

Policing Belief



THE IMPACT OF BLASPHEMY LAWSON HUMAN RIGHTS



A FREEDOM HOUSE SPECIAL REPORT

Poland

INTRODUCTION

Though freedom of expression is guaranteed in Poland's constitution and for the most part upheld by the government, there are some legal restrictions on this fundamental right. In addition to laws prohibiting libel and defamation of government figures, the constraints include Article 196 of Penal Code, which bans offenses toward religious feelings or sentiment. There have been several investigations and charges under Article 196 in recent years. While they remain fairly infrequent, most have been initiated by members of conservative, Catholic-oriented political parties or groups, and have targeted writers, musicians, and other artists.

Poland's population is fairly homogeneous with respect to religion, as Roman Catholics account for 94 percent of the country's 38 million people. The remaining 6 percent consists largely of smaller Christian groups, including Orthodox Christians, Greek Catholics, various Protestant denominations, Jehovah's Witnesses, and Mariavites. Jewish organizations estimate the Jewish population to be 30,000 to 40,000, and Muslim organizations estimate the Muslim population to be 25,000.¹

BACKGROUND

Poland's 20th-century history, including the roughly four decades of communist rule following World War II, has had a significant impact on the state of freedom of expression and the position of the Catholic Church in the country today. Poland was restored as an independent state after World War I, having been partitioned by neighboring monarchies at the end of the 18th century.² However, the country faced partition again in 1939, when Nazi Germany and the Soviet Union occupied western and eastern Poland, respectively. During World War II,

millions of Polish Jews were systematically killed by Nazi forces,³ and both the Germans and the Soviets executed tens of thousands of Poles who represented the country's political, military, religious, and intellectual elite. Millions of others were uprooted, sent to labor camps, or killed in the course of the war and occupations.⁴ By the end of the conflict, Poland's borders and population had been radically altered, leaving it with little of its previous ethnic and religious diversity.

Poland's formal independence was restored, albeit under Soviet occupation, in 1945, and communist factions took power in Soviet-administered elections in 1947.⁵ For the next four decades, the country was governed by the Polish United Workers' Party, which tightly restricted freedom of expression and other fundamental rights. The democracy movement that eventually ended communist rule in 1989 was led by the Solidarity labor organization, but the Catholic Church also played a prominent role.

Though Catholicism is not the state religion of Poland, it has enjoyed such a status at various times in the country's history, and represented an important component of Polish national identity during periods of foreign domination.⁶ Today, the state's relations with the Church are determined by a treaty with the Vatican, as laid out under Article 25 of the constitution.⁷ Article 25 also guarantees that other religious groups will have equal rights, and states that relations between such groups and the government are to be determined by separate legislation.⁸ There are now some 15 religious groups whose status has been defined and clarified by law, but the rights of dozens of other groups are also upheld.⁹ The U.S. State Department reports that religious groups are not subject to limitations or government interference in the selection and appointment of their personnel, in the maintenance of their places of worship, or in their ability to worship.¹⁰ Article 25 specifically requires Polish authorities to be "impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life."¹¹

Despite these legal provisions, Catholic clergy and activists wield significant social and political influence in Poland, and the blasphemy cases brought under Article 196 of the Penal Code afford them an important means of asserting their power in the public sphere.

BLASPHEMY LAW

Poland's blasphemy law, Article 196 of the Penal Code, states that "anyone found guilty of offending religious feelings through public calumny of an object

or place of worship is liable to a fine, restriction of liberty or a maximum two-year prison sentence.”¹² Because of the focus on objects or places of worship, as opposed to religious ideas, personages, or divinities, many Article 196 cases have involved the use of religious symbols in different forms of art. However, the effect of the law is the same as that of other blasphemy laws, in that it places undue limits on freedom of expression and encourages self-censorship.

The League of Polish Families (LPR), a small right-wing and Catholic-themed political party that lost its parliamentary representation in the last elections in 2007, has initiated a number of high-profile cases or investigations under Article 196. For example, in 2004, the LPR accused Norwegian artist Børre Larsen of blasphemy and offending religious feelings in a piece that was displayed in Warsaw’s Zacheta gallery.¹³ The sculpture reportedly consisted of two miniature statuettes of Jesus, one with his hands signaling impotence, placed next to a broken statuette of the Virgin Mary. Sylwester Chruszcz, then deputy president of the LPR, was quoted as saying, “It is unacceptable that part of our faith, a tradition, should be made a mockery of.” He reportedly threatened to file a lawsuit against the gallery’s directors under Article 196 unless the statuettes were removed from the exhibition.¹⁴

Incompatibility with International Law

Poland’s religious insult law conflicts with international standards on freedom of expression, in large part because its vague wording does not identify the legal threshold for “offending religious feelings.” As one member of the Council of Europe’s Venice Commission remarked, “The religious feelings of the different members of one specific Church or confession are very diverse. The question is: whose level of religious sensibility should we treat as the average level—the sensibility of a group of fundamentalist or tolerant members?” The decision to investigate an alleged offense under Article 196 of the Penal Code is at the discretion of the prosecutor. Though there must be at least two “victims,” there is no requirement for individuals to submit complaints.¹⁵ In practice, the law appears to be applied mostly at the instigation of conservative Catholics. There are few cases overall, and they usually result in acquittals when pursued to the end, but the legal process involved is itself a deterrent that encourages individuals, notably artists, to engage in self-censorship.

Poland is a party to several regional and international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights, the International Convention on the

Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These agreements, in addition to Poland's own constitution, oblige the country to uphold and protect freedom of expression and opinion.

IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

The application of Poland's blasphemy law, including the threat of enforcement posed by prosecutorial investigations, does appear to affect individuals' ability to enjoy freedom of expression. In addition, while the law does not single out any religion for protection, it is in practice invoked only to investigate or prosecute perceived insults against Christian religious symbols. However, Article 196 does not seem to affect enjoyment of human rights in any other way.

Freedom of Expression

Over the past decade, there have been several notable cases of alleged religious insult in Poland. Though not all of these investigations result in prosecutions under Article 196, they have negatively affected freedom of expression, as individuals—particularly artists, writers, curators, publishers, and others working in creative fields—are forced to engage in self-censorship to avoid legal entanglements.

An early case launched just a few years after the end of communist rule involved a cover image printed by the Polish weekly magazine *Wprost* that depicted the Virgin Mary and Jesus Christ wearing gas masks.¹⁶ Prosecutors initiated an investigation in August 1994, reportedly consulting experts to determine whether the image was offensive to religious feelings.¹⁷ The investigation was dropped in October of that year.¹⁸

One of the more prominent prosecutions under Article 196 was that of Polish artist Dorota Nieznalska in 2002. She was charged with blasphemy for a piece of art entitled *Passion*, which she exhibited at a gallery in Gdansk. LPR leader Robert Strak and lawmaker Gertruda Szumska had filed complaints after seeing the work, part of which consisted of a photograph of male genitalia attached to a cross.¹⁹ In July 2003, Gdansk judge Tomasz Zielinski found Nieznalska guilty of offending religious sentiment and sentenced her to six months of community service and "restricted freedom."²⁰ The prosecutor in the case had reportedly asked only for a fine, but Zielinski opted for a harsher sentence.²¹ Nieznalska ex-

pressed her surprise and dismay at the ruling, saying, “This is a shock for me, such a high sentence.... This court is completely unobjective as regards the work of artists.”²² Some Poles, notably artists but also a member of parliament, were deeply concerned by the complaints, prosecution, and verdict. Several artists accused the LPR of “imposing an ideologized version of a religious state.”²³ Marek Borowski, then speaker of the Sejm, Poland’s lower house of parliament, reportedly told Nieznalska that while he did not agree with her views, he would work to ensure that she was free to express them.²⁴ Nieznalska appealed her conviction, arguing in part that she had not intended to offend anyone with the piece, which was aimed at criticizing the excesses of male exercise and body-building. She was eventually acquitted in June 2009.²⁵

In 2004, an investigation was launched into a possible violation of Article 196 by the Norwegian heavy metal band Gorgoroth. The probe focused on stage decorations at a concert in Krakow that included naked women tied to crosses and covered in blood.²⁶ The prosecutor’s office eventually dropped the investigation in 2006, and no charges were pressed against the band members. However, the band’s agent and organizer in Poland, Tomasz Dziubinski, was fined 10,000 zloty (US\$3,000) for his involvement in the incident, on the grounds that he knew the laws of Poland and should have prevented the concert from going ahead.²⁷ In addition, investigators reportedly consulted Catholic theologians in Krakow, who found the stage decorations to be offensive to the religious feelings of Christians.

A similar case in 2008 centered on Adam Darski, the lead singer for the heavy metal band Behemoth. His alleged offense was tearing and burning a Bible on stage during a concert in Gdynia in September 2007, and calling the Catholic religion the “most murderous cult on the planet.”²⁸ A complaint was reportedly brought to the prosecutor’s office by Ryszard Nowak, chairman of the Polish Committee for the Defense Against Sects, an organization devoted to upholding and defending Christian values.²⁹ During an investigation launched in February 2008, prosecutors consulted with experts from Jagiellonian University who argued that “each copy of the Bible may be the subject of religious worship,” and that therefore a breach of Article 196 had occurred.³⁰ However, Polish law requires at least two complainants or “victims” of religious insult for legal proceedings to move forward, and because Nowak was the only complainant or victim to emerge, the investigation was dropped. The case was revived in January 2010, when four members of Law and Justice (PiS), a mainstream conservative party, filed a complaint against Darski for the 2007 incident.³¹ In May 2010, the prosecutor’s office reportedly requested an indictment, but according to the band, a court in Gdynia

dismissed the case on June 28, finding that Darski's actions did not constitute a crime under Article 196.³²

In an ongoing case, Polish pop star Dorota Rabczewska, known as Doda, was charged in April 2010 with violating Article 196 by stating in a 2009 interview that she believed more in dinosaurs than in the Bible because "it is hard to believe in something written by people who drank too much wine and smoked herbal cigarettes."³³ The complaints in the case were reportedly submitted by Catholic groups. Nowak was quoted in the press as saying, "I believe that she committed a crime and offended the religious feelings of both Christians and Jews."³⁴ In August 2009 the prosecutor's office of Warsaw had refused to launch an investigation, arguing that the singer's statements did not constitute an offense against religious feelings. However, under pressure from conservative groups, prosecutors spoke with secular and religious linguistic experts before submitting the indictment in 2010.³⁵

CONCLUSION

Despite their relative rarity and tendency to end in acquittal, blasphemy prosecutions under Article 196 of the Penal Code represent undue restrictions on freedom of expression. The threat of lengthy legal cases and potential criminal penalties inevitably encourages artists, writers, publishers, and others to censor themselves. Moreover, the complaint mechanism and prosecutors' practice of consulting theologians and other experts to determine the boundaries of the vaguely worded law effectively imposes the subjective views of a few on the rest of society. Nevertheless, the application of Article 196 does not appear to result in a broad range of human rights violations, meaning the effects of Poland's blasphemy law are limited compared with other countries examined in this study.

Charged under Blasphemy Law,”

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POLAND

- ¹ Bureau of Democracy, Human Rights, and Labor, “Poland,” in *International Religious Freedom Report 2009* (Washington, DC: U.S. Department of State, October 2009), <http://www.state.gov/g/drl/rls/irf/2009/127330.htm>.
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- ³ U.S. Holocaust Memorial Museum, “Poles: Victims of the Nazi Era,” http://www.ushmm.org/education/resource/soles/soles.php?menu=/export/home/www/doc_root/education/foreducators/include/menu.txt&bgcolor=CD9544.
- ⁴ U.S. Department of State, “Background Note: Poland.”
- ⁵ *Ibid.*
- ⁶ Article 114 of the 1921 constitution declared that Catholicism was the chief religion of the state. See Daniel H. Cole, “Poland’s 1997 Constitution in its Historical Context,” *Saint Louis-Warsaw Transatlantic Law Journal* (1998): 6, available at <http://indylaw.indiana.edu/instructors/cole/web%20page/polconst.pdf>.
- ⁷ Article 25.1 and Article 25, Constitution of Poland (1997), <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.
- ⁸ *Ibid.*, Article 25.5.
- ⁹ Bureau of Democracy, Human Rights, and Labor, “Poland,” *International Religious Freedom Report 2009*.
- ¹⁰ *Ibid.*
- ¹¹ Article 25.2, Constitution of Poland.
- ¹² European Commission for Democracy Through Law (Venice Commission), *Annexe II: Analysis of the Domestic Law Concerning Blasphemy, Religious Insult and Inciting Religious Hatred in Albania, Austria, Belgium, Denmark, France, Greece, Ireland, the Netherlands, Poland, Romania, Turkey, United Kingdom, on the Basis of Replies to a Questionnaire* (Strasbourg: Council of Europe, 2008), 72, available at <http://www.venice.coe.int/docs/2008/CDL-AD%282008%29026add2-bil.asp> [hereafter: Venice Commission Survey].
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