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La CEDU sulla violazione dell'art. 5 della Convenzione
(CEDU, sez. I, sent. 31 luglio 2025, ric. n. 13375/18)

Con la decisione in commento, la Corte EDU si è pronunciata sul ricorso presentato da una cittadina polacca, la quale lamentava di essere stata illegittimamente trattenuta dalla polizia per aver preso parte a una manifestazione di contestazione svoltasi in occasione di un evento commemorativo organizzato dal partito di governo.

La Corte ha ribadito che, a norma dell'art. 5 CEDU, ogni (eccezionale) privazione della libertà deve realizzarsi in conformità a una procedura prevista dalla legge e nel rispetto del principio generale della certezza del diritto. È quindi essenziale che le condizioni per la restrizione della libertà siano previste dal diritto interno e che la legge sia prevedibile nella sua applicazione.

Nel caso di specie, Governo e giudici nazionali hanno individuato come base legale per le azioni della polizia le disposizioni che permettono alle forze dell'ordine di controllare i documenti di una persona al fine di verificarne l'identità. Tali disposizioni tuttavia non individuano presupposti che legittimino un arresto. Peraltro, il Governo non ha dimostrato che sia stato lo svolgimento del controllo sull'identità a rendere necessario l'intero (e prolungato) periodo di trattenimento, né ha spiegato perché i partecipanti non siano stati rilasciati dopo la verifica dei documenti, ma solo al termine della commemorazione oggetto di contestazione.

La Corte ha rilevato, di conseguenza, una violazione dell'articolo 5 § 1 della Convenzione.

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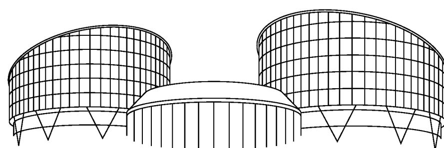

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXX v. POLAND

(Application no. 13375/18)

JUDGMENT

STRASBOURG

31 July 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Ivana Jelić, *President,*
Erik Wennerström,
Alena Poláčková,
Frédéric Krenc,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant, *judges,*
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 13375/18) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, OMISSIS ("the applicant"), on 11 March 2018;

the decision to give notice to the Polish Government ("the Government") of the complaints concerning Articles 5, 10 and 11 of the Convention and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by Helsinki Foundation for Human Rights and the Polish Commissioner for Human Rights, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 8 July 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present application concerns the applicant's allegation that she was deprived of her liberty by the police during a counter-demonstration to a monthly commemorative event for the victims of the 2010 crash of the Polish government plane in Smolensk (hereinafter referred to as "the monthly Smolensk commemoration"). The commemorative event took the form of a recurrent assembly and was organised by the governing Law and Justice party. The application raises issues under Article 5 § 1 of the Convention.

THE FACTS

1. The applicant was born in 1958 and lives in Warsaw. She was represented by Mr P. Osik, a lawyer practising in Warsaw.

2. The Government were represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs.

3. The facts of the case may be summarised as follows.

4. The applicant is a well-known journalist writing on legal issues and human rights. She has received a number of awards for her journalistic work.

I. EVENTS OF 10 JUNE 2017

5. On the evening of 10 June 2017 the applicant took part in an assembly on Krakowskie Przedmieście Street in Warsaw. The assembly was organised by a foundation called Citizens of the Republic of Poland as a counter-demonstration to the monthly Smolensk commemoration.

6. According to the applicant, by taking part in the assembly she wished to express her disagreement with the, in her view, unconstitutional Law of 13 December 2016 amending the Assemblies Act. She contended that the amendments to the Assemblies Act had been adopted by the government majority with a view to protecting their own monthly political events. The amendments introduced a special status for so-called recurrent assemblies (*zgromadzenia cykliczne*).

7. Before and after the events complained of, the applicant published a series of articles in the press concerning the constitutionality of the amendments to the Assemblies Act, the legislative process, public reactions and protests, the consequences of the implementation of the said amendments concerning recurrent assemblies as well as actions taken by the police against demonstrators.

8. On 5 June 2017 the Mayor of Warsaw (*Prezydent Warszawy*) had banned, on the basis of the amended Assemblies Act, the counter-demonstration planned for 10 June 2017. On 6 June 2017 the Warsaw Regional Court (*Sąd Okręgowy*) had upheld the decision of the Mayor of Warsaw and on 8 June 2017 the Warsaw the Court of Appeal (*Sąd Apelacyjny*) had also dismissed an appeal lodged by the organisers.

9. The ban of the counter-demonstration was justified by the fact that it was to be held at the same time as the monthly Smolensk commemoration. Under the amended Assemblies Act the latter event, being a recurrent assembly, had priority over any other assembly. In addition, under section 12 of the amended Assemblies Act, any other assembly had to be held at least 100 metres from a recurrent assembly, which rendered effectively impossible the exercise of the right to counter-demonstrate.

10. The applicant and a number of other persons took part in the counter-demonstration. They submitted that they had merely intended to approach the people participating in the monthly Smolensk commemoration, which was to involve a march. At about 8 p.m. the police decided to cordon off the persons participating in the counter-demonstration. In reaction to this, the applicant and other counter-demonstrators sat down on the ground. The police called on the counter-demonstrators to disperse and soon after that they began removing them from the site. The applicant and other counter-demonstrators were removed and put in the courtyard of a building located at 2 Miodowa Street. They were blocked in the courtyard by the police cordon and could not leave that area.

11. One of the police officers requested the applicant to present her identity document (ID). The applicant presented her press card, which was not accepted, and then she presented her ID. The police officer retained the applicant's ID, informing her that he needed to check in the police database whether she was on the list of wanted persons.

12. The applicant was held by the police inside the courtyard until 10 p.m. the same evening. She was informed by them that she had not been arrested, but that she "remained at the disposal of the police". According to the applicant's statement, which was not contested by the Government, she had been prevented from going to the toilet or buying water. The police had also refused to let her communicate with lawyers that had been sent by the Warsaw Bar and who had been just outside the police cordon.

13. The applicant claimed that the police had prevented her from participating in the counter-demonstration despite the fact that she had not blocked the march of those taking part in the monthly Smolensk commemoration. She submitted that she had not intended to encroach on the freedom of assembly of those persons.

II. THE APPLICANT'S APPEAL

14. On 16 June 2017 the applicant filed an appeal against her arrest on 10 June 2017 with the Warsaw-Śródmieście District Court (*Sąd Rejonowy*). She claimed that her having been brought to the courtyard and kept there by the police for more than two hours had amounted to an arrest and breached Article 45 § 1 (1-2) and Article 46 §§ 1-5 of the Code of Procedure for Administrative Offences (*Kodeks Postępowania w Sprawach o Wykroczenia* – "the CPAO", see paragraphs 31-33 below) as being unjustified, unlawful and incorrect. She further argued that it had violated Article 41 § 1 of the Constitution and Article 5 §§ 1 and 2 of the Convention.

15. The police claimed that the applicant had not been arrested, but had simply "remained at the disposal of the police". The applicant argued that her arrest had been unlawful because none of the prerequisites stipulated in Article 45 § 1 of the CPAO had been met in her case.

16. The applicant also argued that her arrest had not been properly carried out. No record of her arrest had been made and she had not been informed of the reasons for her arrest or of her rights. She had also been prevented from informing her relatives of her whereabouts and from speaking to a lawyer. Lastly, she contended that her having been held for more than two hours was unjustified in the circumstances of the case.

17. On 11 September 2017 the Warsaw-Śródmieście District Court dismissed as unjustified the applicant's appeal against her arrest. It relied on information about the events of 10 June 2017 submitted by the police.

18. The court found that on 10 June 2017 the applicant had taken part in a blockade that was aimed at preventing the planned march of the recurrent assembly. The applicant and other protesters had not followed the orders given by the chairman of recurrent assembly and by the police. Accordingly, the police had decided to remove the blockade from the route the recurrent assembly was planning to march along, since the protesters' actions appeared to fall under the administrative offences specified in Articles 52 § 3 (2) and 52 § 2 (1) of the Code of Administrative Offences (*Kodeks Wykroczeń* – "the CAO", see paragraphs 35-36 below). The police had removed the protesters to a safe location where their identities could be checked and searched for in police databases. That process had been obstructed by supporters of the protesters gathered in the vicinity and had been time-consuming for that reason.

19. The court found that the police had carried out their actions in an appropriate manner. It did not agree with the applicant's argument that her removal had been unjustified. The applicant had sat down on the ground after having been surrounded by a police cordon. In the court's view, such behaviour could not be regarded as anything other than the intentional obstruction of a lawful assembly. The behaviour of the applicant and the other protesters had also delayed the planned march of the recurrent assembly. The court held that the recurrent assembly had been impeded and that the police's actions had a legal basis in, *inter alia*, the Police Act – namely section 1(2)(2) and sections 14 and 15 thereof (see paragraph 38 below) – and that there were therefore no grounds on which to conclude that their actions had been unjustified, unlawful or incorrect.

20. The court further held, contrary to the applicant's submissions, that in the circumstances of the case there had been no arrest within the meaning of the CPAO. It considered that the manner in which the applicant had been prevented from moving about freely had been justified by the need to establish her identity, and that that process had been prolonged for objective reasons, such as the need to run checks in the relevant police databases, the large number of checks that had to be carried out at the same time and the obstruction of the process by other persons supporting the counter-demonstrators.

21. No further appeal lay against that decision.

III. PROCEEDINGS AGAINST THE APPLICANT

22. On an unspecified date the applicant was charged with an administrative offence (*wykroczenie*) under Article 52 § 3 (2) of the CAO in conjunction with section 19 § 5 of the Assemblies Act for having refused to obey the orders of the chairman of the recurrent assembly to leave the route of the march. She was further charged under Article 52 § 2 (1) of the CAO for having obstructed the conduct of a recurrent assembly by standing and sitting down on the assembly's planned marching route and by shouting.

23. On 26 April 2018 the Warsaw-Śródmieście District Court discontinued the proceedings against the applicant, holding that the constitutive elements of the relevant administrative offences had not been shown.

24. The court found that before 8 p.m. on 10 June 2017 on Krakowskie Przedmieście Street the applicant and other persons had participated in a counter-demonstration to the monthly Smolensk commemoration. The members of the counter-demonstration had been protesting against a violation of their constitutional right to freedom of assembly by the affording in the Assemblies Act, as amended by the Law of 13 December 2016, of a privileged status to recurrent assemblies. The protesters had decided to express their dissent symbolically by sitting down on the street and had passively awaited removal by the police. The court noted that the applicant had publicly exercised her right to freedom of expression and that that fact had been disregarded by the police.

25. The court further noted that the protesters' actions had been motivated by disapproval of the privileged status of recurrent assemblies and not by a desire to thwart the conduct of the monthly Smolensk commemoration. Their actions had had a minimal impact on the conduct of the commemorative march as it had only delayed it by a few minutes, and the removal of the protesters by the police in order to enable the continuation of the commemorative march had constituted a sufficient reaction to their behaviour. However, having regard to the circumstances in which the protesters had acted and the consequences of their actions, the institution of proceedings against them could not be regarded as a proportionate reaction by the authorities.

26. On an unspecified date the prosecutor appealed against the discontinuation of the proceedings.

27. On 30 August 2018 the Warsaw Regional Court set aside the first-instance decision and remitted the case to the District Court, holding that the latter had established facts of the case without sufficient evidence.

28. On 27 August 2020 the Warsaw-Śródmieście District Court discontinued the proceedings against the applicant as the limitation period had expired.

29. The applicant appealed against that decision.

30. On 12 November 2020 the Warsaw Regional Court upheld the first-instance decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE 2001 CODE OF PROCEDURE FOR ADMINISTRATIVE OFFENCES

31. Article 45 § 1 of the Code reads as follows:

"The police may arrest a person caught in the act of committing an administrative offence or directly afterwards if:

1) there are grounds to apply accelerated proceedings in relation to that person;

2) that person's identity cannot be established."

32. Article 46 § 1 reads as follows:

"An arrested person shall immediately be informed of the reasons for his or her arrest and of his or her rights, and shall be heard."

33. Article 46 § 5 reads as follows:

"An arrested person shall immediately be released when the reasons for his or her arrest cease to exist [or] when the allowed period of arrest elapses."

II. THE CODE OF ADMINISTRATIVE OFFENCES

34. Article 47 § 1 of the Code of Administrative Offences provides, in so far as relevant, as follows:

"An arrested person may appeal against their arrest to the court. In the appeal the arrested person may demand that the justification, lawfulness and correctness (*zasadność, legalność oraz prawidłowość*) of the arrest be examined."

35. Article 52 § 2 of the Code provides, in so far as relevant, as follows:

"Whoever:

1) disturbs or attempts to disturb the organisation or conduct of an assembly which was not forbidden:

...

– is liable to limitation of liberty or a fine."

36. Article 52 § 3 of the Code provides, in so far as relevant, as follows:

"Whoever

2) does not obey the requests and instructions of the chairman of an assembly or its organiser ...

...

– is liable to a fine."

III. THE ASSEMBLIES ACT OF 24 JULY 2015 AS AMENDED BY THE LAW OF 13 DECEMBER 2016 INTRODUCING RECURRENT ASSEMBLIES

37. The amended Assemblies Act provides, in so far as relevant, as follows.

Section 3

"1. An assembly is a gathering of people in an open space accessible to unspecified persons ... in order to engage in joint meetings or to jointly express a position on public matters.

2. A spontaneous assembly is an assembly held in connection with a sudden and unforeseeable event related to the public sphere, the holding of which on a different date would be pointless or insignificant from the point of view of public debate."

Section 7

"1. The organiser of the assembly shall notify the municipality of the intention to organise the assembly such that the notification reaches the authority no earlier than 30 days and no later than 6 days before the planned date of the assembly.

...

3. The municipality, upon receipt of the notification of the intention to organise an assembly, shall immediately provide information on the place and date of the planned assembly on its website in the Public Information Bulletin."

Section 9

"1. The organiser of the assembly shall notify the municipality of the intention to organise the assembly in writing, by fax, orally for the record or by means of electronic communication within the meaning of section 2(5) of the Provision of Electronic Services Act of 18 July 2002 (Journal of Laws of 2019, item 123), hereinafter referred to as 'electronic means of communication'.

2. The notification of the intention to organise an assembly is registered according to the date, hour and minute of the notification, which determine the order in which the notification is filed."

Section 12

"1. If notifications of an intention to organise two or more [separate] assemblies, which are planned at least partially at the same place and time and which have, in particular, a distance of less than 100 m between them, have been submitted, and it is not possible to hold them in such a way that they do not pose a significant threat to the life or health of people or to property, priority ... shall be decided according to the order in which the notifications were submitted. In the event that one of the submitted notifications did not meet the requirements set out in section 10, [priority] shall be determined according to the date, hour and minute of its refiling, provided that the refiled notice meets those requirements. Assemblies [of the kind] referred to in section 26a have priority in choosing the place and time of [their gathering].

2. In the case referred to in paragraph 1, the municipality shall immediately contact [the organisers of assemblies which do not have priority under paragraph 1], by phone and by means of electronic communication, [so that they can] change the place or time of the gathering ..."

Section 14

"The municipality shall issue a decision banning an assembly no later than 96 hours before the planned date of the assembly, if:

...

3) the assembly is to be held at the same place and time as a recurrent assembly [as defined in] section 26a is to take place."

Section 19

"1. The organiser of the assembly and the chairman of the assembly are obliged to ensure that the assembly is conducted in accordance with the provisions of law and ... in such a way as to prevent damage being caused by the participants of the assembly.

To this end, the organiser of the assembly and the chairman of the assembly shall take the measures provided for in the Act.

...

4. During the assembly, the chairman of the assembly is obliged to have distinguishing elements in a visible place at all times, including the identifier referred to in subsection 3.

5. The chairman of the assembly shall demand that a person who, by their behaviour, violates the provisions of the Act or prevents or tries to frustrate the assembly, leaves the assembly. In the event

of disobedience, the chairman of the assembly shall ask for help from the police or the municipal (city) guard."

Section 26a

"1. If assemblies are organised by the same organiser in the same place or along the same route at least four times a year according to a prepared schedule or at least once a year on a public or national holiday, and such events have taken place over the last three years, even if not in the form of assemblies, and were intended in particular to celebrate important events in the history of the Republic of Poland, the organiser may request the consent of the governor for the recurrent organisation of these assemblies."

Section 27

"Participants of spontaneous assemblies may not disturb the conduct of assemblies referred to in Chapters 2, 3 and 3a [recurrent assemblies]"

IV. THE POLICE ACT

38. The Police Act (*Ustawa o Policji*) of 6 April 1990 provides, in so far as relevant, as follows:

Section 1

"2. The main responsibilities of the Police are:

...

(2) protection of security and public order, including security in public places..."

Section 14

"1. Within the limits of its responsibilities, the Police carries out operational, investigative and administrative activities."

Section 15

"1. Police officers, while carrying out the activities referred to in section 14, have the right to:

(1). check a person's documents in order to verify his or her identity,

...

7. Arrests, identity checks and searches carried out by police officers may be the subject of an interlocutory appeal lodged with a prosecutor."

V. FREEDOM OF EXPRESSION AND FREEDOM OF ASSEMBLY

39. Article 14 of the Constitution provides as follows:

"The Republic of Poland shall ensure the freedom of the press and other means of social communication."

40. Article 54 § 1 of the Constitution guarantees freedom of expression and provides, in its relevant part:

"Everyone shall be guaranteed freedom to express opinions and to acquire and to disseminate information."

41. Article 57 of the Constitution provides as follows:

"The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Limitations upon such freedoms may be imposed by statute."

42. Article 31 § 3 of the Constitution, which lays down a general prohibition on disproportionate limitations on constitutional rights and freedoms (the principle of proportionality), provides:

"Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic State for the protection of its security or public

order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights."

VI. STATE'S LIABILITY IN TORT

43. Article 23 of the Civil Code (*Kodeks Cywilny*), which entered into force in 1964, contains a non-exhaustive list of so-called "personal rights" (*dobra osobiste*). This provision states:

"The personal rights of an individual, in particular [the rights to] health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, the inviolability of the home, scientific or artistic work, [as well as to] inventions and improvements, shall be protected by the civil law, regardless of the protection laid down in other legal provisions."

44. Article 24 § 1 of the Civil Code provides:

"A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of an infringement, [the person concerned] may also require the party responsible for the infringement to take the necessary steps to remove [the infringement's] consequences ... In compliance with the principles of [the] Code, [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest."

45. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. The relevant part of that provision reads:

"The court may award an adequate sum in pecuniary compensation for non-pecuniary damage (*krzywda*) suffered by anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of [whether he or she is] seeking any other relief that may be necessary in order to remove the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ..."

VII. RELEVANT Case-law of the Constitutional Court

46. In judgment no. Kp 1/17 of 16 March 2017 the Constitutional Court (*Trybunał Konstytucyjny*) held that section 1(4) of the Act of 13 December 2016, which amended the Assemblies Act by adding to that Act Chapter 3a "Proceedings concerning recurrent assemblies" (section 26a-26e in the amended Act), was consistent with Article 32 § 1 (equality before the law) and Article 57 of the Constitution (freedom of assembly). The judgment was issued by a panel of the Constitutional Court involving, *inter alia*, Judge M.M. (see *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, §§ 58-60 and 289-291, 7 May 2021).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

47. The applicant complained that her having been taken to the courtyard and kept there for two hours by the police had amounted to an arrest in violation of Article 5 § 1 of the Convention, which reads, in so far as relevant, as follows:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

..."

(b) the lawful arrest or detention of a person ... in order to secure the fulfilment of any obligation prescribed by law;
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
..."

A. Admissibility

1. *Applicability of Article 5*

48. The Court notes that the parties are in dispute as to whether the applicant's situation amounted to deprivation of liberty and whether it falls to be examined under Article 5 of the Convention.
49. The Court must therefore first determine whether this part of the application is compatible *ratione materiae* with that provision.
(a) The parties' submissions
50. The Government submitted that there were no grounds for considering that the state the applicant was in during the police intervention constituted an arrest within the meaning of Article 45 § 1 of the CPAO, Article 244 § 1 of the Code of Criminal Procedure, or section 15(1)(3) of the Police Act as in force on the date of the events in question. They considered that the applicant had not been deprived of her liberty in breach of the Convention, in particular Article 5 § 1.
51. They further observed that the applicant's identity had been verified in no more than two hours. They referred to the case of *Austin and Others v. the United Kingdom* [GC] (nos. 39692/09 and 2 others, ECHR 2012) in which the Court found that the seven-hour confinement of the applicants within a police cordon in the context of ensuring public order in the face of unlawful actions of demonstrators had not constituted deprivation of liberty. The Government also referred to the case of *S., V. and A. v. Denmark* [GC] (nos. 35553/12 and 2 others, 22 October 2018). In particular, the two-hour duration of the measures taken by the police in respect of the applicant in the present case had been significantly shorter than the police measures taken in two above-mentioned cases and had not exceeded what was strictly necessary. In the present case, as in the case of *S., V. and A. v. Denmark*, the measures had been taken by the police only after the demonstrators had engaged in unlawful actions, and they had been limited to what was strictly necessary to secure the ongoing event (the recurrent assembly in the applicant's case and the match in the case of *S., V. and A. v. Denmark*, cited above) and complete the identification procedures.
52. The applicant argued that Article 5 § 1 of the Convention was applicable to her situation because she had been *de facto* arrested and deprived of her liberty for about two hours in the courtyard to which she had been taken by the police. She had not been allowed to buy water or go to the toilet. She had also been prevented from contacting a lawyer.
(b) Third-party interveners
53. The Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*) submitted that freedom of assembly in Poland was threatened by the police's practice of making excessive use of short-term detention in order to conduct ID checks on participants in assemblies and by its tactics of placing cordons around participants. The Foundation submitted several instances of domestic courts finding that in such cases the people in question had in fact been arrested.

54. The Polish Commissioner for Human Rights (*Rzecznik Praw Człowieka*) considered that the practice of the short-term detention of demonstrators in order to check their IDs and the temporary confinement of demonstrators in police cordons amounted to a *de facto* deprivation of liberty and should be assessed as arrest for the purpose of Article 5 of the Convention. The Commissioner submitted that the circumstances of the present case had to be seen as an interference with the applicant's right to freedom of expression and freedom of assembly.

(c) The Court's assessment

(i) General principles

55. The Court reiterates that Article 5 § 1 protects the physical liberty of the person. It is not concerned with mere restrictions upon liberty of movement, which are addressed by Article 2 of Protocol No. 4 to the Convention. The difference between deprivation of and restrictions upon liberty is one of degree or intensity, and not of nature or substance (see *Austin and Others,* cited above, § 57; *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 64, 15 December 2016; and *De Tommaso v. Italy* [GC], no. 43395/09, § 80, 23 February 2017 and the cases cited therein).

56. The Court also reiterates that deprivation of liberty may take various forms (see *Guzzardi v. Italy*, 6 November 1980, § 95, Series A no. 39). It does not consider itself bound by the legal conclusions of the domestic authorities as to whether or not there has been a deprivation of liberty, and undertakes an autonomous assessment of the situation (see *Khlaifia and Others*, cited above, § 71; *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012; *Valerian Dragomir v. Romania*, no. 51012/11, § 67, 16 September 2014; *Čamans and Timofejeva v. Latvia*, no. 42906/12, § 108, 28 April 2016; and *Bryan and Others v. Russia*, no. 22515/14, § 62, 27 June 2023; *Friedrich and Others v. Poland*, nos. 25344/20 and 17 others, § 150, 20 June 2024).

57. In order to determine whether a person has been deprived of his or her liberty, the starting point must be his or her specific situation, and account must be taken of a whole range of criteria, such as the type, duration and effects of the measure in question and the manner in which it was implemented (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 58-59, Series A no. 22, and *Khlaifia and Others*, cited above, § 64). The Court attaches importance to factors such as whether there is a possibility to leave the restricted area, the degree of supervision and control over the movements of the person concerned, the extent of that person's isolation and the possibility of contact with the outside world (see *Guzzardi*, cited above, § 95, and *H.M. v. Switzerland*, no. 39187/98, § 45, ECHR 2002-II, and as a recent example, *Friedrich and Others*, cited above § 151).

58. Where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the duration of the measure, even when it is relatively short, does not affect this conclusion (see, *Friedrich and Others*, cited above, § 152, with references to *Shimovolos v. Russia*, no. 30194/09, §§ 44 and 50, 21 June 2011, in which the applicant spent forty-five minutes at a police station; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts), where the applicants were stopped and subjected to a thirty-minute search; *Novotka v. Slovakia* (dec.), no. 47244/99, 4 November 2003, where transportation to the police station, a search of the applicant and his confinement in a cell did not exceed one hour; *Zelčs v. Latvia*, no. 65367/16, §§ 36 and 40-41, 20 February 2020, where the applicant spent less than two hours in "administrative detention" while an administrative-offence report was being written; and *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 317-18, ECHR 2010 (extracts), where the alleged detention of the applicant's daughter lasted about two hours).

59. The purpose of measures taken by the authorities in order to deprive individuals of their liberty is not decisive for an assessment of whether there has in fact been a deprivation of liberty. The Court takes that into account only at a later stage of its analysis, when examining the compatibility of the measures with Article 5 § 1 (see *Khlaifia and Others*, cited above, § 71; *Creangă*, cited above, § 93; and *Rozhkov v. Russia* (no. 2), no. 38898/04, § 74, 31 January 2017; and contrast *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 224-30, 21 November 2019).

60. In cases that raised the issue of the applicability of Article 5 of the Convention, the Court has considered that what is indicative of deprivation of liberty is an element of coercion in the exercise of police powers in terms of the applicant's inability to leave (see, for example, *Čamans and Timofejeva,* cited above, § 112; *Gillan and Quinton*, cited above, § 57; *Khalikova v. Azerbaijan*, no. 42883/11, § 102, 22 October 2015 and *Friedrich and Others*, cited above, § 155). It has also had regard to the effect of a measure on the applicant in terms of physical discomfort and inability to leave (compare *Austin and Others*, cited above, § 64). As to the element of coercion, the Court has held that the absence of handcuffing or other measures of physical restraint does not constitute a decisive factor in establishing the existence of a deprivation of liberty (see *M.A. v. Cyprus*, no. 41872/10, § 193 *in fine*, ECHR 2013 (extracts) and the cases cited therein; and compare *Čamans and Timofejeva,* cited above, § 113).

(ii) Application of these principles to the present case

61. The Court notes that the District Court in its decision of 11 September 2017 dismissed the applicant's appeal against her arrest (see paragraphs 16-20 above). It considered that in the circumstances of the case there had been no arrest within the meaning of the CPAO, but that the applicant and other participants in the counter-demonstration had been moved to a safe location for their identities to be checked and searched for in police databases. However, having regard to its case-law on the matter, the Court is not bound by these legal conclusions and will undertake its own assessment of whether the applicant's situation amounted to a deprivation of liberty (see paragraph 56 above). Turning to the circumstances of the present case, the Court notes that the applicant participated in the counter-demonstration on 10 June 2017 and was in a group of people who were surrounded by a police cordon at about 8 p.m. In reaction to this, the applicant and other demonstrators sat down on the ground. The police called on them to disperse and soon after they began removing them from the site. The applicant and other protesters were removed and put in the courtyard of a building located nearby. They were subsequently blocked in the courtyard by the police cordon and could not leave that area until about until 10 p.m. the same evening (see paragraph 10 above). As regards the Government's argument that the applicant's identity had been checked relatively quickly, the Court notes that the duration of the measure in question is only one of many elements to be taken into consideration (see paragraphs 57 and 58 above). The applicant was prevented from going to the toilet and buying water. The police also refused to let her communicate with lawyers sent by the Warsaw Bar who were just outside the police cordon (see paragraph 12 above). The applicant's ID was retained by the police while they were checking the police database to see whether she was on the list of wanted persons. It follows from the above that the applicant was not free to leave the place for about two hours. Throughout that time her ID was retained and her contact with the outside world was limited.

(iii) The Court's conclusion on the applicability of Article 5

62. Having regard to the nature and the duration of the restrictions imposed on the applicant by the authorities, the Court finds that she was deprived of her liberty, within the meaning of Article 5 of the Convention, on 10 June 2017 between 8 p. m. and 10 p. m. That provision is therefore applicable.
63. It follows that the Court has jurisdiction *ratione materiae* to examine the applicants' complaints under Article 5 of the Convention.

2. *Non-exhaustion of domestic remedies*

(a) The parties' submissions

(i) The Government

64. The Government raised a preliminary objection of non-exhaustion of domestic remedies.
65. Firstly, they considered that the applicant had failed to appeal to the locally competent public prosecutor against the police's actions of 10 June 2017 related to her identification, in accordance with section 15(7) of the Police Act, namely with regard to the length of the identification process.
66. Secondly, they submitted that the applicant had failed to claim compensation under Article 114 § 2 of the CPAO, which provides that compensation and redress should be awarded to anyone who was subjected to an undoubtedly wrongful arrest and to anyone who was imprisoned under Article 82 § 5 (2) or (3) but who was then legally acquitted or against whom the proceedings were legally discontinued. According to the case-law of domestic courts, such claims can be brought regardless of whether the people involved appealed against their arrest and obtained a statement that it was illegitimate or illegal (see the judgment of the Court of Appeal in Katowice, ref. no. II Aka 162/10, OSA 2011, issue 12, item 47).
67. Thirdly, they considered that the applicant had failed to avail herself of the right to claim compensation from the State Treasury under Articles 417 and 448 of the Civil Code in connection with alleged damage related to an alleged restriction of rights guaranteed by the Convention (see the judgment of 5 July 2012 of the Court of Appeal in Katowice, ref. no. II Aka 242/12).

(ii) The applicant

68. The applicant submitted that an appeal to the locally competent public prosecutor against the police's actions related to her identification, on the basis of section 15(7) of the Police Act, would not have been an effective remedy in her case because the competent prosecutor was not authorised to examine the justification, lawfulness or correctness of a deprivation of liberty. Only a court could examine appeals against deprivation of liberty, and such an appeal had been lodged by the applicant.
69. As for the compensation claim on the basis of the CPAO, the applicant submitted that that remedy would have been ineffective in view of the domestic court's finding that she had not been arrested. Furthermore, a claim for compensation on the basis of the Civil Code would not have had any prospect of success because, under the relevant domestic provisions, the acts complained of would have had to have been unlawful (*bezprawne*).

(b) The Court's assessment

70. The Court reiterates that the obligation to exhaust domestic remedies referred to in Article 35 § 1 of the Convention requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of these remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. To be effective, a remedy must be capable of directly redressing the

impugned state of affairs and must offer reasonable prospects of success (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 139, 27 November 2023 with further references).

71. Having found that the applicant was deprived of her liberty within the meaning of Article 5 of the Convention (see paragraph 62 above), the Court considers that by lodging the interlocutory appeal of 16 June 2017 she availed herself of the specific remedy provided under Article 47 of the Code of Administrative Offences (see paragraph 34 above). In it she alleged that the deprivation of her liberty had been unjustified, unlawful and incorrect and requested that those circumstances be examined by a court (see paragraph 14 above).

72. Regarding situations in which different avenues of redress are available, the Court reiterates that an applicant who has made use of a remedy that is apparently effective and sufficient cannot also be required to have tried others that were available but were probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

73. The Court therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 5 of the Convention.

3. *Conclusion regarding the admissibility of the applicant's complaint under Article 5*

74. The Court notes that the applicant's complaint under Article 5 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

75. The applicant submitted that she had been effectively deprived of her liberty for about two hours. She maintained that she had not been able to leave the courtyard to which she had been taken by the police (see paragraph 52 above). Moreover, she had not been released after her ID had been verified; in fact all the participants of the counter-demonstration who had been brought to the courtyard with the applicant had been kept there until the end of the recurrent assembly instead of each person being released after verification of his or her ID.

76. The applicant further considered that her deprivation of liberty had not been necessary in the circumstances of the case, in particular given that there had been no suspicion of her having committed any offence.

(b) The Government

77. The Government submitted that the police actions had a legal basis, *inter alia* in the Police Act, and that there were thus no grounds to conclude that their actions had been unjustified, unlawful or incorrect. The actions of the police officers had been based in particular on section 1(2)(2) and section 14(1) in conjunction with section 15(1)(1) of the Police Act. They maintained that, in their view, the applicant had not been arrested.

78. They further submitted, however, that, should the Court find that the state the applicant was in during the police intervention constituted a deprivation of liberty within the meaning of Article 5 § 1 of the Convention, it is permissible under Article 5 § 1 (b) of the Convention to lawfully arrest or detain a person for non-compliance with the lawful order of a court or in order to secure the

fulfilment of any obligation prescribed by law, and under Article 5 § 1 (c) of the Convention when it is reasonably considered necessary to prevent his committing an offence.

79. The applicant, together with several other participants of the counter-demonstration, had sat down on the ground after having been surrounded by a police cordon. The Government shared the domestic court's view that such behaviour could not be regarded as anything but intentional obstruction of a lawful assembly which was being held nearby. The behaviour of the applicant and the other counter-demonstrators had delayed and impeded the planned march of the recurrent assembly. The applicant had disobeyed the orders of the police. Because of the lack of reaction from the people blocking the planned route of the legal assembly, steps had been taken to unblock it. Those actions consisted in relocating the people blocking the recurrent assembly to a safe place for identification. The police measures had been undertaken in line with section 1(2)(2) and section 14(1) in conjunction with section 15(1)(1) of the Police Act and they had been applied in a gradual manner. The police, having realised that the aim of the members of the unlawful assembly was to disturb the recurrent assembly, had decided to relocate them. The relocation had not had a punitive character but had been aimed at the prevention of disorder by securing the rights of all the participants in the assemblies (both the recurrent assembly and the counter-demonstration).

80. The police action had ensured that the recurrent assembly could go ahead, but at the same time the counter-demonstrators had not been stripped of their right to peaceful assembly and to express their views. They had been free to hold a peaceful demonstration at any location other than the route along which the recurrent assembly had planned to march.

81. As regards the temporary situation in which the applicant had been prevented from moving freely, according to the Government that was justified by the need to establish her identity and had been based on section 15(1)(1) of the Police Act. It had ended as soon as the relevant obligation had been fulfilled. The duration of that situation had been prolonged for objective reasons, such as the need to run checks in the relevant police databases, the large number of such checks to be carried out at the same time and the obstruction of the process by other persons supporting the protestors. The authorities had begun to apply at that time a new law on public assemblies, which had entered into force in April 2017, and the number of participants in the counter-demonstration (who had disobeyed the order of the police and sat down on the street instead of leaving the route of the lawful assembly) was significant. All those factors had had an impact on the length of the process of identification.

82. The Government submitted that even if the Court finds that the applicant was deprived of her liberty in the meaning of Article 5 § 1 of the Convention, the deprivation of liberty was proportionate and a due balance had been struck between the importance in a democratic society of securing the immediate fulfilment of an obligation prescribed by law and the applicant's right to liberty. In that context they referred to the case *Ostendorf v. Germany* (no. 15598/08, 7 March 2013).

83. Lastly, the Government contended that all the actions undertaken by the police with regard to the applicant were justified under the second limb of Article 5 § 1 (b) of the Convention and invited the Court to find that no violation of Article 5 § 1 of the Convention had occurred in the present case.

2. *Third-party interveners*

84. The Helsinki Foundation for Human Rights made the following submissions.

85. The 2016 amendment of the Assemblies Act allowed some assemblies held periodically to apply for permission for the organisation of recurrent assemblies. The main benefit of having such permission was obtaining priority over other assemblies, which could not be organised in the same place and time as recurrent assemblies. That applied even to ordinary assemblies that had been planned before a recurrent assembly.

86. The concept of recurrent assemblies was controversial among some scholars and in parts of civil society, who perceived it as unjustified preferential treatment of certain types of assemblies and a disproportionate restriction on the right to organise counter-assemblies.

87. The Polish Commissioner for Human Rights submitted that the provisions on recurrent assemblies had led to an illegitimate differentiation between individuals and certain groups of people where the right to freedom of assembly was concerned. The new law indicated that the national authorities wished to give priority to assemblies which they themselves organised or which were organised by groups of people supported by the authorities.

3. *The Court's assessment*

(a) General principles

88. The Court reiterates that Article 5 of the Convention guarantees a right of primary importance in a "democratic society" within the meaning of the Convention, namely the fundamental right to liberty and security. Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual and, as such, its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 311, 22 December 2020, and *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 123, 1 June 2021).

89. All persons are entitled to the protection of that right, that is to say, not to be deprived, or not to continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 of the Convention. Three strands of reasoning in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly, and which do not allow for the broad range of justifications under other provisions (Articles 8 to 11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, both procedural and substantive, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls (ibid., § 312).

90. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law (see *Denis and Irvine*, cited above, § 125).

91. In laying down that any deprivation of liberty must be carried out "in accordance with a procedure prescribed by law", Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law. They also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be

clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Khlaifia and Others*, cited above, §§ 91-92; *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013; and *Denis and Irvine*, cited above, § 128).

92. In addition to being in conformity with domestic law, Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among other authorities, *Rooman v. Belgium* [GC], no. 18052/11, § 190, 31 January 2019 and *Denis and Irvine*, cited above, § 129).

93. The relevant principles regarding Article 5 § 1 (b) and (c) of the Convention can be found in the judgment of *S., V. and A. v. Denmark* (cited above, §§ 79-83 and 89-92).

(b) Application of these principles to the present case

94. The Government argued that the applicant had failed to comply with the demands given by the chairman of the recurrent assembly and orders by the police and that, therefore, the circumstances of the case fell under Article 5 § 1 (b) of the Convention. They also referred to Article 5 § 1 (c) (see paragraphs 78 and 83 above). However, before turning to the question whether the applicant's deprivation of liberty was covered by either of these exceptions, the Court will first examine whether it was lawful within the meaning of Article 5 § 1 of the Convention.

95. The Court notes that the Government like the District Court in its decision of 11 September 2017 (see paragraph 19 above) submitted that the police actions had had a sufficient basis in the domestic law. They relied on the relevant provisions of the Police Act, namely section 1(2)(2) and section 14(1) in conjunction with section 15(1)(1) thereof. Those provisions refer to the general activities of the police and allow the police to check a person's documents in order to verify his or her identity (see paragraph 38 above), but they do not provide grounds for arrest. The Court would further note that the provision allowing the arrest of a person is contained in Article 45 of the CPAO which provides for arrest if the following conditions are fulfilled – firstly, when the person concerned is caught in the act of committing an administrative offence or directly afterwards and secondly if (1) there are grounds to apply accelerated proceedings in relation to that person or (2) that person's identity cannot be established (see paragraph 31 above). The District Court in its decision of 11 September 2017 considered that there had been no arrest within the meaning of the CPAO (see paragraphs 16-20 above). The Government in their observations did not submit that any of the circumstances referred to in Article 45 of the CPAO pertained to the applicant's case. It follows that the Government failed to show that the whole set of coercive measures taken in respect of the applicant and leading to, as found in paragraph 62 above, her deprivation of liberty, had a sufficient legal basis in domestic law.

96. The Court further notes that the Government failed to demonstrate that the entire period of effective detention was necessary for the purpose of carrying out the identity check. In particular, while the Government relied on the significant number of participants of the counter-demonstration to justify the duration of the measure (paragraph 81 above), they did not indicate even their approximative number. It would also appear from the applicant's description of the events and the District Court's decision (paragraphs 11 and 18 above), that in addition to the identity checks further

checks in police data bases were carried out. Finally, the Government did not explain why, as submitted by the applicant (see paragraph 75 above), all the participants of the counter-demonstration had not been released after the verification of their ID but were instead kept together until the end of the recurrent assembly.

97. The above considerations are sufficient for the Court to conclude that the applicant's arrest, which started on 10 June 2017 at about 8 p.m. and lasted for about two hours, was not "prescribed by law" for the purposes of Article 5 § 1 of the Convention. The requirement that any deprivation of liberty must be "lawful" is common to all the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1 of the Convention (see paragraph 90 above). In view of the above finding, the Court does not consider it necessary to further analyse whether the applicant's detention complied with the specific requirements of subparagraph (b) or (c) of Article 5 § 1.

98. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 10 and 11 OF THE CONVENTION

99. The applicant also complained under Articles 10 and 11 of the Convention that the police intervention had constituted a disproportionate limitation of her right to freedom of expression and freedom of assembly.

100. The provisions in question read, in so far as relevant, as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Admissibility

1. *The Government's preliminary objections*

101. The Government raised a preliminary objection that the applicant did not have victim status in respect of the alleged violation of her rights under Article 11 of the Convention and that that complaint should be declared incompatible *ratione personae* with the Convention.

102. The Government further submitted that the applicant had not raised, at any stage of the domestic proceedings, any pleas concerning the alleged violation of her right to impart information or ideas under Article 10 of the Convention. They referred in particular to the possibility of lodging a civil claim for compensation under Article 417 of the Civil Code for damage related to the alleged restriction of her rights guaranteed by the Convention.

2. *The applicant's submissions*

103. The applicant submitted that her right to freedom of peaceful assembly had been directly affected and violated by the police measures that had resulted in her being deprived of her liberty. She had been prevented from expressing her disagreement with the unconstitutional provisions of the Assemblies Act regarding recurrent assemblies.

104. As regards the objection that she had not raised her complaints under Article 10 before the domestic authorities, the applicant submitted that a "careful analysis of the applicant's appeal against the arrest as well as the written reasoning of the court's decision ... after its examination, indicated beyond doubt that issues regarding the violation of the rights provided by Article 10 as well as by Article 11 of the Convention had been raised and analysed by the domestic court."

3. *The Court's assessment*

(a) Incompatibility *ratione personae*

105. As regards the Government's objection concerning the applicant's alleged lack of victim status, the Court notes that, as found above (see paragraph 62), the applicant was deprived of her liberty in the course of an assembly expressing her disagreement with the amendments to the Assemblies Act concerning the privileged position of recurrent assemblies. That amounted to a clear interference with her rights under both Articles 10 and 11 of the Convention. However, the Court holds that it is not necessary to examine this issue in detail since it considers that the applicant's complaints under Articles 10 and 11 of the Convention are inadmissible on other grounds.

(b) Exhaustion of domestic remedies

(i) General principles

106. The Court has held in previous cases that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism: it does not simply require that applications should be made to the appropriate domestic courts and use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally also requires that any complaint intended to be lodged subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

107. The object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address allegations of violations of a Convention right and, where appropriate, to afford redress before such an allegation is submitted to the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). If the complaint presented before the Court has not been put, either explicitly or in substance, to the national courts when it could have been raised in the exercise of a remedy available to the applicant, the national legal order has been denied the opportunity to address the Convention issue. It would be contrary to the subsidiary character of the

Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see, *Azinas,* cited above, § 38, and *Vučković and Others*, cited above, § 75).

108. Even in those jurisdictions where the domestic courts in civil proceedings are able, or even obliged, to examine the case of their own motion (that is, to apply the principle of *jura novit curia*), applicants are not dispensed from raising before them a complaint which they may intend to subsequently make to the Court (see, among other authorities, *Kandarakis v. Greece*, nos. 48345/12 and 2 others, § 77, 11 June 2020), it being understood that for the purposes of exhaustion of domestic remedies the Court must take into account not only the facts but also the legal arguments presented domestically (see *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 171, 1 June 2023).

109. Likewise, it is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, he or she must actually complain (expressly or in substance) of such a violation in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see *Fu Quan, s.r.o.*, cited above, § 172).

(ii) Application of these principles to the present case

110. The Court notes that on 16 June 2017 the applicant lodged an appeal against her arrest with the Warsaw-Śródmieście District Court (see paragraph 14 above) and that the Court has already found that, for the purposes of her complaint under Article 5 of the Convention, the applicant was not required to exhaust any further domestic remedies (see paragraphs 71-73 above).

111. In reply to the applicant's argument (see paragraph 104 above) the Court having carefully examined her appeal of 16 June 2017, concludes that in that remedy she did not raise, even in substance, any allegations concerning her rights to freedom of expression or freedom of assembly. It appears that in the proceedings before the domestic courts the applicant chose to defend herself using arguments other than those which she subsequently raised in her application to the Court.

112. In sum, the applicant did not provide the Polish authorities with the opportunity which is in principle intended to be afforded to a Contracting State by Article 35 of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 43, ECHR 2006-II, and *Irzyk v. Poland* (dec.), no. 58113/09, § 40, 28 February 2017). The objection that the relevant "effective" domestic remedy was not used by the applicant with regard to her complaints under Articles 10 and 11 of the Convention is therefore well-founded.

113. Consequently, those complaints must be rejected as inadmissible, in accordance with Article 35 §§ 1 and 4 *in fine* of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

115. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of the alleged violation of her rights under Article 5 § 1 of the Convention, EUR 1,000 in respect of non-pecuniary damage resulting from the alleged violation of Article 10, and EUR 2,000 in respect of non-pecuniary damage resulting from the alleged violation of Article 11.

116. The Government submitted that the applicant's claims were unsubstantiated and unsupported by any documents. They requested that the claims be rejected.

117. Having found a violation of the applicant's rights under Article 5 § 1 of the Convention and having declared the remaining complaints inadmissible, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage resulting from the violation of her rights under Article 5 § 1, plus any tax that may be chargeable.

B. Costs and expenses

118. The applicant did not make any claim in respect of costs and expenses as she was represented on a *pro bono* basis.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 5 § 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar

Ivana Jelić President