



**“THEY TREATED US LIKE
CRIMINALS”**

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

© Amnesty International 2022

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2022

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: EUR 37/5882/2022

Original language: English

amnesty.org



Cover photo: © Demonstration for LGBTI rights in Warsaw, August 2020

© Piotr Lapinski/NurPhoto/Getty

AMNESTY
INTERNATIONAL



CONTENTS

EXECUTIVE SUMMARY	5
LGBTI PROTESTS SUBJECT TO UNDUE RESTRICTIONS AND UNEQUAL TREATMENT	6
“RAINBOW NIGHT”: POLICE ABUSES AND MASS DETENTIONS	7
CRIMINAL CHARGES FOR DISPLAYING A RAINBOW FLAG AND OTHER VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION	8
THE CHILLING EFFECT ON LGBTI RIGHTS DEFENDERS	9
KEY RECOMMENDATIONS	9
METHODOLOGY	11
1. CONTEXT: SYSTEMIC SUPPRESSION OF LGBTI RIGHTS	13
2. DON'T BLAME IT ON MY PARADE! LGBTI PEOPLE'S RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY	16
2.1 RESTRICTING AND BANNING ASSEMBLIES	18
NOTIFICATION OF ASSEMBLIES	18
PREVENTIVE ASSEMBLY BANS	22
2.2 FAILURE OF LAW ENFORCEMENT OFFICIALS TO PROTECT LGBTI ASSEMBLIES	27
EQUALITY MARCH IN GNEZNO (2019): FAILURE TO ENSURE PROTECTION OF THE ASSEMBLY DURING AND AFTER THE ASSEMBLIES	31
UNDER-REPORTING AND IMPUNITY FOR HATE CRIMES AGAINST LGBTI PEOPLE	34
CONCLUSIONS	35
2.3 RAINBOW NIGHT: POLICE USE OF FORCE AND PROFILING OF LGBTI ACTIVISTS	35
UNNECESSARY AND EXCESSIVE USE OF FORCE DURING DISPERSAL	36
INAPPROPRIATE USE OF CONTAINMENT AND “KETTILING” BY POLICE	40
PROFILING OF LGBTI PEOPLE	41
LEGALITY AND CONDITIONS OF DETENTION	43
INVESTIGATING TO INTIMIDATE	44
“THEY TREATED US LIKE CRIMINALS” FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS	
Amnesty International	3

POLICE ACCOUNTABILITY AND THE RIGHT TO AN EFFECTIVE REMEDY	45
3. SPEAKING UP FOR DIGNITY: FREEDOM OF EXPRESSION IN THE CONTEXT OF LGBTI RIGHTS	46
3.1 WEAPONISING THE LAW AGAINST LGBTI RIGHTS DEFENDERS	47
“INSULT TO STATE SYMBOLS”	48
“PROFANATION OF A MONUMENT”	50
“OFFENDING RELIGIOUS BELIEFS”	54
CONCLUSIONS	58
4. CHILLING EFFECT ON LGBTI RIGHTS DEFENDERS	60
4.1 MISUSE OF THE CRIMINAL JUSTICE SYSTEM	61
4.2 INTIMIDATION AND SMEAR CAMPAIGNS	63
4.3 FINANCIAL AND PROFESSIONAL IMPACT	64
4.4 NEGATIVE IMPACT ON HEALTH AND PRIVATE LIFE	65
RECOMMENDATIONS	67

EXECUTIVE SUMMARY

"We don't know where this campaign of hate will stop. Vehicles with homophobic slogans drive on the streets with impunity, but it's us who are to be punished and suffer. It is because of this long-standing activism that I am in a such bad state today"

Jacek, a long-time activist and organizer of Equality March

Amnesty International has repeatedly sounded the alarm about the actions of the authorities in Poland which have shrunk the space for civil society around the country, undermined the rule of law, attacked women's and LGBTI people's rights and those who defend them, particularly over the last five years. Although the space for civil society has been targeted and restricted by the authorities for all those standing up to defend human rights, there are specific ways in which state officials and the police have violated the rights of LGBTI people wishing to engage in the civic space. Hostile and stigmatising rhetoric against LGBTI people, including by high-level officials, is having increasingly harmful consequences that are clearly translating into more violence and discrimination on the basis of people's actual or perceived sexual orientation or gender identity. The atmosphere of hostility against LGBTI people has been particularly growing since the change of government in 2015, which has been accompanied with a sustained repression of their rights to freedom of expression, association and peaceful assembly. As demonstrated in this report, there is a direct link between the progressive erosion of these rights and the harassment, profiling and targeting of LGBTI activists.

This report exposes the deplorable situation of LGBTI people and their allies in Poland. It evidences both the deliberate actions and failures to act by authorities and law enforcement officials that constitute violations of LGBTI people's human rights and create a more dangerous environment for LGBTI people and those who support them. The findings of this research detail the extent of the violations of the rights to freedom of peaceful assembly and expression documented by Amnesty International between 2017 and 2021. Each section analyses a different aspect of the obligations that states have under international human rights law to respect, protect and facilitate peaceful protests, followed by sections analysing the challenges faced by LGBTI defenders when engaging in the civic space.

This report is the result of Amnesty International's research conducted between October 2021 and May 2022 across Poland. Researchers conducted 51 semi-structured interviews with 49 people, 44 of whom self-identified as LGBTI people and five as allies. The organization also interviewed the legal representatives of over 20 individuals that have been facing cases in court and more than 15 representatives of NGOs, journalists and experts on LGBTI rights in Poland. Amnesty International also held interviews with

"THEY TREATED US LIKE CRIMINALS"
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

Amnesty International

representatives of Poland's Human Rights Commissioner's (Ombudsman's) Office and members of Parliament. Amnesty International also met with the Plenipotentiary for Human Rights of National Police of Poland. Additionally, the research team requested information from the municipal authorities of Dębica and Białystok. Representatives of the Ministry of Interior, the Headquarters of National Police and the Ministry of Justice were provided with an opportunity to respond to its main findings prior to publication, and the responses received are reflected in this report.

Amnesty International observed four Equality Marches – in Bydgoszcz, Białystok and Płock in 2019 and in Białystok in 2021 – and four court hearings in proceedings against LGBTI activists charged with offending religious beliefs in Płock as well as one hearing of an activist charged with damaging a monument in Warsaw. Researchers also spoke to organizers and participants of the Equality Marches in Białystok, Czestochowa, Gniezno, Krakow, Lublin, Lodz, Nowy Sacz, Rzeszow, Tri-City, Poznan, and Warsaw. It also participated in the Congress of Equality Marches 2021 in Łódź in October 2021.

What emerges is a picture of systemic violence and discrimination directed against LGBTI people and those working to defend and promote their rights. People in positions of power in government and other influential public figures have intentionally negatively portrayed LGBTI people as a “threat to family values”, “the Catholic faith” and “public order”. The situation for LGBTI people rapidly deteriorated after 2019 with the gradual adoption of homophobic local government resolutions arbitrarily banning Pride parades and Equality Marches, also known as “LGBTI-free zones”, and the subsequent attacks on Equality Marches in Białystok and Lublin where the police failed to adequately protect from violence and discrimination by counter-demonstrators those who were marching peacefully. People who speak out and openly oppose systemic homophobia, biphobia and transphobia in Poland are increasingly facing multiple reprisals for their activism, including criminal charges that have escalated into years of grueling and costly trials that gradually exclude them – or compel them to withdraw - from an already shrinking space for civil society.

LGBTI PROTESTS SUBJECT TO UNDUE RESTRICTIONS AND UNEQUAL TREATMENT

During the last five years, the authorities have intentionally weaponized onerous and complex notification requirements to arbitrarily and discriminatorily ban or disperse LGBTI protests. Amnesty International shows in this report how, despite activists following all the required procedures to hold a peaceful assembly, the authorities have continued to use notification proceedings as if they were a requisite to get a prior authorization before holding an assembly. The Law on Assemblies requires organizers to notify the municipality of their intention to organize an assembly no earlier than 30 days and no later than six days before the planned date of the assembly. Amnesty International has documented how this legislation has been used to illegitimately prevent the conduct of peaceful assemblies and particularly to target a number of LGBTI gatherings that have faced disproportionate challenges and obstacles from various authorities on the pretext of maintaining public order. For example, Amnesty International heard of arbitrary restrictions imposed on organizers of Equality Marches in Sanok, Kalisz, Nowy Sacz, and Rzeszów where 11 different organizers of Equality Marches told the organization that they faced problems with the overly complex process of notification.

Under international human rights law and standards, domestic legislation may only require advance notification of an assembly for the purpose of enabling the state to provide the necessary arrangements to facilitate the smooth conduct of the assembly while protecting the rights of others. Accordingly, any lack of previous notification or failure to meet other administrative requirements does not render an assembly unlawful nor should be used as a basis to disperse an assembly or arrest its participants.

Further, local authorities in Poland have repeatedly used the Law on Assemblies in an instrumental way to unduly restrict the right to freedom of peaceful assembly of LGBTI people by imposing so-called “preventive

“THEY TREATED US LIKE CRIMINALS”
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

bans". This has made the process of notifying assemblies more onerous and difficult, piling on additional requirements for organizers of Equality Marches and Pride Parades. By imposing these "preventive bans", local authorities prohibit an assembly preemptively and force the organizers to appeal in court. Both the Polish Ombudsman and the Commissioner for Human Rights at the Council of Europe have often intervened in cases of preventive bans targeting LGBTI assemblies due to its arbitrary and discriminatory application. During 2018 and 2019, Amnesty International documented at least eight preventive bans on LGBTI assemblies, including in Gorzow Wielkopolski, Kielce, Rzeszow and Lublin.

Contrary to international law and standards, the authorities justified the prohibition of these assemblies and the imposition of "preventive bans" on the grounds that they would provoke a hostile reaction among the public. Yet police protection of LGBTI assemblies is often inadequate, especially in the face of violent counter-demonstrations. Dialogue and cooperation by the police with the organizers was described by many people who have organized and participated in LGBTI assemblies as inadequate and non-transparent, exacerbating the situation. Interviewees described to Amnesty International the inadequacy of the police protection during protests with some detailing how the police failed to take action to ensure the rights of LGBTI people and their allies when counter-demonstrators used or advocated violence or discrimination.

Amnesty International has found compelling evidence on how attacks on LGBTI people at peaceful gatherings have markedly increased, especially in the wake of the government's hate campaign against LGBTI people that particularly intensified ahead of the 2019 presidential campaign. For example, on 20 July 2019, a group of under 1,000 people taking part in the first Equality March in Bialystok were attacked by a much larger and aggressive crowd of 4,000 counter-demonstrators, including members of far-right groups and some sports clubs, in a context of insufficient police protection. As a result of the lack of protection, people participating in the Equality March were attacked with bottles, paving stones and firecrackers, accompanied by homophobic slurs. At least two people participating in the Equality March were assaulted, one of whom was a minor.

At the same time, the lack of specific hate crime provisions in law and multiple obstacles that impede LGBTI people who experience violence and other hate crimes to safely and adequately report these acts, means that law enforcement agencies are not effectively identifying and prosecuting those responsible.

In this already concerning context, a civic bill known as "Stop LGBT" was submitted to the Sejm (Parliament) in August 2021 and was subsequently sent for further work after the first reading. The bill would impose a total ban on the "promotion of LGBTI ideology" in public spaces, thus posing a serious threat to the rights to freedom of peaceful assembly and expression that stands in contravention of international human rights law and standards.

In this climate of hostility towards LGBTI people, state representatives and law enforcement officials have a particular obligation to ensure that LGBTI people are adequately protected and able to organize and participate in peaceful assemblies safely and without hindrance or restriction.

“RAINBOW NIGHT”: POLICE ABUSES AND MASS DETENTIONS

Amnesty International raised specific human rights concerns over the events of the so-called Rainbow Night of 7 August 2020. That day, police officers used unnecessary and excessive force together with other unlawful tactics, including means of containment and profiling of LGBTI protesters that have gathered to protest against the arrest of LGBTI activist Margot. Many protesters and bystanders were arbitrarily detained, and were not informed of the charges nor given the possibility to challenge the lawfulness of their detention. That night, during the Krakowskie Przedmieście protests and the solidarity demonstration held on Wilcza Street, 48 people were arrested and charged, including people who were just passing by and not even participating in the protests.

People who were arrested during Rainbow Night were later denied contact with relatives or lawyers, and received warrantless home visits by the police to gather additional evidence. According to people who were detained during the protests and their lawyers, the vast majority of detainees did not learn of the legal basis for their detention until after the arrest warrant was drawn up, often up to five hours after their detention. Amnesty International also documented the use of profiling during the policing of LGBTI assemblies to target individuals on the basis of their sexual orientation or gender identity.

Ada, a 31-year-old activist who was at the protest outside the police station, was rushed to the emergency ward after a police officer forcibly removed her from the roadway where she and others were peacefully blocking the passage of a police car taking Margot to a police station. "They threw me like a fly, some policeman grabbed me by my backpack and pushed me on the sidewalk... I just had a dislocated shoulder, they dislocated it again and made me walk from Wilcza to Krucza... At least at the police station they let me take painkillers." After a judicial review of her arrest, a court ruled that her detention was improper and illegal.

In April 2022, the Prosecutor's Office dropped the criminal proceedings against 41 of those arrested during Rainbow Night due to insufficient evidence. However, concern remains that at any time these cases could come back if additional material or witnesses were put forward, resulting in the situation proving to be a source of fear and concern for all those involved. This case also sends an alarming signal to others who may consider exercising their rights to freedom of expression and peaceful assembly, resulting in a chilling effect beyond those directly affected.

CRIMINAL CHARGES FOR DISPLAYING A RAINBOW FLAG AND OTHER VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION

People defending and promoting the rights of LGBTI people in Poland face particular hostility and acrimony from authorities, law enforcement officials, Church representatives and the media. Peaceful activism in defense of the rights of LGBTI people or intended to expose the violence and discrimination they face in their daily lives are consistently met with an immediate and extremely harsh response from the state apparatus. Simple actions such as displaying rainbow flags or writing slogans on the sidewalk in chalk have been harshly repressed, leading to activists being treated as criminals and dragged through the courts. It has been clear that the aim of these actions is to intimidate and silence them.

Different provisions of the Criminal Code, including public insult of a sign or symbol of the state (Article 137), insult of a monument (Article 261), insult of religious feelings (Article 196), and Article 108 of the Law on the Protection of Monuments concerning the destruction or damage of monuments are contrary to international human rights law and are deliberately used against LGBTI activists.

For example, in October 2020, police detained Marta after she wrote on the facade of the Ministry of Education the names of young LGBTI people who committed suicide as a result of homophobia. Police searched the activist's apartment, collected her fingerprints and DNA samples, and held her at the police station for 48 hours. After the Minister of Education called her act "barbaric", the prosecutor's office charged Marta under Article 108 of the Law on the Protection of Monuments and imposed police supervision.

In another effort to silence LGBTI activists, including Bart Staszewski and Hate Atlas activists who have documented the impact of homophobic "LGBT-free zones" resolutions, the authorities have relied on defamation suits as a way to further intimidate LGBTI activists. These legal proceedings are supported by organizations close to the government, such as Ordo Iuris and the Good Name Redoubt, which are known for their campaigns against LGBTI rights. Activists facing such lawsuits have spoken of how costly and exhausting these proceedings are, and about how the threat of legal, financial and personal consequences risks gradually paralyzing them.

THE CHILLING EFFECT ON LGBTI RIGHTS DEFENDERS

LGBTI rights defenders have been effectively and systemically discouraged from continuing to engage in activism and to publicize the bad situation of LGBTI people in Poland. The authorities have used the whole apparatus of the state, including the justice system, to target and harass activists in a way that is creating a chilling effect that instills fear in many others beyond those directly targeted.

After Bart Staszewski attached "LGBT Free Zone" signs to road signs in municipalities and counties that had adopted the aforementioned resolutions, he was met with a smear campaign and a number of civil lawsuits from the respective entities. Bart explained to Amnesty International: "What I did was an art installation ... I only exposed what the authorities themselves decided, I just gave it a face".

In May 2022, two years after his intervention, the Regional Court in Rzeszow dismissed the lawsuit brought against him but the activist is still waiting for a decision on two other similar lawsuits from different municipalities. Amnesty International has documented similar harassment in the case of Hate Atlas activists who, since 2020, have faced civil lawsuits and a smear campaign for their work monitoring the impact of the introduction of "LGBTI-free zones" resolutions on LGBTI people.

Amnesty International heard from LGBTI activists that years of protracted court cases using injunctive rulings and appeals by the Attorney General's Office have translated into burnout, physical and mental health problems, and a deterioration in their professional and personal situation. Many activists have even decided to leave the country.

People who stand up against injustice and discrimination should not be punished for their peaceful activism, but rather protected and supported by the state. Intimidation and harassment of LGBTI people is a manifestation of deliberate and systemic violence and discrimination against those who often need this protection the most. LGBTI people, like anyone else, have the right to be free from violence, to freedom of expression, to freedom of peaceful assembly, and to non-discrimination. Obstacles and hurdles such as onerous and at times insurmountable notification requirements as well as other arbitrary restrictions deliberately used to hinder and frustrate LGBTI people's right to freedom of peaceful assembly must be urgently addressed and removed. The Polish authorities have an obligation to respect, protect and fulfil LGBTI people's human rights, and must take urgent action to do so.

KEY RECOMMENDATIONS

Amnesty International calls on the Polish authorities to urgently:

- Ensure that criminal proceedings against individuals that stem solely from their human rights activism or from their participation in LGBTI-related assemblies are dropped and that any investigation is closed.
- Guarantee equal opportunities and adequate cooperation and protection from law enforcement in the notification, organization and conduct of LGBTI assemblies such as Equality Marches and Pride Parades. In addition, local authorities must stop using preventive bans and put an end to imposing additional arbitrary requirements on organizers of gatherings in support of LGBTI rights.
- Refrain from the instrumental use of criminal and misdemeanor laws against LGBTI rights defenders, with particular attention to Articles 137, 196 and 261 of the Penal Code and Article 108 of the Law on the Protection of Monuments.
- Immediately withdraw defamation charges brought by local authorities against LGBTI rights activists if they were intended to silence or suppress their peaceful activities, and withdraw civil suits brought by local authorities for alleged violations of personal rights. Ensure that these tools, along with the

"THEY TREATED US LIKE CRIMINALS"
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

Amnesty International

institution of emergency complaints, are not used in the future to intimidate and suppress the peaceful activities of LGBTI rights defenders and advocates.

- Amend the Criminal Code to add the prerequisites of gender, sexual orientation, gender identity and gender characteristics to Articles 256 and 257, which criminalize hate speech and discriminatory assault, and Article 119, which criminalizes the use of physical violence and unlawful threats on discriminatory grounds (hate crimes).
- Immediately reject the "STOP LGBT" bill by the Parliament and, in the future, further bills of a similarly discriminatory nature, if any are presented.

METHODOLOGY

Amnesty International has continuously monitored the human rights situation of LGBTI people in Poland. This report seeks to analyse the trajectory of two interlinked rights – freedom of peaceful assembly and freedom of expression – in the context of shrinking space for LGBTI rights defenders in Poland over the period 2017-2021. There is a direct link between the progressive erosion of these rights and the harassment, profiling and targeting of LGBTI rights activists.

The report is based on the qualitative research carried out between October 2021 and May 2022. Amnesty International conducted 54 semi-structured interviews with 49 people, 44 of whom self-identified as LGBTI people and five as allies. Research into government responses to LGBTI groups was conducted mainly through desk research, consultations with experts and analysis of official correspondence between representatives of the Polish government and the Commissioner for Human Rights (Ombudsman). Amnesty International also analysed the content of two parliamentary questions to the Ministry of the Interior regarding anti-LGBTI hate crimes and LGBTI refugees.¹

Amnesty International sought to include among those interviewed and consulted persons representing diversity in terms of sexual orientation, gender identity, gender expression and sex characteristics, although the organisation was not able to interview intersex people. Amnesty also sought to include the views of people from diverse socio-economic backgrounds from various regions of Poland,² though most individuals interviewed lived in large Polish cities, often declaring a direct link between their relocation to urban centres and their activism for LGBTI rights.

The report uses the pronouns preferred by the individuals. In compliance with informed consent given by interviewees and as is the norm in Amnesty International's investigations, we provide the date of when the interview took place but have protected the identity of some of the people with whom we have spoken by using a pseudonym or other means to anonymize the individual, their location, nationality and any other identifying details, in accordance with their wishes. Eleven interviews were conducted virtually or by telephone, the remaining ones were face-to-face interviews at the headquarters of Amnesty International Poland or at a location selected by the interviewees. All of the interviews were conducted in Polish by a native-speaking researcher.

Amnesty International interviewed the legal representatives of over 20 individuals that have been facing cases in court and more than 15 representatives of NGOs, journalists and experts on LGBTI rights in Poland. The report also relies on publicly available information from the Ombudsman's Office, particularly when it constituted a record of communication between them and relevant state actors in cases described in the report.

¹ Poland, Parliamentary question to Ministry of Interior on LGBTI asylum seekers, 16 February 2022 (answered on 8 March 2022), sejm.gov.pl/Sejm9.nsf/interpelacja.xsp?typ=INT&nr=31375&view=5; Poland, Parliamentary question to Ministry of Interior on hate crimes motivated by homophobia, biphobia and transphobia, 18 January 2022 (answered on 11 April 2022), sejm.gov.pl/Sejm9.nsf/interpelacja.xsp?typ=INT&nr=30504.

² Both from the east (Białystok), west (Poznań, Gorzów Wielkopolski, Gniezno), north (Trójmiasto, Szczecin) and south (Częstochowa, Kraków) of Poland.

Amnesty International also held interviews with representatives of Poland's Human Rights Commissioner's (Ombudsman's) Office and members of Parliament. Amnesty International also met with the Plenipotentiary for Human Rights of National Police of Poland. Additionally, the research team requested information from the municipal authorities of Dębica and Białystok, but only received information from the officials in Białystok. Requests for official meetings were sent to the Ministry of Interior, Ministry of Justice and Headquarters of National Police in accordance with the Right of Reply Procedure on 15 June 2022. All representatives of the Polish authorities mentioned in the report were provided with an opportunity to respond to its main findings prior to publication. Amnesty International has received written responses from the Ministry of Interior³ and the Headquarters of National Police;⁴ the Ministry of Justice decided not to respond to Amnesty International's request for the statement.⁵ Responses received are reflected in this report.

Amnesty International observed four Equality Marches – in Bydgoszcz, Białystok and Płock in 2019 and in Białystok in 2021 – and four court hearings in proceedings against LGBTI activists charged with offending religious beliefs in Płock and one hearing of an activist charged with damaging a monument in Warsaw. Researchers also spoke to organizers and participants of the Equality Marches in Białystok, Częstochowa, Gniezno, Krakow, Lublin, Lodz, Nowy Sacz, Rzeszow, Tri-City, Poznan, and Warsaw. It also participated in the Congress of Equality Marches 2021 in Łódź in October 2021.

Amnesty International was also witness to the events of 7 August 2020, when police used unlawful force to disperse a spontaneous protest against the preventative detention of LGBTI activist Margot Szutowicz.

ACKNOWLEDGEMENTS

Amnesty International thanks all those who took the time to share their experiences, expertise and views during the research for this report. In particular, the organisation would like to thank LGBTI individuals for so courageously and generously sharing their personal experiences and/or putting their friends and acquaintances in contact with our researchers. We are also grateful to the lawyers, academics and representatives of NGOs and collectives who generously shared their time and knowledge.

Amnesty International also acknowledges the responses of the Ministry of Interior and Headquarters of National Police to our requests for information and meetings. The Ministry of Justice has informed Amnesty International it is not willing to respond to the request for a meeting or statement.

³ Response of the Ministry of Interior to the request for information and meeting sent by Amnesty International, 4 July 2022, on file with Amnesty International.

⁴ Response of the National Chief of Police Jarosław Szymczyk, dated 27 June 2022, to the request for information and meeting sent by Amnesty International on 15 June 2022, on file with Amnesty International.

⁵ Information with a refusal response provided by the Secretariat of the Ministry of Justice on 4 July 2022.

1. CONTEXT: SYSTEMIC SUPPRESSION OF LGBTI RIGHTS

LGBTI people in Poland have struggled for decades against systemic discrimination, which has often been implemented under the guise of protecting so-called “traditional values”. Although same-sex relationships were decriminalised in 1932, the communist authorities of the post-war period in Poland consistently treated homosexuality as a social pathology. The authorities have systematically monitored LGBTI people and deliberately presented them as a group with clear criminal inclinations and as a potential threat to public order.

For example, between 1985 and 1987, on the orders of the Minister of the Interior, a secret mass operation by the Citizen’s Militia, known as Operation Hyacinth, resulted in the detention of 11,000 people “suspected of or in contact with homosexuality.”⁶ They were interrogated in an effort to extract confessions about their private lives. As a result, compromising details gathered during this operation were stored by the Secret Service as so-called “pink files”. The authorities called the operation a preventive move to infiltrate and counteract sex work and “homosexual criminal gangs.”

The fall of communism in 1989 opened a new chapter for human rights protection in Poland. However, efforts to ensure the human rights of LGBTI people under international and European Union (EU) law were hampered by ongoing stigma and discrimination, exacerbated over the years by politicians from both main parties and the Catholic Church.

There have been several attempts to legalize civil partnerships, but the relevant bill was voted down three times in the Sejm (Poland’s Parliament) between 2013 and 2015. Legal adoption by same-sex partners remains impossible in practice, and in July 2020 President Andrzej Duda signed a draft amendment to the Constitution that seeks to ban access to legal adoption for people in same-sex relationships.⁷

Although legal gender recognition of transgender people is possible in Poland, it is a lengthy and costly process, requiring a number of mandatory criteria to be met – such as suing the parents or providing the non-refunded complex medical diagnosis. Even if these conditions are met, a court can still deny legal

⁶ Remigiusz Rzyński, *Hiacynt. PRL wobec homoseksualistów*, 2021 (in Polish only); Łukasz Szulc, *Operation Hyacinth and Poland's pink files*, NOTCHES: (re)marks on the history of sexuality, 2 February 2016.

⁷ Poland, the draft Amendment to Constitution, 6 July 2020, www.prezydent.pl/storage/file/core_files/2021/8/5/4bad51aa665957e2cd12ec241e17eab5/s22c-6e20070613530.pdf

gender recognition at the end of the process. There is no prohibition of non-consensual medical interventions, either surgical or hormonal, on intersex people.

The Polish legal system provides for effective legal remedies for people who experience discrimination on the basis of sexual orientation and gender identity only with respect to employment. Protections against discrimination for LGBTI people under EU law have been systematically diluted by the Polish government since 2015. Despite a documented rise in anti-LGBTI sentiment and international pressure to address this, there is still no coherent system for reporting and combating hate crime and hate speech based on sexual orientation and gender identity.

Since the Law and Justice party came to power in the 2015 parliamentary elections, the prospects for legal change to better respect the rights of LGBTI people have significantly decreased and regular attempts of politicians and activists - such as Robert Biedroń, Anna Grodzka or Bart Staszewski, to name few - to advocate for LGBTI rights have been met with immediate opposition, both in parliament and on the streets. Government officials have issued numerous anti-LGBTI statements, creating an atmosphere that fosters discrimination and affords a social licence for hostility towards LGBTI people in wider society. For example, in April 2018 the leader of Law and Justice, Jarosław Kaczyński, asserted during a local government campaign that “no homosexual marriages will be allowed in Poland” and “Europe has to sober up” when it comes to LGBTI rights, while in April 2021 he stated on national television that homosexuality is “an ideology that dominates the world today and radically limits the freedom of those who are terrorised to accept it.”⁸

The 2019 presidential campaign saw an intensification of attacks on LGBTI people by politicians, mainly from conservative parties such as PiS and Konfederacja.⁹ In February 2019, Warsaw Mayor Rafal Trzaskowski¹⁰ signed a LGBT+ Charter,¹¹ which aims to improve the situation and recognition of LGBTI people in Warsaw. In response, central government authorities launched an unprecedented campaign promoting “LGBT-free zones” and Family Charters¹² in all regions of Poland, pitting local authorities against non-heteronormative people. Since then, the national authorities and many local authorities under the control of Law and Justice have repeatedly fuelled homophobic and transphobic sentiment.¹³

The disclosure of alleged e-mails from the Chief of the Chancellery of the Ministers’ Council, Michał Dworczyk, in February 2022 revealed that there had been organized and direct cooperation between the authorities and some media outlets in advocating hatred towards LGBTI people during the 2019 presidential campaign.¹⁴ In a June 2020 speech in Brzeg, President Andrzej Duda equated LGBTI people with communists, by stating:

“They’re trying to tell us that they’re people. And it’s an ideology. If anyone has any doubts as to whether or not this is an ideology, look back through history and see what it was like to build the LGBT movement around the world ... an ideology that is even more destructive to human beings, an ideology that beneath the platitudes of

⁸ TVP Info, *Jarosław Kaczyński o gender i LGBT. Póki my rządząmy to nam niczego nikt nie narzuci*, 31 March 2021, tvp.info/53073272/jaroslaw-kaczynski-o-gender-i-lgbt-poki-my-rzadzimy-to-nam-niczego-nikt-nie-narzuci; Notes From Poland, “LGBT “ideology weakens the West”, warns Polish leader Kaczyński”, 2 April 2021, notesfrompoland.com/2021/04/02/lgbt-ideology-weakens-the-west-and-terrorises-people-warns-polish-leader-kaczynski/

⁹ Law and Justice (PiS) is a right-wing national-conservative ruling party of Poland with Jarosław Kaczyński as its present chairman, founded in 2001. Confederation (Konfederacja), initially founded as a political party in 2018 for the 2019 European parliament elections, became a far-right national conservative party with Jakub Kulesza as its present chairman.

¹⁰ From the opposition centrist (to centre right) liberal conservative party Civic Platform (PO), whose present chairman is Donald Tusk.

¹¹ Interpreted by the Jarosław Kaczyński as an “attack on children and families on March 2019. See more in Notes From Poland, “LGBT “ideology weakens the west and terrorises people”, warns Polish leader Kaczyński”, 2 April 2021, notesfrompoland.com/2021/04/02/lgbt-ideology-weakens-the-west-and-terrorises-people-warns-polish-leader-kaczynski/.

¹² See Chapter 6 of the report.

¹³ Mahmut Murat Ardag and others, “Homophobia and national collective narcissism in populist Poland”, September 2021, *European Journal of Sociology*, Volume 62, Issue 1, <https://www.cambridge.org/core/journals/european-journal-of-sociology-archives-europeennes-de-sociologie/article/abs/homophobia-and-national-collective-narcissism-in-populist-poland/7C20316825F1CF5F0C44556D18823120>.

¹⁴ In correspondence from the Prime Minister’s adviser, Mariusz Chłopik, in March 2019, in which he states that there is a need for “more celebrities who agree to criticise LGBT in the media”; Rp.pl, “Afera e-mailowa: Doradca premiera radził szukać celebrytów, którzy krytykują LGBT”, 1 February 2022, rp.pl/polityka/art35628411-afere-mailowa-doradca-premiera-radzil-szukac-celebrytow-ktorzy-krytykuja-lgbt

respect and tolerance hides a deep intolerance and elimination, the exclusion of all those who do not want to submit to it.”¹⁵

It is noteworthy that Poland’s experience of communism went down in Polish history as a period of occupation and persecution, and communists became associated with a period of deprivation of political and economic independence and civic freedoms.¹⁶ This is reflected in Article 256 of the Criminal Code, according to which the penalty for “propagating fascist, communist or other totalitarian symbols” is up to 2 years imprisonment.¹⁷ Attempts to link fascism and communism with the defence and promotion of LGBTI rights heightens the risk that those who do not conform with wider gender norms are further stigmatised and scapegoated.

Harmful and dangerous rhetoric by state actors, as well as increasing attempts to use the legal system to harass, intimidate and silence LGBTI people, coupled with heightened closure of civic space to those wishing to peacefully protest against it has meant unprecedented levels of threats and attacks against LGBTI people wishing to claim their rights. The deterioration in the situation has meant that for the third year in a row ILGA-Europe’s (an international organisation working on the rights of LGBTI people) categorised Poland as the country in Europe most acutely failing to protect LGBTI rights.¹⁸

LGBTI people in Poland experience barriers in access to justice, interference in judicial proceedings by the Ministry of Justice and Prosecutor General, and limitations on their rights to freedom of expression and peaceful assembly. Legislative attempts to limit education on sexual and reproductive rights and regular smear campaigns against activists and NGOs advocating for LGBTI rights fuel an atmosphere in which the space for LGBTI people to engage in the civic space is shrinking. Widely reported harassment of LGBTI rights defenders, including through the misuse of the criminal justice system to silence them, has resulted in draining and expensive legal proceedings and exposure to smear campaigns. LGBTI rights defenders have reported a consequential “chilling effect” that deters LGBTI people’s peaceful activism and a deterioration in their quality of life, affecting their health, life plans and financial situation.

¹⁵ Rp.pl, “Andrzej Duda o LGBT: Próbuja nam wmówić, że to ludzie. To ideologia”, 13 June 2020, rp.pl/wydarzenia/art8909311-andrzej-duda-o-lgbt-probuja-wmowic-ze-to-ludzie-to-ideologia.

¹⁶ Poland was under communism from 1945 to 1989, and the established socialist state, the Polish People’s Republic, was subordinate to the Soviet Union.

¹⁷ Poland, Criminal Code, Article 256, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-karny-16798683/art-256

¹⁸ ILGA Europe, *Annual review of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe and Central Asia 2022*, May 2022, rainbow-europe.org/annual-review.

2. DON'T BLAME IT ON MY PARADE! LGBTI PEOPLE'S RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

“The primary duty of public authorities related to the freedom of public assembly is to enable the assembly and secure its peaceful conduct.”

The Polish Ombudsman in a published statement against the preventive ban imposed on Equality March in Lublin in 2019

“The road there was probably the most difficult as there was not enough protection for this March ... There was a rainbow flag burning in front of us because someone set it on fire ... The person in front of me started to run and a man near me shouted: 'Yes, run away, otherwise I will kill you'”

Bazyli, Participant of Equality March in Bialystok in 2019¹⁹

¹⁹ Interview with Bazyli, 5 April 2022.
“THEY TREATED US LIKE CRIMINALS”
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS
Amnesty International

Amnesty International published a report called *Poland: On the streets to defend human rights. Harassment, surveillance and prosecution of the protesters*²⁰ in 2017, followed by a complementary report *The Power of 'the street'. Protecting the Right to Peaceful Protest in Poland*²¹ in 2018. Both reports, as well as the *Public assembly observation project in 2017-2019*,²² were a response to the growing harassment of peaceful demonstrators and undue restrictions on the right to freedom of peaceful assembly under the Law on Assemblies, which came into force on 2 April 2017.²³ Previous research conducted by Amnesty International had already concluded that such legislative changes constituted a serious threat to the right to freedom of peaceful assembly as it placed new restrictions on the exercise of this right that were not in line with international human rights law and standards. The judiciary, which has been under immense political pressure since constitutional reforms passed in 2017,²⁴ has played an important role in further undermining the right to freedom of peaceful assembly.

Since 2017, Amnesty International has been monitoring with increasing concern how the suppression of the right to freedom of peaceful assembly has been gradually weaponized against LGBTI groups, in a hostile climate of institutionalised homophobia, biphobia and transphobia. Various human rights bodies and civil society organizations, including the Commissioner for Human Rights of the Council of Europe, the pan-European LGBTI rights group ILGA Europe and Human Rights Watch, have publicly expressed similar concerns. As the stigmatization of LGBTI people has deepened, peaceful assemblies such as the Equality Marches have repeatedly met a hostile and violent response from central and local authorities and law enforcement officials. As a result, far-right groups that have promoted an anti-human rights agenda have enjoyed growing impunity when they have condoned, advocated or used violence or discrimination against LGBTI individuals.

In Poland, the Law on Assemblies regulates the way in which assemblies and demonstrations are organized, held and dispersed.²⁵ LGBTI people, like anyone else in the country, have a constitutional right to exercise their right to freedom of peaceful assembly without discrimination (Articles 32 and 57 of the Polish Constitution).²⁶ This right is also enshrined in international human rights law binding on Poland, including the International Covenant on Civil and Political Rights (ICCPR),²⁷ the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),²⁸ and the Charter of Fundamental Rights of the European Union.²⁹ It is also expressed in the Yogyakarta Principles, a set of internationally respected principles guiding how to apply international human rights law in the context of sexual orientation and gender identity.³⁰

²⁰ Amnesty International, *Poland: On the streets to defend human rights, harassment, surveillance and prosecution of protesters*, 2017 (Index: EUR 37/7147/2017), [amnesty.org/en/documents/eur37/7147/2017/en/](https://www.amnesty.org/en/documents/eur37/7147/2017/en/).

²¹ Amnesty International, *Poland: The Power of 'the Street', Protecting the Right to Peaceful Protest in Poland* (Index: EUR 37/8525/2018), 2018, [amnesty.org/en/documents/eur37/8525/2018/en/](https://www.amnesty.org/en/documents/eur37/8525/2018/en/)

²² Amnesty International Poland, *Conclusions and recommendations concerning freedom of assembly in Poland based on observations and monitoring conducted by Amnesty International in the years 2017-2019*, July 2020, [amnesty.org.pl/wp-content/uploads/2020/11/Zgromadzenia-ENG.pdf](https://www.amnesty.org.pl/wp-content/uploads/2020/11/Zgromadzenia-ENG.pdf).

²³ Poland, Amendment to the Law on Assemblies, 2 April 2017, isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170000579.

²⁴ Amnesty International, *Poland: Free courts, free people, judges standing for their independence*, July 2019, (Index: EUR 37/0418/2019), [amnesty.org/en/documents/eur37/0418/2019/en/](https://www.amnesty.org/en/documents/eur37/0418/2019/en/)

²⁵ Poland, Law on Assemblies, isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170000579.

²⁶ Constitution of the Republic of Poland, Article 32 and Article 57, [sejm.gov.pl/prawo/konst/angielski/kon1.htm](https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm).

²⁷ International Covenant on Civil and Political Rights (ICCPR), Article 21, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 11, [echr.coe.int/documents/convention_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

²⁹ Charter of Fundamental Rights of the European Union, Article 12, eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT.

³⁰ The Yogyakarta Principles. Principles on the application of international human rights law in relation to sexual orientation and gender identity, Article 19 and Article 20, March 2007, [yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf](https://www.yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf), pp. 24-26.

2.1 RESTRICTING AND BANNING ASSEMBLIES

Over the past few years, Amnesty International has observed how the Polish authorities have put increasing obstacles in the way of those seeking to exercise their right to freedom of peaceful assembly. While many people organizing and joining protests have faced the force of state repression, the experiences of LGBTI people in this regard have been particularly acute.³¹ The frequency with which restrictions and prohibitions have targeted LGBTI people has been widely noted, including by Amnesty International and the Commissioner for Human Rights of the Council of Europe, who has expressed her concern over the risk of the erosion of the right to freedom of peaceful assembly for LGBTI people in Poland.

While the right to freedom of peaceful assembly is not absolute, it can only be restricted in very limited circumstances. International human rights law requires that any restriction on this right be provided by a clearly defined law, and be necessary and proportionate to one of the limited legitimate aims. As provided for by article 21 of the ICCPR, restrictions on the right to freedom of peaceful assembly are only permissible when they are intended to protect national security or public order, for the protection of public health or morals, or for the protection of the rights and freedoms of others.

The right to freedom of peaceful assembly requires that protestors are able to have a real opportunity to peacefully convey their message to the right people, group or organization. Therefore, assemblies should as a general rule be facilitated within the “sight and sound” of their target audience.³² While certain restrictions to the time, place and manner of an assembly may be legitimate, such restrictions must pass the test of necessity and proportionality. In such cases, the authorities should always give preference to the least intrusive means. Even in cases where certain restrictions to the time, place or manner of an assembly are imposed, the authorities should try to facilitate such an assembly by offering reasonable alternatives. Blanket bans on the permissible time or location of an assembly are impermissible restrictions because they necessarily prevent authorities from engaging in a case-by-case assessment of the restrictions by preventing authorities from evaluating specific circumstances and assessing proportionality.³³

NOTIFICATION OF ASSEMBLIES

The Law on Assemblies requires organizers to notify the municipality of their intention to organize an assembly no earlier than 30 days and no later than six days before the planned date of the assembly.³⁴ Amnesty International has documented how this legislation has been used to illegitimately prevent the conduct of assemblies and particularly to target a number of LGBTI peaceful assemblies that have faced disproportionate challenges and obstacles from municipalities on the pretext of maintaining public order.³⁵

Under international human rights law and standards, domestic legislation may only require advance notification of an assembly for the purpose of enabling the state to provide the necessary arrangements to facilitate the smooth conduct of the assembly while protecting the rights of others.³⁶ Accordingly, any lack of previous notification or failure to meet other administrative requirements does not render an assembly unlawful nor should be used as a basis to disperse an assembly or arrest its participants.³⁷

Notification regimes can also pose risks for spontaneous assemblies, which are generally regarded as those organized in response to current events or a specific incident where the organizer – if there is one – is

³¹ Amnesty International. *Poland: On the Streets to Defend Human Rights*. October 2017 (Index: EUR 37/7147/2017), [amnesty.org/en/documents/eur37/7147/2017/en/](https://www.amnesty.org/en/documents/eur37/7147/2017/en/).

³² Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 22.

³³ Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 38.

³⁴ Poland, Law on Assemblies, April 2017, Article 7, isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170000579.

³⁵ And in some cases based on the amendment to the Law on Assemblies, that has given priority to certain types of assemblies and introduced the order of the notification as the criterion determining the route and time of the assembly, if their course endanger life or health of people or property of significant size. Amnesty International referred to this amendment as not in compliance with international human rights standards in the previous reports.

³⁶ Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 70; ODIHR. *Human Rights Handbook on Policing Assemblies*, 2016, p. 20.

³⁷ Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 71; Report of UN Special Rapporteur for freedom of assembly and association, Maina Kiai, May 2012. *A/HRC/20/27*. par. 2.

unable to meet the legal deadline for prior notification, or where there is no organizer at all. Spontaneous assemblies are equally protected by international law, and should be exempted from notification requirements.³⁸

CZĘSTOCHOWA 2018: RESTRICTIONS ON THE FLY

Gosia, a 23-year-old student and English teacher, organised three Equality Marches since 2018 in her hometown in the southern city of Częstochowa. In an interview with Amnesty International, she explained that organizers of the marches have faced obstacles from the very beginning:

“In Częstochowa they make things incredibly difficult for us. ... The municipality does not treat our notification to organize an event as sufficient, and they also request us to notify the special use of road. Instead of just one notification, each time we have to submit this extra application, which requires a thousand attachments.”³⁹

Gosia told Amnesty International that in 2019, although it is not a legal or policy requirement, the police chief of Katowice demanded the organizers to prepare a fire safety plan, which he subsequently rejected at the last minute and resulted in the need for another attempt to prepare a fire safety plan.⁴⁰ Such requirements for organizers renders the process of notification unnecessarily onerous and bureaucratic, and can sometimes deter people from organizing peaceful assemblies.

Gosia and most of the other Equality March organizers reported to Amnesty International that the requirement of notification is difficult and very onerous. This is proved through the timeframe allowed and the multiple documents that need to be provided, in addition to the discriminatory and arbitrary approach of the authorities. Gosia stressed that a deadline of just one day to meet these requirements was particularly limiting, especially as there was a risk of being preempted by counter-demonstrators, who – if they know the date of the Equality March – notify the amount of assemblies at key points in the city to force a change in the date or route of the March itself.

“If we publish the date in advance, counter-demonstrators will react immediately. Notification of the assembly is practically a competition over the better internet connection.”⁴¹

Amendments passed in April 2017 to the Public Assemblies Act have made notification requirements even more onerous and have sometimes been deployed in a discriminatory manner against LGBTI people. As the deadline to apply for the special use of the roads is 30 days before the planned date of the assembly, while the notification of the assembly has to be sent no earlier than 30 days before the planned assembly, the date of the assembly has to be kept secret to the very last moment, otherwise the counter-protesters use this procedure to notify their assemblies.

According to the amendments, the order in which the notifications are submitted determines the priority for the selection of place and time of the assembly. Consequently, the number of notifications submitted for the same day and on the planned route of a demonstration can force the organizers to rearrange or completely alter the initial plan which would result in the need to submit all the required paperwork all over again.

How this works in practice can be seen in the experience of LGBTI protesters in Częstochowa. In 2018, organizers of the Equality March submitted an early notification of the assembly just one day in advance, triggering an immediate reaction from far-right groups opposed to LGBTI rights. In only a few hours, more than a dozen counter-demonstrations were notified to the authorities for the very same day. Counter-demonstrators also launched a petition “against the profanation of Jasna Góra,” where the Pauline Monastery with the image of the Black Madonna is located, and requested the Polish President and the Mayor of Częstochowa to protect this place of worship and pilgrimage destination for Catholics from those “who openly promote depravity and demand the right to murder unborn children.”⁴²

³⁸ Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 14, 72

³⁹ Interview by video call with Gosia, 1 April 2022, Warszawa.

⁴⁰ Documentation on file with Amnesty International.

⁴¹ Interview by video call with Gosia, 1 April 2022, Warszawa.

⁴² Poland Travel, “The shrine on Jasna Góra”, poland.travel/en/monuments/the-shrine-on-jasna-gora-in-czestochowa.

“THEY TREATED US LIKE CRIMINALS”

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

After multiple requests by anti-LGBTI groups to organize their own assemblies, local authorities began to pressure the Equality march organizers to significantly change their route to avoid the Jasna Góra monastery. An administrative hearing took place at the City Hall on July 2, and Gosia reported to Amnesty International that in result of pressure from the City Hall, the organizers of the Equality March had to change the start time of their assembly. "Of course we were the ones to compromise, not the counterdemonstrators"⁴³ - said Gosia.

Moreover, the organizers asked for the Mayor's patronage. However, in a letter of refusal sent to the organizers on 4 July 2018, the magistrate stated that while it appreciates the efforts of the organizers, it can only grant patronage to events organized by public institutions and social organizations whose purpose is to "spread culture, build social capital and develop the local community."⁴⁴

Gosia also described how the authorities come up with requirements that the organizers had to meet on the fly, even if these are not prescribed by law or in any other regulations. During the planning of the Equality March in 2018, the authorities tried to ban the march at the very last minute after they argued that according to the law, there can only be two people on moving platforms from which often the organizers distribute key information during the course of an assembly. But, as Gosia explained, the unsubstantiated restrictions imposed by the authorities leave little space for them to react: "What can we do? You can fight in court for four years and then receive a confirmation that you were right. But we just want the March to go ahead. It has been like that for the last three years."⁴⁵

In fact, Polish law does not regulate the number of people on moving platforms during assemblies. Imposing restrictions on an assembly or even banning it altogether due to the number of people in moving platforms has thus become an arbitrary decision deployed with immense discretion by the authorities. Amnesty International heard of similar arbitrary restrictions imposed on organizers of Equality Marches in Sanok, Kalisz, Nowy Sącz, and Rzeszów where 11 different organizers of Equality Marches told the organization that they faced problems with the overly complex process of notification.⁴⁶

As shown by this example, the notification process in Poland is complex and used arbitrarily and discriminatorily to unduly restrict LGBTI protests. Together with other undue restrictions by the municipality and law enforcement representatives, LGBTI people across the country have faced multiple, and sometimes insurmountable, obstacles to be able to freely exercise their right to freedom of peaceful assembly safely and without discrimination.

Such arbitrary restrictions were recognized as contrary to the Constitution by the Constitutional Tribunal already in 2006. In a ruling on the case of *Bączkowski v. Poland*⁴⁷, the Tribunal stated that legal regulations leading to excessive arbitrariness by public administration bodies lowers the constitutional standard of the right to freedom of assembly. Importantly, the Tribunal noted that in some cases the very same restrictions were applied to Equality Marches, but not to religious gatherings.⁴⁸ A similar decision by the European Court of Human Rights also found that the Equality March in Warsaw planned to be held on 12 June 2005 was banned by the Mayor of Warsaw while six anti-LGBTI counter-demonstrations were permitted to go ahead. In its reasoning, the European Court of Human Rights recognized the preferential and discriminatory dimensions of the decision to ban the Equality March.⁴⁹

NADIA: ONE DOT AWAY FROM A PENALTY ORDER

On 20 September 2020, 19-year-old Nadia and three friends set up a small stand with free educational materials on LGBTI rights and sexual education in the main square in the town of Dębica in southeastern

⁴³ Interview by video call with Gosia, 1 April 2022, Warszawa.

⁴⁴ On file with Amnesty International. The content of the letter of refusal available here: OKO.press,"Tęcza nad Jasną Górą", 8 July 2018, oko.press/tecza-nad-jasna-gora-i-marsz-rownosci-w-czestochowie-przeszedl-mimo-blokad-nacjonalistow-zdjecia/.

⁴⁵ Interview by video call with Gosia, 1st April 2022, Warszawa.

⁴⁶ Correspondence with Julia, 4 June 2022; information gathered at Congress of Marching Cities in Łódź, 26 and 27 October 2021.

⁴⁷ Judgement 3.5.2007 of the European Court of Human Rights, *Bączkowski and Others vs. Poland*, April 2007. hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-2725&filename=002-2725.pdf&TID=ihgdqbxnfi.

⁴⁸ Judgement 3.5.2007 of the European Court of Human Rights, *Bączkowski and Others vs. Poland*, April 2007. hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-2725&filename=002-2725.pdf&TID=ihgdqbxnfi.

⁴⁹ Final judgement 24.9.2007 of the European Court of Human Rights, *Bączkowski and Others vs. Poland*, September 2007, hudoc.echr.coe.int/eng#(f%22dmocnumber%22:(%22816493%22),%22itemid%22:(%22001-80464%22)).

Poland. This was a peaceful response to the declaration of “LGBT-free zones” that attempted to deny LGBTI people of their rights and make them invisible.⁵⁰ This peaceful action, “What is LGBT+?”, was one component of a so-called QueerTour organized by Nadia and others that had previously been carried out in other regions of Poland.⁵¹ Nadia told Amnesty International that the tour went to Puławy, Lubaszów, Jarosław, Przasnysz, Tuchów, and Sochaczew. According to her testimony, people in Puławy threw eggs at them and their stand.⁵²

Nadia had duly notified the Municipal Office of their plans under a simplified procedure, as it would not impede the flow of traffic. Nadia called the Town Hall on 14 September,⁵³ and was informed over the phone that the notification must be submitted by e-mail.⁵⁴ She then submitted the notification to the e-mail address she was given, and thought she had fully complied with the notification procedure.⁵⁵

Nadia and her friends accordingly set up the booth on the day when they were planning to gather. Police officers were present for most of the time and let the group carry on with their activities peacefully. However, a few hours later, the mayor was passing-by the area and noticed LGBTI symbols. Nadia told Amnesty International that they did not know at the beginning who this man was, but it later turned out to be the mayor. According to her testimony, after the mayor looked at the rainbow flags, he approached the police officers who were present. The police then approached them to say that their gathering was an illegal assembly and that they had to leave.⁵⁶ After demanding to see their identity cards, the police ordered Nadia and her friends to disperse. Nadia was later issued with a 220 euro fine and a penalty order for failing to submit a notification of the assembly.⁵⁷

According to various sources, the Town Hall of Dębica has two functioning e-mail addresses that differ just by one dot.⁵⁸ Apparently, Nadia’s notification went to the e-mail not designated for the purpose of submitting notifications for an assembly. Consequently, when the mayor called the Town Hall, he was informed that the notification had not been submitted and ostensibly gave him the justification he needed to disperse an otherwise peaceful assembly. According to statements by the mayor during a court hearing, he informed the police after this call that “he didn’t give a permission” for the QueerTour assembly.⁵⁹

Amnesty International contacted the Dębica Town Hall on 2 June 2022 to clarify the reasons why they told the Mayor there had been no notification request in advance of the gathering. However, at the time of writing, Amnesty International had received no response to its request.⁶⁰

International standards are clear that failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organisers.⁶¹ This requirement is equally reflected in Polish law, as the Law on Assemblies does not require the authorities to issue a permit after a notification request has been submitted.⁶² While the law allows the authorities to impose certain restrictions or even to ban an assembly, the law imposes an obligation on the authorities to communicate the decision to the organizers within a strict timeframe so that they can appeal against it.⁶³ In this case, the Mayor of Dębica

⁵⁰ OKO.press, „Dębica. QueerTour na celowniku”, 21 December 2021, <https://oko.press/debica-queertour-na-celowniku/>.

⁵¹ “The group consists of 5 non-heteronormative women in Warsaw (...) Queer Tour is their activist response to the creation of “LGBT free zones”, i.e. municipalities, districts and voivodeships that adopted resolutions discriminating against non-heteronormative persons.” From: “QueerTour”, FemFund femfund.pl/en/spolecznosc/queer-tour-2/.

⁵² Interview with Nadia, 9 January 2022.

⁵³ Confirmed in the grounds of the judgement from 28 February 2022. Copy of documentation on file with Amnesty International.

⁵⁴ Interview with Nadia, 9 January 2022.

⁵⁵ Law on Assemblies, Article 21 and Article 22.

⁵⁶ Interview with Amnesty Nadia, 9 January 2022.

⁵⁷ Confirmed by the legal representatives of Nadia: Interview with Amnesty International, 13 January 2022; Poland, Code of Minor Offenses, Article 52 para 2 (2), sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-wykroczen-16788218/art-52.

⁵⁸ Interview with Agnieszka Jędrzejczyk, 11 January 2022; Interview with Nadia’s lawyers, 13 January 2022

⁵⁹ Confirmed by the mayor himself in court during the hearing; Interview with Karolina Gierdal, 8 April 2022.

⁶⁰ As of 24 April 2022.

⁶¹ Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 71, <https://digitallibrary.un.org/record/3884725?ln=en>.

⁶² Law on Assembly, Article 7(1) from 24 July 2015, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001485/U/D20151485Lj.pdf>

⁶³ Law on Assembly, Articles 14, 15 and 16, from 24 July 2015, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001485/U/D20151485Lj.pdf>

was unlawfully using the pretext of not having received a notification as an excuse to disperse a peaceful assembly.

Nadia appealed against the penalty order on 20 September 2020, within the statutory period of seven days. On 26 October 2021, she was acquitted by the District Court in Dębica who found that to meet the requirement of prior notification it is sufficient to inform the relevant office by telephone. Yet, the Court concluded that the dispersion of the assembly was voluntary and failed to recognize the roles played by the police and the Mayor.

Nadia also filed a complaint against the Mayor's decision to dissolve the assembly. However, on 28 February 2022, almost two years later, the Rzeszów District Court ruled that the assembly was "not dissolved on the basis of an oral decision of the municipal authority" and that no such decision had been issued.⁶⁴ On the contrary, the court stated that it was the organizers who made the decision to voluntarily dissolve the gathering.⁶⁵ Nadia's legal representatives highlighted that the activists were approached by eight police officers who stated that he gave "no permission for the assembly,"⁶⁶ which was the same information provided by the Mayor in court. In interview with Amnesty International, Nadia's legal representatives stated that the court's judgment failed to recognize the direct connection between the actions and testimony of the Mayor and the decision of the police to disperse the assembly.⁶⁷

Nadia's case clearly illustrates how the authorities are weaponizing onerous and complex notification requirements to arbitrarily and discriminatorily ban or disperse protests. Despite activists following all the required procedures to hold a peaceful assembly, the authorities continue to use notification proceedings as if they were a requisite to get a prior authorization before holding an assembly. This hostile attitude towards specific assemblies is having a chilling effect that is systematically discouraging people from promoting LGBTI rights.

PREVENTIVE ASSEMBLY BANS

Since 2005, Amnesty International has been monitoring the way in which municipalities across Poland issued "preventive bans" that precluded peaceful assemblies from going ahead, including Equality Marches and Pride Parades organized by LGBTI groups.⁶⁸ A large majority of these bans were issued in 2018 and 2019, followed by a total ban on public assemblies that was introduced as part of the measures to respond to the Covid-19 pandemic by decree of Minister of Health on 31 March 2020,⁶⁹ and lifted on 26 June 2021.⁷⁰

According to national and international law, restrictions on the right to freedom of peaceful assembly should be treated as an extraordinary measure that cannot rely on predictions or general assumptions. Preventive bans are precisely such an extraordinary measure, imposed on the event organizers by municipalities under the justification of public safety. Because the notification of assemblies by Equality March organizers in Poland is met with an immediate response from counter-demonstrators in the form of numerous notifications to hold counter-assemblies on the same date, some municipalities have used these situations to justify the imposition of preventive bans and thus prevent Equality Marches from taking place. This practice has been

⁶⁴ 28 February 2022. Copy of the documentation on file of Amnesty International.

⁶⁵ 28 February 2022. Copy of the documentation on file of Amnesty International.

⁶⁶ The audio file from the events reviewed by Amnesty International.

⁶⁷ Interview with Nadia, 8 April 2022.

⁶⁸ Amnesty International Poland. "Poland: LGBTI rights are in danger", 24 November 2005, [amnesty.org/pl/polska-prawa-mniejszo%C5%9Bci-seksualnych-zagro%C5%BCone/](https://www.amnesty.org/pl/polska-prawa-mniejszo%C5%9Bci-seksualnych-zagro%C5%BCone/).

⁶⁹ Under Section 5 of the Decision of the Council of Ministers, 2 May 2020 isap.sejm.gov.pl/isap.nsf/download.xsp/WDU2020000792/O/D20200792.pdf

⁷⁰ On 29 May 2020, Amnesty International objected to the unjustified restrictions - bearing the hallmarks of a general prohibition - imposed on freedom of assembly in Poland under the umbrella of prevention the COVID-19, regulated by ordinance rather than statute, in conflict with the Constitution and international law. See more: [Amnesty International Poland, "Poland: COVID-19 is no excuse for crackdown on protest", 28 May 2020, amnesty.org/en/wp-content/uploads/2021/05/EUR3724212020ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR3724212020ENGLISH.pdf); /The Ombudsman's Office, "Rząd zakazał rozporządzeniem udziału w zgromadzeniach", 29 April 2021, bip.brpo.gov.pl/pl/content/rzad-zakazal-rozporzadzeniem-udzialu-zgromadzeniach-watpliwosci-rpo.

"THEY TREATED US LIKE CRIMINALS"
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

repeatedly criticized by the Polish Ombudsman, who reminded that although Article 14 of the Act on Assemblies provides for issuance of imposing a ban on an assembly by an administrative body, it is unacceptable to make the possibility of exercising the right to freedom of peaceful assembly dependent on the reaction of opponents of the assembly.⁷¹ The Commissioner has pointed out that it is the responsibility of the authorities to ensure the safety of participants in gatherings, including Pride and Equality Marches, so that they can take place free from any hindrance.⁷²

The concern over “preventive bans” began after the Mayor of Warsaw imposed a ban on the Equality March in 2005.⁷³ This ban was found to be unlawful by the European Court of Human Rights in its decision on the case of *Bączkowski and Others vs. Poland*, which found that the Mayor's decision constituted a violation of the rights to freedom of assembly, right to an effective remedy and the right to non-discrimination (articles 11, 13 and 14 of the European Convention on Human Rights).⁷⁴ The Court determined that the real reason for the ban was the hostility of the local authorities towards LGBTI people and recalled that a peaceful assembly is subjected to the protection of Article 11 of the ECHR even if, as a demonstration, it is disruptive, annoying or offensive to persons with different views.⁷⁵

Despite the ruling of the European Court, municipalities across Poland have continued over the years to issue “preventive bans” to preclude LGBTI protests from going ahead. Amnesty International heard from four people involved in organising Equality Marches in different cities across the country about how the authorities attempted to impose preventive bans on their assemblies using “security concerns” as a pretext for imposing the restriction.⁷⁶ Amnesty International has documented eight different preventive bans imposed on Equality Marches in seven cities, all in 2018 or 2019. After the intervention of the Ombudsman,⁷⁷ all eight bans were eventually overturned by court decisions and were able to proceed, yet in some cases in another date than the originally planned.⁷⁸

The Secretary of State informed Amnesty International that preventive bans imposed by city authorities fall under the mandate of the municipality in whose area the assembly is planned to be held. In his response to the organization, the Secretary of State argued that local authorities can legitimately issue a ban if the purpose of the assembly violates the right to freedom of peaceful assembly, the rules for organizing assemblies, or criminal provisions; or if its holding may endanger the life or health of people or property of significant size; or in the case of the occurrence of cyclical events at the same place or time.⁷⁹

Such arbitrary and unjustified interference with the right to freedom of peaceful assembly by the municipal authorities represents a dangerous trend in Poland,⁸⁰ and is affecting LGBTI people in a particular and

⁷¹ The Ombudsman's opinion on preventive ban imposed on organization of Equality March in Rzeszów: The Ombudsman's Office „RPO zaskarżył do sądu zakaz marszu równości w Rzeszowie”, 7 June 2019, bip.brpo.gov.pl/pl/content/rpo-zaskarzyl-do-sadu-zakaz-marszu-rownosci-w-rzeszowie.

⁷² The Commissioner on Human Rights, Twitter post, 18 October 2018, twitter.com/CommissionerHR/status/1050688689599381504, “I welcome the decision of the court in #Lublin to lift the mayor's ban on #Pride2018 Equality March”.

⁷³ Parada Równości.eu, “Equality Parade History”, paradarownosci.eu/en/equality-parade-history/.

⁷⁴ Judgement 3.5.2007 of the European Court of Human Rights, *Bączkowski and Others vs. Poland*, April 2007. hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-2725&filename=002-2725.pdf&TID=ihgdqbxnfi

⁷⁵ Judgement 3.5.2007 of the European Court of Human Rights, *Bączkowski and Others vs. Poland*, April 2007. hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-2725&filename=002-2725.pdf&TID=ihgdqbxnfi

.. “In the case before the Court, the decisions concerning the applicants' request for permission to hold the demonstrations had been given by the municipal authorities on the Mayor's behalf after he had already made public his opinion on the matter. It could therefore reasonably be surmised that his opinions may have affected the decision-making process and consequently infringed in a discriminatory manner the applicants' right to freedom of assembly”.

⁷⁶ In cases of Equality Marches in Gniezno in 2019, Gorzów Wielkopolski in 2019, Kielce in 2019, Lublin in both 2018 and 2019, Nowy Sącz in 2019 and Rzeszów in 2019. The course of proceedings along with some of the trial documentation is available on the Ombudsman's website. An example of Equality March in Kielce in 2019: The Ombudsman's Office, “Kielce. Kolejny zakaz marszu równości. Odwołanie RPO”, 7 April 2019, bip.brpo.gov.pl/pl/content/kolejny-zakaz-marszu-rownosci-odwolanie-rpo.

⁷⁷ In all cases the Ombudsman requested that the ban be overturned as inadmissible under the Constitution and the Law on Assemblies, and the court agreed.

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.

⁷⁹ Response of the Ministry of Interior to the request for information and meeting sent by Amnesty International, 4 July 2022, on file with Amnesty International.

⁸⁰ Amnesty International Poland, *Conclusions and recommendations concerning freedom of assembly in Poland based on observations and monitoring conducted by Amnesty International in the years 2017-2019*, July 2020, amnesty.org.pl/wp-content/uploads/2020/11/Zgromadzenia-ENG.pdf.

deliberate way. States duty to respect this right entails no unwarranted interference with peaceful assemblies, which means that States are obliged not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organisers without legitimate cause.

EQUALITY MARCH IN LUBLIN (2018): BANNING LGBTI ASSEMBLIES PREVENTIVELY INSTEAD OF PROTECTING THEIR RIGHT TO DEMONSTRATE

As in many other cities around the country, municipal authorities in Lublin have issued “preventive bans” arguing the risk that participants may face due to social opposition to Equality Marches and the rights of LGBTI people more broadly.

The first Equality March in Lublin, in southeast Poland, was scheduled for 13 October 2018. On 8 October, the city’s mayor issued a decision banning the gathering because of a threat from counter-protesters.⁸¹ In a decision of 10 October, the Lublin Regional Court upheld this decision.⁸² On 12 October, the Court of Appeal ruled against the mayor and overturned the ban, citing the Polish Constitution, international standards and Constitutional Court case law.⁸³ When LGBTI people organized a new Equality March the next year, the mayor issued again a decision banning the assembly, citing the threat from counter-protesters.⁸⁴ This time, the Regional Court overturned the ban on 26 September 2019 and allowed the protest to go ahead.⁸⁵

Alicja, one of the organizers of the Equality March in Lublin since 2018 and a Board Member of the Equality March in Lublin told Amnesty International: “It’s hard to call what happened in 2018 collaborative, because it was just intentional obstruction of our work. First that ban went ahead, we went to court for a week and only managed to win the day before the actual date of the March.”⁸⁶

The Commissioner for Human Rights of the Council of Europe welcomed the verdict of the court in Lublin on the Equality March and referred to the obligation of the city authorities to ensure the safety of those participating in the March.⁸⁷ Despite the authorities’ claims of security concerns that would put the participants in the march at risk, statements by certain officials suggest that the reason behind the bans was their own hostility towards LGBTI people. For example, in September 2018, the Voivode⁸⁸ of Lubelskie Przemysław Czarnek, who has the responsibility over one of the largest territorial units of Poland called Voivodenships, published material on a news channel, entitled *Czarnek v. Perversions, Deviations and Degeneracies*, in which he described the behaviour of people attending Equality March as “disgusting and unhealthy.”⁸⁹ Another councillor from the Law and Justice party claimed on his official social media account on 23 September 2019 that the march in Lublin “promoted paedophilia.”⁹⁰

Bart Staszewski, one of the organizers of the Equality March in Lublin, filed a private defamation lawsuit,⁹¹ which resulted in a fine for the councillor and a public apology from the Voivode. Bart Staszewski described the experience to Amnesty International as an “exhausting victory over the homophobia of public actors.”⁹²

⁸¹ Helsinki’s Foundation on Human Rights, “Marsz Równości w Lublinie”, 11 October 2018, www.hfhr.pl/wp-content/uploads/2018/10/Marsz-Rownosci-Lublin-pismo-SA-Lublin- stanowisko-11.10_ost_anonim_PDF.pdf.

⁸² The Ombudsman’s Office, “Sąd Apelacyjny uchyla zakaz Marszu Równości w Lublinie”, 12 October 2018, bip.brpo.gov.pl/pl/content/sad-apelacyjny-uchyla-zakaz-marszu-rownosci-w-lublinie-zgadza-si%C4%99-z-argumentami-rpo

⁸⁴ The Ombudsman’s Office, “RPO przystępuje do sprawy Marszu Równości w Lublinie”, 25 September 2019, bip.brpo.gov.pl/pl/content/rpo-przystepuje-do-sprawy-marszu-rownosci-w-lublinie

⁸⁶ Interview by voice call with Alicja, 22 June 2022.

⁸⁷ The Commissioner on Human Rights, Twitter post, 18 October 2018, twitter.com/CommissionerHR/status/1050688689599381504, “I welcome the decision of the court in #Lublin to lift the mayor’s ban on #Pride2018 Equality March”.

⁸⁸ The regional authority assigned to oversee one of 16 territorial units of Poland (voivodenships) and answerable not to the local electorate but as representatives/emissaries of the central government’s Council of Ministers.

⁸⁹ *Czarnek v. Perversions, Deviations and Degeneracies*, 27 September 2018, [youtube.com/watch?v=zj9Cov0ZUil](https://www.youtube.com/watch?v=zj9Cov0ZUil)

⁹⁰ Kurier Lubelski, “Tomasz Pitucha prawomocnie skazany za słowa o pedofilii na Marszu Równości”, 5 December 2019, kurierlubelski.pl/tomasz-pitucha-prawomocnie-skazany-za-slowa-o-pedofilii-na-marszu-rownosci-wplaci-5-tys-zlotych-na-konto-marszu/ar/c1-14632673.

⁹¹ OKO.press, “Radni PiS i wojewoda: Zakazać Marszu Równości w Lublinie. „Promuje pedofilię, łamie Konstytucję i zapisy katechizmu”, 28 September 2018, oko.press/radni-pis-i-wojewoda-chca-delegalizacji-marszu-rownosci-w-lublinie-bo-promuje-pedofilie-lamie-konstytucje-i-jest-niezgodny-z-katechizmem/

⁹² Interview with Bart by video call, 17 February 2022.

While Equality Marches took place in 2018 and 2019, the route had to be changed several times due to numerous attacks from counter-protesters.⁹³ “Police told us that our Equality March is a high-risk event. They changed the route [in 2018] to push us to the outskirts of the city. The police officers explained, for example, that if they used water against counter-demonstrators, the electric lines of the trolleybuses would be a danger. While according to procedure along the assembly route these lines must be turned off – they know it and we knew that as well” recalls Alicja.⁹⁴ She told Amnesty International that, in 2019, the organizers notified three events with three different routes for the March, just to be sure that they will not be forced to change all the routes by the police, yet all of the notified routes were challenged by the police.

EQUALITY MARCH IN GNEZNO (2019): PREVENTIVE BAN AND MUNICIPALITY RELUCTANCE TO COOPERATE

On 14 March 2019, Piotr informed the Gniezno authorities of the intention to hold an Equality March on 13 April. There were 17 other assembly notices submitted for 13 April in the city, 16 of them along the same route as the Equality March.⁹⁵

The Chief of the District Police in Gniezno indicated that the organization of the gatherings “potentially carries a threat of damage or destruction of property,” citing the participation of representatives of social groups with different worldviews. However, on 4 April, an administrative hearing at the Gniezno City Hall did not lead to a change in the place or time of the gatherings.⁹⁶ In an interview with Amnesty International, the organizer of the Equality March explained:

“In our case, the cooperation with the City Hall looked terrible. Not only did they not want the March, but they were poorly informed on the Law on Assemblies... First, they were unable to publish our notification in the Public Information Bulletin, then they informed us that there would be no assembly. We asked about the order of notification – who came first, us or the nationalists – they said that they would not provide this information and there would be no assembly at all. And just like that, the conversation was over.”⁹⁷

In a decision dated 8 April, the Mayor of Gniezno and a member of an opposition party banned all assemblies planned for 13 April on the grounds that there was a significant threat to human life or health or property.⁹⁸ On 9 April, the organizer of the Equality March appealed against the ban, supported by the Ombudsman.⁹⁹ The municipality argued that it was not able to ensure the safety of participants on the designated route of the march. However, as pointed out by the Ombudsman, the exercise of the constitutionally guaranteed right to peaceful assembly is not conditional on the topography of the city.¹⁰⁰

On 11 April, the Poznań Regional Court overturned the mayor’s decision.¹⁰¹ The court reasoned that the decision to ban the march violated Article 14(2) of the Law on Assemblies, Article 57 of the Constitution and Article 11 of the European Convention on Human Rights.

Piotr told Amnesty International: “During a phone conversation, a spokeswoman for the City Hall asked me: ‘Why Gniezno? Why do you have to do it exactly in Gniezno?’...They tried to present it as if we had come

⁹³ Interview with Bart by video call, 17 February 2022.

⁹⁴ Interview with Alicja by phone call, 22 June 2022.

⁹⁵ Interview with Piotr by phone call, 8 April 2022.

⁹⁶ OKO.press, “Organizator marszu równości w Gnieźnie zaskarżył prezydenta”, 10 April 2019, oko.press/organizator-marszu-rownosci-w-gnieznie-zaskarzynil-zakaz-prezydenta-rpo-uzasadnienie-zakazu-niedopuszczalne/

⁹⁷ Interview with Piotr by phone call 8 April 2022.

⁹⁸ Civic Platform [pol. *Platforma Obywatelska*].

⁹⁹ The Ombudsman’s public decision to support the complaint of the organizers of the Equality March: The Ombudsman’s Office, “Zakaz marszu równości w Gnieźnie - niedopuszczalny. RPO przyłącza się do skargi organizatora”, 4 April 2019, bip.brpo.gov.pl/pl/content/zakaz-marszu-rownosci-w-gnieznie-niedopuszczalny-rpo-przylacza-sie-do-skargi

¹⁰⁰ The Ombudsman’s public decision to support the complaint of the organizers of the Equality March: The Ombudsman’s Office, “Zakaz marszu równości w Gnieźnie - niedopuszczalny. RPO przyłącza się do skargi organizatora”, 4 April 2019, bip.brpo.gov.pl/pl/content/zakaz-marszu-rownosci-w-gnieznie-niedopuszczalny-rpo-przylacza-sie-do-skargi

¹⁰¹ The Ombudsman’s Office, 11 April 2019, “Sąd uchylił zakaz marszu równości w Gnieźnie. Odwołania organizatora i RPO zasadne”, bip.brpo.gov.pl/pl/content/s%C4%85d-uchyli%C5%82-zakaz-marszu-r%C3%B3wno%C5%9Bci-w-gnie%C5%BAnie-odwo%C5%82ania-organizatora-i-rpo-zasadne

here with this March, and yet two thirds of the organizers were from Gniezno.” According to Piotr, the clear intention was to discourage the organizers of the march.¹⁰²

Amnesty International is aware of other cases where preventive bans on LGBTI-related peaceful assemblies have been issued. In Kielce, on 3 July 2019, the Mayor banned an Equality March arguing that there was a threat to life or health.¹⁰³ The organizers of the march, with the support of the Ombudsman, appealed to the Kielce Regional Court the next day, which resulted in the ban being overruled on 4 July.¹⁰⁴ Similar preventive bans were imposed in 2019 by the authorities of Rzeszów,¹⁰⁵ and Gorzów Wielkopolski,¹⁰⁶ but in both cases the courts overturned the bans.¹⁰⁷

The arbitrary and discriminatory way in which municipal authorities have issued “preventive bans” reveals a worrying pattern attempting to discourage and obstruct the conduct of LGBTI assemblies. Equality March organizers who shared their experiences with Amnesty International highlighted the disproportionate restriction on their right to freedom of peaceful assembly and the failure of the police to provide effective protection to those gathering peacefully from attacks by counter-protesters.¹⁰⁸

While the right to freedom of peaceful assembly applies to counter-demonstrations, which should be allowed within sight and sound of the initial assembly,¹⁰⁹ a counter-demonstration should not seek to impede participants from the initial assembly from fully enjoying their right to freedom of peaceful assembly. Accordingly, it is the police duty to protect the main assembly from any unlawful interference by counter-demonstrators,¹¹⁰ including from violent acts or acts that seek to impede the holding of the initial assembly. As stated by the European Court of Human Rights, violent intentions among counter-demonstrators should not be used as a justification for the authorities to prohibit or disperse the initial assembly.¹¹¹

The fact that an assembly may provoke a hostile reaction from members of the public cannot be, on its own, the mere justification to impose restrictions. Unspecified risks of violence or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly is not enough. As it has been determined by the UN Human Rights Committee, the authorities must be able to show, based on a concrete risk assessment, that it would not be able to contain the situation, even if significant law enforcement capability were to be deployed.¹¹²

¹⁰² Interview with Piotr by phone call, 8 April 2022.

¹⁰³ The Ombudsman's appeal to the District Court in Kielce: “The Ombudsman's Office, “Kolejny zakaz Marszu Rownosci - kolejne odwołanie Rzecznika do sądu”, 4 July 2019, bip.brpo.gov.pl/pl/content/kolejny-zakaz-marszu-rownosci-odwolanie-rpo.

¹⁰⁴ Decision of the District Court in Kielce, 5 July 2019,

bip.brpo.gov.pl/sites/default/files/Postanowienie%20s%C4%85du%20okr%C4%99gowego%20w%20Kielcach%20ws.%20Marszu%20R%C3%B3wno%C5%9Bci.pdf.

¹⁰⁵ The Ombudsman's appeal to the preventive ban on Equality March in Rzeszów, “RPO zaskarżył zakaz Marszu Równości w Rzeszowie. Sąd uchylił zakaz”, 7 June 2019, bip.brpo.gov.pl/pl/content/rpo-zaskarzynl-do-sadu-zakaz-marszu-rownosci-w-rzeszowie

¹⁰⁶ Decision of the District Court in Rzeszów, 21 August 2019,

bip.brpo.gov.pl/sites/default/files/Postanowienie%20s%C4%85du%20wraz%20z%20uzasadnieniem.pdf.

¹⁰⁷ In grounds of justification in case of Gorzów Wielkopolski: In the written of reasons for the decision, the District Court in Gorzów Wielkopolski reminded that the possibility of prohibiting an assembly on the basis of Article 14(2) of the Public Assemblies Act boils down to proving the premises of a threat to human life or health or to property of significant size. The appealed decisions do not contain any argumentation in this respect, despite such a deep, due to its subject matter, interference in civil rights and liberties. Therefore, in the court's view, the mayor failed to conduct a detailed analysis of the risk of danger. Documentation in file of Amnesty International.

¹⁰⁸ Decision of the District Court in Rzeszów, 21 August 2019,

bip.brpo.gov.pl/sites/default/files/Postanowienie%20s%C4%85du%20wraz%20z%20uzasadnieniem.pdf.

¹⁰⁹ Joint report to the Human Rights Council, 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, UN Doc. A/HRC/31/66, para. 14.

¹¹⁰ European Court of Human Rights Chamber (1988), *Plattform “Ärzte für das Leben” (Doctors for the Right to Life) v. Austria*, (10126/82), para. 32

¹¹¹ European Court of Human Rights Fourth Section, (2010), *Christian Democratic Party v. Moldova (No. 2)*, (25196/04) para. 23

¹¹² Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 52

“THEY TREATED US LIKE CRIMINALS”

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

“STOP LGBT” BILL: LEGISLATIVE ATTEMPT TO PROHIBIT LGBTI ASSEMBLIES

On 9 August 2021, the conservative organization Life and Family Foundation submitted a citizen’s legislative initiative to amend the Public Assemblies Law.¹¹³ In principle, the amendment was aimed to outlaw LGBTI people and their supporters from public spaces and criminalize peaceful LGBTI activism.¹¹⁴ The law would result in a prohibition of all forms of protest that question the idea of marriage as a union between a woman and a man or that “propagate sexual orientations other than heterosexuality,”¹¹⁵ including Equality Marches and Prides.

The Foundation eventually collected 140,000 signatures in 300 churches and parishes. Although the bill would seriously undermine the rights of LGBTI people, the initiative has not yet been dismissed. During the obligatory bill review process, the First President of the Supreme Court failed to condemn the bill, stating only that it has no impact on the functioning of the courts. For its part, the Supreme Bar Council issued a negative opinion on the draft, but their opinion is only a recommendation, and the extent to which their comments are taken into account is up to parliamentarians.

Even though the bill is contrary to national and international legal standards, it was not rejected after the first reading in parliament on 29 October 2021,¹¹⁶ but rather referred to the Committee on Administration and Internal Affairs.¹¹⁷

Amnesty International has strongly condemned the bill because it infringes on the rights to freedom of expression and peaceful assembly with the specific aim of excluding LGBTI people from public spaces and violates both the Polish Constitution and international human rights standards.¹¹⁸

2.2 FAILURE OF LAW ENFORCEMENT OFFICIALS TO PROTECT LGBTI ASSEMBLIES

Several people who took part in Equality Marches and other LGBTI-related assemblies told Amnesty International that police protection was inadequate in relation to the severity of the risks posed by counter-protesters. According to most people interviewed by the organization, despite the additional protection needs of LGBTI people and allies before and after assemblies, like Equality Marches, the deployment of police officers and strategies for their protection was insufficient.

Linus, aged 29, told Amnesty International he had lost trust in the police’s ability and willingness to protect LGBTI people after he joined a protest on 7 August 2020 in Warsaw, when police responded with excessive

¹¹³ It was the second attempt to submit this proposal; the first time it was rejected by Marshal of the Parliament Elżbieta Witek for procedural errors.

¹¹⁴ In short description of the bill, one can read that it „opposes actions that challenge family values in the public eye, particularly by “active homosexual” groups (LGBT groups)”. The Draft Amendment to the Law on Assemblies, 9 August 2021 www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=1607

¹¹⁵ Content of the citizens’ bill.

¹¹⁶ Notes From Poland, “Bill banning LGBT parades submitted to Polish parliament”, 10 November 2020, notesfrompoland.com/2020/11/10/bill-banning-lgbt-parades-submitted-to-polish-parliament/

¹¹⁷ As for the time of writing this report.

¹¹⁸ Amnesty International UK, “Poland: new ‘Stop LGBT’ Bill is ‘discriminatory to its core’”, 28 October 2021, [amnesty.org.uk/press-releases/poland-new-stop-lgbt-bill-discriminatory-its-core](https://www.amnesty.org.uk/press-releases/poland-new-stop-lgbt-bill-discriminatory-its-core).

“THEY TREATED US LIKE CRIMINALS”
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

force to a spontaneous protest about the preventive detention of LGBTI activist Margot Szutowicz, by pressing to the ground and breaking the hands of activists participating in the protest.¹¹⁹

“When we are beaten, they are nowhere to be found, but then they punish us even for a queer solidarity marathon, right?” , Linus concluded referring to an incident when, in solidarity with the two gay men beaten on 17 March 2021 by nationalist groups, he and other LGBTI activist organized a marathon in Gdansk. The investigation into the attack was dropped, while those participating in the marathon were fined by police under Covid-19 restrictions.¹²⁰

In contrast, 45-year-old Monika, who experienced the police response to an attack on a Rainbow Picnic in Szczecin on 2 September 2018,¹²¹ told Amnesty International that as regards the prosecution of those who attacked the picnic: “The police approached it in a serious way.”¹²²

Law enforcement officials have an obligation under national and international law to facilitate the organization of assemblies and ensure that participants and organizers can exercise their rights to freedom of expression and peaceful assembly safely and without fear of reprisals.¹²³

The National Chief of Police told Amnesty International that the police's actions in implementing security measures for gatherings primarily consist of ensuring the safety of all those participating in the gatherings, whether participants, opponents or bystanders. He also noted that these activities also involve preventing the commission of illegal, unlawful acts and the escalation of conflicts between participants, as well as mediation process conducted by the Police. It was also underlined by the National Chief of Police that actions by police officers are carried out within the limits of the law and adequate to the situations.¹²⁴

EQUALITY MARCH IN BIAŁYSTOK (2019): INSUFFICIENT POLICE PROTECTION FOR LGBTI PROTESTORS

On 20 July 2019, a group of under 1,000 people taking part in the first Equality March in Białystok were attacked by a much larger and aggressive crowd of 4,000 counter-demonstrators, including members of far-right groups and some sports clubs, in a context of insufficient police protection.¹²⁵ As a result of the lack of protection, people participating in the Equality March were attacked with bottles, paving stones and firecrackers, accompanied by homophobic slurs. At least two people participating in the Equality March were assaulted, one of whom was a minor.¹²⁶

While some politicians – including the Prime Minister – condemned the attacks, ILGA-Europe highlighted how the incident showed the causal link between political vilification of LGBTI people and “hatred and real attacks against people”,¹²⁷ as well as the fact that some politicians even blamed LGBTI people for the escalation of violence against them.¹²⁸

Amnesty International was in Białystok to observe the assembly, but for the first time since the organization began an assembly observation project in 2017, observers were unable to conduct a full observation according to accepted standards due to the constant threat of violence from counter-demonstrators.¹²⁹

¹¹⁹ Interview with Linus, 13 April 2022, Warszawa. The events are described further in the report.

¹²⁰ Interview with Linus, 13 April 2022, Warszawa.

¹²¹ Głos Szczeciński, „Napaśli na tęczyowy piknik w centrum Szczecina”, 2 September 2018, gs24.pl/napadli-na-teczowy-piknik-w-centrum-szczecina-wideo/ar/13460259?utm_source=facebook.com&utm_medium=gs24&utm_campaign=szczecin.

¹²² Interview by video call with Monika, 30 March 2022.

¹²³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para 38, [ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf), also: A/HRC/31/66, para. 38.

¹²⁴ Letter with request for information and meeting from Amnesty International to National Chief of Police, 15 June 2022, on file with Amnesty International; Response of the National Chief of Police Jarosław Szymczyk, 27 June 2022, on file with Amnesty International.

¹²⁵ Estimates put the number of police officers at around 700. Amnesty International, “Poland: Inadequate police protection for BIAŁYSTOK march amidst anti-LGBTI hate”, 22 July 2019, [amnesty.org/en/documents/eur37/0775/2019/en/](https://www.amnesty.org/en/documents/eur37/0775/2019/en/)

¹²⁶ Wiadomości WP.pl, “Marsz Równości w Białymstoku. Pobili 14-latkę”, 30 July 2019, wiadomosci.wp.pl/marsz-rownosci-w-bialymstoku-pobili-14-latka-policja-zatrzymala-kolejnego-mezczyzyna-6408088697226881a

¹²⁷ ILGA Europe, *Poland: Anti-LGBT Timeline*, June 2022, ilga-europe.org/files/uploads/2022/06/Poland-Anti-LGBT-Timeline.pdf

¹²⁸ ILGA Europe, *Poland: Anti-LGBT Timeline*, June 2022, ilga-europe.org/files/uploads/2022/06/Poland-Anti-LGBT-Timeline.pdf

¹²⁹ Amnesty International, *Poland: Inadequate police protection for Białystok March amidst anti-LGBTI hate*, July 2019 [amnesty.org/en/documents/eur37/0775/2019/en/](https://www.amnesty.org/en/documents/eur37/0775/2019/en/)

Nevertheless, Amnesty International's observers were able to confirm that the police failed to provide sufficient protection to those attending the March.¹³⁰

Bazyli, a participant in the Białystok March, told Amnesty International:

“There have been terrifying sights... Throwing urine at us, physical violence, insults, throwing a firecracker under the wheelchair of a person with a disability. We felt completely overwhelmed, although at the end we managed to somehow escape. After all that, my friends who were there with me got completely traumatized. It was the first time I had such direct evidence that anyone could just kill me or beat me up... There was very little protecting us from them.”¹³¹

The organizers of the Equality March from the association Rainbow Białystok pointed out that police provided insufficient protection, especially for people trying to join the march, and were left at increased risk of experiencing direct violence. According to Bazyli, “the road to this march was probably the most difficult, because there were definitely not enough security measures to protect the march... You could also see people with patches with black suns, Celt Symbols and swastikas... It was far from safe.”¹³²

In a statement issued by Amnesty International on 22 July 2019 after having concluded the observation of the march, the organization reported that a safe way to reach the start of the march was not ensured by, for example, designating a free passage zone or directing people along a single secured route, which led to an unsafe situation even before the march began.¹³³ Moreover, people leaving the march were not properly assisted by the police, which resulted in acts of direct violence after the march against people who had taken part and passers-by.¹³⁴

Police officers responded to the violence by counter-protesters with stun grenades, tear gas and police batons.¹³⁵ However, Amnesty International pointed out that bystanders were also injured as a result of the measures deployed and that the tear gas was aimed directly at people, not upwards.¹³⁶ Various activists told Amnesty International that minors, families with small children and bystanders in the crowd were also exposed both to police use of force and violence from counter-demonstrators.¹³⁷

In his response on 30 July 2019 to a letter from the Ombudsman's Office regarding the security measures surrounding the march, the Provincial Police Commander stated that these were “very high” and stressed that “they were organized in a professional manner”.¹³⁸ Police were able to identify the perpetrators of the assault on the two participants in the march who were charged under the Criminal Code with causing minor or moderate bodily harm.¹³⁹ A total of 25 people were charged – 21 under the Code of Minor Offences,¹⁴⁰ and four under the Criminal Code.¹⁴¹ However, the organizers of the Equality March from the NGO Tęczowy

¹³⁰ Amnesty International. *Poland: Inadequate police protection for Białystok March amidst anti-LGBTI hate*, July 2019 [amnesty.org/en/documents/eur37/0775/2019/en/](https://www.amnesty.org/en/documents/eur37/0775/2019/en/)

¹³¹ Interview with Bazyli, 5 April 2022.

¹³² Interview with Bazyli, 5 April 2022.

¹³³ Amnesty International Poland. “Oświadczenie dotyczące wydarzeń w Białymstoku, związanych z Marszem Równości” 20 lipca 2019. [amnesty.org.pl/oswiadczenie-dotyczace-wydarzen-w-bialymstoku-zwiazanych-z-marszem-rownosci-w-dniu-20-lipca-2019/](https://www.amnesty.org.pl/oswiadczenie-dotyczace-wydarzen-w-bialymstoku-zwiazanych-z-marszem-rownosci-w-dniu-20-lipca-2019/)

¹³⁴ Amnesty International Poland. “Oświadczenie dotyczące wydarzeń w Białymstoku, związanych z Marszem Równości” 20 lipca 2019. [amnesty.org.pl/oswiadczenie-dotyczace-wydarzen-w-bialymstoku-zwiazanych-z-marszem-rownosci-w-dniu-20-lipca-2019/](https://www.amnesty.org.pl/oswiadczenie-dotyczace-wydarzen-w-bialymstoku-zwiazanych-z-marszem-rownosci-w-dniu-20-lipca-2019/)

¹³⁵ CNN, *Polish city holds first LGBTQ pride parade despite far-right violence*, 21 July 2019, edition.cnn.com/2019/07/21/europe/bialystok-polish-lgbtq-pride-intl/index.html

¹³⁶ CNN, *Polish city holds first LGBTQ pride parade despite far-right violence*, 21 July 2019, edition.cnn.com/2019/07/21/europe/bialystok-polish-lgbtq-pride-intl/index.html

¹³⁷ Interview with Aleksandra, Hanna, Jacek and Katarzyna, 10 October 2021, Białystok; Amnesty International Poland. “Oświadczenie dotyczące wydarzeń w Białymstoku, związanych z Marszem Równości” 20 lipca 2019. [amnesty.org.pl/oswiadczenie-dotyczace-wydarzen-w-bialymstoku-zwiazanych-z-marszem-rownosci-w-dniu-20-lipca-2019/](https://www.amnesty.org.pl/oswiadczenie-dotyczace-wydarzen-w-bialymstoku-zwiazanych-z-marszem-rownosci-w-dniu-20-lipca-2019/), Interview with Bazyli, 5 April 2022.

¹³⁸ Letter from the Provincial Police Chief in Białystok to the Ombudsman's request for information, 31 July 2019, bip.brpo.gov.pl/sites/default/files/Odpowied%20C5%BA%20KWP%20Bia%20C5%82ystok%2031%20lipca%202019%20.pdf

¹³⁹ Poland, Criminal Code, Article 157, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-karny-16798683/art-157

¹⁴⁰ The Ombudsman's Office, “Policja o „Marszu Równości”: w Białymstoku: nie dopuściliśmy do zablokowania tego legalnego zgromadzenia”, 8 August 2019, bip.brpo.gov.pl/pl/content/policja-do-rpo-o-marszu-rownosci-w-bialymstoku-nie-dopuscilismy-do-jego-blokady

¹⁴¹ Two with Article 13, para 1. One with Article 158, para 1. One with article 224, para 2.

“THEY TREATED US LIKE CRIMINALS”

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

Białystok told Amnesty International that they had experienced a lack of cooperation from the police in the search for perpetrators.¹⁴²

According to the response from 22 July 2019 to the Ombudsman's Office, the Provincial Police Headquarters in Białystok had knowledge of 52 assemblies planned on the same day as the Equality March, including 17 marches.¹⁴³ Two of these were reported to be organized by well-known figures from "football fan communities" who are known to advocate violence and discrimination against LGBTI people. Amnesty International has confirmed that on 17 July 2019 an announcement mobilizing "football communities" from all around Poland and calling for the disruption of the Equality March, was published on related websites.¹⁴⁴ Furthermore, the organizers reported to Amnesty International that two days before the Equality March they were tear gassed by unidentified individuals in a public place.¹⁴⁵ According to one of the organizers of the March, the tear gas attack was reported to the police, but after contacting the police and despite assurances that they would do so, the police did not reach out to the victims the next day to get their statements.¹⁴⁶

Amnesty International has reasons to believe that the police had ample knowledge to anticipate and prepare in advance for a mobilization of counter-demonstrators likely to engage in violence against LGBTI people and their supporters in Białystok, but failed to do so. The very nature and scale of the reported counter-demonstrations were sufficient grounds for the police to take adequate preparatory actions to protect LGBTI people and allow them to carry on with their demonstration in a safe way, and to ensure their safety before, during and after the Equality March.

EQUALITY MARCH IN BIALYSTOK (2021)

Amnesty International participated in the second Equality March in Białystok on 9 October 2021 and was able to see certain improvements by the authorities to ensure the protection of the participants. The Equality March itself was much calmer with over 1,000 participants, and it counted with a sufficient police presence to protect them against potential violence by counter-demonstrators.¹⁴⁷

Aleksandra from Rainbow Białystok told Amnesty International:

"It was incomparably better, and before we really didn't know what to expect... There were more police, they were prepared... And they also met with us before the march itself, there was some kind of cooperation... It was only towards the end that some counter-demonstrations with their slogans appeared, but it was heaven and earth compared to what it was two years ago."¹⁴⁸

Along the route of the march there were several dozen people with banners with homophobic slogans, including "Stop paedophilia" or "Białystok for normality", among others.¹⁴⁹ At 3 pm at Kościuszko Square in the city centre, where the assembly was supposed to end, a counter-demonstration appeared with several dozen people carrying a large banner, which read "Family is a boy and a girl", and several smaller banners.¹⁵⁰

¹⁴² Interview with Aleksandra, Hanna, Jacek i Katarzyna, 10 October 2021; Text interview with Katarzyna, 17 June 2022.

¹⁴³ "The organizer [of the Equality March] declared the participation of about 1,500 people. The above undertaking aroused much controversy among the local community. (...) The planned number of participants in these gatherings [counter-demonstrations] was about 10,000". Letter from the Provincial Police Chief in Białystok to the Ombudsman's request for information, 31 July 2019, bip.brpo.gov.pl/sites/default/files/Odpowied%C5%BA%20KWP%20Bia%C5%82ystok%2031%20lipca%202019%20.pdf

¹⁴⁴ "Spread the word to all your fellow supporters, friends from your neighborhood, school. We all see each other at 12:00 in the city center. And once again, I would like to inform you about the Non-Aggression Pact (...) Also on July 20, in Białystok, an equality march will take place, organized by the lesbian, gay, bisexual and "transgenderic" community. Our city will be visited by a handful of perverts from all over Poland (...) We cannot allow cross-dressed clowns to do the same in Białystok! That is why we are gathering in the city center in the largest possible group and we are acting", Stadionowi Oprawcy, "Ogólnopolski zjazd kibiców w Białymstoku", 17 July 2019, stadionowioprawcy.net/news/ogolnopolski-zjazd-kibicow-w-bialymstoku/

¹⁴⁵ Interview with Aleksandra, Hanna, Jacek and Katarzyna, 10 October 2021, Białystok.

¹⁴⁶ Correspondence with Katarzyna, 5 May 2022.

¹⁴⁷ OKO.press, "Marsz Równości przeszedł przez Białystok. Sielska atmosfera zamiast huku petard", 9 October 2021, oko.press/marsz-rownosci-przeszedl-przez-bialystok-sielska-atmosfera-zamiast-huku-petard/

¹⁴⁸ Interview with Aleksandra, Hanna, Jacek and Katarzyna, 10 October 2021, Białystok.

¹⁴⁹ On file with Amnesty International.

¹⁵⁰ On file with Amnesty International.

Participants in the counter-demonstration chanted anti-LGBTI slogans. Aleksandra described how they read the Bible aloud, and “threatened us with hell, called us sodomites, paedophiles, but at least they did not beat us, because they could not. If they could, maybe they would have, but we were separated by the police”.¹⁵¹

The Town Hall had received notification of 10 other assemblies for the same day, so the authorities set up a crisis team, consisting of the Deputy Mayor,¹⁵² a representative of the Town Hall, police and municipal police, public transport and the Public Roads Administration.¹⁵³ The organizers of the march were able to actively participate in the meetings with the police.¹⁵⁴

In an interview with Amnesty International, the National Police Plenipotentiary for Human Rights Protection stated that Białystok has shown that “it is possible to adapt to the situation and cooperation with the police is possible and necessary. Practice shapes such things.”¹⁵⁵

The Equality March in Białystok shows how positive change involving an adequate response and well-coordinated prior cooperation between the police, municipality and organizers of the March in Białystok resulted in successful facilitation and policing of the assembly.¹⁵⁶

EQUALITY MARCH IN GNIEZNO (2019): FAILURE TO ENSURE PROTECTION OF THE ASSEMBLY DURING AND AFTER THE ASSEMBLIES

Accounts of people who experienced acts of physical violence or destruction of property motivated by homophobia, biphobia or transphobia at the end of or immediately after assemblies of special importance for LGBTI rights show how the lack of state intervention, and more specifically police protection, is perpetuating the stigma, violence and discrimination faced by LGBTI people. As highlighted in other parts of this report, there is consistent inflammatory and harmful rhetoric from state officials about LGBTI people, and this has enhanced the risks for LGBTI people or people perceived as LGBTI of being subjected to verbal and physical attacks in public spaces. As shown by the testimonies in this section, there is a direct link between the exercise of the right to freedom of peaceful assembly and violence against LGBTI people.

Amnesty International’s research indicates that violence against LGBTI people and their supporters is particularly common during or immediately after assemblies concerning LGBTI rights and in the vicinity of such assemblies. They may be targeted because of visible signs of participation in these events – flags or items of clothing – or as a consequence of the increased mobilization of counter-demonstrators. Ensuring the protection of participants at these demonstrations and taking concrete actions that can prevent these threats from materialising before and after the assembly, could be an effective strategy to supplement security operations and help restore trust between LGBTI people and the police.

According to the OSCE guidelines on freedom of peaceful assembly, participants in a demonstration should be provided free access to safe routes from the assembly area and protected by law enforcement from attacks by hostile opponents.¹⁵⁷

In six cases documented for this report, individuals reported to Amnesty International that they were physically attacked or suffered damage to property motivated by homophobia or transphobia during or after Equality Marches. In one case, during the 2019 Equality March in Lublin, two media workers were attacked by counter-demonstrators. In an interview with Amnesty International, one journalist, Agata, described that a

¹⁵¹ Interview with Aleksandra, Hanna, Jacek and Katarzyna, 10 October 2021, Białystok.

¹⁵² Who publicly expressed hope that “Saturday’s assemblies will be held with respect for the dignity of others”.

¹⁵³ Official website of the City of Białystok, “Sobota zgromadzeń”, 8 October 2021, bialystok.pl/pl/wiadomosci/aktualnosci/sobota-zgromadzen.html

¹⁵⁴ Interview with Aleksandra, Hanna, Jacek and Katarzyna, 10 October 2021, Białystok.

¹⁵⁵ Meeting of Amnesty International and National Police Plenipotentiary for Human Rights, 8 April 2022.

¹⁵⁶ ODIHR, *Principles for Policing Assemblies, Human Rights Handbook on Policing Assemblies*, May 2016.

¹⁵⁷ ODIHR, *Human Rights Handbook on Policing the Assemblies*, 2016, p. 98

“THEY TREATED US LIKE CRIMINALS”

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

man threw a drink can at her while she was taking a picture of him, ending up with an injury to her forehead and damage to her camera.¹⁵⁸ Another journalist was punched in the face with a fist, and his phone camera was damaged as a result of the shoving. Only one of the attackers was found by the police.

During the second Equality March in Lublin in 2019, police officers detained two individuals who took part in the homophobic blockade who were carrying homemade explosives, including gas canisters combined with firecrackers. According to an expert of the police forensic department in case of an explosion, several dozen people could have been injured.

Alicja to Amnesty International: “The police didn't tell us about it right away, and that's a very good thing. I was standing on the platform when Bart called me and told me about the failed bombing attempt. I stayed up all night thinking about what might have happened and whether it was worth the risk of organizing a march next year. ... And the best part was that this couple only received 12 months in prison by the court's sentence, meaning a year later they could do it again.”¹⁵⁹

The Polish Ombudsman response to the events at the Equality March in Lublin, stating: “The events connected with the second Equality March in Lublin demonstrated that the threat to security and fundamental human rights is growing rather than diminishing. The explosive devices secured by the police could have deprived the participants of their life or health.”¹⁶⁰

The individuals who were arrested were charged under Article 171 of the Criminal Code for illegal manufacture and possession of explosive devices and participation in a riot. On 20 February 2020, the Lublin-West District Court issued a decision on 12 months' imprisonment, holding that the guilt of the defendants is beyond doubt.¹⁶¹

GLEB: ATTACKED AFTER PRIDE PARADE IN WARSAW (2021)

After the Equality March in Warsaw ended on 19 June 2021, two masked men attacked Gleb, a 25-year-old artist of Belarusian descent, and his friend at the Poniatowski Bridge once the Pride had ended. The attackers, armed with telescopic batons, knocked his friend to the ground and shouted homophobic slogans. In an interview with Amnesty International, Gleb said that the only thing that distinguished him and his friend from other people on the bridge was their rainbow bag and flag. He recalled:

“Everything lasted maybe two or three minutes... We thought maybe it was a father and son, because one of them was rather underage. They attacked from behind, in full masks, but did not expect that we could defend ourselves, which we did. They ran away when they saw the police, but the police drove by and did not stop”.¹⁶²

A group of people were watching the incident, but none of them reacted.

The attackers fled, but Gleb and his friend managed to get hold of one of the telescopic batons and a mask which had fell into the Vistula river. Despite their injuries, Gleb and his friend went along the bridge and tried to report the attack to two police officers who were at the nearby National Stadium, informing them of the homophobic nature of the attack. The police officers said they could not help as they were responsible for the security at the stadium and told them to report the incident to the police station. The two friends took a streetcar to the apartment of another friend,¹⁶³ where they dressed their wounds and contacted a lawyer.¹⁶⁴ At around 9 pm, they went to the Hospital of the Transfiguration in Praga to be examined and remained there until 4 am. The medical examination found injuries requiring seven days of recovery time, namely bruises, abrasions and lacerations on the legs and arms and, in Gleb's case, his jaw.¹⁶⁵

¹⁵⁸ Interview with Agata, 15 April 2022.

¹⁵⁹ Interview with Alicja by phone call, 22 June 2022.

¹⁶⁰ Public statement of the Ombudsman, „Stop homofobicznej i transfobicznej przemocy”, 3 March 2019, bip.brpo.gov.pl/pl/content/stop-homofobicznej-i-transfobicznej-przemocy-oswiadczenie-rzeczniaka-praw-obywatelskich

¹⁶¹ Judgement of the District Court in Lublin from 20 February 2020, the recording on file with Amnesty International.

¹⁶² Interview with Gleb, 12 February 2022, Warszawa.

¹⁶³ Interview with Bazyli, 4 April 2022, Warszawa.

¹⁶⁴ Interview with Gleb, 15 February 2022, Warszawa.

¹⁶⁵ Copy of the medical documentation in possession of Amnesty International.

Two days later, they went to report the attack to the Prosecutor's Office with their attorney at Warszawa Śródmieście, but they were told they had to report the attack at the Police Station at Wilcza Street. Gleb reported to Amnesty International that, due to previous experiences of attacks in that area and the inaction of that police station it was "the last place anyone would like to report the homophobic attack".¹⁶⁶ Despite this, they went to the police station and handed over the baton they had secured to the police for fingerprinting, but Gleb told Amnesty International that the police appeared reluctant to note the homophobic nature of the attack despite the credible indications and physical evidence. Gleb said:

"We said that we had a rainbow flag and a rainbow bag, and offered to incorporate them into evidence. That they attacked exactly us, in a crowd of others. That they were prepared and masked, that it was a kind of fag hunt, and they shouted homophobic slogans... And I don't think it mattered at all, we actually had to correct the transcript of the testimony several times and the police officer made us understand it wouldn't matter."¹⁶⁷

On 8 December 2021, the First District Police Station of Warsaw, under the supervision of the Śródmieście Północ District Prosecutor's Office in Warsaw, decided to close the investigation due to the failure to identify the perpetrators of the act.¹⁶⁸ The justification for closing the investigation mentions that an analysis of surveillance cameras on the bridge showed no footage of the incident and that fingerprint marks on the baton were not suitable for identification.¹⁶⁹

KLAUDIUSZ: BEATEN AFTER THE EQUALITY MARCH IN ŁÓDŹ (2021)

On Saturday, 26 June 2021, 22-year-old Klaudiusz and a group of friends were attacked with pepper spray and beaten by unidentified individuals while returning from the Equality March in the central city of Łódź.¹⁷⁰ The attackers were waiting outside a store who were able to distinguish Klaudiusz and his friends by a rainbow flag and visible LGBTI emblems. Klaudiusz described to Amnesty International what happened:

"Next to the door of Żabka¹⁷¹ was a man who sprayed me and my friend in the eyes with gas. He pulled the flag around my neck – I still have a mark¹⁷² – attacked me, beat me with his fists. They pulled me by this flag maybe two meters. I was bleeding badly. The whole thing lasted maybe a few minutes, and after a while the first police car arrived."¹⁷³

After the police arrived, Klaudiusz was taken by ambulance immediately to the hospital. A physical examination documented "a visible head wound (2 stitches), petechiae on the neck" and abrasions.¹⁷⁴ The police investigated the case as involvement in a fight.¹⁷⁵ Klaudiusz told Amnesty International that the homophobic nature of the beating was never recognized or adequately addressed by the police. On 29 November 2021, the prosecution decided to close the investigation due to the failure to identify the perpetrators.¹⁷⁶

After the incident, some of Klaudiusz friends asked police officers to drive some of them to the station for security reasons, but the officers refused. Klaudiusz recalled: "A lot of people had this problem coming back home."¹⁷⁷

¹⁶⁶ Interview with Gleb, 15 February 2022, Warszawa.

¹⁶⁷ Interview with Gleb, 12 February 2022, Warszawa.

¹⁶⁸ On file with Amnesty International.

¹⁶⁹ On file with Amnesty International.

¹⁷⁰ OKO.press, "Atak homofobów na Marszu Równości w Łodzi. „Nic nie mówili, po prostu bili", 26 June 2021, oko.press/atak-homofobow-na-marszu-rownosci-w-lodzi/?fbclid=IwAR2x_opP_vJ-8sdgLYAnc4rd9XOefZCuivf-WUkiikrZ6v7slrUFwJO_e0

¹⁷¹ Local franchise of shops.

¹⁷² Evidenced by Amnesty International.

¹⁷³ Interview by video call with Klaudiusz, 6 April 2022. The second person attacked declined to be interviewed by Amnesty International.

¹⁷⁴ Copy of medical documentation on file with Amnesty International.

¹⁷⁵ Poland, Criminal Code, Article 158 para. 1, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-karny-16798683/art-158.

¹⁷⁶ On file with Amnesty International.

¹⁷⁷ Interview by video call with Klaudiusz, 6 April 2022.

UNDER-REPORTING AND IMPUNITY FOR HATE CRIMES AGAINST LGBTI PEOPLE

Amnesty International has found that law enforcement authorities did not deal with any of the beatings documented in this report as hate crimes in their investigation to prepare for possible prosecution. The authorities failed to include LGBTI emblems in the evidence, despite at least three indications that the violence had a discriminatory character, namely the victims' participation in an LGBTI event; visible signs, such as flags and badges; and homophobic and transphobic slogans that were shouted by the attackers.¹⁷⁸ In the large majority of cases documented in this report, the perpetrators were not identified and the cases were closed.

All the activists that spoke to Amnesty International emphasised that the violence occurred as a result of visible signs of support or affiliation with LGBTI groups. As shown by their testimony, their experiences highlight a dangerous trend of increased attacks on individuals participating in LGBTI assemblies, both during or in the immediate aftermath, and the failure of law enforcement officials to identify these crimes as possible hate crimes, motivated by homophobia, biphobia, or transphobia.

The experience of violence and insufficient protection, followed by law enforcement officials' reluctance or inability to identify the motivation behind the violence properly effectively discourages LGBTI people from safely exercising their rights to freedom of expression and peaceful assembly. It also leads to an increasing lack of confidence in the police, which reinforces under-reporting of these crimes.

Karolina Gierdal, a lawyer representing many LGBTI-related cases, told Amnesty International:

“Previously we said 10% of LGBTI victims of hate crimes report the acts of violence. Well, now it’s 3% at most... And this is just the beginning of a more systemic problem. Even if someone reports it, a policeman still has to check the box. And since he has neither the appropriate training nor the will of his superiors, he probably won’t check it. And so it goes on at several more levels until, in the end, it turns out that statistically there are no crimes against LGBTI people in Poland.”¹⁷⁹

The lack of coherent reporting mechanisms, adequate training and an effective legal framework has become a barrier to the accurate reporting and investigation of anti-LGBTI attacks. As the National Police Plenipotentiary for Human Rights explained to Amnesty International,¹⁸⁰ in the absence of amendments to the Criminal Code, homophobic, biphobic or transphobic motivation cannot be taken into account by police as aggravating circumstances, such as the degree of social harm.¹⁸¹

In its 2015 report, *Targeted by hate, forgotten by law: Lack of a coherent response to hate crimes in Poland*,¹⁸² Amnesty International recommended Poland to amend the Criminal Code to ensure that the list of protected characteristics included in Article 119 is an open-ended list and, as a minimum, explicitly included gender, gender identity and sexual orientation, among others.¹⁸³ Since then, Amnesty International and other civil society organizations have observed a clear regression in Poland in the detection and documentation of crimes motivated by homophobia, biphobia or transphobia and a trend of significant increases in violence against LGBTI individuals.¹⁸⁴

¹⁷⁸ After the inspection of records and based on the testimonies collected.

¹⁷⁹ Interview with Karolina, 7 April 2022, Warszawa.

¹⁸⁰ Meeting between Amnesty International and National Police Plenipotentiary for Human Rights, 3 April 2022.

¹⁸¹ Poland, Criminal Code, Article 53, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-karny-16798683/art-53.

¹⁸² Amnesty International, *Targeted by hate, forgotten by law: Lack of a coherent response to hate crimes in Poland*, 2015, (Index: 37/2147/2015) amnesty.org/en/documents/eur37/2147/2015/en/

¹⁸³ Amnesty International, *Targeted by hate, forgotten by law: Lack of a coherent response to hate crimes in Poland*, 2015, (Index: 37/2147/2015) amnesty.org/en/documents/eur37/2147/2015/en/, p. 58.

¹⁸⁴ Amnesty International, *Targeted by hate, forgotten by law: Lack of a coherent response to hate crimes in Poland*, 2015, (Index: 37/2147/2015) amnesty.org/en/documents/eur37/2147/2015/en/

In a 2020 study by the Fundamental Rights Agency of the European Union,¹⁸⁵ Polish men and women reported the highest increase in violence against LGBTI people in five years.¹⁸⁶ When asked whether the authorities deal effectively with prejudice and violence against LGBTI people, 83% of respondents said they believed they did not.¹⁸⁷ At the same time, the Agency recorded that Poland had the highest rate of hate-motivated physical and sexual violence against LGBTI people of any EU country – as many as 15% of respondents confirmed that they had experienced this form of violence in the previous five years.¹⁸⁸

Nevertheless, public recognition of violence against LGBTI people as a hate crime has increased. In a study conducted in March 2020 in Poland on behalf of Amnesty International, 51.1% of respondents described violence against people due to their sexual orientation or gender identity as a hate crime.¹⁸⁹ Yet, despite increased awareness and the scale of homophobia, biphobia and transphobia in Poland, the necessary legislative changes have not been enacted and training of law enforcement services remains inadequate. This extends from insufficient protection given to the groups at risk, such as during and after the Equality Marches, to the lack of cross-sectional and coherent mechanisms for reporting, identifying and investigating crimes motivated by homophobia, transphobia or biphobia.

CONCLUSIONS

Local authorities in Poland deliberately weaponise assembly regulations to unduly restrict the right to freedom of peaceful assembly of LGBTI people, including by imposing “preventive bans” or by effectively obstructing the conduct of peaceful assemblies, such as Equality Marches and Pride Parades.

As a result of the hate campaign against LGBTI people, which especially intensified ahead of the 2019 presidential campaign, there has been a significant increase in attacks against LGBTI people at peaceful assemblies. Police protection has not always been sufficient and the cooperation with event organizers is usually not transparent and inefficient. The inability to report acts of violence against LGBTI people committed during or after a demonstration as hate crimes also prevents law enforcement agencies from effectively identifying and prosecuting these acts.

The dramatic events of the Equality Marches in Lublin 2018 and Bialystok 2019 make it clear that LGBTI people require enhanced protection from police, and that organizers of peaceful gatherings for LGBTI rights should be supported, not harassed, by state actors.

2.3 RAINBOW NIGHT: POLICE USE OF FORCE AND PROFILING OF LGBTI ACTIVISTS

On 7 August 2020, police violently dispersed a peaceful demonstration in Warsaw organized in solidarity with 27-year-old LGBTI activist Margot. Margot had been arrested and charged with damaging a van bearing homophobic slogans and assaulting a driver recording the incident on 27 June 2020. The series of human rights violations against LGBTI activists during the Rainbow Night events of 7 August 2020 highlight the scale and determination with which law enforcement and other state actors are able to harass LGBTI people who are critical of the state.

¹⁸⁵ Fundamental Rights Agency. *A long way to go for LGBTI equality 2020*, fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf

¹⁸⁶ Fundamental Rights Agency. *A long way to go for LGBTI equality 2020*, fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf p. 15.

¹⁸⁷ Fundamental Rights Agency. *A long way to go for LGBTI equality 2020*, fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf

¹⁸⁸ Fundamental Rights Agency. *A long way to go for LGBTI equality 2020*. fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf p. 39.

¹⁸⁹ SW Research on behalf of Amnesty International 2020, *Infografiki LGBTI*, September 2020, [amnesty.org.pl/wp-content/uploads/2020/09/Infografiki-LGBTI-1.pdf](https://www.amnesty.org.pl/wp-content/uploads/2020/09/Infografiki-LGBTI-1.pdf)

“THEY TREATED US LIKE CRIMINALS”
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

During the Rainbow Night, police officers used excessive and unnecessary force together with other unlawful tactics, including means of containment and profiling of LGBTI protesters. Many protesters and bystanders were arbitrarily detained, without informing them of the charges or giving them the possibility to challenge the lawfulness of the detention.

Nearly 50 people were detained for their participation in the protest and reported experiencing abuse and other forms of ill-treatment while held overnight at police stations. Most of the protesters were arrested and charged with rioting.¹⁹⁰ Some of those detained were also accused of assault,¹⁹¹ insulting a public official,¹⁹² and damage to property.¹⁹³ Bystanders taking no part in the protest were also among those arrested and there are reasonable grounds to suggest that the police had a top-down order to profile people with LGBTI emblems, regardless of whether they participated in the spontaneous assembly or not.

The National Chief of Police pointed out to Amnesty International that, in accordance with the Law on Assemblies, police agencies have the authority to dissolve only spontaneous assemblies or those that turn violent, including when the assembly is held in violation of criminal provisions or the Law on Assembly. According to him, interventions by the police against participants in gatherings in situations of suspected violation of the law should not be considered as abuse. He pointed out that in the event of a suspected violation of criminal laws by participants in a gathering, a police officer has the power to stop individuals in order to establish their identity, and detain them in accordance with the Code of Criminal Procedure and other laws, or carry out a personal inspection if there is a reasonable suspicion that a criminal act has been committed.¹⁹⁴

On 4 July 2022 Secretary of State at the Ministry of Internal Affairs answering the Amnesty International's request for information or a meeting, referred directly to the actions of the Police taken on 7 August 2020 in Warsaw, informing that in this case the circumstances of the described events were subjected to intra-police investigation, while in accordance with the current legal order, the issues of legality, legitimacy, as well as the correctness of the actions taken by police officers against protesters could be subjected, at the request of those concerned, to the decisions of independent common courts.¹⁹⁵

UNNECESSARY AND EXCESSIVE USE OF FORCE DURING DISPERSAL

Around 4.30 pm on 7 August 2020, the District Court in Warsaw issued a warrant for LGBTI activist Margot to be taken into custody. At the time, Margot was with her *pro bono* lawyer at the headquarters of LGBTI rights organization Campaign Against Homophobia, to prevent what they believed would be a police raid on the squat,¹⁹⁶ where the LGBTI anarchistic collective "Stop Bzdurom" ("Stop the Bullshit") had its headquarters.¹⁹⁷ Margot described the scene:

"Before the police arrived, we took a moment to decide what to do... In the end, I decided to go out and get arrested. I came out and started approaching the policemen one by one, stretched my hands out in front of me and said: 'I know about the warrant, please cuff me and take me away' – and they did not react, practically kept hiding away from me."¹⁹⁸

A spontaneous assembly formed in front of the headquarters of the Campaign Against Homophobia in solidarity with the Margot. At 6.30 pm, when Margot came out voluntarily to hand herself in to the police, the people who had gathered started chanting "You will not arrest us all." Kuba, aged 30, recalls that the

¹⁹⁰ Poland, Criminal Code, Article 254, lexlege.pl/kk/art-254/

¹⁹¹ Poland, Criminal Code, Article 226, lexlege.pl/kk/art-226/

¹⁹² Poland, Criminal Code, Article 223, lexlege.pl/kk/art-223/

¹⁹³ Poland, Criminal Code, Article 288, lexlege.pl/kk/art-288/

¹⁹⁴ Letter to Amnesty International from Chief of National Police Jarosław Szymczyk on 27 June 2022, in response to the request for information and meeting on 15 June 2022, on file with Amnesty International.

¹⁹⁵ Letter to Amnesty International from Ministry of Interior, 4 July 2022, in response to the request for information and meeting on 15 June 2022, on file with Amnesty International.

¹⁹⁶ Interviews with Margot on 17 December 2021 and 19 April 2022.

¹⁹⁷ The Stop the Bullshit Collective terminated its actions as a result of, among other things, the loss of the headquarters, due to the attacks on the aforementioned squat in December 2021.

¹⁹⁸ Interview with Margot, 19 April 2022, Warszawa.

number of people gradually exceeded 100. He told Amnesty International: “It was clear that the stakes were high”.¹⁹⁹ Media representatives and members of parliament were also present. Anna, an activist aged 29, told Amnesty International that the police, although present, did not act and refused to arrest Margot. She said that they seemed to be “waiting for something.”²⁰⁰ As a result of the police’s repeated refusal to carry out the arrest, Margot and the protesters decided to walk along Krakowskie Przedmieście Street to the Holy Cross Church.

KRAKOWSKIE PRZEDMIEŚCIE: VIOLENT DISPERSAL OF A SPONTANEOUS ASSEMBLY

Once the protest reached Krakowskie Przedmieście, the police arrested Margot. When Margot was bundled into an unmarked police car, protesters began blocking the car’s route in solidarity, waving rainbow flags and shouting slogans. At that point the number of police officers on the scene increased significantly.

Margot recalled: “We get to the height of Copernicus’ monument. Halfway there, some older policeman approached and tried to detain me by force. Two undercover officers approached him and nervously explained that they would be the ones to take me over. And so, near Kopernik, they packed me into the car.”²⁰¹

People who were part of the protest told Amnesty International that there was a “frightening number of police”²⁰² using “increasing brutality.”²⁰³ Filip, aged 28, who was one of the people who sat around the car that took Margot blocking its way, described what happened next:

“We all grabbed hands. I was facing the back of the church, we sat around the car they put Margot in. Suddenly a lot of police showed up, they were recording us, calling on us not to attack police property. It was the first time I had been in such a situation, people were handing each other a marker to write down the number for a lawyer, sharing water, telling each other what to do if they were arrested.”²⁰⁴

One hour later, around 8 pm, the police started to break up the peaceful blockade by forcibly removing the activists and even carrying one individual to ensure the car could pass. In conversations with Amnesty International, witnesses made it clear that this was not preceded by any announcement of the police. Despite the protesters remaining peaceful, they recall that officers began moving and forcibly removing people blocking the road, who nevertheless kept on coming back. Ada, a human rights activist that was at the protest, recalled: “We were trampled, we were dragged. We were not treated like normal people.”²⁰⁵

“Suddenly a squad of police gathered and the car sped off. And people were dragged by their arms, legs, neck, thrown to the sidewalk. And so it continued up to the Geology Department,” recalled Margot.²⁰⁶ She was taken to the District Police Station at Nowolipki 2 and then to District Police Station in Pruszków, spent the night in custody.

While the car was being blocked, several people decided to hang a rainbow flag on the Copernicus monument as a symbol of solidarity. According to Kajetan and Aleks, who remained there at the time, after the car with Margot left, a wave of several dozen officers rushed at them with no warning.²⁰⁷ Both Kajetan and Aleks were taken to the police station and charged with participating in a riot, even though both remained peaceful throughout the protest.

Forty-eight people were detained on Krakowskie Przedmieście as well as during a solidarity demonstration to the Police Headquarters on Wilcza Street, where the activists arrested were taken. In some cases, the individuals were stopped and detained by police on their way to the demonstration.

¹⁹⁹ Interview with Kuba, 5 February 2022, Warszawa.

²⁰⁰ Interview with Anna, 12 January 2022, Warszawa.

²⁰¹ Interview with Margot, 19 April 2022, Warszawa.

²⁰² Interview with Piotrek, 15 April 2022, Warszawa.

²⁰³ Interview with Kuba, 10 March 2022, Warszawa.

²⁰⁴ Interview by video call with Filip, 6 April 2022.

²⁰⁵ Interview with “Ada” (asked for anonymity), 15 April 2022, Warszawa.

²⁰⁶ Interview with Margot, 19 April 2022, Warszawa.

²⁰⁷ Interview with Kajetan, 7 January 2022, Warszawa.

Amnesty International documented a further five cases where people described the use of excessive and unnecessary force by the police during the events of Rainbow Night. Seven people said they had experienced such use of force first-hand.²⁰⁸ The National Mechanism for the Prevention of Torture of the Ombudsman's Office²⁰⁹ visited police stations where protesters were taken and documented that some people reported violent behaviour by police officers; one person reported to have been beaten in the police car. Some of the protesters had visible injuries on their bodies.²¹⁰ Many of them highlighted the use of coercive measures that appeared to be unnecessary, like handcuffing their hands behind their backs while in police vehicles or being thrown to the ground, since they did not represent a threat nor were resisting the arrest.

Among them was Magda, aged 26, who during the so-called Rainbow Night first went to the headquarters of the Campaign Against Homophobia, marched towards Krakowskie Przedmieście and then to the police headquarters on Wilcza Street in solidarity with those who were arrested. Recalling the events in Krakowskie Przedmieście, she told Amnesty International: "The role of the police was to cause us physical pain... I had a flag around my neck and it was the flag that the policeman pulled on me, choking me". She added: "We don't care because we're supposed to be tough. But being violently carried across the street was not cool. When they threw me to the ground, that wasn't cool either."²¹¹ Magda did not file a case against the police for the way in which she was treated, due to the general lack of trust to the state actors.

Ada,²¹² a street activist, described her experiences to Amnesty International.²¹³ She reported how at around 9 pm near Wilcza Street, she was pushed away by an officer as she moved to help another activist.

"I saw several officers forcibly pulling her away from the street sign. She was screaming in monstrous pain, so I shouted to them: let her go, don't you see she suffers? Then I was pushed away like a fly, some policeman grabbed me and my backpack and threw me... They started to tell me to go alone... Thus, with my twisted arm, still unhealed from a previous fracture, they dragged me from the Wilcza to the Krucza street, and I kept howling. Then they threw me into a police van. But at least at the police station they let me take painkillers."

Ada reported an immediate need for medical care. She was later diagnosed with a dislocated shoulder. In an interview with Amnesty International, she also stressed that one of the two doctors clearly indicated that night detention was not advisable given the psychiatric trauma and the injuries she sustained Ada mentioned she went through a severe panic attack later in the night in front of the police officers, who did not help her.

The Warszawa Śródmieście Regional Court later dismissed the charges of participating in a riot²¹⁴ and hooliganism against Ada and found her detention to be unjustified and inappropriate, but legal. At the time of writing, the District Court's decision on the request for compensation of PLN 10,000 was still pending.

In response to the report and recommendations of the National Mechanism for the Prevention of Torture, the Warsaw Metropolitan Police made no reference to the documented instances of unnecessary and excessive use of force. In a statement issued on 22 September 2020,²¹⁵ the police simply said that the use of means of direct coercion, including handcuffs, are regulated by the provisions of an Act of 24 May 2013 and that detainees' injuries "are documented in the protocols of detention"²¹⁶ as are the circumstances in which the injuries occurred.

²⁰⁸ In two cases this additional question was not asked nor answered.

²⁰⁹ Report of National Mechanism for the Prevention of Torture with the recommendations to the Ministry of Interior, Ministry of Health and Main Police Headquarters, 7 September 2020. bip.brpo.gov.pl/pl/content/nie-tylko-ponizajace-traktowanie-koncowy-raport-kmpt-o-zatrzymaniach-7-sierpnia-w-warszawie

²¹⁰ Confirmed and verified with the medical documentation with two out of three interviewees reporting the use of violence to Amnesty International.

²¹¹ Interview with Magda, 19 March 2022, Warszawa.

²¹² Name changed at the express request of the person.

²¹³ Interview with "Ada" (asked for anonymity), 15 April 2022, Warszawa.

²¹⁴ Poland, Criminal Code, Article 254, lexlege.pl/kk/art-254/

²¹⁵ Letter of the Commander in Chief Metropolitan Police to High Commissioner of Human Rights, 22 September 2022, bip.brpo.gov.pl/sites/default/files/Odp.%20policji%20ws%20wydarze%C5%84%207-8%20sierpnia%2C%2017.09.2020.pdf

²¹⁶ Letter of the Commander in Chief Metropolitan Police to High Commissioner of Human Rights, 22 September 2022, bip.brpo.gov.pl/sites/default/files/Odp.%20policji%20ws%20wydarze%C5%84%207-8%20sierpnia%2C%2017.09.2020.pdf

According to international standards on the use of force by law enforcement, force may be used only to the minimum extent necessary, in line with the principles of necessity and proportionality.²¹⁷ Police must apply non-violent means before resorting to the use of force, including use of handcuffs or other restraints, which may be used only if non-violent means have proven to be, or are likely not to be, effective. The use of any force by police should be strictly limited to those situations where it is absolutely necessary for the achievement of a legitimate law enforcement aim. If the use of force is unavoidable, police officers must always exercise restraint in its use: the principle of necessity means they must only use the lowest level of force that is needed to achieve the legitimate objective, but it must stop once the objective has been achieved or if it becomes clear that the objective cannot be achieved. Moreover, the level of any force used must also be strictly proportional to the law enforcement objective which sets a ceiling on the level of force that may be used for a particular law enforcement objective, even if that results in the inability to achieve the objective.

LINUS: CRIMINAL CHARGES FOR DAMAGING POLICE PROPERTY

Just before the police car with Margot moved off, LGBTI activist Linus, aged 29, followed someone else up onto the roof of the police car in an attempt to prevent it from driving away. After a few minutes, he was forcibly pulled off the car by officers and at 8.30 pm he was handcuffed and taken to the police station on Wilcza Street, where after a few hours and without having had access to a lawyer, he was taken to the Warsaw Metropolitan Police Station on Nowolipie 2 Street where he was detained.²¹⁸ He was then released the following evening at 9.20 pm.

Linus was charged later at the Prosecutor's Office Warszawa Śródmieście with active participation in a riot with intent to damage property²¹⁹ and damage to property.²²⁰ On both charges he was accused of "severe disregard for legal order".²²¹ A financial estimate of the cost of a broken car antenna was set at €4,000.²²²

The prosecutor ordered that he be placed under police supervision, but this was revoked two months later by the Warsaw Downtown District Court.²²³ Linus filed a complaint about his detention, which the court found to be lawful and justified, but irregular due to the fact he was denied access to a lawyer.²²⁴

Linus told Amnesty International that a year after the incident, the police filed an indictment against him and four other protesters -. He added:

"I went on police probation for two months - which is an absolutely disproportionate measure, and the court recognized that, too. Going on that probation made me think of suicide, so one day I decided: ok, enough is enough, I cannot do it anymore. I posted about it on my social media, and right next day at 6 am police came to our apartment to check if my boyfriend could be this other person from the car they were still looking for. And it didn't matter they were obviously different looking: they kept my boyfriend's phone for six months. Well, they made a decision to torment me, so they did."²²⁵

At the time of writing, criminal proceedings against Linus remained pending. Between 2020 and 2021, over 20 prosecutions were launched against Linus for his activism and his participation in various protests, six of them directly related to LGBTI rights.²²⁶

²¹⁷ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4, [ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement](https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement).

²¹⁸ Interview with Linus, 13 April 2022.

²¹⁹ Article 254 para 1 od Criminal Code, in relations to Article 57a para 1.

²²⁰ Article 288 para 1 od Criminal Code, in relations to Article 57a para 1.

²²¹ A copy of the indictment is on file with Amnesty International.

²²² Estimates in the indictment, in file of Amnesty International. In PLN: 17 231 of Polish złotych.

²²³ Documentation on file with Amnesty International.

²²⁴ Decision of the Court on file with Amnesty International.

²²⁵ Interview with Amnesty Linus, 13 April 2022, Warszawa.

²²⁶ Access to the documentation given to Amnesty International.

INAPPROPRIATE USE OF CONTAINMENT AND “KETTLING” BY POLICE

Between 8 pm and 9 pm, after Margot had been driven away, the first detentions began. Amnesty International was present during the protest and observed people being kettled using force, with cases of wringing hands and pinning to the ground reported and witnessed by the organization. At approximately 8.40 pm, Krakowskie Przedmieście Street was completely blocked by a disproportionate number of police, after which a second wave of detentions began, in which both protesters and bystanders were targeted.

Filip, who was present at the protest, told Amnesty International:

“At this point, right after the short break, we saw that we were surrounded by a line of police – and it turned out that they were not letting anyone go. I saw my friend, she is a journalist, who was being held in a kettle by the police, despite her journalist ID presented to the officers. I informed the officer: ‘you’re holding the journalist inside, let her go’ - yet he didn’t react. I managed to get inside, and eventually she got out, but they wouldn’t let me out again. ‘You now know what will happen now’ I heard from the officer, who said I was going to be detained due to participation in a violent disorder.”²²⁷

As documented by Amnesty International, a series of detentions occurred on Krakowskie Przedmieście where police used inadequate measures for managing public order, as well as during the solidarity demonstration at the Police Headquarters on Wilcza Street. In some cases, the individuals were stopped and detained on their way to the demonstration.

Jacek, 22, told Amnesty International:

“When the people on Krakowskie Przedmieście had already moved or were taken by the police, information went out that people were gathering at the headquarters on Wilcza Street to wait there for the release of the detainees. Somewhere along the way, around Pasaż Niżyńskiego, we were just walking in this direction and talking with each other. Suddenly I was caught by the arm: I turned around and saw a uniform (...) My friend and two other people from our group were packed into the same police car. I tried to ask the reason for the detention, but I was told that I would not find out.”

Over a dozen people interviewed by Amnesty International who witnessed the events of 7 August 2020, including members of the media and a member of parliament, told the organization that police used disproportionate crowd control measures, including kettling and prevented people from leaving the assembly freely. Furthermore, Amnesty International has documented cases of unnecessary and excessive use of force against the protesters, that were a direct result of the crowd control measures employed by the police.²²⁸

Containing participants of an assembly in a certain area without permission to leave in an indiscriminate or punitive manner is an infringement of the right to freedom of peaceful assembly.²²⁹ This tactic, also known as “kettling” that consists in deploying a police cordon around a group of protestors, often for long periods with a view to enclosing them and preventing other protestors from joining them, has a powerful chilling effect on people seeking to exercise their rights to freedom of expression and peaceful assembly.

The European Court of Human Rights has ruled that “kettling” tactics to contain crowds by the police is lawful, as long as it is necessary, reasonable and proportionate and imposed in “dangerous and volatile conditions”.²³⁰ For its part, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association has defined this tactic as “detrimental to the exercise of the right of freedom of assembly”.²³¹

²²⁷ Interview with Jacek, 6 April 2022, Warszawa.

²²⁸ Amnesty International has witnessed the use of these containment tactics during the events of 7th August 2020, both at Krakowskie Przedmieście and Wilcza Street.

²²⁹ Human Rights Committee. General Comment 37: Right to peaceful assembly. UN Doc CCPR/C/GC/37, 27 July 2020, para. 84

²³⁰ *Austin & Ors v United Kingdom* [2012] ECHR 459 (15 March 2012). Legal analysis available here: hrlc.org.au/human-rights-case-summaries/austin-ors-v-united-kingdom-2012-echr-459-15-march-2012

²³¹ A/HRC/23/39/Add. 1, para. 37.

“THEY TREATED US LIKE CRIMINALS”

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

Amnesty International

Amnesty International has repeatedly reported that the recent tactics used by Polish law enforcement agencies to contain protesters are disproportionate and not in compliance with international standards.²³² On 7 August 2020, the police forces acted without giving prior warning, while the intention behind the disproportionate containment was to arrest people who have gathered to protest peacefully and not to de-escalate the situation. Amnesty International also noted that bystanders and members of the media were also kettled and then detained, raising serious concerns about the legitimacy of the police's choice of tactic.²³³

In a meeting with Amnesty International, when asked about the use of containment tactics, the National Police Plenipotentiary for Human Rights stated that they have learned a lesson and expressed a commitment to improve their policing tactics. Referring to the events of 7 August, the Plenipotentiary emphasized that in his opinion protesters had behaved in an aggressive manner towards the officers, stating: "For us, it came as a huge surprise as we learn during trainings that LGBTI people are a peaceful, vulnerable minority. And the police officers were shocked. Later we had to work through that with the Regional Police."²³⁴ Nevertheless, while discussing on National Plan on Trainings for Law Enforcement on Human Rights for 2021-2024, as well as the results of the previous National Plans back to 2017, the Plenipotentiary did not recall the trainings focused particularly on working with LGBTI people.

Amnesty International has consistently raised serious concerns about and the way in which police forces are using containment tactics, which have resulted in the use of excessive force and undue restrictions on the work of journalists, which are contrary to international human rights law and standards.

PROFILING OF LGBTI PEOPLE

The National Mechanism for the Prevention of Torture of the Ombudsman's Office has reported cases in which those who were contained were bystanders, who, as was shown in subsequent proceedings and documentation made available to Amnesty International, were not present at the place and time of the incident indicated in the police arrest report.²³⁵

One of them was Aleks, aged 21, who did not participate in the protest itself and arrived at the Copernicus Monument in Krakowskie Przedmieście a little before 9 pm. According to police statements,²³⁶ he was behaving calmly, which is confirmed by the recording from the detention made available to Amnesty International.²³⁷ The one thing that distinguished him from the others was his rainbow mask. He told Amnesty International:

"I wasn't at the protest itself, but I did manage to see people spreading out. There were lots of police everywhere. Suddenly I saw that they were surrounding us... I started audiorecording the conversation with the officer just in case, and my friend and I tried to find out what the legal basis for the detention was."²³⁸

His legal representative Karol Wenus told Amnesty International: "From the very beginning, Aleks was under the impression that he was stopped just because of this rainbow mask."²³⁹

In the footage shown to Amnesty International,²⁴⁰ which was submitted as evidence in the case, one of the police officers making the arrest can clearly be heard telling Aleks that the basis for the arrest is participation in an "illegal assembly," despite Aleks's assertions that he arrived later. The police officer also informed

²³² Amnesty International, *Poland: On the streets to defend human rights, harassment, surveillance and prosecution of protesters*, 2017 (Index:EUR 37/7147/2017), [amnesty.org/en/documents/eur37/7147/2017/en/](https://www.amnesty.org/en/documents/eur37/7147/2017/en/)

²³³ Amnesty International Netherlands. *Understanding policing. A resource for human rights activist*, 2017, [amnesty.nl/content/uploads/2017/01/book_1_0.pdf?x54649](https://www.amnesty.nl/content/uploads/2017/01/book_1_0.pdf?x54649)

²³⁴ Meeting between Amnesty International and National Police Plenipotentiary on Human Rights, ^h 8 April 2022.

²³⁵ Report of National Mechanism for the Prevention of Torture with the recommendations to the Ministry of Interior, Ministry of Health and Main Police Headquarters, "Nie tylko ponizające traktowanie", 7 September 2020. bip.brpo.gov.pl/pl/content/nie-tylko-ponizajace-traktowanie-koncowy-raport-kmpt-o-zatrzymaniach-7-sierpnia-w-warszawie

²³⁶ Legal documentation consulted with the Alekslegal representative in file of Amnesty International.

²³⁷ On file with Amnesty International.

²³⁸ Interview by video call with Aleks, 24 March 2022.

²³⁹ Interview with Karol Wenus, 8 April 2022, Warszawa.

²⁴⁰ In file of Amnesty International.

Aleks that “now he will never become a fireman” and he can “dream about the public service or studies,” which in his recollection had a strong and intimidating effect.

At about 10.30 pm, Aleks and four other people were taken to the police station on Wilcza Street and then to Opaczewska Street, where the charge sheet was drawn up. Despite Aleks’ clear statement of his gender, he was searched by a policewoman due to the information on his ID, not the preference reported during the search due to his trans identity. He was not informed until midnight of the criminal charges against him: participation in a riot and damage to property, which related to the vandalizing of a police car that had left before Aleks had even arrived. The police did not allow Aleks to contact a family member until 2 am, yet they contacted his mother at 1am themselves. Aleks was only able to meet with his attorney until 5 pm the next day, and it was only at the lawyer’s request that Aleks’s handcuffs were removed. Aleks was refused access to medicines and was given just one cup of tea during the night he was held in jail. He also reported that a police officer made comments about his gender identity: “this police officer also questioned me about what my actual gender was, about my deadname and whether I was going to change my name.”²⁴¹

The District Court later found that Aleks’s detention was unjustified and inappropriate and that the scale of the irregularities was “of such gravity that Aleks may have had his freedom of expression taken away.”²⁴² The Prosecutor’s Office did not oppose the court’s ruling but requested that the amount of compensation for unlawful detention be reduced from PLN 10,000 to PLN 100. Aleks still awaits the court decision on the reparation.

The testimony given by the police officer responsible for Aleks’s detention to the prosecutor at the final hearing in the District Court on 22 January 2022 was very revealing of the way in which people associated with LGBTI symbols were targeted by the police. In his testimony, the police officer stated:

“We were instructed to stop all persons displaying the colours of LGBT, regardless of how they behaved. We treated that order as an order to be obeyed... I don’t remember if he raised any shouts or slogans. I remember that these people were marked with LGBT colours.”²⁴³

In a meeting with Amnesty International on 8 April 2022, the National Police Plenipotentiary for Human Rights asserted that there was no pressure on the police to target and detain people associated with LGBTI symbols and emphasized that this would be a matter for the Prosecutor’s Office.

The case of Aleks was formally described to the Ministry of Interior by Amnesty International. In a response to Amnesty International from Secretary of State Maciej Wąsik from 4 July 2022,²⁴⁴ he stressed that the police carries out their tasks without regard to the individual characteristics, views or religion of those taking part in the gathering.

The use of profiling during the policing of an assembly is a discriminatory practice whereby law enforcement officials target individuals on the basis of impermissible grounds, such as race, ethnicity sexual orientation or gender expression.²⁴⁵ Profiling is a violation of human rights and constitutes unlawful discrimination. It also has the effect of perpetuating and reinforcing discriminatory attitudes and behaviour towards marginalized groups, in addition to the direct and harmful consequences for individuals and communities concerned.²⁴⁶

²⁴¹ Interview by video call with Aleks, 24 March 2022.

²⁴² Content of both reasonings has been accessed by Amnesty International.

²⁴³ On file with Amnesty International and confirmed by the attorney Karol Wenus on 8 April 2022. Also available here: oko.press/policiant-o-teczowej-nocy-otrzymalismy-polecenie-zatrzymania-wszystkich-oznakowanych-barwami-lgbt/

²⁴⁴ Letter to Amnesty International from Ministry on Interior, 4 July 2022, in response to the request for information and meeting on 15 June 2022, on file with Amnesty International.

²⁴⁵ There is an evident research gap in studies on police profiling towards LGBTI people in Europe, especially in comparison to other groups subjoined to the other forms of profiling, ethnic and racial. More on the subject of profiling and policing the LGBTI in United States available here: Luhur, W., Meyer, I., Wilson B. *Policing LGBTQ People*, May 2021. williamsinstitute.law.ucla.edu/publications/policing-lgbq-people/

²⁴⁶ Open Society Justice Initiative. International Standards on Ethnic Profiling: Decisions and Comments from the UN System, July 2016.

LEGALITY AND CONDITIONS OF DETENTION

In total, 48 people were detained following the events of 7 August 2020, among them LGBTI people, supporters and bystanders. In April 2022, the Regional Prosecutor's Office for Warszawa Śródmieście dropped the charges of disturbing public order against 41 of them.²⁴⁷ Charges against five individuals are ongoing.²⁴⁸

A number of irregularities in the arrests have emerged. After Piotr and Filip were detained, their lawyers were able to prove that there was no direct continuity between the place and time of the arrest and the circumstances of their alleged conduct. Their relatives and lawyers were not informed of their whereabouts. Five people interviewed by Amnesty International said that the police officers moved them from one station to another. . . . Some interviewees were moved three times from one police station to another during the night, which hindered further their ability to challenge the legality of their detention. One lawyer told Amnesty International: "The officers misled us on purpose. The information where our clients were placed, was withheld from members of parliament."²⁴⁹ Kajetan, who was detained that night, told the organization: "For a very long time, no one knew where I actually was. My dad and two deputies in Nowolipki were told, when they came, that I wasn't there – which was simply not true."²⁵⁰

Margot had a similar conclusion:

"My experience is that when the police takes you with them, no one knows where you are."²⁵¹

According to people who were detained during the protests and their lawyers, the vast majority of detainees did not learn of the legal basis for their detention until after the arrest warrant was drawn up, often up to five hours after their detention. With one exception, they were not able to contact their lawyers until the following day, contrary to the legal requirement for a detainee to be able to contact a lawyer immediately.²⁵² Piotrek, a 22-year-old protester, recalled: "I was informed of charges around 2 am – and was taken to the police station around 9 pm... It was like they did not know initially what they can actually charge us with."

Amnesty International has documented irregularities in the arrest protocols drawn up by the police, which claim that detainees "refused their right to remedy", agreed that the detention was "reasonable, legal and correct", refused to contact relatives and agreed with the basis for the detention. Agnieszka Helsztyńska, an attorney representing one of the protesters detained on 7 August, told Amnesty International:

"The purpose of such actions was to have a chilling effect – that nothing can be done any more and the only thing you can do is waive those rights. Their only goal was intimidation... The language of the record clearly indicated that it was the police officers who included those specific phrases. It is unlikely that the detainees themselves uttered these words."²⁵³

Amnesty International heard of additional irregularities in the detention procedure, which were also documented by the National Mechanism for the Prevention of Torture, including lack of access to medication (even when the diagnosis was reported and detainees had the medication with them at the time of detention); lack of medical examinations; deliberate misinformation regarding contact with a lawyer;

²⁴⁷ Confirmed with the Collective Szpila. Noizz.pl, « Prokuratura umorzyła dochodzenie w sprawie Tęczowej Nocy », 4 April 2022. <https://noizz.pl/lgbt/prokuratura-umorzylo-dochodzenie-w-sprawie-teczowej-nocy/8rnz4de>

²⁴⁸ One of them interviewed by Amnesty International, another contacted with no response. Adding to that, two other cases of those 48, who were detained, are not known to be neither dropped or ongoing.

²⁴⁹ Confirmed to the Amnesty International.

²⁵⁰ Interview with Kajetan, 20 March 2022.

²⁵¹ Interview with Margot, 19 April 2022, Warsaw.

²⁵² In aforementioned response of the Metropolitan Police to Ombudsmans Office, the delay in contacting attorneys was justified on the grounds that individual police stations were "overcrowded" as a result of mass arrests, and that "providing immediate contact with the legal representative should be interpreted as the earliest available time, not at the very moment of the detention". Amnesty International reminds, that it is the police legal obligation to provide such contact, regardless of the conditions, and emphasizes on the fact, that those conditions were caused by the mass detentions ordered by the police, found in most cases to be unfounded and in some additional cases to be incorrect.

²⁵³ Interview by video call with Agnieszka, 22 April 2022.

interrogations at night; lack of food when people were detained for over 11 hours; and intimidation as well as transphobic and homophobic comments by police officers.²⁵⁴

Anyone who is arrested or detained has a right to be informed of the reasons why they are being deprived of their liberty.²⁵⁵ This requirement is key to enable an individual to challenge their detention if they believe it is unlawful or unfounded. Therefore, the reasons given must be specific and must include a clear explanation of both the legal provision under which the individual is being held and the essential factual basis for the arrest or detention.

The right to challenge the lawfulness of the detention safeguards the right to liberty and provides protection against human rights violations including torture and other ill-treatment, arbitrary detention and enforced disappearance.

The conditions of and reasons for detention and arrest of LGBTI protesters were in breach of international standards and exposed LGBTI people to discriminatory behaviour by law enforcement officials. The right to know where they were being held, the legal grounds for their detention and the identity of the arresting officers, access to the outside world and immediate access to legal counsel, as well as the presumption of innocence – all were denied to detainees for at least a period of time. Some were subjected to inhuman and degrading treatment on grounds of their sexual orientation, gender identity and expression, or their LGBTI activism. It is extremely concerning that security forces attempted to force individuals to waive their right to lodge complaints and, consequently, their right to compensation.

INVESTIGATING TO INTIMIDATE

In four cases documented by Amnesty International where protesters were arrested, the police conducted a community interview in the proximity of the individuals place of residence or registration on the very same night of detention. These investigations had a wider intimidatory effect that spread fear among the community.

On the night of his detention, police representatives asked about the actions of Filip around his neighbourhood.

“The police questioned my neighbors, and they also tried to force their way into the apartment, but no one was there.”²⁵⁶

One of the lawyers Amnesty International talked with has directly referred to the inadequate actions of law enforcement, leading to a chilling effects among protesters and activists:

“If I see a person suspected of murder, I am not surprised they would be questioned by the police and their actions would be eventually recorded. It is justifiable. However, in this case of a spontaneous assembly, it is an abuse of the law [sic: against the individuals]. . . Here we have young people with no criminal record, nevertheless police make a detailed examination and interview them.”²⁵⁷

In another case, police also interviewed their neighbours insinuating that the person had engaged in illegal activities and attempted to enter their apartment.²⁵⁸ While questioning neighbours and conducting searches can be a legitimate measure Evidence gathered by Amnesty International appear to show that the police are using this tactic rather to intimidate protesters and send a clear message to deter others from engaging in protests in the future.

²⁵⁴ National Mechanism of Prevention Against Torture with the Ombudsman's Office, *Raport RPO z działalności Krajowego Mechanizmu Prewencji Tortur w 2020 r.*, 17 May 2021, bip.brpo.gov.pl/content/rpo-raport-KMPT-2020

²⁵⁵ Article 9(2) of the ICCPR, and Article 5(2) of the ECHR.

²⁵⁶ Interview by video call with Filip, 6 April 2022.

²⁵⁷ Interview by video call with Agnieszka, 22 April 2022.

²⁵⁸ Confirmed with the so-called Rainbow Defenders, Public Facebook message, “Aktywista Tęczowej Częstochowy został wczoraj zatrzymany” 8 August 2020, [facebook.com/queerczestochowa/photos/a.1274129209356224/2558894014213064/?type=3&source=48](https://www.facebook.com/queerczestochowa/photos/a.1274129209356224/2558894014213064/?type=3&source=48)

Even though most charges were not pursued, the personal data collected during arrest – the so-called “signatory data” – remain in police records in accordance with Polish law, and people do not have the option of requesting that the data be deleted.

POLICE ACCOUNTABILITY AND THE RIGHT TO AN EFFECTIVE REMEDY

States must ensure the full accountability of law enforcement officials for all their actions, and particularly for any incidents in relation to the use of force.²⁵⁹ Appropriate disciplinary or criminal sanctions are essential in response to human rights violations committed by law enforcement officials. The European Court of Human Rights has established that law enforcement officials should be individually identifiable through name or personal number tags.²⁶⁰ Superior and commanding officers must also be held accountable for any action or omission that led to such human rights violations.

However, instances of unnecessary and excessive force by the police during the events of 7 August 2020 were never directly addressed by representatives of National Police. Of the 40 complaints filed and reviewed by the legal aid collective Szpila,²⁶¹ 35 were examined by the courts which found that 26% of the detentions were unjustified. Only 22% of the cases were found to involve just one violation of human rights. An analysis of court settlements by Szpila found that in 97% of the cases, those performing the actions acted outside the applicable law and exceeded their authority.²⁶²

The right to an effective remedy has been exercised by individuals interviewed by Amnesty International, despite attempts to limit this right through the arrest protocol. In the cases of Aleks and Piotr, the court upheld the decision to guarantee the full amount of financial compensation. However, due to the lack of identification of the police officers themselves, it proved very difficult or impossible to file a complaint against the particular officers involved.

As recommended by Amnesty International since it started documenting the increasing unnecessary and excessive use of force by police against protesters in 2017 and 2018,²⁶³ the Ministry of the Interior must ensure that reports of unlawful use of force by police are properly investigated in a thorough, independent and impartial manner. It is also crucial that the security forces are properly trained in how to police public assemblies in a way that is consistent with international human rights standards and respects the human rights of protesters.

²⁵⁹ Opinion of the Commissioner for Human Rights of the Council of Europe, CommDH (2009)4.

²⁶⁰ *Hentschel and Stark v. Germany*, (47274/15), European Court of Human Rights Fifth Section (2015), para. 91

²⁶¹ Collective Szpila, *Year After the Rainbow Night Report*, 2021, szpila.blackblogs.org/2021/08/07/rok-po-teczowej-nocy-raport-podsumowujacy-zatrzymania-z-7-sierpnia-2020/?fbclid=IwAR3aPNEaJPTYLeoVxph3ZiZfo7Us04287tvu-jW9oeUxYYfaOvyqAfn1fc

²⁶² Collective Szpila, *Year After the Rainbow Night Report*, 2021, szpila.blackblogs.org/2021/08/07/rok-po-teczowej-nocy-raport-podsumowujacy-zatrzymania-z-7-sierpnia-2020/?fbclid=IwAR3aPNEaJPTYLeoVxph3ZiZfo7Us04287tvu-jW9oeUxYYfaOvyqAfn1fc

²⁶³ Amnesty International, *Poland: The Power of ‘the Street’, Protecting the Right to Peaceful Protest in Poland* (Index: EUR 37/8525/2018), 2018, amnesty.org/en/documents/eur37/8525/2018/en/

3. SPEAKING UP FOR DIGNITY: FREEDOM OF EXPRESSION IN THE CONTEXT OF LGBTI RIGHTS

“They want to silence people doing what we do ... So that there are no rainbow symbols, and Poland remains as it is, grayish-brown. Poland without minorities: without women and without queer people...”

Anna, an activist who faced criminal charges for painting a Rainbow Halo on Virgin Mary

The exercise the right to freedom of expression is one of the remaining tools available for people willing to express dissent against growing discrimination of LGBTI people in Poland.²⁶⁴ The lack of visibility of LGBTI people, their scarce representation in public space, and the extent of criminalization of LGBTI rights defenders provides a clear indication of the barriers that the authorities are imposing on this marginalized and oppressed group.²⁶⁵

²⁶⁴ Amnesty International. *Przełamać milczenie. Łamanie praw człowieka ze względu na orientację seksualną*, 2003, amnesty.org.pl/prawa-czlowieka-a-orientacja-seksualna/

²⁶⁵ ODIHR, *Guidelines on the Protection of Human Rights Defenders*, 2014, pp. 9-11.

“THEY TREATED US LIKE CRIMINALS”
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

While the right to freedom of expression is also not absolute, any restriction on this right must be provided by law and be necessary and proportionate for the respect of the rights or reputations of others, or for the protection of national security, public order, health or morals.²⁶⁶

The protection of abstract concepts or religious or other beliefs, or the religious sensibilities of their adherents, is not a permissible ground for restricting the right to freedom of expression.²⁶⁷ International human rights standards are clear that the right to freedom of expression protects expression even when it may be regarded as offensive, shocking or disturbing.²⁶⁸

Since 2018, Amnesty International has been monitoring the increase in the scale of instrumental and deliberate use of criminal law against LGBTI rights defenders in Poland, including through charges of “insult to state symbols”, “profanation of monument” and “offending the religious beliefs”. Activism aimed at monitoring and publicizing the reach and risks of “LGBT-free zones” has been met with charges of infringement of personal rights and defamation civil lawsuits, resulting in draining legal proceedings intended to silence activists and deplete them of energy and resources.

Based on testimonies gathered by Amnesty International, the organization has found that many LGBTI rights defenders face particularly hostile and substandard treatment from law enforcement, and above that, repeatedly have to prove in courtrooms that LGBTI symbols are protected under the right to freedom of expression regardless if some people consider them to be offensive to family values or the Catholic faith.

3.1 WEAPONISING THE LAW AGAINST LGBTI RIGHTS DEFENDERS

In recent years, Amnesty International, together with ILGA-Europe and the Polish Commissioner of Human Rights, have documented an increase in the number and scale of criminal charges stemming solely from the exercise of the right to freedom of expression of LGBTI rights defenders, which stands in stark violation of international standards.²⁶⁹

The way in which the criminal justice system has been used to target and harass LGBTI defenders stands in stark contradiction to the way in which the authorities have dealt with arise in advocacy of hatred and smear campaigns against LGBTI people, which are often conducted under the umbrella of protection of family values, public morals and national symbols.

The cases documented by Amnesty International give a clear picture of the instrumental use of the law against people whose peaceful and creative criticism is met with a strong reaction from an apparatus of power determined to stifle the voices of LGBTI rights defenders. Normalizing such practices, especially in so-called “LGBTI-free zones” and aggravated by the crackdown on the judicial system and the independence of the Ombudsman,²⁷⁰ carries a potential risk of further entrenching the violence and discrimination faced by LGBTI people.

²⁶⁶ Amnesty International. *Stonewalled – still demanding respect. Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the USA*, 2006; Amnesty International. *“Not an illness nor a crime”. Lesbian, gay, bisexual and transgender people in Turkey demand equality*, 2011, policycommons.net/artifacts/355346/united-states-of-america/1315422/.

²⁶⁷ Human Rights Committee. General Comment 34: Freedoms of opinion and expression. UN Doc CCPR/C/GC/34, 12 September 2011, para. 48.

²⁶⁸ Human Rights Committee. General Comment 34: Freedoms of opinion and expression. UN Doc CCPR/C/GC/34, 12 September 2011, para. 11; European Court of Human rights, *Handyside v United Kingdom* (7 December 1976) Application No. 5493/72

²⁶⁹ Protection of this right is guaranteed by, among others, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11 of the Charter of Fundamental Rights of the European Union and Article 19 of the International Convention on Civil and Political Rights.

²⁷⁰ Amnesty International, *Poland: Free courts, free people, judges standing for their independence*, July 2019, (Index: EUR 37/0418/2019), [amnesty.org/en/documents/eur37/0418/2019/en/](https://www.amnesty.org/en/documents/eur37/0418/2019/en/)

**“THEY TREATED US LIKE CRIMINALS”
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS**

“INSULT TO STATE SYMBOLS”

In July 2018, activist Bart Staszewski carried a flag with an image of an eagle on a rainbow background during the Equality March in Częstochowa, which drew an immediate reaction from conservative circles, including Minister of Interior (at the time), who publicly accused Staszewski of “insulting state symbols”²⁷¹ and called the march a “cultural and religious provocation of the LGBT community against pilgrims.”²⁷²

Following the public condemnation by the Minister, and in response to six notifications Staszewski received on suspicion of committing a crime under Article 137 of the Criminal Code,²⁷³ the Prosecutor’s Office in Częstochowa opened an investigation which was ultimately dropped on 28 September 2018,²⁷⁴ after the court expert in heraldry stated that the activist’s action was “an artistic transformation without the characteristics of conscious insult.”²⁷⁵ The solidarity campaign with Bart – “rainbow is not an insult” – evoked an immediate response from anti-LGBTI groups, resulting in three more cases of charges being filed against activists from Poznań who, according to the authorities, were wearing „insulting emblems.”²⁷⁶ The Prosecutors’ Office then dropped the charges due to the lack of material elements of the crime.²⁷⁷

After the investigation against Bart was closed, he felt it was “quite a bittersweet victory”:

“I remember that after [the Minister of Interior] published this, my name was all over the right-wing portals. On one side, details of my private life were discussed, on the other – people invoked the highest patriotic values. Or their own interpretation of those values.”²⁷⁸

In an interview with Amnesty International, Bart emphasized that the intent of his action was to remind the public that LGBTI people in Poland have a right to be equally protected under the law and to be present in public spaces.

On 15 December 2020, the police in Sucha Beskidzka received a notification of suspicion of committing a crime under Article 137, in connection with the publication by a 16-year-old boy of an illustration showing the coat of arms of the city of Jordanów on a rainbow background. This notification was filed by Jordanów’s mayor.²⁷⁹ The teenager later reported that, during the interrogation at the police station, he was intimidated and pressured by law enforcement representatives to make an apology to the mayor, yet representatives of the police later denied this. In a statement published on 25 February 2020, the mayor announced that the city’s coat of arms had been used in a manner inconsistent with a city council’s resolution that prohibits the use of a coat of arms in the shape, proportions and colours defined in the status of the city, but at the same time allows the use of stylization of this coat of arms in artistic works.²⁸⁰

²⁷¹ TVN 24, *Częstochowa. Biały orzeł na tęczowym tle. Brudziński : profanacja godła*, 9 July 2018, [tvn24.pl/polska/czestochowa-bialy-orzel-na-teczowym-tle-brudzinski-profanacja-godla-ra852342-2404188](https://www.tvn24.pl/polska/czestochowa-bialy-orzel-na-teczowym-tle-brudzinski-profanacja-godla-ra852342-2404188)

²⁷² Minister of Interior, Twitter post, 8 July 2018. Source: <https://www.tysol.pl/a21418-min-brudzinski-kulturowa-i-religiina-prowokacja-srodowisk-lgbt-dzieki-policji-bezpiecznie-sie-skonczyła>

²⁷³ Article 137 of Criminal Code: “Whoever publicly insults, destroys, damages or removes an emblem, banner, flag, flag or other state sign shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.”

²⁷⁴ OKO.press, “Brudziński nie miał racji”, 9 October 2018. [oko.press/brudzinski-nie-mial-racji-prokuratura-teczowe-godlo-nie-profanuje-symboli-narodowych/](https://www.oko.press/brudzinski-nie-mial-racji-prokuratura-teczowe-godlo-nie-profanuje-symboli-narodowych/)

²⁷⁵ OKO.press, “Orzeł na tęczowym tle to nie zniewaga”, 9 July 2018, [oko.press/orzel-na-teczowym-tle-to-nie-zniewaga-analiza-prawna/](https://www.oko.press/orzel-na-teczowym-tle-to-nie-zniewaga-analiza-prawna/)

²⁷⁶ Interview with Mateusz, 22 November 2021, Poznań; *Gazeta.pl*, “Tęczowy orzeł to nie profanacja symboli narodowych. Prokuratura odmówiła wszczęcia śledztwa”, 4 September 2018, [gazeta.pl/wiadomosci/7,114883,23863104,teczowy-orzel-to-nie-profanacja-symboli-narodowych-prokuratura.html](https://www.gazeta.pl/wiadomosci/7,114883,23863104,teczowy-orzel-to-nie-profanacja-symboli-narodowych-prokuratura.html)

²⁷⁷ Onet.pl, « Poznań. Tęczowy Orzeł. Prokuratura nie zgadza się z Młodzieżą Wszczępolską. », 4 September 2018, wiadomosci.onet.pl/poznan/teczowy-orzel-prokuratura-nie-zgadza-sie-z-mlodzieza-wszczepolska/dnbw73r

²⁷⁸ Interview by video call with Bart, 17th February 2022.

²⁷⁹ OKO.press, “Szesnastolatek zrobił tęczy herb Jordanowa”, 27 February 2020, [oko.press/16-latek-zrobil-teczowy-herb-jordanowa-musial-tlumaczyc-sie-przed-policja-jakim-prawem/](https://www.oko.press/16-latek-zrobil-teczowy-herb-jordanowa-musial-tlumaczyc-sie-przed-policja-jakim-prawem/)

²⁸⁰ The Resolution of the City Council of Jordanowo, 26th September 2013 (XXVIII/217/2013). The confirmation of the mayor’s statement in file with Amnesty International.

The Prosecutor's Office, after conducting an investigation, concluded that the 16-year-old committed a crime under Article 257 of the Criminal Code ("incitement to hatred based on nationality") as under the picture he placed a comment that read "*Jordanów is pro-LGBT, down with the nationalists*". As a result, the Prosecutor took the case to the juvenile court.²⁸¹ The Ombudsman intervened in the case several times, stressing that the teenager had only made his voice heard in the public debate on the legal and social situation of LGBTI people, and that his actions - as he openly admitted - were a peaceful reaction to the adoption of the "Stop LGBT" Resolution, adopted by the nearby rural municipality of Jordanów with its seat in Jordanówon 30 May 2019.²⁸² The court ruled on 21 May 2020 that no criminal offence had been committed, having reviewed the Ombudsman's recommendations, and acquitted the teenager.²⁸³

The prosecution of the teenage activist is an exemplary illustration of how the right to freedom of expression is under threat in Poland under an atmosphere of hostility towards LGBTI people by state officials, municipalities, prosecutor's offices and law enforcement officers that are weaponizing the law against people daring to stand up for their rights and challenge a narrative that sees them as a threat to the nation .

"HOMOPHOBUSES": HATE ON WHEELS

"Homophobus" is a name given by LGBTI people to vehicles (vans) belonging to the "Pro-Life Foundation", a conservative organization promoting an agenda to restrict the rights of women and LGBTI people, that slander LGBTI people. "Homophobuses" have been seen since 2019 in various cities around the country, including in Gdańsk, Poznań, and Warsaw. The vans are well-recognized due to the anti-LGBTI slogans that are broadcast on city streets through a megaphone or written on a banner.²⁸⁴

Jacek, the president of the Tolerado organization, told Amnesty International: "We went to court and filed charges against these buses. But first we announced our intention at a press conference." And continued, explaining the differences in public response: "The presence of these vehicles in cities has angered many people. When [the buses] appeared in Gdansk, people spontaneously blocked them. For that, already in [nearby] Elblag, the organizers and creators of these vehicles held their own conference."²⁸⁵

"When we started this case, society was very critical about it. It was pointed out to us that this is an untrodden path," – he adds.

In February 2019, Tolerado, the association operating in Tri-City agglomeration for LGBTI people, brought a defamation lawsuit against the Pro-Life Foundation under Article 212 of the Criminal Code.²⁸⁶ In June

²⁸¹ Nevertheless, under the Polish law criminal responsibility is prescribed for persons 17 years of age and older, and only in exceptional cases - which do not include this incident - from the age of 15.

²⁸² Declaration No 1/19 of the Council of the Jordanów Commune of 30 May 2019 against the introduction of "LGBT" ideology into local communities, in file of Amnesty International. Example: "The Council of the Jordanów Commune expresses its strong opposition to the public actions aimed at promoting the ideology of LGBT movements whose goals question the fundamental rights and freedoms guaranteed by international law, challenge the values protected by the Polish Constitution and interfere with the social order. These actions are aimed at destroying values shaped by centuries of Christian heritage, especially important for the residents of the Jordanów Commune".

²⁸³ The Ombudsman's Office review of the case, 26 June 2020, bip.brpo.gov.pl/pl/content/autor-teczowej-przerobki-herbu-jordanowa-nie-zniewazyl-grupy-ludnosci.

²⁸⁴ Harmful and stigmatizing messages seen in "homophobuses" have included: "LGBT lobby wants to teach the children from 4 to 9 about masturbation", "Gay people live 20 years shorter", "Pedophilia is 20 times more common among homosexuals", "Over 70 percent of AIDS cases involve perderasts" and "Most of the children raised by lesbians and pederasts are molesters", among others.

²⁸⁵ Interview with "Maciej" (name changed for anonymity reasons) and Karolina by video call, 11 April 2022, Gdańsk/Warszawa/Kościerzyna.

²⁸⁶ Article 212 of Polish Criminal Code: "Whoever slanders another person, a group of people, an institution, a legal person or an organizational unit without legal personality of such conduct or properties, which may bring him/her into disrepute in public opinion or put him/her at risk of losing confidence necessary for a given position, profession or type of activity shall be subject to a fine or the penalty of restriction of liberty".

2020 the District Court in Gdansk dismissed the case, leading Tolerado to file a private lawsuit of defamation before Regional Court in Gdańsk and requesting security due to the threats he was facing. In Polish law defamation is prosecuted only by private individuals and the prosecutor can include the case in the prosecution ex officio only in the case of an important public interest. In addition, hate speech based on sexual orientation or gender identity is also not included in the catalogue of crimes in the Criminal Code.

On 26 September 2019, the Regional Court granted the motion for security, ordering the removal of homophobic banners and slogans from streets across the country and from the foundation's website. The court ruled that some of the slogans on the trucks had to be removed, including nude pictures, slurs about the lifespan of LGBTI people, and inferring a link between homosexuality and paedophilia. The court, however, did not ban the remaining slogans about an alleged "LGBT lobby" and children's sex education since it found no inaccuracies in these phrases and accepted them as true.

Tolerado appealed against the court's decision to allow the buses to retain slogans that depicted LGBTI people as a "LGBT lobby" wanting to provide sexual education to children 4 to 9 years old. In June 2020, the court again rejected their claim and, on 15 July 2020, the Regional Court in Gdańsk, in a closed session, dismissed Tolerado's suit.

On July 2020, the District Prosecutor's Office in Gdańsk Śródmieście filed an indictment against the driver of the "homophobus" for defamation of the LGBT community. However, the indictment was withdrawn three months later. The indictment, however, set an important precedent as it was the first time that a prosecutor responded to homophobic slogans advocating hatred on the basis of sexual orientation and gender identity that it was not directed at a specific person.

When these suits were lost, Margot and other activists decided to take direct action against these vehicles. As "Maciek" told Amnesty International, "She decided enough is enough."²⁸⁷ This action was what led to Margot's arrest and the subsequent protests of the Rainbow night on 7 August 2020.

Margot told Amnesty International:

"We tried to report it both before and after Tolerado got their verdict. Nothing worked, though we were reporting it as individuals". "Sometimes [those buses] rove by our house 10 times a day."²⁸⁸

Margot told Amnesty International how they decided to attack the vehicle as they saw it as the last resort after the lawsuit failed in court.

On 17 March 2022, the District Court in Gdańsk ruled in favour of Tolerado in the private criminal case in the first instance. The judge sentenced the driver of the homophobus to 20 hours of community service for six months and a 1000 EUR fine in the form of a contribution to help refugees from Ukraine. In the oral justification, the district judge stated that the social harm caused by the homophobus was high, and that its content was false and slanderous. On 22 March 2022, the Appeal Court in Poznań handed down another conviction on a separate civil suit against the driver of another homophobus. The court found that the homophobic claims painted on the Pro-Life Foundation's van were slander and defamation, and not scientifically proven facts.

"PROFANATION OF A MONUMENT"

Polish regulations on desecrating monuments and memorials remain very restrictive and vague. This, combined with the overzealousness of law enforcement agencies and the erosion of the rule of law, makes these regulations easy tools to use against LGBTI rights defenders. Amnesty International has documented

²⁸⁷ Interview with "Maciek" and Karolina by video call 11 April 2022, Warsaw/Gdańsk/Kościerzyna.

²⁸⁸ Interview with Margot, 19 April 2022, Warsaw.

such cases illustrating the overall dynamic, involving the instrumentalization of Article 261 of Criminal Code.²⁸⁹

On 3 August 2020, the Ombudsman formally approached the District Prosecutor in Warsaw asking about the status of an investigation undertaken against three activists who hung rainbow flags on monuments in Warsaw on the night of 28 to 29 July 2020,²⁹⁰ in reaction to what they called “internalised homophobic attitudes.”²⁹¹ The Prosecutor informed the Ombudsman that on 30 July 2020 he had initiated an investigation on grounds of profaning monuments and offending religious feelings.²⁹² The rainbow flags with symbols of the anarchist movement were placed at the monuments of pre-war general Józef Piłsudski, the Warsaw Mermaid, Nicolaus Copernicus and the statue of Christ at a landmark church in Warsaw.

In reaction to this peaceful action, Prime Minister Mateusz Morawiecki condemned the activists:

“This kind of vandalism does not lead to anything good and has one purpose - to further divide society. There will be no consent to the defilement of national and religious symbols in the name of any ideology and I will not allow it! In Poland, we will not make the mistakes of the West. We can all see what tolerance for barbarism leads to.”²⁹³

Deputy Minister of Defense echoed the sentiment: “I believe that for this type of action, one should not get a fine but at least one day in prison, in order to show that there is no consent in the Polish state for this type of action.”²⁹⁴ Even the mayor of Warsaw from the political opposition called the action an “unnecessary provocation”, even though he criticised the excessive response of the authorities.²⁹⁵

Margot, who was also one of the activists behind of this action said to Amnesty International:

„We made no secret of it. This was our sign of protest, as we do not agree with the violence that is the everyday reality of LGBTI people in Poland. We do it fully aware of the rights that we have been denied.”²⁹⁶

Margot was approached by an unmarked police car and was taken to the police station, where she spent the night. Another activist was detained the next day, while the police searched the apartment she was in at the moment of arrest.²⁹⁷ Margot was then charged both for this action and for attacking a driver of a van with homophobic slogans.²⁹⁸ The arrest of Margot and the other activist was widely condemned by international LGBTI organizations and the Council of Europe’s Commissioner for Human Rights.²⁹⁹ The Polish NGO Campaign Against Homophobia has explained that the reaction of various authorities was aimed at intimidating not just the activists who were charged, but all LGBTI activists who would dare to speak up and advocate for LGBTI rights.³⁰⁰

²⁸⁹ Poland, Criminal Code, Article 261, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-karny-16798683/art-261: “Whoever profanes a monument or other public place commemorating a historic event or honor a person shall be subject to a fine or the penalty of restriction of liberty”. The law makes no distinction between worthy and unworthy objects of commemoration.

²⁹⁰ [Notes From Poland](https://notesfrompoland.com/2020/07/31/polish-prosecutor-investigates-lgbt-activists-for-offending-religious-beliefs/), “Polish Prosecutor investigates LGBT activists for offending religious beliefs”, 31 July 2020, notesfrompoland.com/2020/07/31/polish-prosecutor-investigates-lgbt-activists-for-offending-religious-beliefs/

²⁹¹ [Notes From Poland](https://notesfrompoland.com/2020/08/06/lgbt-activists-detained-and-charged-in-poland-for-putting-rainbow-flags-on-statues/), “LGBT activists detained and charged”, 6 August 2020, notesfrompoland.com/2020/08/06/lgbt-activists-detained-and-charged-in-poland-for-putting-rainbow-flags-on-statues/

²⁹² Letter from the Warsaw District Prosecutor’s Office dated 14 August 2020 in response to a request from the Ombudsman’s office dated 3 August 2020.

²⁹³ The official account of Prime Minister Matusz Morawiecki, Facebook post, “Na świecie i w Polsce toczy się spór cywilizacyjny”, 8 August 2020, facebook.com/MorawieckiPL/photos/a.118659772811894/310037863674083/?type=3.

²⁹⁴ RMF24, “Marcin Ociepa: Za tęczową flagę na figurze Chrystusa co najmniej dzień więzienia”, 5 August 2020, rmf24.pl/news-marcin-ociepa-za-teczowa-flage-na-figurze-chrystusa-co-najmn,nld,4652110#crp_state=1

²⁹⁵ The official account of the Mayor of Warsaw Rafał Trzaskowski, Facebook post, “W przeddzień rocznicy Powstania Warszawskiego”, 31 July 2020, facebook.com/65335771090/posts/10158204481836091/

²⁹⁶ Interview with Tsu Tsu, 12 February 2022.

²⁹⁷ Interview with Tsu Tsu and Piotrek, 12 February 2022.

²⁹⁸ The details of the events presented in Chapter 4.

²⁹⁹ Official account of the Commissioner on Human Rights, Twitter post, 8 August 2020, twitter.com/commissionerhr/status/1292007235447656448: “I call for immediate release of LGBT activist Margot from detained yesterday for blocking an anti-LGBT hate van & putting rainbow flags on Warsaw monuments. Order to detain her for 2 months sends very chilling signal for #FreedomOfSpeech & #LGBT rights in #Poland”.

³⁰⁰ Official meeting with Campaign Against Homophobia, 7 April 2022.

In solidarity with Margot, many other LGBTI rights defenders began hanging rainbow flags on monuments in various Polish cities.³⁰¹ Two of them were Piotrek, aged 22, and Tsu Tsu, aged 24, who decided to express their opposition to the detention of LGBTI activists on 25 August 2020 in Warsaw.

Tsu Tsu told Amnesty International: “What we did first was to spread rainbow candles around the city. We were even planning to go under the Holy Cross Church, where Margot was arrested, but crowds of police were quite disheartening (...) Our final decision was to visit the monument of John Paul II.”

“I was the one responsible for hanging up the flag while Piotrek wrote *“God loves you the way you are”* with chalk on the sidewalk. Then one person came and told us that he is against how much we show ourselves. Not even a second later there was four police cars.”³⁰²

As the activists reported to Amnesty International, most police officers refused to identify themselves and did not confirm the legal basis for their detention, stating that it would be given at the police station at Wilcza Street.

Tsu Tsu then explained: “I knew Article 244³⁰³ beforehand; I just didn't get any information of the legal basis for our detention... Six or eight police officers were around us, they took our backpacks and I suppose decided there was no point in handcuffing us.”³⁰⁴ According to Tsu Tsu, one police officer threw her phone into the street to stop the recording. Amnesty International has been able to see the video recorded of the events that confirms the behaviour of the police.³⁰⁵ Tsu Tsu and Piotrek were taken to the police station at 1.30 am. They were kept in handcuffs for part of this time and recalled that they were not allowed to contact their lawyer. Tsu Tsu told Amnesty International that they had the general number to the legal collective The Pin, but not of a specific lawyer.³⁰⁶ Due to irregularities in their detention, the activists refused to sign the police protocol with the charges of profaning a monument.³⁰⁷

“They told us that our procedure will be accelerated.”³⁰⁸

Both activists have further reported degrading treatment from police officers, especially during the personal search, including acts of verbal abuse, transphobic comments towards one of them and homophobic ones towards the other.³⁰⁹

“They brought Piotrek to tears and asked me what it means that he is a transman, if he is a girl, a boy, or a freak. Then they asked me if *at least* I am a girl. I confirmed, just for the sake of my sanity.”³¹⁰

Tsu Tsu was released from detention at 10.30 am the next day, a few hours after Piotrek. After the preliminary legal proceedings, they were informed on 29 September 2020 of the discontinuation of the investigation.³¹¹ The District Court, in a decision dated 2 February 2021, held that their detention was unlawful, unjustified and incorrect and the use of the handcuffs at the police station was unnecessary. Nevertheless, on 16 April 2021, following the individual notification of insulting religious feelings, the District

³⁰¹ Among others, Wawel Dragon in Cracow, where six people were identified by the police and one charged by the police for disturbing the public order. The investigation was discontinued due to the low-level offense.

³⁰² Interview with Tsu Tsu, 12 February 2022, Warsaw.

³⁰³ Poland, Code of Criminal Procedure, Article 244, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-postepowania-karnego-16798685/art-244: “The police have the right to detain a suspected person if there is a reasonable suspicion that he or she has committed an offence and there is a fear of that person fleeing or hiding or that traces of the offence may be obliterated, or that person's identity cannot be established, or that there are grounds for conducting accelerated proceedings against that person”.

³⁰⁴ Interview with Tsu Tsu, 18 March 2022, Warsaw.

³⁰⁵ The audio recording on file with Amnesty International. Well-recorded excerpts of the conversation between officers and activists support the version that not all elements of the arrest procedure were completed. The recording was evidence in the case.

³⁰⁶ Interview with Tsu Tsu, 18 March 2022, Warsaw.

³⁰⁷ Poland, Criminal Code, Article 261, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-karny-16798683/art-261: “Whoever insults a monument or other public place arranged to commemorate a historical event or to honor a person, shall be subject to a fine or the penalty of restriction of liberty”

³⁰⁸ Interview with Tsu Tsu, 18 March 2022, Warsaw.

³⁰⁹ The activists reported also the degrading comments on the issue of the “proclaimed equality in marriage of LGBTI people in Poland”. The behavior of the police officers was constituted one of the bases for the remedy and legal documentation from the case was made available to Amnesty International.

³¹⁰ Interview with Tsu Tsu on 12 February 2022 in Warsaw, confirmed with the legal request for the remedy and the legal representative of both activists.

³¹¹ Due to the legal documentation made available to Amnesty International.

Prosecutor's Office for Warsaw Śródmieście Północ decided to appoint a court expert on religious studies to determine whether the rainbow flag and the chalk inscription could be of an insulting character, yet the expert established the contrary.³¹² The quote selected by the activists was a direct reference to Pope Francis' 2018 words to Juan Carlos Cruz, gay man from Chile, who was the victim of sexual abuse by a priest.³¹³ Both activists received their requested compensation in mid-2022, despite the prosecution's efforts to reduce it to the bare minimum.³¹⁴

Amnesty International has documented at least six other cases of activists charged for hanging the rainbow flag or writing a slogan advocating for LGBTI rights in public spaces. In all of these cases, law enforcement agencies reacted immediately by opening a lengthy and exhausting criminal investigation. For most of the activists, the investigation overlapped with other proceedings they were already facing, which often led to the inevitable decrease in their activism. In one case, a person was given police supervision in connection to the allegations against him.

Linus told to Amnesty International that they were approached by the police solely for taking a photo of a rainbow flag hanging from the monument of Maria Konopnicka in Suwałki on 27 November 2021:

“The police officers checked our IDs, as they were clearly trying to find a legal basis to charge us with whatever goes, either for vandalizing the monument or for violating Covid-19 laws. We were five people standing 1.5 metres from each other. The very next day, police arrived at the home of a 15-year-old who was also there and began threatening him with probation and court.”³¹⁵

Linus recalled that the legal basis for the charges they were facing was changed a few times, from profaning a monument to violating Covid-19 restrictions. According to Linus, when the activists informed police officers that just before their arrival they were reportedly assaulted by a group of people, police took no action.³¹⁶ Ultimately, the group of activists were charged for failing to comply with Covid-19 restrictions with a penalty order, yet their case was later cancelled by the Regional Court in Suwałki on 15 February 2022.³¹⁷

The response of the police to LGBTI activism raises serious concerns over their motivation. The cases documented by Amnesty International clearly reflect the way in which the law is being instrumentalized to unduly restrict the right to freedom of expression with considerable premeditation of the law enforcement officials.

The Ombudsman criticised the response of law enforcement agencies and other authorities against activists hanging rainbow flags. On 5 August 2020, the Ombudsman stated that this may be an attempt "to provoke a specific effect: fear. A sign of the power of the state, which will treat every manifestation of unruly thinking or acting in this exact way."³¹⁸

Amnesty International has strongly and continuously opposed the discriminatory application and interpretation of the Polish Criminal Code or the Act on Protection of Historical Monuments, as it leads to the suppression of the right to freedom of expression and aims to silence LGBTI activists.³¹⁹ It also entails violation of both international human rights law and Articles 30 and 54 of the Polish Constitution, which protect the right to freedom of expression.

³¹² On file with Amnesty International.

³¹³ BBC, *Pope Francis tells gay Chilean sex abuse victim 'God loves you'*, 22 May 2018, [bbc.com/news/world-latin-america-44215996](https://www.bbc.com/news/world-latin-america-44215996).

³¹⁴ According to the legal documentation on file with Amnesty International.

³¹⁵ Interview with Linus, 13 April 2022, Warsaw.

³¹⁶ Interview with Linus, 13 April 2022, Warsaw.

³¹⁷ Legal documentation made available to Amnesty International. Amnesty International has repeatedly called the Polish authorities not to impose the undue restrictions on the rights to freedom of expression and peaceful assembly, after the reported cases of the instrumental use of COVID restrictions, implemented in unlawful way, against the activists and participants of the protests. See more: Public statement of Amnesty International, Poland: COVID-19 is no excuse to crack down on protests, 29 May 2020, ([EUR 37/2421/2020](https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR3724212020ENGLISH.pdf)), [amnesty.org/en/wp-content/uploads/2021/05/EUR3724212020ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR3724212020ENGLISH.pdf).

³¹⁸ TVN24, *Tęczowe flagi na pomnikach. Zarzuty dla aktywistów*, 5 August 2020, [fakty.tvn24.pl/ogladaj-online/60/teczowe-flagi-na-pomnikach-zarzuty-dla-aktywistow,1025481.html](https://www.fakty.tvn24.pl/ogladaj-online/60/teczowe-flagi-na-pomnikach-zarzuty-dla-aktywistow,1025481.html).

³¹⁹ See more on application and interpretation of law against LGBTI people, for example: Amnesty International, *Not an illness, nor a crime. LGBT people in Turkey demand equality*, June 2011, ([EUR 44/001/2011](https://www.amnesty.org/en/documents/eur44/001/2011/en/)), [amnesty.org/en/documents/eur44/001/2011/en/](https://www.amnesty.org/en/documents/eur44/001/2011/en/).

MARTA: CHARGED FOR WRITING ON THE WALL

On the night of 29 to 30 September 2020, the 30-year-old activist and co-founder of a network of legal aid for activists, Marta, spray-painted „My child LGBT+” on the facade of the Ministry of Education with the names of LGBTI children and teenagers who committed suicide after acts of homophobia and violence were directed towards them. On 8 October 2020, police officers visited her at 6 am with a warrant for her arrest and a search of her apartment.

“It was a clear idea, as I got really exhausted observing this cynical game our authorities play against LGBTI kids. And it hits harder, when you are young. Sometimes there is no way back, right?” – she explained.³²⁰

During the court proceedings, which were monitored virtually by Amnesty International, Marta explained: „I did this the same day I learned about the suicide of 12-year-old Zuzia from Kozenice, who was bullied and harassed at school – and that was the reason I did it”.³²¹ Marta also mentioned to Amnesty that police officers stripped her, took her fingerprints, samples of her DNA, and photos of her tattoos. At the District Attorney’s Office at Wilcza Street in Warsaw, she refused to testify and pleaded not guilty, after being detained for 48 hours.³²² The Minister of Education called the activist “barbarians and idiots” in a press conference, and expressed hope that the act would provoke widespread outrage among society.³²³

The Prosecutor’s Office filed charges against Marta for damaging a monument,³²⁴ which punishable with imprisonment from 9 months to 8 years. The Prosecutor has further claimed that the motives behind the activists’ actions aggravate the offence and are a blatant disregard for public order. The Prosecutor ordered preventive measures in the form of police supervision twice a week and set bail set at over 2200 Euros, which was then repealed by the District Court on 1 December 2020. In March 2022, the District Court lowered the classification of the charges to Article 63 of the Code of Petty Offenses, after reviewing the methods of removing the inscriptions.³²⁵

“OFFENDING RELIGIOUS BELIEFS”

The use of blasphemy laws is contrary to the right to freedom of expression under international human rights law, and it continues to pose a threat to LGBTI rights defenders who have been criminalized simply for expressing their views or criticising religious leaders. Amnesty International has documented not only how blasphemy laws are misused to protect abstract religious concepts and the sensibilities of its adherents, but they have also exposed individuals to smear campaigns, and depleted many activists of their time and scarce resources through exhausting and costly litigation.

The Polish Constitutional Tribunal has ruled that Article 196 of the Criminal Code on offending religious beliefs is in line with the Constitution and the European Convention on Human Rights.³²⁶ In recent years, this Article has been interpreted and particularly weaponized against LGBTI activists, evoking expressions of serious concern not only by Amnesty International,³²⁷ but also by other civil society organizations like Article

³²⁰ Interview with Marta, 26 January 2022, Warsaw.

³²¹ OKO.press, “Pisała na ścianie o samobójstwach dzieci LGBT”, 6 December 2022, oko.press/pisala-na-scianie-men-o-samobojstwach-dzieci-lgbt-proces-marty-puczynskiej/.

³²² By the decision from 1 December 2020 of the District Court Warszawa Śródmieście, established to be unfounded.

³²³ Pink News, “Names of LGBT+ teens bullied into suicide painted on the walls of Poland’s Ministry of Education to send a powerful message”, 1 October 2020, pinknews.co.uk/2020/10/01/poland-ministry-education-lgbt-teens-bullied-suicide-names-spray-painted-dariusz-piontkowski/.

³²⁴ Poland, Act on Protection of the Historical Monuments, Article 108, sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/ochrona-zabytkow-i-opieka-nad-zabytkami-17051617/art-108

³²⁵ Confirmed with the legal representative of the activist.

³²⁶ Kulesza, J and Kulesza, A., *Blasphemy Law in Poland*. *Blasphemy and Freedom of Expression*, 2017, Cambridge University Press. pp. 411–428.

³²⁷ Amnesty International, “Urgent Action on Ela, Anna and Joanna, Activist arrested in Poland and house raided after Amnesty International meeting”, 6 May 2019, amnestyusa.org/press-releases/activist-arrested-in-poland-and-house-raided-after-amnesty-international-meeting/ **“THEY TREATED US LIKE CRIMINALS”**

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

19 or Human Rights Watch.³²⁸ Based on data provided by the Polish National Police, there has been a marked rise from 2016 to 2020 in the number of criminal proceedings under this offence. According to the data, we have seen an increase in both measures since 2016 (54 to 46), with a clear peak in 2020 (130 to 97).³²⁹

The Human Rights Institute of the International Bar Association has previously raised concerns that the offence remains in conflict with Article 19 of International Covenant on Civil and Political Rights and Article 10 of European Convention on Human Rights and fuels the flagrant disregard for the principles of tolerance, equality and dignity towards LGBTI people in Poland.³³⁰

Attorney Marcin Pawelec-Jakowiecki, who represents many activists charged under Article 196, told Amnesty International:

“There is not the slightest doubt that in recent years we have faced a strategic abuse of this particular article, as it has a chilling effect on activism of LGBTI rights defenders that is intended to be permanent.”³³¹

Michał, a 24-year old student who held the image of the Virgin Mary with the rainbow halo during the Equality March in Częstochowa in 2019, was charged under article 196 in 16 June 2019. This makeshift art installation infuriated counter-demonstrators and, as a result, led to criminal charges against him, even if he was not the author of the image.

“During that march, the aggression against us was beyond my understanding.” Michał said to Amnesty International, explaining how counter-demonstrators attacked the image with stones and temporarily blocked the route of the demonstration.

“I was not the only person carrying the image at the time, nor even the organizer of the March, but later I became the scapegoat. And I don't know how much those who accused me are simply homophobic and how much they just treat it as an instrument to achieve their goal.”³³²

Following complaints by some counter-demonstrators that their religious feelings were insulted, the District Attorney's Office in Częstochowa Północ opened an investigation against Michał. The investigation was later discontinued in October 2019 due to lack of statutory features of the prohibited act. In late October, however, following political pressure, the District Attorney's Office decided to reopen the case.³³³ On 15 March 2022, three years after the case began, the district court in Częstochowa upheld the district court's September 2021 decision to dismiss the case.

As a result, police officials actively looked for people who could file a complaint of offence against their religious feelings. Information with a brief description of the investigation on the events of 19 June 2019 was then posted at the official website of the City Police Station, indicating that the rainbow halo on the image of the Virgin Mary is a symbol of LGBT people, and announced that “persons whose religious feelings were offended on that day are asked to contact the Criminal Department of the City Police Station in Częstochowa”.³³⁴ The police message was a clear sign of political interest of some authorities to pursue this particular case. More than 30 individuals filed complaints, among them people who were not in Częstochowa

³²⁸ Article 19, *Poland: Blasphemy conviction of pop star violates free expression*, 9 April 2018, [article19.org/resources/poland-blasphemy-conviction-pop-star-violates-free-expression/](https://www.article19.org/resources/poland-blasphemy-conviction-pop-star-violates-free-expression/); Human Rights Watch, *Poland: Arrest Over Virgin Mary's Rainbow Halo*, 8 May 2019, [hrw.org/news/2019/05/08/poland-arrest-over-virgin-marys-rainbow-halo](https://www.hrw.org/news/2019/05/08/poland-arrest-over-virgin-marys-rainbow-halo).

³²⁹ National Police, *Initiated Proceedings and Ascertained Crimes for Article 196 for 1999-2000*, statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63492.Obraza-uczuc-religiinych-art-196.html

³³⁰ International Bar Association, “IBAHRI condemns LGBTIQ+ rights crackdown in Poland”, 14 August 2020. ibanet.org/article/Oce7ba4e-9a8f-48df-89d0-3a4e730047dc.

³³¹ Interview with Marcin Pawelec-Jakowiecki, 13 January 2022, Warsaw.

³³² Interview by video call with Michał, 31 March 2022, Warsaw.

³³³ Piotr Wróblewski from District Attorney, Office in Częstochowa in Częstochowa. *Nasze Miasto*, “Prokuratura otrzymała doniesienia w sprawie Marszu Równości”, 25 August 2021, czestochowa.naszemiasto.pl/prokuratura-otrzymala-doniesienia-w-sprawie-marszu-rownosci/ar/c1-8424905 : „The prosecutor concluded that the decision to discontinue the proceedings was premature and the evidence needed to be supplemented in order to clearly determine the meaning of the rainbow symbol”.

³³⁴ The photocopy of the announcement on file with Amnesty International. Not available at the City Police Station's website at the moment of writing the report.

during the Equality March but that nonetheless became supporting plaintiffs in the case.³³⁵ Out of those 30 individuals, six were not even present at the Equality March itself, yet responded to the police's request and filed a complaint.

The case was then reopened and a court expert was appointed to determine whether placing a rainbow next to the image of the Virgin Mary was an offence against religious feelings. The court expert was a sociolinguist, and in an opinion of over 40 pages, determined that: "in the opinion of the believers, painting a rainbow instead of a halo (the symbol of holiness) is not an interference in the artistic concept, but an interference in the divine figure itself, an insult to the divine figure."³³⁶

In Michał's opinion,

"The expert stated that because this is a rainbow with no indigo in it, it is an LGBT rainbow and therefore an insult to religious feelings."³³⁷

On 24 September 2021, the District Court in Częstochowa decided to close the case highlighting how initiating such cases leads directly to discrimination of "people like Michał."³³⁸ The Prosecution's Office appealed to the District Court's decision, yet on 15 March 2021 the court upheld the previous decision. In the court's opinion, it could not be assumed that the defendant's conduct was intentional and its purpose was to offend religious feelings.

According to the ruling, "Religious believers may voice objections in connection with the interference with an image that is an object of religious worship, but this is not automatically construed as insulting if the defendant's conduct consisted only of holding the image. The court did not find in the defendant's conduct any insult to religious feelings. He participated in a march that promoted ideas of equality, non-discrimination and, consequently, love and respect for others."³³⁹

Michał told Amnesty International he decided to retreat from activism because two years of legal proceedings, smear campaigns in public TV and political spots and "a vicious determination of media and state actors to harass him," had a severe effect on his well-being.³⁴⁰

"To be honest, the Attorney General could drag this out for two more years. This case is unmeritorious and made just for publicity," Michał concludes.³⁴¹

According to Polish law, the General Prosecutor has the right to extraordinarily appeal a court's decision, introduced into the Polish legal order in April 2018 with the entry into force of the new Act on the Supreme Court of 8 December 2017. Amnesty International has documented how the General Prosecutor's Office has abused the extraordinary appeal to resume cases against LGBTI defenders, such as in a landmark verdict on a case of protection against discrimination of trans people³⁴² or against a 21-year-old student from Poznań, against whom the court had previously awarded a remedy for wrongful detention, after he was arrested during protests advocating for sexual and reproductive rights.³⁴³ Representatives of NGOs and legal

³³⁵ According to both testimonies and: Gazeta Wyborcza, "Sąd w Częstochowie ws obrazu tęczowej Matki Boskiej na Marszu", 15 March 2022, [czestochowa.wyborcza.pl/czestochowa/7,48725,28225053,sad-w-czestochowie-ws-obrazu-teczowej-matki-boskiej-na-marszu.html](https://www.wyborcza.pl/czestochowa/7,48725,28225053,sad-w-czestochowie-ws-obrazu-teczowej-matki-boskiej-na-marszu.html)

³³⁶ The court's expert opinion from the hearing on 11 August 2021

³³⁷ Interview with Michał, 31 March 2022, Warsaw.

³³⁸ Grounds of reasoning of the District Court in Częstochowa on file with Amnesty International.

³³⁹ On file with Amnesty International.

³⁴⁰ Interview with Michał, 31 March 2022, Warsaw.

³⁴¹ Interview with Michał, 31 March 2022, Warsaw.

³⁴² The case of the transwoman who brought an action - and won in District Court of Warszawa on 29 September 2020 - for violation of the principle of equal treatment against the security company where she was employed on a civil law contract. Despite the fact that the woman was in the process of gender correction (change of sex designation in documents) and socially functioned as Joanna, she was forced to work in a male uniform and use a male name on a badge, in - as reported the Ombudsman - the humiliating conditions. The Attorney General Zbigniew Ziobro has filed the extraordinary appeal in April 2021, stating that "that was an example of a misunderstanding in recruitment, not discriminatory behavior". The European Commission has been informed of the case, Amnesty International has interviewed the legal representatives of a woman. OKO.press, "Nowa idea Ministra Ziobry. Walczy o prawo do dyskryminacji osób transpłciowych", 2 July 2021, oko.press/nowa-idea-ministra-ziobry-walczy-o-prawo-do-dyskryminacji-osob-transpłciowych-zlozyl-skarge/

³⁴³ Gazeta Wyborcza, "Zbigniew Ziobro uwziął się na studenta z Poznania", 22 April 2022, [poznan.wyborcza.pl/poznan/7,36001,28356972,zbigniew-ziobro-uwzial-sie-na-studenta-z-poznania-chce-obalic.html](https://www.wyborcza.pl/poznan/7,36001,28356972,zbigniew-ziobro-uwzial-sie-na-studenta-z-poznania-chce-obalic.html)

representatives of LGBTI rights defenders have repeatedly stressed that extraordinary appeal used by Attorney General is an the ultimate means to intimidate activists, used to reopen cases with verdicts favourable to civil society.³⁴⁴

In April 2022, the Deputy Minister of Justice Marcin Warchoń announced the government's intention to amend the offence against religious feelings so that the right to profess a religion is even more strongly protected, resulting in a precise classification of the offences.³⁴⁵ Given the current context, this proposed amendment may pose a risk that this particular article would be used to silence the human rights defenders with even greater frequency and damage.

Ela, Anna and Joanna: dragged through the courts for a Rainbow Halo

In March 2021, Elżbieta, Anna and Joanna were acquitted after spending months on trial accused of offending religious beliefs, simply for distributing posters of the Virgin Mary with a rainbow halo, the colours of the LGBTI pride flag. Their case, closely monitored by Amnesty International, got international attention and support from all over the world.

On 29 April 2019, Elżbieta, Anna and Joanna pasted posters of the Virgin Mary with the rainbow halo in the cities of Płock and Jabłonna in solidarity with LGBTI people and in reaction to a homophobic installation by the local representative of the Catholic Church in Płock. Following their peaceful action, the apartment of Elżbieta was searched by police officials in the early morning of 6 May 2019. The previous day, she came back from a visit to Amnesty International Netherlands, and her laptop and mobile phone were confiscated.

In July 2020, the three activists were accused by a far-right activist of publicly insulting an object of religious worship through the use of this image, which offended the religious feelings of others under Article 196 of the Criminal Code.

“It was just terrifying, as we were treated as criminals from the very beginning,” recalled Anna.³⁴⁶ “The first hearing was a horrifying experience, as the charges were interspersed with drastically homophobic argumentation, equalizing LGBTI people with deviants.”

A first hearing in the case was scheduled for 13 January 2021 in the town of Płock. On 3 March 2021, all three activists were acquitted by the court of Płock and the costs of the proceedings allocated to the state. The case garnered unprecedented attention from representatives of Catholic Church and international human rights organizations, including Amnesty International, ILGA-Europe, Frontline Defenders and Human Rights Watch.

The former pastor of St. Dominic's Church in Płock, the parish where the stickers were posted, and the far-right activist who originated the complaint appealed against the acquittal. State representatives also condemned the activists publicly: In May 2019, deputy Minister of Justice Michał Wójcik declared on public television that the image is under “particular protection” and claimed that there is no doubt of the evidence of crime.³⁴⁷ Polish Minister of Interior Joachim Brudziński praised their arrest, condemning the activists for “the desecration of the image of Our Lady, which has been considered sacred by Poles for centuries.”³⁴⁸

³⁴⁴ Official meeting with Campaign Against Homophobia and in words of four separate legal representatives Amnesty International has met with.

³⁴⁵ eKAI, “Obraża uczuć religijnych będzie karana według nowych przepisów”, 11 April 2022, ekai.pl/uczucia-religijne-beda-chronione-wedlug-nowych-zasad/

³⁴⁶ Interview with Anna, January 2022, Warsaw.

³⁴⁷ Polsat News, *Obraz Matki Boskiej podlega szczególnej ochronie*, 7 May 2019, polsatnews.pl/wiadomosc/2019-05-07/wojcik-obraz-matki-boskiej-podlega-szczegolnej-ochronie/

³⁴⁸ Balkan Insight, “Save the children”, 26 June 2019: balkaninsight.com/2019/06/26/save-the-children/

Joanna told Amnesty International: “The whole process was, of course, unimaginably draining, but paradoxically also very empowering. LGBTI people, who we aimed to support, at the end supported us back all the way.”³⁴⁹

Amnesty International monitored and actively engaged in the activists’ proceedings. On 11 January 2022, after postponing the final hearing twice in the second instance due to the absence of the accusers, by the final verdict of the District Court in Płock, all three activists were acquitted of the charges they faced.³⁵⁰ In the reasoning, the judge emphasized that the Catholic Church is not immune to public debate, and therefore cannot avoid it by penalizing the voices of peaceful criticism.³⁵¹

“It is crucial to keep in mind that the goal of the accusers was not to win in court, but to effectively intimidate Ela, Anna and Joanna, as well as those activists who would eventually commit to act on behalf of LGBTI rights defenders in future” – commented Karolina Gierdal, the legal representative of the activists.³⁵²

CONCLUSIONS

LGBTI rights defenders in Poland face particular risks and hostility from politicians, law enforcement officials, religious leaders and the media. Peaceful activism to defend the rights of LGBTI people and expose the violence and discrimination they face in their daily lives, like hanging the rainbow flags or chalk writings on the sidewalk, are constantly met with all the tenacity of the state apparatus, while the activists are treated like criminals and dragged through the courts in an attempt to silence and intimidate them.

Embroiled in years of costly litigation, Amnesty International has documented how human rights defenders are effectively discouraged from further engaging in activism and raising legitimate concerns that the authorities should be paying attention to. Instead, activists continue to be disparaged and ostracised, fuelled by government-friendly circles and media that promote smear campaigns against them.

³⁴⁹ Interview with Joanna, 7 April 2022, Warsaw, online.

³⁵⁰ Amnesty International, “Poland: Verdict in prosecution of women who put up posters of Virgin Mary with rainbow halo expected”, 11 January 2022, [amnesty.org/en/latest/news/2022/01/poland-verdict-in-prosecution-of-women-who-put-up-posters-of-virgin-mary-with-rainbow-halo-expected/](https://www.amnesty.org/en/latest/news/2022/01/poland-verdict-in-prosecution-of-women-who-put-up-posters-of-virgin-mary-with-rainbow-halo-expected/)

³⁵¹ Documentation from the court monitoring on file with Amnesty International.

³⁵² Interview with Joanna, 7 April 2022, Warsaw.

4. CHILLING EFFECT ON LGBTI RIGHTS DEFENDERS

“Until 7 August, 2020, I had a lot of trust and faith in the state and that it would protect us. I wanted to work for such state. Because of what I saw and experienced myself during Rainbow Night, I have to say that I have lost that faith and willingness.”

“Artur”³⁵³

The rights of human rights defenders and the obligation of states to ensure they can carry out their work in a safe and enabling environment are set out in international human rights law.³⁵⁴ However, in Poland, human rights defenders have seen essential protections eroded and the criminal justice system used to hinder their work. LGBTI rights defenders have been subjected to harassment through the misuse of the justice system, the financial burden of the legal proceedings, and other sanctions and physical or verbal attacks, which have had a chilling effect on their work and a negative impact on their health and well-being.

In conversations with Amnesty International, LGBTI rights defenders have emphasized that they are facing unprecedented risks and relentless harassment, including through unfounded judicial proceedings.³⁵⁵

Amnesty International recognizes the need to investigate further the various forms in which LGBTI activists are targeted and harassed through the misuse of the justice system, which bear clear hallmarks of abusive

³⁵³ Interview by video call with “Artur” (asked for anonymity), 28 June 2022.

³⁵⁴ UN Declaration on human rights defenders of 1998 (A/RES/53/144), Helsinki Final Act of 1975, Document of the Copenhagen Meeting on the Human Dimension of the CSCE of 1990, EU Guidelines on Human Rights Defenders of 2008, OSCE Guidelines on the Protection of Human Rights Defenders of 2014, to name few.

³⁵⁵ Strategic Lawsuit(s) Against Public Participation.

“THEY TREATED US LIKE CRIMINALS”
FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

litigation against public participation (SLAPPs).³⁵⁶ SLAPP suits are legal cases brought with the intention of silencing or intimidating public participation, often targeting journalists, human rights defenders, civil society organizations or academics with the aim of silencing them and deterring other critical voices. Such vexatious suits are often characterized by high legal costs and disproportionate claims for remedies, and are not necessarily aimed at protecting the honour or reputation of an individual or a corporation, but rather to intimidate, tire and deplete the financial and psychological resources of their target. All too often, claimants are not even seeking to win damages but rather to extend the proceedings indefinitely to delegitimise and tire the defendant. In a sense, the process becomes the punishment they seek.³⁵⁷

4.1 MISUSE OF THE CRIMINAL JUSTICE SYSTEM

The misuse of the judicial system to hinder and silence human rights defenders has had a negative impact on human rights in Poland, diverting time, energy and resources away from crucial work to defend and promote human rights and towards defending oneself. This harassment has taken the form of criminal charges, civil claims, administrative proceedings and constitutional actions against human rights defenders, including LGBTI activists.

Filip's representatives, who defended him from criminal charges of public riot brought after the Rainbow Night, described to Amnesty International the various legal loopholes that those intended to silence LGBTI activists are using to extend the proceedings indefinitely and leave them in limbo for years.

“Whenever the new evidence or a witness would appear, the case could be reopened. It is practically an axe hanging over your head” – concludes one of the attorneys.³⁵⁸

Joanna, one of three activists acquitted in March 2022 following an appeal against the criminal charges of offending religious beliefs for placing rainbow halo on an image of Virgin Mary, told Amnesty International:

“What is happening right now in Poland is deadly serious. What happens at these hearings and in between, against the odds, is serious as well... The driving force behind these lawsuits were Ordo Iuris and Kaja Godek, who came to Plock the day after our action, publicized the case and called Minister Budzinski.”³⁵⁹

Despite a final verdict of the District Court in Plock that acquitted the three activists, their ordeal is still not over. Joanna explained:

“And of course, the case is still not closed, because our prosecutors have already filed motions with the Court of Cassation, and the court has one year to resolve them before the judgment becomes final. And even then, there is still the extraordinary complaint of the Prosecutor General... Our case has been political from the beginning, so they will do whatever is needed to convict us.”

Anna explained to Amnesty International her motivations to continue raising her voice to demand dignity for LGBTI people in Poland, using the term intersectional activism or intersectional solidarity. In addition to the charges of insulting religious feelings, Anna was simultaneously subjected to numerous other proceedings that she explained are “a result of living in Poland and not being indifferent to injustice.”³⁶⁰

³⁵⁶ Strategic Lawsuit Against Public Participation. Penelope Canan and George William Pring, *SLAPPs: Getting Sued for Speaking Out*, January 1996.

³⁵⁷ In April 2022 the European Commission presented a Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”). The Proposal complements and is fully in line with the Strategy to strengthen the application of the Charter of Fundamental Rights of the EU, adopted on 2 December 2020. Source: European Commission, Proposal for a Directive (...), 27 April 2022, Brussels. (COM(2022) 177 final 2022/0117 (COD))

³⁵⁸ Interview by video call with Agnieszka, 22 April 2022.

³⁵⁹ Interview by video call with Joanna, 18 April 2022.

³⁶⁰ Interview with Anna, 12 January 2022, Warsaw.

“It’s not just women who are at risk, and it’s not just the courts who are at risk, and it’s not just gays who are at risk. In fact, all groups are at risk, so they have learned to support each other and help each other. We wouldn’t be able to do it otherwise.”³⁶¹

Amnesty International documented the existence of various official and unofficial support networks - including in the form of free legal aid - offered to activists facing criminal charges.³⁶² In the absence of state protection and facing the piling up charges, some activists are forced to work with more than one legal representative. Four of the LGBTI rights defenders Amnesty International has interviewed confirmed having more than five pending cases, all started after 2016. Many have lost track of the number of cases they face.

Katarzyna, called 'Grandma Kasia' by many activists, told Amnesty International: "I am 65 years old and currently have 54 cases. For me, the message associated with rainbow people is very important. Now, for example, I stood with a cardboard on Visibility Day."³⁶³ Katarzyna explained to Amnesty International:

“I expect normality; the normality of the law towards minorities... And I agree, I am quite busy with so many cases, but my lawyer is an angel. What can I do if in Poland even for a sticker there is a court case, when that sticker is in rainbow colours?”³⁶⁴

Most of Katarzyna’s cases are misdemeanors for pasting stickers in public spaces, blocking vehicles with offensive slogans, or failing to obey police orders. She explains that she started her activism five years ago.

Linus, who at the time of writing has faced charges in 23 different cases since 7 August 2020, admits the whole process is extremely draining.

“What frustrates me is that I have to think about it all the time. I am practically sending objections all the time. Formally, it’s very onerous. A letter comes to me from Łódź, at the same time I have something in Warsaw, so I have to explain myself right away.”³⁶⁵

Amnesty International has also spoken to activists who say the biggest problem is the cumbersome and artificially prolonged court proceedings. Kuba, who is one of four activists responsible for creating the Atlas of Hate,³⁶⁶ has currently seven simultaneous cases for defamation and protection of personal property in six different counties and one municipality.³⁶⁷ He admitted to Amnesty International that preparing for the trials had made him almost give up organizing the Equality March in Rzeszów.³⁶⁸ Kuba explained that all the documents from different regions of Poland with charges are similar to the point of self-plagiarism, which confirmed an analysis by Amnesty International that suggests certain sort of coordination from anti-LGBTI activists and authorities. Amnesty International has repeatedly recognized that the misuse of the criminal justice system to target and harass human rights defenders as a persistent threat around the world, which has a chilling effect on activists who are dragged through various legal proceedings for years.. The UN Human Rights Council has called upon states to ensure that the promotion and protection of human rights is not criminalized.³⁶⁹

BART: TARGETED FOR THE PEACEFUL ACTIVISM AGAINST “LGBTI-FREE ZONES”

³⁶¹ Interview with Anna, 12 January 2022, Warsaw.

³⁶² One of them is Szpila (“The Pin”), co-created by Marta, with whom Amnesty International talked. Szpila functions as an “one-call away antirepression system” and has its own block of associated legal representatives *pro bono* assigned for LGBTI-related cases. Amnesty International has interviewed over 10 lawyers who had at least one client through Szpila.

³⁶³ Interview with Katarzyna, 7 April 2022, Warsaw.

³⁶⁴ Interview with Katarzyna, 7 April 2022, Warsaw.

³⁶⁵ Interview with Linus, 13 April 2022, Warsaw.

³⁶⁶ Official website of Atlas of Hate: atlasnienawisci.pl/

³⁶⁷ On file with Amnesty International.

³⁶⁸ Interview by correspondence with Kuba, 22 April 2022.

³⁶⁹ Budapest 1994. Decisions: VIII. Human dimension”, para. 37.

In February 2019, Warsaw's liberal mayor Rafał Trzaskowski signed a declaration supporting LGBTI rights and announced his intention to follow World Health Organization guidelines and integrate LGBTI issues into the Warsaw school system sex education curricula, which was met with strong opposition from the ruling Law and Justice party and galvanized the public opinion of the conservative circles.

Local governments responded with discriminatory resolutions which declared their territories to be zones free from "LGBT ideology". Bart, aged 31, began the self-funded project of photographing himself with road signs and superimposed stickers of his own design with the words "LGBTI-free zone" next to territorial unit boundaries.³⁷⁰

"My action was an art installation and I guess I didn't expect it to upset everyone so much. But I only showed what the commune authorities themselves decided, I gave it a "face". Municipalities initially had no problem saying they were "anti-LGBT" instead of "against LGBT ideology". It was only the threat of sanctions from the European Union and the spectre of losing cooperation with foreign cities and investors that made them deflate."³⁷¹

The project itself gained international recognition, and the photos were published by representatives of the European Parliament, along with criticisms of the resolutions.

The Bastion of the Good Name Foundation, which regularly sides with the ruling Law and Justice party and specializes in defamation lawsuits,³⁷² announced on 22 September 2020 that with its financial and legal support, the Zakrzówek municipality located in the Lubelskie province in eastern Poland will file a lawsuit for the protection of personal rights against Bart Staszewski for publishing a photo with a "LGBTI-free zone" sign.

Commenting on the filing of the lawsuit, Zakrzówek Borough Mayor Józef Potocki said in a press release of 21 September 2020:

"We have decided to take legal action against Mr. Staszewski because his description of our municipality as an 'LGBT-free' zone is a lie suggesting that there is discrimination or segregation of people based on any criteria in our municipality. Nothing of the sort exists".³⁷³

The lawsuit for infringement of personal rights was filed in the District Court in Lublin on 21 September 2020. After this lawsuit, two other lawsuits for the protection of personal rights were filed by the communes of Tuszów and Niebylec, also represented by the Foundation. In an interview with Amnesty International, Bart acknowledged that during the course of the trials he was subjected to a media blitz and hate campaign against him that made public information about his private life.³⁷⁴

On 4 May 2022, Bart received a decision of the Regional Court in Rzeszów ending with his acquittal in a lawsuit filed by the municipality of Niebylec.³⁷⁵ Two other cases are still pending by the time of writing this report.

4.2 INTIMIDATION AND SMEAR CAMPAIGNS

Activists interviewed by Amnesty International repeatedly spoke about being intimidated and harassed by the

³⁷⁰ ILGA-Europe, Annual Review on Poland, 2020, ilga-europe.org/sites/default/files/2021/poland.pdf

³⁷¹ Interview by video call with Bart, 17 February 2022.

³⁷² Official website of the organization: anti-defamation.org/.

³⁷³ Polish Press Agency, "Gmina Zakrzówek pozywa Barta Staszewskiego", 21 September 2020, samorzad.pap.pl/kategoria/aktualnosci/gmina-zakrzowek-pozywa-barta-staszewskiego-za-akcje-strefy-wolne-od-lgbt

³⁷⁴ Interview with Bart, 17 February 2022; OKO.press, "Bart Staszewski: Nagle atakują cię anonimowe trolle na celowniku", 5 August 2021, oko.press/bart-staszewski-nagle-atakujcie-anonimowe-trolle-na-celowniku/

³⁷⁵ OKO.press, "Pozew gminy Niebylec bezzasadny. Bart Staszewski wygrał sprawę tablicy „Strefa wolna od LGBT", 5 May 2022, oko.press/pozew-gminy-niebylec-bezzasadny-bart-staszewski-wygral-sprawe-tablicy-strefa-wolna-od-lgbt/

"THEY TREATED US LIKE CRIMINALS"

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

public and state authorities, both in person and online, which negatively affected most or all aspects of their everyday life.

“Regular threats on the Internet - I'll kill you, I'll kill your mother, I'll spit on you – so practically nothing very joyful, right?” – told Michał.³⁷⁶

Michał also described being subjected to unlawful surveillance by law enforcement:

“Was visited by the Internal Security Agency, they asked me out of my apartment twice already and they call me every year. Once I published a post online after they called me, and just one hour later they came again. It is like I am on a list of some sort. They have even mentioned that to their knowledge I am studying history, but that was already the outdated information from my social media. A year ago, and this year as well, they contacted me again, so I told them the truth, that I am no longer an activist.”³⁷⁷

4.3 FINANCIAL AND PROFESSIONAL IMPACT

In almost all the cases Amnesty International documented for this report, activists stated that the harassment they faced led them to have to alter their career plans and/or resulted in a significant financial burden.

Kuba, aged 30, told Amnesty International that years of LGBTI activism have partially led him to the precarious situation: “I work as a bartender partially because it’s the only place I feel reasonably safe”, said Kuba referring to years spent on street activism as a LGBTI person himself.³⁷⁸ Kuba has been engaged in the street activism since 2017 and faced a range of charges related to his activities.³⁷⁹ In 2020, the toll on his health, burnout and his personal experience of violence at the hands of the police, led him to put his activism on hold.

One of the activists told Amnesty International, that due to the events of Rainbow Night he decided to quit the work in public administration, that he originally “invested a lot to get.” He declared to lose his trust towards state administration regarding protection of LGBTI rights and individuals.³⁸⁰

One activist interviewed by Amnesty International said that their decision to engage in sex work was partially due to the restrictions imposed by police probation,³⁸¹ while another recounted how their activism and related legal proceedings were incompatible with holding down a regular job.³⁸² Amnesty International has noted that a vast majority of activists worked as freelancers or in places closely associated with advocacy for the rights of LGBTI people or other marginalized groups.

One of the activists involved in the Atlas of Hatred spoke to Amnesty International about the impact that multiple lawsuits have had on his employment, since he has been repeatedly served with lawsuits at his place of work:

“Because of the lawsuits sent to work, I got a reprimand from my boss. At my company, it is forbidden to use company mail for private purposes. I had to disclose my activism-related activities and lawsuits at work. And Ordo Iuris [an anti-LGBTI organization] was sending me lawsuits at work because they found me on LinkedIn! I filed a complaint with the District Bar Council (ORA) against Jerzy Kwasniewski.³⁸³ So the ORA initiated disciplinary proceedings against him.”³⁸⁴

³⁷⁶ Interview with Michał, 31 March 2022, Warsaw.

³⁷⁷ Interview with Michał, 31 March 2022, Warsaw.

³⁷⁸ Interview with Kuba, 15 January 2022.

³⁷⁹ Among others, the charges from 2018 for the active assault on police officer (Article 233, Criminal Code); acquitted on basis of the recording.

³⁸⁰ Interview by video call with „Artur” (asked for anonymity), 28 June 2022.

³⁸¹ Interview with Elena, 5 January 2022.

³⁸² Interview with Tsu Tsu, 18 March 2022.

³⁸³ The case is pending, status for the May 2022. Tygodnik Przegląd, “Małostkowość odbija się czkawką”, 13 January 2022, www.tygodnikprzeglad.pl/malostkowosc-odbije-sie-czkawka/

³⁸⁴ Based on the regular correspondence between February and April 2022.

“THEY TREATED US LIKE CRIMINALS”

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

Amnesty International

The activist's attorney, Karolina Gierdal, confirms:

"They found them in internet, so they have reported address of their companies as correspondential. This is especially onerous for [the activist] because mail there is checked once a week, and you can only appeal a lawsuit for seven days after it is served, therefore creating a one-day window of legal response as a by-product of the intentional malice from Ordo Iuris."³⁸⁵

The financial aspect of the way in which activists are targeted in the courts is crucial. In the case of the founders of the Atlas of Hatred, the plaintiffs requested a total of 165,000 PLN (approximately 35 600 euro) in compensation.

"This system will only work if you pack a lot of resources into it" – explains attorney Anna Mazurczak.³⁸⁶

According to the information given to Amnesty International, all but one of the LGBTI activists facing charges rely on *pro bono* legal assistance provided by the Campaign Against Homophobia, Rainbow Defenders or a specialized law firm. Many activists have spoken about their inability to fund their defense by themselves.³⁸⁷

Three activists told Amnesty International that they decided to give up college or high school due to the legal consequences of the proceedings or the prolonged psychological pressure due to their activism.

The Campaign Against Homophobia found that 25% of LGBTI people surveyed in 2020-2021 said it was "better not to disclose your [sexual] orientation to anyone in the workplace".³⁸⁸ With the downward spiral of LGBTI people's sense of security documented in Poland in recent years, activists have suffered significant economical, educational and professional pressure that often makes their activism unsustainable and/or very stressful to the point of being unbearable for some.

4.4 NEGATIVE IMPACT ON HEALTH AND PRIVATE LIFE

According to research conducted by ILGA-Europe and the Campaign Against Homophobia, there has been a significant decline in the mental health and feelings of safety among LGBTI people in Poland since 2017.³⁸⁹ LGBTI rights defenders interviewed by Amnesty International have repeatedly highlighted how the targeting of their activism and protracted trials in the absence of effective legal protection mechanisms from the state apparatus negatively impacts their health, in many cases making it impossible for them to function on a daily basis.

In a few cases, individuals expressed a willingness to share medical records in the form of a psychiatric diagnosis or detailed protocols from a specialized hospital, not included in this report to protect their privacy. One activist told Amnesty International:

"Keeping an eye on all these lawsuits and the constant public pressure, whether it's from the LGBT community or this pure hatred from our opponents - it's killing us."³⁹⁰

Kuba also told Amnesty International:

"In September 2020, the large number of Atlas-related developments overwhelmed me. A psychiatrist diagnosed a depressive episode after which I began pharmacotherapy, which continues to this day".

³⁸⁵ In the interview both attorney and the client highlight the possibility of the verification of the correspondence address by the court, not applied here. Interview with Karolina and Justyna, 7 April 2022

³⁸⁶ Interview with Karolina and Justyna, 7 April 2022, Warsaw.

³⁸⁷ Campaign Against Homophobia, The Atlas of Hate due to appear in court. Campaign Against Homophobia, "The Atlas of Hate due to appear in court. The first two hearings are set for July", 29 June 2021, kph.org.pl/atlas-of-hate-due-to-appear-in-court/

³⁸⁸ Campaign Against Homophobia, *Sytuacja społeczna osób LGBTIA w Polsce Raport na lata 2019-2020*, 7 December 2021, kph.org.pl/polityka-polskich-wladz-dewastuje-sytuacje-zyciowa-osob-lgbt-publikujemy-raport-o-sytuacji-spoecznej-osob-lgbta-w-polsce/

³⁸⁹ Campaign Against Homophobia, *Sytuacja społeczna osób LGBTIA w Polsce. Raport na lata 2019-2020*, 7 December 2021, kph.org.pl/polityka-polskich-wladz-dewastuje-sytuacje-zyciowa-osob-lgbt-publikujemy-raport-o-sytuacji-spoecznej-osob-lgbta-w-polsce/

³⁹⁰ Interview with Linus, 13 April 2022, Warsaw.

"THEY TREATED US LIKE CRIMINALS"

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

In describing the impact of the Rainbow Mary case, Anna said:

“This obviously took a toll on the health of all of us. However, Ela, who was also deeply involved in the case, suffered the most. At some point her health deteriorated and she told us: ‘Girls, I trust you, but I have to withdraw a little and take care of myself.’”

Linus and Elena, an activist with an experience of being subjected to vexatious criminal charges, admitted to suicidal thoughts after the events of Queer Night and the experience of police supervision.³⁹¹

LGBTI activists also reported that they felt they had to leave Poland, emphasizing the loss of a sense of security and trust in the authorities. Aleks, who has lived in the UK since 2021, told Amnesty International that the decision to leave his country was strongly influenced by the events of 7 August 2020. A survey by the Campaign Against Homophobia found that 12% of the respondents were planning to move abroad and a third cited the experience of discrimination based on sexual orientation or gender identity as a reason for leaving the country.³⁹² Anna told Amnesty International:

“After all these events, I don’t want to stay here... I’m learning programming and getting ready to leave... Lately you can suffocate here in Poland”.³⁹³

Michał, commenting on three years of the legal proceedings for criminal charges of offending religious beliefs, told Amnesty International:

“I wish I could say I’m relieved, but I’m not. I have wasted a lot of time, a lot of money, horrendous amounts of money. My relationship with my family and activist friends have deteriorated. There was no me as me, there was just this over-paralyzing Criminal Code thing. This situation threw me completely out of the world of activism. I was immediately and completely out.”³⁹⁴

³⁹¹ Interview with Elena, 20 March 2022.

³⁹² Campaign Against Homophobia., *Sytuacja społeczna osób LGBTQIA w Polsce. Raport na lata 2019-2020*, 7 December 2021, kph.org.pl/polityka-polskich-wladz-dewastuje-sytuacje-zyciowa-osob-lgbt-publikujemy-raport-o-sytuacji-spoecznej-osob-lgbta-w-polsce/

³⁹³ Interview with Anna, 19 February 2022, Warsaw.

³⁹⁴ Interview with Michał, 31 March 2022, Warsaw.

RECOMMENDATIONS

TO ENSURE THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

The right to freedom of peaceful assembly must be ensured regardless of the counterreaction the assembly may elicit. In the climate of hostility towards LGBTI people, state actors and law enforcement officials remain obliged to provide sufficient protection and equal opportunity for LGBTI people to organize and participate in peaceful demonstrations and to operate without obstruction or limitation.

Amnesty International urges the Polish authorities to:

- **To the Polish Parliament.** Immediately reject the “STOP LGBT” Bill as it is discriminatory towards LGBTI people and contrary to international human rights law and standards. Any further similar drafts should be rejected by the Parliament on the spot.
- **To the Ministry of Justice.** Ensure that criminal proceedings against individuals solely for their participation in LGBTI-related events are dropped and that any investigation is closed.
- **To the Ministry of Interior.** Provide equal opportunities and adequate protection by local authorities and law enforcement officials to the organizers and participants of peaceful assemblies without discrimination, showing a willingness of cooperation and good practice.
- **To the local authorities.** Ensure that prior notification of peaceful assemblies are treated only as a notice of the intent and not the request for permission. The notification process must be transparent, coherent and unbureaucratic, not to be used in a discriminatory manner against the LGBTI activists. The lack of official notification must not be used as a valid ground on which to determine that an assembly is unlawful or to allow its dispersal.
- **To the local authorities.** Stop the discriminatory practice used by local authorities to issue preventive bans for Equality Marches and other peaceful assemblies through which LGBTI people gather to celebrate and demand their freedoms.
- **To the local authorities.** Ensure that any restriction on the time, place or manner of an assembly are necessary and proportionate to a legitimate aim, and do not fundamentally alter the character of an event. When restrictions are unavoidable, the authorities should always give preference to the least intrusive means and should try to facilitate such an assembly by offering reasonable alternatives.
- **To the local authorities.** Engage in a case-by-case assessment when considering restrictions on an assembly. Blanket bans on the permissible time or location of an assembly are impermissible restrictions because they necessarily prevent authorities from evaluating specific circumstances and assessing their proportionality.

- **To the local authorities.** Refrain from the practice through which local authorities delegate its own responsibilities to the organizers. The costs of providing adequate security and safety should be fully covered by public authorities.
- **To the local authorities and law enforcement officials.** Prevent law enforcement officials from dispersing an assembly solely for failing to comply with a notification requirement or for otherwise considering it unlawful. Decision to disperse an assembly should be the last resort and only when violence is generalized and cannot be addressed by less restrictive means.
- **To the local authorities.** Designate an appropriate advisory body in local governments, such as Plenipotentiaries or Council of Equal Treatment, to ensure that they can efficiently contribute to the peaceful exercise of the right to freedom of peaceful assembly and assist non-governmental organizations in their cooperation with the local authorities and law enforcement, for example when organizing an assembly for LGBTI rights.

TO ENSURE THE ADEQUATE POLICING OF ASSEMBLIES

Law enforcement officials play a crucial role in enforcing the duty to facilitate, enable and protect the right to freedom of peaceful assembly. Accordingly, law enforcement agencies should seek to carry out the policing of assemblies in a manner that ensures the best possible and effective enjoyment of the right to freedom of peaceful assembly by participants, and not limit their planning to the anticipation of problems and how to respond to any outbreaks of violence.

Amnesty International urges **law enforcement officials** to:

- Provide sufficient and adequate protection to LGBTI assemblies, in cooperation and coordination with the organizers. If the participants face a threat to their safety, the protection should be extended for the adequate time before, during and after the assembly, and ensure that participants are able to safely join or disperse.
- Use force only when it is strictly necessary and to the extent required for the performance of their duty.
- Avoid the use of tactics of containment or “kettling” resulting in preventing the participants from attending or joining an assembly.
- Ensure that all law enforcement officials policing assemblies wear visible identity badges and identify themselves in a clear manner with their names and ranks while performing their duties.
- Cease the discriminatory practice of profiling LGBTI individuals during or after an assembly and impose disciplinary proceedings, if applicable.
- In the event of a detention in the course of an assembly, law enforcement officials must act in accordance with international and national standards and ensure the right to information, legal counsel, medical examination, access to the outside world, fair trial and decent conditions in detention. The detention itself must be lawful, reasonable and justified, and the arrest report has to be factual. The detained person must be given the right to challenge the lawfulness of the detention and cannot be coerced into waiving this right.
- Refrain from conducting unlawful surveillance and home visits that amount to intimidation and harassment or serve the arbitrary purpose of gathering the data on LGBTI rights defenders that is irrelevant to the case.
- Provide anti-discriminatory training addressing LGBTI rights as an integral part of police trainings, depicted in the annual and periodic National Plans on Human Rights Trainings for the Police, and

reflecting international standards. Documents and implementation reports should be accessible to the public.

- Provide sufficient and adequate protection to LGBTI assemblies, in cooperation and coordination with the organizers. If the participants face a threat to their safety, the protection should be extended for the adequate time before, during and after the assembly, and ensure that participants are able to safely join or disperse.
- Use force only when it is strictly necessary and to the extent required for the performance of their duty.
- Avoid the use of tactics of containment or “kettling” resulting in preventing the participants from attending or joining an assembly.
- Ensure that all law enforcement officials policing assemblies wear visible identity badges and identify themselves in a clear manner with their names and ranks while performing their duties.
- Cease the discriminatory practice of profiling LGBTI individuals during or after an assembly and impose disciplinary proceedings, if applicable.
- In the event of a detention in the course of an assembly, law enforcement officials must act in accordance with international and national standards and ensure the right to information, legal counsel, medical examination, access to the outside world, fair trial and decent conditions in detention. The detention itself must be lawful, reasonable and justified, and the arrest report has to be factual. The detained person must be given the right to challenge the lawfulness of the detention and cannot be coerced into waiving this right.
- Refrain from conducting unlawful surveillance and home visits that amount to intimidation and harassment or serve the arbitrary purpose of gathering the data on LGBTI rights defenders that is irrelevant to the case.
- Provide anti-discriminatory training addressing LGBTI rights as an integral part of police trainings, depicted in the annual and periodic National Plans on Human Rights Trainings for the Police, and reflecting international standards. Documents and implementation reports should be accessible to the public.

TO ENSURE THE RIGHT TO FREEDOM OF EXPRESSION

Amnesty International urges the Polish authorities to:

- **To the Polish Parliament.** Repeal Article 137 and 196 of the Criminal Code which criminalizes "Insults to state symbols" and "offending religious beliefs", respectively, as they are in clear contravention of the right to freedom of expression.
- **To the Polish Parliament.** Pass legislation and other regulations to protect LGBTI people from the abusive use of defamation laws or other vexatious claims aimed at silencing and intimidating them.
- **To the Ministry of Justice.** Ensure that Articles 261 of the Criminal Code and Article 108 of the Act on Protection of the Historical Monuments are not interpreted and abused in a way that targets and harasses LGBTI rights defenders.
- **To the Ministry of Justice.** Ensure that legal cases brought with the intention of silencing or intimidating public participation can be easily identified by judges and dismissed at an early stage.

- **To the Ministry of Justice.** Refrain from any unlawful interference with the right of individuals and groups to exercise their right to freedom of expression and peaceful assembly, notably when related to the rights of LGBTI people, and condemn such actions if they occur.
- **To the Ministry of National Education.** Cease from censoring the content and representation of LGBTI people in educational spaces at every level under the guise of protecting family values.
- **To all the Polish authorities.** Aim for the equal and adequate treatment of LGBTI rights defenders in public space and react with no hesitation if material of degrading content, targeted at LGBTI people, is displayed in the public space.
- **To all the Polish authorities.** Promptly condemn smear campaigns directed towards LGBTI rights defenders, including by publicly recognizing their crucial work to advance equality and human rights

TO ENSURE THE PROTECTION OF LGBTI RIGHTS DEFENDERS

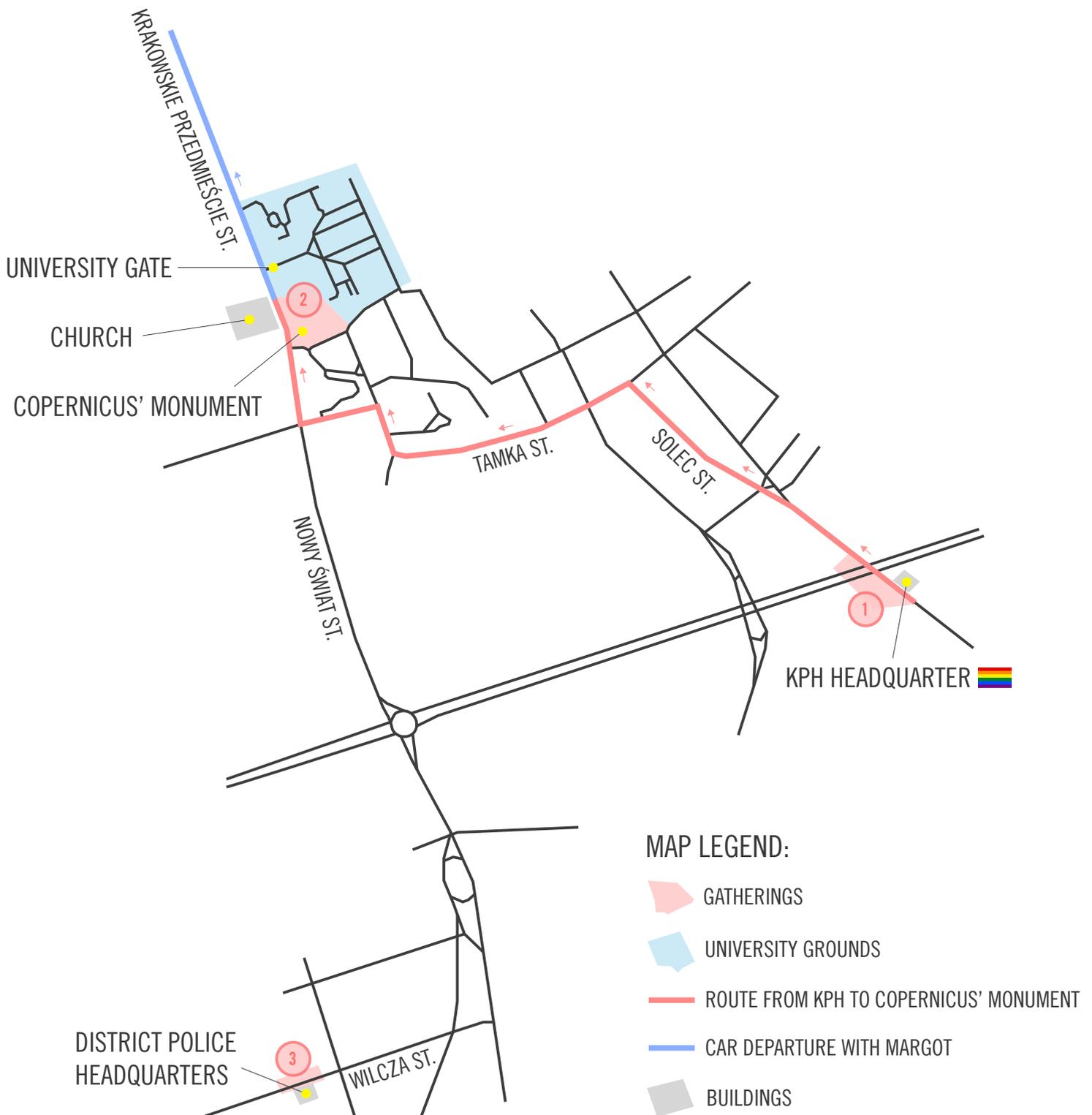
Amnesty International calls on the Polish authorities to:

- **To the Polish Parliament.** Draft and introduce a legislative proposal in order to ensure that the list of protected characteristics included in Article 119 is an open-ended list and, as a minimum, explicitly includes gender, sexual orientation, gender identity and gender expression as protected characteristic.
- **To the Ministry of Justice.** Stop abusing the institution of extraordinary appeal to target and harass LGBTI rights defenders and other civil society representatives.
- **To the Ministry of Justice.** Immediately drop the charges for defamation claimed by local authorities against LGBTI rights activists, if aimed at silencing or deterring their peaceful activism.
- **To the local authorities.** Withdraw civil lawsuits brought by local authorities for the alleged infringement of personal rights.
- **To the Polish authorities.** Comply with the relevant concluding observations of the UN treaty monitoring bodies regarding the obligation to respect, protect and fulfil the rights of LGBTI people as well as the recommendations made by the UN special procedures such as the UN Independent Expert on sexual orientation and gender identity, UN Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- **To the Polish authorities.** Fully co-operate with the different UN human rights mechanisms and, in particular, extend an invitation to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to conduct a visit without restrictions on duration or scope and ensure they are allowed to meet with human rights defenders and civil society organizations without hindrance.
- **To the Polish authorities.** Ensure that public officials do not issue any inflammatory, harmful and stigmatizing rhetoric against LGBTI people.

MATERIAL 1A:

QUEER NIGHT'S MAP

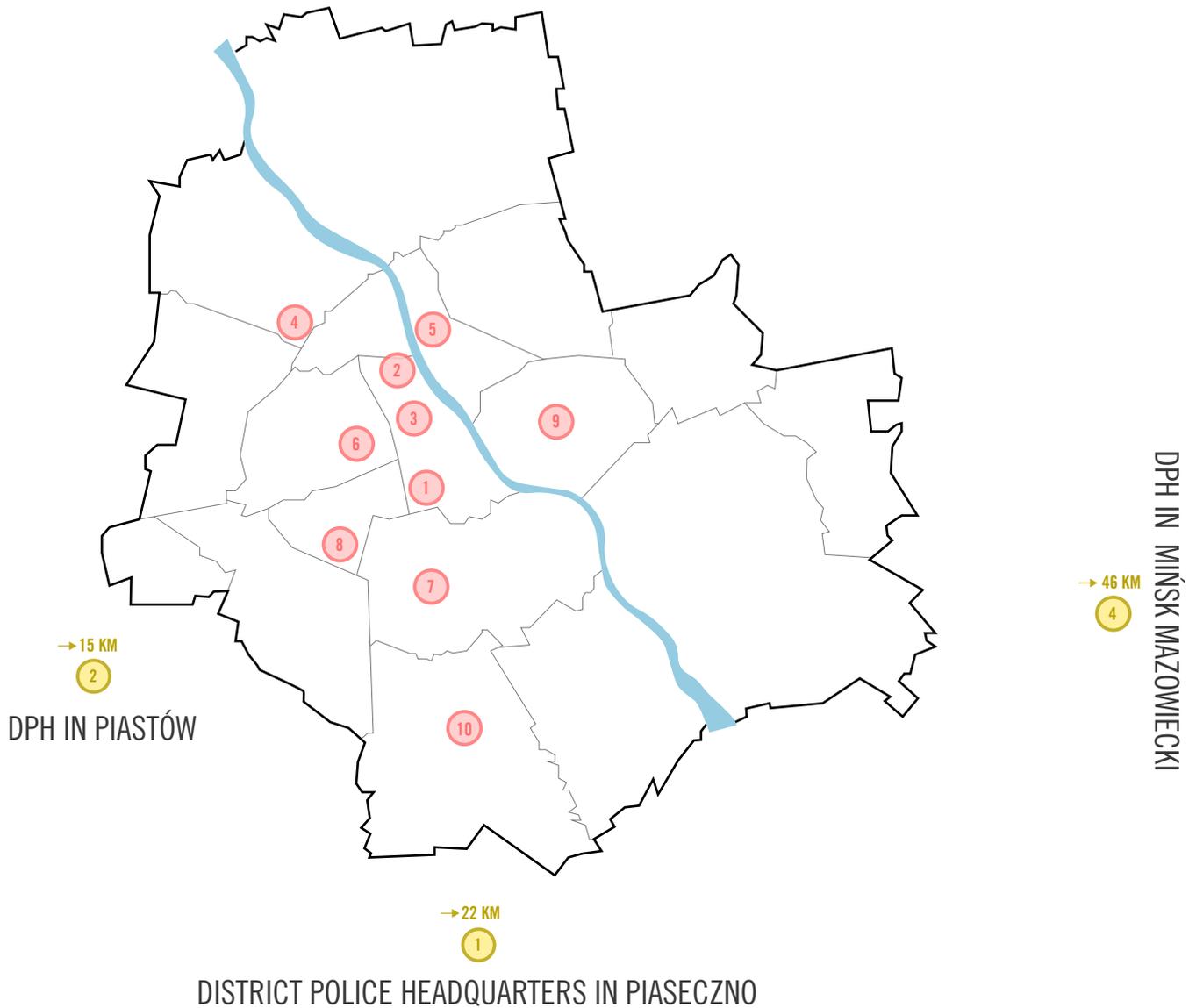
- 1 A gathering had formed in front of the headquarters of the Campaign Against Homophobia in solidarity with the Margot.
- 2 As a result of the police's repeated refusal to carry out the arrest, Margot and the protesters decided to walk along Krakowskie Przedmieście Street to the Holy Cross Church.
- 3 Solidarity demonstration outside of the Police Headquarters on Wilcza Street



MATERIAL 1B:

QUEER NIGHT'S MAP

- 33 KM
5 DPH IN NOWY DWÓR MAZOWIECKI
- 22 KM
3 DPH IN LEGIONOWO

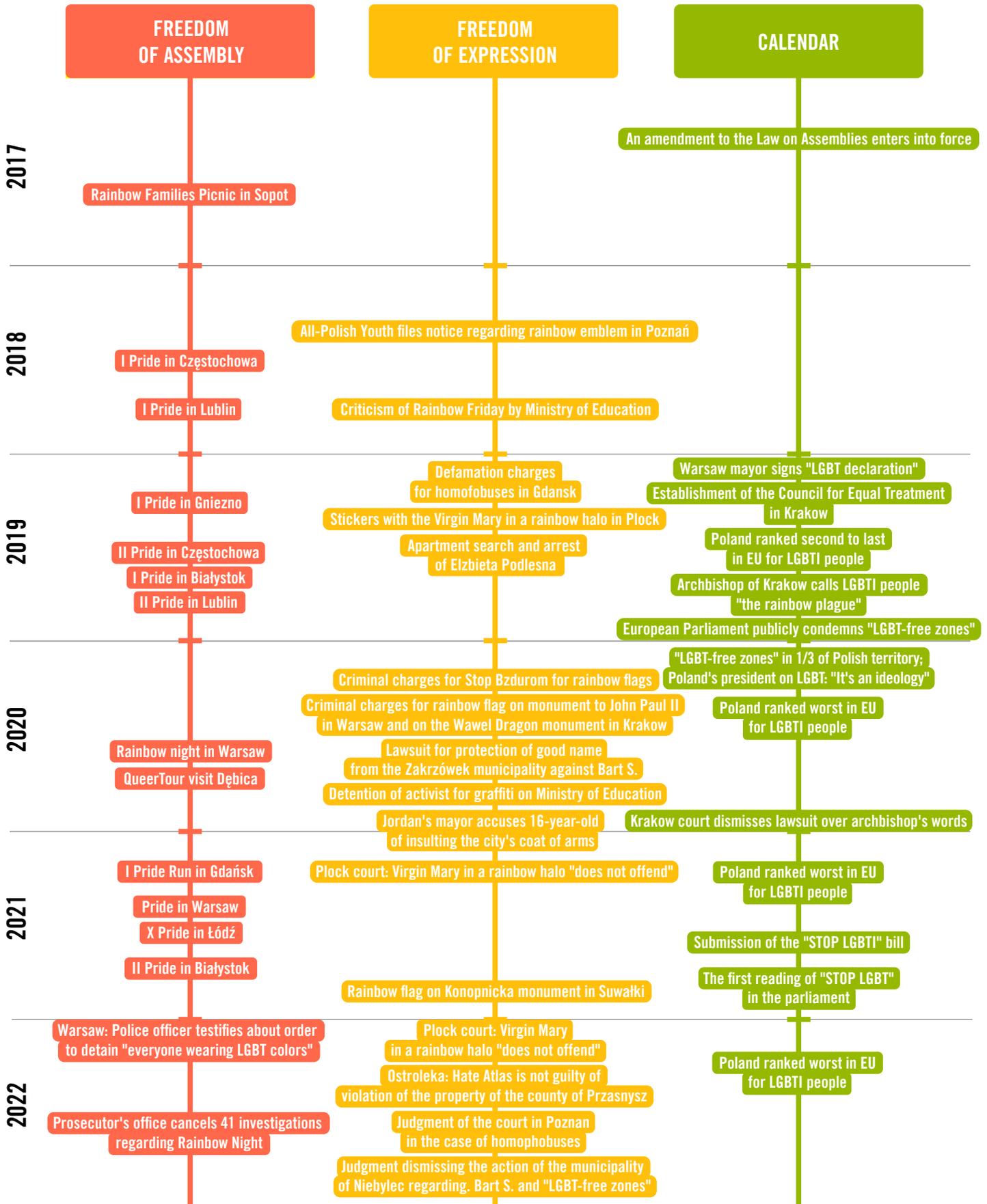


- 1 DPH WARSAW: WILCZA 21 ST.
- 2 DPH WARSAW: ZAKROCYMSKA 3C ST.
- 3 DPH WARSAW: NOWOLIPIE 2 ST.
- 4 DPH WARSAW: ŻEROMSKIEGO 7 ST.
- 5 DPH WARSAW: JAGIELLOŃSKA 51 ST.
- 6 DPH WARSAW: ŻYTANIA 36 ST.
- 7 DPH WARSAW: MALCZEWSKIEGO 3/5/7 ST.
- 8 DPH WARSAW: OPACZEWSKA 8 ST.
- 9 DPH WARSAW: GRENADIERÓW 73/75 ST.
- 10 DPH WARSAW: JANOWSKIEGO 7 ST.

MATERIAL 2:

TIMELINE

EVENTS DESCRIBED IN THE REPORT



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

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/AmnestyGlobal



[@Amnesty](https://twitter.com/Amnesty)

“THEY TREATED US LIKE CRIMINALS”

FROM SHRINKING SPACE TO HARASSMENT OF LGBTI ACTIVISTS

While the atmosphere of hostility towards LGBTI people in Poland is growing dangerously worse, those who stand up for LGBTI rights face an immediate and hostile response from the state apparatus. Bans on Equality Marches, mass detentions, smear campaigns or criminal charges for a rainbow flag - this is how the authorities discourage LGBTI activists from fighting unevenly for their rights and dignity. Some of them do not lose their voices, but others are silenced.

This report documents the stories of those who uphold LGBTI rights and the repression they face for their peaceful actions. Based on Amnesty International's 2017 and 2018 reports on freedom of assembly, we show how Polish authorities not only inadequately protect, but add to harassment of LGBTI people. In the result, the defenders of their rights may be dragged through the courts for years just for writing in chalk or hanging a rainbow flag.

LGBTI rights are human rights. Those who defend them should be supported by the Polish authorities, not humiliated and harassed. The deliberate silencing of LGBTI activists is not only a dangerous trend we have seen in recent years, but also an acquiescence to violence against those it hits hardest.