

**The Supreme Court of Poland**

**Case no: V KK 430/22**

**Between: The District Prosecutor in Płock and  
Elżbieta Agnieszka Podleśna, Anna Prus, and Joanna Gzyra-Iskandar**

**Poland**

**The District Prosecutor in Płock**

**vs.**

**Elżbieta Agnieszka Podleśna  
Anna Prus  
Joanna Gzyra-Iskandar**

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**EXPERT OPINION BY ARTICLE 19**

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## **Introduction and summary**

1. This expert opinion has been prepared by ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an independent human rights organisation, working globally to promote the right to freedom of expression and information. We have been asked to advise on the compatibility of the prosecution of Elżbieta Agnieszka Podleśna, Anna Prus, and Joanna Gzyra-Iskandar (the Defendants) with international and European law and standards on the right to freedom of expression. We understand that this opinion will be relied upon by the Defendants in the case currently pending before the Supreme Court.
2. This opinion reviews the case in light of Poland's obligations to protect the right to freedom of expression, as guaranteed by Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights (the European Convention). As Poland signed and ratified these treaties, the Polish courts are required to consider international and European human rights law in the present case. This is without prejudice to the consideration of how these same facts may also violate other human rights, including the right to liberty (Article 5 of the European Convention), the right to a fair trial (Article 6 of the European Convention), the right to freedom of thought, conscience and religion (Article 9 of the European Convention), and the principle of legality (Article 7 of the European Convention).
3. In the expert opinion, we address:
  - a) The facts of the case relevant for the subsequent analysis;<sup>1</sup>
  - b) Overview of key international human rights law standards on the permissible restrictions of the right to freedom of expression, including international standards on blasphemy and religious insult;
  - c) Our assessment of the present case in the light of these international and European human rights standards.
4. ARTICLE 19 submits that Article 196 of the Polish Criminal Code, under which the Defendants were charged, does not comply with international and European human rights standards, including those on the right to freedom of expression. Hence, the provision in question should be abolished and no charges should be brought against the Defendants. Even if this Court were to consider this provision as providing a sufficient legal basis for prosecution under international and European human rights law, ARTICLE 19 submits that the criminal prosecution of the Defendants under these provisions violates his right to freedom of expression and should cease immediately.

## **ARTICLE 19's expertise on freedom of expression and defamation of religion**

5. ARTICLE 19 is an international human rights organisation that advocates for the development of progressive standards on freedom of expression and freedom of

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<sup>1</sup> These are based on an unofficial translation of the judgment of 2 March 2021, Ref. no. II K 296/20, of the District Court in Płock in the Second Criminal Division and the judgment of 12 January 2022, Ref. No. V Ka 418/21, of the District Court Płock in the Fifth Criminal Appeals Division.

information at the international and regional levels, and the implementation of such standards in domestic legal systems. ARTICLE 19 has produced a number of standard-setting documents and policy briefs based on international and comparative law and best practice on freedom of expression issues. On the basis of these publications and overall legal expertise, ARTICLE 19 regularly intervenes in domestic and regional human rights court cases, including in Poland in cases under Article 196 of the Criminal Code,<sup>2</sup> and comments on legislative proposals as well as existing laws that affect the right to freedom of expression.

6. ARTICLE 19 holds specific expertise in the subject area that this case is based on—defamation of religion and blasphemy laws. We have conducted legal analysis of multiple national laws of this topic and produce policy recommendations. For instance, ARTICLE 19's *Hate Speech' Toolkit* contains detailed argumentation against religious insult laws and draws a clear distinction between religious hatred that constitutes incitement to violence, discrimination or hostility on the one hand and blasphemy on the other.<sup>3</sup> We also published a policy briefing on Human Rights Council (HRC) Resolution 16/18 which addresses 'combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief.'<sup>4</sup>

## The facts and arguments of the parties of the case

7. The prosecution of the Defendants, who are Polish LGBTIQ activists, for "offending the religious feelings of other persons" under Article 196 of the Polish Penal Code, stems from an incident that took place in the Saint Dominic Church in Płock on 27 April 2019. The Defendants plastered the area around the church with the images of the Black Madonna of Częstochowa adorned with a rainbow halo, in protest of an earlier homophobic display in the church, which depicted the words "gender", "homo-deviation" and "LGBT" amidst the list of the deadly sins. The image was used in the context of the wider actions of local activists in support of the LGBTIQ community. These included disseminating leaflets about the prevalence of suicidal thoughts among LGBTIQ youth, displaying rainbow flags and slogans, such as "God Save The Queer", in different city locations, and disseminating lists of bishops accused of paedophilia. As the Defendants explained in a letter sent to media outlet naTemat.pl and published on [30 April 2019](#), they conducted their protest, including the display of the Madonna with a rainbow halo, in defiance of "indoctrination towards hate and segregation."
8. Elżbieta Agnieszka Podleśna was detained by the police on 6 May 2019, following a house search and seizure of the Rainbow Madonna stickers. On 2 March 2021, the District Court of Płock ruled in favour of the Defendants dismissing all charges. Additionally, the

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<sup>2</sup> ARTICLE 19, [Poland: Blasphemy conviction of pop star violates free expression](#), 2018 and [Poland: Blasphemy legislation must be repealed](#), 2015.

<sup>3</sup> ARTICLE 19, ['Hate Speech' Explained. A Toolkit](#), 2015, pp. 29-32.

<sup>4</sup> ARTICLE 19, [UN HRC Res 16/18: Consolidating Consensus Through Implementation](#), 2016.

detention of Elżbieta Agnieszka Podleśna was found to be unjustified and the District Court ordered monetary compensation.

9. The District Court described the impugned conduct as ‘provocative’ in nature but agreed that it was necessary to instigate a public debate on an issue of social relevance – discrimination and stigmatisation of the LGBTIQ community in Poland, in which the Catholic Church plays a significant part. This contextual analysis was particularly relevant to the conclusion as to no specific intent of the Defendants to ‘insult’ the image of the Częstochowa Madonna and offend religious feelings of Catholics. The Court also referenced the European Convention and, based on the jurisprudence of the European Court of Human Rights, concluded that: “A Catholic, therefore, cannot reasonably expect his symbols in public spaces to gain inviolability and immunity from all non-religious use”.
10. On 12 January 2022, the District Court of Płock in the Fifth Criminal Appeals Division upheld the acquittal in the appeal proceedings, citing, *inter alia*, the right to freedom of expression of the Defendants.

### **Applicable international standards on the right to freedom of expression**

11. As a party to the ICCPR and the European Convention, which form part of Polish law, the Polish courts are required to consider the international and European standards on freedom of expression when deciding this case. ARTICLE 19 points out that under these standards, the right to freedom of expression is not an absolute right. It may be legitimately restricted by the State in certain circumstances. Under the so-called three-part test any restrictions:
  - **Must be provided for by law:** any restriction must have a basis in law, which is publicly available and accessible, and formulated with sufficient precision to enable citizens to regulate their conduct accordingly;<sup>5</sup>
  - **Must pursue a legitimate aim,** exhaustively enumerated in Article 10(2) of the European Convention and Article 19(3) of the ICCPR. Although protection of the reputation or rights of others is one of the legitimate grounds, the protection is only provided to individual persons and, in some instances, of groups and persons, not to abstract entities such as religions, beliefs, ideas or symbols;
  - **Must be necessary in a democratic society:** any restriction must be necessary and proportionate; this first aspect entails an assessment of whether the proposed limitation satisfied a “pressing social need” and whether the measure is the least restrictive to achieve the aim. Second, the proportionality lens should be used to

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<sup>5</sup> See, *inter alia*, the European Court of Human Rights (the European Court), *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina*, App. No. 17224/11, 27 June 2017; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, App. No. 931/13, 27 June 2017; *De Tommaso v Italy*, App. No. 43395/09, 23 February 2017; *Fernández Martínez v Spain*, App. No.56030/07, 12 June 2014, para. 117; *Cumhuriyet Vakfı and Others v Turkey*, App. No. 28255/07, 8 October 2013; or *Ahmet Yıldırım v Turkey*, App. No. 3111/10, 18 December 2012.

assess the nature and severity of the penalties imposed.<sup>6</sup> A measure cannot be regarded as necessary where a less restrictive means could be employed to achieve the same end.

12. Additionally, Article 20 para 2 of the ICCPR stipulates that States must prohibit “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” While States are obliged to prohibit this type of expression under the law, restrictions must still be limited to ensure broad restrictions on expression are avoided. At the international level, the Rabat Plan of Action (Rabat Plan) – adopted by experts following a series of consultations convened by the UN Office of the High Commissioner for Human Rights (OHCHR) – provides guidance on what constitutes incitement under Article 20(2) of the ICCPR.<sup>7</sup>

### ***International standards on blasphemy and religious ‘insult’***

13. International and regional human rights bodies have repeatedly confirmed that protection of religions or religious beliefs is not a legitimate basis for restrictions of freedom of expression and called for abolition of laws that prohibit defamation of religion or blasphemy laws. For example:

- **The Human Rights Committee** (HR Committee) unequivocally stated in its **General Comment No 34** that any prohibitions of displays of lack of respect for a religion or other belief system are incompatible with the ICCPR, except in the narrow circumstances envisaged under article 20, paragraph 2 of the Covenant (religious hatred that constitutes incitement of violence, discrimination or hostility).<sup>8</sup> The prohibitions that genuinely fall under article 20(2) of the ICCPR must also comply with the strict requirements of legality, adherence to a legitimate aim, and necessity and proportionality.
- **In Resolution 16/18**, the **Human Rights Council** called on states to prioritize measures that would promote an “open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue” and limited its recommendation on adopting criminal measures to “incitement to imminent violence based on religion or belief.”<sup>9</sup>
- **The UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion** has stated that limitations on the right to

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<sup>6</sup> See, *inter alia*, the European Court, *Fressoz and Roire v France*, App. No. 29183/95, 21 January 1999; or *Yarar v Turkey*, App. No. 57258/00, 19 December 2006.

<sup>7</sup> The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 5 October 2012, Annual report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4, 11 January 2013.

<sup>8</sup> HR Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 29 July 2011, para 48.

<sup>9</sup> Human Rights Council, Resolution 16/18 Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, 12 April 2011, A/HRC/RES/16/18, para 5 (f) and (h). See also ARTICLE 19 Briefing, [Implementing UN HRC Res 16/18. A framework for inclusivity, pluralism and diversity](#), 2016.

freedom of expression were “designed in order to protect individuals against direct violations of their rights” and “are not designed to protect belief systems from external or internal criticism”.<sup>10</sup>

- Similarly, **the UN Special Rapporteur on freedom of religion and belief** stated in his 2017 report that blasphemy laws, “which prohibit or criminalize the alleged ‘defamation’ of religious beliefs and principles, or those which allegedly insult religious figures, have a disproportionate impact on members of minority religious communities and ‘non-believers.’”<sup>11</sup> The Special Rapporteur added that blasphemy is “generally framed as a strict liability offence and based on vague and overly broad criminal statutes” and “is increasingly used against political opponents for their opposition to the Government.”<sup>12</sup>
- **The Rabat Plan of Action**, endorsed by the Office of the UN High Commissioner for Human Rights, explicitly recommended to States to repeal blasphemy laws, “as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion.”<sup>13</sup> It also pointed out that blasphemy laws result in a de facto censure and impede debate and criticism, which are necessary elements of democratic societies.<sup>14</sup>
- In its jurisprudence, **the European Court of Human Rights** (the European Court) repeatedly stressed out that freedom of expression is “applicable not only to ‘information’ or ‘ideas’ that are favourably 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”.<sup>15</sup> In several cases, it found out the restriction on expression on the grounds that the speech concerned offended religious believers, to be in violation of the European Convention as it did not correspond to a pressing social need and was disproportionate to the legitimate aim (i.e. the rights of others whose religious feelings had been offended).<sup>16</sup> The European Court also repeatedly stated that persons who exercise or manifest a particular faith or religion cannot reasonably expect to be except from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.<sup>17</sup>

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<sup>10</sup> Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, to the Human Rights Council, 28 February 2008 A/HRC/7/14, para 85.

<sup>11</sup> Human Rights Council, Report of the Special Rapporteur on freedom of religion and belief, Heiner Bielefeldt, to the Human Rights Council, 17 January 2017. A/HRC/34/50, para 40.

<sup>12</sup> *Ibid.*

<sup>13</sup> Rabat Plan, *op.cit.*, para 25.

<sup>14</sup> European Court, *Aydın Tatlav v. Turkey*, App. No. 50692/99, 2 May 2006, paras 28 and 19.

<sup>15</sup> See e.g. European Court, *Handyside v. United Kingdom*, App. No. 5493/72, 7 December 1976.

<sup>16</sup> European Court, *Klein v Slovakia*, App. No. 72208/01, 31 October 2006, para 54; or *Giniewski v France*, App. No 64016/00, 31 April 2006, para 51-53.

<sup>17</sup> European Court, *Otto-Preminger v Austria*, App. No 13470/88, 20 September 1994, para 47; *IA v Turkey*, App. No 42571/98, 13 September 2005, para 47; see also European Commission of Human Rights, *Dubowska v Skup v Poland*, Apps. Nos [33490/96](#) and [34055/96](#), 18 April 1997.

- **The Parliamentary Assembly of the Council of Europe** also recommended decriminalisation of blasphemy and insults to a religion. The Assembly cautioned that, in practice, prosecutions under these laws reinforced the dominant position of a particular religion in individual states and threatened “the democratic principle of the separation of state and religion.”<sup>18</sup>
- **The Council of Europe’s Venice Commission** recommended that “it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component [and] that the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced.”<sup>19</sup>

## **Application of the relevant international human rights standards to the present case**

14. ARTICLE 19 submits that the restrictions places on the Defendants’ non-verbal protest must be assessed under the international standards detailed above. Any interference with the Defendants’ right to freedom of expression must strictly adhere to the requirements of legality, legitimate aim and necessity and proportionality (the three-part test). In this respect, ARTICLE 19 makes the following submissions.

### ***The restrictions do not meet the requirement of legality***

15. Article 196 of the Penal Code, under which the Defendants are prosecuted, prohibits conduct that “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.” ARTICLE 19 submits that these provisions do not correspond to the requirement of legality, which mandates that the law in question is precisely formulated and foreseeable.
16. The vagueness and subjectivity of the terms “offending,” “insulting” and “outraging” raises a multitude of interpretations, which creates a risk of overbroad and arbitrary application of the criminal provision at hand. It thus creates a wide base for prosecution that can be used for law enforcement to regularly initiate proceedings, which may discourage the legitimate exercise of free speech, particularly on issues of public interest.
17. As we highlighted earlier, the European Court systematically asserts that expressions that “offend,” “shock,” or “disturb” the public or a segment thereof firmly fall within the scope of the right to freedom of expression. As determined by the Court, these are the

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<sup>18</sup> Parliamentary Assembly of the Council of Europe, *Blasphemy, religious insults and hate speech against persons on grounds of their religion*, Recommendation 1805 (2007), paras 10 and 17.2.

<sup>19</sup> European Commission for Democracy through Law (the Venice Commission), Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, CDL-AD(2008)026, 23 October 2008, para 89.

demands of pluralism, tolerance and broadmindedness without which there is no “democratic society.”<sup>20</sup> Moreover, the prohibition of “insulting” speech constitutes an interference with the right to freedom of opinion, which is recognized under international human rights law as an absolute right that does not allow any restrictions.<sup>21</sup> The criminalisation of blasphemous ‘insult’ is construed in defiance of these fundamental principles that define the scope of the rights to freedoms of opinion and expression.

18. As a matter of principle, ARTICLE 19 notes that Article 196 of the Penal Code should be repealed entirely. Only instances of religious hatred that constitute incitement to violence, discrimination or hostility against individuals should be prohibited.

***The restrictions do not pursue a legitimate aim***

19. The legal construction of Article 196 of the Penal Code seems to establish that prosecutions under this provision are necessary for the protection of the religious rights of others. However, as noted above, the protection of the rights of others under international and European human rights standards only applies to the rights of individual persons and, in some instances, of groups of persons. It does not extend to abstract entities such as religions, beliefs, ideas, or symbols.
20. Furthermore, the right to freedom of religion does not grant protection from being subjected to expressions that might be deemed blasphemous or offensive.<sup>22</sup> It is not a legitimate aim to impose limitations on the right to freedom of expression to protect individuals’ feelings from offense, including in relation to ideas or opinions that offend their religion or belief. Article 196 of the Penal Code essentially amounts to a prohibition of a display of lack of respect for religion, which is manifestly incompatible with international free speech standards. It comes into sharp conflict with the fundamental feature of the both the rights to freedom of religion or belief and freedom expression, which requires the State to protect conflicting and contrary viewpoints, even if they are offensive or insulting from the subjective point of view of one’s most deeply held conviction. As the UN Working Group on Arbitrary Detention has stated, while religious insult “may offend people and hurt their feelings [they do] not directly result in a violation of ... rights to freedom of religion.”<sup>23</sup>
21. Here, ARTICLE 19 highlights that the European Commission of Human Rights addressed a similar issue in *Dubowska and Skup v. Poland*, where the application motivated by ‘insult’ to religious feelings was dismissed as inadmissible because members of a religious community must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. The European Commission further noted that the right to freedom of religion as guaranteed in Article

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<sup>20</sup> *Handyside v. the UK*, *op.cit.*

<sup>21</sup> General Comment No. 34, *op.cit.*, para 9.

<sup>22</sup> European Court, *Aydın Tatlav v. Turkey*, App. No. 50692/99, 2 May 2006, para 28.

<sup>23</sup> Opinion No. 35/2008 (Egypt), 6 December 2008, para 38.



9 of the European Convention does not imply a right to bring proceedings against those who “offend the sensitivities of an individual or of a group.”<sup>24</sup>

22. Additionally, the depiction of Madonna crowned with a rainbow halo cannot be considered to reach the threshold of incitement to violence, discrimination or hostility that the states must prohibit (as per Article 20 para 2 of the ICCPR). The action of the Defendants, albeit being considered ‘disrespectful’ or ‘offensive’ to certain believers, contained no element of incitement to violence, discrimination or hostility. Nor did the Defendants express any hatred towards individuals of a particular faith or belief. “Offensiveness” of an expression, including its “gratuitousness,” should not be considered as determinative factors in assessing the legitimacy of restrictions. Instead, the focus should be on whether the expression intentionally advocated religious hatred constituting incitement to hostility, discrimination or violence, and was likely to be successful in doing so, particularly through analysing such elements as content and context of the expression. Nothing in the case suggests that the Defendants intended to express hatred towards Catholics as a religious group or incite violence, discrimination or hostility. They disseminated an image of rainbow halo, which symbolises tolerance, acceptance, and advocacy for LGBTIQ rights, rather than an attack or expression of hatred against an individual or group based on their religion. As the court of the first instance pointed out in its analysis, although the conduct of the Defendants can be regarded as “provocative”, it was not directed at any specific believer, but was used to draw attention to an issue of great public interest — discrimination of LGBTIQ people.
23. Hence, the prosecution of the Defendants under Article 196 of the Penal Code does not pursue a “legitimate aim” for restricting freedom of expression.

***Criminal prosecution is not necessary and proportionate***

24. ARTICLE 19 finds that prohibitions - such as those in Article 196 of the Penal Code - do not contribute to a climate of religious openness, tolerance, non-discrimination and respect. To the contrary, they often fuel stereotyping, stigmatisation, discrimination and incitement to violence. An open and robust debate, even between representatives of conflicting views, is an antidote to hostility and the most effective path to achieving mutual understanding and intra-societal dialogue.
25. The assessment of whether a restriction imposed on free speech was “necessary” requires the determination of “a pressing social need” to that effect. In this respect, it is important to analyse the larger context around the case. The Defendants acted in response to a homophobic display in the St Dominic’s Church in Płock, which portrayed LGBTIQ persons as inherently ‘sinful’. The actions for which the activists were charged—plastering the image of a rainbow-haloed Madonna on certain objects in the immediate vicinity of the church—carried a clear objective: to attract attention of the public to the intolerance and hatred expressed against people based on their sexual orientation or gender identity and expose the hypocrisy of the Catholic Church in relation to the paedophilia crimes committed by its members. As the activists explained, they were also

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<sup>24</sup> European Commission, *Dubowska and Skup v. Poland*, Apps. Nos. 33490/96 and 34055/96, 18 April 1997.

concerned about the actual effects of ostracizing members of the LGBTIQ community, such as the issue of suicides among young LGBTIQ people who cannot cope with social exclusion. It is beyond doubt that this non-verbal expression, conducted in protest against a preceding expression of intolerant and homophobic views, contributed to the debate on a set of important social issues. In this context, it is useful to recall the utmost weight that the European Court ascribes to matters of public interest in its application of the test of necessity and proportionality: “there is little scope ... for restrictions on political speech or debates on questions of public interest.”<sup>25</sup>

26. The considerations of public relevance of the issues raised by the Defendants’ non-verbal expression are much more important for the balancing exercise than perceived “provocative” or “offensive” nature of their conduct. It was precisely the element of provocation that allowed the three activists to instigate a public debate around the issue of homophobia and discrimination faced by the LGBTIQ community in Poland. The application of criminal sanctions to a protest action to draw attention to acute social issues would also produce a chilling effect on civic activism and public defence of human rights and would discourage others from participating in a debate on issues of public interest.
27. It is useful to compare the present case to the European Court’s judgment in *Sekmadienis LTD v. Lithuania* where an advertisement that used images of persons resembling Christian religious figures was deemed “offensive” by certain believers in Lithuania. Despite the commercial nature of the expression, unlike the public interest one in the present case, the European Court found no “pressing social need” in restricting non-verbal expression for the mere use of a religious image for a non-religious purpose. Its subjective “offensiveness” to a certain portion of the population, even to the majority thereof, was regarded as insufficient for finding the associated restrictions as “necessary.”<sup>26</sup>
28. In any event, the sanctions prescribed under the provision at hand— criminal fines, restrictions and deprivation of liberty for up to 2 years —are impermissible from the point of view of the proportionality test. Criminal prosecution as such—and especially the risk of imprisonment—is not proportionate to the alleged legitimate aims. The prosecution failed to demonstrate the social harm and the high level of severity of the offense that would justify such a harsh punishment. We also recall that in *Aydin Tatlav v. Turkey*, the punishment of 12 months of imprisonment that was subsequently replaced by a “modest fine” was found by the European Court to be disproportionate and sufficient to discourage others from publishing non-conformist opinions about religion.<sup>27</sup> Similarly, the criminal conviction of the Defendants would constitute a manifestly disproportionate restriction on their free expression.

## Conclusions

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<sup>25</sup> European Court, *Dichand and others v. Austria*, App. no. 29271/95, 26 May 2002, para 39.

<sup>26</sup> European Court, *Sekmadienis LTD v. Lithuania*, App. no. 69317/14, 30 April 2018, paras 75-83.

<sup>27</sup> European Court, *Aydin Tatlav v. Turkey*, *op.cit.*, para 30.

29. In light of the foregoing assessment, ARTICLE 19 submits that the charges against the Defendants constitute an unjustified interference with their right to freedom of expression, as guaranteed by Article 10 of the European Convention and Article 19 of the ICCPR. The charges at hand fail to satisfy the test of legality, necessity and proportionality. In particular, “offending religious feelings of others” is not a legitimate aim for permissible restrictions on freedom of expression under the aforementioned provisions. Thus, it cannot form the basis for prosecution of individuals for their exercise of the right to freedom of expressions, in a verbal or non-verbal form. Additionally, the criminal conviction of the Defendants would not satisfy the test of a “pressing social need” and would be entirely disproportionate to any alleged legitimate aim. The conviction of the Defendants, who acted in support of the rights of others, would also produce a chilling effect on engaging in the public debate on important social issues in Poland.
30. The charges against the Defendants should be dismissed in their entirety and they should be provided with due redress and compensation, particularly for the detention suffered by one of them. We ask the Court to uphold the decisions of the first-instance court and the court of appeals.