

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL POL 1/2019

5 March 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a civil lawsuit filed against **Adam Bodnar**, the Commissioner for Human Rights of Poland. Adam Bodnar has been the ombudsperson of Poland since 9 September 2015, and has consistently spoken out against the spread of hate speech, and on the obligation of the government to create an environment where hate speech is not tolerated.

According to the information received:

On 11 February 2019, the public broadcaster of Poland, Telewizja Polska SA (TVP) filed a civil action lawsuit against Adam Bodnar, for the violations of personal rights (right to reputation), and demanded an apology from him, as well as the payment of a sum of PLN 25.000 for the benefit of a specified charity. This move follows an earlier attempt by TVP to achieve a similar apology and payment by threatening to file a lawsuit.

The civic lawsuit in question is related to statements made by Mr Bodnar in his professional capacity in an interview he gave on 16 January 2019, in which he criticized the coverage by the public broadcaster of Mr Pawel Adamowicz, the former mayor of Gdansk who was murdered on 14 January 2019. According to an analysis carried out by a private media company, TVP broadcast coverage about Pawel Adamowicz about 1.800 times during the course of 2018. These broadcasts consistently portrayed the mayor of Gdansk in a negative light, by calling him a 'criminal, and impostor, a person who is acting under bribes' among others, and without giving him the opportunity to refute these accusations and negative portrayals.

In the TV interview in question, the ombudsman, Mr Adam Bodnar, mentioned, in a general way, that such materials by the public broadcaster have the potential of contributing to an atmosphere of pressure and to the incitement of hatred against Mr Adamowicz. The statements made by the ombudsman did not attribute direct responsibility to TVP for the actions of the murderer of the former Gdansk mayor. The ombudsperson stressed that he was not aware of the motives of the

perpetrator, and was unable to determine whether there was a relationship between the programming of TVP about the late Gdansk mayor, and the motivations of the perpetrator.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concerns regarding the civil action brought against Mr Adam Bodnar in his personal capacity, for statements made in his professional capacity. We are of the view that it is clearly within the mandate of ombudspersons and national human rights institutions in general to reflect on the actions of national (public) media, especially in a broader context of concerns, in accordance with relevant provisions of international human rights law. National human rights institutions play a key role in promoting and protecting human rights and any restriction or pressure, including in the form of civil lawsuits, may have a significant chilling effect on the ability of the NHRI to carry out its key functions.

We would like to recall that according to Article 19 of the International Covenant on Civil and Political Rights, ‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual grounds that have justified the charges brought against Mr Adam Bodnar.
3. Please provide information regarding strategies, action plans or programmes, aimed at ensuring that the office of the national commissioner for human rights is able to carry out its mandate in full independence, without any fear of legal sanctions or other repercussions, including budget cuts.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In this regard, we would like to remind your Excellency's Government of the internationally recognized standards on the right to freedom of opinion and expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Poland in 1977.

Article 19(1) of the ICCPR protects the right to "hold opinions without interference." Article 19(2), which protects the right to freedom of expression, states that this right shall include the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [or her] choice." Under Article 19(3), any restrictions on freedom of expression must be "provided by law", proportionate, and necessary for "respect of the rights and reputations of others", "for the protection of national security or of public order, or of public health and morals".

We also wish to draw the attention of your Excellency's government to the Paris Principles (UN GA resolution 48/134), according to which national human rights institutions (NHRIs) "shall be vested with competence to promote and protect human rights". The Paris Principles further state that "within the framework of its operation, the national human rights institution shall address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations".

Furthermore, both the UN General Assembly and the UN Human Rights Council have consistently emphasized in their respective resolutions that "national human rights institutions and their respective members and staff should not face any form of reprisal or intimidation, (...) as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries". (see UN GA resolution 72/181, para 11 and UN HRC resolution 39/17, para 4).

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms and to article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the

observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

We also wish to draw the attention of your Excellency's government to the recommendation it accepted during its consideration by the Universal Periodic Review, which, among others, included that "(t)he independence [of the Polish Commissioner for Human Rights] must not be compromised by legislative, administrative or political measures" (A/HRC/36/14/Add.1, 120.32).