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POLAND: DROP CHARGES AGAINST WOMEN RIGHTS DEFENDERS. NGOS CALL TO DROP UNFOUNDED CHARGES FOR PEACEFUL ACTIVISM

Unfounded charges of “offending religious beliefs” are being brought against three women human rights defenders in Poland for simply exercising their right to freedom of expression, a coalition of six nongovernmental groups said today. The first hearing in their case is scheduled for November 4, 2020 in the town of Plock.

The Prosecutor General should drop the charges - and ensure that the three women are allowed to carry out their human rights work without harassment and reprisals by the authorities. The groups are Amnesty International, Campaign Against Homophobia, Freemuse, Front Line Defenders, Human Rights Watch and ILGA-Europe.

The Polish authorities should amend their legislation and bring it in line with international and regional human rights standards and abstain from using it against activists to unduly curtail their right to freedom of expression.

THE CASE AGAINST THE THREE WOMEN HUMAN RIGHTS DEFENDERS

The three human rights defenders, Elżbieta, Anna and Joanna - whose surnames are not being used to protect their privacy - are facing trial for ‘offending religious beliefs’ under article 196¹ of the Criminal Code (C.C.) in relation to the use of posters depicting the Virgin Mary with a rainbow halo symbolic of the LGBTI flag around her head and shoulders. The authorities are alleging that the three activists pasted the posters on 29 April 2019 in public places such as on portable toilets, dustbins, transformers, road signs, building walls in public areas in the city of Plock and have ‘publicly insulted an object of religious worship in the form of this image which offended the religious feelings of others’. They now face up to two years in prison if found guilty for their peaceful activism.

The authorities arrested and detained Elżbieta in 2019 after she took a trip abroad with Amnesty International. The authorities opened an initial investigation against her in May 2019 and in July 2020, they officially charged the three activists.

¹ Article 196 of the Criminal Code makes anyone found guilty of intentionally offending religious feelings through public calumny of an object or place of worship liable to a fine, a restriction of liberty, or to imprisonment for a maximum of two years.

A CRIMINAL OFFENSE UNDULY RESTRICTING THE RIGHT TO FREEDOM OF EXPRESSION, INCLUDING WITH RESPECT TO ARTISTIC EXPRESSION

Having, created or distributing posters such as the ones depicting the Virgin Mary with a rainbow halo should not be a criminal offense and is protected under the right to freedom of expression.

In its current formulation², article 196 of the C.C. imposes undue restrictions on the right to freedom of expression by providing overly broad discretion to the authorities to prosecute and criminalize individuals for expression that must be protected. This is incompatible with Poland's international and regional human rights obligations.

Poland is bound by the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights as well as the Charter of Fundamental Rights of the EU to respect, protect and fulfill the right to freedom of expression.

Furthermore, in 2013, the Special Rapporteur in the field of cultural rights noted that "Restrictions on artistic freedoms based on insulting religious feelings... are incompatible with [ICCPR]"³. In 2019, this was again highlighted by the Special Rapporteur on freedom of opinion and expression who stressed that criminalising expression that insults religious feeling limits "debate over religious ideas and... such laws [enable] governments to show preference for the ideas of one religion over those of other religions, beliefs or non-belief systems"⁴. Freemuse is particularly concerned about the policing of artistic and creative content by the authorities in Poland and regard it as an unlawful attack on freedom of artistic expression.

Amnesty International has previously called on the Polish authorities to repeal or amend legal provisions, such as article 196 of the Criminal Code, that criminalize statements protected by the right to freedom of expression, for example in the report 'Targeted by hate, Forgotten by Law: Lack of a coherent response to hate crimes in Poland'⁵. Many other national and international human rights organizations have criticized provisions of the Polish Criminal Code, including article 196, as problematic because they constitute restrictions on the right to freedom of expression not permissible under international human rights law.

International human rights law permits states to impose certain restrictions on the exercise of the right to freedom of expression only if such restrictions are provided by law and are demonstrably necessary and proportionate for the protection of certain specified public interests (national security, public order, protection of health or morals) or for the protection of the rights of others (including the right to protection against discrimination). When restricting the right to freedom of expression to protect public order or morals, the Human Rights Committee, which interprets the ICCPR, observed that states must not base their restrictions on principles deriving "exclusively from a single tradition" e.g. Christianity. States may impose certain restrictions on certain forms of expression if they can demonstrate that such restrictions are necessary and proportionate to the specified purpose (that is, the measure is designed to be effective in achieving its goal, lesser measures do not suffice and without putting in jeopardy the right itself). The current formulation of article 196 of the C.C. does not appear to pass the test of proportionality and necessity.

According to international standards, restrictions on the right to freedom of expression must be provided by law and formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly (Human Rights Committee, General Comment 34 on Freedom of Expression, para. 25). The current formulation of article 196 is not sufficiently precise, leaves space for arbitrary interpretation and allows authorities to arrest, detain, and prosecute people simply for expressing views that may be perceived by others as offensive.

² Article 196. Whoever offends the religious feelings of other persons by outraging in public an object of religious worship or a place dedicated to the public celebration of religious rites, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

³ <https://undocs.org/A/HRC/23/34>

⁴ <https://undocs.org/A/74/486>

⁵ Amnesty International, report 'Targeted by hate, Forgotten by Law: Lack of a coherent response to hate crimes in Poland', available at <https://www.amnesty.org/en/documents/eur37/2147/2015/en/>.

The organizations recall that everyone has a right to express themselves safely and without fear of reprisals, and that the right to freedom of expression is protected, even if some people might find the expression to be deeply offensive (Human Rights Committee, General Comment 34 on Freedom of Expression, para. 11). In the words of the European Court of Human Rights the right to freedom of expression “is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population”.⁶

THE UNFOUNDED CHARGES SHOULD BE DROPPED

Elżbieta, Anna and Joanna now face up to two years in prison if found guilty under the unfounded charges brought against them. The case against them is not unique but an example of the repeated harassment activists and human rights defenders face simply for carrying out peaceful activism in Poland, which Polish and international human rights organizations have documented and denounced at length in the last several years.

Elżbieta, Anna and Joanna stood against hate and discrimination and for years they have been fighting for a just and equal Poland. They deserve to be praised and not taken to court for their activism.

BACKGROUND

To date, around 140,000 people have joined an international campaign urging the Prosecutor General to drop the unfounded charges against the three women human rights defenders. The campaign is available at <https://www.amnesty.org/en/get-involved/take-action/poland-activist-elzbieta-podlesna/>.

Amnesty International, Campaign Against Homophobia, Freemuse, Front Line Defenders, Human Rights Watch and ILGA-Europe, remain committed to supporting the three women human rights defenders and campaigning for justice.

Elżbieta is one of the courageous 14 women human rights defenders who were beaten and targeted for standing up to hate in Poland during the Independence March in 2018. See their story at <https://www.amnesty.org/en/latest/campaigns/2019/04/14-women-blog/>.

At the time of her arrest in May 2019, she had just returned from a trip to Belgium and the Netherlands with Amnesty International, where she participated in several events and advocacy meetings with activists and supporters to raise awareness about the situations of peaceful protesters and the crackdown they are facing in Poland.

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⁶ https://www.echr.coe.int/documents/fs_hate_speech_eng.pdf