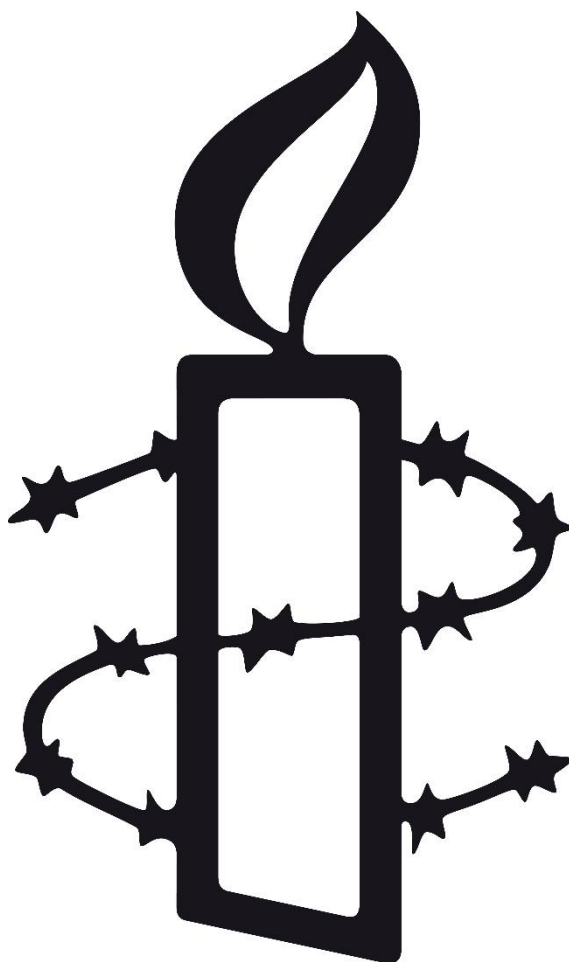


# POLAND

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE  
142<sup>ND</sup> SESSION, 14 OCTOBER- 7 NOVEMBER 2024, LIST OF  
ISSUES PRIOR TO REPORTING



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Amnesty International submits this information to the UN Human Rights Committee ahead of the adoption of the list of issues prior to reporting for Poland. It focuses on the rights to freedom of expression, association, and peaceful assembly, women's rights, equality and non-discrimination, access to an effective remedy, the rights of refugees and migrants, and the right to privacy.

# 1. INTRODUCTION

Amnesty International submits this information to the UN Human Rights Committee ahead of the adoption of the list of issues prior to reporting for Poland. It focuses on the rights to freedom of expression, association, and peaceful assembly, women's rights, equality and non-discrimination, access to an effective remedy, the rights of refugees and migrants, and the right to privacy.

Most issues cover the period from 2015-2023 when the Law and Justice Party was in government. Since then, a new government has come into power in December 2023, and has committed to introducing reforms relating to the independence of the judiciary and respect for human rights more generally. So far, no concrete reforms have been introduced in the areas covered in this report.

## 2. FREEDOM OF EXPRESSION (ARTICLE 19)

Before the Parliamentary elections of October 2023, Amnesty International documented how the government targeted people perceived to be critical of the government. This included certain judges, prosecutors, journalists, and human rights defenders, especially women, LGBTI and climate activists, who have faced harassment, strategic lawsuits against public participation (SLAPPs), disciplinary proceedings that inhibit their work, slander, smear campaigns and threats.<sup>1</sup>

An example is the case of three activists who were charged, in 2019, with “offending religious beliefs” for possessing and distributing posters and stickers depicting the Virgin Mary with an LGBTI rainbow halo.<sup>2</sup> They were acquitted in January 2022 by the Płock Regional Court. However, this judgment was appealed by the prosecutor's office, which eventually brought the case to the Supreme Court. On 28 March 2024, the Supreme Court dismissed the cassation appeal and held that the activists had not offended religious beliefs. It is worth noting that the Prosecutor's Office withdrew its appeal at the final stage (before the Supreme Court).

Under the previous government, public television (TVP) in Poland often ran programming that supported the ruling party's political agendas, and also supported their hateful stance towards opposition parties and marginalized groups in Poland, in particular people with migrant backgrounds and LGBTI persons.<sup>3</sup> An example of this was TVP's production and broadcasting of the homophobic film “Invasion” - targeting the LGBT community.<sup>4</sup>

In December 2023 the newly appointed minister of culture and national heritage unilaterally dismissed the boards of several public broadcasters. This was done in an untransparent manner, and not in accordance

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<sup>1</sup> Cf. Amnesty International, *Wspólny list organizacji pozarządowych do ministrów UE w sprawie praworządności i praw człowieka w Polsce [Joint letter from NGOs to EU ministers on the rule of law and human rights in Poland]*, 22 February 2022, <https://amnesty.org.pl/list-organizacji-pozarządowych-do-ministrów-ue-w-sprawie-kryzysu-praworządności-w-polsce/>

Amnesty International, *Poland: Free courts, free people, judges standing for their independence* (Index Number: EUR 37/0418/2019), 4 July 2019, <https://www.amnesty.org/en/documents/eur37/0418/2019/en/>

Amnesty International, *Poland: Witch hunt of judges threatens independence of judiciary*, 4 July 2019, <https://www.amnesty.org/en/latest/news/2019/07/poland-witch-hunt-of-judges-threatens-independence-of-judiciary/>

Ilga Europe, *Poland: All charges against LGBTI rights defenders charged for peaceful activism must be dropped, say Human Rights NGOs*, 12 January 2021, <https://www.ilga-europe.org/resources/news/latest-news/poland-all-charges-against-lgbti-rights-defenders-charged-peaceful>

Adam Płoszka, Marcin Sczaniecki, *Dajcie mi człowieka, a znajdzie się paragraf. O instrumentalnym stosowaniu Kodeksu wykroczeń do tłumienia protestów [Give me a man and a paragraph will be found. On the instrumental use of the Code of Misdemeanors to suppress protests]*, Amnesty International, 2024

<https://www.amnesty.org.pl/dajcie-mi-czlowieka-a-znajdzie-sie-paragraf-nowa-analiza-amnesty-international/>

<sup>2</sup> Amnesty International, *Tęczą nie obraża! Aktywistki uniewinnione po apelach Amnesty International [Rainbow does not offend! Activists acquitted after Amnesty International appeals]*, 26 March 2024

<https://www.amnesty.org.pl/tecza-nie-obraza-apelujemy-do-prokuratora-generalnego-o-wycofanie-kasacji/>

<sup>3</sup> Reporters Without Borders, *Polish public broadcaster peddles government hate speech in presidential election run-up*, 24 June 2020

<https://rsf.org/en/news/polish-public-broadcaster-peddles-government-hate-speech-presidential-election-run-1>

<sup>4</sup> Notes from Poland: *Court orders Polish state broadcaster TVP to take down online anti-LGBT film*, 8 June 2020

<https://notesfrompoland.com/2020/06/08/court-orders-polish-state-broadcaster-tvp-to-take-down-online-anti-lgbt-film/>

with the law: the dismissal was carried out under the Commercial Companies Code and should have been done pursuant to the Broadcasting Law.<sup>5</sup>

### Recommendations

Amnesty International recommends that the government of Poland:

- End the harassment and intimidation of individuals perceived as critical of the government, including journalists, human rights defenders, judges and prosecutors.
- Decriminalize defamation, whether of public figures or private individuals, and ensure it is treated as a matter of civil litigation.
- Drop all prosecutions for expression protected under international human rights law, and immediately release individuals detained on these grounds

## 3. FREEDOM OF PEACEFUL ASSEMBLY (ARTICLE 21)

Several peaceful demonstrations faced barriers and were not adequately protected by the police.<sup>6</sup>

LGBTI persons organizing Pride parades have faced particular challenges, including additional extra-legal obligations imposed on organizers. For example, in Częstochowa the municipality did not treat pride organizers' notification to organize an event as sufficient, requiring them to "request the special use of road", which is not a requirement for protests generally.<sup>7</sup> Moreover, in 2018 and 2019 several preventive bans on Equality Marches were issued 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.<sup>8</sup> Amnesty International considers these bans arbitrary and discriminatory as they were not issued in furtherance of any existing regulations around protests<sup>9</sup>. In October 2021, the Parliament debated a draft law submitted by the non-governmental organization "Stop LGBT" which aimed at prohibiting any form of "promotion" of same-sex relationships, and could have impacted people's freedom to organize and attend Pride parades. The law did not pass.<sup>10</sup>

In May 2020, during the presidential election campaign, police arrested hundreds of people simply for peacefully protesting in the streets, and the courts imposed heavy fines on them. The police especially targeted protesters demanding respect for the independence of the judiciary and those criticizing the lack of support for small entrepreneurs during the Covid-19 lockdown.<sup>11</sup>

In November 2020, the Constitutional Tribunal's ruling on the unconstitutionality of abortion (one of the grounds for allowing legal abortion) triggered mass peaceful demonstrations. The police responded with unnecessary force against protesters and journalists, including use of batons and pepper spray. The January 2021 publication of the ruling led to further protests. During demonstrations held on 27 January in Warsaw, the police arrested 20 protesters and filed 250 cases against them. Charges included assault on a police officer, violation of physical integrity and insulting police officers. The police took the arrested protesters to stations outside Warsaw, which hindered their timely access to lawyers.<sup>12</sup>

The former government extensively used so-called "cyclical assemblies" to suppress any critical opinions. Cyclical assemblies are a legal term (based on Art. 26a of the Law on assemblies) given to assemblies that

<sup>5</sup> Helsińska Fundacja Praw Człowieka, *Stanowisko Helsińskiej Fundacji Praw Człowieka w sprawie zmian w mediach publicznych [Statement of the Helsinki Foundation for Human Rights on changes in public media]*, 22 December 2023, <https://hfhr.pl/aktualnosci/stanowisko-hfpc-ws-zmian-w-mediach-publicznych>

<sup>6</sup> Amnesty International, *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, <https://amnesty.org.pl/wp-content/uploads/2020/11/Zgromadzenia-ENG.pdf>

<sup>7</sup> Amnesty International, *They Treated Us Like Criminals. From Shrinking Space to Harassment of LGBTI Activists*, (Index: EUR 37/5882/2022), 20 July 2022, <https://www.amnesty.org/en/documents/eur37/5882/2022/en/> p. 19

<sup>8</sup> *Ibidem*, p. 23.

<sup>9</sup> *Ibidem*.

<sup>10</sup> Amnesty International, *Polska: Marsze Równości na celowniku [Poland: Equality marches on target]*, 28 October 2021, <https://amnesty.org.pl/polska-marsze-rownosci-na-celowniku/>

<sup>11</sup> Amnesty International, *Covid-19 nie usprawiedliwia tłumienia protestów [Covid-19 does not justify suppression of protests]*, 29 May 2020, <https://www.amnesty.org.pl/covid-19-nie-usprawiedliwia-tlumienia-protestow/>

<sup>12</sup> Amnesty International, *Policja musi wyjaśnić nadużycia wobec pokojowych demonstrantów [Police must explain abuses against peaceful protesters]*, 4 February 2021

<https://www.amnesty.org.pl/policja-musi-wyjasnic-naduzycia-wobec-pokojowych-demonstrantow/>

are, by law, given priority over other assemblies that may have taken place at the same time and place. The periodic organization of such assemblies is a tactic that allows the government, and groups and organizations supportive of the government to de facto prevent other assemblies, which are potentially critical of the government, from happening. For instance, in October 2022, a “cyclical assembly” was used by members of the ruling Law and Justice party to prevent protests during a monthly commemoration in the city of Kraków of the Smolensk plane crash which killed a former president.<sup>13</sup>

The police have also charged peaceful protestors with petty offences, as a way to harass them, in some instances. Recent years have seen a significant rise in the number of cases in which Article 52 of the Code of Petty Offences (regulating the infringement of assembly regulations) has been used to charge peaceful protestors. Data provided by the Ministry of Justice indicates that the largest number of proceedings under Article 52 in recent times were initiated in 2017 and 2018 (766 and 1,223 respectively).<sup>14</sup> This was the period when nationwide demonstrations against the reforms of the Supreme Court were organized. In 2020 and 2021, when large protests against the Constitutional Court's ruling on abortion were staged, the authorities launched 471 and 306 proceedings respectively. The data also shows that, in the same years, about half of the proceedings resulted in the imposition of a penalty, mostly a fine.<sup>15</sup>

For example, in June 2023, an activist organized an assembly to commemorate the death of young woman who died as a result of not being allowed to undergo an abortion due to Poland's restrictive abortion laws (these laws are discussed in more detail later in this submission). In her notification, the activist had declared that the assembly would be stationary, but on the day, she changed the assembly to a mobile one to respond to ground realities. As a result, she was charged under Article 52 of the Code of Petty Offences. On 4 December 2023, the Bielsko-Biała District Court found her guilty, but waived all punishment. On 17 May 2024, the Court of the second instance overruled the judgement of the court of first instance and acquitted her.<sup>16</sup> Other such cases are still being heard in courts.<sup>17</sup>

## Recommendations:

Amnesty International recommends that the government of Poland:

- Ensure that Pride parades are not arbitrarily banned and guarantee that LGBTI people can exercise their right to freedom of peaceful assembly without fear of reprisals.
- Ensure that all demonstrations enjoy equal access to public spaces and that all individuals are equally protected by the police, in particular by amending the Law on Assemblies and repealing the provisions regarding cyclical assemblies
- Ensure that any restriction on public assemblies is consistent with international law. Decisions to ban a demonstration should only be the last resort after a thorough assessment where no less restrictive means could achieve the desired aim.
- Adequately train law enforcement officials to police assemblies, including on international standards on the use of force, and ensure accountability in instances when police actions violate human rights.
- Immediately drop all charges against all individuals for exercising their right to peaceful assembly
- Ensure that the Code of Petty Offences is not misused to suppress the freedom of assembly

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<sup>13</sup> Amnesty International, *Amnesty International Report 2022/23: The state of the world's human rights*, 27 March 2023, <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>

<sup>14</sup> Adam Płoszka, Marcin Szczaniecki, *Dajcie mi człowieka, a znajdzie się paragraf. O instrumentalnym stosowaniu Kodeksu wykroczeń do tłumienia protestów* [Give me a man and a paragraph will be found. On the instrumental use of the Code of Misdemeanors to suppress protests], Amnesty International, 2024, <https://www.amnesty.org.pl/dajcie-mi-czlowieka-a-znajdzie-sie-paragraf-nowa-analiza-amnesty-international/> p. 17

<sup>15</sup> Ibidem.

<sup>16</sup> Amnesty International, *Murem za Aśką [I stand firmly behind Aśka]* [https://www.amnesty.org.pl/akcje/petycja\\_\\_protest\\_murem\\_za\\_aska/](https://www.amnesty.org.pl/akcje/petycja__protest_murem_za_aska/)

<sup>17</sup> Cf. For example: *Gazeta Wyborcza*, *Babcia Kasia chciała w Częstochowie zatrzymać homofobus. Sąd ukarał ją naganą, Ordo Iuris: "To bagatelizowanie wykroczeń lewicowych aktywistów [Grandmother Kasia wanted to stop a homofobus in Częstochowa. The court reprimanded her, Ordo Iuris: "This downplays the misdemeanors of left-wing activists.]"*, 6 August 2024 <https://czestochowa.wyborcza.pl/czestochowa/7,48725,31196327,babcia-kasia-na-marszu-rownosci-w-czestochowie-chciala-zablokowac.html>

## 4. GENDER EQUALITY (ARTICLES 3 AND 26)

### Sexual and reproductive rights

Poland has one of Europe's most restrictive abortion laws. In Poland today, abortion is only legal when the health or the life of the pregnant person is at risk or when the pregnancy is the result of rape or incest. Performing your own abortion or the possession of abortion pills for a self-managed abortion is not a crime under Polish law, but any person or doctor who helps pregnant people with an abortion outside the two permitted grounds in the law may face up to three-years in prison. In practice, however, it is almost impossible for those eligible for a legal abortion to obtain one. Every year thousands of women leave Poland to access abortion care in other European countries, while others import medical abortion pills or seek extra-legal abortion in Poland.<sup>18</sup> Polish women, particularly those in difficult socio-economic situations, have to depend on the crucial help from civil society organizations, with often limited resources.<sup>19</sup>

On 22 October 2020, Poland's Constitutional Tribunal ruled that abortion on grounds of "severe and irreversible fetal defect or incurable illness that threatens the fetus' life" was unconstitutional. The ruling followed a case filed by members of the Polish Parliament and formally supported by the Prosecutor General. The ruling came into force on 27 January 2021.<sup>20</sup>

The ruling eliminated one of few legal grounds for abortion under Poland's highly restrictive law and its entry into force means that there is now effectively a near-total ban on abortion in Poland. Previously, over 90% of the approximately 1,000 legal abortions annually performed in Poland were on this ground.<sup>21</sup> The ruling came as the COVID-19 pandemic restrictions made travel for abortion care prohibitively difficult and costly. It spurred the country's largest public protests in decades, led by women human rights defenders. Activists and women's rights organizations report that the ruling is having a significant chilling effect as medical professionals fear repercussions even in situations where abortion remains legal.<sup>22</sup> Women human rights defenders and civil society organizations advocating for the ruling to be overturned and for reform of Poland's abortion law have faced threats of violence and several protestors have been prosecuted by the government for creating an "epidemiological threat" due to protesting during the Covid-19 pandemic.<sup>23</sup>

### Women Human Rights Defenders

Women human rights defenders face harassment and persecution for their work. For example, in November 2021, the public prosecutor brought charges against Justyna Wyrzyńska (a doula, an activist and cofounder of Women on the Web and Abortion Dream Team (an informal initiative to educate and destigmatize abortion) - for "helping with an abortion" and "possession of medicines without authorisation for the purpose of introducing them into the market".<sup>24</sup> Justyna Wyrzyńska supported a pregnant woman, who said she had been suffering from domestic violence, to access abortion pills. The woman never used the pills as they were found by her partner who notified the police. However, Justyna was accused and found guilty of the offence of helping with abortion. Justyna was sentenced to 8-months of community service. She appealed the verdict, and her case is still pending. It was the first time in Europe in which an activist is being prosecuted for aiding an abortion by providing abortion pills and when a human rights defender advocating for access to abortion has been sentenced under such law. At this time, there are

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<sup>18</sup> Magdalena Chrzczonowicz, *46 tys. osób mogło przerwać ciążę w ostatnim roku dzięki Aborcji Bez Granic [NOWE DANE]* [46,000 people may have terminated their pregnancies in the last year thanks to Abortion Without Borders [NEW DATA]], OKO.press, 22 October 2023, <https://oko.press/aborcja-bez-granic-raport>

<sup>19</sup> Center for Reproductive Rights, *Poland: A Year On, Abortion Ruling Harms Women Anniversary Marks Ongoing Assault on Women's Rights, Rule of Law*, 19 October 2021, <https://reproductiverights.org/poland-a-year-on-abortion-ruling-harms-women/>

<sup>20</sup> Amnesty International, *Polska: Regres w dostępie do aborcji zagraża życiu i zdrowiu kobiet [Poland: Regression in access to abortion threatens women's lives and health]*, 27 January 2021

<https://www.amnesty.org.pl/polska-regres-w-dostepie-do-aborcji-zagraza-zyciu-i-zdrowiu-kobiet/>

<sup>21</sup> Julia Theus, *Drastycznie zaniżone dane. Oficjalnie tylko 161 kobiet przerwało ciążę w 2022 roku. To fałsz [Drastically underreported data. Officially, only 161 women terminated their pregnancies in 2022. This is false]*, OKO.press, 28 July 2023

<https://oko.press/161-tyle-kobiet-oficjalnie-przerwalo-ciaze-w-ostatnim-roku>

<sup>22</sup> Rzeczpospolita, *Szpital odmówił aborcji. "Lekarze obawiają się odpowiedzialności karnej"* [Hospital refused abortion. "Doctors fear criminal liability."], 6 December 2021

<https://www.rp.pl/ochrona-zdrowia/art19170571-szpital-odmowil-aborcji-lekarze-obawiaja-sie-odpowiedzialnosci-karne>

<sup>23</sup> Human Rights Watch, *Poland: Escalating Threats to Women Activists*, 31 March 2021

<https://www.hrw.org/news/2021/03/31/poland-escalating-threats-women-activists>

<sup>24</sup> Amnesty International, *Poland: Charges against activist accused of aiding an abortion must be dropped*, 13 July 2022

<https://www.amnesty.org/en/latest/news/2022/07/poland-charges-against-activist-accused-of-aiding-an-abortion-must-be-dropped-2/>

several other cases brought against family members or activists who allegedly helped with an abortion being investigated or being processed in courts in Poland.<sup>25</sup>

### Gender based violence

Under Polish law, rape is defined as "bringing another person to sexual intercourse" by "violence, unlawful threat or deception". The aggravated forms of this crime, which carry more severe penalties, are set out in paragraphs 3 and 4 of Article 197. This is not consistent with a consent-based definition of rape, and with what international human rights law standards require.<sup>26</sup> One consequence of the wording of Article 197 is that trials tend to focus on how the victim "resisted" and how the perpetrator "overcame that resistance". Prosecutors and judges, concentrate on establishing whether the alleged perpetrator used force, illegal threats or deceit to overcome the victim's "resistance". This leads the authorities to focus not on the survivor's absence of consent, but rather on the level of opposition, how that was communicated, and for how long.<sup>27</sup> An amendment to this law has recently been passed but has not yet entered into force. As per the new definition, which unequivocally recognizes that sex without consent is rape, rape is defined as "bringing another person to sexual intercourse by violence, unlawful threat, deception or otherwise despite the lack of his or her consent."

### Recommendations:

Amnesty International recommends that the government of Poland:

- Provide access to comprehensive sexual and reproductive health services, goods and information, and enact a regulatory framework for abortion care aligned with the 2022 WHO Abortion Care Guideline
- Immediately drop all charges against human rights defender Justyna Wydrzyńska and refrain from bringing any other charges with the intention to criminalize her or other activists for providing support to people seeking an abortion.
- Remove Article 152, which criminalizes abortion, from the Criminal Code
- Enforce the amended definition of rape in the Criminal Code to recognize that sex without consent is rape, bringing it in line with international human rights standards.

## 5. EQUALITY AND NON-DISCRIMINATION (ARTICLES 2, 21 AND 26)

The Equality Law has been the subject of multifaceted criticism from various entities, including NGOs, academics, legal practitioners.<sup>28</sup> One of its criticisms is that the definition of discrimination in the act is narrow, and not consistent with the Polish Constitution or international human rights law. The Constitution, in Article 32(2), states that: "No one shall be discriminated against in political, social or economic life for any reason." The Equality Law on the other hand enumerates specific criteria: gender, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age or sexual orientation, while omitting others, such as gender identity, socio-economic status, family status or marital status. As a result, certain groups, such as those living in poverty and other marginalized groups, are not protected by the law. Therefore, it should be urgently amended.

There was a sharp increase in hostile and stigmatizing rhetoric against LGBTI people, including by high-level officials, after 2019. A particular expression of this was the adoption of discriminatory local

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<sup>25</sup>Amnesty International, *An unstoppable movement: A global call to recognize and protect those who defend the right to abortion*, 24 November 2023 (Index Number: POL 40/7420/2023)

<https://www.amnesty.org/en/documents/pol40/7420/2023/en/>

<sup>26</sup>European Court of Human Rights, *M.C. v. Bulgaria*, Application 39272/98, judgment 4 December 2003.

<sup>27</sup> Judgment of the Supreme Court of 18 February 2014 (case no. II KK 19/14), <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%2019-14.pdf>

<sup>28</sup> Cf. in particular the comprehensive commentary by academics and practitioners on this law containing numerous criticisms: Zofia Jabłońska, Karolina Kędziara, Krzysztof Śmiszek, and Maciej Kułak. *Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania: komentarz [Law on the implementation of certain provisions of the European Union on equal treatment: a commentary]*, Wolters Kluwer, 2017, as well as more recent criticism expressed by: Adam Płoszka, *Status społeczno-ekonomiczny jednostki jako niedopuszczalne kryterium różnicowania sytuacji prawnej jednostki [Socio-economic status of an individual as an impermissible criterion for differentiating the legal situation of an individual]*, Państwo i Prawo, no. 2/2023, p. 59-76.

government resolutions, also known as ‘LGBTI ideology-free zones’, that – although not legally binding – were harmful and fueled the atmosphere of hostility towards LGBTI people living in those regions. These resolutions sought to prohibit various activities for LGBTI people on the territory of the local government. LGBTI-free zones were intended to be a discriminatory manifestation of the almost 100 local government's opposition to human rights of LGBTI people. Almost all of them were finally forced to withdraw as a result of pressure from civil society and the European Commission.<sup>29</sup> Only five of them have remained in force.<sup>30</sup>

Peaceful ‘equality marchers’ in Białystok, Gniezno and Lublin, who were protesting in solidarity with the rights of LGBTI persons, were attacked by violent counterdemonstrators in 2018-2019, and the police failed to adequately protect them. An Amnesty International report on this issue documented how, in some instances, excessive use of force also was used by police against LGBTI people and their allies during protests.<sup>31</sup>

LGBTI rights defenders faced ongoing criminal and civil proceedings. Some, like activists who created the interactive map ‘Atlas of Hatred’, were subject to Strategic Lawsuits Against Public Participation (SLAPPs) by the government. In January 2022, during court proceedings brought by one activist who had been arbitrarily detained for 24 hours after the so-called Rainbow Night protest in 2020, the police officer who arrested him admitted: “We were instructed to stop all persons displaying the colours of LGBT, regardless of how they behaved.”<sup>32</sup>

These various discriminatory acts were also possible because Polish criminal law does not sufficiently protect against hate crimes, especially those committed against LGBTI people. This is well illustrated by the wording of Article 119 of the Criminal Code, which states that:

*§ 1. Whoever uses violence or unlawful threat against a group of persons or an individual because of his national, ethnic, racial, political, religious affiliation or because of his irreligiousness, shall be subject to a penalty of imprisonment from 3 months to 5 years.*

Similarly, Article 257 of the Criminal Code states that:

*Whoever publicly insults a group of people or an individual person because of his national, ethnic, racial, religious affiliation, or because of his irreligiousness, or for such reasons violates the bodily integrity of another person, is punishable by imprisonment of up to 3 years.*

These provisions contain several key gaps. They exclude several marginalized groups who often experience hate crimes in Poland, including LGBTI persons, women or human rights defenders. Furthermore, police are not obliged to investigate discriminatory motives in crimes as a part of routine investigation, as a result of which it is hard to officially identify a hate crime.

## **Recommendations:**

Amnesty International recommends that the government of Poland:

- Amend the existing law in order to ensure that:
  - a. the list of protected characteristics included in Article 119 is an open-ended list and, as a minimum, explicitly includes age, disability, gender, gender identity, sexual orientation and social or economic status as protected characteristics;
  - b. extend the scope of the provision of art. 257 to an open-ended list of protected characteristics, which, as a minimum, should also include age, disability, gender, gender identity, sexual orientation and social or economic status;
  - c. any discriminatory motive associated with any other violent offence under Polish Criminal law is fully investigated in the prosecution and trial of suspects and reflected in court records.

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<sup>29</sup> Cf. more: Adam Płoszka, *From human rights to human wrongs. How local government can negatively influence the situation of an individual. The case of Polish LGBT ideology-free zones. The International Journal of Human Rights* 27, no. 2 (2023): 359-379.

<sup>30</sup> Cf. Atlas of Hatred’: <https://atlasnienawisci.pl/>

<sup>31</sup> Amnesty International, *They Treated Us Like Criminals. From Shrinking Space to Harassment of LGBTI Activists*, (Index: EUR 37/5882/2022), 20 July 2022,

<https://www.amnesty.org/en/documents/eur37/5882/2022/en/> p. 23

<sup>32</sup> *Ibidem*, p. 42.



- 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.
- Provide anti-discriminatory training to the police addressing LGBTI rights as an integral part of police trainings. Documents and implementation reports should be accessible to the public.

## 6. LACK OF ACCESS TO REMEDY (ARTICLES 2 AND 14)

Poland has been in a crisis of the rule of law since 2016. This crisis has multifaceted effects on human rights. One of its most significant elements is the weakening of the independence of the Constitutional Tribunal and the common courts. This has resulted in impacting individuals access to an independent tribunal and courts.<sup>33</sup>

The cornerstone of the crisis affecting human rights, including the right to an effective remedy, is the politicization of the National Council of the Judiciary. The independence of the National Council of the Judiciary (NCJ), the body responsible for the election of judges in Poland, has been severely undermined because of legislative changes initiated in 2017. The functioning of the NCJ in its current form, in subordination to political authorities, undermines guarantees of effective judicial protection.<sup>34</sup>

The status of judges elected by the politicized NCJ, especially the status of Supreme Court judges sitting in the Chambers of Professional Responsibility and of Extraordinary Control and Public Affairs, is widely questioned by legal society in Poland as well as by courts. There have been several judgments issued by the European Court of Human Rights and the Court of Justice of the European Union in this regard,<sup>35</sup> including the case of *Wałęsa vs Poland*. This judgment, which is the latest in a series of judgments on the rule of law crisis, notes as.<sup>36</sup>

“(…)considering the rapid and continued increase in the number of applications concerning the independence of the judiciary in Poland and alleging, in particular, a breach of the right to an “independent and impartial tribunal established by law” over the past eighteen months and the gravity of the impugned situation, commonly referred to as “the rule of law crisis”, as a result of which numerous yet unidentified persons may be adversely affected, the Court considers that the systemic problems identified above may aggravate quickly and call for urgent remedial measures.”<sup>37</sup>

### Recommendations:

Amnesty International recommends that the government of Poland:

- Ensure that all people have access to remedy, including by restoring the independence of the Constitutional Tribunal, Supreme Court - in particular the Chambers of Professional Responsibility and Extraordinary Control and Public Affairs – and the NCJ

<sup>33</sup> Cf in details: Amnesty International, *Poland: Briefing on the rule of Law and Independence of the Judiciary in Poland In 2020-2021* (Index no: EUR 37/4304/2021), 17 June 2021, <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR3743042021ENGLISH.pdf>

<sup>34</sup> Cf. Joint NGOs letter: *National Council of the Judiciary in Poland*, 14 June 2022

<https://www.amnesty.eu/news/joint-ngos-letter-national-council-of-the-judiciary-in-poland/>

<sup>35</sup> Cf. for example: European Court of Human Rights, *Xero Flor w Polsce sp. z o.o. v. Poland*, Application no. 4907/18, Judgment, 7 May 2021; European Court of Human Rights, *Advance Pharma sp. z o.o v. Poland*, Application 1469/20, judgment, 3 February 2022. European Court of Human Rights, *Grzęda v. Poland*, Application no. 43572/18, Grand Chamber judgment, 15 March 2022.

Court of Justice of the European Union, cases: C-619/18 –Commission v Poland (judgement of 24 June 2019, ECLI:EU:C:2019:615); C-192/18 – Commission v Poland (Judgement of 5 November 2019, ECLI:EU:C:2019:924); as well as joint cases C-585/18, C-624/18 and C-625/18 – A.K. et al. v Krajowa Rada Sądownictwa (judgement of 19 November 2019, ECLI:EU:C:2019:982); C-824/18 – A.B. et al. v Krajowa Rada Sądownictwa et al. (Grand Chamber judgement of 2 March 2021, ECLI:EU:C:2021:153).

<sup>36</sup> European Court of Human Rights, *Wałęsa v. Poland*, Application no. 50849/21, judgment 23 November 2023.

<sup>37</sup> *Ibidem*, par. 327.

## 7. FREEDOM OF ASSOCIATION (ARTICLE 22)

From 2015 till the end of 2023, Amnesty International observed that the space for civil society has been deliberately reduced by the Government.<sup>38</sup> These actions in particular target organizations working on human rights, including organizations responsible for combating domestic violence and providing support for women victims of violence.

One of the tools used by Polish state to restrict space for civil society was limiting non-governmental organizations' capacity to receive financing from government-related sources of funding. Initially, the government organized 'competitions' for NGOs, based on which they would receive funding. According to the National Federation of Non-governmental Organizations, an umbrella organization of nearly 130 NGOs operating in Poland, the possibility of obtaining financing from the government was limited by certain practices, including of organizing competitions amongst NGOs for funding, with very short time frames between the opening of the competition and the submission of tender proposals; and the non-transparent annulment of competitions because certain organizations favoured by the government did not participate.<sup>39</sup>

Therefore, organizations that have aided victims of domestic violence, including women, for several years, and which for this reason were commonly respected, such as, the Center for Women's Rights; and the Lubuskie Center for Women's Rights BABA, have been deprived of state funding. The official reason for the refusal to grant financing to these women's organizations was that they directed their assistance only to female victims of crime, while the Ministry of Justice, as the administrator of funds, considered that it was necessary to ensure "comprehensive" delivery of assistance to "all" victims of crime.<sup>40</sup>

### Recommendations:

Amnesty International recommends that the government of Poland:

- Reverse the process of shrinking space for civil society, including by ensuring adequate funding for NGOs engaged in critical human rights work, and amending regulations on the financing of civil society organizations to ensure transparency in the financing of NGOs.

## 8. RIGHTS OF REFUGEES AND MIGRANTS

Since 2017 there have been ongoing reports of Polish authorities intercepting people seeking international protection at Poland's border with Belarus, mainly in Terespol.<sup>41</sup> The UN Human Rights Committee and the ECtHR have found violations in cases concerning events of 2017, where it was alleged that Border Guards did not allow people at the border to submit asylum applications and that they were summarily returned to Belarus, in violation of the international obligation of non-refoulement.<sup>42</sup> Since 2021 a significant number of people have been trying to cross the Polish-Belarusian border outside official border crossings points. This resulted in more cases pending before the ECtHR, concerning the events at the Poland-Belarus border since 2021.<sup>43</sup>

In August 2021, the situation on the Polish-Belarusian border worsened; a group of 32 Afghan asylum seekers complained that they were stranded at the border between Belarus and Poland for around seven weeks in inadequate conditions, and that Polish border guards had summarily returned them back to Belarus. Despite two interim measures by the ECtHR, Poland failed to provide the group with food, water,

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<sup>38</sup> Cf. Amnesty International, *They Treated Us Like Criminals. From Shrinking Space to Harassment of LGBTI Activists*, (Index: EUR 37/5882/2022), 20 July 2022,

<https://www.amnesty.org/en/documents/eur37/5882/2022/en/>

<sup>39</sup> Adam Ploszka, *Shrinking space for civil society: A case study of Poland* European Public Law 26, no. 4 (2020).

<sup>40</sup> Ibidem.

<sup>41</sup> European Court of Human Rights, *M.K. and Others v. Poland*, applications 40503/17, 42902/17 and 43643/17, judgment 23 July 2020. See also Amnesty International letter to Polish Minister of Interior, 10 May 2017, <https://www.amnesty.org.pl/wp-content/uploads/2017/06/37.2017.002-Blaszczak.pdf>

<sup>42</sup> Cf. European Court of Human Rights, *Sherov and Others v. Poland*, Applications 54029/17 and 3 others, judgment 4 April 2024; Amnesty International, *Unia Europejska: Nowe dowody na przemoc na granicach i regularne pushbacki*, 07 October 2021, <https://amnesty.org.pl/unia-europejska-nowe-dowody-na-przemoc-na-granicach-i-regularne-pushbacki/>

<sup>43</sup> Cf. European Court of Human Rights, *H. K. and Others against Poland*, Application 12752/22; and European Court of Human Rights *M.M. and Others against Poland*, Application no. 41764/17.

shelter, medical assistance and access to lawyers when they were in Poland. Their case remains pending before the Grand Chamber of the ECtHR.<sup>44</sup>

In 2021, Poland summarily returned thousands of refugees and migrants at the border with Belarus.<sup>45</sup> Amnesty International reported “evidence of abuses [that] highlight[ed] ‘hypocrisy’ of unequal treatment of asylum seekers”, with authorities violating rights of asylum seekers, including strip searches and other degrading treatment, in overcrowded detention centres. Nearly all people Amnesty International spoke with reporting “consistently disrespectful and verbally abusive behaviour, racist remarks and other practices that indicated psychological ill-treatment”.<sup>46</sup>

On 20 August 2021, the Polish authorities suspended access to people seeking asylum at the border and ordered their immediate and summary expulsion from its territory.<sup>47</sup> In October 2021, parliament adopted amendments to the Law on Foreigners and the Law on Granting Protection to Foreigners, granting the Polish Border Guard powers to reject any application for international protection without examination and remove persons from Polish territory without providing any effective means of challenging an adverse decision.<sup>48</sup>

On 2 September 2021, the President declared a state of emergency on the border, limiting access to the area, including to journalists, media workers and NGOs.<sup>49</sup> When the constitutional time limit for the state of emergency expired, amendments to the Law on Border Protection, adopted in November 2021, gave powers to the Minister of Interior to impose further restrictions on freedom of movement in that area. With the only exception of Poland’s Human Rights Commissioner’s Office, humanitarian and human rights organisations, and human rights monitors are not allowed to access the so-called “exclusion zone”.<sup>50</sup>

People who entered Poland and were fortunate enough to eventually avoid a pushback to Belarus have consistently ended up in months-long detention in one of the closed centres for foreigners. The number of people held in the centres has increased significantly, including families with children. For example, in the first half of 2021, 482 persons were put in the closed centres, while in the second half of 2021, at least 3570 were placed in these centers. Detention has been automatically applied to persons crossing the Polish-Belarusian border regardless of individual factors which should influence decisions behind the application of detention.

According to Polish law, the minimum living space in these centers is of 2 m<sup>2</sup> per person. This is less than the standard in Polish prisons and twice as low as the standards under international law.<sup>51</sup> This leads to overcrowding in facilities and worsening conditions there. These centers provide little privacy, the people held in them have limited contact with the outside world, as well as limited access to sanitary facilities, doctors, psychologists or legal assistance. Persons detained in these centers for foreigners also draw attention to poor treatment by Border Guard officers, consisting of disrespectful and insulting behavior, even racist remarks.<sup>52</sup> Since mid-2021 until the end of 2023,<sup>53</sup> media reported that at least 55 migrants and refugees were reported to have died due to lack of medical care, malnutrition and exhaustion while

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<sup>44</sup> European Court of Human Rights, *Court indicates interim measures in respect of Iraqi and Afghan nationals at Belarusian border with Latvia and Poland*, 25 August 2021, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7100942-9612632&filename=Interim%20measures%20Poland-Latvia-Belarus%20border.pdf>

<sup>45</sup> Małgorzata Tomczak, *Ile osób naprawdę pokonuje granicę polsko-białoruską? Dane niemieckich służb ujawniają skalę [How many people really cross the Polish-Belarusian border? German service data reveals scale]*, OKO.press 17 August 2023 <https://oko.press/ile-osob-pokonuje-granice-polsko-bialoruska-dane-niemieckie>

<sup>46</sup> Amnesty International, *Poland/Belarus: New evidence of abuses highlights ‘hypocrisy’ of unequal treatment of asylum seekers*, 11 April 2022 <https://www.amnesty.org/en/latest/news/2022/04/poland-belarus-new-evidence-of-abuses-highlights-hypocrisy-of-unequal-treatment-of-asylum-seekers/>

<sup>47</sup> Rozporządzenie Ministra spraw wewnętrznych i administracji z dnia 20 sierpnia 2021 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych, poz 1536, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001536/O/D20211536.pdf>

<sup>48</sup> Ustawa z dnia 14 października 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw, Dz.U. 2021 poz. 1918, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001918/T/D20211918L.pdf>

<sup>49</sup> Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 2 września 2021 r. w sprawie wprowadzenia stanu wyjątkowego na obszarze części województwa podlaskiego oraz części województwa lubelskiego, poz. 1612, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001612/O/D20211612.pdf>

<sup>50</sup> Ustawa z dnia 17 listopada 2021 r. o zmianie ustawy o ochronie granicy państwowej oraz niektórych innych ustaw, Dz. U. 2021 poz. 2191, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210002191/T/D20212191L.pdf>

<sup>51</sup> Amnesty International, *Ośrodki all inclusive [All-inclusive resorts]*, <https://www.amnesty.org/pl/osrodki-all-inclusive/>

<sup>52</sup> Ibidem.

<sup>53</sup> Anna Mierzyńska, *Miał zaledwie 23 lata. 55. ofiara śmiertelna kryzysu na granicy [He was only 23 years old. 55th fatality of the border crisis]*, 4 November 2023, OKO.press, <https://oko.press/mial-23-lata-ofiara-smiertelna-na-granicy>

stranded in the Polish-Belarrussian border area, where they lack the access to basic services and necessities.<sup>54</sup>

As of January 2024, around 42,200 refugees from Ukraine were still living in group housing centres, despite their temporary nature, and faced challenges finding more permanent rental accommodation in Poland.<sup>55</sup> According to an amendment to the so called “special assistance act” adopted on January 13, 2023<sup>56</sup>, refugees from Ukraine are required to cover part (up to 75%) of the cost of their stay in group housing centers which many people found unaffordable.<sup>57</sup>

On 13 June 2024 the Polish government decided for a second time to introduce a 90-day “exclusion zone” along 60 km of its border with Belarus. According to the regulations, journalists and civil society organizations cannot access the exclusion zone,<sup>58</sup> and are therefore unable to legally observe the actions of Polish officials and report violations, shielding the authorities from public scrutiny. In the “exclusion zone”, people on the move would also lack access to life-saving humanitarian aid and medical support.

On 12 July 2024, a further concerning amendment to the Criminal Code was introduced. Amongst other things, the amendment excuses public officials carrying weapons from liability where they use weapons in “self-defense” or ‘pre-emptively’ when the ‘life, health and freedom’ of law enforcement officials are threatened during an ‘unlawful attack on the inviolability of the state border’. The provision in question states as follows:

*“A Police officer, a Border Guard officer or a soldier of the Military Police does not commit a criminal offence, if in breach of rules on the use or application of means of direct coercion or firearms in the event of a direct and unlawful attack on the inviolability of the State border, uses or applies such means or firearms in connection with the performance of the following official activities or duties:*

*1) repelling a direct and unlawful attempt on the life, health or liberty of that police officer, Border Guard officer, Military Police soldier or other person or*

*2) counteracting activities directly aimed at an attempt on the life, health or freedom of that police officer, Border Guard officer, Military Police soldier or other person, or*

*3) resisting a person who disobeys a call to immediately abandon a weapon, explosive or other dangerous object, the use of which may endanger the life, health or freedom of that Police officer, Border Guard officer, Military Police soldier or other person, or who attempts to unlawfully seize the weapon from that Police officer, Border Guard officer, Military Police soldier or other person entitled to possess it- should circumstances require immediate action”<sup>59</sup>*

Ahead of the vote on the amendment, Amnesty International expressed concern that this provision would increase refugees and migrants’ risk of experiencing potentially lethal force by law enforcement, and reduce the possibilities of seeking accountability for the actions of police and border guards. It also noted that situations in which guards would be excused from liability under the amendment are extremely expansive and vaguely defined and the notion of ‘pre-emptive’ self-defence is not in line with international law and standards on the use of force and prone to abuse.<sup>60</sup>

## Recommendations:

Amnesty International recommends that the government of Poland:

- Respect the principle of non-refoulement and immediately stop pushbacks and collective expulsions of migrants and refugees at the border.

<sup>54</sup> Marcin Wiącek, *List Rzecznika Praw Obywatelskich do Prezesa Sądu Okręgowego w Krośnie* [Letter from the Ombudsman to the President of the Regional Court in Krosno], 25 January 2022, [https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO\\_sad\\_25.1.2022.pdf](https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO_sad_25.1.2022.pdf)

<sup>55</sup> Amnesty International, Summary of the annual research project “Refugees from Ukraine in Poland”, [https://www.amnesty.org.pl/wp-content/uploads/2023/06/Podsumowanie-rocznego-projektu-badawczego-Uchodzcy-z-Ukrainy-w-Polsce\\_EN.pdf](https://www.amnesty.org.pl/wp-content/uploads/2023/06/Podsumowanie-rocznego-projektu-badawczego-Uchodzcy-z-Ukrainy-w-Polsce_EN.pdf)

<sup>56</sup> Ustawa z dnia 13 stycznia 2023 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw (dziennikustaw.gov.pl)

<sup>57</sup> Rzeczpospolita, *Od września zmiany we wsparciu dla uchodźców z Ukrainy. Ochrona nie dla wszystkich* [From September, changes in support for refugees from Ukraine. Protection not for all], 23 January 2024 <https://www.rp.pl/polityka/art39729861-od-wrzesnia-zmiany-we-wsparciu-dla-uchodzcow-z-ukrainy-ochrona-nie-dla-wszystkich>

<sup>58</sup> There is an option for media to access those zones, but there is no data on whether the access can be considered effective. Cf.: Notes from Poland: *The renewed Poland-Belarus border crisis explained* 12 June 2024, <https://notesfrompoland.com/2024/06/12/the-renewed-poland-belarus-border-crisis-explained/>

<sup>59</sup> <https://www.sejm.gov.pl/Sejm10.nsf/PrzebiegProc.xsp?id=388E6C00C0BCACE9C1258B470043D88C>

<sup>60</sup> Amnesty International, *Poland New Firearms Regulations Risk Undermining the Rule of Law*, 10 July 2024 <https://www.amnesty.eu/news/poland-new-firearms-regulations-risk-undermining-the-rule-of-law/>

- Ensure access to asylum proceedings in Poland to all those seeking international protection at the border, and ensure an individual assessment of all asylum claims.
- Ensure that media, humanitarian and other civil society organization can access the border areas to provide assistance to people who may need it and to monitor and report on government actions
- Refrain from passing any law or amendment which would allow for the excessive use of lethal force of Polish state officials against migrants and refugees.

## 9. RIGHT TO PRIVACY (ARTICLE 17)

In 2019, Pegasus spyware from the surveillance company NSO Group was used against the chief of staff of the largest opposition party during parliamentary elections, as well as against several other members of the opposition and their staff.<sup>61</sup> On 6 September 2023, the Senate's Extraordinary Commission for clarification of illegal surveillance reported that the use of Pegasus spyware against opposition figures and government critics was unlawful, and rendered the 2019 parliamentary elections unfair<sup>62</sup>. In April 2024 the Prosecutor General stated that under the previous government in the years 2017-2022, 578 people had been spied on with the use of Pegasus. Amnesty International has confirmed the use of Pegasus spyware against 6 persons in Poland.<sup>63</sup> No charges have been brought against any of these persons, and none of them has been convicted of any offence.

On 28 May 2024, the European Court of Human Rights issued a judgement in the case of Pietrzak and Bychawska-Siniarska and Others v. Poland (applications nos. 72038/17 and 25237/18). It held that uncontrolled surveillance violates the right to privacy. Furthermore, it drew attention to the lack of supervision over surveillance and an overly easy access to telecommunications data in Poland.

### Recommendations:

Amnesty International recommends that the government of Poland:

- End unlawful use of surveillance software; including any use of unlawful highly-invasive spyware such as Pegasus, investigate all instances of such use; ensure victims of unlawful surveillance are informed about what has happened, and are provided with remedy for the violation of their rights.

<sup>61</sup> Amnesty International, *Pegasus: Oparty na ustaleniach Amnesty International raport senackiej komisji ds. inwigilacji ujawnia naruszenie praw człowieka* [Pegasus: Based on Amnesty International's findings, Senate surveillance committee report reveals human rights violations], 15 September 2023, <https://www.amnesty.org.pl/pegasus-oparty-na-ustaleniach-amnesty-international-raport-senackiej-komisji/>

<sup>62</sup> Ibidem.

<sup>63</sup> Amnesty International, *Pegasus – Amnesty oraz dziennikarze Gazety Wyborczej i Die Zeit ujawniają kolejne przypadki bezprawnej inwigilacji w Polsce* [Pegasus - Amnesty and journalists from Gazeta Wyborcza and Die Zeit reveal more cases of unlawful surveillance in Poland], 17 February 2022 <https://www.amnesty.org.pl/pegasus-amnesty-wyborcza-die-zeit-ujawniaja-kolejne-przypadki-bezprawnej-inwigilacji/>

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