



Amnesty International Poland submission to the call for input by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

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 since 2017. 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 submission, there is a direct link between the progressive erosion of these rights and the harassment, profiling and targeting of LGBTI activists.

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 counterdemonstrators 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 gruelling 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

Between 2017 and 2022, 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 Sącz, and Rzeszów where 11 different organizers of Equality Marches told the organization that they faced problems with the overly complex process of notification.

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 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 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. 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.

Supporting documents:

1. Amnesty International Report - "They treated us like criminals. From shrinking space to harassment of LGBTI activists" <https://www.amnesty.org.pl/wp-content/uploads/2022/07/THEY-TREATED-US-LIKE-CIMINALS-report-on-LGBTI-activists-in-Poland-Amnesty-International-EUR3758822022english.pdf>
2. Poland: Inadequate police protection for BIAŁYSTOK march amidst anti-LGBTI hate <https://www.amnesty.org/en/documents/eur37/0775/2019/en/>
3. Poland: Prosecution of women who put up posters of Virgin Mary with rainbow halo smacks of state-sponsored homophobia <https://www.amnesty.org/en/latest/news/2021/12/poland-prosecution-of-women-who-put-up-posters-of-virgin-mary-with-rainbow-halo-smacks-of-state-sponsored-homophobia/>