



Permanent Mission  
of the Republic of Poland  
to the United Nations Office  
at Geneva

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The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights.

With reference to a joint communication of the Special Rapporteur on the human rights defenders; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Ref: AL POL 6/2021) the Permanent Mission of the Republic of Poland has the honour to transmit to the Office of the High Commissioner for Human Rights its reply.

The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 13 January 2022

**Special Rapporteur on the human rights defenders;  
Special Rapporteur in the field of cultural rights;  
Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression;  
Independent Expert on protection against violence and  
discrimination based on sexual orientation and gender identity;  
Office of the UN High Commissioner for Human Rights**

Geneva

**Poland's response  
to the Joint Communication from Special Procedures**

**(AL POL 6/2021 of 18 November 2021)**

***January 2022***

Replying to the Joint Communication from Special Procedures (the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity) concerning the criminalisation of Mr. Bart Staszewski – defender of the rights of lesbian, gay, bisexual, trans and gender diverse (LGBT) persons (AL POL 6/2021 of 18 November 2021), please find below the following information.

Proceedings cited in the Joint Communication have been initiated by municipalities, which represent the local government and are independent from the central government of Prime Minister Mateusz Morawiecki. Municipalities receive their mandate in separate democratic elections and are free to support their point of view in their own, publications in print and on-line media as well as to lodge civil, criminal or administrative proceedings in support of their agenda, including the right to sue the central government or its agencies.

In case of particular lawsuits against Mr. Bart Staszewski, which are of civil nature, they cannot “criminalize” the activist, but are aimed at protecting the reputation of the municipalities. In his social media, Mr Bart Staszewski reports on court proceedings he has or is planning to initiate against persons, who in his opinion have stigmatized him and retweets information about investors reportedly withdrawing moneys from municipalities portrayed in his photo campaign.

The Polish civil law system is based on the principles of universal access, granting every person and entitled entity the ability to protect her rights, without the need to issue court fees in prohibitive amount or the necessity for the claims to pass a test of probability. Polish civil proceedings also do not set a minimum dispute value, allowing every claim to go through appeal proceedings, heard in a devolutive way (by a different judge at second instance court) with suspensive effect (the first instance order is not enforced before the appeal has been considered). These guarantees may prolong proceedings, but in connection with very few types of cases requiring assistance of a professional lawyer – contribute to granting everyone the right to file lawsuits and complain against disadvantageous court decisions. This right is mirrored by the risk of being sued by other persons or entities, who file action against the individual for e.g. damages, request that he abstains form a given action or publish a written apology. Public persons, who engage in the field of business, artistic or legal actions in Poland, have to face the increased risk of having to respond to lawsuits of persons unhappy about their statements, advertising or publications. They are not automatically protected from

liability by their fame or wealth and have to respond to civil charges in the same manner as other citizens do. Activists are free to hire a lawyer of their choice or request legal aid. Insurance companies offer a wide range of products protecting from abusive litigation or bogus cases. Since the losing party is obliged to cover her own expenses, as well as costs incurred by the winner (for lawyers, travels, lost income) and the court (e.g. in case of expert opinions requested by the judge), making false accusations doesn't harm the defendant, but can be costly for the plaintiff. Winning the first court proceedings usually deters further accusations of similar content, but in the continental civil law system doesn't enjoy precedent value.

In case of criminal proceedings, based on Art. 212 of the Polish Criminal Code, it has to be noted, that the person charged for slander remains not guilty in case her accusations against a person holding a public office or for a socially justified reason were found to be true, even if made publicly in mass media (art. 213 of the Criminal Code). The crime requires, that the injured person or entity has been humiliated or lost respect because of the accused' statements. Fines adjudicated for this offence can be very modest, incomparably lower to damages ordered in civil proceedings, where an adequate causal link was confirmed between the defendant's statements and damage to property of the claimant.

The Polish government is not party to civil or criminal proceedings against Mr. Bart Staszewski initiated by the cited municipalities. Regardless of the foregoing, it should be reminded that the Constitution of the Republic of Poland grants autonomy to local government units, as separate public entities, with respect to the performance of tasks they are entrusted with, subject to judicial protection. Therefore, local government participates in the exercise of public power, and performs the substantial part of public duties which it is empowered to discharge by statute in its own name and under its own responsibility (Article 16(2) of the Polish Constitution). This means that, within the boundaries of the law, local government units independently perform individual tasks based on the competences reserved for its authorities. The self-governing nature of units of local government is protected by the courts (Article 165(2) of the Polish Constitution). In these circumstances, it is not allowed to view the case file at independent courts or to issue comments on pending court proceedings, in particular by sympathizing with either party. Therefore, we regret not being able to respond to the third question without interfering with the government's impartiality in proceedings it is not party to.

Municipalities, which have issued resolutions on "LGBT ideology" have the same duties in preventing and combatting discrimination, in particular against LGBT persons, as other municipalities in the Polish three level system of local government. All projects using funding by the European Union have to meet the common horizontal values of non-discrimination and equal treatment. Information obtained from the respective voivodship offices shows that 35 resolutions (declarations/positions) have been adopted with respect to so-called "zones free from LGBT ideology" across the whole country, whereas a total of 12 administrative court rulings in this matter have been provided by voivodship offices.

The voivods have not interfered with the resolutions/declarations/positions of resolution-passing bodies at local government units concerning LGBT ideology that have been sent to supervisory authorities; they have not issued supervisory decisions with respect thereto or lodged complaints with administrative courts. This was due to the fact that the opinions expressed in the aforementioned acts, in the view of the supervisory authorities, did not constitute acts of local law or other acts of individual nature; no binding provisions have been included therein which would bear specific legal (including standard-setting) consequences. The aforementioned resolutions (declarations, positions) were merely of a declaratory nature, wherein representatives of given local government communities expressed their views. It is furthermore worth noting that the resolutions/declarations/positions of resolution-passing bodies at local government units provided, concerning LGBT ideology, were not uniform as to their content. The majority opinion of administrative courts interprets the resolutions as non-binding declarations, which do not impose duties or award rights to individuals. Their nature is declarative. None of the resolutions discriminates minorities, impairs the legal or factual situation of LGBT citizens or discourages sexual minorities from coming out, assuming public offices or participating in public tenders or competitions. The Polish Constitution provides for protection of privacy and family life, preventing LGBT persons from unsolicited outing or questioning their orientation.

Additionally, as for information on measures in place to prevent, investigate and punish discrimination on the basis of sexual orientation and gender identity, please be informed that tasks related to Police prevention of hate crime offenses fit into Priority 1 of the Commander-in-Chief of Police for 2019-2020, i.e., Increasing efficiency of Police efforts to strengthen cooperation with society. Tasks assigned to this Priority included, among other things, adjusting Police efforts to needs diagnosed in the area of preventing social threats. Given the significance of this problem, prevention of hate crime was also incorporated into Priority 3 of the Commander-in-Chief for 2021-2023, i.e., Increasing efficiency of Police efforts to satisfy social expectations. Tasks serving to achieve this priority include adjusting Police prevention efforts to diagnosed social threats, such as hate speech.

Considering how serious hate- and prejudice-motivated crime is, and, at the same time, how important it is to protect the rights of minority representatives in Poland, the National Police Headquarters developed a Police Action Plan 2018-2021 preventing the promotion of fascism and other totalitarian regimes, and offenses of incitement to hatred on the grounds of national, ethnic, racial and religious differences, or for reason of lack of any religious denomination, hereinafter referred to as the Plan. Police prevention efforts, as assumed in the Plan, were to lead to the promotion of a life that was free of discriminatory behaviour, and to the reduction of any forms of infringement on human dignity. Social Prevention Coordinators, actively supported by Plenipotentiaries of the Regional/Warsaw Metropolitan Police Commanders for Human Rights, are responsible for the implementation of the Plan. Groups engaged in efforts in this area include children, adolescents, parents, teachers and journalists, as well as active members of minority unions and associations who work towards equality and social assimilation.

The National Police Headquarters also gathers information on efforts in this area that are planned by organisational units of the Police. These include, among others, such forms of prevention efforts as:

- information and educational campaigns involving meetings in schools with children and adolescents, parents, and teachers, touching upon the subject of equality and tolerance;
- training for Police officers, workshops, conferences (in collaboration with various entities, including local government authorities, education superintendents, representatives of churches and religious associations, and higher education institutions);
- cooperation with national and ethnic minority associations;
- media releases on hate crime, information concerning assistance and support points for foreigners as well as concerning security principles in our country published in various languages on websites.

To summarize the number of actions that the Police has taken to prevent hate crime in recent years, in 2019, the Police officers undertook 197 interventions and ad hoc measures, 231 in 2020, while there were 442 in the first half of this year. It must be stressed that in 2020-2021, the nature of these efforts was closely linked to the situation that Poland was dealing with due to the COVID-19 pandemic.

Given the topicality of issues covered by the aforementioned Plan, the National Police Headquarters made the decision to implement a similar document for 2022-2025. The Headquarters is currently developing it in consultation with the Regional/Warsaw Metropolitan Police Headquarters and police schools. It is worth recalling that the Plan stipulates for periodic meetings of coordinators of Regional/Warsaw Metropolitan Police Headquarters who are responsible for the implementation of the Plan and representatives of police schools holding specialist courses in hate crime. These have been organized annually since 2019. Their purpose is to discuss potential problems, and to exchange practices and experiences related to taking prevention efforts regarding hate speech and hate crime.

I also kindly wish to inform you that currently applicable legal regulations do not provide for a separate category of offenses in which the victims would be the people discriminated against on the grounds of sexual orientation or gender identity. The Polish Police takes action provided for in the law in each instance where it receives an offense notification or becomes aware of an offense.