

Protests under threat

Right to protest in Poland: Key recommendations for reform

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Contents

Introduction	4
Recommendations for reforms of legislation, policy, and law enforcement practice	6
Recommendation 1: Abolishing the provisions of the Law on Assemblies that effectively require prior permissions for protests	6
Recommendation 2: Abolishing the provisions that give preference to 'cyclical assemblies'	8
Recommendation 3: Ensuring the protection and facilitation of simultaneous and counter protests in law and practice	10
Recommendation 4: Bringing into compliance with international standards the current system of 'petty offences' and applicable sanctions for the manner in which the protest is conducted	12
Recommendation 5: Repealing criminal prohibitions of criticism or 'insult' of the state, its symbols or institutions, religion, and religious objects	14
Recommendation 6: Ceasing the practice of arbitrary arrests and detentions prior to, during, or following an assembly	16

Introduction

The right to protest is a cornerstone of democratic society, allowing people to express dissent, advocate for change, and hold authorities accountable. In Poland, however, this fundamental right faced significant challenges during the government of the Law and Justice party (PiS), which systematically undermined democratic institutions, restricted civic space, and imposed harsh measures against those who dared to voice opposition.

Under international human rights standards, the right to protest can be understood as the individual and/or collective exercise of several universally recognised and protected human rights. These include, in particular, the rights to freedom of expression and freedom of peaceful assembly and of association; the right to take part in the conduct of public affairs; the right to freedom of thought, conscience and religion; the right to participation in cultural life; the rights to life, privacy, liberty, and security of a person; and the right to non-discrimination. The right to protest also enables the defence and fulfilment of other political, civil, economic, social, and cultural rights. The effective possibility to engage in protest is a litmus test for the state of civic space in a given country.

In this briefing, ARTICLE 19 outlines key areas for much-needed reform of protest-related legislation and policy. We highlight the most pressing issues that the current government must address in the reform to bring both the law and the practices of law enforcement authorities in line with international human rights standards.

The briefing draws on ARTICLE 19's report [Poland in peril: Democracy or authoritarianism?](#), which examined the laws, institutions, policies, and practices around the right to protest in Poland for their compliance with international and regional standards on the right to freedom of expression and the right to freedom of peaceful assembly. These standards include the UN Human Rights Committee's [General Comment No. 37](#) on the right to peaceful assembly, the 2016 [Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies](#), and the Organization for Security and Co-operation in Europe's (OSCE) [Guidelines on Freedom of](#)

[Peaceful Assembly](#). The briefing also references ARTICLE 19's [Principles on the protection of human rights in protests](#).

The government of Prime Minister Donald Tusk has a unique opportunity to restore public trust and reaffirm its commitment to democratic principles by enacting reforms that protect the right to protest. This includes revising laws that restrict protests, ensuring accountability for police actions, and fostering an environment where all people can freely express their dissent without fear of reprisal.

The time for change is now. ARTICLE 19 urges the government to prioritise this reform and protect the right to protest as a vital component of a healthy democracy. By doing so, Poland can reaffirm its commitment to human rights and set a precedent for safeguarding human rights in the face of growing authoritarianism in the region.

The reform should include, at minimum, the following **recommendations**:

1. Abolishing the provisions of the Law on Assemblies that effectively require prior permissions for protests.
2. Abolishing the provisions that give preference to 'cyclical assemblies'.
3. Providing protection to simultaneous and counter protests, in which one or more protests aim to express discontent with the message of other assemblies. The law and practice should ensure that, as far as possible, simultaneous and counter protests facilitated can take place within sight and sound of their target.
4. Bringing into compliance with international standards the current system of 'petty offences' and applicable sanctions for the manner in which the protest is conducted.
5. Repealing criminal offences that penalise criticism or 'insult' of the state, its symbols or institutions, religion, and religious objects.
6. Ceasing the practice of arbitrary arrests and detentions prior to, during, or following protests.

This briefing elaborates on the specific issues that should be addressed in the reform . ARTICLE 19 stands ready to support the authorities in the implementation of these recommendations.

Recommendations for reforms of legislation, policy, and law enforcement practice

Recommendation 1: Abolishing the provisions of the Law on Assemblies that effectively require prior permissions for protests

International standards

International human rights standards clearly establish a presumption in favour of exercising the right to protest.

Having to apply for permission to hold a protest undercuts the very essence of the right to freedom of expression and the right to peaceful assembly and of association. In its [General Comment No. 37](#) on the right to freedom of assembly, the UN Human Rights Committee stated that advance notification requirements are only permissible in the narrow circumstances insofar as they are necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies. The absence of notification cannot render the exercise of the right to protest automatically unlawful.

Furthermore, notification regimes cannot function as prior authorisation of the assembly by the authorities. The OSCE [Guidelines on Freedom of Peaceful Assembly](#) (OSCE Guidelines) urge states to amend domestic legislation to turn any authorisation rules into simple notification. The elements of the notification should be limited to considerations of time, place, and manner and should not provide a basis for content-based authorisation.

Therefore, states should abolish all legislation, regulations, and practices that require, in law or effect, prior permission or licences for protests to take place.

Current national legislation

The current [Law on Assemblies](#) establishes a rigid authorisation regime for holding protests and assemblies. In particular, 'cyclical assemblies' are subject to authorisation by the regional authorities ('voivodes') (Article 26b). The previously gathered authorisations

are also revocable by the authorities (Article 26c). Neither the initial authorisation nor the power of the authorities to revoke the previously granted permission are justified with reference to the legitimate aims, such as the rights of others. Instead, the authorisation regime establishes onerous bureaucratic requirements which interfere with the fundamental right to protest.

Non-cyclical assemblies are also generally subject to de facto authorisation. Namely, the law requires a detailed list of information about the intended assembly, including details that go beyond the time, place, and manner, and also the protest's purpose and subject matter (Article 10) to be submitted prior to assemblies. Further bureaucratic hurdles are imposed on the organiser if the municipal authorities are not satisfied with the content of the notification (Article 11). Finally, the authorities have the power to prohibit the assembly on the list of grounds that go beyond the recognised legitimate aims, including vaguely stated 'principles of organising assemblies' and the automatic prohibitions of protests that coincide with 'cyclical assemblies' (Article 14). Thus, the current notification rules amount to a de facto authorisation regime, which is not permissible under international human rights law.

Recommendation

Poland should abolish any provisions that amount to de jure or de facto prior authorisation of assemblies. This includes repealing the provisions on applications for, and prior authorisation of, the so-called 'cyclical assemblies', in particular Articles 26a, 26b, 26c, and 26d of the Law on Assemblies. Additionally, other provisions that establish notification requirements for all types of assemblies (in particular Articles 10, 11, and 14) should be reformed to eliminate the elements that de facto amount to prior authorisation.

Recommendation 2: Abolishing the provisions that give preference to ‘cyclical assemblies’

International standards

[General Comment No. 37](#) unequivocally establishes that states must promote an enabling environment for the exercise of the right of peaceful assembly without discrimination. No preference should be given to any specific type of protest, particularly based on its subject matter.

When notifications are submitted for a number of assemblies intended to occur at the same time and place, the authorities have a positive obligation to take reasonable measures to accommodate all of these assemblies. The [OSCE Guidelines](#) provide that priority should be given to finding a mutually acceptable solution for the parties involved. If that is not possible, the authorities cannot resort to differential levels of restrictions on the assemblies, particularly by giving preference to the specific subject matter of the protest.

Current national legislation

The current [Law on Assemblies](#) provides a clear preferential treatment to ‘cyclical assemblies’. In particular, preference is given to assemblies ‘organised ... according to a developed schedule’ and occurring with particular frequency and at the same place/route.

The Law on Assemblies stipulates that in case of a coinciding time and place between a cyclical assembly and another protest, the former has ‘priority in choosing the time and place of assembly’ (Article 12). Furthermore, the authorities retain a blanket right to prohibit the non-cyclical assembly altogether if its intended time and place coincides with those of the cyclical one (Article 14).

The Law on Assemblies further provides priority to events ‘aimed at commemorating significant events in the history of the Republic of Poland’ (Article 26a). The same provision stipulates that these events, ‘even if not [conducted] in the form of assemblies’, enjoy the preferential treatment given to ‘cyclical assemblies’, as described earlier. As

such, the current regulation establishes preferential treatment based on the subject matter of the protest, which is contrary to international human rights standards.

Recommendation

Poland should amend the Law on Assemblies by eliminating all elements of the preferential treatment provided to 'cyclical assemblies', including the priority for choosing the time and place under Article 12 of the Law of Assemblies and the automatic prohibition of simultaneous non-cyclical assemblies under Article 14.

Recommendation 3: Ensuring the protection and facilitation of simultaneous and counter protests in law and practice

International standards

Simultaneous and counter protests are protests in which one or more assemblies aim to express discontent with the message of other assemblies. [General Comment 37](#) states that states must take a content-neutral approach to counter-demonstrations, allowing them to take place, as far as possible, within sight of the assembly against which they are protesting. Further, the [report of the two special rapporteurs](#) also recommended that spontaneous assemblies and counter-protests should, as far as possible, be facilitated to take place within sight and sound of their target.

The [OSCE Guidelines](#) specifically note that coincidence in time and venue is the indispensable element and likely to be the very purpose of the counter-demonstration. Both assemblies have to be facilitated and protected. Furthermore, the OSCE Guidelines note that the application of the 'first come, first served' rule cannot be subject to abuse where notification is deliberately submitted early or routinely to limit opportune times and places for other events.

The European Court of Human Rights provided further guidelines on counter-protests. For instance, in [Plattform 'Ärzte für das Leben' v. Austria](#) it stipulated that the scope of the right to counter-demonstration is curbed by non-interference with the rights of others to protest. Thus, the authorities carry a positive obligation to prevent physical interference of one protest with the other.

Current national legislation

The [Law on Assemblies](#) gives clear priority to 'cyclical assemblies' in case of simultaneous time and venue. This inhibits the right to counter-demonstration for which the simultaneity is an indispensable element of their protest message. The preference for 'cyclical assemblies' applies to both planned and spontaneous protests, which further

narrows the possibility for organising an effective counter-demonstration. ARTICLE 19 previously voiced [concerns](#) about the authorities’ practice of denying counter-protests the ability to take place within sight and sound of the original protest.

Recommendation

First, Poland should reform legislation to ensure the right to counter-protest, including by eliminating automatic preference for ‘cyclical assemblies’. Second, as a matter of policy and law enforcement practice, the authorities should apply a more flexible approach to facilitating the simultaneous holding of two (or more) assemblies and deploy sufficient resources to enable the holding of counter-protests within sight and sound of each other, while at the same time protecting the safety of participants of both protests.

Recommendation 4: Bringing into compliance with international standards the current system of ‘petty offences’ and applicable sanctions for the manner in which the protest is conducted

International standards

The right to freedom of expression and the right to freedom of assembly can only be restricted under the conditions of the so-called three-part test of legality, necessity, and proportionality to the legitimate aim. Although ‘public order’ and the ‘rights of others’ are legitimate aims under which the rights can be restricted, states may not rely on overbroad definitions of these legitimate interests. States must also restrict expression that constitutes incitement to violence, discrimination or hostility, or propaganda for war. Only sanctions strictly proportionate to the need to protect a legitimate aim are permissible.

[General Comment 37](#) specifically stipulates that peaceful assemblies ‘require a significant degree of toleration’ and may be ‘inherently or deliberately disruptive’. A protest can encompass conduct or expression that may annoy or give offence to people who are opposed to the ideas or claims that a protest is seeking to promote, or conduct that temporarily hinders, impedes, or obstructs the activities of third parties. As stipulated by the [OSCE Guidelines](#), these disruptions do not render an assembly to be ‘unpeaceful’ and, thus, the authorities must accommodate the protest.

The European Court of Human Rights also [stipulated](#) on numerous occasions that freedom of expression is equally applicable to ideas that ‘offend, shock, or disturb the State or any sector of the population’.

Current national legislation

The [Code of Petty Offenses](#) (Article 51) penalises vaguely formulated offences, such as ‘disrupting night rest’, ‘causing scandal in a public place by shouting, noise, alarm’, and ‘other outrageous behaviour’. Further, the ‘placement of ... posters, notices, appeals,

leaflets, drawings ... in a public place not designated for this purpose' is also a punishable offence under Article 63a, as is the use of 'indecent language' under Article 141.

Organising an assembly 'without the required notification' is also an offence under the Code of Petty Offenses (Article 52.2). These offences are subject to harsh sanctions: fines, arrests, and restrictions of liberty.

Such offences do not sustain the scrutiny of the aforementioned human rights standards. They penalise the essential elements of the protest. Vague terms that form the disposition of the offences, such as 'other outrageous behaviour', do not pass the test of legality. They are not sufficiently definable nor is their application by the authorities foreseeable. As formulated, the restrictions rely on an inflated understanding of 'public order' and/or 'the rights of others' and are not justified by a concrete individualised risk to these impugned interests. Finally, the sanctions, particularly restrictions on liberty, are manifestly disproportionate and should never be imposed on minor disturbances during a protest. As such, the current system of 'petty offences' contains unjustified restrictions of the rights to freedom of expression and freedom of peaceful assembly.

Recommendation

The Code of Petty Offenses should be profoundly reformed. At a minimum, the following offences should be repealed: 'disrupting night rest', 'causing scandal in a public place', and 'other outrageous behaviour' under Article 51; organising an assembly 'without the required notification' under Article 52.2; 'placement of ... posters, notices, appeals, leaflets, drawings ... in a public place not designated for this purpose' under Article 63a; and the 'use of indecent language' under Article 141. All remaining offences relevant to the conduct of a protest must be narrowly construed, clearly linked to a recognised legitimate aim and justified by a 'pressing social need'. The sanctions must be treated as measures of last resort and must be strictly proportionate.

Recommendation 5: Repealing criminal prohibitions of criticism or ‘insult’ of the state, its symbols or institutions, religion, and religious objects

International standards

[General Comment 37](#) and the [OSCE Guidelines](#) stipulate that any restrictions on the right to peaceful assembly must be content neutral. This includes assemblies that may contain criticism of, or insult to, the nation, the state or its symbols, the government, its agencies or public officials, and criticism of religions or religious doctrines, which may be perceived as ‘offensive’ or ‘insulting’ by some.

Further, although states are obliged to prohibit incitement to violence, hostility, and discrimination based on protected grounds, as detailed in the OSCE Guidelines, these prohibitions do not extend to protests which contain messages that might be hostile or insulting to other individuals, groups, or particular sections of society. Moreover, protests that merely ‘insult’ or express criticism of the state and its institutions or religions and religious symbols do not constitute incitement and are firmly protected by international human rights law.

As highlighted earlier, the right to freedom of expression ‘is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb’.

Under international freedom of expression standards, prohibitions of ‘insult’ are not justified as they protect feelings rather than a legitimate protection of reputation.

Last but not least, international human rights standards, including the [UN Human Rights Committee General Comment No. 34](#), the [UN Human Rights Council Resolution 16/18](#) on ‘Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief’, the [Rabat Plan of Action](#) of the Office of the UN High Commissioner for Human Rights, and the UN special rapporteurs on freedom of expression and freedom of religion and belief also

recommend abolishing prohibitions of blasphemy/defamation of religion as illegitimate restrictions on freedom of expression.

Current national legislation

The [Polish Criminal Code](#) contains provisions on blasphemy (Article 196) and defamation and insult (Articles 212–215). These provisions have been applied to stifle the right to protest in Poland, including against assemblies that have expressed support for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) rights, as the [Rainbow Mary](#) case vividly demonstrated.

Recommendation

Poland must fully decriminalise blasphemy, defamation, and insult as they are fundamentally incompatible with international and regional freedom of expression standards. Articles 196 and 212–215 of the Criminal Code should be abolished in their entirety. All criminal cases on the basis of these provisions should be discontinued.

Recommendation 6: Ceasing the practice of arbitrary arrests and detentions prior to, during, or following an assembly

International standards

Arresting and detaining protesters may affect a number of their human rights: the rights to liberty, physical, and mental integrity; respect for private and family life; non-discrimination; as well as the rights to freedoms of expression, peaceful assembly, and movement.

[General Comment 37](#) stipulates that ‘practices of indiscriminate mass arrest prior to, during or following an assembly are arbitrary and thus unlawful’.

Arrests must always be carried out in an individual manner in response to unlawful behaviour of a specific protester. ‘Preventive’ stops, searches, arrests, and detentions of protesters en route to an assembly are against international human rights standards.

Powers to ‘stop and search’ or ‘stop and frisk’ applied to those who participate in assemblies or are about to do so must be exercised based on reasonable suspicion of the commission or threat of a serious offence and must not be used in a discriminatory manner. The mere fact that authorities associate an individual with a peaceful assembly does not constitute reasonable grounds for stopping and searching them.

As the [OSCE Guidelines](#) also stipulate, mass arrests cannot be justified by the inability of the authorities to effectively carry out individual arrests. Allocating sufficient number of police resources is an element of the state obligation to protect and fulfil the right to a peaceful assembly. All instances of stops, searches, arrests, and detentions of protesters must be proportionate to an individualised risk of specific violations. It is recommended that law enforcement authorities develop practical protocols that would provide guidance as to when specific measures are appropriate and proportionate and when they are not, how they should be conducted, and how individuals are to be dealt with following arrest.

Current practice

As documented by ARTICLE 19's [2023 report](#) on Poland, in many instances the authorities detained anti-government protest participants simply for exercising their right to protest. In a number of protests, the police selected protesters to detain seemingly at random. Even passers-by who did not participate in the protest were subjected to sporadic arbitrary arrest, as seen during a [spontaneous protest](#) in support for a detained LGBTQI activist in August 2020. A number of arrests during protests were cited to be linked to holding or wearing rainbow-coloured objects, which is a manifestly arbitrary and discriminatory practice. The police have also routinely asked for identification documents without cause.

Recommendation

All arrests, detentions, and any subsequent trials should be carried out in accordance with both formal and substantive rules of domestic and international law, including the principles of non-discrimination and proportionality and with respect to due process. The Polish authorities must end the practice of mass stops, seizures, and arrests. All arrests and detentions must have an individualised cause and must be based on a reasonable suspicion of the person having committed an offence or motivated by the imminent necessity to prevent them from committing an offence. The Polish authorities must ensure human rights-focused training for law enforcement and review the existing protocols and instructions on stops, searches, seizures, and arrests to bring them in line with international standards. Independent oversight over all law enforcement actions that interfere with the protest must be ensured.