

6 January 2026

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the

Human Rights Centre at Ghent University.

Friedrich and Others v Poland (Application n. [25344/20](#))

I. INTRODUCTION

This submission addresses the execution of the judgment of the European Court of Human Rights (hereafter: 'Court' or 'ECtHR') in the case of *Friedrich and Others v Poland*. In its judgment of 20 June 2024, the Court held that the interruption of a protest held at sea against the use of fossil fuels and media coverage thereof, the immobilization of the applicants, and the arrest of two applicants who were taken ashore, amounted to an unjustified interference with the right to liberty and the right to freedom of expression under respectively Article 5 and 10 of the European Convention of Human Rights (hereafter: 'Convention' or 'ECHR').

This submission is made by the Human Rights Centre at Ghent University,¹ a leading center of expertise on international human rights law in general, and ECHR law in particular. The Human Rights Centre valorizes its expertise through constructive impact-oriented activities. In that regard, it has submitted more than thirty third party interventions before the ECtHR and five Rule 9 submissions to the Committee of Ministers of the Council of Europe.² The author of this text is Luca Persan, under supervision of Prof. Eva Brems and Dr. Anne Heinisch.

II. EXECUTIVE SUMMARY

This communication addresses the general measures necessary for the implementation of the case *Friedrich and Others v Poland*.

The action plan submitted by the Polish government in September 2025 elaborates on both individual and general measures.³ This submission will demonstrate that the general measures set out in the action plan do not suffice to implement the judgment and protect individuals' Convention rights. They reflect an overly narrow reading of the *Friedrich* case, failing to address the structural roots of the issue. In particular, they overlook the widespread practice of 'detention for the purpose of identity checks' and the lack of accountability for law enforcement. Therefore, this communication recommends the Committee of Ministers to request the Polish authorities to:

¹ See <https://hrc.ugent.be/>.

² See <https://hrc.ugent.be/clinic/third-party-interventions-before-ecthr/>.

³ 1545th meeting (December 2025) (DH) – [Action Plan \(11/09/2025\) - Communication from Poland concerning the Friedrich and Others v. Poland \(Application No. 25344/20\)](#), Doc. DH-DD(2025)1060. (hereafter: 'action plan')

- Effectively publish the judgement on the government website and disseminate it to all senior law enforcement officials
- Provide training for law enforcement on a human-rights based approach to policing assemblies
- Provide targeted training for the judiciary on the legal standards governing detention under Article 5 of the Convention
- Enhance accountability of law enforcement for misconduct during public assemblies

III. CASE SUMMARY

The case of *Friedrich and Others v Poland* concerns unlawful interferences with the right to liberty and the right to freedom of expression, as protected under Articles 5 and 10 of the Convention, respectively.

The applicants in this case are sixteen Greenpeace activists and two journalists (§ 5). As part of Greenpeace’s international campaign entitled the *European Energy Transition Project*, they organized a peaceful protest in Polish territorial waters on 9 September 2019, opposing coal imports into Poland (§§ 9–10). The protest was disrupted by the Polish Border Guard, who boarded Greenpeace vessels and conducted searches. During this operation, the applicants were subjected to identity checks. The searches and identity checks involved coercive measures, including threats of handcuffing and prohibiting the applicants from moving freely (§ 26). These procedures lasted for eight hours, during which the applicants were not provided with food, water, or blankets (§ 29).

With regard to Article 5 ECHR, the Court held that the treatment of the applicants by the Border Guard, given their nature and duration, amounted to a de facto deprivation of liberty within the meaning of Article 5 § 1 of the Convention (§ 187). It found that the coercive measures leading to the applicants’ deprivation of liberty had lacked a sufficient legal basis under domestic law and that the full duration of their detention had not been necessary for the purpose of conducting identity checks or inspecting the vessels (§ 219). In relation to two of the applicants who were formally arrested, the Court found a lack of reasonable suspicion of any offence and concluded that their detention had been unlawful, in violation of Article 5 § 1 ECHR.

The Court further found a violation of Article 5 § 2 ECHR, noting that the applicants had not promptly been informed of the legal reasons for their deprivation of liberty (§§ 225–226).

Concerning Article 10 ECHR, the Court held that the disruption of the protest and the obstruction of media reporting constituted an unlawful interference with the applicants’ right to freedom of expression (§ 253), as did the unlawful deprivation of liberty (§ 256).

IV. BACKGROUND OF THE FRIEDRICH CASE: STRUCTURAL DEFICIENCIES IN LAW ENFORCEMENT OF PUBLIC ASSEMBLIES

The case of *Friedrich and Others* is not an isolated incident. Numerous national institutions and international non-governmental human rights organizations — including the Commissioner for Human Rights of the Republic of Poland,⁴ the Polish Bar Association,⁵ Article 19⁶ and Amnesty International⁷ — have documented a pattern of abuse of power not only by Border Guard officials, but by law

⁴ COMMISSIONER FOR HUMAN RIGHTS FOR THE REPUBLIC OF POLAND, [Wolność zgromadzeń w Polsce w latach 2016-2018. Raport RPO](#) (‘Freedom of assembly in Poland in 2016-2018. Report by the Ombudsman’), 2018; COMMISSIONER FOR HUMAN RIGHTS FOR THE REPUBLIC OF POLAND, [Written comments of the Commissioner for Human Rights of the Republic of Poland in the case of Ewa Siedlecka v Poland \(Application n. 13375/18\)](#), 19 April 2021, p. 5-7.

⁵ ECtHR 20 September 2024, *Friedrich/Poland*, n. 25344/20, § 241.

⁶ ARTICLE 19, [Poland in Peril: democracy or authoritarianism](#), 2023, p. 24-26.

⁷ AMNESTY INTERNATIONAL, [Poland: On the streets to defend human rights, harassment, surveillance and prosecution of protesters](#), 2017, p. 16.

enforcement in general during public demonstrations. The violations recognized in *Friedrich and Others v Poland* are the result of a practice of ‘detention for the purpose of identity checks’ and a lack of accountability for law enforcement.

1. Detention for the purpose of ID checks

There is a well-documented practice by law enforcement of briefly detaining protesters to verify their identity, as well as temporarily blocking demonstrators for the same stated purpose. As Polish law provides no legal basis for detention for the purpose of ID-checks,⁸ law enforcement authorities have consistently denied that their actions constitute detention. However, several national and supranational court decisions, such as the *Friedrich* judgement, have reached a different conclusion. Below is a list of documented instances in which protesters were subjected to detention for the purpose of ID checks.

- On 10 June 2017, during an assembly in Warsaw, 90 protesters were detained by police for two hours for the purpose of identity checks. The protesters were taken to a nearby courtyard, surrounded by a police cordon, and prevented from leaving.⁹ Police requested and retained their IDs, informing them that they needed to check in the police database whether any of the protesters were on the list of wanted persons.¹⁰ The protesters were informed that they had not been arrested, but that they “remained at the disposal of the police”.¹¹ They were prevented to go to the toilet, to buy water and to communicate with a lawyer.¹² On 31 July 2025 the ECtHR ruled that the actions of the police had been contrary to Article 5 of the Convention. It pointed to the length of the detention and the lack of any clear legal rule justifying such treatment, stating the identity checks went far beyond a simple administrative measure.¹³
- On 10 July 2017, during another assembly in Warsaw, protesters were removed from the demonstration site by law enforcement and later closed in a so-called ‘kettle’ for the purpose of running ID checks on the participants. The time these activities consumed, up to two hours, made it impossible for the identified individuals to take further part in the counter-demonstration.¹⁴
- On 11 November 2017, during a counter-demonstration against the Independence March, 43 protesters were removed from the site and taken to a police station for the purpose of ID checks. The procedure lasted approximately two hours. The police maintained that this did not amount to detention but merely to ID verification. However, the Warsaw district court¹⁵ later ruled that the ID checks had constituted unjustified detention for the duration of the assembly.¹⁶
- On 10 June 2020, during a spontaneous protest outside the Warsaw police headquarters against the arrest of two activists, law enforcement officers conducted ID checks on participants. After ordering the crowd to disperse and receiving no compliance, officers surrounded the protesters with a tight cordon, preventing them from leaving, even after the ID checks. One protestor filed a complaint, arguing that the police had carried out a de facto detention without legal basis. By

⁸ See Article 244, §1 of the Code of Criminal Procedure of 6 June 1997 for the grounds for detention in Polish Law.

⁹ ECtHR 31 July 2025, *Siedlecka/Poland*, n. 13375/18, §10.

¹⁰ *Ibid*, §11.

¹¹ *Ibid*, §12.

¹² *Ibid*.

¹³ *Ibid*, §95-97.

¹⁴ 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, p. 15.

¹⁵ Warsaw Śródmieście District Court, 3 January 2018, n. II Kp 2976/18.

¹⁶ PRZERWA D., ‘Sąd Apelacyjny utrzymał rekompensatę za bezzasadne zatrzymanie’, *Obywatele RP*, 12 February 2019, <https://obywatelerp.org/sad-okregowy-utrzymal-rekompensate-za-bezzasadne-zatrzymanie/> (accessed on 18 October 2025).

decision of 25 February 2021, the Warsaw Śródmieście District Court¹⁷ found that the arrest had been unlawful, unjustified and improperly carried out.¹⁸

- On 24 October 2020, 278 people were detained by the police after public protests broke out in Warsaw against the judgment of the Constitutional Tribunal¹⁹ on the abortion law. A total of 948(!) people were identified. The Polish Commissioner for Human Rights condemned the detentions and ID checks as aimed solely at stopping the demonstrations.²⁰
- During the Women’s Strike of 28 November 2020, the police removed Katarzyna Augustynek (nicknamed “Oma Polska”) from the protest. She and her fellow protestors had been surrounded and ‘kettled’ during their protest and asked to show their IDs. Ms. Augustynek refused to identify herself unless she was presented with proper reasons.²¹ The same happened to journalist Agata Grzybowska.²² As a reaction to both women refusing to identify themselves, the police detained them, claiming that the protestors had violated the physical integrity of a police officer, using Article 222 of the Penal Code.
- On 30 December 2020, Ilona Michalak staged a solitary protest in the Old Market Square in Bydgoszcz, holding a pizza box with the words: “Stop political repression!”. Following the demonstration, five police officers detained her and demanded that she provide identification. The police subsequently filed a motion with the court to punish Ms. Michalak for refusing to show her ID. The District Court in Bydgoszcz acquitted her, ruling that the protest had been lawful and “could not constitute grounds for the police to demand proof of identity”.²³

What emerges from these cases is that the violations identified in *Friedrich and Others* occurred against the background of a broader pattern of unlawful detention for the purpose of ID checks during peaceful protests. When protestors and journalists refuse to identify themselves (because there is no legal ground for it), they are detained and fined or their cases are transferred to the court in connection with violation of public order.²⁴ Such widespread practices not only violate the right to liberty, but also have a chilling effect on the rights to freedom of expression and peaceful assembly.

It is worth noting that, as part of its broader efforts to restore the rule of law, the current Polish government has recently established a special commission tasked with investigating the systematic repression of civil society under previous administrations.²⁵ One of the commission’s forthcoming reports will focus specifically on police repression. This initiative demonstrates an acknowledgement of the scale of the problem and a commitment to addressing the shortcomings of the past. It is therefore recommended that the Polish government take into account the findings of the commission, alongside the implementation of the *Friedrich* judgment, and adopt concrete measures (see *infra* V. ‘General measures’) to prevent unlawful actions by law enforcement in the future.

¹⁷ Warsaw Śródmieście District Court, 25 February 2021, n. II Kp 1827/20.

¹⁸ HELSINKI FOUNDATION FOR HUMAN RIGHTS, [Written comments by the Helsinki Foundation for Human Rights on the case of Siedlecka v Poland](#), 23 March 2021, § 31.

¹⁹ Polish Constitutional Court, 22 October 2020, n. K 1/20.

²⁰ COMMISSIONER FOR HUMAN RIGHTS FOR THE REPUBLIC OF POLAND, [Written comments of the Commissioner for Human Rights of the Republic of Poland in the case of Ewa Siedlecka v Poland \(Application n. 13375/18\)](#), 19 April 2021, § 26.

²¹ PASEWICZ P., ‘Babcia Polska: „Chcą mnie poniżyć, upodlić”. 75 proc. w sondażu OKO.press potępia przemoc policji’, *OKO.press* 29 November 2020, <https://oko.press/nie-lubimy-jak-policja-bije-kobiety-sondaz-oko-press> (accessed on 18 October 2025).

²² PASEWICZ P., ‘Fotoreporterka Grzybowska z zarzutem ataku na policję: "Nie chodzi o mnie, ale co dzieje się w Polsce" [4 kłamstwa Ciarki]’, *OKO.press* 24 November 2020, <https://oko.press/policjant-oslepiony-i-kopniety-przez-fotoreporterke-4-klamstwa-ciarki-rozmowa-z-grzybowska> (accessed on 18 October 2025).

²³ AMNESTY INTERNATIONAL, *Facebook* 15 June 2021, <https://tinyurl.com/58a5d493> (accessed on 24 November 2025).

²⁴ COMMISSIONER FOR HUMAN RIGHTS FOR THE REPUBLIC OF POLAND, [Written comments of the Commissioner for Human Rights of the Republic of Poland in the case of Ewa Siedlecka v Poland \(Application n. 13375/18\)](#), 19 April 2021, § 16.

²⁵ See <https://www.gov.pl/web/sprawiedliwosc/komisja-zbada-naduzycia-poprzedniej-wladzy-wobec-aktywistow>.

2. Lack of accountability for law enforcement officers

The violations recognized in the *Friedrich* judgment could persist due to the consistent failure to hold law enforcement officers accountable for these violations. Polish prosecutors have been shown to often refrain from pursuing charges, despite a clear legal obligation under Article 231 of the Polish Criminal Code to prosecute ex officio public officials who exceed their authority or abuse their powers. For example:

- After Ms. Michalak was unlawfully requested to present identification during the course of a public protest on 30 December 2020 (see supra IV.1. ‘detention for the purpose of ID checks’), she lodged a complaint against the police officers, requesting that they be held criminally liable for abuse of power within the meaning of Article 231 of the Polish Criminal Code. However, the public prosecutor decided not to continue the case.²⁶ After appeal by Ms Ilona, the courts annulled this decision. This pattern recurred in several subsequent complaints filed by Ms. Michalak in relation to unlawful conduct by law enforcement authorities during protests.²⁷
- Following a protest on 10 October 2020, the public prosecutor did not take action despite numerous media reports alleging the excessive use of force by law enforcement officers against protestors.²⁸
- In April 2022, the prosecutor’s office closed an investigation into police violence against journalists covering demonstrations on 11 November 2020 because of the failure to identify perpetrators. Video footage of the event showed police using truncheons to beat media workers despite them either wearing PRESS signs or being clearly identifiable as journalists. According to the prosecutor’s office, police officers on site were wearing either masks or helmets, making it impossible to identify them. When police officers who participated in the events and their supervisors were questioned, they were unable to identify anyone.²⁹

The difficulty of identifying officers is part of a broader problem. Amnesty International notes that police officers in Poland often do not wear identification numbers or other identifiers.³⁰ Such practice is against international human rights standards³¹ and makes it extremely difficult for victims of police abuse to file a complaint against a specific officer and for prosecutors to thoroughly investigate allegations.

The documented cases reveal a clear failure on the part of public prosecutors to thoroughly investigate allegations of law enforcement abuse of power. This lack of accountability risks perpetuating a cycle of abuse: officers do not perceive any meaningful risk of being held accountable for their actions, misconduct continues unchecked and protestors are demotivated to file complaints. Additionally, public prosecutors who have spoken out against irregularities have faced punishment.³²

²⁶ BOCZEK K., ‘Aktywistka z Bydgoszczy zatrzymana nielegalnie przez policję, teraz ściga w sądach funkcjonariuszy’, *OKO.press* 26 August 2022, <https://oko.press/aktywistka-z-bydgoszczy-zatrzymana-nielegalnie-przez-policje-teraz-sciga-w-sadach-funkcjonariuszy> (accessed on 18 October 2025).

²⁷ Ibid.

²⁸ BOCZEK K., ‘“W końcu złapałem cię, suko”. Kulisy i następstwa ataku policji na legalną kontrmiesięcznicę’, *OKO.press* 16 October 2022, <https://oko.press/kulisy-i-nastepstwa-ataku-policji-na-legalna-kontrmiesiecznice> (accessed on 18 October 2025).

²⁹ CIVIL LIBERTIES UNION FOR EUROPE, *Liberties Media Freedom Report 2023*, April 2023, p. 22.

³⁰ AMNESTY INTERNATIONAL, *Poland: The Power of ‘the Street’, Protecting the Right to Peaceful Protest in Poland*, 2018, p. 17.

³¹ OSCE/ODIHR - VENICE COMMISSION, *Guidelines on Freedom of Peaceful Assembly*, 2020, § 159.

³² The Helsinki Foundation for Human Rights documented a rising number of disciplinary proceedings against prosecutors, particularly those who publicly criticized changes within the prosecution service or defended the rule of law, see HELSINKI FOUNDATION FOR HUMAN RIGHTS, *State of Accusation: Functioning of the Prosecution Service in 2016–2022*, 2022.

V. GENERAL MEASURES

This section demonstrates that the government's proposed measures are insufficient. It outlines the general measures that are required, each anchored in the reasoning of the *Friedrich and Others* judgment and framed as part of an integrated strategy to remedy the structural root causes, as reflected in the Court's reasoning. The recommendations outlined below are grounded in the findings and proposals of the Polish Commissioner for Human Rights,³³ Amnesty International,³⁴ Article 19,³⁵ as well as international human rights standards set by the UN Human Rights Committee,³⁶ the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association,³⁷ the Special Rapporteur on Environmental Defenders³⁸ and the Office for Democratic Institutions and Human Rights (OSCE-ODIHR) together with the Venice Commission.³⁹

1. Effective publication and dissemination of the judgment

In order to raise awareness around the *Friedrich and Others* case and its implications, it is recommended that the judgment be effectively published and disseminated. The action plan submitted by the Polish authorities acknowledges this necessity. However, the proposed efforts to publish the judgement on a government website and to disseminate the judgment to Border Guard officials do not appear sufficient to ensure its broad accessibility and visibility.⁴⁰

The action plan states that information about the judgment was placed in the *News* segment of the Ministry of Justice website.⁴¹ A close examination reveals that the presentation of the case minimizes its significance and masks the fact that Poland was found in violation of Articles 5 and 10 ECHR. The webpage is titled "Latest judgment of the European Court of Human Rights", a vague and generic heading that fails to convey the seriousness or substance of the Court's findings. Moreover, the content of the article (spanning nearly two A4 pages) mentions the Court's finding of a violation only in the final paragraph. The preceding text is devoted almost entirely to listing the applicants and detailing all aspects of the case in which no violation was found. This presentation is likely to mislead readers and reduce the visibility and weight of the Court's findings.

It is strongly recommended that the Polish authorities adopt a more transparent and accessible approach to disseminating the judgment. This could begin with the publication of a clearly titled and structured webpage that immediately identifies the nature of the Court's findings and their legal implications. Improved publication would help raise public awareness and empower other protestors who are exposed to unlawful detention with the legal knowledge necessary to understand their rights.

In addition, it is recommended that the Polish authorities distribute the judgment, accompanied by an explanatory note, to all senior law enforcement officials; rather than limiting dissemination to Border

³³ COMMISSIONER FOR HUMAN RIGHTS FOR THE REPUBLIC OF POLAND, [Wolność zgromadzeń w Polsce w latach 2016-2018. Raport RPO](#) ('Freedom of assembly in Poland in 2016-2018. Report by the Ombudsman'), 2018.

³⁴ AMNESTY INTERNATIONAL, [Poland: On the streets to defend human rights, harassment, surveillance and prosecution of protesters - Amnesty International](#), 2017, p. 32.

³⁵ ARTICLE 19, [Right to protest in Poland: key recommendations for reform](#), 2024, pp. 7, 17.

³⁶ HUMAN RIGHTS COMMITTEE, [General comment no. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), 2020.

³⁷ UN SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION, [Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests](#), 2024, p. 8-10.

³⁸ UN SPECIAL RAPPORTEUR ON ENVIRONMENTAL DEFENDERS, [Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience](#), October 2025, p. 24-31.

³⁹ OSCE/ODIHR - VENICE COMMISSION, [Guidelines on Freedom of Peaceful Assembly](#), 2010, p. 73-87; OSCE/ODIHR - VENICE COMMISSION, [Guidelines on Freedom of Peaceful Assembly](#), 2020, p. 61-89.

⁴⁰ Action plan, p. 3.

⁴¹ see <https://www.gov.pl/web/sprawiedliwosc/najnowszy-wyrok-europejskiego-trybunalu-praw-czlowieka61>.

Guard officials, as mentioned in the action plan.⁴² This will promote awareness of the judgment's significance within law enforcement institutions and support its effective implementation at all operational levels.

2. Training for law enforcement on a human-rights based approach to policing assemblies

The action plan submitted by the Polish authorities proposes, as general measures, the establishment of an Operations Support Office and the development of an algorithm to govern the detention of individuals by officers in hard-to-reach locations.⁴³ However, it remains unclear how these measures will effectively address the shortcomings identified by the Court. The fundamental concern is not the efficiency of detentions, but the fact that such detentions were deemed unlawful and should therefore be prevented altogether. As this proposal would seem to expand the use of unlawful detention rather than eradicate it, it is recommended that the Committee of Ministers request evidence demonstrating how these measures contribute to the execution of the *Friedrich* judgment, in particular how the proposed algorithm will ensure full respect for the rights of individuals exercising their freedom of expression.

Furthermore, the Polish government proposes, as general measures, the inclusion of the *Friedrich* judgment in the training of Border Guard officials and the preparation of guidelines by the Commander in Chief of the Border Guard on the detention of individuals.⁴⁴ In light of the several other documented instances of unlawful detention of protestors in Poland (see supra IV. 1 'Detention for the purpose of ID checks'), these measures cannot be considered sufficient in view of their limited personal and material scope.

Personal scope As the practice of detention for the purpose of ID checks has been recorded not only in relation to Border Guard officials but across multiple law enforcement units, it is recommended that all law enforcement officials should receive training on the policing of public assemblies.

Material scope The training program should not be limited to the applicable rules on detention, but should comprehensively address a human rights based approach to the policing of public assemblies.⁴⁵ Its primary objective should be to ensure that law enforcement officials understand that their primary task is not to restrict or discourage participation in protests, but to create conditions that allow individuals to safely and freely exercise their right to freedom of expression and assembly.⁴⁶ In accordance with international standards, it should equip law enforcement agencies to act in a manner that avoids escalation of violence and minimizes conflict, and should include 'soft skills', such as negotiation and mediation.⁴⁷ Training should also include human rights standards,⁴⁸ implicit bias training⁴⁹ and the control and planning of policing operations, emphasizing the imperative of minimizing recourse to force to the greatest extent possible.⁵⁰ For example, in line with ECtHR case-law, the tactic of 'kettling' should only be used in the face of a pressing need to prevent serious injury or damage.⁵¹

⁴² Action plan, p.3.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ OSCE/ODIHR - VENICE COMMISSION, [Guidelines on Freedom of Peaceful Assembly](#), 2020, § 158.

⁴⁶ Ibid.

⁴⁷ OSCE/ODIHR - VENICE COMMISSION, [Guidelines on freedom of peaceful assembly](#), 2010, p.75.

⁴⁸ AMNESTY INTERNATIONAL, [ten basic human rights standards for law enforcement officials](#), December 1998.

⁴⁹ ARTICLE 19, 'Poland: Five priorities for restoring protection for freedom of expression', 5 February 2024, [Poland: Five priorities for restoring protection for freedom of expression](#) (accessed on 24 November 2025) .

⁵⁰ OSCE/ODIHR - VENICE COMMISSION, [Guidelines on freedom of peaceful assembly](#), 2010, p. 76.

⁵¹ ECtHR 15 March 2012, Austin/UK, n. 39692/09; 40713/09; 41008/09, § 68.

Only law enforcement officials that completed this training should be deployed for the policing of public assemblies.⁵² As the Committee for the Prevention of Torture has underlined, the best possible guarantee against arbitrary detention is for its use to be unequivocally rejected by law enforcement themselves.⁵³

Finally, it is recommended that law enforcement authorities provide practical protocols for stop and search procedures, detention or arrest that will provide guidance as to when specific measures are appropriate and proportionate during public assemblies, when they are not and how they should be conducted.⁵⁴

Specific recommendations on handling of the media

Regarding the handling of journalists covering public assemblies, it is recommended that officers be adequately informed about the role and function of the free media in a democracy, and particularly their role during a public assembly.⁵⁵ Explaining the great importance of, and (legal) framework around, freedom of expression should be part of any such training activity. It is important to have law enforcement officials meet with media workers to discuss this topic.⁵⁶

Another crucial learning point for law enforcement agencies concerns the issue of the so-called legal status of a public assembly. It should be made clear to all law enforcement officials that journalists have a right to cover any form of public assembly, irrespective of whether the assembly was authorized or deemed unlawful. Even in cases where an assembly could be regarded as illegal, the reporting on the event and possible actions by government authorities never is.⁵⁷

Another important step is the creation of a set of well-defined rules regulating the conduct by law enforcement officials towards the media during public assemblies, with clear instructions on how to manage the challenges arising from the presence of journalists at these events. Such rules should be implemented, in particular through training activities and the appointment of officers in charge of facilitating the work of journalists during events that can lead to public unrest.⁵⁸

3. Training for the judiciary on the legal standards governing ‘deprivation of liberty’ under Article 5 ECHR

Given that the ECtHR explicitly identified shortcomings in the domestic courts’ assessment of the notion of ‘deprivation of liberty’ (§ 77), it is striking that the action plan does not include any general measures addressing this issue. To prevent similar shortcomings in the future, it is essential to ensure that judges receive adequate training on the legal standards governing ‘deprivation of liberty’ under Article 5 ECHR.

The *Friedrich and Others* case underscores the serious consequences of an overly formal interpretation of detention. The domestic court failed to qualify the measures taken by the Border Guard as deprivation of liberty, dismissing the appeal of the applicants that their detainment had been

⁵² UN SPECIAL RAPPORTEUR ON ENVIRONMENTAL DEFENDERS, [Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience](#), October 2025, p. 25.

⁵³ CPT, [Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 15 to 22 September](#), 9 March 2010, § 16.

⁵⁴ ARTICLE 19, [Right to protest in Poland: key recommendations for reform](#), 2024, p. 15.

⁵⁵ OSCE, [Report on handling of media during public assemblies](#), 22 October 2020, p. 9.

⁵⁶ Ibid, p. 6.

⁵⁷ Ibid.

⁵⁸ Ibid, p. 7.

unlawful.⁵⁹ The domestic court considered that the applicants had not been detained, but merely required to undergo police procedures (§80). The fact that during the actions by the Border Guard the applicants had not been able to walk away without the officers' authorization had, according to the domestic court, been an inherent feature of the operation (§77). In *Siedlecka v Poland*, the ECtHR detected a similar shortcoming in the reasoning of the Polish court.⁶⁰

Such misinterpretations enable the continued use of identity checks as enforcement instruments, particularly in the context of peaceful protest, thereby violating both the right to liberty and the right to freedom of expression.

To remedy these structural deficiencies and prevent future violations, it is essential to institute systematic training programs for judges. These programs should focus on the ECtHR's interpretation of the notion of 'deprivation of liberty' under Article 5 of the Convention, and could rely on analysis of relevant ECtHR case law, including *Friedrich and Others v Poland*, *Engel and Others v The Netherlands*,⁶¹ *Guzzardi v. Italy*,⁶² *Khlaifia and Others v. Italy*,⁶³ and *H.M. v. Switzerland*.⁶⁴

4. Enhancing accountability of law enforcement for misconduct during public assemblies

The action plan submitted by the Polish Government makes no mention of any measures to enhance accountability of law enforcement officers. This omission is striking given the fact that the Court explicitly identified a lacuna in the Border Guard Act of 12 October 1990 (*Ustawa o Straży Granicznej*) namely the absence of any mechanism to challenge identity checks by the Border Guard (§ 96) and given the well-documented systemic failures to hold law enforcement accountable for violations of fundamental rights during protests (see supra IV. 2 'Lack of accountability for law enforcement officers').

The absence of proposed measures is particularly concerning given the established practice, as identified in *Friedrich and Others*, of depriving individuals of their liberty under the guise of identity checks. Such actions occur without formal recognition or documentation of detention, thereby circumventing procedural safeguards under Article 5 ECHR. Insufficient accountability mechanisms facilitates and sustains a pattern of abuse, allowing law enforcement to conduct potentially unlawful measures during protests, fostering a climate of impunity.

It is therefore strongly recommended that real and effective accountability mechanisms be developed to ensure that law enforcement officials are held liable for unlawful actions during protests. To this end, it is specifically recommended that:

- Prosecutors be required to respect their legal obligation under Article 231 of the Polish Criminal Code to prosecute ex officio public officials who abuse their powers during public assemblies and, to this end, to periodically report on the status and outcomes of investigations carried out against misconduct by law enforcement during protests.⁶⁵
- Masked law enforcement officers be required to wear and display distinctive identification signs during the policing of assemblies.⁶⁶

⁵⁹ Gdansk-Poludnie District Court, 6 November 2020, X Kp 1088/19 and X Kp 1089/19.

⁶⁰ ECtHR 31 July 2025, *Siedlecka/Poland*, n. 13375/18, § 20.

⁶¹ ECtHR 8 June 1976, *Engel/Netherlands*, n. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72.

⁶² ECtHR 6 November 1980, *Guzzardi/Italy*, n. 7367/76.

⁶³ ECtHR 15 December 2016, *Khlaifia/Italy*, n. 16483/12.

⁶⁴ ECtHR 26 February 2002, *H.M./Switzerland*, n. 39187/98.

⁶⁵ OSCE/ODIHR - VENICE COMMISSION, [Guidelines on Freedom of Peaceful Assembly](#), 2020, §§ 40, 233.

⁶⁶ *Ibid.*, § 159.

- Law enforcement officials involved in any decision to disperse a peaceful protest be required to prepare a report documenting the circumstances of, and legal justification for, the decision, including why no other measures were possible.⁶⁷
- A legislative amendment to the Border Guard Act be initiated, introducing an effective interlocutory appeal mechanism against ID checks by Border Guards.

VI. CONCLUSIONS AND RECOMMENDATIONS TO THE CM

The Human Rights Centre at Ghent University wishes to draw the following conclusions.

The *Friedrich and Others* case highlights significant, widespread deficiencies in the practices concerning law enforcement of public assemblies in Poland. Lack of training of law enforcement officials and judges and inadequate accountability mechanisms have led to violations of Articles 5 and 10 of the Convention. Enforcing the proposed measures is crucial to addressing these systemic issues. In our view, the Committee of Ministers should insist on:

- **effective publication and dissemination of the judgment**

The current efforts to publish and disseminate the *Friedrich and Others v Poland* judgment are not sufficient to ensure its broad accessibility and visibility. It is strongly recommended that the Polish authorities adopt a more transparent and accessible approach to publishing the judgment. Additionally, the judgment should be circulated, along with an explanatory note, to all senior law enforcement officials to support awareness and effective implementation.

- **training of law enforcement officials**

It is recommended that the Polish authorities develop and implement training for law enforcement on a human-rights based approach to policing assemblies. Additionally, the Committee of Ministers should request further evidence on the efficiency of the establishment of an Operations Support Office and the development of an algorithm governing the detention of individuals for the implementation of the *Friedrich* judgment.

- **judicial training**

The *Friedrich and Others* judgment underscores the serious consequences of an overly formal approach to the notion of ‘deprivation of liberty’. To prevent future violations, the Polish authorities must provide specialized judicial training on correctly identifying situations that constitute a ‘deprivation of liberty’ for the purposes of Article 5 ECHR.

- **enhancing accountability of law enforcement**

It is recommended that Polish authorities strengthen accountability for law enforcement by amending the Border Guard Act to allow interlocutory appeals against ID checks, by requiring officials who disperse peaceful protests to document the circumstances and legal basis for their decisions, by obliging masked officers to display identifiable markings and by ensuring that prosecutors fulfil their duty under Article 231 of the Criminal Code and regularly report on investigations into law enforcement misconduct during protests.

⁶⁷ UN SPECIAL RAPPORTEUR ON ENVIRONMENTAL DEFENDERS, [Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience](#), October 2025, p 26.