

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# POLAND: COVID-19 IS NO EXCUSE TO CRACK DOWN ON PROTESTS

Amnesty International calls on all authorities in Poland to ensure that any measures to prevent the spread of the COVID-19 pandemic are necessary and proportionate and do not impose undue restrictions on the rights to freedom of expression and peaceful assembly.

While states can legitimately impose restrictions on the right to peaceful assembly to slow down the spread of the virus, these must be necessary and proportionate. As a general rule, there should be no blanket bans on assemblies and each assembly should be assessed on a case by case basis to impose restrictions only to the extent necessary and proportionate to achieve a legitimate end. The impediment on people being able to protest collectively in public as a result of measures imposed to protect public health must be a last resort based on a compelling need.

The government of Poland introduced a total ban on public assemblies as part of the measures to respond to the COVID-19 pandemic.<sup>1</sup> It was first introduced by a decree of the Minister of Health on 31 March, followed by subsequent decisions of the Council of Ministers. However, on 27 May, the government decided to permit assemblies up to 150 people - the decision comes into force on 30 May.<sup>2</sup>

In the past three weeks, Amnesty International has documented multiple interactions of police with protesters, often leading to human rights violations. On 6 May, the police issued heavy fines to peaceful activists protesting against planned presidential elections to be held by postal vote on 10 May. During various instances in May, the police levied steep fines against protesters demanding the independence of the judiciary and criticizing the government for lack of support provided to small companies during COVID-19.<sup>3</sup>

On some occasions, the police used tear gas against protesters when dispersing assemblies. Hundreds of protesters have been arrested simply for exercising their right to peaceful assembly.<sup>4</sup>

On 6 May, as part of the "Letter" protest against the postal presidential election to be held on 10 May, a group of activists in Warsaw moved a 14-meter banner from the Main Post Office to the Parliament (*Sejm*). The police requested the protesters' IDs and two of them later were ordered to pay a fine of 10,000 PLN (2,200 Euro) to the Polish Public Hygiene Authority (*Sanepid*) for violating the lockdown restrictions. The activists argued that they had followed sanitary regulations, including the obligation to keep a two-meter distance between persons and to cover their faces. Following the protesters' appeal, *Sanepid* examined evidence showing the protesters' compliance with the COVID-19 measures, and cancelled the fines.<sup>5</sup>

Media reported that dozens of activists have received similar 10,000 PLN fines for taking part in protests on 8 and 9 May against the government's lack of support of small businesses during COVID-19.<sup>6</sup>

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<sup>1</sup> Under Section 5 of the Decision of the Council of Ministers from 2 May, the ban of all public assemblies continues to be in place until further notice: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200000792/0/D20200792.pdf>

<sup>2</sup> <https://www.gov.pl/web/koronawirus/4-etap-odmrazania>

<sup>3</sup> Protests held in Warsaw on 9, 16 and 23 May known as *Strajk Przedsiębiorców* (Strike of Business Owners). For more details see: <https://notesfrompoland.com/2020/05/24/warsaw-hit-by-third-weekend-of-protests-and-clashes-with-police/>

<sup>4</sup> The police reported that it detained over 300 protesters on 16 May:

<https://www.pap.pl/aktualnosci/news%2C645869%2Cnadkom-marczak-ksp-380-zatrzymanych-w-zwiazku-ze-strajkiem-przedsiębiorcow>

<sup>5</sup> For details see in Polish: <https://www.rpo.gov.pl/pl/content/sanepid-uchylil-kary-10-tys-z%C5%82-dla-protestujacych-pod-sejmem-odwolanie-RPO-skuteczne>

<sup>6</sup> <https://wiadomosci.wp.pl/protest-przedsiębiorcow-w-warszawie-sanepid-karze-uczestnikow-pawel-tajnano-zapowiada-kolejny-protest-6509378495026817a>

Police also fined activists protesting against the undermining of the independence of the judiciary. On 13 May, police stopped an activist named Ewa, while she was approaching Supreme Court building with her friend. Ewa told Amnesty International that she was keeping the required two-meter distance from her friend and that they both wore masks and gloves. Three days later, the police came to her home and issued her a *Sanepid* decision obliging her to pay a 10,000 PLN fine for not respecting the order to maintain the required distance of two meters.

The police also imposed fines on a group of peaceful protesters who gathered outside the state radio station (*Trójka*) on 22 May. They were protesting against the alleged censorship of the song called *Your Pain is Better than Mine*, which is perceived as criticism of the head of the ruling Law and Justice Party (PiS), Jarosław Kaczyński, who visited family graves (as did several party and state officials) apparently in violation of sanitary regulations.

There are currently two parallel systems of sanctions for those who break the total ban on public assemblies. Police can issue fines under the Code of Minor Offences, carrying a maximum fine of 500 PLN (110 Euro); those who refuse to accept the fine order can challenge it in court. Amnesty International has documented the widespread use of fines against protesters in Poland under these regulations in 2017 and 2018.<sup>7</sup> Under the new regime introduced during the COVID-19 pandemic, protesters can also be sanctioned by the Public Hygiene Authority (*Sanepid*) for non-compliance with the public health measures. In this case, the penalties range from 5,000 to 30,000 PLN (1,100 to 6,700 Euro). In practice, it is up to the police officer's discretion to decide under which regulation to impose a fine.

According to media reports, police requested *Sanepid* to issue thousands of fines after the various May protests.<sup>8</sup>

As stated above, while states can legitimately impose restrictions on the right to peaceful assembly to slow down the spread of the virus, these must be necessary and proportionate. In the case of a public assembly that is found to take place in violation of specific measures to protect public health during the pandemic, the dispersal of the assembly must be subject to a careful balancing exercise and considered as a last resort. As in any other situation, participants must be given the opportunity to voluntarily disperse and police must apply non-violent means before resorting to the use of force. Decisions on dispersal of assemblies must take into account the risk of infection, including as a result of the direct contact between police and participants or as a result of the disorder the forced dispersal is likely to cause, as well as to injuries that would create a substantially greater burden on the health system than if letting the assembly proceed.

Amnesty International reminds the government of Poland that the COVID-19 crisis must not lead to further crackdowns on the rights to freedom of expression and peaceful assembly. It provides no justification for excessive use of force against protesters or the imposition of fines that disproportionately restrict the right to peaceful assembly and risk having a chilling effect on the exercise of these rights.

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<sup>7</sup> <https://www.amnesty.org/en/documents/EUR37/8525/2018/en/>

<sup>8</sup> <https://warszawa.wyborcza.pl/warszawa/7,54420,25926740,jak-sanepid-wlepia-kary-za-lamanie-obostrzen-zwiazanych-z-epidemia.html>