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**FREEDOM OF ASSEMBLY AT STAKE: THE WARSAW POLICE'S
PARTISANSHIP DURING POLISH PROTESTS IN TIMES OF
PANDEMIC¹**

Abstract:	<p><i>By focusing on the most important agents of social control, this paper goes beyond the legal aspects of protecting freedom of assembly in pandemic-ridden Poland. It gives insight into a gap between the declared police neutrality and the balance between neutrality and partisanship in practice. Embedded in the scholarship on protest policing, the study aims to determine the extent of police partisanship over the critical public assemblies in Warsaw. By drawing upon a qualitative frame analysis, the study deals with the following research question: where does the model of police partisanship developed by the Warsaw Police during the coronavirus pandemic lie on a continuum of antinomic ideal types of neutral and partisan policing?</i></p> <p><i>The major argument is that protest policing lies close to partisan policing when the government's ruling position is threatened. In such situations, freedom of assembly is at stake, and protesters' behaviour takes the form of civil disorder. Neutral policing is peculiar to events that do not pose any threat to the government. Such events are peaceful, and assembly participants' freedom is respected. Proper recognition of the characteristics of police bias is particularly important to understand the essence of the practice of safeguarding freedom of assembly and the process of political contestation.</i></p>
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Introduction

Legal scholars and political scientists argue that the restrictions on freedom of assembly introduced in Poland during the Covid-19 pandemic aimed at limiting the spread of the virus and were justified by a need to protect public health. However, it did not justify a total ban on assembly because existing protective measures, such as social distancing, could have been implemented to avoid putting freedom of assembly in jeopardy¹. Moreover, researchers draw scholarly attention to the method of the limitation of freedom of assembly. The government was accused of restricting this and other fundamental rights without introducing constitutional states of emergency. The statutory and sub-statutory solutions implemented during the crisis failed to meet constitutional standards, especially since they did not pass “the test of proportionality”. It was due to breaching “the principle of the exclusivity of the act by ‘transferring’ statutory matters to lower-level acts which then served as a basis for interfering with the essence of constitutional freedoms and rights”².

At the same time, the protection of public health was of relative value since the ban did not apply to the politicians of the ruling party that ran the presidential election campaign, held state gatherings, e.g., to commemorate the anniversary of the Smoleńsk catastrophe, or participated in other political meetings³.

While the researchers’ attention focuses on the legal aspects, the practice of protecting freedom of assembly during the pandemic crisis remains insufficiently researched⁴. In Poland, the most important social control agent

¹ Aldona Domańska, *Constitutionality of Restrictions on Freedom of Assembly during the COVID-19 Pandemic in Poland*, in “Białostockie Studia Prawnicze”, Vol. 27, No. 2, 2022, pp. 147–161

² Aleksandra Syryt, Bogusław Przywora, Karol Dobrzeński, *Freedom of Assembly in the COVID-19 Pandemic and the Limits of its Restraints in the Context of the Experiences of the Republic of Poland and the United States of America*, in “Białostockie Studia Prawnicze”, Vol. 27, No. 2, 2022, pp. 55–73

³ Joanna Rak, *Framing Enemies by the State Television: Delegitimation of Anti-Government Protest Participants During the First Wave of the Pandemic in Poland*, in “Journal of Contemporary Central and Eastern Europe”, Vol. 29, No. 2-3, 2021, 157–175; Kamila Rezmer-Płotka, *Contentious Politics in Defense of Neo-Militant Democracy in Poland: The Rationale Behind Fighting a Quasi-Militant Democracy*, in “HAPSc Policy Briefs Series”, Vol. 2, No. 1, 2021, pp. 24–29

⁴ István Hoffman, Jarosław Kostrubiec, *Political Freedoms and Rights in Relation to the COVID-19 Pandemic in Poland and Hungary in a Comparative Legal Perspective*, in “Białostockie Studia Prawnicze”, Vol. 27, No. 1, 2022, pp. 31–53

responsible for protecting law enforcement was the police. Its engagement in respecting freedom of assembly remains a puzzle. The current studies shed light on the apparent drift of the protest policing model from negotiated management to escalated force and the resulting increase in the use of violence by protesters¹. Nevertheless, they remain silent about the officially neutral police's political involvement in policing protests. The signalled problem of inequality in the face of the ban on assemblies directs the research attention towards biases in the law enforcement service.

That translates into a bias in protest policing is the selectiveness of protest policing, including partiality (when police repress some protesters and support or ignore others) and partisan actions (when police actions perform political interests of the ruling and act as their loyal supporters)². Recent studies consider police partisanship and the political function of public order policing as one of its most under-theorized aspects³. They emphasize that policing researchers must engage with police's dependence on the government, the political context of their activity, and resulting bias "to develop a comprehensive understanding of protest policing in the current era"⁴.

Studying police bias allows us to understand not only the level of protection of freedom of assembly but also the dynamics of mass mobilization and violent behavior that occurs during it. Current case studies provide significant empirical evidence supporting the thesis that the lower level of police political neutrality during a contention, the more likely it is that a collective action transforms into civil disorder⁵. Proper recognition of the characteristics of police bias is, therefore, essential to understanding the essence of the practice of safeguarding freedom of assembly and the process of political contestation.

This paper aims to determine the extent of police partisanship during critical public assemblies in pandemic-ridden Poland. By drawing upon a qualitative frame analysis, the study deals with the following research question: where does the model of police partisanship developed by the Warsaw Police during the coronavirus pandemic lie on a continuum of antinomic ideal types of neutral and partisan policing?

¹ Joanna Rak, *Policing Anti-Government Protests During the Coronavirus Crisis in Poland: Between Escalated Force and Negotiated Management*, in "Teorija in Praksa", Vol. 58, No. SI, 2021, pp. 598–615

² Chan S. Suh, Sidney G. Tarrow, *Suppression by Stealth: The Partisan Response to Protest in State Legislatures*, in "Politics & Society", Vol. 50, No. 3, 2022, 455–484

³ William Smith, *The Politics of Protest Policing: Neutrality, Impartiality, and "Taking the Knee"*, "The Harvard Review of Philosophy", Vol. 28, 2021, pp. 125–142

⁴ Joanna Gilmore, William Jackson, and Helen Monk, "That is Not Facilitating Peaceful Protest. That is Dismantling the Protest": *Anti-fracking Protesters' Experiences of Dialogue Policing and Mass Arrest*, "Policing and Society", Vol. 29, No. 1, 2019, p. 48

⁵ Julia Hornberger, *We Need a Complicit Police! Political Policing Then and Now*, "SA Crime Quarterly", Vol. 48, 2014, pp. 17–24

The study draws on an observed gap between the declared police neutrality and the balance between neutrality and partisanship in practice. Its major argument is that protest policing lies close to partisan policing when the government's ruling position is under threat. In such situations, freedom of assembly is at stake, and protesters' behaviour takes the form of civil disorder. Neutral policing is peculiar to events that do not pose any threat to the government. Such events are peaceful, and assembly participants' freedoms are respected. The study contributes empirically to our understanding of the relationships between protest policing and political contestation in Poland during the public health crisis. It uncovers the influence of partisan policing on the dynamics of civil dis(order).

The remainder of the article consists of three parts. The first one presents methodological and theoretical assumptions for the study. By shedding light on the dataset and research procedures, it unpacks a research process. The second part discusses research findings concerning three case studies in the field that concentrate on different public assemblies. Each case study finishes with locating a particular case of protest policing on a continuum determined by antinomic ideal types of neutral and partisan policing. The final part delivers conclusions on the nature of the Warsaw Police's engagement in protecting freedom of assembly in crisis-driven Poland.

Research design

Based on a scholarship on protest policing, the study delves analytically into the level of the Warsaw Police's partisanship during protest policing in pandemic-ridden Poland. The research field includes the behaviour of the Warsaw Police. This entity was responsible for ensuring security and public order during the most important and largest public gatherings in Poland, which took place in Warsaw.

The study addresses the research question: where does the model of police partisanship developed by the Warsaw Police during the coronavirus pandemic lie on a continuum of antinomic ideal types of neutral and partisan policing? Police partisanship is understood as a form of law enforcement that targets protesters based on their political attributes¹. This latent variable takes on values that can be placed on a continuum determined by antinomic ideal types of neutral and partisan policing.

The analysis covers three critical assemblies policed by the Warsaw Police. They are the Strike of Business Owners (May 7-20, 2020), the 2020–2021 All-Polish Women's Strike protests (October 22, 2020-January 29, 2021), and the commemoration of the Smoleńsk catastrophe (April 10-13, 2022). These events had different dynamics. Whereas civil disorder emerged during the first two waves of contention, the third event was peaceful. Only the first two waves posed any threat to the ruling camp.

¹ Gary T. Marx, *Civil Disorder, and the Agents of Social Control*, in "Journal of Social Issues", Vol. 26, No. 1, 1971, p. 33

Although the pandemic started in March 2020 in Poland, the Strike of Business Owners was the first uneasy test for the declared neutrality of Polish police. It was a wave of demonstrations held by one of the presidential candidates Paweł Tanajno and the Facebook group Strike of Business Owners. At the same time, Tanajno was a counter-candidate of the incumbent president Andrzej Duda originating from and supported by the ruling party, Law, and Justice (Prawo i Sprawiedliwość, PiS), and might have been perceived as a potential threat. Then there was controversy about the socially unfair application of the ban on public assembly¹. In line with a new Law on Public Assembly² and government restrictions, Duda and the ruling party politicians were free to run a campaign under governmental restrictions because they were classified as state entities. Tanajno, as a candidate not belonging to the group referred to as state authorities, had limited opportunities to meet voters and implement his political agenda. At the same time, the ruling party and its partisan institutions were illegitimate participants of anti- and non-government assemblies, pointing out that their behaviour was a threat to the public health, life, and health of Poles³.

The All-Polish Women's Strike was the wave of the biggest protests in democratic Poland. They were directed against the decision of the Constitutional Tribunal, the consequence of which was the tightening of the anti-abortion law and the restriction of Polish women's reproductive rights. The protests were anti-government in nature and were consistently supported by 70 percent of Poles⁴. Such a high level of contestation translated into a revolutionary situation in which the position of the government was under threat⁵. Due to the scale of the protests,

¹ Kamila Rezmer-Płotka, *"I Am Not Going": Determinants of Social Activity before Poland's Ghost Election*, "Polish Political Science Yearbook", 2022, pp. 1–10

² In 2015, the new Law on Assemblies introduced a legal definition of a public assembly as a grouping of people in the open gathered to serve joint deliberations or manifest a joint position on public matters. Importantly, however, since then, the Law on Assemblies does not apply to gatherings organized by state institutions, churches, and other religious associations. Therefore, the ban imposed on public assembly during the pandemic did not apply to assemblies held by the president and the government. Act of 24 July 2015 Law on Assemblies, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001485/U/D20151485Lj.pdf>; Act of 13 December 2016 on Amending the Law – Law on Assemblies, Article 1, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170000579/O/D20170579.pdf>; Mariusz Bidziński, *Freedom of Public Assembly in Poland*, in "Przegląd Prawa Konstytucyjnego", Vol. 5, No. 51, 2019, pp. 201–213

³ Joanna Rak, *Policing Anti-Government Protests During the Coronavirus Crisis in Poland: Between Escalated Force and Negotiated Management*, in "Teorija in Praksa", Vol. 58, No. SI, 2021, pp. 598–615

⁴ Przemysław Osiewicz, *Limitations to the Right to Freedom of Assembly in Poland during the COVID-19 Pandemic: The Case of Women's Strike*, in "HAPSc Policy Briefs Series", Vol. 1, No. 2, 2020, pp. 195–200

⁵ Cf. Charles Tilly, *From Mobilization to Revolution*, Random House, New York, 1978

the level of public support for the protesters, and the threat perceived by the ruling camp, this was another critical test for police neutrality.

The third assembly is also crucial due to the police involvement in controlling an event of political importance. State institutions, Law and Justice politicians, and their supporters spread conspiracy theories accusing the Russians and the opposition of causing the attack and disguising the catastrophe whose victims were to be commemorated during the assembly. Since 2010, the interpretation of tragic events has been the subject of political disputes¹. Politicians from the ruling party expected great counterdemonstrations, and they engaged police officers from all over Poland to police order during the state assembly. It was one of the most important events involving the police before the end of the pandemic in Poland.

These three case studies rest on a qualitative frame analysis of police tweets. Frames are interpretative schemas that present situations by simplifying and explaining them to make sense to the intended audience². The source corpus includes a population of 393 tweets released on the Warsaw Police Headquarters' official Twitter profile (@Policja_KSP). Tweets are the units of analysis. The Warsaw Police was directly involved in policing public order in Warsaw. It served as a means of communication between the police, assembly participants, and journalists. The police used it to comment on ongoing protests and respond to journalists, politicians, and ordinary people's comments and inquiries. The verified account was a reliable source of the official police views. Other social media profiles of the police were used less frequently and were of minor importance when communicating about public order policing.

Collecting data began with finding all tweets that concerned the three critical events. Then, we inductively chose frames that occurred as the research progressed by doing a pilot study. We read them several times to decide on codes for two categories: neutral and partisan policing. This stage was followed by formulating their operational definitions and producing a codebook.

Neutral policing is when police enforce the law equally regardless of political attributes³. The set of codes for neutral policing is as follows: (i) "emotionless reporting" by describing a situation that carries a political meaning without its evaluation, (ii) "avoiding labelling" by showing a situation in a way that precludes identification and political stigmatisation of its participants.

¹ Leszek Koczanowicz, *The Politics of Catastrophe: Poland's Presidential Crash and the Ideology of Post-post-communist*, "East European Politics and Societies", Vol. 26, No. 4, 2012, pp. 811–828

² Michelle D. Bonner and Lucia Dammert, *Constructing Police Legitimacy during Protests: Frames and Consequences for Human Rights*, "Policing and Society", Vol. 32, No. 5, 2022, p. 632

³ This is a premise underlying an analysis, even though some researchers argue that even neutral policing implies a political judgment. See a discussion: David R. Mansley, *Collective Violence, Democracy, and Protest Policing*, Routledge, New York, London, 2014, p. 48

Partisan policing emerges when police enforce the law unequally depending on the political attributes of those participating in collective action. The set of codes for partisan policing is as follows: (i) “labelling participants of anti-government assemblies” by maintaining that participants of anti-government assemblies are violators of law and pandemic restrictions and ignoring similar behaviour of state assembly participants, (ii) “socio-political labelling” calling protesters mad, irrational, abortionists, abortion supporters, pro-abortion, anti-clerical, and anti-Church, the leftists, left-leaning, anarchists, feminists, supported by or associated with politicians from the opposition despite their claims.

By drawing upon the above set of categories and codes, we identified frames characteristic of policing. The occurrence of at least one frame in a tweet meant classifying it under a category covering this frame (Table 1). We relied on a constant comparative technique for manual qualitative analysis. It commenced with the comparative assignment of tweets to categories and then to codes. After ordering tweets, we elaborated and refined the data. Then, we searched for relationships and themes among frames within each category and between the two categories to learn about the nature of protest policing during each of the three critical events. Finally, we located each case on a continuum determined by neutral and partisan policing.

Research findings

In 2020, with the spread of the coronavirus pandemic, the ability to conduct certain business activities was limited, and entrepreneurs organised themselves and decided to fight against the illegally imposed restrictions.¹ The entries on policing the Strike of Business Owners, published on the official Twitter account of the Warsaw Police Department, were characterised by negative emotions towards the protesters. In most of these tweets, they were labelled as a threat to public health, as well as disobeying the existing law and pandemic-induced restrictions while gatherings held by the ruling party were ignored.

The model of protest policing	Neutral policing		Partisan policing	
	emotionless reporting	avoiding labelling	labelling participants of anti-government assemblies	socio-political labelling
The frame types				
The critical event				
The Strike of Business Owners	0	0	39	4
The Women’s Strike	23	23	346	21

¹ Adam Szymański, Lukasz Zamecki, *The Impact of the COVID-19 Pandemic on the Model of Governance and Democracy in Poland*, in “Siyasal: Journal of Political Sciences”, Vol. 31, No. 1., 2022, p. 70

protests				
The commemoration of the Smoleńsk catastrophe	4	4	0	0

Table 1. The models of protest policing during the Warsaw Police’s engagement in public gatherings¹

Importantly, reminding the public of the restrictions and prohibitions on assembly did not appear in the case of subsequent coverage of the gathering commemorating the victims of the Smoleńsk catastrophe. This may suggest that the police assumed in advance to act against the Strike of Business Owners, unlike in the following case. Based on the entries, it is impossible to categorize the police actions in this case as neutral, as one could see signs of partisan actions in favor of the ruling party. Given that the present strikes were anti-government in nature, the police tried to portray the protesters as criminals so that the public would focus on their violations of the law to distract attention from the actions taken by police officers. Such labeling is the fulfilment of one of the characteristics of the category of partisan policing (Table 1).

Furthermore, the police entries repeatedly criticised journalists and politicians who opposed police actions and provided evidence of the non-transparent nature of the actions taken against the strikers. Constantly in the entries, the Warsaw Police denied that direct coercive measures were used in situations and suggested that journalists spread fake news about officers’ actions during the ongoing strikes. Nevertheless, when the evidence against the police version was published by a *Gazeta Wyborcza* journalist, the Warsaw Police Department was forced to issue a statement and stop denying the use of direct coercion. Several posts also suggested that it was the strikers who were aggressive toward the police acting under the law.

Based on the analysis, police actions meet the essential features of partisan policing. Indeed, the tweets provided empirical evidence of the fulfillment of the essential features of this model. There were both labeling manifestations at the level of defining the participants of the gatherings as a threat to public health and socio-political labeling by implying and indicating that the opposition and its politicians were responsible for spreading “fake news” about the actions taken by the Warsaw Police. As it turned out, they were part of an information campaign, not disinformation.

However, the most doubts about the political bias of the police and the motives of their actions were raised by the policing of strikes that took place in connection with the Constitutional Tribunal’s verdict from October 2020. From the very beginning of the outbreak of demonstrations, the Warsaw Police portrayed the protesters as breaking the law and disregarding sanitary restrictions².

¹ Source: own study

² @Policja_KSP, Twitter,

In addition, the Warsaw Police emphasized that they asked for lawful behaviour, but it was nevertheless disregarded by the protesters. It served as a justification for the use of force against them. Besides, the police asserted that the use of force was the only adequate solution to the situation, given the aggressive behavior of the protesters. Negative emotions towards the demonstrators characterized the tweets. They portrayed them as crazy, irrational, and prone to risky behaviour, provoking police reactions, which could exacerbate the conflict between the protesters and the police. In most of the tweets, the Warsaw Police used the phrase “illegal assembly” repeatedly and stressed that any assembly under the current legislation was a violation of the law, which meant that anyone who participated in it committed an act prohibited by the law. Protesters were also frequently called “violent”, “aggressive”, and “aggressors”¹. At the same time, assemblies organized by the ruling party were silenced.

The police suggested that individual media outlets were overlooking the issue of these conflicting behaviours, and the Warsaw Police appealed for coverage of this facet of the Women’s Strike protests as well. It was also pointed out that the Warsaw Police, in cooperation with the authorities responsible for public health and security in Poland, was primarily trying to provide for the demonstrators and bystanders. Nevertheless, special attention was paid to the failure to comply with the illegally applicable restrictions on the organization of the ongoing demonstrations. At the same time, however, the same accusations were not directed at participants in pro-government gatherings, such as so-called Church defenders or the ruling party’s meetings.

The analysis of the policing of the Women’s Strike protests reveals the above-average activity of the Polish Police on Twitter undertaken to legitimize their own actions and illegitimate participants of anti-government protests. Unemotional reporting of events infrequently occurred at the end of social mobilization regarding traffic obstructions and detours. Negative assessments of the activists’ behavior predominated. The Warsaw Police repeatedly tried to ensure that direct coercive measures were applied only because of the improper conduct of the protesters. Multiple entries informed on the use of these measures and the justification in terms of the failure of the demonstrators’ behaviour to conform to the standards of peaceful assembly². These entries, as previously mentioned, were characterized by negative emotions towards the protesters, as if they bore all the blame for using direct coercive measures. In addition, they were depicted as irresponsible and endangering the lives and health of bystanders. These tweets meet the characteristics of partisan policing (Table 1).

https://twitter.com/Policja_KSP/status/1333079857094406149?ref_src=twsrc%5Etfw, (11.07.2022)

¹ @Policja_KSP, Twitter, https://twitter.com/policja_ksp/status/1333080409916235777, (11.07.2022)

² @Policja_KSP, Twitter, https://twitter.com/policja_ksp/status/1332751763561132035, (12.07.2022)

As mentioned earlier, the gathering commemorating the victims of the Smoleńsk catastrophe was not viewed as a threat by the ruling party. Thus, perceiving the event in this way might have influenced police behaviour and their Twitter coverage. The first characteristic regarding the policing of this gathering is that, despite the shortest duration of all three critical events, there was disproportionately little information on the Warsaw Police Department's engagement. The tweets were purely informational. As the police indicated, the assembly took place, and its reason was given. Messages regarding important political figures participating in the celebration were also included¹. No labeling of the gathering participants emerged. Those tweets were neutral due to reporting without emotion and avoiding labeling (Table 1). These are the essential features of neutral policing.

Conclusions

As was mentioned earlier, what translates into partisanship in protest policing is political selectivity when approaching participants of neutral, pro-, and anti-government gatherings. The analysis provides empirical evidence that the Warsaw Police at two of the three critical events met these theoretical requirements to qualify their actions as partisan. The first requirement was the biased coverage of unilateral aggression, which always in protests that could pose a threat to the ruling party had its origin in the protesters. It allowed police to justify the use of direct coercion as a necessity to ensure the safety of officers, peaceful protesters, and bystanders². Moreover, during the Strike of Business Owners, it did not allow information about the use of batons for an initial period and even tried to dismiss this information. Only after irrefutable evidence was provided, was the law enforcement agency published a tweet on taking the necessary investigative steps.

In the case of the Women's Strike protests the Constitutional Tribunal's verdict, one could see the above-mentioned above-average police activity on Twitter in which demonstrators were stigmatized. It could result in an increase in violent behaviour among the gathering participants, as the police were characterized by a political bias when publishing these posts. This conclusion would confirm previous case studies on the impact of neutrality on protesters' violent reactions to police bias, which, after time, turns into civil disorder. However, as mentioned earlier, researchers have focused heavily on legal aspects, while the practice of protecting freedom of assembly has not been sufficiently studied. Hence, this study seems even more important to understand the dynamics of political contention in pandemic-ridden Poland.

¹ @Policja_KSP, Twitter, https://twitter.com/policja_ksp/status/1513184762969702401, (12.07.2022)

² @Policja_KSP, Twitter, https://twitter.com/Policja_KSP/status/1331639807282384897?ref_src=twsrc%5Etfw, (11.07.2022)

Analyzing the entries after the occurrence of all three gatherings and during the events, one can conclude that the neutral police performed only as intended in one case, i.e., during the gathering commemorating the victims of the Smoleńsk catastrophe. This event in no way aroused a sense of threat in the ruling party; hence there was no need for it to take a partisan stance as was the case with the other two events. In the latter cases, the actions of the police place them on the side of the partisanship model. Hence, the Warsaw Police, during the coronavirus pandemic, are on a continuum of neutral and partisan policing very close to the latter model.

The placement of the Warsaw Police on a continuum of ideal types of protest policing supports the argument regarding the ruling party's sense of threat. It highlights the use of different measures depending on this sense of security of those in power and their position during the gatherings. In other words, the study uncovers that protest policing lies close to partisan policing when the government's ruling position is threatened. In such situations, freedom of assembly is at stake, and protesters' behaviour takes the form of civil disorder. Neutral policing is peculiar to events that do not pose any threat to the government. Such events are peaceful, and assembly participants' freedom is respected. Proper recognition of the characteristics of police bias is particularly important to understand the essence of the practice of safeguarding freedom of assembly and the process of political contestation.

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