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Poland: The Law on the Institute of National Remembrance contravenes the right to freedom of expression

On 6 February, the President of Poland signed an amendment to the Law on the Institute of National Remembrance, which makes it a crime to publicly claim that Poland had any responsibility for or complicity in the Holocaust. The law will enter into force in two weeks. The President also referred the amendment (Article 55a) to the Constitutional Tribunal for it to review the amendment's compliance with Article 54 of the Constitution, which guarantees "the freedom to express opinions".

Under the amendment, "[w]hoever claims, publicly and contrary to the facts, that the Polish Nation or the Republic of Poland is responsible or co-responsible for Nazi crimes committed by the Third Reich... shall be liable to a fine or imprisonment for up to 3 years."

Amnesty International considers that the amendment infringes on the right to freedom of expression as guaranteed by international human rights law binding on Poland. The right to freedom of expression can be restricted only in cases when it is necessary and proportionate for the protection of the rights or reputations of others or for the protection of national security, public order or public health or morals. Laws prohibiting insult or disrespect of public institutions or national symbols, or laws that are intended to protect the honour of the state are not permitted under international law and standards, and are contrary to the right to freedom of expression. Equally, laws that penalise the expression of opinions about historical facts are incompatible with states' obligations to respect freedom of opinion and expression.

The criminalization of the expression of ideas or opinions, such as that provided by Article 55a of the amendment of the Law on the Institute of National Remembrance, is an undue restriction of the right to freedom of expression and is in breach of Poland's obligations under international human rights law. It threatens to have a "chilling effect" by preventing people from discussing matters of public interest and could be used as a tool to silence critical voices in Poland. Amnesty International urges the Polish authorities to amend the Law on the Institute of National Remembrance and remove any provisions that criminalize statements about historical facts and threaten to have a chilling effect on freedom of expression.

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International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK

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