

POLAND				
QUESTION	ANSWER	SOURCE OF LAW\INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
<i>Where is online hate speech established as a criminal offence?</i>	Incitement to hatred, promoting fascism, and insulting a group within a population are all offences according to the Penal Code.	Articles 256 and 257 of the Penal Code <sup>C</sup>		Note that the incitement to hatred provision has been interpreted widely by national courts in Poland, to include statements that stir feelings of strong dislike, anger, lack of acceptance or hostility towards particular persons or entire social or religious groups. (Source: ECRI Report on Poland, 2015, p. 48, available at <a href="https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/POL-CbC-V-2015-20-ENG.pdf">https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/POL-CbC-V-2015-20-ENG.pdf</a> . And Supreme Court judgment SN dated 5 February, 2007, ref. no. IV KK 406/06.
<i>What is the punishment for online hate speech?</i>	Promoting fascist or other totalitarian systems and incitement to hatred – is punished with a fine, restriction of liberty or deprivation of liberty for up to two years.  Public insult of a group within the population – is punished by deprivation of liberty for up to three years.	Articles 256 and 257 of the Penal Code <sup>C</sup>		
<i>Is there a law-based obligation for intermediaries to monitor hate speech?</i>	Service providers are not obligated to monitor online hate speech.	Article 15 of the Act on Electronic Services <sup>A</sup>	“Service provider” - any person or entity who provides commercial or professional activities by electronic means.	
<i>Who is responsible to remove/block access to hate speech?</i>	The service provider or administrator of the website who received a formal notice.	Article 14 of the Act on Electronic Services <sup>A</sup>		
<i>What is the required time frame, if any, for removing hate speech?</i>	"Immediately", upon being notified of the unlawful nature of the content.	Article 14 of the Act on Electronic Services <sup>A</sup>		

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<p><i>Is the intermediary liable for hate speech posted on a website?</i></p>	<p>Intermediaries are not responsible for storing content if they are unaware of the content's unlawful nature. The website administrator is required to delete the content only if the report is credible and indicates the specific illegal content. The administrator may refuse to remove the content if the comment of an unlawful nature contains true information, or if the information submitted by the reporting user is not reliable. However, if a user is convinced that the content is illegal, he\she may start the proceedings against the administrator of the website under the Civil Code provisions.</p> <p>If the content is not removed by the administrator of the website or service provider, the person offended by such content may take an action against the portal or the person who posted the content, and may claim for an apology, compensation or redress.</p> <p>Note that with respect to media intermediaries, the general Penal Code provisions apply to media offenses occurring online, including those related to blasphemy, religious insult or hate speech.</p>	<p>Article 14 of the Act on Electronic Services<sup>A</sup></p> <p>Articles 23 and 24 of the Civil Code<sup>B</sup> (Source: <a href="http://www.siectolerancji.pl/jak-reagowac/jak-reagowa%C4%87-na-mow%C4%99-nienawi%C5%9Bci-w-sieci">http://www.siectolerancji.pl/jak-reagowac/jak-reagowa%C4%87-na-mow%C4%99-nienawi%C5%9Bci-w-sieci</a>.)</p> <p>Article 37 of the Press Law<sup>78</sup></p> <p>(The European Legal Framework on Hate Speech, Blasphemy and its interaction with freedom of expression, 2015, p. 442).</p>		
<p><i>Are there online mechanisms for anyone to report about hate speech content?</i></p>	<p>The online site <i>Hejt Stop</i> was established to allow reporting on cases of hate speech reporting hate speech.</p>	<p>The website: <a href="http://hejtstop.pl/">http://hejtstop.pl/</a></p>		

<sup>78</sup> Press Law of 26 January 1984, as amended up to 2013, Journal of Laws of 1984 No. 5, item 24. Official version available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19840050024>.

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	<i>Siec Tolerance</i> is another platform which was developed to allow notifications of hate speech. Two lawyers work in the project, providing assistance and consultation.	The website: <a href="http://www.siectolerancji.pl/">http://www.siectolerancji.pl/</a> .		
<i>When is the offence considered to be committed within the territory\under the country's jurisdiction?</i>	The Polish Penal Law is applied to a perpetrator who committed an offence within the Polish territory. Polish Law is applied to Polish citizens who have committed an offence abroad.	Articles 5, 109 and 110 of the Penal Code.		

#### POLAND APPENDIX

##### A. The Act on Electronic Services of 2002, as Amended up to 2016<sup>79</sup>

**Article 2** -“Terms used in this Act have the following respective meaning:

1) -3) (...).

4) providing services by electronic means - such way of rendering a service, which comprises transmitting and collecting data by means of tele information systems, at the individual request of a service recipient, without the parties being simultaneously present, while the data are transmitted through public networks within the meaning of the act referred to under point 3 herein,

5) electronic communication means - technical measures, including tele information equipment and software tools co-operating with it, enabling individual distant communication by using data transmission between tele information systems, in particular electronic mail,

6) service provider - any natural person, legal person or organizational unit without legal entity, who, while performing, even as side activities, commercial or professional activities provides services by electronic means,

7) service recipient- any natural person, entity or organizational unit without legal entity, who uses services provided by electronic means.”

**Article 14** - “1. The responsibility for the stored data shall not be borne by the person, who, making the resources of a tele-information system available for the purpose of the data storage by a service recipient, is not aware of unlawful nature of the data or the activity related to them, and in case of having been informed or having received a message on unlawful nature of the data or the activity related to them, makes immediately the access to the data impossible.

2. The service provider, who has received the formal notice on unlawful character of the stored data provided by a service recipient and has made access to them impossible, shall not bear the responsibility to this service recipient for any damage resulting from impossibility to access these data.

3. The service provider, who has received a reliable message on the unlawful character of the stored data provided by a service recipient, and has made access to these data impossible, shall not bear responsibility to this service recipient for a damage resulting from impossibility to access these data, if he/she has immediately notified the service recipient of intention to make the access to the data impossible. 4. (...).”

<sup>79</sup> The Act of 18 July 2002 on electronic services, Dz.U. 2002, Item. 1441204, Official version available at <http://isap.sejm.gov.pl/>. English text available at [http://www.giodo.gov.pl/data/filemanager\\_en/51.pdf](http://www.giodo.gov.pl/data/filemanager_en/51.pdf).

**Article 15** - “The entity, which provides services specified in art. 12 - 14, shall not be obliged to monitor the data referred to in art. 12 - 14, which are transmitted, stored or made available by that entity.”

**B. The Civil Code of 1964, as Amended up to 2016<sup>80</sup>**

**Article 23** - “The personal man, in particular health, liberty, honor, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, inventions and improvements shall be protected by civil law regardless of the protection provided in other provisions.”

**Article 24** - “1. The person, whose personal rights are at risk of infringement, may request such action, unless it is not unlawful. In the event of an infringement it can also demand that the person who committed the violation, perform all the actions necessary to remove its effects, in particular, made a declaration to the appropriate content and in proper form. The principles laid down in the Code may also demand financial compensation or payment of an appropriate amount of money for the designated social purpose. 2. If, as a result of violation of a personal property damage has been caused, the victim may seek damages on general terms. 3. The above provisions are without prejudice powers provided for in the other provisions, in particular copyright and inventive.”

**C. Penal Code of 1997, as Amended up to 2016<sup>81</sup>**

**Article 5**

“The Polish penal law shall be applied to the perpetrator who committed a prohibited act within the territory of the Republic of Poland, or on a Polish vessel or aircraft, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.”

**Article 110**

“1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organizational unit not having the status of a legal person. 2. The Polish penal law shall be applied to aliens in the case of the commission abroad of an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and where no decision on his extradition has been taken.”

**Article 256<sup>82</sup>**

“Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.”

**Article 257<sup>83</sup>** - “Whoever publicly insults a group within the population or a particular person because of his national, ethnic, race or religious affiliation or because of his lack of any religious denomination or for these reasons breaches the personal inviolability of another individual shall be subject to the penalty of deprivation of liberty for up to 3 years.”

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<sup>80</sup> Act of 23 April 1964, The Civil Code, Dz. U. 1964, item 1693. **Official version available at** <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093>.

<sup>81</sup> The Act of 6 June 1997, Criminal Code, Dz.U. 1997, item 88553. **Official version available at** <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553>. English text *available at* [https://www.imolin.org/doc/amlid/Poland\\_Penal\\_Code1.pdf](https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf).

<sup>82</sup> ECRI recommends that sexual orientation and gender identity be explicitly added to the prohibited grounds in Articles 256 and 257 of the Criminal Code. Source: ECRI Report on Poland, 2015, p. 16, available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/POL-CbC-V-2015-20-ENG.pdf>.

<sup>83</sup> The offence of religious feelings is applicable for online offenses. According to European Legal Framework on Hate Speech, “the only prerequisite concerns the public character of the crime, which means that it must reach a larger, often indeterminate group of people (with a minimum two persons). This condition is met when a message is disseminated online.” (The European Legal Framework on Hate Speech, Blasphemy and its interaction with freedom of expression, 2015p. 443).