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POLAND
Freedom of Expression Threatened
by Curbs on Criticism of Government and Religion

Contents

Introduction	1
Criminal Slander.....	2
Broadcast Law of 1992.....	4
Offense to Religion Charges.....	5
Legal Standards	6
Recommendations.....	8

INTRODUCTION

Poland's transition to democracy is endangered by government and private restrictions on freedom of expression. In a distressing series of arrests and prosecutions for "slandering" the state, President Walesa has relied upon a repressive Communist-era law to punish government critics. The government has also instigated prosecutions against artists at the behest of private

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parties calling for "a healthy and patriotic censorship" in Poland.¹ Reflecting this climate of censorship is a new broadcast law requiring all broadcasters to ensure that all programming respects "Christian values" This newsletter describes some of these incidents, analyzes the relevant international law on freedom of expression, and makes recommendations to the Polish government to guarantee more vigorous protection of freedom of expression.

CRIMINAL SLANDER

¹ Anna Szymańska, "Protesting the Last Temptation," *Warsaw Voice*, May 2, 1993 (quoting an article in the *Ład Weekly*).

One of the most disturbing aspects of President Walesa's term has been a recent spate of criminal prosecutions against individuals for "slandering" the head of state. Under Article 270(1) of the Polish Penal Code, anyone who "publicly insults, ridicules and derides the Polish Nation, Polish People's Republic, its political system or its principal organs, is punishable by between 6 months and eight years of imprisonment." For years, this ambiguous, overbroad law was used by the communist government to harass its opponents. Rather than depart from this dishonorable history, the Walesa government has continued to use the law against government critics. An editor of a major daily described the law's chilling effect, noting "This may well set a precedent that will shut people up."²

- In early June 1993, twelve people were arrested for putting up posters announcing a demonstration on June 4. The posters claimed that members of the current government had collaborated with the secret police. The twelve people were arrested under Article 270(1), and face up to eight years of imprisonment if convicted. The prosecutor is still investigating whether to bring formal charges against any of the twelve.³

- On March 18, 1993, students Adam Harlacz and Mariusz Sokolowski were convicted in the regional court in Brzeg for "abusing and discrediting" President Walesa. The students admitted to shouting "Down with Walesa--communist agent" at a demonstration in June 1992.⁴ The students were fined 2.5 million zlotys each--about the average monthly salary--and ordered to pay court costs totalling 260,000 zlotys. Justifying its imposition of fines rather than prison sentences, the court noted that prominent politicians had made similar statements about Walesa.⁵ Trial judge Grzegorz Kapera added, "It is normal everywhere for the president to have adversaries and fervent political opponents. Recent attempts at discrediting the president, however, including the activities of the defendants, cannot be seen as anything but an attack on the presidency."⁶

The students have appealed their case to the Voivodship Court, arguing that they were not allowed to present witnesses necessary to establish a defense of truth in the lower court.⁷ Marek A. Nowicki, a Polish lawyer and Acting President of the International Helsinki Federation, agreed, saying that "the defendants were denied an honest court hearing."⁸

- On January 11, 1992, Stanislaw Bartosinski, a night caretaker, engaged in a conversation at a bus stop. Bartosinski used insulting words about President Walesa, reportedly calling him the Polish equivalent of a "son of a bitch." He was charged under Article 270(1) for insulting the head of state. On

² Grzegorz Cydejko, "Sticks and Stones," *Warsaw Voice*, November 22, 1992.

³ "Kto lzy, wyszydza, poniża," *Gazeta Wyborcza*, June 8, 1993.

⁴ "Appeal for Walesa, Kaczynski, to testify in slander case," *PAP News Wire*, February 10, 1993.

⁵ Louisa Vinton, "Guilty Verdict in Walesa Slander Trial," *Radio Free Europe/Radio Liberty Daily Report*, No. 55, March 22, 1993.

⁶ Jakub Kaminski, "Two Students Fined in Brzeg," *Gazeta Wyborcza*, March 19, 1993.

⁷ "Walesa's Defamers Appeal," *Gazeta Wyborcza*, May 6, 1993.

⁸ Katarzyna Kesicka, "Defendants' Rights Violated," *Gazeta Wyborcza*, March 25, 1993.

August 28, 1992, Bartosinski was convicted and sentenced to one year in prison, suspended if he does not break the law in the next three years, and fined three million zlotys. His case is currently on appeal. President Walesa has the option to pardon Bartosinski, but as of this writing, he has not done so. Helsinki Watch and the Fund for Free Expression wrote to President Walesa on October 1, 1992, protesting Bartosinski's conviction. Although the government's "response" was reported in the Polish press, neither Helsinki Watch nor the Fund for Free Expression received a response to their inquiry.

- **Ryszard Zajac is the first person in post-communist years actually imprisoned under Article 270(1). During the parliamentary elections in summer of 1991, Zajac published an article in his periodical *Głos Wodzisławia* (The Wodzisław Voice) in which he referred to a local authority in Katowice and nine Solidarity officials as "dopes" and "small-time politicians and careerists." He also alleged that the council "aspires toward a Communist party committee." In response, Alojzy Pietrzyk, now a Solidarity Sejm deputy, publicly called for the author's prosecution. The regional prosecutor in Wodzisław filed criminal charges, and Solidarity leaders filed a separate slander suit. In January 1992, Zajac was fined and sentenced to ten months in prison, suspended if he agreed to apologize in two newspapers. A provincial court upheld his conviction. Zajac refused to apologize, and was sent to jail for 74 days.⁹ After numerous requests from the Senate, the Polish Helsinki Committee, the ombudsman and others, as well as an appeal filed on his behalf by the Minister of Justice, Zajac was released.**

- **In a well-publicized case, Stanislaw Tyminski was charged under Article 270(1) for remarks made during his unsuccessful presidential bid in the 1990 campaign against Walesa. At a political rally on November 17, 1990, Tyminski had said that then-Prime Minister Tadeusz Mazowiecki had committed "treason" by selling Polish companies to foreign investors at low prices. Tyminski also reportedly threatened to reveal personal materials about Walesa. On December 10, 1990, the day after the election, Tyminski was charged under Article 270(1). After much public attention and an apology by Tyminski, charges were dropped.**

Helsinki Watch and the Fund for Free Expression are deeply disturbed to see the Walesa government use slander arrests and convictions to punish individuals who criticize the government or the Solidarity party. We are particularly concerned about application of Article 270(1) in the context of election campaigns, where it is essential that voters and candidates alike engage in a free and open discussion of views and qualifications. Even if some of the reported statements could give rise to a private cause of action for slander, they do not warrant criminal charges brought by the very government that is the object of criticism. Any narrow exceptions to freedom of expression cannot be construed to shield a state, or its elected officials, from criticism, however coarse the language of the complaint. We strongly urge the Polish Parliament to amend Article 270, and reiterate our request that President Walesa pardon those who have been convicted under this provision.

BROADCAST LAW OF 1992

On December 29, 1992, the Polish Parliament passed the "Radio and Television Law" creating a new regulatory structure for broadcasting. One of the more notable features of the law is the requirement that

⁹ Grzegorz Cydejko, "Sticks and Stones," *Warsaw Voice*, November 22, 1992.

all broadcasts "respect the religious feelings of the audience and in particular respect the Christian system of values."¹⁰

The Sejm, or lower house of parliament, voted in October 1992 to exclude the "Christian values" clause from the broadcasting law upon criticism that the clause was too vague.¹¹ However, Catholic Church leaders, including Cardinal Jozef Glemp and the episcopate media commission chairman Bishop Adam Lepa, criticized parliament's decision in their campaign against anti-Church bias in the media.¹² The Senate reinserted the "Christian values" provision into the final bill approved by the Sejm.¹³

Both the vague language of the "Christian values" provision and its substantive requirements have generated controversy. The *Warsaw Voice* reported that many journalists "are unsure of how to behave in the face of the new law's controversial requirements."¹⁴ Critics charge that the law requires media owners to reconcile different interpretations of religion in order to determine what constitutes "Christian values." The final arbiter of whether a given piece of material properly respects "Christian values" is left undefined.

Broadcasters who break the law could be fined up to 50% of their annual fee for their transmission frequency. Moreover, they could face difficulty renewing their license when the three to ten year license period expires, or have their license withdrawn.¹⁵ The Radio and Television Law grants the National Radio and Television Council authority to license stations and enforce regulations. The Council is composed of nine people: four chosen by the Sejm, two chosen by the Senate, and three chosen by the President, who also designates the Council Chair. Three of the nine newly appointed members--Jan Szafraniec (Senate appointee), Maciej Kowiecki (Walesa appointee), and Ryszard Bender (Walesa appointee)--reportedly support the "Christian values" provision.¹⁶

Helsinki Watch and the Fund for Free Expression are concerned that the "Christian values" standard will chill legitimate speech as broadcasters are forced to censor themselves to fit within the undefined boundaries of the law. Even a narrowly tailored provision would be an effective ban on a range of expression that does not seek to promote a certain religious viewpoint. We encourage the Polish parliament to rescind this provision of the broadcast law.

OFFENSE TO RELIGION CHARGES

¹⁰ Radio and Television Law, Article 18.2.

¹¹ "Catholics Condemn `Assault on Values'," *National Catholic Register*, November 8, 1992.

¹² *Ibid.*

¹³ "Polish Media to Accept `Christian Values'," *National Catholic Register*, January 17, 1993.

¹⁴ Grzegorz Cydejko, "Towards an Airwave Inquisition?," *Warsaw Voice*, January 10, 1993.

¹⁵ Radio and Television Law, Article 38.

¹⁶ Grzegorz Cydejko, "God, TV and Politics," *Warsaw Voice*, April 11, 1993.

Under the Polish Penal Code, offending religious sentiment is punishable by a fine or a two-year prison term. The Christian National Union (ZChN), a right-wing political party, has been at the forefront of efforts to bring criminal prosecutions under this provision. ZChN Deputy Maciej Srebro reportedly said that the party sought to create a "special intervention bureau, which would register cases of 'offending religious feelings' and establish a 'white book', where works whose publication is 'not recommended in a Catholic country' would be listed."¹⁷ Actors in a local theater company described one such prosecution as "an attempt to exert pressure on the artistic community."¹⁸ Helsinki Watch and the Fund for Free Expression are concerned that these criminal prosecutions not only penalize certain forms of speech that should not be the target of state prosecution, but contribute to an unhealthy climate of censorship that chills artistic expression.

Some of the recent incidents include:

- In late 1992, the ZChN pressed charges against a rock group called Piersi for a song entitled "ZChN's Coming," sung to the tune of a hymn "Jesus Christ is Coming." The song is about a priest who gets drunk and crashes his car, and the parishioners' complaint that they will bear the cost.¹⁹ Five people complained to the prosecutor that the song offended their religious feelings.²⁰ The prosecutor in Warsaw announced on April 20, 1993 that it would abandon proceedings against the rock group on the grounds that the hymn is not an object of a religious cult. The ZChN is appealing the decision.²¹ Although the prosecutor dropped charges, ZChN's complaint has been followed by private acts of censorship. While the prosecutor's office was deciding whether to pursue the case, radio producer Alicia Leszczyńska was fired for playing the song on the *Brum* radio show. She was reinstated after members of the Democratic Union intervened.²²

In June 1993, Piersi was awarded the "Prize of Journalists" at an annual music festival. The organizers of the event refused to announce that Piersi had won the prize, and refused to allow them into the festival to play a song.²³

- The May 2, 1993, *Warsaw Voice* reported that ZChN deputies were seeking to use the "offense to religion" provision against a movie theater in Poznań after its showing of the Martin Scorsese movie *The Last Temptation of Christ*. Three ZChN deputies reportedly filed a "Notification of Offense" with the Poznań

¹⁷ Aleksandra Waldoch, "By All Things Sacred," *Warsaw Voice*, November 22, 1992.

¹⁸ Anna Szymańska, "Protesting the Last Temptation," *Warsaw Voice*, May 2, 1993.

¹⁹ Aleksandra Waldoch, "By All Things Sacred," *Warsaw Voice*, November 22, 1992.

²⁰ "Prokuratura: 'Piersi' nie złamały prawa," *N. Dz.*, April 20, 1993.

²¹ *Ibid.*

²² Aleksandra Waldoch, "By All Things Sacred," *Warsaw Voice*, November 22, 1992.

²³ Krzysztof Grybos, "Piersi nie na pokaz," *Gazeta Wyborcza*, June 28, 1993.

prosecutors office, although they admitted that they had never seen the movie. None of the 600 viewers who saw the Poznań screening signed the deputies' complaint.²⁴

- In March 1993, ZChN deputy Marek Jurek unsuccessfully sued the *Poznaniak* weekly for offending his religious feelings, demanding an apology and 500 million zlotys in damages, payable to the Red Cross.²⁵ The paper had published a trick photograph of the Virgin Mary, with the face of American singer Madonna, holding a baby with the face of Marek Jurek.²⁶

LEGAL STANDARDS

International Covenant on Civil and Political Rights:

Freedom of expression is guaranteed by Article 19(2) of the International Covenant on Civil and Political Rights, which Poland ratified on March 18, 1977. It states:

"Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice."

The only permissible limitations on this right are set forth in Article 19(3), which permits only those restrictions that:

"are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals."

The term "provided by law" requires more than mere codification of a law. A law must meet fundamental principles of legality, including "knowledge of the existence of the law and accessibility to it by those affected, and sufficient definiteness as to content and meaning."²⁷ Article 270(1), the offense to religion clause, and the Christian values in broadcasting law all fail to meet this standard because they are impermissibly vague in their description of illegal behavior.

The European Court of Human Rights has strictly interpreted the second requirement of Article 19(3) that a limitation be "necessary." A "necessary" restriction must meet a "pressing social need"; it is

²⁴ Anna Szymańska, "Protesting the Last Temptation," *Warsaw Voice*, May 2, 1993.

²⁵ "Poznaniak Trial Continues," *Gazeta Wyborcza*, March 19, 1993.

²⁶ Anna Szymańska, "Protesting the Last Temptation," *Warsaw Voice*, May 2, 1993.

²⁷ Karl Josef Partsch, "Freedom of Conscience and Expression, and Political Freedoms," *The International Bill of Rights: The Covenant on Civil and Political Rights*, p. 220.

insufficient that its purpose be merely "useful", "reasonable" or "desirable."²⁸

Moreover, any limitation must clearly be for one of the purposes enumerated in 19(3)(a) and (b). With regard to the purpose of protecting the "rights and reputations of others," the Siracusa Principles state that this limitation "shall not be used to protect the state and its officials from public opinion or criticism."²⁹ This does not bar a civil cause of action for libel where appropriate, but underscores the principle that a free and open society must tolerate criticism of the government. Similarly, the purposes of security, order, health and morals must be narrowly interpreted to apply to individuals rather than shield the governing institutions from criticism. As the European Court of Human Rights noted in a famous case concerning political defamation,

[t]he limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.³⁰

Helsinki Accords:

Agreements pursuant to the Helsinki Final Act of 1975 also make clear that the Polish laws discussed here inappropriately restrict freedom of expression. At the June 1990 Copenhagen meeting of the Conference on Security and Cooperation in Europe, Poland and other participating states agreed on the following:

No one will be charged with, tried for or convicted of any criminal offense unless the offense is provided for by a law which defines the element of the offense with clarity and precision. (5.19)

[E]veryone will have the right to freedom of expression...The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. (9.1)

These agreements clearly define both substantive and procedural standards that are unmet by the ambiguous, over-broad provisions that are being used to restrict freedom of expression in Poland today.

RECOMMENDATIONS:

²⁸ *Sunday Times v. United Kingdom*, Judgement of 26 April 1979, Series A No. 30, para. 59.

²⁹ Principle 37. The Siracusa Principles were the result of a 1984 meeting of 31 legal experts from several countries, including Poland, convened by the United Nations Center for Human Rights and other organizations. The aim of the conference was to examine the limitations and derogation provisions of the Covenant. See "Symposium: Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights," *7 Human Rights Quarterly* (February 1985).

³⁰ *Lingens v. Austria*, Judgement of 8 July 1986, Series A No. 103, para. 42.

Helsinki Watch and the Fund for Free Expression call on the President Walesa and the appropriate branches of the Polish government to do the following:

- **Repeal Article 270(1).**
- **Pardon all persons convicted under Article 270(1).**
- **Repeal the provision of the broadcasting law requiring broadcasters to respect "Christian values," and ensure that any broadcasting regulations are narrowly tailored in accordance with international and European law.**
- **Ensure that the regulation of television and radio does not penalize broadcasters for exercising their rights to freedom of expression.**

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This newsletter is a publication of the Fund for Free Expression and Helsinki Watch. It was researched and written by Mary Lynne Werlwas, an attorney and Leonard Sandler Fellow at Human Rights Watch. Melissa Lee, from the Columbia Law School Summer Human Rights Internship Program, provided research assistance.

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