

**Mandates of 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**

Ref.: AL POL 6/2021  
(Please use this reference in your reply)

18 November 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of 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 and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 43/16, 46/9, 43/4 and 41/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminalisation of a defender of the rights of lesbian, gay, bisexual, trans and gender diverse (LGBT) persons, due to his artistic expression as a legitimate exercise of his right to take part in cultural life and in social debates on decisions and policies that have an impact on the rights of LGBT persons.

Mr. **Bart Staszewski** is a human rights defender of the rights of LGBT persons and documentary film-maker in Poland. He is a co-founder of Lublin Equality March Association, an organisation which coordinates annual peaceful demonstrations in the city of Lublin against discrimination on the basis of sexual orientation and gender identity. In 2019, Mr. Staszewski was awarded the European Tolerantia Award for his human rights work.

We previously communicated concerns to your Excellency's Government on the alleged targeting of defenders of the human rights of LGBT persons in communications POL 3/2021 sent on 26 February 2021 and POL 1/2020 sent on 20 January 2021. In the latter we raised specific concerns regarding the municipal resolutions declaring the "local governments free from LGBT ideology".

We thank your Excellency's Government for the responses received to both communications. In the reply by your Excellency's Government to POL 1/2020, we welcome the statement that "[t]here is an open, free debate going on in Poland about the ['free from LGBT ideology'] resolutions, without the participation of state authorities". We however regret that in the following paragraph, your Excellency's Government commented negatively on the work of Mr. Bart Staszewski, despite the fact that Mr. Staszewski had not been mentioned in the communication.

According to the information received:

In 2020, Mr. Bart Staszewski launched a photo project titled Zones, in which he briefly hung and photographed signs outside Polish towns that had passed symbolic resolutions declaring themselves to be "free from LGBT ideology". The signs, which read "LGBT-free zone" in four languages, were placed alongside road signs of the town's name. He took down the "LGBT-free zone"

signs after the photographs were taken. The project aimed to draw public attention to the declarations.

In September and October 2020, representatives of the municipalities of Zakrzówek, Tuszów Narodowy and Niebylec, who were among the towns featured in the project, filed lawsuits for “defamation” against Mr. Staszewski under Article 23 of the civil code. The proceedings were filed on the basis that Mr. Staszewski’s art project portrays the towns as “LGBT-free zones”, which differs from the wording of the resolutions, local governments “free from LGBT ideology”. They reportedly argue that the artwork is misinformation, misleads the public and is, by consequence, defamatory.

Mr. Staszewski’s first hearing in the defamation case brought against him by the municipality of Zakrzówek was due to be held on 30 September 2021, however it was delayed until 25 November 2021 for technical reasons. If convicted, the prosecution is requesting that Mr. Staszewski makes a public apology.

The court dates for defamation hearings filed by Tuszów Narodowy and Niebylec against Mr. Staszewski have yet to be announced.

Mr. Staszewski has reportedly been stigmatised in the press and by public figures. After the campaign launched in 2020, Prime Minister Mateusz Morawieck accused Mr. Staszewski of carrying out a “hoax”. In a televised interview in October 2021, President Andrzej Duda called Mr. Staszewski “radical” and “aggressive” and labelled the campaign as “fake news”. He has also reportedly been receiving multiple death threats online.

Without wishing to prejudge the accuracy of the information received, we express our deep concern with regards to the defamation cases brought against Mr. Staszewski by Polish municipalities, which appear to target his work advocating against discrimination based on sexual orientation and gender identity. We see little difference between the practical consequences of differentiating between “LGBT-Free” zones or local governments “free from LGBT ideology”, as in both cases it appears that the objective is to eliminate the possibility of LGBT persons to enjoy their rights, including their right to freedom of movement and residence, and to freely express their sexual orientation and gender identity publicly. In this regard, we are deeply concerned that Mr. Staszewski is being stigmatised and criminalised for his legitimate human rights activities, for questioning public policies and for his artistic expression. Mr. Staszewski’s artistic expression is a legitimate exercise of his right to take part not only in cultural life, but also in social debates on decisions and policies that have an impact on human rights. We are also deeply concerned by comments made by high ranking public officials stigmatising the work of Mr. Staszewski. Such comments are detrimental to the legitimacy of the work of human rights defenders, particularly defenders of LGBT rights, who face additional risks based on their sexual orientation and/or gender identity. We are concerned that such comments may fuel threats and attacks against LGBT persons and rights defenders. Furthermore, we wish to stress that artistic freedom has to be respected especially when radical, provocative or aggressive, as this is when it is most vulnerable. International standards on artistic freedom do not require accuracy of art projects.

Criminal defamation laws, particularly those that accommodate public officials bringing defamation claims against criticism of their activities in public office, are detrimental to the enjoyment of the right to freedom of opinion and expression and the right to take part in cultural and political life and should be revoked or revised. We remind your Excellency's Government that criminal law should be used against speech only in very exceptional and most egregious circumstances of incitement to violence, hatred or discrimination. We are concerned that anti-defamation laws in Poland facilitate strategic litigation against public participation (SLAPP) by allowing for the judicial harassment of those exercising free speech and provoking public debate on human rights issues.

In light of communications POL 3/2021 and POL 1/2021, and despite assurances from your Excellency's Government to the contrary in the responses received, we are deeply concerned that the case against Mr. Staszewski is demonstrative of a broader context of discrimination against LGBT persons in Poland.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 comments you may have on the above-mentioned allegations.
2. Please explain how local governments' "free from LGBT ideology", in a theoretical and practical sense, comply with your obligations under international law to not discriminate on the basis of sexual orientation and gender identity.
3. Please explain the legal basis for the charges against Mr. Bart Staszewski and how they are compatible with Poland's obligations under international law, in particular obligations towards freedom of opinion and expression and the right to take part in cultural life.
4. Please provide information on measures in place to prevent, investigate and punish discrimination on the basis of sexual orientation and gender identity, including comments made by public officials.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. 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.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Alexandra Xanthaki  
Special Rapporteur in the field of cultural rights

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

Victor Madrigal-Borloz  
Independent Expert on protection against violence and discrimination based on sexual  
orientation and gender identity

## **Annex**

### **Reference to international human rights law**

The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Under Articles 1 and 2 of the Universal Declaration of Human Rights (“UDHR”), “[a]ll human beings are born free and equal in dignity and rights”, and “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. This principle is reaffirmed by other human rights treaties, including Article 2 (1) of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), both ratified by Poland on 18 March 1977. The jurisprudence, general comments and concluding observations of United Nations treaty bodies have consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law.

The Human Rights Council, in its resolutions 17/19, 27/32, 32/2 and 41/18, expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

The United Nations High Commissioner for Human Rights echoed this concern and emphasized that States have an obligation to ensure equal protection before the law, freedom from discrimination, to prohibit and prevent discrimination in private and public spheres and to diminish conditions and attitudes that cause or perpetuate such discrimination (A/HRC/29/23, para. 16). He further stated that to this end, States should enact comprehensive anti-discrimination legislation that includes sexual orientation and gender identity among protected grounds, that States should review and repeal discriminatory laws and address discrimination against LGBT and intersex (“LGBTI”) persons, including in the enjoyment of the rights to health, education, work, water, adequate housing and social security (Ibid., paras. 16 and 79 (c), A/HRC/19/41, para. 84 (e)).

States have an obligation to guarantee to everyone the rights to freedom of opinion, expression, association, and peaceful assembly, without discrimination (Articles 19 and 20 (1) of the UDHR, Articles 19, 21, and 22 (1) of ICCPR, and Articles 1, 2, 5 and 6 of 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). Limitations on these rights that are based on sexual orientation or gender identity violated international human rights norms and standards.

Article 19 of the ICCPR guarantees for all the right to freedom of expression, which includes “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 interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one’s own and on public affairs, cultural and artistic expression, and discussion of human rights (para. 11) as well as expression of criticism or dissent. Under Article 19 (3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it

seeks to serve. In this context, we recall that in its General Comment no.34, the Human Rights Committee states that defamation laws must be crafted with care to ensure ensure that they comply with article 19 (3), and that they do not serve, in practice, to stifle freedom of expression, and that such laws, in particular penal defamation laws, should include such defences as the defence of truth and should not be applied with regard to those forms of expression that are not, of their nature, subject to verification (CCPR/C/GC/34). As interpreted by the Human Rights Committee, article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (*idem*, paragraph 23).

The former Special Rapporteur on the situation of human rights defenders highlighted that defenders promoting the rights of LGBT persons are often the target of numerous attacks and the lack of any protection under the law or in practice exacerbates the vulnerability of those defenders (A/70/217, para. 65-66). Therefore, he recommended that States adopt the following measures: (i) do more to disseminate the work of defenders and to support their work through campaigns and specific communication and information activities that pay tribute, in particular, to the contributions made by certain categories of defenders, such as the rights of LGBT persons, (ii) conduct impartial investigations and ensure that the perpetrators of violations against the rights of defenders are brought to justice, and (iii) provide State agents, especially those who are in direct contact with communities of defenders, with the necessary training regarding the role and rights of defenders and regarding the Declaration on human rights defenders (*Ibid.*, paras. 93 (a), (e) and (i)).

We would also like to refer your Excellency's Government to article 15 of the ICESCR, which states that everyone has the right to take part in cultural life, without discrimination, to exercise both scientific and artistic freedoms, and to benefit from scientific progress and its applications. This includes the right to participate in the definition and implementation of policies and decisions that have an impact on the exercise of cultural rights, to contribute to debates that shape society (see A/HRC/37/55, para. 15; and E/C.12/GC/21, para. 15 (c)).

It also includes the obligation from State Parties to respect the freedom indispensable for creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d). The Special Rapporteur has also noted that socially engaged artistic initiatives and the exercise of cultural rights “provide crucial opportunities to build capacity for critical thinking,” which is vital in a democracy.