

Protests under threat



Poland in peril: Democracy or authoritarianism?

July 2023

ARTICLE 19



First published by ARTICLE 19, July 2023

ARTICLE 19 is an international think-do organisation that propels the freedom of expression movement locally and globally to ensure all people realise the power of their voices.

Together with our partners, we develop cutting-edge research and legal and policy analysis to drive change worldwide, lead work on the frontlines of expression through our nine regional hubs across the globe, and propel change by sparking innovation in the global freedom of expression movement. We do this by working on five key themes: promoting media independence, increasing access to information, protecting journalists, expanding civic space, and placing human rights at the heart of developing digital spaces.

✉ info@article19.org

🌐 www.article19.org

🐦 [@article19org](https://twitter.com/article19org)

📧 [@article19](https://www.instagram.com/article19)

📘 facebook.com/article19org

© ARTICLE 19, July 2023

This work is provided under the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 license. You are free to copy, distribute, and display this work and to make derivative works, provided you: 1) give credit to ARTICLE 19; 2) do not use this work for commercial purposes; 3) distribute any works derived from this publication under a license identical to this one.

To access the full legal text of this license, please visit:
<https://creativecommons.org/licenses/by-nc-sa/4.0/>

ARTICLE 19 would appreciate receiving a copy of any materials in which information from this report is used. ARTICLE 19 bears the sole responsibility for the content of the document.

ARTICLE 19 thanks Anton Ambroziak, Dominika Sitnicka, and Anna Wójcik for their work on this report.

Front cover photos

Collage image includes:

People hold a large rainbow flag at the Krakow Equality March on 29 August 2020. (Photo: Longfin Media/Shutterstock)

Police monitor a demonstration on 24 October 2020 in Katowice, Poland, against a judgment of the constitutional court on the anti-abortion law. (Photo: TomaszKudala/Shutterstock)

Back cover photo

People take part in a march in Warsaw on 4 June 2023, the 34th anniversary of the first democratic elections in postwar Poland. (Photo: Slawomir Kaminski/Agencja Wyborcza.pl via Reuters)

Contents

05 Abbreviations

06 Executive summary

09 Introduction

- 09 The social and political context
- 11 Legal and institutional framework
- 14 Covid-19 pandemic-related restrictions
- 16 Case studies of two anti-government protests
- 17 7 August 2020 protest
- 19 Protests after the Constitutional Tribunal ruling of 22 October 2020 restricting legal abortion

23 Limitations to exercising the right to protest

- 23 Protesters' preventive personal safety measures
- 24 Demands for identification and fines
- 24 Arbitrary detentions
- 27 Disproportionate or unnecessary use of force against protesters
- 30 Humiliating treatment at police stations
- 32 Denial of access to lawyer
- 36 Kettling protesters
- 37 Assessment by courts and national oversight institutions of the police's response to the protests



41 Prosecutions and intimidation

41 Misdemeanour charges

42 Criminal charges

43 Intimidation and harassment, including of children

45 Chilling effect

47 Limits on media coverage

49 Bias in portrayal/handling of protests

49 Public media bias

50 Unequal treatment of pro/anti-government protesters

53 Conclusions and recommendations

55 Recommendations

57 Annexe

59 Endnotes

Abbreviations

LGBTQI+	Lesbian, gay, bisexual, transgender, queer, and intersex
NGO	Non-governmental organisation
OSCE	Organization for Security and Co-operation in Europe
PiS	Prawo i Sprawiedliwość (Law and Justice) party
MP	Member of parliament
TVP	Telewizja Polska (Polish state media corporation)

Note on the right to protest

This report examines the laws, institutions, policies, and practices around the right to protest in Poland, an EU and Council of Europe member state with a thriving and diverse protest culture.

While many of the measures analysed in the report have to do with freedom of assembly and its legal framework at the national level, it is important that this legal framework should be seen in the broader context of the right to protest. The right to protest is the individual and/or collective exercise of existing and universally recognised human rights, including the rights to freedom of expression, freedom of peaceful assembly and of association, the right to take part in the conduct of public affairs, the right to freedom of thought, conscience and religion, the right to participation in cultural life, the rights to life, privacy, liberty and security of a person and the right to non-discrimination. The right to protest is also essential to securing all human rights, including economic, social and cultural rights.¹

Poland is obliged to ensure its laws, policies, and practices regarding the right to protest comply with international human rights standards. These rights are enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which Poland [has been a party](#) since 8 March 1977, as well as in the European Convention on Human Rights, [ratified by Poland](#) in 1993. Therefore, the international protection of the rights engaged when protesting in or about Poland, including the rights to freedom of assembly and freedom of expression, is legally binding upon the practices, policies, and laws in Poland.

Executive summary

Acceptance of and responsiveness to protest is an important mark of a healthy democracy. Protests are essential to the civil, political, economic, social, and cultural life. They can inspire positive social change, improve human rights protection, safeguard civic space, develop an engaged and informed citizenry, and strengthen democracy and participation. They enable people to express grievances, share opinions, expose governance flaws, and demand accountability and remedies from power holders. This is especially important where some people's interests are poorly represented or marginalised. Still, governments around the world too often treat protests as an inconvenience to be controlled or a threat to be extinguished.

On 4 June 2023, about half a million people in Poland rose in protest against the government of the right-wing Law and Justice (Prawo i Sprawiedliwość, PiS) party. Since it came to power in 2015, Poland has seen a steady erosion of the rights to assemble and protest. *Poland in peril: Democracy or authoritarianism?* considers two cases that exemplify this trend. First, it examines the protest of 7 August 2020 following the arrest of an Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) rights activist in Warsaw, amid a wider anti-LGBTQI+ campaign by politicians aligned with the ruling party. Second, it studies the nationwide mass demonstrations in October and November 2020 after the Constitutional Tribunal, a body subordinated to the government,

ruled to tighten abortion restrictions in the country. In both cases, the protests met with a violent law enforcement response and many protesters were detained improperly. The authorities' reaction raises the possibility that these actions were intended to deter Poles from protesting against government policies targeting vulnerable groups such as women and LGBTQI+ people.

Numerous court rulings, amendments to legislation, and a draft bill have seriously threatening freedom of assembly in Poland in recent years. Restrictions adopted in response to the Covid-19 pandemic were also used to curb the protests against the new abortion restrictions. This report finds that in the cases studied, authorities violated protesters' rights in a number of ways, including the use of tear gas and pepper spray, random detention of peaceful protesters, and abuse during arrest and detention. In some cases, MPs, journalists covering the events, and passers-by were also subjected to these measures. Apart from the Commissioner for Human Rights, the National Mechanisms for the Prevention of Torture, and some district courts, authorities did not consider the law enforcement response irregular or disproportionate, and did not launch an independent inquiry into it. The governing majority-controlled public media portrayed the protesters in a biased and exclusively negative light. The majority of detainees who lodged complaints in courts were ruled to have been illegally detained. The report found instances when authorities privileged pro-government protesters over government critics.

Summary of recommendations

ARTICLE 19 makes the following recommendations to safeguard the right to protest in Poland.

To the Polish authorities

- Ensure that any present and future restrictions on the freedoms of assembly and of expression are introduced in accordance with the Polish Constitution.
- End the practice of arbitrary and selective application and enforcement of restrictive rules towards people with dissenting political opinions.
- Ensure that no person is held criminally, civilly, or administratively responsible for the mere act of organising or participating in a protest.
- Ensure that all detentions and any subsequent trials of protesters are carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of non-discrimination.
- Ensure that individuals detained are observed to have engaged in unlawful activity, as opposed to simply being in a public area near unlawful activity.
- Ensure that the right to be informed of the grounds for the detention is respected; all detainees are informed promptly and in sufficient detail about their right to access a lawyer and are provided with that access; and all detentions must be confirmed in an independent court established by law.
- Officially and publicly condemn disproportionate and excessive use of force, arbitrary detention, judicial harassment, and other serious human rights violations.
- Ensure that public media present unbiased, objective, and accurate information about the protest and protesters.
- Immediately end the harassment and intimidation of protest leaders, organisers, activists, and protest participants.

To the police

- Ensure that police officers are adequately trained in the policing of assemblies in line with international and domestic human rights law standards, including regarding the use of force and less-lethal weapons. This must include training on crowd facilitation, de-escalation of violence, and implicit-bias training.
- Ensure police and other security services policing protests or performing other law enforcement duties do not use excessive force and comply fully with the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Ensure that any allegations of excessive use of force by law enforcement agents in the course of protests are promptly, thoroughly, and impartially investigated, that the results of these investigations are made public without delay, and that the suspected perpetrators are brought to justice in fair trials.
- Ensure that persons are only arrested based on reasonable evidence of having committed a recognised offence.
- Ensure that no one is deprived of their liberty except in accordance with legally established procedures and in accordance with international law.
- Ensure all persons taken into custody are given prompt access to a lawyer and all necessary medical treatment.
- Ensure that police respect the safety and integrity of journalists, human rights defenders, MPs, and others involved in monitoring or reporting on assemblies.

To the judiciary

- Take immediate steps to end criminal proceedings against protesters, activists, and human rights defenders.
- Ensure that victims of police abuse have access to mechanisms of justice and to redress.

Introduction

This report examines the laws, institutions, policies, and practices around the right to protest in Poland, an EU and Council of Europe member state with a thriving and diverse protest culture.

In recent years, tens of thousands of people have taken to the streets in the post-communist Central European state to protest against a wide range of issues and to show their support for diverse causes. This report examines the main challenges to the right to protest in Poland in 2020 and 2021, especially in the context of anti-government protests concerning lesbian, gay, bisexual, and transgender (LGBTQI+) people's and women's rights. It uses two case studies of high-profile anti-government protests:

- 7 August 2020 protest against the smear campaign focused on LGBTQI+ people that broke out in the context of an LGBTQI+ rights activist's arrest in Poland's capital; and
- nationwide mass demonstrations in October and November 2020 after the Constitutional Tribunal, a body subordinated to the government, ruled to restrict abortion in Poland.

Forty semi-structured interviews were conducted with protest organisers, participants, journalists, civil servants, and lawyers providing legal assistance to protesters. Moreover, this report has been

informed by analysis of legislation and case law, official documents, documents from Polish and international human rights monitoring bodies and non-governmental organisations (NGOs), and media coverage.

The report concludes with recommendations for the Polish authorities and other relevant stakeholders.

The social and political context

In today's Poland, individuals exercise their right to protest in an institutional context that, since the return of the right-wing Law and Justice (Prawo i Sprawiedliwość, PiS) party to power in 2015, has been characterised by so-called democratic backsliding. Such a process is understood as government-led, purposeful weakening, hollowing-out, and eliminating or capturing democratic institutions that constrain the executive's reach. In Poland, these institutions include the tribunals, courts, state bodies taking part in nominating and promoting judges (the National Council for Judiciary), the prosecution service, electoral commission, and public media.²



In addition to rolling back the rule of law standards, the PiS-led governing coalition – named United Right (Zjednoczona Prawica) – has introduced several significant changes to the protection of the rights and freedoms of individuals, including restrictions on freedom of assembly (discussed later in this report), freedom of expression,³ and reproductive rights.⁴ It also [prevented a gender recognition bill](#)⁵ from entering into force and used captured state institutions to restrict LGBTQI+ people's rights.⁶ Moreover, authorities have intimidated some government critics, including [independent judges and prosecutors](#) opposing changes made to the justice system, [journalists and independent media](#), [women's](#) and LGBTQI+ rights activists, and various grassroots social movement leaders. At the same time, the government has strengthened, including financially, [pro-government private media](#) and specific [social organisations](#) aligned with its agenda.

The socio-political context in Poland is characterised by significant [political](#) and religious⁷ polarisation. In recent years, electoral party competition has been framed around issues related to [economic redistribution](#), [sexual minorities' rights](#), [migration](#), national identity, and so-called [traditional versus modern values](#).

These institutional, social, and political factors have shaped the right to protest in Poland since 2015 to a significant extent. Individuals have responded to those phenomena by demonstrating against and in favour of the government's policies, actions, and rhetoric.

Between 2015 and 2018, Poland witnessed significant protests against the authorities breaching or disrespecting the Constitution and [purposely lowering the rule of law standards](#). These included [protests](#) organised by a grassroots movement named the Committee for the Defence of Democracy (Komitet Obrony Demokracji, KOD). In July 2017, a wave of [nationwide protests](#) against government-planned changes to courts deferred some of the bills being signed into law by the President of Poland. In July 2018, many protesters in Warsaw supported the First President of the Supreme Court in carrying out her duties, despite a new bill forcing her to retire. The protesters' support has [slowed down](#) the capture of Poland's top court by governing politicians.

In 2019 and 2020, some of the governing politicians, including the President of Poland, participated in a [smear campaign against LGBTQI+ people](#) during general, European Parliament, and presidential elections. On 7 August 2020, spontaneous protests erupted concerning the [arrest of an LGBTQI+ rights activist](#) in Warsaw. She was detained on remand (pre-trial detention) for two months on charges of vandalising a van bearing homophobic slogans that belonged to a Pro-Life Foundation member and attacking its driver in June. As a result of the police response to a [spontaneous protest](#) in central Warsaw, 48 people, including passers-by, were detained.

In October 2020, the [biggest protests](#) since Poland's turn to democracy in 1989 occurred. The demonstrations were a reaction to the politically subordinated Constitutional Tribunal's⁸ ruling on a further restriction to already very restrictive grounds on legal termination of pregnancy in Poland.⁹ The judgment entered into force in January 2021. The protests against curbing legal abortion erupted with new energy in November 2021 after the [death of a pregnant woman](#) in a hospital due to septic shock because doctors did not terminate her pregnancy and instead waited for her non-viable foetus to die.

In October 2021, crowds protested in favour of the country's [continuing membership in the EU](#), after the [Constitutional Tribunal](#), in a ruling from 7 October, challenged EU law primacy and certain judgments of the top EU court, the Court of Justice of the European Union.¹⁰ Other noteworthy anti-government protests in recent years have included [all-Poland teachers strikes](#) in 2019, student demonstrations in 2020 and 2021 against planned changes in the education system that critics accuse of disproportionately [limiting school autonomy and ideological bias](#), [entrepreneurs' protests](#) against various restrictions imposed during the Covid-19 pandemic, [climate and environmental protests](#), and demonstrations against

[excessive force used by the police](#) at police stations. Since 2015, groups of pro-democracy activists and performers have been staging [counter-protests to official commemorations](#) of the 2010 state aeroplane crash in Smoleńsk, Russia, which is a key event in the governing PiS's historical policy. In the summer of 2021, when some Covid-19-related restrictions on freedom of assembly were lifted, many [LGBTQI+ pride parades](#) took place across Poland.

Individuals and organisations that share ideology or agenda with the current government in Poland have also exercised the right to protest in recent years. The most prominent event is the annual Independence March in Warsaw. Its organisers received generous state funding from the National Freedom Institute – Centre for Civil Society Development¹¹ and the Patriotic Fund.¹² On 11 November 2021, the Independence March organised by far-right nationalists with state support gathered 150,000 people in Warsaw amid legal controversies. The court ruled that the anti-fascist group had a right to schedule a demonstration on the march's usual route as it had filed for it first. However, to allow the extreme right-wing protest, [state authorities elevated it](#) to the category of state event, privileged over any other assemblies. The anti-fascist group decided [not to hold a counter-demonstration](#), citing security concerns.

Legal and institutional framework

The right to protest in Poland is protected by national and international law guaranteeing freedom of peaceful assembly and expression. These freedoms are protected by the Constitution of the

Republic of Poland of 7 April 1997 (Articles 54 and 57),¹³ the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (Articles 10 and 11),¹⁴ and the [International Covenant on Civil and Political Rights](#) (Articles 19 and 21),¹⁵ to which Poland is a state party. These rights apply to all people, including minors, and are further protected by the UN [Convention on the Rights of the Child](#) (Articles 13 and 15), to which Poland is a state party.¹⁶

Freedom of assembly and expression¹⁷ are not absolute and may be subject to limitations. The Constitution stipulates that restrictions to these freedoms may be established only by statute and only when they are necessary in a democratic state for its security or public order, or the protection of the environment, health, and public morals, or the freedoms and rights of others (Article 31.3 of the Constitution). Such limitations may not infringe upon the essence of freedoms and rights.¹⁸

The Constitution also regulates which constitutionally protected rights and freedoms may be restricted when a state of exception is introduced. Significantly, the freedom of assembly cannot be limited in the case of a state of natural disaster (which may be introduced, for example, due to fire, flood, or epidemic); however, it can be restricted under martial law and a state of emergency.¹⁹

Despite these protections, numerous court rulings, amendments to legislation, and a draft bill have seriously threatened freedom of assembly in Poland in recent years.

The Assembly Law of 24 July 2015 defines an assembly as a grouping of persons in an open space accessible to an unspecified number of persons in a specified place for the purpose of holding meetings together or to express a common opinion on public matters.²⁰ Precisely 14 months after its enactment, the Assembly Law was amended. In 2016, the Polish parliament, which has been dominated by the United Right coalition since October 2015, passed a series of restrictions to freedom of assembly that was signed into law by PiS-aligned President Andrzej Duda.²¹

A new statute of 13 December 2016, amending the Assembly Law introduced the concept of cyclical assemblies – assemblies regularly occurring in the same place, which have priority over any other assembly.²² A cyclical assembly is recognised when it has the same organiser, occurs at least four times a year, or once a year on a national holiday, has been organised for at least three years, and aims to celebrate events of particular importance in the history of Poland. The law stipulates that counter-demonstrations must be distanced at least 100 metres from cyclical assemblies. A provincial governor, nominated by the ruling party, can authorise a cyclical assembly instead of the local government authorities that typically authorise assemblies. Moreover, the provincial governor's single decision allows the organisation of cyclic assemblies for three years. However, national and international organisations,

including the Polish Supreme Court,²³ the [Commissioner for Human Rights of the Republic of Poland](#), the [Polish Helsinki Human Rights Foundation](#), the European Parliament,²⁴ the [Organization for Security and Co-operation in Europe](#), [Amnesty International](#), [Human Rights Watch](#), and [ARTICLE 19](#) raised serious concerns over the new rules on assembly in Poland.

In 2017, the Polish Constitutional Tribunal, which has been subordinated to the governing politicians since 2016,²⁵ ruled that the amended regulation on assembly conforms to the Constitution.²⁶ Before 2015, an independent Constitutional Tribunal established a strong status of spontaneous and other assemblies, ruling, among others, that authorities cannot restrict freedom of assembly on public morality grounds.²⁷ In 2015–2016, the PiS-led government illegally introduced three loyalists to the Constitutional Tribunal and effectively ended the tribunal's independence.²⁸ Since December 2016, the Constitutional Tribunal has been an extension of the ruling party.²⁹ Consequently, the independent centralised constitutional review of rights, such as freedom of assembly, has been disabled in Poland.

Nonetheless, common courts engaged in dispersed constitutional review and tended to favour the individual's freedom of assembly in cases regarding participation in protests. On 26 April 2021, the Supreme Court, the highest court in the land, overturned a judgment and discontinued proceedings in a case concerning a penal order (*wyrok nakazowy*) against an individual who had been charged by police with an 'attempt to obstruct' a cyclical

assembly commemorating the victims of the Smoleńsk plane crash. The obstruction [allegedly consisted of shouting](#) in the direction of that gathering. The NGO Helsinki Foundation for Human Rights in Warsaw monitored more than 160 proceedings in Polish courts from March 2018 to June 2019 and found that most cases concerning freedom of assembly ended with positive decisions for the protesters. In individual cases, there were judgments or decisions unfavourable to the defendants, but the vast majority of cases ended with acquittals or decisions to discontinue proceedings.³⁰ Moreover, applicants have filed complaints with the European Court of Human Rights concerning freedom of assembly in Poland in recent years. For instance, a complaint was brought by an activist banned six times from organising a counter-manifestation to a cyclical assembly (*Kornacki v Poland*, Appl. no. 4775/18). In another case, citizen journalists lodged complaints concerning the reporting from an environmental protest (*Grundland and Bojarowska v Poland*, Appl. nos. 15532/21 and 16560/21). The cases were pending at the time of writing this report.

In September 2021, responding to the migration crisis orchestrated by authoritarian Belarus, Poland fortified its border and declared a state of emergency in areas bordering Belarus. Humanitarian aid agencies, NGOs, media, and volunteers who wanted to help vulnerable migrants stranded in the forests and swamps were banned from the area, and the [right of assembly in the zone was effectively restricted](#). At the beginning of December 2021, some media were allowed into the area but no civil society aid organisations.

There have also been new legislative initiatives to prohibit assemblies with specific themes in recent years. In October 2021, the [Polish parliament decided](#) to scrutinise further a bill commonly known as 'Stop LGBTQI+', tabled as a citizens' initiative by an NGO named Life and Family (Życie i Rodzina). The bill would ban pride parades and other public gatherings deemed to promote non-heterosexual sexual orientation and gender identities, the idea of non-biological gender, same-sex marriage or civic partnerships (which are not legal in Poland), or the adoption of children by same-sex couples (which is also not legal in Poland). [Amnesty International](#) warned that the bill is 'discriminatory to its core'. Hundreds of people took to the streets in Warsaw to [protest against it](#). At the time of finalising this report, the bill was still being debated in parliament.

Covid-19 pandemic-related restrictions

In 2020–2022, Poland's democracy and the rule of law were affected by the executive and the legislative's approach to the Covid-19 pandemic, which included [imposing restrictions to freedom of assembly](#). Notably, the executive decided [not to introduce any constitutional state of exceptions](#), such as the state of emergency or natural disaster, which would be the most appropriate in the pandemic's context. Instead, the government adopted a Bill on Prevention and Control of Infections and Infectious Diseases in Humans in which a 'state of epidemic', unknown to the Constitution, was introduced.³¹ Based on Article 46 of the bill, which entails that the authorities may ban public gatherings in the event of an epidemic emergency, the government

issued a series of ordinances prohibiting public gatherings. The Commissioner for Human Rights [repeatedly warned](#) that under the Polish Constitution, the rights and freedoms of individuals might be restricted only by a statute, and the ordinance cannot be the basis for limiting the freedom of assembly.

On 13 March 2020, the Minister of Health's ordinance prohibited public assemblies with more than 50 participants.³² Two weeks later, all public gatherings were prohibited and confirmed in the regulations issued by the Council of Ministers. On 29 May 2020, a ban on assemblies, including spontaneous assemblies, was introduced, except for registered assemblies with fewer than 150 participants (for example, the monthly government commemoration of the Smoleńsk plane crash, known as *miesięcznice smoleńskie*³³). In autumn 2020, Poland was severely hit with a Covid-19 outbreak, and the government limited the numbers of participants in registered assemblies.³⁴

On 23 October 2020, the day after the Constitutional Tribunal ruled to limit the grounds of legal abortion, which provoked spontaneous protests, the government reduced the maximum number of registered assembly participants to five.³⁵ In a televised speech on 27 October, Jarosław Kaczyński, the Deputy PM responsible for state security and the governing PiS party chairman, [accused demonstrators](#) protesting despite Covid-19-related restrictions of committing a serious crime. On 29 October, the National Prosecutor instructed all prosecutors conducting

or overseeing pre-trial investigations in cases regarding illegal gatherings during the pandemic that they should consider charges of 'bringing a threat to the health and life of many people'.³⁶ The [National Prosecutor](#) considered that organising street protests in 'dramatic realities' of the surging Covid-19 epidemic was 'extremely irresponsible' because 'it will lead to an even greater increase in infections and multiplied deaths'. The statement emphasised that 'it is also a clear violation of the Regulation of the Council of Ministers of 23 October 2020, on establishing certain restrictions, orders, and prohibitions in connection with the occurrence of an epidemic'.

As the Covid-19 epidemic in Poland showed some signs of abating in late April and May 2021, the government, in successive decrees, expanded the limit of people allowed to participate in registered assemblies. On 11 June 2021, the government's order [lifted the ban on spontaneous assemblies](#). This meant that from now on, the police would not be able to ask for identification or issue fines on charges of participating in an illegal assembly. However, the police [continued to charge protesters](#) for occupying lanes, littering, making noise, or using profanity in public spaces. One interviewee, reporter Maciej Piasecki, assessed that:

“ The police are still asking protesters to identify themselves. Only the formal basis has changed. It is no longer participation in an illegal assembly, but participation, even as bystanders, in an assembly during which, for example, a lane is occupied, or a roadway is painted, or when public order is disturbed in another way.



Under the Council of Ministers Ordinance of 11 June 2021, from 26 June 2021 onwards it has been permitted in Poland to organise or participate in assemblies, including spontaneous assemblies, with up to 150 participants.³⁷

Despite the Covid-19 epidemic-related restrictions, assemblies, including spontaneous ones, continued to be held in Poland. Some of them were met with a strong reaction from the police and other authorities. The police and the Sanitary Inspection Department frequently fined individuals for breaking Covid-19-related restrictions. However, courts usually ruled that the government-imposed restrictions on freedom of assembly have been against the Constitution.³⁸ On 1 July 2021, the Supreme Court ruled that the ban on public gatherings was introduced without a proper legal basis by way of ordinance instead of a statute, and found it contrary to Article 57 and Article 31.3 of the Constitution.³⁹ The government [removed most of the pandemic-related restrictions](#) from 1 March 2022.

Case studies of two anti-government protests

This research examined the ability to exercise the right to protest in two anti-government demonstrations that occurred spontaneously in 2020, despite Covid-19 related restrictions of freedom of assembly. The selected protests comply with the definition of 'peaceful protest' adopted by the Council of Europe's European Commission for Democracy through Law (the Venice Commission) and the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights which reads:

“ The term 'peaceful' includes conduct that may annoy or give offense to individuals or groups opposed to the ideas or claims the assembly seeks to promote. It also includes conduct that temporarily hinders, impedes, or obstructs the activities of third parties, for example, by temporarily blocking traffic. As such, an assembly can be entirely 'peaceful' even if it is 'unlawful' under domestic law. The peaceful intentions of organizers and participants in an assembly should be presumed unless there is convincing evidence of intent to use or incite violence.⁴⁰

Due to their subject matter and the response of authorities towards the protesters, the two anti-government protests discussed in this report received extensive media coverage and [alarmed national](#) and [international](#) human rights monitoring organs and NGOs.

The first case study is the 7 August 2020 spontaneous protest in central Warsaw that broke out in relation to an LGBTQI+ rights activist's arrest and, more broadly, in the context of the anti-LGBTQI+ campaign led by governing politicians. The protest was dubbed '[the Polish Stonewall](#)' in an analogy to the 1969 Stonewall Riots, which were considered a watershed event that transformed the gay liberation movement and fight for LGBTQI+ rights in the US.

The second case study concerns mass protests against the rollback on women's rights, especially reproductive rights, which arose after the captured Constitutional Tribunal ruled to restrict legal abortion. In this report, the All-Poland Women's Strike protests on 23 and 29 October and 18 November are considered indicative of the authorities' changing response to anti-government protests.

We argue that the authorities' response to these two protests, showcasing grassroots resistance to human rights policies and ideologies of the camp governing Poland since 2015, was a litmus test for the government's commitment to constitutional and international standards on freedom of assembly. Outlining the protests' broader context provides a better understanding of their significance.



LGBTQI+ rights activists hold a 'Free Margot' banner during a protest. (Photo: MOZCO Mateusz Szymanski/Shutterstock)

7 August 2020 protest

A spontaneous protest against the pre-trial detention of non-binary activist 'Margot' Szutowicz was part of a broader civil society's response to an ongoing, state-led smear and hate campaign against LGBTQI+ people in Poland. During the European Parliament (2019), general (2019), and presidential (2020) election campaigns, LGBTQI+ rights were made into one of the primary polarising topics.

The most important office holders publicly used dehumanising language against non-heterosexual people. Among them were incumbent President Andrzej Duda:

“ They are trying to tell us that they are people, and this is just ideology.

” (13 June 2020)

and the future Minister of Education, then PiS MP Przemysław Czarnek:

“ Let's defend the family from this kind of corruption, depravity, and immoral behavior. Let's defend ourselves from the LGBTQI+ ideology and stop listening to these idiocies about human rights or equality. These people are not equal to normal people, and let's finally end this discussion.

” (13 June 2020)

In the same year, legislative proposals included a ban on 'homosexual propaganda'¹⁴¹ modelled on legislation straight from Vladimir Putin's authoritarian Russia. Such proposals were promoted under the slogan of 'defending Polish children'.

Moreover, since 2019, more than 100 local governments in Poland have adopted non-binding, declaratory resolutions against the so-called 'LGBTQI+ ideology' or in support of the traditional family model, discriminating against LGBTQI+ people from local communities. These resolutions were often officially named Pro-Family Charters.⁴² At the time of submitting this report, at the end of 2021, such resolutions existed in 52 local communities.

The response of the LGBTQI+ community to the smear campaign has been mainly symbolic and included exercising the freedom of expression and the freedom of assembly. It included the hanging of rainbow flags on well-known monuments in Warsaw, as well as peaceful protests. A more robust expression can be seen in the destruction of the tarpaulin of a vehicle belonging to the far-right Pro-Life Foundation, whose homophobic message amounts to linking homosexuality to paedophilia or zoophilia. National authorities

– the government, prosecution service, and the police – actively participated in the harassment of activists protesting against the anti-LGBTQI+ campaign. On 28 July 2020, Prime Minister Mateusz Morawiecki publicly named the act of hanging rainbow flags on monuments in Warsaw 'Nazi barbarism'. Deputy Minister of Justice Sebastian Kaleta, who considered that a group of LGBTQI+ militants profaned several monuments and that this was evidence of the 'aggression of LGBT circles towards patriotic and Christian values', filed a notice to the prosecutor's office against the protesters for the crime of 'insulting religious feelings' (Article 196 Criminal Code). Subsequently, police violently detained three suspects on these charges. The 7 August protest occurred in this context, characterised by heightened social tensions and strong reactions by public authorities.

Activists placed a rainbow flag on a statue of Jesus in front of the Basilica of the Holy Cross in Warsaw in July 2020. (Photo: Robert Kuszyński/Oko.press)



Protests after the Constitutional Tribunal ruling of 22 October 2020 restricting legal abortion

On 22 October 2020, the Constitutional Tribunal ruled in case K1/20 brought by the governing coalition's MPs and declared unconstitutional a provision of the Law on Family Planning allowing pregnancies to be terminated when there is a high probability of a severe or irreversible foetal impairment or when the foetus is diagnosed with an incurable and life-threatening disease.⁴³

Although the abortion law was officially tightened not by the parliamentary majority but by the Constitutional Tribunal, Poles attributed the change to the governing PiS party. The motion to the Constitutional Tribunal was signed by 107 PiS MPs, 11 MPs of extreme right-wing Konfederacja, and one deputy of the then existing PSL-Kukiz'15 party. The identification of PiS party with the ruling is also determined by the Constitutional Tribunal's very status, broadly considered subordinated to the government. The European Court of Human Rights ruled that illegally composed benches of the Constitutional Tribunal do not constitute an independent court within the meaning of the European Convention on Human Rights.⁴⁴

The nationwide mass protests that erupted after the 22 October ruling were strictly anti-government, directed against the governing party. Almost immediately, 'F*** PiS!' ('Jeść PiS') graphically expressed in the form of eight stars (***** ***) became one of the most frequently chanted slogans during protests. The demonstrations were held in front of the Constitutional Tribunal building, but also in front of the PiS party headquarters, PiS Chairman Jarosław Kaczyński's home, the presidential palace, the home of former PiS MP and sitting Constitutional Tribunal judge Krystyna Pawłowicz, and Constitutional Tribunal President Julia Przyłębska's place of residence in Berlin where her husband, then Poland's Ambassador to Germany, resided.



Police scuffle with people near the house of Law and Justice leader Jaroslaw Kaczynski during a protest against imposing further restrictions on abortion law in Warsaw, Poland on 23 October 2020. (Photo: Jędrzej Nowicki/Agencja Gazeta via REUTERS)



The second target of the protests, after the politicians, was the [Catholic Church](#). Across Poland, protests were held in front of archbishops' palaces, and there were instances of spraying pro-choice slogans on churches. On Sunday 25 October 2020, some activists demonstrated in front of churches, and even [inside the churches during holy mass](#). Dozens of such instances were recorded.

The mass character of protests shocked the government. Some PiS politicians spoke with conciliation and understanding towards the protesters. However, the official position of the authorities towards the All-Poland Women's Strike was formulated very quickly. PiS Chairman and deputy PM Kaczyński, responsible for state security, announced in a [televised speech](#) to the nation that:

“ **This verdict is completely in line with the Constitution, moreover, in the light of the Constitution, there could not be any other verdict in this case. (...) And this verdict has today become a reason or a pretext for violent social speeches, speeches that take place in a special situation. We have a severe stage of the Covid epidemic; we have a state in which all kinds of gatherings of more than five people are forbidden, we have a state in which these demonstrations will certainly cost the lives of many people. Those who call for them and those who participate in them are bringing a general danger, so they are committing a serious crime. The authorities have not only the right but also the duty to oppose such events.** ”

The governing politicians created a narrative around the Women's Strike that it was not about abortion rights but about bringing down the government. [PiS spokeswoman](#) Anita Czerwińska assessed: 'In the beginning, there was a pretext that it was about women's rights, but very quickly it turned out that in fact, this anarchist spectacle is about simply overturning the democratic order and overthrowing the PiS government.'

The All-Poland Women's Strike demonstrations were organised as spontaneous assemblies without prior registration, and they were formally illegal under the Covid-19-related restrictions to freedom of assembly. However, the rules were introduced by way of ordinances, not bills, and therefore were in breach of the law. By October 2020, when protests unfolded, common courts had already ruled that restricting the right to the assembly by way of ordinances was in breach of the Constitution.⁴⁵ The courts also indicated that the restrictions to freedom of assembly were disproportionate, infringing on the essence of this freedom. Despite existing case law, the police enforced the restrictions and dispersed protesters, informing them that they were participating in an illegal assembly for which they would [face legal liability](#) and at times fining them or asking sanitation authorities to issue fines for breaching Covid-19-related restrictions.

The Commissioner for Human Rights (the constitutional authority for the protection of liberties and human and citizen's rights as outlined in the Constitution and other normative acts) took up the matter of police actions against the participants of the first spontaneous assembly in Warsaw on the night of 22–23 October 2020 on its own initiative. The Commissioner was seriously concerned about the proportionality of the use of direct coercive measures, including tear gas, against the demonstrators and the significant number of detainees. Above all, the Commissioner pointed out that the assemblies are and will be legal. In a letter to the Ministry of Interior and Administration and the Capital City Police, the Commissioner stressed that citizens have the right to assemble spontaneously, which is particularly important in the context of the abortion decision. The [Commissioner pointed out](#) that:

“ The current social situation and the involvement of society mean that the reaction to this decision of the Constitutional Court must be immediate. Spontaneous assemblies are a permitted and legally protected form of assembly. The ban on the organisation of spontaneous assemblies by regulation should be assessed in terms of its compliance with Article 31.3 of the Constitution, according to which limitations of rights and freedoms may only result from the law and each time must meet the test of proportionality in a democratic state of law.

When the Women's Strikes were unfolding, the police were repeatedly informed that the ban on assembly is unlawful. However, police officers took the position that it is not their role to interpret the law but enforce it.

In the intervention, the Commissioner for Human Rights highlighted that 'the police – having no basis for doing so in the Code of Offences – conducted mass searches, detentions, interrogations, imposed fines and, as a public prosecutor, submitted to the courts' motions for punishment that were unjustified under the existing law.' To this, the [Chief of Police responded](#) that 'the Police have no authority to examine the constitutionality of existing legislation'. The Chief of Police spokesman [Mariusz Ciarka](#) defended banning gatherings through the government ordinances:

“ It is also worth remembering that the pandemic situation is very dynamic, and it changes from day to day and sometimes even from hour to hour. If the government were to introduce orders and bans in the form of law each time, then by the time it would go through the legislative path, i.e., the Sejm, the Senate, and the President's decision, at the moment it comes into force, these regulations might no longer have any impact on the real state of affairs. Therefore, there is no better and faster legislative path in Polish law than issuing regulations under Article 92 of the Polish Constitution.

People react after police used tear gas during a protest against imposing further restrictions on abortion law in Warsaw on 23 October 2020. (Photo: Jędrzej Nowicki/ Agencja Gazeta via REUTERS)





Protesters gathered to speak out against a legislative proposal for a ban of abortion in Katowice, Poland, on 30 October 2020. (Photo: Shutterstock/Saratstock).

The protests unfolded as follows. On 22 October, a wave of spontaneous mass protests in opposition to the ruling commenced in Warsaw and centres of other cities and towns. On 25 October, sit-ins in some Catholic churches were staged, and nationalists groups started to organise to [‘defend churches’](#) under the name of National Guard (Straż Narodowa). On 26 October, protests were held in hundreds of locations in Poland. On 27 October, the [All-Poland Women’s Strike](#) presented a list of demands. On 29 October, the [biggest nationwide protests](#) in Poland since 1989 were held in more than 400 locations. The protests reached an unprecedented scale, including in small towns and communities. In the capital, Warsaw, nationalist football [hooligans attacked the protesting crowds](#) on several occasions.

The longer the protests lasted and the less numerous they were, the more decisive the actions of the police became. In November and December 2020, [police officers blocked entire streets](#) to split demonstrations and separate participants, pushing them to try to regroup elsewhere. The use of direct coercive measures by the police against

protesters and journalists became more frequent. On 6 November, police effectively dispersed a demonstration for the first time. A concert against the stricter abortion law was to take place at Plac Defilad in central Warsaw, and well-known artists had announced their participation. About 200 people showed up at the venue, but police vans quickly surrounded the square and proceeded to check the identity of those gathered. The concert did not take place, and the [demonstrators dispersed](#) to avoid fines.

On 18 November, several hundred peaceful protesters were cordoned off by the police in central Warsaw, unable to move and leave the protest. At some point, unidentified plain-clothed officers appeared and started to beat people with telescopic batons and use stun guns and tear gas against them. They were later identified as officers from the [Central Counterterrorist Subdepartment of the Police](#) (Biurem Operacji Antyterrorystycznych). No reason was given for the use of containment strategies. Protesters were [dragged from the crowd](#) to be detained, and some protesters, MPs, and journalists were pepper-sprayed.

On 28 November, during another protest in central Warsaw, another [MP was pepper-sprayed](#). The police, surrounding the participants, entered the area belonging to the Warsaw University of Technology with riot squads, thus [violating the university’s autonomy](#). Between 28 December and 17 January, the strict [National Lockdown was introduced](#). On 27 January 2021, after months of illegally withholding to do so, the government published the Constitutional Tribunal’s ruling, and it became officially binding. On that day and the day that followed, the [last big protests](#) were held.

Limitations to exercising the right to protest

Protesters' preventive personal safety measures

Interviewees reported that due to the officially illegal status of assemblies due to Covid-19-related restrictions, the disproportionate reaction by the police to the 7 August 2020 protest concerning the arrest of an LGBTQI+ rights activist, and the first impressions of police actions against the All-Poland Women's Strike protests, those who planned to participate in subsequent anti-government protests communicated mostly via encrypted instant messaging services such as Signal or Telegram. In the case of promoting a demonstration on public social media pages, such as on Facebook, the event's details were determined shortly before the planned start and communicated via an encrypted channel. Interviewees in this research considered that this safeguard was intended to prevent the police from cordoning off the march routes in advance.

One interviewee who participated in the Women's Strike protests considered that these preventive measures resulted directly from information on how the police treated the 7 August 2020 demonstrators. She believed these measures were:

“ A matter to protect me, maybe unprofessionally, but as much as I was able to before someone intercepted that data. You had to hide your plans in some way and protect yourself that the information does not fall into the wrong hands.

” (Sonia Łukomska, protest participant)

Ahead of the protests, people on social media channels (Facebook, Instagram, Twitter) shared information about peaceful protesters' rights, detainee rights, the status of demonstrations during pandemic restrictions, and safe communication channels. A pro bono lawyers' group prepared the information (for example, Kolektyw Szpila, a grassroots group that coordinates legal assistance to protest participants), along with NGOs (for example, [Campaign Against Homophobia](#)) and social activists (for example, [Akcja Demokracja](#), [Anarchist Black Cross](#)). The [Free Courts \(Wolne Sądy\)](#) lawyers' initiative explained in a video the three fundamental rights anyone has in the event of a police arrest: to be informed of their rights and the reasons for their detention; to be put in contact with a person of choice; and to have immediate contact with an attorney.

The grassroots education campaign also addressed [mandatory equipment](#) for the demonstrations: warm clothes, food, water, ID, goggles or glasses, chimneys or scarves to cover the nose and mouth, decontamination in case pepper gas is used, and a charged power bank. All this was [in case the police pepper-sprayed them](#). Flyers with legal advice and an emergency phone number for legal assistance were also [circulated](#) among protesters. Some protesters wrote down their lawyer's or a pro bono lawyer's hotline telephone number [on their hands and arms](#). Interviewees stressed

the importance of educating themselves about their rights before participating in protests. One of them argued that learning about his rights led him to engage in new activities during protesting:

“ For a long time, I didn’t know my rights or feel much support from lawyers. I was afraid to take more radical steps during the protest because I’m a student and can’t afford a lawyer. But then I became interested in law related to the right to protest, the more I started to open up to different actions. For example, shouting through a megaphone during protests.

” (Franek Broda, protest participant and social activist)

After the protests on 7 August 2020, informal networks of legal support for protesters formed the Kolektyw Szpila (Pin Collective). This group is a feminist anti-repression collective operating in Warsaw and the vicinity and provides free legal aid for people facing violence or harassment from authorities because of their activities in the public interest, especially protests. The group created a [hotline number](#) that detainees could call for legal assistance. Kolektyw Szpila cooperates with attorneys networked in the informal Tęczowi Obrońcy (Rainbow Defenders) group, also formed after 7 August 2020, to provide legal assistance to the detained.

Demands for identification and fines

The Polish courts’ case law requires the police to [provide clear reasons](#) to ask individuals to identify themselves. During the 7 August 2020 protest and the All-Poland Women’s Strike protest, the police routinely demanded protesters to identify, often citing Covid-19-related restrictions on freedom of assembly. For instance, during a rally on 14 December 2020, police demanded 212 protesters to identify, fined six protesters, detained three persons, and filed 106 notes to the sanitary authorities to issue fines due to pandemic-related restrictions. There were instances when people did not accept the penalties and were informed that their case would be [referred to court](#). One interviewee who participated in a Women’s Strike protest recounted that the police wanted to fine her, but abstained from doing so:

“ Because I knew my rights. The officers eventually let me and my friends go. But it took a very long time. There were various police attempts to intimidate us, and there were a million attempts at instructing or slightly veiled intimidation.

” (Sonia Łukomska, a Women’s Strike protest participant)⁴⁶

Arbitrary detentions

During the 7 August 2020 protest and the All-Poland Women’s Strike protest, protesters and even some passers-by were detained, at times in a violent manner. In the majority of cases they were detained solely for exercising their right to peacefully protest.

The Polish Commissioner for Human Rights, in his capacity as the National Prevention Mechanism under the Optional Protocol to the Convention Against Torture (Krajowy Mechanizm Prewencji Tortur), found that during the 7 August 2020 protest [48 persons](#), including those who did not actively participate in the protest, and even some passers-by going grocery shopping, were detained by the police. Thirty-eight of them later challenged the detention in court. The Helsinki Foundation for Human Rights, based on available footage, considered that the detainees were selected at random.⁴⁷ Some interviewees in this research who had participated in or monitored the 7 August 2020 protest reported that the police particularly targeted those who wore or carried LGBTQI+ emblems, such as badges or flags in rainbow colours, or whose appearance, such as coloured hair or androgynous appearance, made them stand out from the crowd. After reviewing [recorded footage](#), it appears that some of the detained people wore rainbow emblems or carried totes in rainbow print. Two interviewees who are lawyers and have been representing the detained persons, argued that this was the case. According to



Eliza Rutynowska, 'There have been mass arrests based on roundups in the streets solely based on whether or not someone has a rainbow flag with them. People were typecast.' Attorney-at-law Grzegorz Kukówka recounted that his two clients, who are facing charges for having taken part in a demonstration in Krakowskie Przedmieście on 7 August 2020, presented evidence that they were not at the protest scene during the protest, but that they were detained later, 'probably because one had a rainbow-colored bag and another a pin'. According to Kukówka, the police typecast his clients as 'those who must have been returning from the protest'. This assessment of the situation was confirmed by a police officer who testified before the court in a case brought by Aleks Wentykier, a transgender person, against his detention on 7 August 2020. In the proceedings, the policeman admitted that the police were '[instructed to stop all persons bearing LGBTQI+ colours](#), regardless of how they behaved'.

Deputy Commissioner for Human Rights, Dr Hanna Machińska, who was officially monitoring detainees at the police station, emphasised during this research that there were instances of police detaining peaceful protesters without an apparent reason and that later on, some of the detained were accused of destroying property and breaching a police officer's inviolability.

Some participating in nationwide anti-government protests after the Constitutional Tribunal's ruling restricting legal abortion were also detained. Kolektyw Szpila estimated that at least 150 persons were detained during the first 100 days of

protests, from 22 October 2020 through to 28 January 2021.⁴⁸ According to their report, individuals were temporarily deprived of their liberty 150 times (this includes prolonged detention in police cars and detention at the police station), and there were 81 instances in which individuals were detained for a night, or sometimes two, in police detention stations and charges were pressed against them. There were 62 further instances in which individuals were transported to police stations, from which they left the same day or night, and charges were pressed against them. Finally, there were seven instances of individuals being detained in police custody for several hours and then released without charge.

Attorney-at-law Karolina Gierdał, associated with Kolektyw Szpila and the NGO Campaign Against Homophobia, who monitored the All-Poland Women's Strike protests, also assessed that the police tended to detain peaceful protesters 'at random'. In her view:

“ There was no difference in the behavior of demonstrators who were detained and those who were not. Either in terms of some sort of confrontation with the police or in terms of methods of protesting. These were mainly very peaceful protests; the participants didn't do anything else, just chanted, or sang, or danced. There were absolutely no direct actions taken there. At least I don't recall any. And it was impossible for us to predict whether or not there were to be any detentions. Because this depended on the police tactics on the given day.

Opposition party Lewica (Left) MP Maciej Kopiec submitted a formal request to parliament (interpellation) to explain the

scale of the use of force against protesters during the All-Poland Women's Strike protests. According to the [Provincial Police Headquarters data](#), between 23 October 2020 and 2 March 2021 (the date of the MP's inquiry), the Warsaw Police detained 406 persons.

According to the [Capital City Police statistics](#) cited by media, during the All-Poland Women's Strike protests on 18 November, the Warsaw Police demanded 497 people to identify, issued 320 motions to court and 277 notes to sanitary authorities, and detained 20 persons. During protests on 27 January 2021, the day when authorities published the Constitutional Tribunal's abortion ruling and it entered into force, the Warsaw Police demanded to [identify several hundred demonstrators](#), issued 13 fines, found 240 instances of misdemeanour and 10 cases of committing a crime, and gave almost 250 motions for punishment to courts. During the All-Poland Women's Strike protest on International Women's Day on 8 March 2021, 335 persons were demanded to identify, and the police issued 188 motions for punishment to the court and 28 fines. Five persons who refused to identify themselves were [detained](#) and one person was detained for allegedly insulting the police officer.



A protest outside the house of the leader of Poland's ruling party, Jarosław Kaczyński, in Warsaw after the Constitutional Tribunal banned abortion on the basis of foetal defects. (Photo: Grzegorz Zukowski/Shutterstock)



Disproportionate or unnecessary use of force against protesters

In the statements of interviewees during this research and in the documents of human rights monitoring institutions, concerns over the disproportionate use of force during the arrest of protesters on 7 August 2020 were raised frequently.

[International human rights law and standards](#) specify that law enforcement officials may use force only when strictly necessary and only to the extent required for the performance of their duty,⁴⁹ and it must be proportionate to the situation faced.⁵⁰ After making arrests, among other considerations, law enforcement officials must ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.⁵¹

Likewise, European law and standards entail that the use of force in the policing of demonstrations must be absolutely necessary and proportionate, and authorities must be able to provide convincing or credible arguments which could explain or justify the degree of force used against the protesters under the requirements of [Article 3 of the European Convention on Human Rights](#) that prohibits inhuman or degrading treatment. Legal safeguards surround the use of tear gas in order to minimise the risks of death and injury stemming from its use. The standards further stipulate that force should not be applied against peaceful protesters who

have not engaged in any acts of violence during a protest, police must show tolerance and restraint before attempting to disperse a crowd which has neither been violent nor presented a danger to public order, and the use of force against protesters should not have a dissuasive effect on people's willingness to demonstrate, which would breach [Article 11 of the Convention](#) guaranteeing freedom of assembly.

Moreover, [Article 57](#) of the Constitution of the Republic of Poland guarantees citizens the right to peaceful participation in public assemblies. The Act on Police⁵² and Act on Means of Direct Coercion and Firearms⁵³ stipulate that the means of direct coercion can be applied in 14 circumstances, including to repel or counteract an attack on the life, health, or freedom of a person or an attack on areas, objects, or equipment protected by an authorised person or to prevent a breach of public order or public security.⁵⁴

The Constitutional Tribunal has ruled that the police are able to take lawful action against disorderly conduct during a public assembly.⁵⁵

The Commissioner for Human Rights' report on the 7 August 2020 detentions included findings that dangerous coercive measures were used against some protesters, disproportionate to their behaviour. Such measures included [throwing people on the ground to be handcuffed](#) and putting handcuffs on people's hands from behind during transport. Moreover, some officers were [verbally abusive to detainees](#), making homophobic and transphobic comments, as confirmed by an eyewitness. Opposition MP

Magdalena Biejat argued that 7 August was the first time the police started escalating the situation during anti-government protests:

- “ Certainly the first such moment when the police started to behave by escalating the situation were the protests on Krakowskie Przedmieście [on 7 August 2020]. That was the first moment when we saw that the police were escalating instead of de-escalating, that they were behaving in a way that was
- ” disproportionate to the situation.

Interviewees who participated in the 7 August 2020 protest reported that the police brutally searched them, threw them or other protest participants to the ground, handcuffed them, and that there were instances of kneeling and throwing detainees into police cars ‘like sacks of potatoes’. Interviewees reported:

- “ We stood close to the police, but we didn’t even chant. They approached us, and I asked my friend to identify himself. He said – ‘OK, I’ll pull out my ID’ and reached into his pocket. And they acted like he was going to pull out a gun. Six of them grabbed his arms and legs, even though he was shouting at them not to touch him. They carried him writhing to a car where there were already more detainees. I saw them being brutally searched.
- ” (Kajetan, a detained 7 August 2020 protest participant)

- “ They started to put the handcuffs on me, but interestingly they folded them at the back, but diagonally, one hand from the bottom, the other from the top. Then once they had put them on like that, they carried me out of there to the police car, generally holding my hands, which is very painful in that position.
- ” (Linus, a detained 7 August 2020 protest participant)

- “ A couple of policemen approached me and took me to the police car. The whole situation was quite absurd because I was standing on the side of the road at the time, I wasn’t shouting any slogans, I wasn’t demonstrating anymore, and the demonstration was over. People were dispersing; they were going to protest further but to another place.
- ” (Anonymous, 7 August 2020 protest participant)

- “ [The police] wanted to take a girl to the police car, I stood in their way, then, of course, they fired back that I was disturbing them, someone grabbed me, put me on the ground. I wanted to get away, but a dozen [policemen] surrounded me, they held me, and that was it.
- ” (Anonymous, 7 August 2020 protest participant)

One of the most [extreme examples of police brutality](#) on 7 August 2020 was the intervention against a non-binary person Krem, who recounted that they smashed their head and lost consciousness when officers intervened. Krem recalled that, ‘A policeman grabbed me by the neck and pinched me. I lost consciousness for

2 seconds. Then they put me on the ground, and two of them crushed me.’ This scene was also recounted by another interviewee, Natalia:

“ The worst moment was when one person was pinned to the ground with the policeman’s knee. It didn’t look like the person was standing against the police. She was loud and shouted something towards the police officers, but she did not use force against them. Several plain-clothed policemen, undercover police officers, rushed at her. They threw her on the ground, pinned her with a knee to the pavement.”

Analysis of available photo documentation confirms that coercive measures were used during Krem’s arrest.⁵⁶

Solidarity rallies in front of some police stations in Warsaw were held during the Women’s Strike protests in autumn 2020. On 9 December, the All-Poland Women’s Strike organised a solidarity rally in front of the Chancellery of the Prime Minister of Poland. Five people were detained and two were transported to the police station on Wilcza Street in central Warsaw. The police actions against one of the transported protesters, 19-year-old Aleksandra ‘Mola’ Melaniuk, resulted in her arm being broken and she was not immediately allowed to see a doctor. Eventually, after a lawyer intervened, the detainee was released and she was assisted to the Hospital Emergency Department by opposition MP Michał Szczerba from the Civic Coalition party.

The Commissioner for Human Rights National Torture Prevention Mechanism issued a statement about the events on

9 December and [cited the protester’s statement](#) on social media:

“ During a demonstration in solidarity with the detainees at the Wilcza Street police station, at exactly 10 pm, the police rushed on the gathered crowd, 10 people were forcibly taken to police cars to charge them with disturbing the quiet of the night (...). I was first put into a kettle where the police locked several people. Next, I was cuffed by an officer pulling me by my scarf, and then I was forcibly taken to a police car. On the way, my left arm was twisted completely unnecessarily – I was escorted by several of them anyway, and I did not resist. The policeman who did it did it with such force that he broke my arm. Specifically, to quote, it is a ‘spiral fracture with an intermediate fragment of the shaft of the left humerus – eligible for surgery’. What does that mean? It means that my arm is broken in several places, immobilized for three months, and I have to undergo surgery because this is the type of fracture that cannot be put on a cast, and I may have impaired innervation or circulation in this arm. The police inflicted on me another, probably even worse, torture: for half an hour, I was denied the right to medical assistance when from the window of the police car, I could see a group of medics waiting across the street. An ambulance was ordered by a policewoman who came to the police car after half an hour to do a personal check, this one refused to come because we all know what a pandemic situation and emergency medical services crisis look like. Meanwhile, the medics were still across the street.”

MP Szczerba confirmed this account on his social media. The Capital City Police spokesperson Sylwester Marczak provided a competing account on the events, emphasising that the direct coercive measures were used against the demonstrator after the police repeatedly called her to stop breaching the public order, with no reaction from the persons to whom the calls were addressed. He also argued that the detainee only started complaining that her arm hurt when she was in the police vehicle and that the policewoman who inspected her did not notice any visible injuries. He also claimed that the ambulance was called but [did not arrive](#). The victim complained to the court about the unjustified detention. In December 2021, the prosecutor's office [discontinued the investigation](#), concluding that there had been no detention and that the police actions were appropriate.

Humiliating treatment at police stations

The European Convention on Human Rights [prohibits inhuman or degrading treatment of detained persons](#) (Article 3), which includes a prohibition on denying a detainee access to sanitation, cumulative conditions that have detrimental effect on the detainee's health and well-being, and requires that [detention conditions must respect human dignity](#). It also states that detained persons must not be subjected to distress or hardship and must be assured minimum level of privacy.

The humiliating or degrading treatment at some police stations in Warsaw following the detentions of protesters on 7 August 2020 was a problem highlighted by

interviewees and human rights monitoring bodies. The Commissioner for Human Rights report, based on [interviews with 33 out of 48 detained persons](#), found that treatment of detainees at some police stations amounted to degrading treatment and, in some cases, to inhuman treatment. Also, lawyers and MPs who were monitoring the detention of protesters at the police stations and were interviewed during this research emphasised severe irregularities in detainees' treatment at some police stations in Warsaw and neighbouring towns, where the detainees were transported.

At the police stations, detainees were subject to a personal check, including stripping naked and performing a squat while supervised by the police officers. In the case of a transgender woman, the [personal examination was conducted by a male officer](#) despite stating her gender, as confirmed by an eyewitness. She also claimed that she was misgendered and contemptuously referred to as 'it'. Furthermore, a non-binary detained person claimed that they were intimidated and threatened by police officers at the station.



One interviewee, Dominik Puchała, described his experience:

“ One of the police officers threatened me with rape in a direct way and also said he would let me into the skinhead cell. I’m not sure where he wanted to get them [the skinheads] from, but because he was in uniform and I was in a cell, any threat sounded quite real. And a skinhead ‘was going to show me what it means to be LGBTQI+’. Those were his words, exactly. There were also a few more snarky comments; once or twice, the word ‘faggot’ appeared, apparently not directly to me, but the group. However, it was clear that this policeman included me in this group, so I treated this insult as directed at me.

Detainees and their legal representatives reported a lack of access to drinking water in several police stations, lack of access to food, and [difficulties using the bathroom](#) in some police stations. However, there were instances where legal representatives were allowed to bring water and food to detained persons, as reported by interviewees. Furthermore, detainees reported that in most cases access to a doctor was only provided a few hours after the detention, and at least once, a detained person was not allowed to take her medication. One interviewee stated that:

“ In complaints about my client’s detention, I documented that detainees were not given medication and that officers had not taken her complaints seriously, that she had problems accessing water, food, essentials.

The Deputy Commissioner for Human Rights recalled during an interview that a detained person who had diabetes felt ‘poorly’ and that:

“ She was not given anything to stabilise her sugar level. Furthermore, the doctor examined her in the presence of male officers. Even though I protested against officers going in there.

The [National Torture Prevention Mechanism report](#) corroborated interviewees’ accounts. The report found that in some cases, detainees were interrogated at night, which, due to their physical and emotional exhaustion, could amount to inhumane treatment. Detainees also reported a lack of access to drinking water in several police stations and a long wait to use the toilet. The detainees did not receive a meal in the police station in Piaseczno near Warsaw, despite more than 12 hours having passed since their detention.

Notably, some people detained on 7 August 2020 in central Warsaw were transported to police stations on the city’s outskirts or outside the city, possibly to impede supporters gathering and protesting outside police stations. In the accounts of those detained, there was [repeated reports](#) of intimidation on the way to police stations (for example, being thrown into police cars, unjustified driving at high speed, ‘purposefully’ violent entry of the vehicle into a curve, not giving any information to the detainees), as well as transporting the person from one station to another, including to facilities several dozen kilometres away from Warsaw.

Denial of access to lawyer

According to [European human rights law standards](#), persons taken into police custody must have access to a lawyer as a fundamental safeguard against ill-treatment and fairness of the proceedings.⁵⁷ The right to access a lawyer during police custody must include the right to meet the lawyer privately. Moreover, the [lawyer must be present](#) and able to intervene during any questioning by the police.⁵⁸ Poland has a [systemic problem](#) with ensuring detainees' first contact with a lawyer immediately after being deprived of their liberty, whether it is arrest or detention. Those detained in connection with the 7 August 2020 protest reported being denied access to lawyers. Legal representatives present at some police stations in Warsaw and the vicinity reported problems with contacting their clients. In particular, the interviewed lawyers highlighted that police initially did not allow attorneys-at-law to enter at least one police station in Jagiellońska Street in Warsaw and did so only after intervention by the opposition MP Magdalena Biejat of the Left party. Such obstructions were [confirmed in media reports](#) and in [official statements](#) by the Left party.

The opposition MPs who were present at the police stations included the Left party MPs Magdalena Biejat, Agnieszka Dziemianowicz Bąk, Krzysztof Śmiszek, and Anna Maria Żukowska, and the Civic Coalition MPs Magdalena Filiks and Urszula Zielińska. The interviewed MPs considered that police officers at times obstructed them from fulfilling their parliamentary duties (monitoring protests and situations at police stations), and asked them which political party they represent, which could indicate

One interviewee, Karolina Gierdał, an attorney-at-law monitoring the 7 August 2020 protest and providing legal services to protesters, explained that:

“ A typical feature of these detentions was that people were transported to various police stations, not in Warsaw, but in Piaseczno, Legionowo, Grodzisk Mazowiecki, and Nowy Dwór Mazowiecki. There were no grounds for taking people out of the capital because there were places available for them in police stations in Warsaw.

In Gierdał's view, this was a deliberate form of repression against protesters that made it more difficult for them to get back home once released from the police station. Gierdał also recounted how a spontaneous 'solidarity rally' with the detained protesters was dispersed in front of the police station on Wilcza Street in central Warsaw on 7 August 2020. At that time, she was inside the police station, trying to provide legal help to the detained protesters. In her account:

“ I only knew that the fact that the police were going to pacify the assembly was somehow known inside, at the police station, because the duty officer was making allusions. There were no direct statements such as 'we will move on them with clubs and stop them', but the assembly would end shortly. That they would, as it were, put a stop to the assembly in a moment.

bias towards or attempt at intimidating opposition MPs. MP Biejat described her experiences in the following way:

“ It depended on each policeman, but the attitude also changed over time. At a certain point, we were asked which political party we represented. I assume not without reason.

MP Biejat also reported difficulties in obtaining the names of the police officers and their commanders. However, MPs were allowed into the police stations when they showed their parliamentary ID cards. The lawyers interviewed confirmed that at the police stations, police officers treated MPs and representatives of the Commissioner for Human Rights respectfully and provided them with the detainees' names.

The lawyers interviewed highlighted the problem of immediately accessing their clients detained at police stations. Attorney-at-law Karolina Gierdał recounted her experience in an interview:

“ After presenting the authorizations, these authorizations were accepted. However, we were not allowed to see the detainees for a very long time. We sat at the police station on Wilcza Street for many hours, waiting to be admitted to the detainees. I was initially admitted to one of the detainees, and then I could not have a private conversation with that person, because we were in a room where there were a dozen or several dozen policemen, and the commander was standing over us. This person was only presented to me after having filled out the detention report, in which, among other things, she stated

that she is not raising any objections, would not complain or make a complaint about the detention. In other words, they had already managed to persuade her to make the appropriate statements.

The [National Prevention of Torture Mechanism report](#) confirmed that meetings between the detainees and their legal counsels were usually restricted to a couple of minutes and took place in conditions that did not ensure confidentiality (for example, in corridors or offices of the police officers). Another interviewed lawyer commented that the police officers did not allow her to contact her client immediately:

“ I waited at the police station until 2:30 am and my client was at the police station the whole time. It is confirmed in the reasons for the court's order on the complaint against my client's detention. The court found the detention to be illegal, irregular, and unjustified. The court emphasised that the pro bono counsel was on the spot, and that the police knew about it. My client is a single parent, her children did not know all night where their mother was. She was released the next day around 6:30 pm. I managed to get in touch with her at 4:00 pm.

Moreover, interviewees complained that denial of access to a lawyer in conjunction with police failing to inform detainees about their rights resulted in them signing detention protocols before consulting with legal counsel. One detainee, Dominik Puchała,

described how he was handed a detention protocol to sign, including the statement that he waived his right to complain about the police's actions. He also said that the protocol had many inaccuracies or mistakes, such as the time and place of the detention or the name of the police officer responsible. In Dominik's words:

“ The police officers entered in the protocol on my behalf, but without my knowledge, that I would not complain about the detention, on the grounds that it was legal, proper, and justified. In this way, they tried to take away from me this basic right that one has after detention to lodge a complaint within seven days against that detention. I protested against this provision, especially because I simply wanted to create a basis for a complaint. I refused to sign the protocol. The police officers repeatedly urged me to do so. Eventually I managed to force them to add some comments. They still did not remove their note, but I added contradictory information, hoping that it would be a clear signal to the court that there was something wrong with this protocol.

While the denial of access to a lawyer was an issue at some police stations, some interviewees reported positive experiences of police officers' behaviour and that some officers ensured that the procedures were completed in a timely manner.

Interviewees also reported that at times the police did not want to disclose detainees' names at police stations and did it only after MPs present at the stations pressured them to do so. The interviewed lawyers emphasised that the fact that the

police transported detainees to various police stations within Warsaw and in suburban satellite towns was a major impediment to providing legal assistance to detainees. Some interviewees saw this as an additional form of harassment of protesters. Interviewees also criticised the transportation of detainees during the All-Poland Women's Strike protest to police stations in the capital's periphery, which was [backed up by media reports](#).

The [Warsaw Bar Association](#) strongly objected to the police obstructing or preventing defence counsel access to persons detained during protests. Moreover, on 12 August 2020, the Polish Bar Council President sent a letter to the Ministry of Justice, referring to the incidents that took place in Warsaw on 7 August and emphasising that:

“ The arrests made by the police during these incidents underline the essence and importance of the right to defense, an element of which should be the guaranteed right to legal assistance for each detainee at the earliest stage of police action.

The [Polish Bar Council](#) President also criticised the police for denying some detainees access to lawyer.

The Polish branch of Amnesty International concluded that the events at Krakowskie Przedmieście on 7 August 2020 were directly provoked by the months-long campaign against minorities by the Polish authorities.

In their [assessment](#), the police acted in an 'exceptionally brutal' manner and the use of force was 'disproportionate' and 'unjustified'. They stated that:

“ **The attempt to divide society and create a public enemy ended with the brutal pacification of the Krakowskie Przedmieście gathering, the use of physical violence, and many detentions. We declare that those responsible for the escalation of violence are, above all, those representatives of the authorities who for months have been fueling the spiral of hatred and contempt for LGBTQI+ people.**

Ex-police officers also evaluated police actions against protesters. A former police officer of the prevention unit assessed that the police action against protesters on 7 August 2020 looked as if it was either not being managed or was [deliberately leading towards](#) a clash with protesters. Another officer considered that a [chaotic roundup was unnecessary](#) and noted that the police could single out people who broke the law during the protest based on camera recordings and reports in social and traditional media. The Federation of Uniformed Services Associations of the Republic of Poland issued a statement in which it raised concern over 'numerous examples of unprofessional actions, with the abuse of means of direct coercion against demonstrators, including physical force'. The Association considered that on 7 August 2020, 'police officers behaved [exceptionally brutally](#) towards peaceful protesters' and called on the police to 'take responsibility for your actions'.

The information on the activities of the police on 7 August 2020 was presented on 2 September 2020 during the 18th meeting of the Administration and Internal Affairs Committee of the Polish Sejm. The State Secretary, Ministry of the Interior and Administration [Maciej Wąsik](#) argued that:

“ **The management of the police actions on that day in Krakowskie Przedmieście were correct. All these actions were taken upon the order of the District Court in Warsaw, which made the decision to detain Mr Michał Sz [MP Michał Szczerba]. No one from the political leadership gave the police any instructions as to how to intervene or whether to intervene at all. The police intervened in a natural, obvious manner, based on communication with patrols and police officers who attempted to make arrests. We assess these actions of the police as correct. The means of direct coercion in our assessment were used in an appropriate manner, adequate to the situation. I would like to remind you that only physical force was used. In the case of detainees, handcuffs were also used.**

Moreover, on 1 February 2021, in response to a formal question asked by opposition MP Artur Łacki from the Civic Coalition party, the State Secretary, Ministry of the Interior and Administration Wąsik provided a list of legal basis for various police actions and procedures concerning detention at a police station. However, [no official inquiry](#) into the police action in relation to 7 August 2020 detentions was conducted.

Kettling protesters

During the Women's Strike protests from 6 November 2020 onwards, the police frequently used [kettling](#) techniques to break up protests that were considered illegal. Kettling, also known as containment or corralling, is a police tactic for controlling large crowds during demonstrations or protests where police surround protesters with a line of officers, separating them from the rest. The OSCE Office for Democratic Institutions and Human Rights guidelines on freedom of assembly emphasised that the 'kettle-lock' tactic remains inherently detrimental to the possibility of exercising freedom of assembly.⁵⁹

During a protest in central Warsaw on 18 November 2020, in addition to kettling, plain-clothed officers, not all of whom were wearing armbands identifying them as police, beat demonstrators with batons and [pepper-sprayed protesters](#) and observers including MPs, according to [eyewitnesses](#) and corroborated by [video documentation](#). MP Biejat described that:

“ Without any reason, protesters were locked in a kettle, which increased the density of people who were in the area. This increased the feeling of danger. They were kept for long hours in the cold, it was already November, it was really cold. This was a way to intimidate people who were at the protest. You don't protect their safety; you just make them feel threatened. Secondly, smaller groups were isolated and cordoned off in order to question each person in turn. The kettling also entailed health risks for the protest participants. In the case of demonstrations taking place in autumn and winter, it meant being forced to stay in

cold temperatures for long periods of time. An additional aspect of the cordon is that it led to the formation of tight clusters of people, which could have had an impact on the transmission of the Covid-19 virus.

The Capital City Police spokesperson [Sylwester Marczak](#) confirmed the pepper-spraying protesters and considered that 'the demonstration was not peaceful. Police officers used gas and physical force against it. And we will use this when necessary to restore order.' In reference to the charge of cordoning off the crowd, Mr Marczak said that the police officers wanted to question people who did not listen to the police announcements.

However, not all participants in the Women's Strike peaceful protests pointed to disproportionate police action. For instance, they indicated that they felt the police protected them from counter-demonstrators. Protest participant Tomasz described his experience in Warsaw:

“ What caught my attention was that the policemen were in plain clothes. Some were aggressive, some were not. Many police officers were friendly. I felt that, especially during the most significant protests, I was well protected. My impression is that the smaller the protest, the smaller the group of protesters, the more aggressive and determined the policemen were, as if they allowed themselves more. On the other hand, some protesters provoked the police officers in a certain way at times. Offensive slogans were directed against police officers. Some protesters asked policemen if their mothers knew what they were doing, or asked why were you doing this.

The police continued, albeit sporadically, to use kettling tactics during anti-government protests in 2021. Interviewed social activist Franek Broda described police kettling protesters in July 2021 demonstrating against education policy:

“ We blockaded the Education Ministry, the police were aggressive towards the end. Once we left and stopped blocking the ministry, they picked us up in a side street, and kettled us. They did not allow anyone to go outside the cordon except me at first, because maybe they knew about my family connections [the interviewee is the

” Polish PM's nephew – eds].

Assessment by courts and national oversight institutions of the police's response to the protests

Forty people detained on 7 August 2020 filed complaints about the legality, legitimacy, and regularity of their detentions. According to Kolektyw Szpila's report, by August 2021, one year after the events, district (first instance) courts have considered 38 applications and found that in the case of 35 the [police breached the law](#) and exceeded their powers.

The courts found that the police, among others, obstructed the detainees' access to a lawyer, even in cases when the lawyer was already at the police station and tried to see their client. Detainees only learned of their rights when they signed the detention report. The police also allegedly deceived frightened persons with the possibility of early release if they gave up seeing their lawyer. According to the courts, this

behaviour [could lead to wrongful conviction](#). For example, courts found that:

“ In the court's opinion, the detention was unjustifiably prolonged until 8:20 pm on 8 August 2020 (and thus lasted almost 24 hours), when the interrogation could have been carried out immediately after bringing the defendant to the police station, much earlier than in the evening of the following day. It should be noted in passing that the unjustified and prolonged use of detention, apart from affecting the correctness of the detention, could have resulted in the exclusion of the detainee's freedom of expression during the interrogation conducted immediately before his release, on the evening of the following day, i.e. on 8 August 2020.

(Ruling of the District Court for Warszawa Śródmieście on 2 June 2021, case file No. II

” Kp 2226/20)

“ The Court thus finds that the application of the measure of detention and the subsequent holding of the applicant for more than 21 hours in the police station was grossly disproportionate to the gravity of the alleged act and to the objectively assessed circumstances existing prior to her detention, and therefore bore no close relation to the needs of the proceedings. In the case of the detainee, as is evident from explanations and from the date of drawing up the detention protocol, it appears that these orders were not complied with, and she only learned about the reason for her detention and her right to the assistance of counsel when the detention protocol was drawn up, which took place nearly 5 hours after her

actual detention. Moreover, despite such a request, the detained person was not allowed to contact her defence counsel until 5 pm on the following day – contrary to the provisions of Article 245, paragraph 1 of the Code of Criminal Procedure – despite the fact that her defence counsel was waiting for her at the police headquarters at night. In this situation, one cannot in any way consider that the contact between the detained person and the defence counsel was made possible immediately (even if one is aware that immediately does not mean immediately). The lack of access to such assistance at such a time may be the cause of a wrongful conviction.

(Decision of the Regional Court Warszawa-Śródmieście of 7 January 2021, II Kp 2337/20; detention deemed illegal,

11 unjustified, improper)

In February 2022, the court awarded PLN 15,000 (€3,203) in damages to a detained person with diabetes because the police had not given her diabetes medication for 12 hours. In an oral justification, the court stated that the police that day ‘acted like an oppressive organisation’ and that their actions were ‘against citizens’. In 2021, the court found that the [claimant’s detention was unlawful](#).

In view of the controversy surrounding the demonstration held in Warsaw on 18 November 2020, in particular the use of force and expandable batons against the protesters by plain-clothed police officers wearing no identification, the Commissioner for Human Rights requested the Commander-in-Chief of the Warsaw Police to provide explanations.⁶⁰ The

Commissioner was particularly interested in the factual and legal grounds of the police action, the scale of the coercive measures and detentions, the actual duration of the detainees’ deprivation of liberty, as well as their possible complaints regarding the detention. Furthermore, the Commissioner was especially concerned with information relating to instances of violation of the immunity of parliamentarians who took part in the protests, and the failure to respect the rights of journalists reporting on them. In particular, the Commissioner found that the use of tear gas against female MPs and the damage of an MP’s ID during the police intervention had been unacceptable actions.⁶¹

On the matter of the police response to the Women’s Strike, in a speech to the Senate on 27 November 2020, the Commissioner for Human Rights Adam Bodnar [expressed concerns](#) that police were increasingly using excessive means of direct coercion against demonstrators over the course of the pandemic and urged the Senate to work on a bill ‘to make the police more oriented towards observing human rights’. Furthermore, the National Mechanism for the Prevention of Torture issued a [report on ad hoc visits](#) to the rooms of detained persons, or persons brought for sobering up, aimed at units reporting to the Warsaw Police Headquarters and to the Voivodeship (i.e. Regional) Police Headquarters in Radom. The visits were of an ad hoc nature and their objective was to examine the situation of those detained by the police in connection with the protests which took place between 22 October and 13 December 2020 in

connection with the Constitutional Tribunal judgment of 22 October 2020 in case K1/20 on the tightening of the legislation on abortion. In the reviewed period, a total of 21 visits were conducted. The report found that:

- In practice, not all detainees in Poland have real access to a lawyer or defence counsel immediately upon detention.
- The National Mechanism for the Prevention of Torture emphasised the engagement of many attorneys and legal advisers who, regardless of the time of day, provided free legal aid to detained persons at the places of their detention. However, there should be no acceptance for situations in which the exercise of detained persons' fundamental right to legal aid depends solely on the grassroots-level initiatives and goodwill of lawyers.
- In the National Mechanism for the Prevention of Torture's opinion, this can be a dangerous attempt to shift the responsibility for protecting the fundamental rights of persons deprived of their liberty from entities required to ensure such protection under the law to citizens.
- Moreover, the majority of detainees interviewed by the National Mechanism for the Prevention of Torture representatives were detained for the first time in their lives and were not aware of their rights.



- The analysis of the information obtained during the ad hoc visits shows that almost none of the persons detained in connection with the protests between 22 October and 13 December 2020 were informed immediately after their detention about its legal and factual grounds.
- Of greatest concern to the National Mechanism for the Prevention of Torture representatives was the information about the brutality of police officers towards the detainees. Some interviewees reported physical and psychological violence against them.
- The detainees pointed out the use of direct coercion measures which were disproportionate to their behaviour, for example handcuffing detainees behind their back during transportation, spraying tear gas or using batons, including telescopic batons.
- The National Mechanism for the Prevention of Torture is concerned about the increasing use of tear gas and pepper spray against people present at protests.

- Interviews conducted with persons detained during the protests against the Constitutional Court's ruling on abortion indicate that application of provisions regulating body searches was highly inconsistent between police units. Some detainees only had the contents of their pockets, bags, or backpacks searched. Others were ordered to undress, but not to remove their underwear. Many detainees said, however, that they had been subjected to body searches where they were required to strip naked and squat. Representatives from the National Mechanism for the Prevention of Torture also received information about one-stage strip searches, during which a detainee was ordered to remove all their clothes at the same time and stand naked in front of a police officer.
- The practice of transporting persons detained in Warsaw to police stations in other localities is a matter of great concern to the National Mechanism for the Prevention of Torture. The unjustified transport of detained persons to police stations located far from the place of apprehension, and usually also from that person's place of residence, may constitute a form of additional punishment. The report found that it was objectively possible to hold persons detained at the Warsaw protests in the police stations in Warsaw.

The legality of detentions during the Women's Strike protests was also examined by courts. According to information obtained by the Commissioner for Human Rights, 562 complaints on detentions in relation to social protests in May–December 2020 were lodged to the District Court Warsaw–Śródmieście. As of September 2021, the complaints were upheld in 343 cases. In 331 cases, the [court found](#) that the detention was unjustified, in 136 cases that it was carried out in an improper manner, and in 83 cases that it was illegal. In May 2021, the Supreme Court ruled in a cassation case brought by the Commissioner of Human Rights in relation to fining two men for participating in a protest after the Constitutional Tribunal's ruling on abortion. The men were fined for protesting on 24 October 2020 outside the governing party MP's office. The Supreme Court ruled that the government introduced the ban on public assemblies without a proper legal basis by means of a regulation instead of a law, and contrary to Article 57 and Article 31(3) of the Constitution.⁶²

People protest in Wrocław, Poland, in October 2016 against an anti-abortion law. (Photo: Trybex/Shutterstock)



Prosecutions and intimidation

Misdemeanour charges

Misdemeanour charges were the main tool used to police All-Poland Women's Strike protesters. The police, assuming that public gatherings were forbidden during the 'state of epidemic', issued penalty notices on the basis of Article 54 of the Petty Offenses Code, that reads 'Whoever contravenes the orderly regulations on behaviour in public places issued under the authority of the Act shall be punished with a fine of up to PLN 500 [EUR 320] or with a reprimand.'⁶³ If someone refused to accept the penalty notice, the police referred the matter to court. However, since April 2020, a clear argument has emerged in the Polish courts case law, which concluded that the ban on assemblies was unconstitutional and, as such, could not form the basis for punishing protesters.⁶⁴ Consequently, the police consistently lost cases referred to the courts. Despite this, the police continued to issue penalty notices against protesters and submit motions to the courts for punishment. Some proceedings were initiated and subsequently discontinued by the court. In the experience of one interviewee:

“ Although the case was referred to court, shortly afterwards we received information that the case was discontinued, [and] because our protest did not have the features of a criminal act, there was no offence. The court decided that the ordinance, which restricted the right of assembly, was contrary to the law.

Other alleged violations of the Petty Offenses Code the police charged demonstrators with include sticking posters, stickers, or [pictures in an unauthorised place](#) such as private or public property, [littering in public space](#), or occupying a traffic lane. One interviewee, Franek Broda, lost a court case against him. In his words:

“ There was a period when assemblies could not be registered. During a spontaneous assembly I used a megaphone. Police fined me for polluting the environment with sound. I was summoned for questioning. At the interrogation I refused to testify, I did not admit guilt. The case went to court, and all in all, without the parties, the court decided that I was guilty of the act. At that time, I couldn't find any lawyer who was currently free and could help me write an appeal. So I lost the court case. I had to pay a fine, PLN 500 [EUR 320] and court costs.

However, the interviewed criminal defence attorneys, Katarzyna Gajowniczek-Pruszyńska (Deputy Dean of the National Bar Council) and Radosław Baszuk have observed that courts have been awarding higher damages in cases regarding authorities' actions against protesters, in particular regarding unlawful detention.

Criminal charges

Almost one year after the events, the prosecutor's office filed indictments on 30 July 2021 against 5 of the 48 people detained on 7 August 2020, charging them with taking part in a riot (*udział w nielegalnym zbiegowisku*) with the aim of attacking individuals or property, which is a crime under Article 254 of the Criminal Code punishable by up to three years in prison.

Among the 5 people against whom the charges were pressed, some were charged with active assault on a police officer (Article 223 of the Criminal Code) or damaging property (Article 288 of the Criminal Code). The cases are pending.

Other criminal charges pressed against protesters included:

- infringement of a public official's physical integrity – punishable by up to three years imprisonment (Article 222.1 of the Penal Code);
- insulting a public official – punishable by up to one year of imprisonment (Article 226.1 of the Penal Code); and
- participation in an unlawful assembly with the purpose of violent attack on a person or property – punishable by a maximum term of imprisonment of up to five years (Article 254.1 of the Penal Code).

In addition, protest organisers have been charged with 'bringing danger to the health and life of many people by causing an epidemiological threat in the form of possible infection with the SARS-CoV-2 virus

and the spread of the Covid-19 infectious disease' (Article 165.1 of the Penal Code). This act is punishable by up to [eight years in prison](#). All-Poland Women's Strike leaders Magdalena Lempart, Agnieszka Czerederecka, and Klementyna Suchanow were [indicted under this provision](#) for introducing a general danger to life and health by organising demonstrations during the pandemic.

The provision was also invoked in proceedings in which protest organisers in small towns were called as witnesses. Laura Kwoczała recalled that:

“ A spokeswoman for the prosecutor's office told the newspaper that they are waiting for an expert virologist's opinion as to whether infection could have occurred during the protest and then further action will be taken, all this in view of the fact that there is an article of the Penal Code which states that whoever spreads a disease in a pandemic is punishable by six months to eight years' imprisonment. We [the organisers of the protest] were called as witnesses in this case. Someone reported a suspicion of a crime to the prosecutor's office, and the prosecutor's office is investigating this. Since my interrogation in December 2020, the case ” has been hushed up.

The prosecution also charged protest organisers with incitement to commit a crime (Article 255.3 of the Penal Code) which carries a penalty of up to one year in prison. Marta Lempert, one of the All-Poland Women's Strike leaders, was charged with incitement to commit a crime of destruction of churches and disturbance of religious

cult, allegedly committed during a [radio interview](#). The National Prosecution Office [publicly informed](#) about pressing charges against the Women's Strike leaders in July 2021, several months after the protests, although charges were presented in February 2021.

A number of interviewed protesters considered that the detentions, as well as the penalties, were an attempt to undermine the credibility of those fighting for human rights. In their opinion, the authorities wanted to create an image of the protesters as those who disturb public peace, pose a threat to the safety of others, incite to unlawful activities or destroy property.

Intimidation and harassment, including of children

International human rights law and standards protect the right to protest of minors. The [UN Convention on the Rights of the Child](#) protects children's right to freedom of expression (Article 13) and the rights of the child to freedom of association and to freedom of peaceful assembly (Article 15.1).

Article 15.2 of the [UN Convention on the Rights of the Child](#) specifies that:

“ No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Organisers of the All-Poland Women's Strike protests who were under 18 years old were threatened with charges, for example for manifestations of demoralisation which is a basis for actions taken against minors by family courts. The police referred 14-year-old Maciej Rauhut, who organised a local Women's Strike protest in the small town of Krapkowice in south-west Poland, to a family court on the charge of 'demoralising minors by inciting them to participate in a gathering on Facebook'. However, the court denied the motion, seeing no basis for initiating proceedings. The teenager and his mother complained to the Police Chief and to the Commander-in-Chief of the police. The police officers who came to the boy's house have been accused of abuse of power and [misleading the public opinion](#).

In another well-known case, 17-year-old Julia Kwoczała, organiser of a local Women's Strike protest in Oleśnica, a town in south-west Poland, was interrogated as a witness by the police in the presence of her father because she was a minor. She had to answer questions about her [personal and sexual life](#). She [recalled the situation](#) in an interview:

“ I was still a minor – so I went to the questioning with my dad. At first, they didn't want to let him in, and I had to explain to them that, as a minor, I had the right to be accompanied by a guardian. And then they asked me such questions as do I have any illegitimate children in front of my dad. This was really uncomfortable.

The charges have never been pressed. The police investigated if a crime of 'exposing people to infection', punishable with up to eight years imprisonment, was committed

in the context of the protest. According to Kwoczała, she did not know the status of her case or whether she would be charged for many months. She did not know whether anyone was a suspect or whether she was being called as a witness. She learned about the status of the case from media releases by the police spokesperson. At the time of writing this report, the latest information she has received about her case was that the police have requested an expert virologist's opinion.

During protests by pupils against changes in the education system, police confiscated a banner that 17-year-old Anna was holding while protesting in front of the European Commission building in Warsaw. In her experience: 'Until the end of the protest, I had to stand aside with the policemen and wait for another police car to arrive. They took my banner away.' The police demanded her to identify but did not contact her parents. Anna recalled that 'I had to hand over the banner, and then the strike ended, practically then I could go.'

People interviewed in this research who protested as minors underscored the psychological impact of a threat of misdemeanour or criminal charges and the fears that the proceedings may last months or even years. Anna remembered:

“ The policemen warned me that in theory I could face some legal consequence for using obscene language, that I could be fined, or that such a poster may be considered an insult to public figure.

Protesters interviewed also experienced harassment online. Aleksandra 'Mola' Melaniuk, who had her arm broken during

police intervention, recalled that she received threats online after the event:

“ People wrote me private messages in which I was insulted. They wrote some nonsense, some threats of rape. I won't say that I received a lot of such hate messages – about a dozen of them. For about half a year, some people wrote really disgusting things in connection with the Women's Strike, with the situation with the police, and with the fact that I publicly expressed my opinions. And it wasn't something like 'shut the fuck up' or 'fuck you'. It was actually rape and death threats, and also calling people from some, you know, the other political side 'communists' or 'secret police agents'. People say these are bots commenting, but at some point, you get the feeling that these are real people from all over Poland writing to you such vile things.

Even opposition MPs who were monitoring protests and the situations at police stations during the 7 August 2020 and All-Poland Women's Strike protests encountered intimidation from other MPs and authorities, including during their work in plenary sessions and in parliamentary committees. MP Biejat, who was pepper-sprayed by the police during one of the protests, remembered that MPs:



“ Were reprimanded, repeatedly, from the Sejm rostrum, at committee meetings, on various occasions. During press conferences held by Sejm Speaker Elżbieta Witek, we were admonished that our actions were contrary to the Act on the exercise of the mandate of a member of parliament and senator. That parliamentary interventions are carried out in writing, that we are troublemakers.

She also recalls how her work was interrupted:

“ I was pepper-sprayed by one of the police officers, the protest took longer than expected. At the same time, a meeting of the social policy committee was taking place. I did not make it to the meeting and when the MPs found out that I had been attacked, they demanded that the chairwoman of the committee order a break. She refused, saying that I should not have pushed my way in there.

In addition to Biejat, opposition MPs [Bartłomiej Sienkiewicz](#) and Barbara Nowacka from the Civic Coalition were pepper-sprayed during All-Poland Women's Strike demonstrations. The Regional Prosecutor's Office in Warsaw decided that the police officer who sprayed MP Nowacka in the face in November 2020 while 'securing' the All-Poland Women's Strike demonstration, did not commit a crime. Investigators refused to initiate proceedings. MP Nowacka appealed the decision. In the justification for the decision, the prosecutor wrote that the event on 28 November 2020 had a dynamic course, the police officer was

cut off from the other police officers and then surrounded by people participating in the gathering who were pushing against him. According to the prosecution, the police officer could not recognise the object that MP Nowacka showed him, i.e. the MP's ID card. He was also [unable to recognise](#) the person who was showing it to him, as she was wearing a mask.

Chilling effect

[Chilling effect](#) means dissuading, directly or indirectly, individuals from exercising their rights as the result of policies and authorities' actions or a threat of actions. Some interviewees in this research considered that the actions taken by the police against anti-government protests described in this report were meant to discourage further protest and intimidate protesters, especially protest leaders but also the average protest participants, including minors. Krem, a non-binary person and LGBTQI+ rights activist, assessed that the police action against 7 August 2020 protesters aimed at 'intimidating our community, our allies', but was also a show for those in Polish society who are against them, 'to make them believe that we are evil and aggressive and are destroying Poland and police vehicles'.

Some interviewees believed that police response on 7 August 2020 was 'precedent-setting' and that the police actions became more violent at subsequent All-Poland

Women's Strike protests as a way of deterring protesters. According to Natalia, a protest participant:

“ It was purely about stopping our movement. To keep people in their homes, to stop parents from letting their teenage children protest in the streets. To make people afraid.

The interviewees indicated that uncertainty about the length of the protest, the risk of detention, or kettling by the police for hours discouraged and made exercising the right to protest more difficult, especially for minors or young adults. Sonia, a protest participant, considered that:

“ Certainly psychologically on me and my family it had a very negative effect, because for the first time since I turned 18, I reported to my parents when I came home in the evening.

Interviewees considered that the authorities intended to make it difficult for them to protest. They criticised the police confrontational approach to anti-government protesters, describing their experiences of protest as frustrating, and reported burnout.

Some protest participants reported highly negative psychological effects of the police actions towards protesters. Others reported that they required therapy or another form of psychological support. Aleksandra, whose arm was broken during the police intervention, admitted that after the

incident, it was difficult for her to cope on a daily basis:

“ In some situations I have had a panic attack at the sight of a policeman. I no longer feel safe. I have a terrible anxiety disorder; it's been exacerbated by this situation.

Attorney-at-law Karolina Gierdał, who has been representing many protesters, observed that some of her clients were withdrawing from protest, 'There are people who don't want to continue protesting, they are scared, and this is somehow traumatic for them, they decide to stop protesting at least for some time.' In her opinion, others are not affected in a way that would change their attitude to the protests as such, and some people are even motivated to attend more protests:

“ There are people who feel the effects on their mental well-being but sort of turn that into even greater opposition and a desire to participate in further activities. But it's not the case that it is like water off a duck's back for these people.

Our interviewees also reported that their participation in the protests had consequences on their immediate family members:

“ My younger sister heard an unpleasant comment in the school corridor. She is 13 years old. She was tugged on the arm in the corridor and heard that she should be careful about who she has in her family.

The protest organiser, who was called as a witness by the prosecution, feared that she would be charged in the course of the

case, which caused her severe psychological discomfort. Laura Kwoczała recalled that:

“ The first few months were scary because I didn’t know which way this investigation might go, whether it would be standstill as it stands now or whether it would end up being opened and continued. My main fear was related to preparing for my A levels. I had in my mind all the time whether I would be called in for some follow-up hearing while I was writing my exams.

Frank, an activist, believes that:

“ You can protest in Poland, but you have to be really determined to do it, you have to have a strong psyche, because otherwise it is difficult.

Another reported effect is discouraging protesters from taking up issues of a public interest. Protesters repeated that they temporarily suspended their attendance at human rights events due to fear of the police or intricate procedures. Kajetan, a protester, also described a decline in trust in public services:

“ I wasn’t able to walk past a police officer on the street, I crossed to the other side quietly for a few weeks, I wasn’t able to go back for my bike which I had left tied up on Nowy Świat Street. It wasn’t until three weeks later that I went back for it. I feel that since then I have lost faith in the police being able to do anything to benefit a citizen in this country. I knew that assemblies at times when the police are in the service of political power is a dangerous practice.

Attorney-at-law Grzegorz Kukówka, who represented many protesters, stated that:

“ In a democratic country we should be able to just go, express our views and that’s it. Not to worry that we need legal assistance if we go to peaceful protest. That is the problem. And that’s probably some sort of chilling effect that’s taking a gigantic toll.

Limits on media coverage

During the All-Poland Women’s Strike demonstrations in November 2020, there were cases of media representatives being kettled by the police together with demonstrators, without the possibility of leaving the place of protest. There were also cases of police using direct coercive measures against journalists, including the use of pepper spray.

At the All-Poland Women’s Strike protest in front of the public broadcaster TVP headquarters in Warsaw on 18 November 2020, [several journalists were pepper-sprayed](#): cameraman Krzysztof Sójka and reporter Bartosz Rumieńczyk from *Onet*; photojournalist Jędrzej Nowicki from *Gazeta Wyborcza*; photojournalist Konrad Fałęck from *Gazeta Polska Codziennie*; reporter Maciej Piasecki from *OKO.press*; and citizen journalist Włodzimierz Ciejka. The Journalists Association emphasised in a statement that most of them were [wearing vests emblazoned with the ‘Press’ inscription](#). Reporter Maciej Piasecki, interviewed for this research, stated that he has encountered

many instances of physical force being used against him while reporting:

“ I was pepper-sprayed at least once by a plain-clothed officer, who aimed at my camera and at my face. I can’t say if I was targeted specifically as journalist though.

He received legal help from the Helsinki Foundation for Human Rights, which prepared notices of a possible violation of the Press Law which includes sanctions against people who obstruct or prevent press intervention or press criticism. Piasecki complained that ‘all kinds of activities take away my time and resources that I should be

putting into my real work, into documenting what is happening at other protests. This requires funds for legal aid.’

During the Women’s Strike demonstration in front of the Education Ministry on 23 November 2020, photojournalist Agata Grzybowska was arrested on suspicion of violating the physical integrity of a police officer after she [took a photo](#) of the officer. Media freedom organisations, such as the International Institute for Press Freedom, highlighted that it marked the [first detention of a journalist](#) covering the then month-long Women’s Strike protests in Poland.

People protest in Krakow on 7 November 2021, after the death of a young woman who was refused an abortion even though the pregnancy posed a threat to her life. (Photo: praskiewicz/Shutterstock)



Bias in portrayal/ handling of protests

Public media bias

The government-controlled public media⁶⁵ were unambiguously against the LGBTQI+ protests and the Women's Strike protests. They portrayed protesters as manipulated, unaware of why they were protesting, aggressive, and vulgar. Public news channels regularly referred to the Women's Strike participants as [‘supporters of killing unborn children’](#). For example, in an article titled ‘Abortion supporters gamble with Poles’ lives’, [TVP summarised](#) that:

“ The District Prosecutor’s Office in Warsaw has launched an investigation into street excesses which have occurred on numerous occasions during protests of supporters of the free killing of unborn children. It concerns endangering the health and lives of participants in demonstrations organised during the pandemic, but also attacks on churches.

The public news channel considered that protesters are an example of how [‘left-wing fascism is destroying Poland’](#). The [material said](#), ‘the supporters of abortion are escalating their demands. They demand abortion on demand, directly referring to the arguments and symbolism known from Nazi Germany.’ The public media also [threatened the viewers](#) that ‘churches, clergy, and believers are being attacked throughout Poland’.

Journalist Kalina Błażejowska, who was monitoring the public media narrative of the All-Poland Women's Strike protests, emphasised that it was:

“ Shocking how consistent this propaganda is. The news channel uses a very precise, biased language, borrowed from anti-abortion activists, or ‘the defenders of life’, playbook. The public media describe protesters as supporters of killing unborn children. The words ‘pro-choice’ were never used, it was always ‘abortion supporters’.

Moreover, during the protests, public media [broadcast anti-abortion films](#). Such narratives seem to have been clearly intended to discredit the protests in the public opinion's eye. Public media also [accused protesters](#) of causing an increase in Covid-19 infections and deaths, saying, for example, that ‘a viral cloud is hovering over the protesters’. The public media were particularly interested in the Women's Strike leaders. TVP published information that one of the leaders, Marta Lempart, had contracted Covid-19 before the medical services informed her about it. She was the anti-hero, and public media presented her only negatively, repeating recordings of her speeches in which she used vulgar language. It was [also implied](#) that when she spat on one of the policemen, she had exposed him to Covid-19.

Unequal treatment of pro-/anti-government protesters

The vast majority of interviewees during this research observed that Polish authorities respond differently to pro- and anti-government protests and privilege the pro-government demonstrators. Most interviewees gave the example of the lenient treatment by the authorities of the far-right-organised annual Independence March which takes place on 11 November in Warsaw. Tomasz, an All-Poland Women's Strike protester who has also attended several Independence Marches 'to get an insight into the soul of society', believes that 'the police favor them a lot compared to other demonstrators. The police officers are much less aggressive towards them than to some other assemblies' participants.'

In the past, some of the Independence March participants [chanted xenophobic or racist slogans](#) and incited to hatred, an act prohibited under Polish and international law. Moreover, various outbursts of violence and clashes with the police were recorded. In 2018, on the centennial of Poland's independence, an official delegation of the government and the President of Poland [attended the march](#). In 2020, the [Independence March took place](#) despite a Covid-19-related ban on public assemblies. At that time, police used kettling techniques against peaceful All-Poland Women's Strike demonstrators, issued fines, and pressed charges against them. In contrast, the [police did not try to disperse or kettle](#) the 2020 Independence March which, according to the organisers, started as a 'spontaneous assembly', even though it was planned in advance. The organisers planned it as a

march 'on wheels', with people joining in their cars or on motorbikes and maintaining social distancing. However, it was attended by hundreds of thousands of protesters on foot. Protesters threw firecrackers, stones, and bottles at riot police. One [apartment caught fire](#) as a result. The police did not attempt to disperse the march and intervened only against demonstrators who behaved aggressively by attacking police officers. Violent clashes with the police erupted near the National Stadium, which hosted a temporary hospital for Covid-19 patients. The police had to [use force to contain the clashes](#), including using pepper spray. Journalists covering the 2020 Independence March sustained injuries and were mistakenly beaten by the police that clashed with protesters. The victims were Renata Kim and Adam Tuchliński from *Newsweek*; Jakub Kamiński of East News Agency, and Dominik Łowicki from *Gazeta Wyborcza*. A photojournalist, 74-year-old Tomasz Guthry from *Tygodnik Solidarność*, was [shot with a rubber bullet in the face](#) by the police and had to undergo surgery.

The Independence March organisers were not fined or charged with a misdemeanour or criminal charges for 'bringing a threat to a large group of people in connection with an epidemic' – a common charge against the All-Poland Women's Strike protest organisers. Moreover, the March organisers later [received state funding](#) from the National Freedom Institute – Centre for Civil Society Development and the Patriotic Fund.

On 11 November 2021, the Independence March, organised by far-right groups with state support, gathered 150,000 in Warsaw amid legal controversies. The Appellate Court in Warsaw ruled that the anti-fascist group had a right to organise a demonstration on the March's usual route as it had filed for it first. To allow the extreme right-wing demonstration to take place, national authorities elevated the Independence March to state event, which is, by law, privileged over any other assemblies. Under the government's patronage, the far-right March organisers [attacked the EU](#), incited hostility against immigrants, and denounced independent media.

Interviewees also noted that the police did not aggressively disperse or kettle anti-vaccination protesters. MP Biejat compared the authorities' approach to anti-vaccination protesters to the approach to anti-government All-Poland Women's Strike protests. According to MP Biejat:

“ At the time of the ban on assemblies, anti-vaccination protests were held in front of the Razem party office, for example in Nowy Świat in Warsaw, protected by the police, not solicited by anyone. No one kettled them, no one checked their IDs, no one demanded that the assembly be dissolved, absolutely double standards are being applied and according to who is convenient for the authorities and who is not.

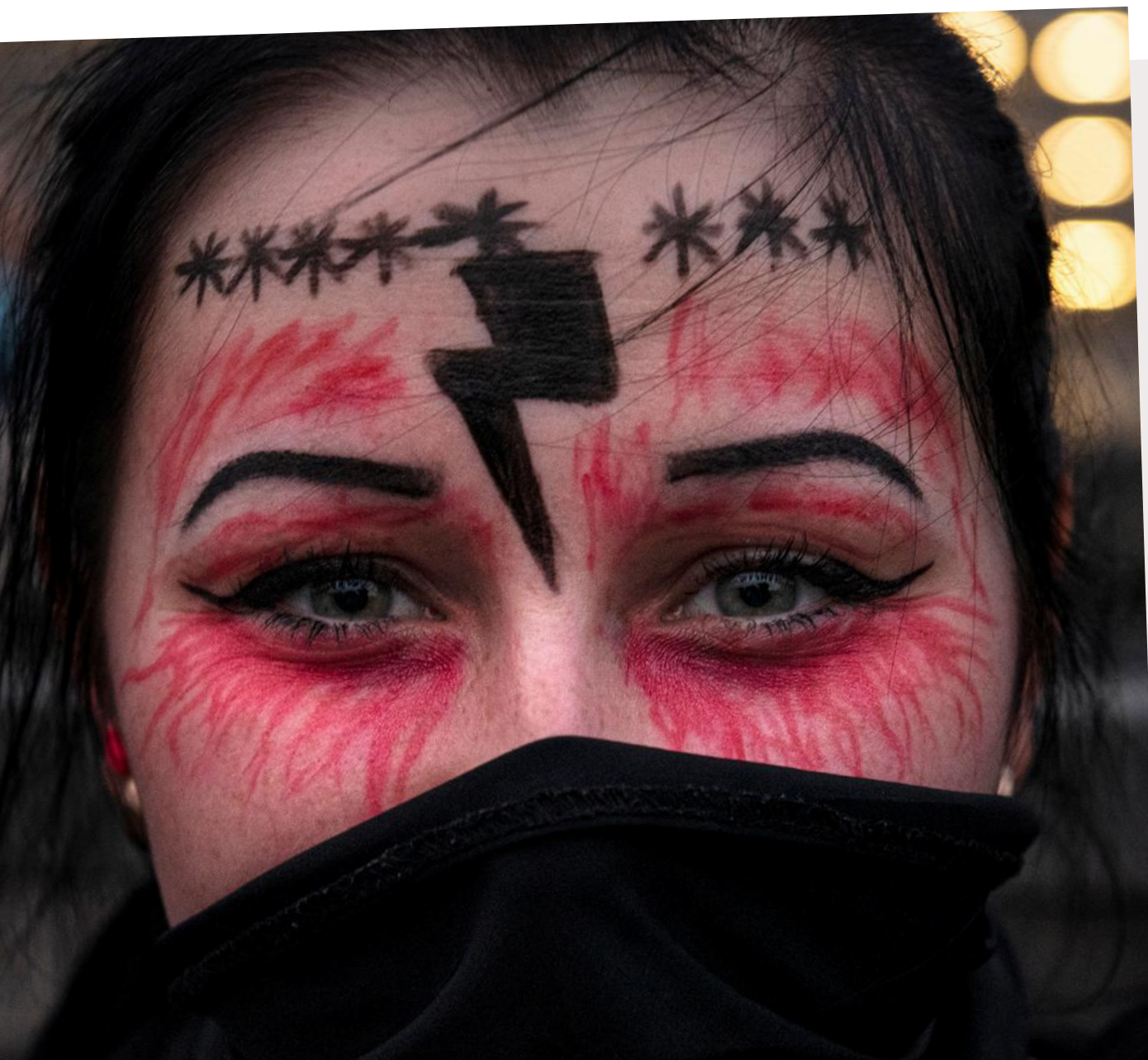
There are more examples where the authorities have not tried to limit demonstrations despite the Covid-19-related restrictions on large public assemblies. On 10 October 2021, a large demonstration was held in Warsaw to express support for Poland remaining in the EU. It was initiated by the leader of the largest opposition party, Donald Tusk. During the demonstration, about 200 metres from the main stage, a counter-demonstration of an anti-EU extreme right-wing group led by Robert Bąkiewicz, President of the Independence March Association and Head of the National Guard, was taking place. Bąkiewicz's group used a high-quality sound system to effectively drown out the scene of the main pro-EU protest. The police, despite the protesters' comments that they could not hear the speeches, did not take action against Bąkiewicz's group. The [National Guard financed the sound system](#) and the infrastructure used was from state grants received from the PiS government at the time.

In Warsaw at central Pilsudski Square, the Smoleńsk Monthly Commemoration was held on 10 October 2021. PiS party chairman Jarosław Kaczyński lays wreaths on the 10th day of every month in memory of victims of the 2010 plane crash in Smoleńsk, Russia in which his brother, then Poland's President, and his wife, the First Lady, died, alongside dozens of other victims, including representatives

of all parliamentary groups, military, and religious leaders. They were travelling to commemorate Polish victims of the World War II Katyń massacre by Soviet Russia. A group of activists, who came to the square where the ceremony was taking place with megaphones to ask questions of the politician, were detained by the police for 35 hours on a charge of violation of turf, a crime that according to the Penal Code is punishable by up to one year of imprisonment. The demonstrators were also [banned by the prosecutor](#) from approaching Pilsudski Square in Warsaw 'during religious ceremonies and rituals'.

Attorney-at-law Radosław Baszuk, who represents social activists often in cases regarding the right to protest, considers that authorities tend to apply a stronger repression against protesters taking part in demonstrations that authorities see as 'threatening, probably more to the image than the actual power'.

A woman takes part in a protest in Gdansk, Poland, on 28 October 2020 against the ruling by the Constitutional Tribunal that imposes a near-total ban on abortion. (Photo: Jadwiga Figula/REUTERS)



Conclusion and recommendations

Since 2015, the national-conservative government has rolled back the liberal constitutional character of democracy in Poland, including multiple democratic and rule of law-related human rights, such as the right to protest. This research found that an insufficient legal and policy framework, combined with multiple human rights violations perpetrated by law enforcement, impede the realisation of the right to protest, especially of government critics.

There are legal and institutional challenges to the right to protest. In 2016, new restrictions to freedom of assembly were introduced, and in 2020–2022 the Covid-19 pandemic-related restrictions on freedom of assembly were put in place. The restrictions were introduced by way of government ordinances, not in a bill passed by the parliament and signed by the President; therefore, in the courts' assessment, they were unconstitutional. In 2021, the independent Supreme Court ruled that the Covid-19-related restrictions to freedom of peaceful assembly did not have a proper basis in law.

However, due to the backsliding of the rule of law which has included political capture and subordination of the Constitutional Tribunal, centralised constitutional review of provisions restricting the freedom of assembly has not been available in Poland. The Constitutional Tribunal ruled that the new restrictions of 2016 conform to the Polish Constitution, blatantly departing

from the line of arguments present in the case law of the 'old', then independent, Constitutional Tribunal.

This research and report focused on the experiences of protesters who took part in anti-government demonstrations in response to the anti-LGBTQI+ campaign and the restriction of the abortion law by the politically subordinated Constitutional Tribunal. These two case studies were selected as litmus tests for the national authorities' approach to the right to protest of government critics. The interviewees' accounts were corroborated by human rights monitoring bodies documents, case law, and media reports.

This report identifies the following violations of the right to protest and associated violations of Polish, European, and international law in the Polish authorities' response to the two anti-government protests in 2020:

- The police routinely demanded demonstrators who took part in peaceful protests to identify themselves.
- During the All-Poland Women's Strike protests, police used tear gas and pepper spray against peaceful protesters, observing MPs, and journalists covering protests.
- The police used the kettling technique during the Women's Strike protests.

- There were instances where police officers beat peaceful protesters with batons.
- There were instances where MPs and journalists covering protests were kettled and pepper-sprayed, and a photojournalist was detained while covering the protest.
- Anti-government protest participants were detained simply for exercising their right to protest; the police selected protesters to detain seemingly at random.
- The detentions were often violent, the police used disproportionate coercive measures, including handcuffing.
- The detainees were not informed about the basis of the detention or their rights.
- Some detainees learned about the possibility to use legal assistance only after they signed detention protocols.
- There were instances when contact with the detainees' legal representative was hindered.
- The detainees were transported to police stations located far from the place of apprehension.
- Detainees were subjected to inhuman and degrading treatment during arrests and/or in police stations including verbal abuse.
- Some detainees were denied or provided with severely delayed access to water, food, toilet facilities, and medical attention.
- Authorities, with an important exception of the Commissioner for Human Rights and the National Mechanisms for the Prevention of Torture, as well as some district (first instance) courts, did not consider the behaviour of the law enforcement authorities as irregular or disproportionate and did not launch an independent inquiry into it.
- The governing majority-controlled public media framing of the protesters against the anti-LGBTQI+ campaign and the All-Poland Women's Strike protesters and protest leaders was biased and exclusively negative.
- Some detainees lodged complaints to courts; the courts in the majority of cases ruled the protesters' detention was illegal.
- Protest organisers and protesters have been charged with administrative or criminal offences weeks or months after the protests took place. The cases were pending at the time of writing this report.
- There were instances when authorities privileged pro-government protesters over government critics.
- The authorities' reaction to the discussed protests raises the possibility that these actions were intended to have a 'chilling effect' on Poles protesting government policies targeting vulnerable groups such as women and LGBTQI+ people, whose claims for rights expansions are rejected by the current governing majority.

Recommendations

Based on the findings of this research, ARTICLE 19 makes the following recommendations:

To the Polish authorities

- Ensure that any present and future restrictions on the freedoms of assembly and of expression are introduced in accordance with the Polish Constitution which requires they are properly established in law (*ustawa*) and not introduced by way of government ordinances, as was the case during the Covid-19 pandemic.
- End the practice of arbitrary and selective application and enforcement of restrictive rules towards people with dissenting political opinions.
- Ensure that no person is held criminally, civilly, or administratively responsible for the mere act of organising or participating in a protest.
- Ensure that all detentions and any subsequent trials of protesters are carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of non-discrimination.
- Ensure that individuals detained are observed to have engaged in unlawful activity, as opposed to simply being in a public area near unlawful activity.
- Ensure that the right to be informed of the grounds for the detention is respected; all detainees are informed promptly and in sufficient detail about their right to access a lawyer and are provided with that access; and all detentions must be confirmed in an independent court established by law.
- Officially and publicly condemn disproportionate and excessive use of force, arbitrary detention, judicial harassment, and other serious human rights violations; making clear that they are prohibited and will not be tolerated under any circumstances.
- Ensure that public media present unbiased, objective, and accurate information about the protest and protesters.
- Immediately end the harassment and intimidation of protest leaders, organisers, activists, and protest participants.

To the police

- Ensure that police officers are adequately trained in the policing of assemblies in line with international and domestic human rights law standards, including regarding the use of force and less-lethal weapons. This must include training on crowd facilitation, de-escalation of violence, and implicit-bias training.
- Ensure police and other security services policing protests or performing other law enforcement duties do not use excessive force and comply fully with the [UN Code of Conduct for Law Enforcement Officials](#) and the [UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). All such organisations should issue clear orders to their forces that any use of force must be strictly necessary and proportionate to a real and imminent threat and that use of unnecessary or excessive force will be punished.
- Ensure that any allegations of excessive use of force by law enforcement agents in the course of protests are promptly, thoroughly, and impartially investigated, that the results of these investigations are made public without delay, and that the suspected perpetrators are brought to justice in fair trials.
- Ensure that persons are only arrested based on reasonable evidence of having committed a recognised offence; no one is arrested solely for exercising their right to peacefully protest.
- Ensure that no one is deprived of their liberty except in accordance with legally established procedures and in accordance with international law.
- Ensure all persons taken into custody are given prompt access to a lawyer and all necessary medical treatment.
- Ensure that police respect the safety and integrity of journalists, human rights defenders, MPs, and others involved in monitoring or reporting on assemblies.

To the judiciary

- Take immediate steps to end criminal proceedings against protesters, activists, and human rights defenders.
- Ensure that victims of police abuse have access to mechanisms of justice and to redress.

Annexe

The National Mechanism for the Prevention of Torture, in its [report on the events of 7 August 2020](#), found the following:

During arrest

1. Among the detainees were people who did not actively participate in the gathering, as well as random people who declared that at that moment they had gone out to a store and were returning from shopping.
2. The National Mechanism for the Prevention of Torture representatives received information about brutal behaviour of some police officers, including the beating of one of the persons with whom they were talking in a police car. Some of the detainees had visible injuries on their bodies.
3. The detainees pointed to use of direct coercive measures by police that were disproportionate to their behaviour, for example putting handcuffs on their hands from behind during transport, throwing them on the ground to be handcuffed, etc.
4. Some officers addressed detainees in an abusive manner, making homophobic and transphobic comments.
2. Some of the detainees were interrogated at night which, due to their physical and emotional exhaustion, should be considered inhumane treatment.
3. Handcuffs were used excessively on detainees (for example, during transport or during medical examination when taking blood pressure and the hands were cuffed behind).
4. Most of the detainees were subjected to a personal check which consisted of stripping naked and performing a squat. Contrary to the regulations, the checks were usually conducted in one step where the detainee had to take off all their clothes at once and stand naked in front of an officer. Strip searches were carried out after detention, as well as before the detention, despite the fact that detainees were supervised by officers all the time.
5. In the case of a transgender woman, the personal check was conducted by a male officer.
6. Detainees reported a lack of access to drinking water in several police stations and a long wait to use the toilet. In the police station in Piaseczno near Warsaw, the detainees did not receive a meal, despite the fact that more than 12 hours had passed since their detention.

During detention

1. The analysis of the detention protocols showed that the time between the detention and the beginning of the activities at the police station was, in some cases, more than five hours.

Access to legal help

1. In several cases, detainees learned about the possibility to use legal assistance after signing the detention protocol and submitting explanations.
2. Some detainees did not know how to obtain legal assistance; others gave up contacting an attorney/legal adviser, thinking that the proceedings would be completed immediately and they would go home.
3. Meetings with attorneys that did occur usually lasted only a few minutes and took place in conditions that did not ensure confidentiality (for example, in corridors or offices of police officers).
4. Informing a designated person usually took place only 2–3 hours after the arrest and was done only by police officers.
5. Some detainees were prevented from checking the contact list in their phone and giving the number of a close person.
6. Most detainees were not informed whether it was possible to contact their designated third party.
7. The majority of detainees were not informed in an understandable way about their rights.
8. Some attorneys could not establish the whereabouts of their clients. Before the start of the visit, the National Mechanism for the Prevention of Torture received information that the [place of detention of 16 persons was unknown](#).

Medical issues

1. Not everyone was examined by a doctor, even if such a necessity resulted from the applicable regulations.
2. Three persons interviewed by the National Mechanism for the Prevention of Torture had visible injuries on their bodies, but they were not examined.
3. Access to a doctor was only provided in most cases a few hours after the detention.
4. Apart from one person, detainees who informed the police about mental disorders and taking psychotropic drugs were examined by doctors specialising in fields other than psychiatry.
5. Some persons were deprived of the possibility of taking their regular medicines.

Endnotes

- ¹ See ARTICLE 19, [The Right to Protest: Principles on the protection of human rights in protests](#), 7 December 2016.
- ² On the democratic erosion in Poland, see Drinóczi, T. and Bień-Kacała, A. (2021) *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, London: Routledge. See also Sadurski, W. (2019) *Poland's Constitutional Breakdown*, Oxford: Oxford University Press.
- ³ Gliszczyńska-Grabias, A., Baranowska, G. and Wójcik, A. (2018) 'Law-secured narratives of the past in light of international human rights law standards', *Polish Yearbook of International Law*, 38, 59–72.
- ⁴ Gliszczyńska-Grabias, A. and Sadurski, W. (2021) 'The Judgment That Wasn't (But Which Nearly Brought Poland to a Standstill): Judgment of the Polish Constitutional Tribunal of 22 October 2020, K1/20', *European Constitutional Law Review*, 17 (1): 130–153; Młynarska-Sobaczewska, A. (2021) 'Unconstitutionality of Access to Abortion for Embryo-Pathological Reasons: Judgment of the Constitutional Tribunal of Poland of 22 October 2020, K1/20', *International Human Rights Law Review*, 10 (1): 168–179.; Żuk, P. and Żuk, P. (2017) 'Women's health as an ideological and political issue: Restricting the right to abortion, access to in vitro fertilization procedures, and prenatal testing in Poland', *Health Care for Women International*, 38, (7): 689–704.
- ⁵ All links in the document were last accessed on 16 May 2022.
- ⁶ Grabowska-Moroz, B. and Wójcik, A., (2021) 'Reframing LGBT rights advocacy in the context of the rule of law backsliding. The case of Poland', *Intersections, East European Journal of Society and Politics*, 3 (forthcoming, manuscript on file with the authors).
- ⁷ Bożewicz, M. and Boguszewski, R. (2021) 'The Covid-19 Pandemic as a Catalyst for Religious Polarization in Poland', *Religions*, 12 (8): 572; Bilska-Wodecka, E. (2019) 'Secularization and Sacralization. New polarization of the Polish religious landscape in the context of globalization and European integration', *Acta Universitatis Carolinae Geographica Univerzita Karlova*, 44 (1): 3–18.
- ⁸ On the Constitutional Tribunal, see Sadurski, W. (2019) 'Polish constitutional tribunal under PiS: from an activist court, to a paralysed tribunal, to a governmental enabler', *Hague Journal on the Rule of Law*, 11 (1): 63–84; Wiącek, M. (2021) 'Constitutional Crisis in Poland 2015–2016 in the Light of the Rule of Law Principle', in von Bogdandy, A., Bogdanowicz, P., Canor, I., Grabenwarter, C., Taborowski, M., Schmidt, M. (eds) *Defending Checks and Balances in EU Member States*, Berlin: Springer, 15–33; Koncewicz, T.T. (2018) 'The Capture of the Polish Constitutional Tribunal and Beyond: Of Institution(s), Fidelities and the Rule of Law in Flux', *Review of Central and East European Law*, 43: 116.
- ⁹ [Constitutional Tribunal judgment of 22 October 2020, K1/20.](#)
- ¹⁰ [Constitutional Tribunal judgment of 7 October 2021, K 3/21.](#)
- ¹¹ The National Freedom Institute – Centre for Civil Society Development is an institution responsible for supporting civil society, public benefit activities, and volunteering.
- ¹² The Patriotic Fund was created on the initiative of Prime Minister Mateusz Morawiecki and under the supervision of Culture Minister Piotr Gliński to allocate grants for initiatives and projects implementing the [politics of remembrance](#) 'with a particular focus on national, Catholic and conservative thought'.
- ¹³ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. uchwalona przez Zgromadzenie Narodowe w dniu 2 kwietnia 1997 r., przyjęta przez Naród w referendum konstytucyjnym w dniu 25 maja 1997 r., podpisana przez Prezydenta Rzeczypospolitej Polskiej w dniu 16 lipca 1997 r., Dz.U. 1997 nr 78 poz. 483.
- ¹⁴ Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), signed in Rome, 4.XI.1950.

- ¹⁵ UN General Assembly, [International Covenant on Civil and Political Rights](#), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
- ¹⁶ UN General Assembly, [Convention on the Rights of the Child](#), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. The Convention on the Rights of the Child was adopted and opened for signature, ratification, and accession by the UN General Assembly resolution 44/25 of 20 November 1989. Article 13.1 guarantees the child the right to free expression, and Article 15.1 guarantees the freedom of peaceful assembly of children.
- ¹⁷ While many of the measures analysed in the report have to do with freedom of assembly and its legal framework at the national level, it is important that this legal framework should be seen in the broader context of the right to protest.
- ¹⁸ See International Covenant on Civil and Political Rights, art. 21; and UN Human Rights Committee, *General Comment No. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, [CCPR/C/GC/34](#).
- ¹⁹ See Miemiec, M. (2016). Stany nadzwyczajne stan wojenny, stan wyjątkowy, stan klęski żywiołowej w konstytucji Rzeczypospolitej Polskiej. *Przegląd Prawa i Administracji*, 106, 19–27.
- ²⁰ Ustawa z dnia 24 lipca 2015 r. – Prawo o zgromadzeniach, Dz.U. 2015 poz. 1485.
- ²¹ See Sadurski, W. (2019). *Poland's Constitutional Breakdown*, Oxford: Oxford University Press, p. 151.
- ²² Ustawa z dnia 13 grudnia 2016 r. o zmianie ustawy – Prawo o zgromadzeniach, Dz.U. 2017 poz. 579.
- ²³ Sąd najwyższy. Opinia do poselskiego projektu ustawy o zmianie ustawy – Prawo o zgromadzeniach. 30 listopada 2016. BSA I-021-499/16.
- ²⁴ European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)).
- ²⁵ See Florczak-Wątor, M. (2021) 'The capture of the Polish Constitutional Tribunal and its impact on the rights and freedoms of individuals', in J. Mackert, H. Wolf, and B.S. Turner (eds) *The Condition of Democracy* London: Routledge, 127–142; Sadurski, W. (2019) 'Polish constitutional tribunal under PiS: from an activist court, to a paralysed tribunal, to a governmental enabler', *Hague Journal on the Rule of Law*, 11 (1), 63–84.
- ²⁶ Polish Constitutional Tribunal judgment of 16 March 2017, Kp 1/17.
- ²⁷ See Polish Constitutional Tribunal judgment of 15 July 2008, P 15/08 and judgment of 18 January 2006, K21/05.
- ²⁸ In May 2021, the European Court of Human Rights ruled that the Constitutional Tribunal's panels do not constitute an independent and impartial court established by law when the panels include people who were illegally appointed to the tribunal taking places that had been legally assigned in 2015 to people before PiS took power. See European Court of Human Rights Judgment of 7 May 2021 in *Xero Flor v Poland*, (Application no. 4907/18).
- ²⁹ See, for instance, Koncewicz, T.T. (2018) 'The capture of the Polish constitutional tribunal and beyond: of institution (s), fidelities and the rule of law in flux', *Review of Central and East European Law*, 43(2), 116–173.
- ³⁰ The Helsinki Foundation for Human Rights, [Freedom of Assembly in the Practice of Polish Courts](#), 2019,
- ³¹ Ustawa z dnia 17 marca 2021 r. o zmianie ustawy o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi. Dz.U. 2021 poz. 616.
- ³² Rozporządzenie Ministra Zdrowia z dnia 13 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu zagrożenia epidemicznego, Dz.U. 2020 poz. 433.
- ³³ On the 10th day of every month, PiS party chairman Jarosław Kaczyński lays wreaths in memory of victims of a plane crash in Smoleńsk (Russia) in 2010, in which his brother, then Poland's President, and his wife, the First Lady, died alongside dozens of other victims, including representatives of all parliamentary groups, military and religious leaders. They were travelling to commemorate Polish victims of the World War II Katyń massacre by Soviet Russia. See Zubrzycki, G. (2022). Sacred religious-secular symbols, national myths and collective memory. *Memory and Religion from a Postsecular Perspective*, 49–65.

- ³⁴ Rozporządzenie Rady Ministrów z dnia 9 października 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii, Dz.U. 2020 poz. 1758.
- ³⁵ Rozporządzenie Rady Ministrów z dnia 23 października 2020 r. zmieniające rozporządzenie w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii. Dz.U. 2020 poz. 1871.
- ³⁶ [Oświadczenie Prokuratury Krajowej](#), 29 October 2021.
- ³⁷ Rozporządzenie Rady Ministrów z dnia 11 czerwca 2021 r. zmieniające rozporządzenie w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii. Dz.U. 2021 poz. 1054.
- ³⁸ See Press Communiqué of the Ombudsperson's Office of 15 April 2021 and 19 March 2021. In that respect, see also Bezprawnik.pl, 'Sądy uchylają mandaty, a także umarzają postępowania w związku z nie noszeniem maseczek. A co z karami administracyjnymi?' of 11 October 2020. Prawo.pl, 'Rząd myśli o zmianach w prawie, a sądy już uniewinniają osoby bez maseczek' of 5 August 2020.
- ³⁹ Supreme Court Judgment of 1 July 2021, case IV KK 238/21.
- ⁴⁰ Venice Commission and OSCE Office For Democratic Institutions and Human Rights, [Guidelines on Freedom of Peaceful Assembly](#), 3rd edition, para 19.
- ⁴¹ Obywatelski projekt ustawy o zmianie ustawy z dnia 6 czerwca 1997 r. Kodeks karny [Citizens' legislative initiative to amend the Act of 6 June 1997 – Penal Code.], [Druk nr 3751](#). Obywatelski projekt ustawy o zmianie ustawy z dnia 24 lipca 2015 r. Prawo o zgromadzeniach oraz niektórych innych ustaw [Citizens' bill to amend the Act of 24 July 2015. Law on Assemblies and some other laws], [Druk nr 1607](#).
- ⁴² See the map of [Atlas Nienawiści/Atlas of Hate](#).
- ⁴³ [Constitutional Tribunal judgment of 22 October 2020, KI/20](#). See Gliszczyńska-Grabias and Sadurski, The Judgment That Wasn't (But Which Nearly Brought Poland to a Standstill).
- ⁴⁴ See European Court of Human Rights Judgment of 7 May 2021, in *Xero Flor v Poland* (Appl. no. 4907/18).
- ⁴⁵ See cases V W 1083/20, IV W 455/20, II W 539/20, V W 1847/20.
- ⁴⁶ Sonia participated in about 20 protests between October 2020 and January 2021.
- ⁴⁷ Interwencje Policji w czasie wydarzeń z 7 sierpnia. Wystąpienie HFPC do Komendanta Stołecznego Policji, Helsińska Fundacja Praw Człowieka.
- ⁴⁸ Wpływ pandemii koronawirusa na system sprawiedliwości w sprawach karnych 3. [Wolność zgromadzeń w dobie pandemii](#), Helsińska Fundacja Praw Człowieka 2021.
- ⁴⁹ UN General Assembly, *Code of Conduct for Law Enforcement Officials*, 5 February 1980, [A/RES/34/169](#), art. 3. Adopted on 17 December 1979 by General Assembly resolution 34/169.
- ⁵⁰ [A/RES/34/169](#), art. 3(b).
- ⁵¹ [A/RES/34/169](#), art. 6. See also UN [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#).
- ⁵² Ustawa z dnia 6 kwietnia 1990 r. o Policji [Act of 6 April 1990 on Police], Dz. U. 1990 Nr 30 poz. 179.
- ⁵³ Ustawa z dnia 24 maja 2013 r. o środkach przymusu bezpośredniego i broni palnej [Act on Means of Direct Coercion and Firearms], Dz. U. z 2019 r. poz. 2418.
- ⁵⁴ Article 11, Act on Means of Direct Coercion.
- ⁵⁵ Constitutional Tribunal Resolution of 16 March 1994, w 8/93.
- ⁵⁶ See Rafał Milach's photo in the Archive of Public Protest, reprinted in: Konieczńska, A. [Protesty po zatrzymaniu Margot](#), *Vogue Polska*, 8 August 2020. Note: the article and photograph reference a person called Julia Miskiewicz, which is the official name of the non-binary activist who chooses to be known as Krem. See Nowak, M.K. [Do Polski wróciła na chwilę, na pierogi. Zamiast tego było duszenie, noc na dołku, zeznania bez prawnika](#), OKO.Press.

- ⁵⁷ See European Union, [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 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.
- ⁵⁸ Council of Europe and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Access to a lawyer as a means of preventing ill-treatment*, [CPT/Inf\(2011\)28-part1](#).
- ⁵⁹ Venice Commission and OSCE Office For Democratic Institutions and Human Rights, [Guidelines on Freedom of Peaceful Assembly](#), 3rd edition, para 35.
- ⁶⁰ Commissioner for Human Rights' letter to the Commander-in-Chief of the Warsaw Police of 19 November 2020, IL519.1694.2020.PS.
- ⁶¹ Commissioner for Human Rights' letter to the Warsaw Police Headquarters of 20 November 2020, IL.519.1694.2020.PS.
- ⁶² The Supreme Court's Criminal Chamber Judgment of 1 July 2021, ref. no. IV KK 238/21.
- ⁶³ An act relating to misdemeanours, i.e. socially harmful acts (even to a negligible degree), prohibited under penalty of arrest, restriction of liberty, a fine of up to PLN 5,000 (€ 1,064) or a reprimand.
- ⁶⁴ See cases: V W 1847/20, II W 539/20, V W 1083/20, IV W 455/20.
- ⁶⁵ A report by Poland's Society of Journalists and the Batory Foundation found that public media in Poland do not fulfil their role as a source of independent and balanced news, but rather function as a propaganda tool for the government. See OSCE Office for Democratic Institutions and Human Rights election monitoring missions in 2019 and 2020 also found clear political bias towards the governing majority and the president of Poland in public media reporting. Their report found that 'The polarized media environment, and particularly the biased coverage by the public broadcaster, remained a serious concern.' See OSCE, [Poland. Presidential Election, 28 June and 12 July 2020: ODIHR Special Election Assessment Mission Final Report](#), 23 September 2020.



ARTICLE 19

www.article19.org