



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

4200/67-3/2022/349

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 situation of human rights defenders; 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 2/2022) 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, 11 April 2022

**Special Rapporteur on the human rights defenders  
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 2/2022 of 15 February 2022)**

***April 2022***

Replying to the Joint Communication from Special Procedures (the Special Rapporteur on the situation of human rights defenders; 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 multiple legal cases brought against *Atlas of Hate* for defending the rights of lesbian, gay, bisexual and transgender (LGBT) individuals (AL POL 2/2022 of 15 February 2022), please find below the following information.

The non-governmental organization *Atlas of Hate* participates through its website in public debate concerning the resolutions, appeals and declarations on “LGBT ideology” or accepting the “Charter on the Rights of the Family” (SKPR) passed by local governments in Poland. Participants of this public debate enjoy freedom of expression, which is only limited to the extent necessary in democratic society by precise provisions of law. An individual, legal entity or other organization, which feels violated by public statements of another person may request the author of the offensive statement to recall it, publish a correction or disclaimer, delete the publication and in case she has suffered damage – apply for compensation. For such proceedings, the provisions of i.a. the Civil Code, Code of Civil Proceedings and the Law on the Press apply. Public proceedings have two instances, with parties entitled to assistance of professional legal representatives and if required – the participation of the Ombudsman (Commissioner for Human Rights) or representatives of non-governmental organizations protecting human and citizens’ rights. As a general rule, the unsuccessful claimant in civil proceedings has to issue not only his own costs, but also come up for costs incurred by the defendant, including i.a. the defendant’s lawyers, travel expenses and lost profits, as well as by the court (e.g. in case of interpretation or expert opinions requested by the judge). In case of financial claims, the court assesses, whether they are justified and adjudicates only an amount congruent with the confirmed damage. The amount of ██████████ mentioned in a local government’s lawsuit can not only be challenged by the *Atlas of Hate*, but will also full under meticulous examination of the impartial judge.

The separation of powers between the government and local government (communes, counties and voivodeships / provinces) implies, that court proceedings with participation of local governments are generally indifferent to the central government, unless they do not concern on the use of public funds or carrying out tasks imposed by statute. The Polish government is not being notified by the local government or court about filing a lawsuit by or against the local government nor being updated about the proceedings and issued judgment.

The Office of the Government Plenipotentiary for Equal Treatment acknowledges, that the fact, that 7 out of over 100 local governments mentioned at the *Atlas of Hate* website for having adopted at one stage a resolution on “LGBT ideology” or the “Charter on the Rights of the Family” decided to sue the authors of this publication does not comprise an organized and mass court action, matching the characteristics of a Strategic Lawsuit Against Public Participation (SLAPP). Councils of local governments recalled in the joint communication (Przysucha county, Tatra county, Tarnów county, Przasnysz county, Opoczno county, Gromadka commune, Łowicz county) indicate a diversified composition, consisting of different political parties and a large representation of independent members elected from local candidates’ lists. Nonetheless, some of the resolutions on “LGBT ideology” or accepting the “Charter on the Rights of the Family” have been passed unanimously. The lawsuits cannot be therefore regarded as an organized action of a specific political party or organization, but considered as a reaction aimed at protecting the reputation of the local community, represented by the local government. None of the 5 regional parliaments (council of the voivodeships) and none of the town or city councils (including Biała Podlaska, Nowy Sącz and Przemyśl) decided to join the list of local governments engaged in court proceedings.

The Polish government cannot prevent any person, organization or institution independent from the central government to make use of their right to a fair trial, including the right to request a judicial resolution of an alleged violation of their personal rights, e.g. reputation. It also cannot interfere with proceedings under way between such independent persons, organizations or institutions, in particular by obstructing court actions or disrupting the process in another way.

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. So far, no resolution of municipalities dealing with “LGBT ideology” was overruled by second instance administrative court or found illegal by the governmental Provincial Governors (wojewoda). 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, as in case of the commemoration of historic events or figures. 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.

Regarding the question of providing a legal basis arising from international law to justify the deprivation of funding for organisations peacefully taking action to provide greater protection for LGBT people, as indicated by the content of *the Local Government Charter of Family Rights*, it is useful to draw attention to the non-normative and declaratory nature of

such documents. These documents constitute *de facto* a collection of ideological views and demands that are not a source of rights or obligations. Public authorities are in no way bound by the call to reduce funding for NGO's contravening the Polish Constitution or other laws of the country – and to our knowledge – no pattern of correlation could be identified between the fact of adoption of a resolution on “LGBT ideology” or accepting the “Charter on the Rights of the Family” and funding of organizations or events focused on LGBT persons on the territory of the local government in question.

It should also be noted that the rules of funding non-governmental organisations are regulated by the provisions of commonly binding law, including in particular the Act of 24 April 2003 *on Public Benefit and Volunteer Work* (Journal of Laws of 2020, item 1057, as amended), which in Article 5(3) among the principles of cooperation between public administration bodies (government and local government) and non-governmental organisations specifies the principle of partnership, the principle of fair competition and the principle of openness. Also, as it was mentioned above, project funding from EU resources and other foreign sources is based on non-discriminatory criteria.

At the same time, in the light of Article 101(1) of the Act of 8 March 1990 *on the Municipal Government* (Journal of Laws of 2022, item 559, as amended), anyone who demonstrates that their legal interest or right has been infringed by a resolution or an order made by a municipal body in a matter of public administration may challenge the resolution or order before an administrative court.

Furthermore, it should be mentioned that the Polish Police follows the motto „we help and we protect [pomagamy i chronimy].” The value of this operating philosophy is to help and protect every person, regardless of sexual orientation, gender identity, or gender expression. The guarantee of equal treatment is provided both by the *Police Act* and the *Order No. 805 of the Commander-in-Chief of the Police [KGP]* of 31 December 2003 on the principles of professional ethics of a police officer. There are no known cases in which, under the influence of local laws enacted by local authorities, police officers would be involved in activities that could have an impact on the radicalisation of social attitudes in the context of LGBT people, let alone stigmatising, antagonising, etc. It should be emphasised that police training includes topics related to LGBT people in the context of social minorities, whose representatives may be victims of discrimination or hate crimes. Moreover, the advocates of LGBT rights who seek to affect change in societal attitudes in a manner that is peaceful and consistent with the canons of law are treated by law enforcement as equal to other activists.

In conclusion, it is important to emphasise that LGBT people and those who identify with the LGBT movement are treated on an equal footing with all other citizens in Poland. Polish law protects people who identify with LGBT groups on an equal basis with others through general criminal laws that prohibit violence, defamation, or harassment against all citizens and foreigners. The Polish authorities strongly condemn all acts of aggression against any of the citizens or foreigners residing in the territory of the Republic of Poland.