



# Conclusions and recommendations concerning freedom of assembly in Poland

based on observations and monitoring conducted by  
Amnesty International in the years 2017-2019



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Amnesty International Poland, July 2020

# **PUBLIC ASSEMBLY OBSERVATION PROJECT BY AMNESTY INTERNATIONAL**

The aim of the project conducted by Amnesty International in the years 2017-2019 was to monitor the means of exercising freedom of assembly, as well as security measures during assemblies, especially in the context of the Public Assemblies Act of April 2nd 2017. In the course of the project over 50 observers have been trained and dozens of observations (official and non-official) have been conducted. Other activities included the analyses of compatibility of regulations and law enforcement practices of the police and local governments with international laws and standards in terms of freedom of assembly, as well as observations and analyses of court hearings, proceedings and rulings on the cases of participants of the protests. Reports from observations and press statements have been published and comments have been issued on cases of violation of freedom of assembly.

During the last three years the space for expressing opposition to the actions of state institutions, often repressive and in violation of the law, was being gradually limited.

The organisation has been particularly concerned by newly introduced laws violating freedom of assembly (for example by granting priority to an individual category of assemblies – i.e. periodic assemblies, or by limiting the right to counter-demonstrations), as well as by law enforcement practices – by local governments and voivodeship governors (including preventive bans on assemblies or bans issued in the form of substitute ordinances), and security practices applied by the police during assemblies (including unequal treatment of assemblies depending on the organizing parties, holding the participants in a so-called kettle<sup>1</sup>, arrests, invigilation and pressing unfounded charges against the participants of peaceful assemblies).

Presented below are main observations and recommendations in areas recognized as the most problematic in terms of guarantee of freedom of assembly. It should also be noted that the issues and practices varied in severity over the course of the observation project (some of them

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<sup>1</sup> Tactics of holding the participants behind a police cordon, fencing off the participants and rendering them unable to leave the spot where they are held.

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were characteristic for particular kinds of assemblies organized in a particular time during the years 2017-2019, especially in the case of the so-called Smolensk Monthlies, which have been granted the status of periodic assembly, as well as of the counter-demonstrations to the Smolensk Monthlies).

Reports from the officially conducted observations along with the recommendations have been published on the website [www.amnesty.org.pl](http://www.amnesty.org.pl). Conclusions and observations presented below have been presented in two reports by an Amnesty International Secretariat researcher: *“Poland: On the streets to defend human rights”*<sup>2</sup>, 2017; and *„The power of the street. Protecting the right to peaceful protest in Poland”*<sup>3</sup>, 2018.

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<sup>2</sup> <https://amnesty.org.pl/wp-content/uploads/2017/10/Final-prosecution-of-protesters-English-version.pdf>

<sup>3</sup> <https://amnesty.org.pl/wp-content/uploads/2018/06/Poland-report-FINAL.pdf>

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# I. PERIODIC ASSEMBLIES

State regulations incompatible with international standards. Lack of equality in security measures and treatment of participants of different assemblies.

According to the Public Assemblies Act of July 24<sup>th</sup> 2015<sup>4</sup>, as amended by the act of December 13<sup>th</sup> 2016, a periodic assembly is “organized by the same party in the same place or on the same route at least 4 times a year according to a developed agenda or at least once a year on public or national holiday, while this type of assemblies will have taken place in the last 3 years even if not in the form of assembly and were focused on celebrating events of particular importance and significance for the history of the Republic of Poland”. By introducing specific priority of periodic assemblies over other assemblies, this law has led to banning multiple assemblies in the years 2017 and 2018.

As an example, in the period between April 2017 and March 2018 the Mazovian Voivodeship Governor rejected the organization of at least 36 assemblies in Warsaw, stating that the reason for his decision was their being located in the same place or in close distance to “periodic assemblies”<sup>5</sup>.

This practice was applied in particular to assemblies which were counter-demonstrations to the so-called Smolensk Monthlies, and reported in a simplified procedure. Mazovian Voivodeship Governor blocked the assemblies by means of substitute ordinances, even though the Assemblies Law does not provide such possibility for assemblies reported in the simplified procedure.

Additionally, these orders were often issued at very short notice before the planned date of the assembly, in some cases even an hour before its scheduled commencement – making it effectively impossible to appeal the ordinance or to obtain a ruling in the case in a time that would allow the assembly to take place. This sort of actions of the Governor led to violations of not only the freedom of assembly, but also of the access to justice.

It is also noteworthy that the unique status of periodic assemblies also influenced the security measures applied by the police, which made any sort of counter-demonstration practically impossible to organize (more on this topic below).

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<sup>4</sup> <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001485/U/D20151485Lj.pdf>

<sup>5</sup> <https://bip.mazowieckie.pl/artykuly/443/1/10/informacja-o-zarzadzeniach-zastepczych-w-sprawach-zakazu-zgromadzen>

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# II. RIGHT TO COUNTER- DEMONSTRATION

State regulations incompatible with international standards  
Charges pressed against participants of peaceful assemblies

Amnesty International points to the fact that the amendment of the Public Assemblies Act, introduced on April 2<sup>nd</sup> 2017, greatly restrains the right to counter-demonstration which is a crucial element of the freedom of assembly.

According to the Public Assemblies Act amendment of December 13<sup>th</sup> 2016, “If notifications have been submitted for two or more assemblies, and the assemblies are to be organized even partly in the same time and place, especially at a distance shorter than 100 meters, and it is not possible to carry them out in a manner that would not threaten human life and health or property of considerable size, then the order in which the notifications are submitted sets the priority for the selection of place and time of the assembly (...). Assemblies mentioned in art. 26a [periodic assemblies] are granted priority of choosing such place and time” (art. 12 of the Public Assemblies Act).

It is important to note that this entry is incompatible with the international standard on freedom of assembly. The requirement of a 100-meter distance from another assembly taking place at the same time is disproportionately limiting the use of freedom of peaceful assembly and freedom of speech by the participants of such assemblies.

According to international human rights law, Poland is obliged to provide the possibility of organizing and securing assemblies (including demonstrations and counter-demonstrations taking place simultaneously), one or more of which is focused on expressing opposition to ideas presented by the other. In a joint report from UN Special Rapporteur for Freedom of Assembly and Association and UN Special Rapporteur on extrajudicial, summary and arbitrary executions on guarantees of freedom of assembly it has been clearly expressed that “it is of fundamental importance to ensure that as far as possible assemblies organized in the same place and time – including spontaneous assemblies and counter-demonstrations – should be allowed to take place in range of sight and hearing of their participants”.

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Provisions of the Polish act which issue limits on counter-demonstrations have in reality led to automatic refusals from local governments (or state government in case of periodic assemblies) to allow assemblies organized in a place and time in which other assemblies have already been registered (and, in case of periodic assemblies, also when the non-periodic assembly has been reported earlier), and may also lead to the police actually preventing the organization of assemblies – counter-demonstrations (including spontaneous assemblies).

Participation in peaceful assemblies is a human right and its use does not require authorization from local authorities. International laws and standards in the field of human rights do not allow countries to force a requirement on the organizing parties to submit pleas for approval. Governments may only require previous notifications of assemblies in order to be able to provide necessary plans and arrangements that would facilitate the use of this right – including events in which more than one assembly (for example a counter-demonstration) is to be organized in the same place and time.

It should also be noted that according to international laws and standards any lack of previous notification or failure to meet other administrative requirements does not render an assembly “illegal”<sup>6</sup>. UN Special Rapporteur on freedom of assembly and association explains that “counter-demonstrations aimed at expressing disagreement with the message of other assemblies may be held, but not in such a way as to discourage participants of other assemblies from exercising the right to freedom of peaceful assembly. In such a situation, the role played by representatives of law enforcement agencies in securing and facilitating the course of such events is crucial”<sup>7</sup>. According to 21<sup>st</sup> article of the International Covenant on Civil and Political Rights authorities may consider an assembly to be illegal if, for example, it is aimed at blocking another assembly, thus forbidding others from exercising their right to peaceful assembly. Nevertheless, even in such cases representatives of law enforcement agencies are obliged to apply only such means as are necessary and proportionate to the aim which they want to achieve.

It is important to note here, that since April of 2017, when the amended Public Assemblies Act was introduced, spontaneous demonstrations have been organized on the routes of pro-government periodic assemblies – the so-called Smolensk Monthlies, the Independence March or the Warsaw Uprising March. Many of the demonstrations’ participants have faced charges for exercising their right to assembly, with reference to breaking state law and public safety regulations, which in themselves are often violating international human rights law, or whose interpretations were in violation of international standards.

Acts committed by the demonstrators were violating regulations aimed at limiting freedom of assembly and freedom of speech. A demonstrator who, without use of violence, is in their actions driven by their conscience and a will to defend human rights which apply to themselves or others should not be subject to restriction of liberty or other legal charges imposed upon them for actions which could violate laws which are incompatible with international standards and had been introduced in their country. The sole act of participating in an assembly which has not been registered by the government should never be considered punishable if it was free of violence.

Polish authorities, while pressing legal sanctions against demonstrators, referred to articles 51

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<sup>6</sup> Report of UN Special Rapporteur for freedom of assembly and association, Maina Kiai, May 2012. A/HRC/20/27. par. 29.

<sup>7</sup> Report of UN Special Rapporteur for freedom of assembly and association, May 2012. Par. 30. Conclusions and recommendations concerning freedom of assembly in Poland based on observations and monitoring conducted by Amnesty International in the years 2017-2019.

and 52 of the Misdemeanours Code<sup>8</sup>. In art. 51 § 1 acts against public order and peace, such as disturbing the peace by shouting, making noise or alarms, and acts causing public scandal, are considered an offence. Legal consequences provided in this act are: imprisonment, restriction of liberty, or fine. In art. 52 § 2 disturbing or attempting to interfere with the organization or running of a non-forbidden assembly, organizing an assembly without the required notification or chairing such an assembly or forbidden assembly, chairing such an assembly after its dissolution and unlawfully occupying or refusing to leave public space, which another person or organization has the right to occupy as the organizer or chair of public assembly, are considered an offence. Penalties for committing an offence under art. 52 include imprisonment or fine. Even though articles 51 and 52 are included in the Misdemeanours Code, they carry criminal sanctions, as they provide a punishment of detention, restriction of liberty, or fine. For this reason, Amnesty International wishes to express a concern that **applying these laws to demonstrators rightfully exercising their freedom of speech and freedom of assembly is disproportionate and unnecessary in the light of international law of human rights**<sup>9</sup>. Most of the offences described in art. 52 § 2 of the Code appear incompatible with international law which forbids state governments to consider peaceful assemblies illegal only because their organizers failed to register with the relevant authorities or did not apply for consent to organize them<sup>10</sup>.

Neither does international law consent to legal sanctions against counter-demonstrators as long as they exercise their right to freedom of assembly without the use of violence. The police is charged with a positive duty of ensuring that the society may fully exercise their right to freedom of assembly. In order to do that, the police should facilitate the organization of assemblies. Police officers securing public assemblies are obliged to use the least restrictive methods possible and to restrain from excessive use of force<sup>11</sup>.

This could be exemplified by assemblies which were taking place in Warsaw on June 10<sup>th</sup> of 2017, in the vicinity of Krakowskie Przedmieście. According to data presented by the Police Headquarters in Warsaw, 91 applications were submitted to the court in connection with these assemblies for punishment for blocking the route of a legal assembly. Legal action was taken against 7 people under art. 195 of the Penal Code for malicious interference in a religious act, against one person under art. 222 of the Penal Code for personal injury of a public official. Additional action was taken against 10 people under art. 52 and art. 51 of the Misdemeanours Code. It is important to note that although the police did have the right to displace counter-demonstrators from the route of another assembly in order to allow the latter to take place, peaceful protesters, including counter-demonstrators should not be subjected to criminal sanctions solely for their participation in an assembly.

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<sup>8</sup> Act of 20 May 1971, the Misdemeanours Code.

<sup>9</sup> Rights protected by international law, and especially by articles 10 (freedom of speech) and 11 (freedom of assembly) of the European Convention of Human Rights, as well as articles 19 and 21 of the International Covenant of Civic and Political Rights, both of which Poland is a party.

<sup>10</sup> Guidelines on Freedom of Peaceful Assembly, Second Edition, OSCE Office for Democratic Institutions and Human Rights/Council of Europe's Commission for Democracy through Law (Venice Commission) (2010, II edition), Warsaw/Strasbourg 2010 (par. 71-73 (public order) and par. 80-84 (rights of other persons).

<sup>11</sup> Human Rights Handbook on Policing Assemblies, OSCE Office for Democratic Institutions, Warsaw 2016, pps. 30-32 (use of force as last resort)

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*Activists mourning the „death of democracy” in front of the Parliament building, after finding out that deputies had adopted an amendment to the Law on the Supreme Court, July 20, 2017. © Amnesty International/Barbora Černušáková*

A report of the Wolni Obywatele RP Foundation indicates that between April 2017 and May 2020 a legal counsel group operating alongside the foundation has received information of 750 people subjected to activities by law enforcement or the judiciary in connection with participation in peaceful assemblies<sup>12</sup>. Enforcing punitive measures on counter-demonstrators on such great scale could act as a deterrent on people who want to publicly express their views.

It is also necessary to point out a police practice of displacing counter-demonstrators from the route of an assembly or from the place where its participants were assembling, which has been observed repeatedly in the reported period. This has been practised most frequently in the case of periodic assemblies. The practice would typically be explained with the need of securing the assembly.

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<sup>12</sup> <https://obywatelerp.org/wp-content/uploads/2020/06/Raport-ObyPomoc-Zbiorczy-do-2020-05-31.pdf>

The report was compiled on the basis of information received from persons seeking legal assistance from a legal team acting alongside Fundacja Wolni Obywatele RP. It only presents the documented cases, including: questioning at police stations and prosecution offices as witnesses or suspects, injunctions issued on the basis of motion for punishment submitted by the police as well as actions based on the terms of criminal code, misdemeanors code, administrative law (the press law, hunting law and the act on the protection of animals and prevention of infectious diseases).

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# III. SECURITY OF ASSEMBLIES

International law and standards in the field of security measures in public assemblies  
Practice of limiting access to public space  
Use of chemical irritants  
Lack of equality in securing assemblies  
Lack of individual identification marks

There is a positive duty resting on the state to provide its citizens with the possibility of exercising their right to freedom of assembly, as well as a duty to not impose limits which exceed the restrictions permitted by international law in a clear and unequivocal way<sup>13</sup>. Especially important in this case is a guarantees of freedom of speech and of right to peaceful assembly, right to free movement, right to life, to security and personal freedom, freedom from torture and other cruel, inhuman or degrading treatment or punishment. Representatives of law enforcement authorities should therefore facilitate the organization of assemblies in such a way, as to guarantee to its participants the ability to exercise these rights. They are also obliged to take up effective measures aimed at providing security and the ability to exercise these rights both to participants of assemblies and to bystanders<sup>14</sup>. In order to do that, state institutions, and especially the police, should engage in dialogue with assembly organizers<sup>15</sup> and should try to foresee possible conflict situations, while at the same time searching for solutions which both include the rights of all interested parties and may turn out helpful in relieving possible tensions. In the course of peaceful conflict resolutions, representatives of law enforcement authorities

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<sup>13</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para 14.

<sup>14</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para 41.

<sup>15</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para 38, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf), also: A/HRC/31/66, par. 38.

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should use methods which are based on negotiations and mediations<sup>16</sup>. The use of force should be treated only as a measure of last resort to be used towards aggressive individuals. It is acceptable only when used towards particular persons, for whom there is a reasonable suspicion that they create a threat, and the range of using this measure should be proportionate to the arising danger. Police officers should never use violence or other police tactics in order to prevent citizens from exercising their right to participate in peaceful assemblies.

## Practice of limiting access to public space

A security practice repeated frequently during the so-called Smolensk Monthlies, which have been granted the status of periodic assembly, was focused on, among other means, setting up fences which would isolate the route of the assembly, which made the occurrence of any kind of counter-demonstration within the range of sight and hearing of the participants of the periodic assembly impossible.

Neither did the authorities securing the assemblies respect court orders rejecting the Mazovian Voivodeship Governor's substitute ordinances against assemblies organized by demonstrators protesting the Smolensk Monthlies, who were prevented from accessing the planned place of assembly.

International standard of freedom of assembly states clearly that if legal acts regulate the issue of parallel assemblies, they should not include an automatic ban on organizing assemblies in the same place and time. In a situation when several assemblies are organized in the vicinity of one another, it is expected that authorities should – by means of dialogue with all the interested parties – work out solutions which would allow both the demonstrations and counter-demonstrations to take place peacefully and within range of sight and hearing from each other.

Practical measures preventing a legal assembly from taking place at a legally reported time and place by isolating the planned place of assembly by law enforcement authorities is unacceptable. It is important to stress with all force that the police, guarding public order, is not exempt from the obligation to comply with court decisions.

Another repeatable security practice used during the so-called Smolensk Monthlies was displacing counter-demonstrators from the route of the periodic assembly and later closing them in a so-called “kettle” for a period of time that would allow the police to identify the participants. The time these activities consumed (up to two hours) made it impossible for the identified individuals to take further part in the counter-demonstration, and they were, in fact, a form of detention for the duration of the periodic assembly. Polish courts of law interpret the situation in the same way in their statements<sup>17</sup> on the subject.

In conclusions to observations of June 10<sup>th</sup> 2017<sup>18</sup>, Amnesty International also pointed out the fact, that no attorney was admitted to the place where police officers were carrying out the activities. It should also be noted that police activities were not limited to identifying the participants, but also included writing out penalty tickets and preparing applications for punishment.

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<sup>16</sup> e.g. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials  
Podstawowe zasady ONZ dotyczące użycia siły i broni palnej, Principle 20.

<sup>17</sup> E.g. <https://obywatelerp.org/sad-okregowy-utrzymal-rekompensate-za-bezzasadne-zatrzymanie/>

<sup>18</sup> <https://amnesty.org.pl/wp-content/uploads/2017/06/RAPORT-AI-z-observacji-zgromadzen-10-czerwca-2017.pdf>

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UN Special Rapporteur on freedom of assembly and association notes that the tactics of forming a “kettle” is in itself harmful to the ability of exercising the right to assembly, due to its mass and disproportionate character<sup>19</sup>. Furthermore, the Rapporteur points out that the tactics of holding protesters back behind a police cordon may have a deterrent effect on exercising the right to freedom of assembly, since citizens may resign from participating in peaceful demonstrations from fear of the possibility of being placed in a “kettle”<sup>20</sup>. The European Court of Human Rights has stressed, with reference to the potentially repressive and restrictive nature of this practice, that the tactics should only be used in the face of a pressing need to prevent serious injury or damage<sup>21</sup>. Considering the above, it is important to note that the tactics of isolating demonstrators and holding them behind a police cordon should only be used – if ever – to suppress violent acts and for as short a time as possible, in such a way as to allow other participants to continue a peaceful assembly<sup>22</sup>. It should not be used as means of preventing participation in an assembly, even in one that had not been reported or had been forbidden. Furthermore, this practice should not be treated as a preventive measure resulting from the assumption that a person may resort to violence. Individuals who have been placed behind the cordon by accident should have the opportunity to leave the isolated space, while others should be allowed to use sanitary facilities, get medical help, etc. It is crucial to introduce effective means of communication between the representatives of law enforcement authorities and participants of protests, so that the latter are informed of the reason for being held behind a police cordon.



*The police intervening during spontaneous and peaceful assembly in front of Law and Justice party's headquarters on Nowogrodzka street, July 24, 2017. Assembly participants didn't disturb the traffic and the Police initially refused to provide legal grounds for intervention against protesters. © Amnesty International/Barbora Černušáková*

Although in particular situations the police may legally take up some measures towards protesters who violate peace and public order, preventive measures such as detaining or isolating demonstrators who are not behaving aggressively are unacceptable. If the authorities have

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<sup>19</sup> A/HRC/23/39/Add.1, par. 37

<sup>20</sup> A/HRC/23/39/Add.1.

<sup>21</sup> Austin et al. vs The United Kingdom, no. 39692/09, 40713/09 and 41008/09.

<sup>22</sup> Amnesty International, Use of Force. Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by law enforcement officials, „Guideline 7f”

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specific information concerning an intention of taking part in illegal and violent actions by a group of protesters, then the aim of preventive identification activities or other preventive measures should be the identification of said protesters, and the measures must be proportionate to the intended effects (that is, preventing certain people from using violence or breaking the law).

The practice of excessively prolonged identification, during which individuals are denied their freedom of movement, could be considered an arbitrary deprivation of liberty. European Court of Human Rights has decided that immobilization in one place and the threat of bringing charges in case of refusing to be held and searched is a coercive measure which in itself is a sign of illegal deprivation of liberty<sup>23</sup>. In a justification to the adopted statement, the Court explains that the “kettle” method is allowed only in case of violence or when it is possible to reasonably predict such an occurrence, while other, less severe measures have been reasonably defined as potentially ineffective<sup>24</sup>.

## Use of chemical irritants

In the period covered by this document reports have been made of the police using **chemical irritants by spraying pepper spray against protesters**<sup>25</sup> in a manner violating the appropriate international standards. Authorities should refrain from such using such methods against peaceful protesters. It is furthermore unacceptable that chemical irritants is be sprayed onto a protester without previous warning. Pepper spray and other irritants may provoke such reactions as breathing problems, nausea, vomiting, irritation of the respiratory tract and eyes, contractions, chest pains, skin inflammation and allergies. Chemical irritants applied in large doses may cause tissue necrosis in the respiratory system or the digestive tract, pulmonary oedema, or internal bleeding. Therefore, it should never be used without a warning and not against a person who is not resisting at all or only resisting passively, without engaging in violence. The use of pepper spray without warning and without a legitimate reason may even amount to torture or inhumane and degrading treatment.<sup>26</sup>

## Lack of equality in securing assemblies

Major disproportions have also been observed in security measures applied during particular assemblies. Amnesty International observations show that these disproportions were part of deliberate police tactics, which would differentiate the assemblies based on their status and the organizing parties.

For example, in an observation of November 11<sup>th</sup> 2017<sup>27</sup> major disproportion was noted in security measures of two assemblies – the Independence March, registered as a periodic assembly, and the Antifascist Coalition March. While the Antifascist Coalition’s assembly had been secured by an overwhelming number of police officers in full gear (a display of strength in itself incompatible with international standards and could induce a chilling effect – intimidate

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<sup>23</sup> Gillan and Quinton vs the United Kingdom, no. 4158/05.par. 57.

<sup>24</sup> Austin et al. vs the United Kingdom, no. 39692/09, 40713/09 and 41008/09, ruling of 15 March 2012, par. 12

<sup>25</sup> For example against protesters during a demonstration outside the Presidential Palace on the night of 26/27 July 2018.

<sup>26</sup> Art. 3 ECHR. See Ali Güneş v. Turkey (Application no. 9829/07), European Court of Human Rights judgement (2012); and Çiloğlu and Others, (Application no. no. 73333/01), paras 18-19, European Court of Human Rights judgement (2007).

<sup>27</sup> <https://amnesty.org.pl/wp-content/uploads/2017/11/Raport-zgromadzenia-11-listopada-2017-1.pdf>  
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and/or discourage from participating in subsequent assemblies), while on the route of the Independence March not one police officer had been noticed by Amnesty International observers. The situation also led to lack of adequate, effective and immediate reaction to dangerous situations which had been taking place during the Independence March, including physical and verbal aggression, hate speech, the use of pyrotechnic products by participants, the use alcohol and possession of dangerous tools (all prohibited under Polish law).

It is noteworthy that, while a the use of varying police tactics in securing assemblies is in itself fully acceptable and understandable, it cannot result in creating an atmosphere of intimidation in one case, and the consent to illegal acts in another.

## Individual Identification marks

It is important to mark the fact that the Polish law does not impose the duty of wearing individual identification marks on police officers securing assemblies (officers in riot sub-units). In order to guarantee accountability for activities carried out on duty, officers taking part in securing demonstrations should always wear visible individual identification marks. While carrying out activities against demonstrators, the officers should also give their surname and rank as quickly as the circumstances allow.

# IV. FACTUAL POSSIBILITY TO EXERCISE THE FREEDOM OF ASSEMBLY

Police practices that may deter or discourage participation in assemblies

Surveillance of participants

Preventive assembly bans

During the observation of gatherings in the reporting period, Amnesty International was repeatedly concerned about restrictive and intrusive preventive measures applied by the police to protesters, especially participants of counter-demonstrations to main assemblies, including periodic ones. The above practices included pressing charges against participants of peaceful protests (including acts of passive resistance), detention in so-called “kettles”, excessive security measures against counter-demonstrations, excessive identification, arrest and searches of participants.

Under international law and standards, law enforcement officials should not detain or search participants of assemblies until there is a clear and immediate threat of violence. If the authorities have specific information about the intention of some protesters to participate in acts of violence and break the law, identification and detention of protesters must meet the criteria of a legitimate aim, necessity and proportionality.

However, common use of these measures against protesters who express their views peacefully appears disproportionate. Moreover, forcibly detaining protesters at police premises and police stations for their pre-booking is both unnecessary and disproportionate, and may deter from exercising the freedom of assembly in the future.

The long time that police officers deprived participants of their freedom of movement without any legal basis was in some cases tantamount to arbitrary deprivation of liberty. The only reason for this measure in these cases seemed to be to prevent protesters from exercising their right to participate in peaceful assemblies. During the counter-demonstration against the Smolensk monthly on July 10th, 2017 police contained groups of protesters for more than two hours for purpose of letting the cyclical assembly proceed.

In many cases excessive and inadequate identification of persons by police officers was also observed. The selection process of people identified by the police officers did not seem to be related to the actual threat to public order, but rather to a specific feature of a given person. For

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example, during the observation of counter-demonstration against the Smolensk monthly on July 10th, 2017<sup>2828</sup>, the most frequently identified participants were either very young or clearly older individuals, distinguished by having an emblem/sign, chanting against the cyclical assembly, recording the activities of authorities or intervening in the event of taking such actions against other participants. In none of the observed cases, the people against whom actions were taken behaved in a manner no different from the behavior of other participants of the observed assemblies.

Additionally, police officers did not always inform about the legal basis of the intervention and did not always follow the procedure, i.e. they failed to provide the legal and factual grounds, failed to inform about the possible violation of the law due to which the actions are taken and about the possibility of submitting a complaint.



*The police is dragging 82 years old Bogusław Zalewski out of the anti-fascist demonstration, May 1, 2018 ©JohnBob & Sophie art*

## Surveillance of participants

Over the past three years Amnesty International has expressed concern about reports of surveillance of demonstrators, pointing out that it may be effective in deterring further civic activities and constitute a violation of human rights.

For example, Amnesty International has obtained information about numerous cases – also outside Warsaw– in which the police invaded the homes of protesters on December 16 and 17, 2016 and on May 10 and June 10, 2017<sup>2929</sup>. At the same time, no reports were drawn up from the interviews conducted by the officers on these occasions, and it was not clear what the character of the “interview” was for a given person – a witness or a person suspected of committing an offense.

Although Polish law allows visits and questioning at home, it does not support unofficial „visits”. When acting on the basis of the Code of Conduct for Misdemeanor Cases, police officers usually summon witnesses under compulsory attendance, and the statements are usually taken at a

<sup>28</sup> <https://amnesty.org.pl/wp-content/uploads/2017/08/Raport-z-observacji-zgromadze%C5%84-10.07.17.pdf>

<sup>29</sup> [https://amnesty.org.pl/wp-content/uploads/2017/10/Polska\\_Demonstracje-w-obronie-praw-czlowieka.pdf](https://amnesty.org.pl/wp-content/uploads/2017/10/Polska_Demonstracje-w-obronie-praw-czlowieka.pdf)  
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police station. Officers may visit witnesses at home when circumstances require such action, for example for health reasons<sup>30</sup>. In the case of a person suspected of committing an offense, the interview begins with informing them of the content of the allegation included in the interview record<sup>31</sup>. Moreover, an interview may be waived if it involves significant difficulties; the person may send explanations to the competent authority within 7 days of withdrawing from the interview, a right on which they should be instructed<sup>32</sup>. Amnesty International points out that such unofficial visits by police officers to the homes of protesters may constitute an attempt to intimidate them. All evidence obtained in this way should be treated as inadmissible, as the method of its collection does not meet the requirements of international law for fair proceedings. Anyone suspected of having committed a criminal offense (such as offenses under Articles 51 and 52 of Misdemeanor Code) is entitled to legal advice<sup>33</sup>. This right also includes the presence of a lawyer during questioning by authorized authorities<sup>34</sup>.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) states that „no one may be exposed to arbitrary or unlawful interference with their private life, family, home or correspondence” and that „everyone has the right to legal protection against such interference and attacks”. Freedom from unlawful state-led surveillance is also guaranteed in Article 8 of the European Convention on Human Rights<sup>35</sup>.

## Preventive assembly bans

At the time of the project, Amnesty International noted a dangerous trend to ban public gatherings. Several mayors from different cities have arbitrarily and unjustifiably interfered with freedom of assembly. The arguments for issuing the bans were, i.a. the accusations of failure to ensure safety by the organizers, fears of counter-demonstrations and violation of the law by participants, or disturbances to road traffic.

Amnesty stresses that these are not sufficient arguments to restrict everyone’s freedom so

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<sup>30</sup> Article 41 § 1 of the Code of Conduct in misdemeanour cases in connection with art. 177 § 2 of the Code of Criminal Procedure: A witness who cannot appear on a summons due to illness, disability or other insurmountable obstacle may be questioned at his place of stay.

<sup>31</sup> Article 54 § 6 of the Code of Petty Offenses Procedure: A person for whom there is a reasonable basis for drawing up a motion for punishment should be immediately interviewed. Such a person has the right to refuse to provide explanations and submit evidence motions, about which he should be informed. The interview of this person begins with the notification of the content of the allegation entered in the interview record.

<sup>32</sup> Article 54 § of the Petty Offense Procedure Code

<sup>33</sup> General Comment No. 32 of the Human Rights Committee, CCPR / C / GC / 32, 23 August 2007, Directive 2013/48 / EU of the European Parliament and of the Council "on the right of access to a lawyer in criminal and European arrest warrant proceedings and in the right to inform a third person about deprivation of liberty and the right to communicate with third persons and consular authorities while deprived of liberty "requires an EU Member State to guarantee that a person subject to criminal proceedings (or proceedings that may lead to restriction of liberty) has the right to legal advice during a police interrogation. While petty offenses may be exempted from this obligation, it nevertheless remains in force in all criminal cases. Since the application of articles 51 and 52 of the Misdemeanour Code may de facto lead to criminal sanctions (restriction of liberty), in their case the provisions of the Directive also apply.

<sup>34</sup> Article 6 of the European Convention on Human Rights requires that everyone be entitled to legal aid from the earliest stage of the police proceedings (John Murray v. The United Kingdom, § 63; Öcalan v. Turkey [GC], § 131; Salduz v. Turkey [GC], § 54; Averill v. The United Kingdom, § 59; Brennan v. The United Kingdom, § 45; Dayanan v. Turkey, § 31) if you are suspected of having committed a crime or an offense punishable by imprisonment.

<sup>35</sup> The right to respect for private and family life

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drastically. An assembly may be prohibited only in exceptional circumstances, i.e. in the event of a real, immediate and serious threat to health and life. Meanwhile, the so-called preventive prohibition, justified only by the probability of a threat, is a violation of international standards. This is also confirmed by the judgements of Polish courts<sup>36</sup>. It is up to the authorities to ensure security while allowing the assembly to be held. This obligation cannot be transferred to the organizers.

Preventive assembly prohibitions discourage people from exercising their fundamental freedoms and place excessive demands on organizers.

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<sup>36</sup> e.g. Decision of the Court of Appeal in Białystok, file ref. act I ACz 232/17; Decision of the District Court in Warsaw, file ref. XXIV Ns 40/17; Decision of the Court of Appeal in Lublin, file ref. no.I ACz 1145/18

# AMNESTY INTERNATIONAL RECOMMENDATIONS FOR POLISH AUTHORITIES<sup>37</sup>

## ON THE PROHIBITION OR OTHER RESTRICTIONS OF PUBLIC ASSEMBLIES

- The Minister of the Interior and Administration should respect the right to freedom of assembly and freedom of speech when citizens gather in public spaces to express their views. It should be the duty of representatives of law enforcement agencies to facilitate peaceful public assemblies, and not to excessively restrict their organization. Failure to officially register an assembly does not constitute grounds for recognizing it as illegal.
- The Sejm and Senate Chambers should amend the Law on Assemblies and remove the provision on „periodic assemblies” which privilege such assemblies at the expense of others and impose a mandatory requirement of a 100-meter distance between two or more assemblies held at the same time.
- Local authorities, the police and/or secret services must ensure that peaceful demonstrations and counter-demonstrations have equal access to public spaces and equal protection, and that those participating in them can fully exercise their right to freedom of assembly.
- Local authorities and voivodes should exercise their powers to prohibit assemblies only as a last resort. They must also ensure that any prohibition meets the necessity and proportionality criteria laid down in international human rights law. The principle should be the presumption of the peaceful nature of an assembly, and failure to ensure safety by the organizers, fears of counter-demonstrations, violation of the law by participants, or road traffic disruptions cannot constitute grounds for a „preventive” ban on the assembly.
- Articles 51 and 52 of the Misdemeanor Code should be amended to bring them in line with international standards, and in particular to remove de facto penal sanctions that threaten those who exercise their right to freedom of assembly.

## ON THE PROTECTION OF PUBLIC ASSEMBLIES:

- Law enforcement officials should avoid using the tactic of keeping protesters behind a police cordon in securing public gatherings – for example by arranging a „kettle” or otherwise separating or surrounding demonstrators and not allowing them to leave the

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<sup>37</sup> The recommendations were published in June 2018 in the Street Power report. In defense of peaceful assemblies in Poland <https://amnesty.org.pl/wp-content/uploads/2018/07/Poland-Moc-Ulicy-raport.pdf>

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protest site – as long as this procedure is not absolutely necessary to isolate individuals who are aggressive or breaking the law, and at the same time does not lead to a disproportionate restriction of the possibility of exercising the right to freedom of assembly by other protesters.

- Law enforcement officials may use force only when absolutely necessary and only to the extent that they can perform their duties. In particular, the police should, as far as possible, use non-violent means, and if it has to be used, it should be done in a manner which is limited and appropriate to the purpose that officers want to achieve. When dispersing assemblies that are forbidden but peaceful at the same time, law enforcement officials should refrain from using force, or if that is not possible, use it to the minimum extent possible.
- All representatives of law enforcement agencies involved in securing demonstrations should wear visible signs of individual identification. When carrying out stop and search operations, or when taking other official actions against protesters, they should always identify themselves by name and rank as soon as possible under the circumstances.

#### ON THE PURSUIT OF PROTEST PARTICIPANTS:

- The authorities, in particular the prosecution and the police, should refrain from bringing criminal charges for participation in peace assemblies, including those that have not been registered by the appropriate administrative bodies.
- Criminal cases initiated solely because of participation in a peaceful assembly should be dropped.
- Police should stop surveillance, home visits and other activities that can be interpreted as attempts to intimidate and harass protesters, as they may prove illegal and act as a deterrent to freedom of assembly and speech.

# ATTACHMENT:

## STATE OBLIGATIONS REGARDING THE FREEDOM OF ASSEMBLY: INTERNATIONAL STANDARDS VS. PROVISIONS OF POLISH LAW AND THE PRACTICE OF LOCAL AUTHORITIES AND SECURITY SERVICES<sup>38</sup>

### THE OBLIGATION TO CREATE A FAVORABLE ENVIRONMENT – ORGANIZERS

INTERNATIONAL LAW	POLISH LAW
<ul style="list-style-type: none"><li>• No undue burdens to the organizer that could have a freeze effect</li><li>• No criminal liability for the behavior of others (only for your own behavior)</li><li>• No responsibility for maintaining public order (=&gt; it is the responsibility of the police)</li></ul>	<ul style="list-style-type: none"><li>• Many details required from the organizer</li><li>• Name of the person responsible for policing/ ending unlawful conduct should be given</li><li>• A visible vest should be worn</li><li>• May be criminally responsible for the problems that arise</li></ul>

### THE OBLIGATION TO CREATE A FAVORING ENVIRONMENT – PLANNED/UNPLANNED (SPONTANEOUS) ASSEMBLIES

INTERNATIONAL LAW	POLISH LAW
<ul style="list-style-type: none"><li>• No consent / authorization needed</li><li>• The notification system must be easy and serve to facilitate, not restrict / prohibit</li><li>• Spontaneous assemblies must be allowed</li></ul>	<ul style="list-style-type: none"><li>• The system can be used as a de-facto consent system</li><li>• Failure to notify may be used as an excuse to dissolve the assembly, including in the event of traffic disruption</li><li>• A very wide range of reasons for dissolving a meeting</li></ul>

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<sup>38</sup> The list was compiled as a part of an analysis by an expert from Amnesty International Netherlands; Police and Human Rights Programme

**OBLIGATION TO CREATE A FAVORING ENVIRONMENT – ASSEMBLIES HELD AT THE SAME TIME**

<b>INTERNATIONAL LAW</b>	<b>POLISH LAW</b>
<ul style="list-style-type: none"> <li>• Obligation to allow both assemblies as much as possible, or to find an acceptable compromise that will allow both events to be held as planned (obligation to consider all possible options)</li> </ul>	<ul style="list-style-type: none"> <li>• Obligation to negotiate if no solution: first come, first served (=&gt; non-compliance with duty to facilitate meetings)</li> <li>• Facilitates misuse of mass notifications</li> <li>• Issue: periodic assemblies</li> </ul>

**OBLIGATION TO CREATE A FAVORING ENVIRONMENT – COUNTER-DEMONSTRATIONS**

<b>INTERNATIONAL LAW</b>	<b>POLISH LAW</b>
<ul style="list-style-type: none"> <li>• Counter-demonstrations: within sight and hearing</li> <li>• But: it must not prevent the second gathering</li> <li>• Duty to facilitate and to protect</li> <li>• Abstract risks are not a reason for prohibition</li> <li>• Duty to solve problems as much as possible without prohibiting / dissolving the assembly</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal offense: „disturbing” another assembly</li> <li>• Issue: police/court interpretation of „disturbance”</li> </ul>
<ul style="list-style-type: none"> <li>• There must be an objective and valid reason</li> <li>• Obligation of non-discrimination, including the prohibition of ethnic profiling (selecting people on the basis of their appearance characteristics)</li> <li>• Targeted searches of participants / assemblies are not allowed (freeze effect)</li> <li>• There must be valid reason to suspect that the person will engage in aggressive or criminal activities</li> </ul>	<ul style="list-style-type: none"> <li>• Does not specify the criteria and thresholds (unclear terms „legal and factual basis”)</li> </ul>
<ul style="list-style-type: none"> <li>• Participants may not be recorder unless they are involved in serious legal violations</li> <li>• It is not allowed to record for identification purposes, unless the person commits an offense / crime</li> </ul>	<ul style="list-style-type: none"> <li>• Does not specify criteria and thresholds</li> </ul>

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<ul style="list-style-type: none"> <li>• Police carrying recording equipment is not a problem, it depends what and who they are recording</li> <li>• Recording instead of reacting as a way to avoid escalating the situation</li> <li>• It is not allowed to threaten or intimidate participants</li> </ul>	
<p><b>INTERNATIONAL LAW</b></p> <ul style="list-style-type: none"> <li>• Dissolution as last resort, generally only for widespread violence that cannot be stopped otherwise</li> <li>• Voluntary dissolution comes first</li> <li>• Peaceful assembly = no use of force that may cause harm is allowed</li> <li>• Massive force use (water cannon, tear gas) = allowed only in case of widespread violence</li> </ul>	<p><b>POLISH LAW</b></p> <ul style="list-style-type: none"> <li>• Dissolution is not defined as a last resort</li> <li>• If the assembly poses a threat to public order, it is also sufficient for any conflict with the act on public assemblies to occur</li> </ul>

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