

ObyPomoc REPORT

11 April 2017 - 31 December 2020

This report was drawn up on the basis of information gathered from persons who turned for help to the legal assistance group operating within the Free Citizens of the Republic of Poland (Wolni Obywatele RP) Foundation. It includes only documented cases, among them: interrogations at police stations and at the prosecutors' offices as suspects or witnesses, "fast track" sentences based on claims for punishment prepared by the police, and proceedings conducted based on the regulations of the Penal Code, Administrative Law, Press Law and Hunting Law as well as the Act on the Protection of Animal Health and Combating Infectious Diseases.

Prepared by Magda Bakun and Barbara Pomorska.

Contact

telephone: +48 576 161 505

e-mail: pomocORP@protonmail.com

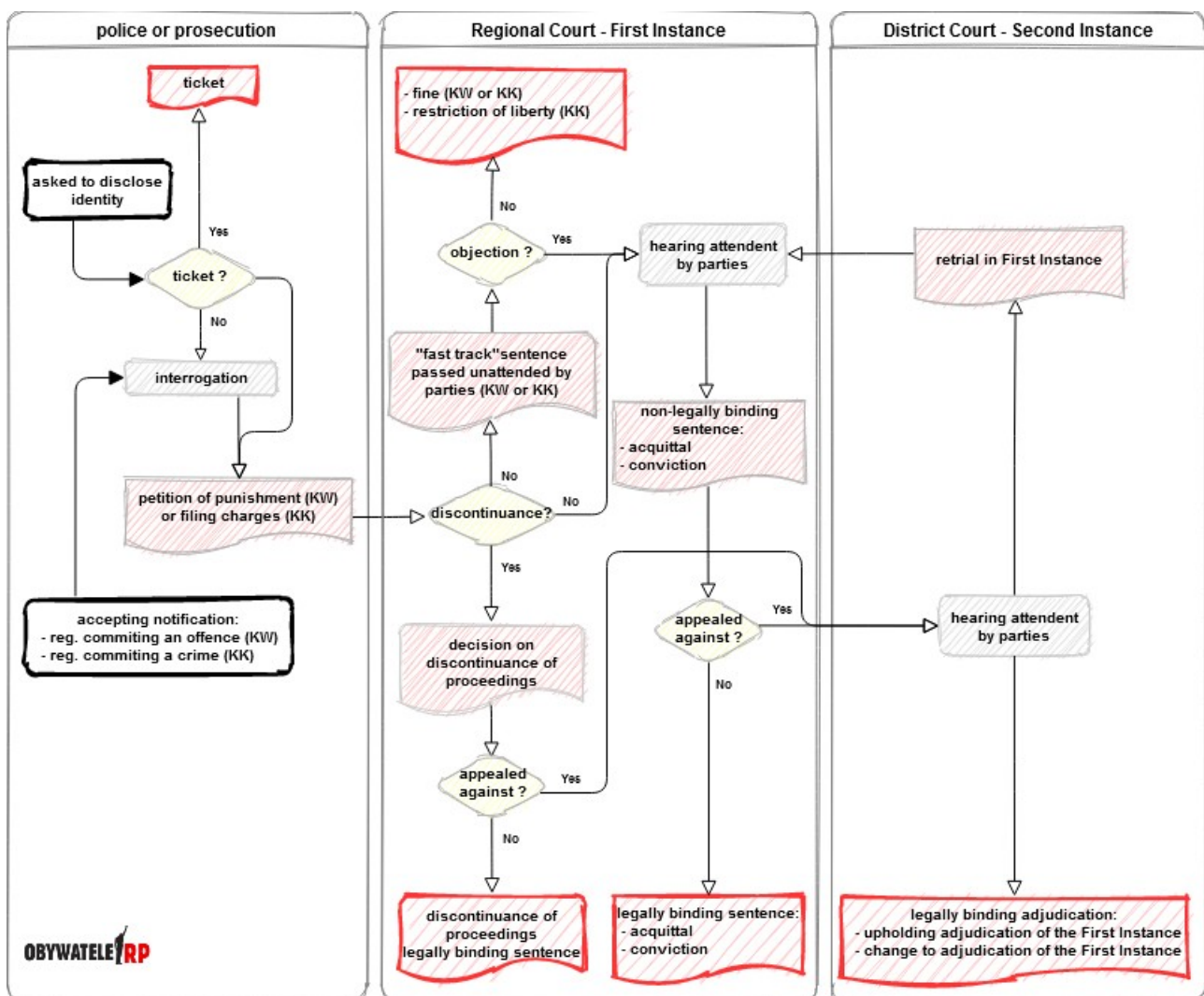
www.obywatelrp.org/ObyPomoc

INTRODUCTION

ObyPomoc received information about **841** individuals who, because of their participation in peaceful protests, had at least once come in contact with the law enforcement, the justice system or the sanitary inspectorate. For the purpose of this report, protests have been divided into categories, the description of which can be found at the end of the document (*page 12.*).

Information on proceedings arrives at the legal aid office at different stages. The diagram below shows in a simplified way the path protesters go through, first suspected and then accused of offences under the Code of Petty Offences or charged under the Penal Code. Usually it is the Code of Petty Offences that is used against the protesters, which has penalties ranging from a symbolic reprimand or being found guilty of committing an offence, a fine between 20 to 5000 pln, up to the penalty of restriction of freedom, e.g, carrying out work for a public good, so-called community work.

The diagram of proceedings carried out under the Code of Petty Offences (KW) and the Penal Code (KK).



CASES WHICH ARE AT THE INVESTIGATION STAGE

Petty Offences Code

- **960 investigations** (interrogations)

Penal Code

- **104 investigations** (interrogations at the police station or prosecutor’s office), including **66** persons interrogated as witnesses
 - **2 discontinuance of the investigation** by the prosecution

Hunting Law

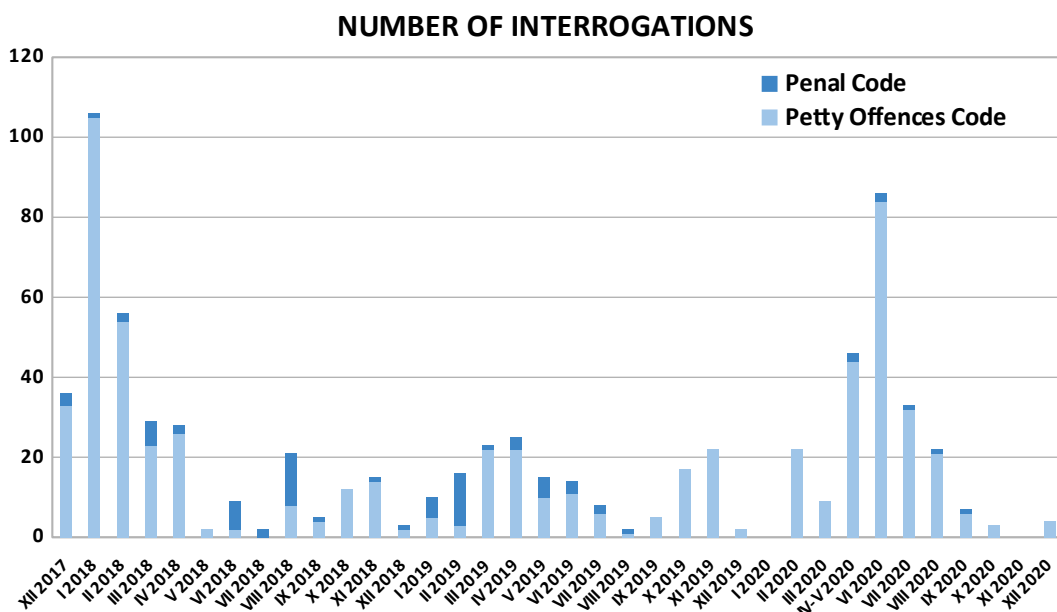
- **1** person was interrogated as a suspect of committing an offense – a journalist who was accused of impeding a hunt.

Press Law

- **1** person – a participant of the counter-monthly celebration was accused of disrupting the work of a journalist.
 - **7** indictments

Act on the Protection of Animal Health and Combating Infectious Diseases of Animals

- **1** interrogation at the Police Station



COURT CASES – PETTY OFFENCES CODE

Up to 31 December 2020, ObyPomoc registered **417** court proceedings conducted on grounds of the Petty Offences Code regulations. These are „fast-track” sentences as well as court cases conducted on grounds of general regulations. Some of the proceedings are still under way.

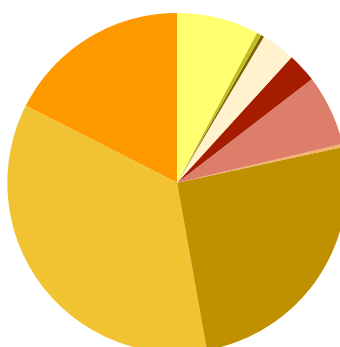
After collecting and assessing the evidence, the police sends them to a court of the First instance accompanied by a motion for penalising the person suspect of committing the offence. When the court concludes that there are no doubts about the suspect being guilty, then during an individual closed-door hearing, the court issues a so-called “fast-track” sentence.

The accused may accept the sentence, pay the fine set by the court or take advantage of their right to file an objection to that sentence within 7 days from when it is passed.

“Fast track” sentences - 255 (for 680 people)

| EVENT | NUMBER OF „FAST TRACK” SENTENCES | NUMBER OF PEOPLE |
|---|----------------------------------|------------------|
| the counter-monthly celebrations | 40 | 119 |
| protests against the far-right | 99 | 240 |
| protests in defence of the independence of courts | 40 | 174 |
| protests in front of the Polish Parliament | 2 | 2 |
| other protests | 20 | 46 |
| actions in solidarity | 18 | 19 |
| refusing to disclose personal data | 17 | 22 |
| protests in defence of media independence | 2 | 2 |
| protests of ecological movements | 1 | 3 |
| protests during the epidemic state | 16 | 53 |

"FAST TRACK" SENTENCES (NUMBER OF PEOPLE)



If the objection to a „fast-track” sentence is delivered on time, then Court of the First Instance is obliged to re-assess the evidence, and fixes a time for the hearing on the discontinuance of proceedings or a time for the hearing to be conducted pursuant to general rules.

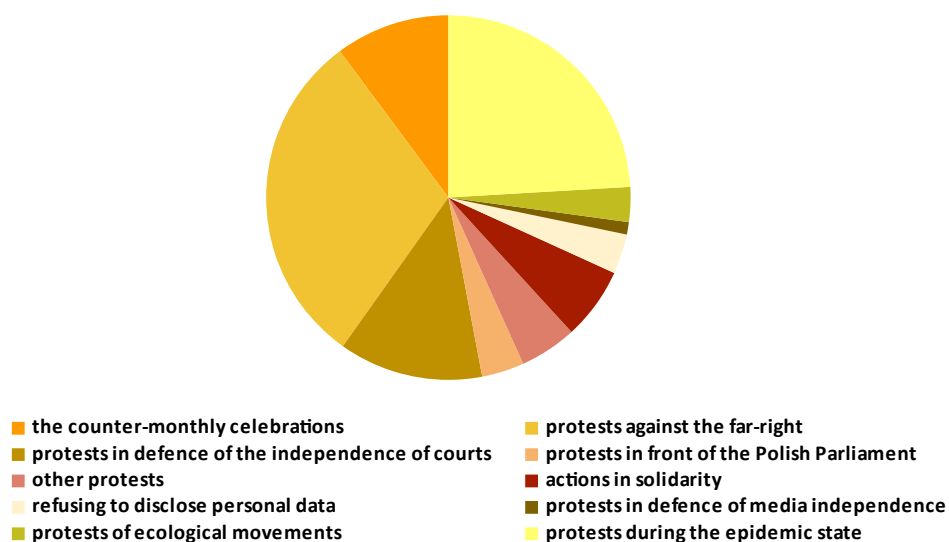
Our statistics show that approx. 50% of the accused file an objection against a „fast track” sentence. Over 97 % of these cases end in court with a discontinuance or acquittal.

Case hearings attended by parties can also proceed bypassing the stage of a “fast track” sentence. In such case, apart from discontinuing the proceedings or holding a classic court hearing, the court may also refuse to initiate proceedings.

Discontinuance of proceedings, acquittal or refusal to initiate proceedings (First Instance) - 167 sentences or decisions concerning 453 people

| DISCONTINUANCE, ACQUITTAL, REFUSAL TO INITIATE (FIRST INSTANCE) | NUMBER OF SENTENCES | NUMBER OF PEOPLE |
|---|---------------------|------------------|
| the counter-monthly celebrations | 16 | 46 |
| protests against the far-right | 41 | 136 |
| protests in defence of the independence of courts | 27 | 58 |
| protests in front of the Polish Parliament | 6 | 17 |
| other protests | 14 | 23 |
| actions in solidarity | 16 | 29 |
| refusing to disclose personal data | 12 | 16 |
| protests in defence of media independence | 1 | 5 |
| protests of ecological movements | 1 | 14 |
| protests during the epidemic state | 33 | 109 |

ACQUITTAL FIRST INSTANCE (NUMBER OF PEOPLE)

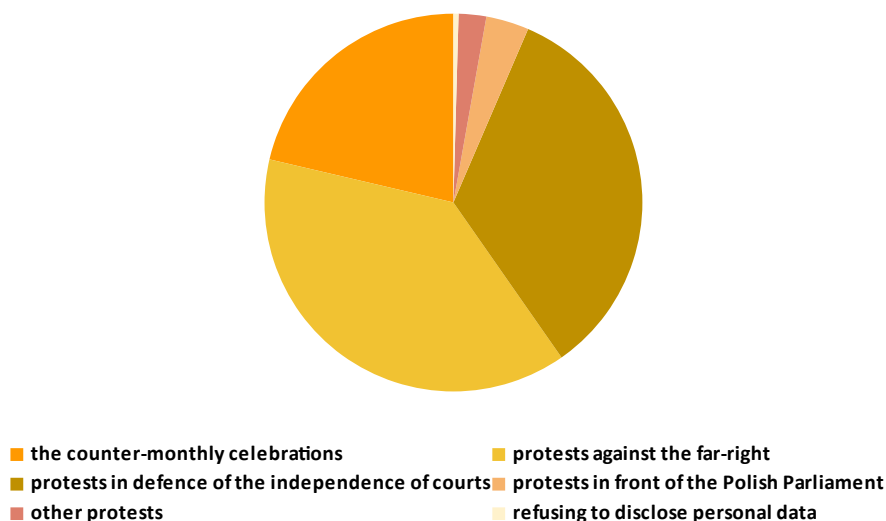


Upon discontinuance of proceedings or a court judgement being handed, parties to the proceedings have the right to appeal against the decision of the court of the First Instance within 30 days from the date of notification. In cases of persons who have been acquitted and remain under the care of ObyPomoc, the public prosecutor, meaning the police, regularly takes advantage of this right. Few weeks or months after their acquittal, these individuals receive a notification about the time of an appeal hearing. The court of the Second Instance can confirm the ruling of the First Instance and that is when we have a legally binding sentence, or it can send the case for retrial before a court of the First Instance.

Legally binding acquittals confirming sentences or acquittals or the discontinuance of proceedings (Second Instance) - 61 sentences 464 people

| EVENT | NUMBER OF LEGALLY BINDING ACQUITTAL | NUMBER OF PEOPLE |
|---|-------------------------------------|------------------|
| the counter-monthly celebrations | 12 | 99 |
| protests against the far-right | 22 | 178 |
| protests in defence of the independence of courts | 17 | 157 |
| protests in front of the Polish Parliament | 3 | 17 |
| other protests | 5 | 11 |
| refusing to disclose personal data | 2 | 2 |

LEGALLY BINDING ACQUITTAL (NUMBER OF PEOPLE)

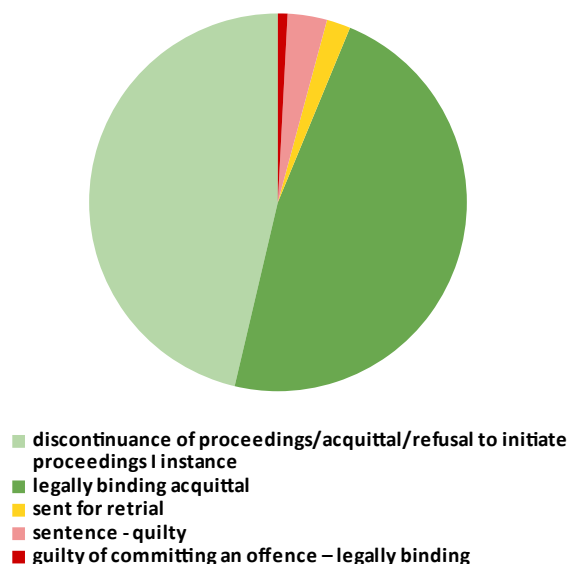


Data gathered by the ObyPomoc team clearly shows that people participating in the different types of pro-democratic protests are mainly acquitted and cleared of accusations pursuant to the Code of Petty Offences, in total **917** acquittals or discontinuance, over half of which are already legally binding. To our knowledge, only **41** persons have been regarded by the court as **guilty of committing an offence**, of which **eight sentences are legally binding**. In most cases, these are charges under art. 52 § 2 point 1 of the Petty Offences Code, i.e., disturbing the process of a non-banned assembly.

Sentences and court decisions 1st or 2nd Instance and sentences passed following retrial before Regional Courts **257** sentences or decisions concerning **978** people

| COURT DECISIONS | NUMBER OF CASES | NUMBER OF PEOPLE |
|--|-----------------|------------------|
| discontinuance of proceedings/acquittal/refusal to initiate proceedings I instance | 167 | 453 |
| legally binding acquittal | 61 | 464 |
| sent for retrial | 6 | 20 |
| sentence – guilty | 16 | 33 |
| guilty of committing an offence – legally binding | 7 | 8 |

THE COURTS' DECISIONS - PETTY OFFENCES CODE
(NUMBER OF PEOPLE)



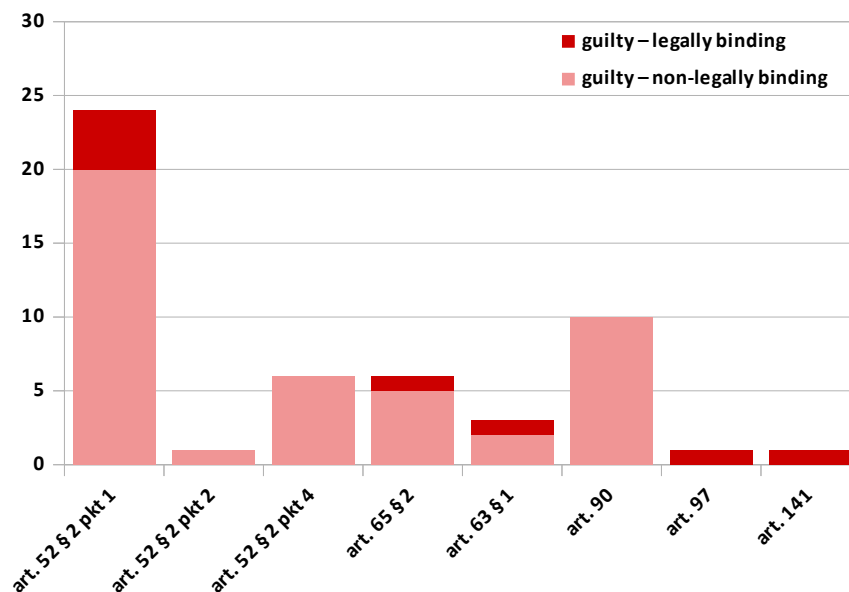
It does happen that defendants are charged for committing more than one offence. The table below contains the type and number of charges filed against defendants where the court decided they are guilty. The highest number of 'guilty' decisions involved public assemblies and blocking traffic on a public road.

Found guilty of committing an offence by courts of the First and Second Instance

| CHARGES UNDER THE PETTY OFFENCES CODE | GUILTY - NON-LEGALLY BINDING | GUILTY - LEGALLY BINDING |
|--|------------------------------|--------------------------|
| art. 52 § 2 point 1 – disturbing an assembly | 20 | 4 |
| art. 52 § 2 point 2 – organising an assembly without required notification | 1 | - |
| art. 52 § 2 point 4 – refusal to leave an assembly when called to do so | 6 | - |
| art. 65 § 2 – refusal to disclose identity | 5 | 1 |
| art. 63 § 1 – placing a poster or leaflet without permission | 2 | 1 |
| art. 90 – impeding traffic on a public road | 10 | - |
| art. 97 – crossing the street where this is not allowed | - | 1 |
| art. 141 – using vulgar language in public | - | 1 |

GUILTY - PETTY OFFENCES CODE

NUMBER OF CHARGES



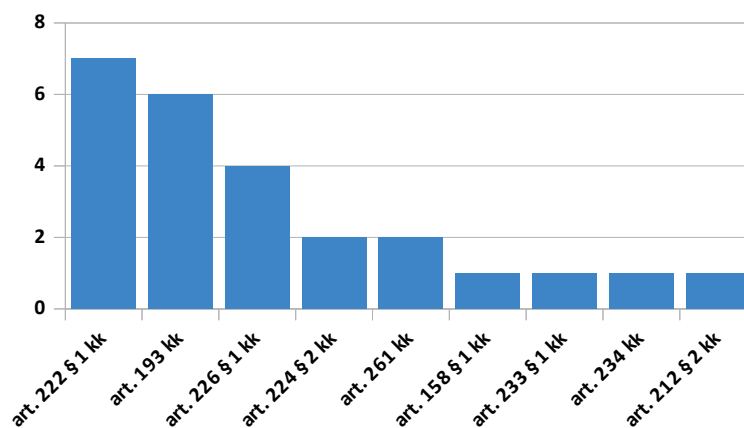
COURT CASES – PENAL CODE

Up till 31 December 2020 ObyPomoc registered **19** court proceedings run on grounds of the Penal Code regulations. Some of the proceedings are still under way. **25** charges in total have been filed against **23** persons. Most of them for violating the bodily integrity of a police officer and violation of the co-called domestic peace, i.e., entering the premises of the Polish Parliament or the Parliament’s parking area.

Charges on grounds of the Penal Code:

| CHARGES ON GROUNDS OF THE PENAL CODE | NUMBER OF PEOPLE |
|--|------------------|
| art. 222 § 1 - violating the personal inviolability of a public official | 7 |
| art. 193 - violation of domestic peace | 6 |
| art. 226 § 1 - insulting a public official | 4 |
| art. 224 § 2 - forcing to conduct a legal official function | 2 |
| art. 261 – insulting a monument | 2 |
| art. 158 § 1 – participation in a brawl or beating | 1 |
| art. 233 § 1 – false testimony | 1 |
| art. 234 – false accusations of committing a crime | 1 |
| art. 212 § 2 – slandering an individual, group of people or an institution | 1 |

NUMBER OF CHARGES - PENAL CODE)

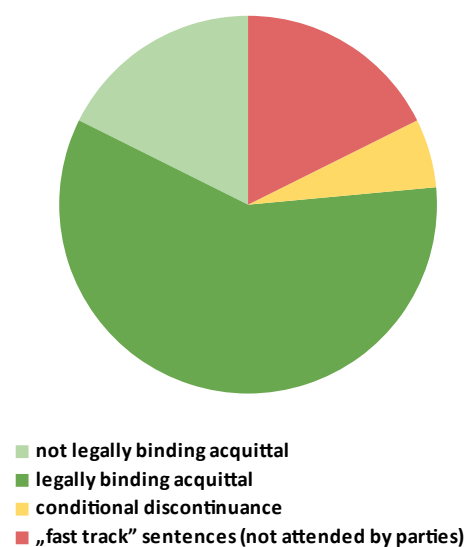


Sentences on grounds of the Penal Code are passed mainly in court. Unfortunately, there have also been such occurrences when regional court judges pass a so-called “fast track” sentence which involves a penalty for the defendant, and this takes place in a closed session which is not attended by the parties and the defendants have no chance to present their arguments. In the same way as with cases on grounds of the Petty Offences Code, it is possible also here to file an objection requesting that the proceedings take place according to general rules, i.e., during an open session. Missing the deadline for filing this objection though carries greater consequences than in case of a fast track sentence on grounds of the Petty Offences Code.

Penal code - 13 sentences 17 people

| PENAL CODE SENTENCES | NUMBER OF CASES | NUMBER OF PEOPLE |
|--|-----------------|------------------|
| not legally binding acquittal | 3 | 3 |
| legally binding acquittal | 6 | 10 |
| conditional discontinuance | 1 | 1 |
| „fast track” sentences (not attended by parties) | 3 | 3 |

PENAL CODE SENCENCES (NUMBER OF PEOPLE)



ADMINISTRATIVE LAW

Penalties imposed on grounds of the Petty Offences Code or Penal Code on persons who participate in peaceful protests can be changed or dropped in the course of court proceedings, with the final penalty executed only after the sentence becomes legally binding, i.e., after all legal remedies have been exhausted. On March 13 2020, the Government of the Republic of Poland introduced an unconstitutional state of emergency and called it an “epidemic state”. Decrees are now being used to restrict civil liberties, *inter alia*, the right to peaceful assembly. Starting from that point onwards, new ways of harassing protesters have been adopted which involve administrative penalties imposed by sanitary inspectors upon request of the police. The said penalties are not only very high (5 000-30 000 PLN), but they are executed before the court decision is given. After exhausting the appeal procedure on the level of the Voivodship Sanitary Inspector which usually ends in upholding the decision of the District Sanitary Inspector, it takes the Tax Office a very short time to collect from the punished person’s bank account the claim, including interest. Filing a complaint against the decision of the sanitary authorities to the Voivodship Administrative Court does not stop the execution of the penalty. Due to the growing numbers of cases of imposing this type of penalties, an

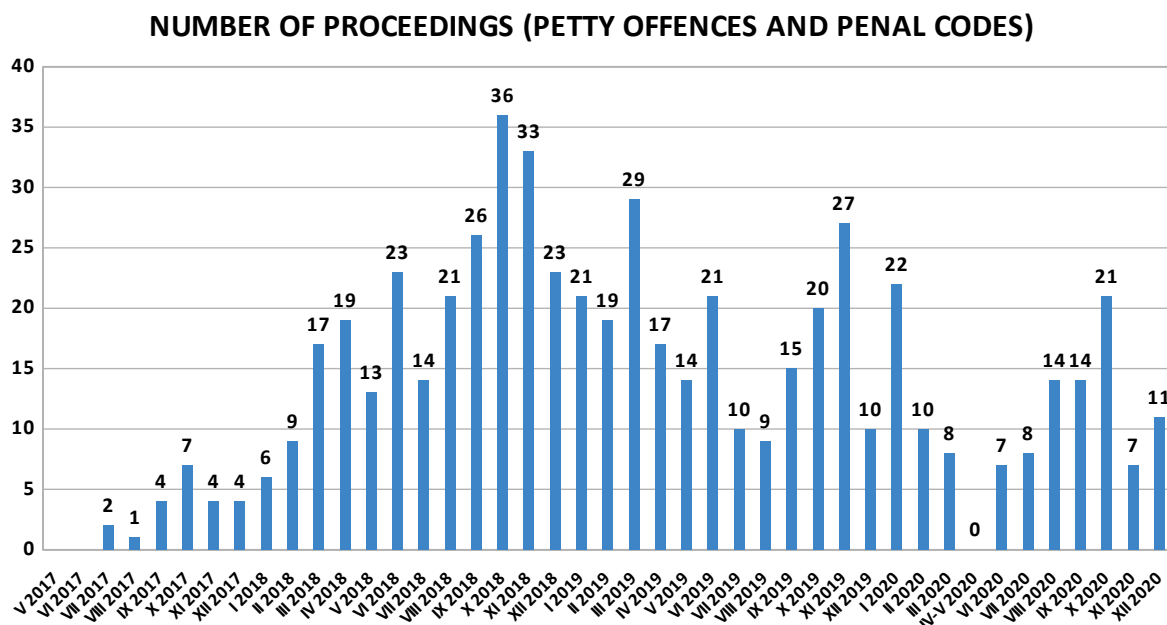
Aid Fund to help persons who have fallen victim to this has been established attached to the Open Society Institute (<https://www.institutspoleczenstwaotwartego.pl/>), in cooperation with ObyPomoc (pomocORP@protonmail.com).

Administrative penalties (District State Sanitary Inspector)

- **2 executions of claims (fine, collection costs, interest) to the total sum of 16 359.70 PLN** imposed by the District State Sanitary Inspector in Legionowo and the Capital City of Warsaw, and approved by Krzysztof Skórczewski, the Voivodship State Sanitary Inspector.
- **4 penalties** to the total amount of **40 000 PLN** imposed by the District State Sanitary Inspector of the Capital City of Warsaw
- **1** admonition, the financial penalty was waived
- **1** discontinuance of proceedings
- **2** cases pending

COURT HEARINGS AND MEETINGS

From when the ObyPomoc team started its work, i.e., from April 2017, the number of „meetings” in court rooms has been regularly increasing. As from March 2018, we note at least a dozen or so such “meetings” every month. With the announcement of the epidemic state by the Government of the Republic of Poland, court hearings were being cancelled in April and May. The below graph shows numbers of court hearings, court sessions regarding acquittal or appeal hearings which dealt with charges against people against whom charges or indictments had been filed.



Up till 31 December 2020, we registered **53** cases that are still under way, on grounds of the Petty Offences or Penal Codes.

The list of current dates of court hearings can be found at: <https://obywatelerp.org/kalendarz/>.

CATEGORY DESCRIPTION

Counter monthly celebrations – action in defence of fundamental civil rights; it was initiated and led by ObywateleRP and began on 10th March 2016 continuing till January 2018, known also as the „Smolensk counter-monthlies” or „the protest of white roses”. It addressed the Smoleńsk monthlies organized by the PiS party, which took place regularly starting from 2010. The protest of ObywateleRP – peaceful, entirely symbolic throughout all of its history and almost completely silent – became the cause of one of the biggest turning points in Poland under the rule of PiS. It led to the introduction of stricter regulations and increasingly more severe police repressions. The monthly celebrations organised by the PiS party acted at that time as rallies which combined religious-mourning service with extreme political content. They served the purpose of spreading lies about the alleged attack aimed at taking the life of particularly President Lech Kaczyński. Accusations were articulated about murder and high treason, stripping PiS opponents of honour and dignity. At the same time, an extreme xenophobic version of Polish national-catholic patriotism was being promoted.

Protests against the extreme far-right – organised by different circles, they involve blocking the passage of marches organised by the extreme right, but also standing in the vicinity of these marches with banners containing peaceful and democratic content. They constitute a reaction to the increasingly more frequent and more numerous such events, e.g., the Hajnówka March of the Cursed Soldiers in honour of Romuald Rajs - „Bury” organised by National Hajnówka (every year in February), the March of the Cursed Soldiers organised by the „Independence March” Association (every year on March 1st), marches of the ultra-nationalistic organisation SZTURM (usually May 1st), the March of the Warsaw Uprising organised by the “Independence March” Association (every year on August 1st), the anniversary of the 1920 victory over the Bolsheviks organised by the All-Poland Youth (every year on August 15th), the Independence Day celebrations organised by the “Independence March” Association which were given a special status of a cyclical assembly (every year on November 11th).

Protests in defence of the independence of the judiciary – from the end of 2015, the ruling coalition continues introducing in an unconstitutional way changes to the judiciary system. The first protests took place already in 2016, and that is when the dismantling of the Constitutional Tribunal began. The largest protests were held in July 2017 (passing the Act on the Supreme Court and on Common Courts), December 2017, July 2018.

Protests in front of the Polish Parliament - protests in defence of the right of citizens to enter the area of the Polish Parliament, which involves entering the green plots surrounding the Parliament and holding up a banner with the words, e.g., „Constitution”. These protests ended with acquittals during criminal proceedings and with a ban to enter the Parliament imposed unlawfully by the Officer in charge of the Marshall’s Guard, a ban that continued to be unlawfully prolonged.

Other protest actions – different types of pickets, demonstrations, leaflet campaigns, educational campaigns etc. taking place around the country.

Actions in solidarity – different types of actions organised in solidarity with those who were being harassed by the state’s law enforcement, e.g., pickets in front of police stations during interrogations, in courts during hearings, actions involving self-incriminating yourself as part of a protest against detaining protesters.

Refusal to disclose personal identity – this usually happens when police officers ask for identity documents and contrary to the law in force, they do not present the legal factual grounds for demanding disclosure of personal data.

Protests in defence of media independence – they are taking place almost from the very start of the rule of the United Right, with the first protests taking place in December 2016, when the attempt was made to restrict journalists' access to information in the Parliament. Since the ruling party took over public television and public radio, they regularly take place also in front of the TVP (Polish TV) building at Powstańców Warszawy Square.

Protests of ecological movements – *inter alia*, against the logging in Białowieża Forest, Extinction Rebellion protests, Youth Climate Strike protests

Protests during the epidemic state – a specific category introduced in reaction to the unconstitutional restrictions of civil liberties. On March 13th, the Government announced an epidemic state on the territory of the whole country instead of one of the possible states of emergency, e.g., a state of natural disaster, which would give legal grounds for restricting civil liberties, and instead of this, these rights are being unlawfully restricted by way of ordinary decrees.