

**Response of the Commissioner for Human Rights of the Republic of Poland to the call for inputs of the** [**UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**](https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/graeme-reid)

**To:** **hrc-ie-sogi@un.org**

**Subject line: Input for IE SOGI report on the right to freedom of expression, association and assembly in relation to sexual orientation and gender identity**

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**Information on reporting institution**

The Commissioner for Human Rights (Commissioner) is a constitutional body appointed to protect and supervise the observance of human and civil rights. The Commissioner’s role is performed independently of other public authorities and his powers are set out in the Constitution of the Republic of Poland as well as in the Act of 15 July 1987 on the Commissioner for Human Rights. The Commissioner is appointed by Sejm (lower chamber of the Parliament) with the approval of Senate (higher chamber of the Parliament) for a 5-year term of office. The Commissioner plays the roles of National Human Rights Institution (NHRI) as well as Ombudsman, the National Mechanism for the Prevention of Torture (NPM – visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment), independent equality body (as referred to in the EU anti-discrimination directives) and independent body monitoring the implementation of the Convention on the rights of persons with disabilities (CRPD).

The Commissioner has been performing the tasks of an independent equality body since 2011. It remains within the scope of the Commissioner’s statutory duties to uphold the equal treatment of all persons, including regardless of sexual orientation and gender identity (SOGI).

The Commissioner actively counteracts unequal treatment and discrimination based on SOGI. Below are some examples of policies and practices violating human rights to freedom of expression, association and peaceful assembly of LGBT+ community in Poland between 2013 and 2023.

**Anti-LGBT resolutions**

On March 26 2019 a municipality in Poland (Świdnik[[1]](#footnote-1)) declared itself to be free from “LGBT ideology” and adopted the first so called “anti-LGBT” resolution. The case of Świdnik started a domino effect and in a couple of months over 100 local governments adopted “anti-LGBT” resolutions which cover two types of acts: local councils’ acts which directly mention LGBT matters in their titles or in the content of the act, in most cases by declaring “freedom from LGBT ideology”, and the “Regional Charter of Family Rights”. That is how the information about “LGBT free zone” dominated the international public discourse.

At first the Commissioner counteracted the “anti-LGBT” resolutions with soft measures such as statements addressed to local authorities. This action however did not bring the desired effect. Thus the Commissioner filed nine complaints with the administrative courts seeking the annulment of the resolutions against the “LGBT ideology”. The 9 resolutions were selected based on such factors as territorial jurisdiction and other procedural matters; the alleged level of interference; and the applicability of arguments to the particular act.

The complaints argued that the resolutions violate selected provisions of the Constitution of Poland[[2]](#footnote-2) and administrative law, the European Convention on Human Rights[[3]](#footnote-3) and EU law, i.e. the principle of freedom of movement and the Charter of Fundamental Rights[[4]](#footnote-4). The rule of law, the principle of equal treatment, human dignity, freedom of speech, the right to private and family life and the right to education have been invoked in the complaints.

All of the challenged resolutions were deemed adopted without legal basis and invalid due to a gross violation of the law by the authorities adopting them. The administrative courts found that the resolutions against the "LGBT ideology" constituted discrimination against specific people and created a hostile, offensive and intimidating environment for them. The resolutions thus caused a risk of violence against LGBT+ community. The administrative courts emphasized that no one can be discriminated against by the public authorities on the grounds of their sexual orientation or gender identity.

The Supreme Administrative Court, in its legally binding judgments[[5]](#footnote-5), agreed with the findings of the first instance courts and confirmed that the said resolutions violated human dignity and the prohibition of discrimination.

Due to the fact that the resolutions against “LGBT ideology” were still in effect in some municipalities and districts, the Commissioner in November 2022 appealed to 24 municipalities and 12 districts to take action to repeal them. Most of the local governments to which he applied have so far repealed their resolutions. However, 6 of them did not agree with the Commissioner’s argumentation. That is why the Commissioner filed subsequent complains with the administrative courts and awaits the rulings[[6]](#footnote-6). So far, the Voivodship Administrative Court has deemed 4 of the recently challenged resolutions to be adopted without legal basis and invalid.

**Freedom of Assembly**

Since 2018, simultaneously with a significant increase in the number of equality marches held in Polish cities, there have been increasing limitations in the protection of the right to peaceful assembly, exercised through the participation in the marches, and in the provision of security to participants of such assemblies. In 2019 equality marches came under increased threat from opposing social groups representing homophobic views. An example of particular aggression could be seen during the Equality March in Białystok, held on 20 July 2019, during which physical and verbal attacks took place against the participants of the peaceful and legal assembly.

In addition to the danger posed by counter-demonstrators, a risk appeared for equality marches to be prohibited by municipal authorities, i.e. city mayors who incorrectly applied the provisions of the Act of 24 July 2015 – the Law on Assemblies.
A significant threat to human life or health or to property justifies calling on the organiser of a counter-assembly (counter-manifestation), notified later than the original assembly, to change the place or time of the counter-assembly[[7]](#footnote-7). If the organisers of the assemblies fail to determine the places or times of the assemblies in a way to eliminate a significant threat to human life or health or to property, the organisers should determine the places or times of the assemblies in accordance with the order of submitting their notifications about the planned assemblies. It should thus be concluded that if, in the opinion of the city mayor, there is a significant threat to human life or health or to property, the mayor is required to call on the organiser of the counter-manifestation notified later to change the place or time of that assembly. The equality march organiser should not be requested to change the place or time of their assembly, as first notified. However, for example the organiser of an equality march in Gdańsk in 2016, was called on to make such a change by the Mayor of Gdańsk who referred to the disagreement of the organisers of the counter-manifestation to change the place and time of their assembly.

A significant threat to human life or health or to property, posed by counter-manifesters should not result, in particular, in a prohibition to hold the assembly. Public authorities, when assessing whether a notified assembly poses a significant threat to human life or health or to property, should assess only the behaviour of the organisers and participants of the assembly and not of third parties, and in such assessment the purpose of the assembly may be relevant. Furthermore, as arises from the international and national standards of protection of the freedom of assembly, any restrictions of this freedom should pass the test of necessity and proportionality and should be considered merely an exception. Public administration authorities are required to permit a peaceful assembly also when its participants are expected present ideas that differ from the majority views, and even if there can be attempts by counter-manifesters to disrupt the assembly or make it impossible. The reasons for prohibiting an assembly may not be interpreted in a broadening sense, in particular based solely on general predictions or expectations, and account should be taken of higher values and norms arising from the Constitution and international law.

The Commissioner intervened 7 times in cases of equality marches prohibited by city mayors without proper grounds: in 2018 (Lublin) and in 2019 (Gniezno, Rzeszów, Kielce, Gorzów Wielkopolski, Nowy Sącz, Lublin). When joining court proceedings in which the organisers appealed against the prohibitions, the Commissioner stated that the prohibitions of the marches constituted a disproportionate restriction on this freedom. In all the cases the courts upheld the arguments of the organisers and the Commissioner, and annulled the prohibitions issued by the city mayors.

In recent years, the situation of equality marches has improved as city mayors have stopped prohibiting such assemblies. Their improved protection by the police has reduced the number of aggression incidents that could pose a threat to health or life of participants of equality marches.

On August 7 2020 in Warsaw the police scattered a peaceful demonstration held as an act of solidarity with an LGBTI activist[[8]](#footnote-8). During the incident a number of violations of human rights took place with regard to LGBTI activists and bystanders. The police applied direct coercion measures and used profiling with regard LGBTI persons. Nearly 50 people participating in the protest were apprehended. According to their accounts, they experienced ill-treatment during the night spent in police stations and their access to lawyers was also restricted. They were charged e.g. with participating in a riot, assaulting and insulting police officers and with destruction of property. Among the apprehended persons were also bystanders who had not participated in the protest. According to the testimony of one of the officers on duty on August 7 2020 the police had been ordered to profile people with LGBTI symbols regardless of whether or not they were taking part in the protest[[9]](#footnote-9).

Representatives of the National Mechanism for the Prevention of Torture, operating within the Commissioner’s Office, visited the police stations where the protesters were detained, and gathered accounts of brutality of police officers[[10]](#footnote-10).

**The “STOP LGBT” Draft Legislation**

In 2021, a citizens’ bill amending the Law on Assemblies[[11]](#footnote-11) was submitted to the Sejm. Its aim was to prohibit assemblies, including equality marches, promoting equal rights for LGBTI persons. According to the bill, the purpose of an assembly may not be to “promote” i.a. non-heterosexual orientations, any same-sex relationships or the introduction of same-sex marriage.

In the opinion of the Commissioner, the bill is evidently contrary to the Constitution, the European Convention on Human Rights, the Charter of Fundamental Rights and the International Covenant on Civil Rights.

**Freedom of association**

The Commissioner is aware of a case in which an application for registration of a foundation whose aims included activities for transgender and transsexual persons was rejected[[12]](#footnote-12).

The court found that the aims of the foundation did not fall within the range of aims to which foundations may be established. According to Article 1 of the Act on Foundations[[13]](#footnote-13) a foundation may be established for the pursuit of socially or economically beneficial aims consistent with the fundamental interests of the Republic of Poland, in particular such as: protection of health, development of the economy and science, education and upbringing, culture and art, social welfare and assistance, environmental protection and the protection of historic monuments. The court found that the aims of the foundation were socially beneficial but were contrary to the "fundamental interests of the Republic of Poland". The refusal to register the foundation was also based on the lack of transparency of its statutes that included terms such as transsexual, transgender, non-binary, agender, queer-gender, transvestite and intersex persons. The foundation was registered after the deletion from its statutes of the aim relating to activities for transgender and intersex persons.

In recent years, the pursuit of statutory aims of foundations and associations operating in support of the rights of LGBT persons can also be threatened by an increasing number of attacks on offices of such organisations. On several occasions, the Commissioner has called on law enforcement authorities to take effort to identify the perpetrators of such attacks and to impose adequate penalties on them[[14]](#footnote-14). Criminal proceedings in cases of physical attacks on activists and offices of NGOs operating in support of LGBT persons have been discontinued due to the failure to detect the perpetrators.

***Invasion* by TVP**

On 10 October 2019 the Public Television (TVP) broadcasted a documentary entitled “Invasion” on organisations working in support of non-heteronormative and transgender people and, in particular, peaceful public assemblies. "Invasion" is based on a provocation by journalists from TVP. The information source used in the material is a recording made in secrecy by a TVP journalist who carried out her investigation after having established cooperation with one of the organisations as a volunteer. The material includes also parts of YouTube footage of equality parades held in other countries, and parts of statements by selected public figures, not only about equality marches but also about sex education, LGBT people and alleged threats arising from their equality activities – starting from the negative attitude towards Catholics, up to the associations of LGBT people with paedophilia. The film is narrated in a sensationalist manner to build tension and influence viewers' emotions by causing the feelings of threat, fear and resentment.

On November 18 2019, the Commissioner sent an intervention letter to the President of the National Broadcasting Council (the body competent for dealing with irregularities in television programmes) concerning “Invasion”, stating that it contains content inciting hatred against LGBT people.

One of non-governmental organisations sued TVP for violating their personal rights. On November 21 2022, the Commissioner joined the proceedings. The Regional Court in Warsaw in its (non-final) judgment in principle upheld the claim regarding the protection of personal rights. The court issued a prohibition for TVP to broadcast “Invasion” by any channels and ordered TVP to apologise to the organisation. Furthermore, the court ruled the payment by TVP of PLN 10,000 to a charity purpose to the Lambda Association.

**Equal treatment at schools**

Schools should provide a space for the development and education of young people that is free from discrimination and prejudice and therefore safe. An assessment of the situation in this regard in Polish schools is contained in particular in the Commissioner’s report[[15]](#footnote-15). The main objective of the publication was to diagnose the state of implementation of the principle of equal treatment in primary schools. The data show, among other, that in the opinion of the interviewed teachers, the group most frequently encountering discrimination in the school system are non-heterosexuals (42.5%), slightly less frequently, but still very often, in the opinion of the respondents, transgender pupils face discrimination (40.6%).

1. See: [0stanowisko.pdf (lubelskie.pl)](https://spswidnik.bip.lubelskie.pl/upload/pliki/0stanowisko.pdf) [access 29.01.2024]. [↑](#footnote-ref-1)
2. Journal of Laws of 1997, no. 78, item 483. [↑](#footnote-ref-2)
3. Journal of Laws of 1993, no. 61, item 284. [↑](#footnote-ref-3)
4. OJ.EU.C.2007.303.1. [↑](#footnote-ref-4)
5. Judgments of the Supreme Administrative Court of 28 June 2022 in the cases of: Serniki Municipal Council (case file no. III OSK 4028/21), Osiek Municipal Council (case file no. III OSK 4041/21), Istebna Municipal Council (case file no. III OSK 3746/21) and Klwów Municipal Council (case file no. III OSK 4240/21), of 11 October 2023 in the cases of Lipinki Municipal Council (case file no. III OSK 1527/22) and Tarnów District Council (case file no. III OSK 2078/22), and of 12 October 2023 in the cases of: Niebylec Municipal Council (case file no. III OSK 2177/22), Lublin Voivodship Assembly (case file no. III OSK 2177/22) and Ryki District Council (case file no. III OSK 2204/22). [↑](#footnote-ref-5)
6. Resolutions of: Tuszów Narodowy Municipal Council (case file no. II SA/Rz 1221/23), Mordy Municipal Council (case file no. I SA/Wa 1951/23), Potworów Municipal Council (case file no. VIII SA/Wa 812/23), Kock Municipal Council (case file no. III SA/Lu 531/23), Świdnik District Council (case file no. III SA/Lu 550/23), Zakrzówek Municipal Council (case file no. III SA/Lu 553/23). On 11 January 2024 the Voivodship Administrative Court in Lublin declared the last 3 resolutions invalid, on 25 January 2024 the Voivodship Administrative Court in Warsaw annulled resolution of Potworów Municipal Council. [↑](#footnote-ref-6)
7. Pursuant to Article 12(2) of the Act of 24 July 2015 - Law on Assemblies (version as in Journal of Laws of 2018, item 408). [↑](#footnote-ref-7)
8. The activist had been placed in custody and charged with damaging, on June 27 2020, a van with homophobic slogans on it and assaulting its driver who videorecorded the situation. [↑](#footnote-ref-8)
9. Amnesty International Raport 2022, "«They treated us like criminals» From shrinking space to harassment of LGBTI activists”, pp. 42, <https://www.amnesty.org.pl/wp-content/uploads/2022/07/THEY-TREATED-US-LIKE-CIMINALS-report-on-LGBTI-activists-in-Poland-Amnesty-International-EUR3758822022english.pdf> [access: 29.01.2024].  [↑](#footnote-ref-9)
10. National Mechanism for the Prevention of Torture, “Nie tylko poniżające traktowanie. Raport z Tęczowej Nocy” [Not only degrading treatment. A report on the Rainbow Night], 23 January 2020, <https://bip.brpo.gov.pl/sites/default/files/Raport%20%20KMPT%20z%20wizytacji%20jednostek%20policyjnych%20po%20zatrzymaniach%20w%20Warszawie%207.08.2020%2C%20%207.09.2020.pdf> [access 24.01.2024]. [↑](#footnote-ref-10)
11. Sejm paper No. 26, see: <https://orka.sejm.gov.pl/Druki10ka.nsf/0/F390C55A026D905AC1258A6D006690F0/%24File/26.pdf> [access 24.01.2024]. [↑](#footnote-ref-11)
12. Ruling of the District Court Poznań-Nowe Miasto and Wilda of 22 March 2017, case file no. PO.VIII.Ns-Rej.KRS 4941/17/900 (not published). [↑](#footnote-ref-12)
13. Act of 6 April 1984 on Foundations (version as in Journal of Laws 2016, item 40). [↑](#footnote-ref-13)
14. See e.g. statement of 5 March 2016: [https://www.rpo.gov.pl/pl/content/rzecznik-w-sprawieatakow-na-osoby-i-organizacje-działajace-na-rzecz-promowania-i-ochrony-praw](https://www.rpo.gov.pl/pl/content/rzecznik-w-sprawieatakow-na-osoby-i-organizacje-dzia%C5%82ajace-na-rzecz-promowania-i-ochrony-praw) and statement of 9 May 2017 <https://bip.brpo.gov.pl/pl/content/oswiadczenie-rzecznika-praw-obywatelskich-w-sprawie-kolejnego-ataku-na-siedzibe-kampanii-przeciw> [access: 24.01.2024]. [↑](#footnote-ref-14)
15. Equal Treatment at School. Report on the school survey and quantitative analysis of upbringing and prevention programmes, available at: <https://bip.brpo.gov.pl/sites/default/files/2022-01/Raport%20-%20R%C3%B3wne%20traktowanie%20w%20szkole.pdf> [access: 29.01.2024]. [↑](#footnote-ref-15)