

Mandates 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
(Please use this reference in your reply)

15 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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, 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 **multiple legal cases brought against Atlas of Hate for defending the rights of lesbian, gay, bisexual and transgender (LGBT) individuals.**

Atlas of Hate, also known as Atlas nienawiści, is a civil society organisation founded in Poland in 2019. Through the website of the same name, the organisation gathers and disseminates information on resolutions adopted by local governments in Poland that allegedly discriminate on the basis of sexual orientation and gender identity, as well as further attempts to introduce discriminatory resolutions.

We regret that this is the fourth occasion in just over 12 months that we communicate concerns to your Excellency's Government regarding acts of discrimination against LGBT persons and LGBT human rights defenders in Poland. We thank your Excellency's Government for the replies received to all three previous communications, POL 6/2021 sent on 18 November 2021, POL 3/2021 sent on 26 February 2021 and POL 1/2020 sent on 20 January 2021, which convey positive messages about the full enjoyment of rights of LGBT people, however we regret that defenders of those rights continue to be targeted, particularly by means of strategic litigation and stigmatising public discourse which significantly impedes their ability to carry out their work.

According to the information received:

Atlas of Hate began collecting data on local government resolutions that discriminate against LGBT persons in the summer 2019 and launched a website to showcase the data in November of the same year. The organisation collects data mainly on two types of resolutions, both of which are declaratory in nature: those declaring certain zones "free of LGBT ideology" and those related to the enactment of a "Charter on the Rights of the Family".

The Charter of the Rights of the Family (or "the Charter") was drafted and advocated for by Ordo Iuris Institute for Legal Culture (hereafter Ordo Iuris), a foundation based on religious principles, whose declared aim is "to protect the Constitution of Poland". Ordo Iuris claims that the aim of the Charter is "to promote the constitutional principles of protection of the family, marriage,

parenthood and motherhood”, “protection of family life” and “protection of children against demoralization”.

The Charter on the Rights of the Family makes no specific mention of sexual orientation and gender identity, however it was reportedly created as a reaction against an increased interest in supporting the human rights of LGBT persons in Poland, and against two initiatives in particular. Indeed, on 29 March 2019, Ordo Iuris argued that the adoption of the Charter was necessary in order to defend Polish values in the face of “ideological postulates” and “demoralisation” of children caused by Warsaw’s “LGBT+ Declaration”, and to stop the “propaganda campaign” Rainbow Friday. The “LGBT+ Declaration” launched by the mayor of Warsaw in February 2019 outlined ways for the local government to support the rights and wellbeing of the city’s LGBT community, for example by the provision of shelter for LGBT youths and including LGBT experiences in anti-discrimination and sex education curriculums in schools. Rainbow Friday is an annual event launched by a Polish NGO in schools to show support for LGBT youth. Furthermore, a coordinator behind the development of the Charter said in March 2020 that the Charter is a response to “threats” from “LGBT ideology and gender ideology”.

The Charter notably says that organisations which “undermine the constitutional identity of marriage as a relationship between a man and a woman or the autonomy of the family” should be excluded from receiving public funds.¹ This may impact the work of LGBT human rights organisations which, among their human rights activities, advocate for the recognition and protection of non-heteronormative families. The Charter on the Rights of the Family was adopted by 40 local governments in total. Six have reportedly since been repealed.

The Atlas of Hate online interactive map monitors local governments that have passed a declaration on either the LGBT free zones or the Charter on the Rights of the Family, or both. Atlas of Hate categorises both declarations as discriminatory on the basis of sexual orientation and gender identity.

Beginning in February 2020, some local governments announced that they would bring legal cases against the authors of Atlas of Hate for alleged defamation, for displaying regions which have enacted the Charter on the Rights of the Family as areas that discriminate on the basis of sexual orientation and gender identity. Atlas of Hate has so far been sued for defamation by seven local governments.

Przysucha county sued Atlas of Hate under articles 23 and 24 (on the protection of personal rights), article 43 (on the protection of a legal person) and article 448 (on the breach of personal good) of the Civil Code in April 2020, followed by Tatra county in November 2020, Tarnów county and Przasnysz county in February 2021, Opoczno county in May 2021, Gromadka commune in June 2021 and Łowicz county in October 2021. A date for the first hearing in each of these cases has reportedly not yet been announced.

¹ The version of the Charter adopted by Tatra county and Lodzkie voivodship reportedly do not contain this wording.

Przasnysz county is the only case that has reached the trial stage at the date of the present communication. The final hearing of the first instance took place at the district court in Ostrołęka on 29 December 2021. The case was dismissed, however the plaintiff has announced that it plans to appeal the decision.

If Atlas of Hate lose a lawsuit they are to be fined 20,000 złoty (approx. 4,400 EUR), which must be paid to a local social organisation. They must release a statement on the Atlas of Hate website, read out an apology in front of the European Parliament building at the expense of the defendants and issue an apology in the Polish Press Agency at the expense of the defendants. This would be repeated for every lawsuit that they lose.

Without prejudging the accuracy of the information received, we wish to express our deep concern with regards to the multiple legal cases against the human rights organization Atlas of Hate, which appears to be targeted for its legitimate defence of the human rights of LGBT persons and exercise of freedom of expression to promote these rights. We are deeply concerned that the Charter on the Rights of the Family may have been enacted in an effort to stymie the further realisation of the rights of LGBT persons in Poland, and defamation legislation misused in an attempt to silence those who collect and share information on the matter.

We are particularly concerned by the legal action against Atlas of Hate as it appears to take place in the context of widespread strategic litigation against public participation (SLAPPs) against defenders of the human rights of LGBT people in Poland. We refer in particular to communications POL 3/2021 and POL 6/2021. While we thank your Excellency's Government for your willingness to engage on these issues in the replies received, we are concerned that the threat that SLAPPs pose to legitimate human rights work in Poland is not fully appreciated in the reply. Your Excellency's Government argues in response to POL 6/2021, that "making false accusations doesn't harm the defendant, but can be costly for the plaintiff." However, a legal framework that allows for litigation against the legitimate defence of human rights can be harmful in several ways to the defendant, as demonstrated by the number of cases against Atlas of Hate as demonstrated in the present letter, Bart Staszewski in POL 6/2021, and others. The ease with which legal proceedings can be brought against activists, leaves them less time to engage in their rights-based work. The increasing use of the insult and defamation laws appears to be part of a systemic approach in recent years to stifle criticism of the government and create a chilling effect on freedom of expression in Poland.

States' positive obligation to facilitate the exercise of the rights of freedom of expression, peaceful assembly and association includes, among others, the duty to establish and maintain an enabling environment for civil society to operate freely. As noted in an information note by the former UN Special Rapporteur rights to freedom of peaceful assembly and of association, "SLAPPs use a range of tactics to exhaust resources, campaign capacity and morale". In this regard, we are concerned that abusive litigation may intimidate others, including journalists, anti-corruption activists, legal experts and minority groups into silence, or facilitate negative impacts on their mental health, or that of the community they defend. Furthermore, regardless of the outcome of the cases, multiple lawsuits against the protection of the rights of certain groups in society may fuel the stigmatising public discourse about that group, leading to further discrimination and possibly violence.

We are furthermore deeply concerned that, if as reported the Charter on the Rights of the Family could lead to the withdrawal of funding or other restrictions for organisations that advocate for same-sex marriage or the rights of families with same-sex parents, the Charter would negatively impact the full and free enjoyment of LGBT persons of their rights. While speech made by Ordo Iuris would not breach international standards on freedom of expression, we are concerned that such comments would indicate that the intention of the Charter is indeed to prevent the full realization of the rights of LGBT persons. Additionally, while the protection of the family is a legitimate and important concern, the conceptualisation of the family in the Charter, and punitive action it recommends against those who advocate for a broader interpretation of family and marriage, would also mean that this Charter is discriminatory, on the basis of sexual orientation and gender identity.

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 provide information on measures in place to prevent strategic litigation against public participation in Poland, in particular with regards to the defence of rights of LGBT people.
3. Please provide information on the basis in international law for which funding can be withdrawn from organisations which peacefully advocate for constitutional changes, with specific mention in this case of advocacy related for greater constitutional protections for LGBT persons.

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

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 former 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 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, paragraph 47). 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). States parties should not prohibit criticism of institutions, such as (...) the administration (*idem*, paragraph 38). The Committee also stressed that ‘care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party (*idem*, paragraph 47).

Additionally, laws restricting the rights enumerated in article 19, paragraph 2 must not violate the non-discrimination provisions of the Covenant (*idem*, paragraph 28).

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)).

Finally, 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.

We would also like to remind you of the following articles of the Declaration on Human Rights Defenders, which state that everyone has the right, individually and in association with others:

- Article 6(a): “To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems”.
- Article 6(c) “To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.”
- Article 12(1) “to participate in peaceful activities against violations of human rights and fundamental freedoms”.