

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

Date: 28 June 2023 EUR 37/6931/2023

# POLAND: LAW ESTABLISHING SPECIAL COMMISSION THREATENS HUMAN RIGHTS

The Polish parliament on 14 April 2023 adopted the *Law on the State Commission for Investigating Russian Influences on the Internal Security of the Republic of Poland between 2007-2022* (Law on the State Commission).<sup>1</sup> The law, commonly referred to as “Lex Tusk”,<sup>2</sup> entered into force on 31 May 2023. It establishes a special non-judicial Commission, composed of nine members elected by the lower house of parliament – the Sejm -- with a simple majority. The Commission’s mandate is to investigate Russian influence on the internal security of the Republic of Poland and focuses on public officials, senior executives and others who allegedly have not only acted to the detriment of Poland’s national security, but more broadly to undermine the country’s “interests”. Commission members will incur no liability for any conduct related to the operation of this new body and will essentially enjoy immunity from accountability for any of their actions.

Amnesty International is deeply concerned that the law may be used to target and stigmatize opposition politicians, dissidents and others who may be running for political office or who may be critical of the government. The Commission’s powers are particularly disturbing as any connection with Russia could be damaging to a person’s reputation, put their health and safety at risk, and undermine their political aspirations. For example, the Commission can issue a decision prohibiting a person from engaging in any activity that involves the disposal of public funds for a period of 10 years, which would essentially exclude that person from running for political office for a decade. The near total lack of recourse to challenge the decisions of the Commission is of particular concern, including the lack of procedural safeguards and access to an effective remedy.

The adoption of the Law on the State Commission and its subsequent signing by the President of Poland has already met with criticism on both the national<sup>3</sup> and international<sup>4</sup> levels for breaching the Polish Constitution and Poland’s international human rights obligations. Although the President has declared that the Law on the State Commission will be referred to the Constitutional Tribunal for evaluation, this referral will not stop the controversial Commission from being established and beginning its work. Moreover, the government’s years long effort to strip the Constitutional Tribunal of its independence and infuse the Tribunal’s composition and proceedings with political influence renders this evaluation meaningless.

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<sup>1</sup> Published in the Journal of Law under item 1030.

The law is available in Polish at: [https://orka.sejm.gov.pl/proc9.nsf/ustawy/2838\\_u.htm](https://orka.sejm.gov.pl/proc9.nsf/ustawy/2838_u.htm)

<sup>2</sup> The law has been informally referred to as “Lex Tusk” after the leader of one of the largest opposition parties and former President of the European Council Donald Tusk. His name was expressly mentioned in the justification for the law in the context of the policy of the Polish government (which Tusk led from 2007-2014) towards Russia. As a result, some public commentators argue that the bill targets Donald Tusk. The justification for the law is available at the following link: <https://orka.sejm.gov.pl/Druki9ka.nsf/0/99808ECB3BB72A3FC125890B0038A8F1/%24File/2838.pdf>

<sup>3</sup> See, in particular, the Committee of Legal Sciences of the Polish Academy of Sciences resolution No. 02/2023 of 01.06.2023 on the introduction into the Polish legal order of the Law on the State Commission for Investigating Russian Influences on the Internal Security of the Republic of Poland in 2007-2022, endorsed by the deans of nearly all law faculties in Poland, available at:

<https://knp.pan.pl/index.php/strona-glowna?view=article&id=274:uchwala-nr-02-2023-komitetu-nauk-prawnych-polskiej-akademii-nauk-z-01-06-2023-r-w-sprawie-wprowadzenia-do-polskiego-porzadku-prawnego-ustawy-o-panstwowej-komisji-ds-badania-wplywow-rosyjskich-na-bezpieczenstwo-wewnetrzne-rp-w-latach-2007-2022&catid=48>

<sup>4</sup> For example, the United States, one of Poland’s closest allies, raised concerns publicly over the law: Press Statement, US Department of State, 29 May 2023.

<https://www.state.gov/concerns-over-potential-use-of-new-polish-legislation-to-target-opposition/>

On 2 June 2023, the President submitted a proposal with amendments to the law to the Polish parliament. The proposal was aimed at neutralizing some of the most controversial aspects of the law, including altering the Commission's ability to impose "remedies" (which would have been, in fact, criminal penalties); changing the procedure for appealing the Commission's decisions from administrative courts to common courts; and excluding the possibility of a deputy or senator from serving as a member of the Commission. The Sejm amended the law accordingly on 16 June 2023, but the remaining provisions continue to raise serious human rights concerns. In accordance with Poland's legislative procedure, the law has now been forwarded to the upper house of parliament for consideration.<sup>5</sup>

## AMNESTY INTERNATIONAL'S MAIN CONCERNS

The Law on the State Commission establishes an institution, defined by the law as a body of an administrative nature, that on its face fuses the functions of investigation, prosecution and potential sanction, thus undermining the separation of powers and the rule of law. The State Commission would essentially function as a body invested with powers normally reserved to the judiciary, investigative agencies and intelligence services. The law does not require members of the Commission to have any investigative experience or a legal background. Members of the Commission will be elected by a simple majority vote in the Sejm, guaranteeing that the ruling party will be able to fill the Commission with its chosen commissioners who may lack independence and impartiality.

While the law mandates that Commission hearings would generally be in public, the Commission has total discretion to exclude media from proceedings and to hold select hearings *in camera*, which would allow the Commission to conduct its work and deliberations behind closed doors. The establishment of this type of institution is reminiscent of practices that resulted in appalling human rights violations in the region of Central and Eastern Europe for decades after World War II, particularly against anyone deemed to be a dissident or critical of the authorities.

The operating protocols and powers given to the Commission violate the right to equality of arms, the right to be heard by an independent tribunal and the right to a public hearing. It is crucial that bodies with judicial functions (ranging from ordinary courts to lawfully established commissions of inquiry, among others) be fully independent and free from political influence. Decision makers must be free to decide matters before them independently and impartially, on the basis of the facts and in accordance with the law, without any interference, pressures, or improper influence from any branch of government or elsewhere.<sup>6</sup> Actual impartiality and the appearance of impartiality are both fundamental for maintaining respect for the administration of justice.<sup>7</sup> At the same time, the right to a public hearing is an essential safeguard of the fairness and independence of the judicial process and a means of protecting public confidence in the justice system.<sup>8</sup>

Amnesty International is also concerned that the Law on the State Commission violates the principle of legality. The notion of "remaining under Russian influence", as articulated in the law, is not precisely defined and it thus creates a fertile environment for its discretionary, arbitrary or abusive interpretation and application. Moreover, the law would allow for the imposition of retroactive penalties for events that took place before the act entered into force and that were not penalised in any way at that time. According to international human rights law and standards, a person may not be prosecuted or otherwise penalised for an act or omission that did not constitute an offense in national or international law when it was committed. Criminal offenses must also be defined clearly and applied precisely at the time an unlawful act is alleged to have been committed to allow individuals to regulate their conduct accordingly.<sup>9</sup>

The law also lacks procedural safeguards to ensure the right to equality of arms and that would provide anyone under investigation by the Commission with the right to an adequate defence. In particular, a person targeted by the Commission has no express right to counsel, due process, meaningful appeal or effective remedy. The powers given to the Commission effectively render the principle of "equality of arms" null as the accused person does not have a genuine opportunity to prepare and present their case, and to contest the arguments and evidence put forth against them on an equal footing.

The Law on the State Commission may also have a negative impact on civic space. The Commission will be empowered to investigate cases of alleged Russian influence on the activities of NGOs, human rights defenders, journalists, political parties,

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<sup>5</sup> Information on the progress of parliamentary work on this amendment is available at the website of the Sejm: <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=2838>

<sup>6</sup> Amnesty International Fair Trial Manual – Second Edition, Index Number: POL 30/002/2014, p. 110.

<sup>7</sup> Amnesty International Fair Trial Manual, p.115.

<sup>8</sup> Amnesty International Fair Trial Manual, p.121.

<sup>9</sup> Amnesty International Fair Trial Manual, p. 138.

and others critical of the authorities.<sup>10</sup> The Commission can therefore be used as a tool of the government to silence critical voices on human rights violations and other government malfeasance. For example, the law explicitly provides for the possibility of investigating Russian influence on the state border.<sup>11</sup> Thus, NGOs who monitor and report on violations of human rights at the state's external borders—including human rights abuses aimed at migrants and refugees -- can be the subject of proceedings before the Commission.<sup>12</sup> The Commission's powers comprise yet another attempt at shrinking the space for civil society, including by the "chilling effect" the law will have on various civil society actors and organizations.<sup>13</sup>

In this context, Amnesty International makes the following calls:

## **TO THE POLISH AUTHORITIES**

Amnesty International calls on the Polish authorities to repeal the Law on the State Commission as a matter of urgency.

## **TO EUROPEAN UNION INSTITUTIONS**

Amnesty International welcomes the infringement proceeding launched by the European Commission and counts on the Commission to continue to treat the Law on the State Commission with the highest level of urgency. When assessing the response from the Polish authorities to the letter of formal notice, the Commission should invite input from civil society experts on the law and its impact on fundamental rights.

Amnesty International calls on the European Parliament to continue its close scrutiny of this development in Poland, along with the response to it by the Commission and the Council.

Amnesty International calls on the European Council to fully address the issue of the Law on the State Commission in the context of the on-going Article 7(1) TEU proceedings, as it forms part of the wider backsliding on the rule of law and the independence of the judiciary already explicitly included in the Commission's Reasoned Proposal. Given the broader attack on fundamental rights in Poland, and the impact on the people in Poland, the Council must address all key issues that threaten the rights enshrined in Article 2 TEU.

## **TO COUNCIL OF EUROPE INSTITUTIONS**

Amnesty International calls on the European Commission for Democracy through Law (Venice Commission) to include in its opinion on the Law on the State Commission the net negative impact that the law will have on the protection of human rights, the rule of law and the further shrinking of space for civil society.

Amnesty International calls on the Secretary General of the Council of Europe, the Council of Europe Commissioner for Human Rights and the Parliamentary Assembly of the Council of Europe (PACE) to include the Law on the State Commission in their dialogues with the Polish authorities and to advocate for its repeal due to the serious human rights concerns expressed by states, civil society organizations and international experts.

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<sup>10</sup> The Deputy Minister of National Defence, Wojciech Skurkiewicz, has already announced that journalists should appear before this commission.

[https://www.press.pl/tresc/76760,minister-pis-o-komisji-ds\\_-badania-wplywow-rosyjskich\\_----powinno-stanac-przed-ta-komisja-wielu-dziennikarzy---](https://www.press.pl/tresc/76760,minister-pis-o-komisji-ds_-badania-wplywow-rosyjskich_----powinno-stanac-przed-ta-komisja-wielu-dziennikarzy---)

<sup>11</sup> See Amnesty International, Poland/Belarus Border: A Protection Crisis,

<https://www.amnesty.org/en/latest/research/2021/09/poland-belarus-border-crisis/>

<sup>12</sup> Amnesty International, Poland: Cruelty not Compassion at Europe's Other Border, EUR 37/5460/2022, 11 April 2022, <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>

<sup>13</sup> Amnesty International: Poland: "They Treated Us Like Criminals": From Shrinking Space to Harassment of LGBTI Activists, Index Number: EUR 37/5882/2022