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Fact-finding report on the role of local authorities with regard to the situation and rights of LGBTI¹ people in Poland

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¹ The acronym LGBTI is more and more replaced with the term "Sexual Orientation, Gender Identity and Expression, and Sex Characteristics" (SOGIESC) when referring to issues related to LGBTIQI+ people. This being said, for ease of presentation and because it is better known by the public, the Rapporteurs have decided to use the LGBTI acronym in this report, when referring to both the issues and the people concerned.

² L: Chamber of Local Authorities/R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party Group of the Congress
SOC: Socialist Group of the Congress
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a Political Group of the Congress
NPA: No political affiliation

INTRODUCTION

1. From 2 to 3 November 2020, a delegation from the Congress of Local and Regional Authorities of the Council of Europe (“the Congress”) carried out a fact-finding mission to Poland in remote meeting format.

2. The Congress delegation (“the Delegation”) consisted of the Chair of the Current Affairs Committee, Gabriele Neff (Germany, ILDG) and the two rapporteurs, Andrew Boff (United Kingdom, R, ECR) and Yoomi Renström, Sweden (R, SOC/G/DP). They were accompanied by the Rapporteur of the Parliamentary Assembly of the Council of Europe on LGBTI issues, Fourat Ben Chikha (Belgium, SOC) and assisted by the Congress expert, Robert J. Davidson (University of Amsterdam) as well as the Congress Director, Rafael Benitez and the Congress secretariat. The rapporteurs wish to thank Mr Ben Chikha for his participation and Mr Davidson for his valuable assistance with drawing up this report.

3. The Congress decided to carry out a fact-finding visit following a letter addressed to Congress President Anders Knappe on 11 February 2020, by two members of the Sejm of the Republic of Poland³, Hanna Gill-Piątek and Krzysztof Śmiszek, on behalf of the parliamentary Intergroup on Cities and the Parliamentary Intergroup on Equal Rights of LGBT+ Community, respectively. The letter was transmitted to the Current Affairs for decision by the Congress Bureau. The Committee took a decision on 16 September 2020 to carry out a fact-finding visit to Poland, which, due to COVID-19 pandemic restrictions, took the form of online meetings.

4. In their letter, the two parliamentarians expressed their concerns about recent developments in Poland, particularly as regards decisions taken by local authorities and asked the Congress to organise a fact-finding visit to Poland to investigate these developments at the earliest opportunity.

5. The developments mentioned in the letter comprised the following:

- Since the beginning of 2019, there have been over 80 instances in Poland where regions, counties or municipalities passed resolutions declaring themselves free from so-called ‘LGBT ideology’, or have adopted ‘Local government Charters of the Rights of the Family’ (hereafter “Family Charter”) or key provisions from such charters, discriminating in particular against single-parent and LGBT families.
- These kinds of resolutions call for local governments to refrain from taking any action to encourage tolerance of LGBT people, from providing financial support to NGOs working to promote equal rights, from organising anti-discrimination education or in any other way supporting LGBT people.
- These resolutions are part of a broader attack against the LGBT community in Poland, which include growing hate speech by public and elected officials and public media, as well as attacks and bans on Pride marches and awareness-raising programmes. There are also more drafts of anti-LGBT resolutions in the pipeline.

6. The Delegation met with

- national level interlocutors: Hanna Gill-Piątek (Coordinator of the Parliamentary Intergroup on Cities), Krzysztof Śmiszek (Chairman of the Parliamentary Intergroup on Equal Rights of the LGBT+ Community), Adam Bodnar (Polish Commissioner for Human Rights), Robert Biedroń (MEP and co-founder of the Campaign Against Homophobia), and Anna Schmidt (Secretary of State of the Ministry of Family, Labour, and Social Policy, Government Plenipotentiary for Equal Treatment) and her delegation, which included representatives from the Ministry of Justice.
- local and regional governments and their associations: Andrzej Porawski (Executive Director of the Association of Polish Cities), Jakub Mielczarek (Director of the Board of the Union of the Polish Regions (Voivodeships), Michał Mulawa (Vice-Marshal of Lublin Voivodeship), Paweł Okrasa (Mayor of Wieluń), and Nina Gabryś (Chair of the Council for Equal Treatment of Kraków).

³ The Sejm of the Republic of Poland is the lower house of the bicameral parliament of Poland.

- representatives of NGOs: Hubert Sobecki (Co-President of the Love Does Not Exclude Association⁴), Bartosz Staszewski (Co-Founder of the Lublin Equality March Association), and Kamil Maczuga (Representative of the Atlas of Hate⁵).

The programme of the meetings is appended to this report.

7. In addition to the complaints made in the letter from the parliamentarians, and after the online meetings on 2 and 3 November 2020, the Delegation became aware of other developments that echoed these complaints. On 9 November 2020, the Life and Family Foundation⁶ submitted to the *Sejm*.⁷ a citizens' bill 'Stop LGBT'.⁸ If passed, the bill will ban public manifestations for LGBTI rights and equality. The required signatures for the bill were collected at, among other places, churches throughout Poland (these can be seen in a map⁹ that shows which churches are helping to collect signatures for the bill).

8. Shortly before the Congress fact-finding meetings, in October, the Council of Europe Commissioner for Human Rights carried out consultations with Polish authorities, national human rights structures and non-governmental organisations working on the rights of LGBTI people. In her "Memorandum on the stigmatisation of LGBTI people in Poland" published on 3 December¹⁰, the Commissioner was particularly disturbed by examples of public support for homophobic projects and initiatives and by the adoption of anti-LGBT declarations and family charters by many local governments and municipalities in Poland. In her view, these actions sent an extremely alarming signal of public approval for hate, intolerance and exclusion, effectively incentivising such behaviour. Emphasising that all people are equal and deserve to be treated as such, the Commissioner called for the anti-LGBT declarations and family charters to be revoked and urged the Polish government to ensure that initiatives which directly or indirectly promote hate and intolerance against LGBTI people do not receive public support. The Commissioner also called for the rejection of several bills targeting LGBTI people currently pending in the Polish parliament.

9. In the following report, the Delegation will address the complaints that gave rise to the fact-finding mission, namely the local government initiatives taken with regard to LGBTI people (declarations and Family Charters adopted), the consequences of these initiatives impacting the lives of LGBTI people (obstacles put in the way of action for the protection of LGBTI people's rights) and the broader impact of these initiatives on the society as a whole, creating a negative climate (growing hate speech by public and elected officials and public media, attacks and bans on Pride marches and awareness-raising programmes). The report will start with a short survey of the background to these initiatives and present a summary of its findings. The report will be submitted to the Current Affairs Committee at its meeting on 10 February 2020.

10. The Delegation is aware that, more and more, the term Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC in short) is used when referring to issues related to LGBTI people. However, for ease of reading and because it is better known by the public, it has decided to use the acronym LGBTI in this report, when referring to both the issues and the people. Again, for ease of reference and in order to avoid confusion with the Council of Europe Commissioner for Human Rights, the report will use the term 'Ombudsman' when referring to Mr Adam Bodnar, the Polish Commissioner for Human Rights.

11. Finally, the Delegation will use the term 'declarations' for the various "anti-'LGBT ideology'" declarations, "positions" or resolutions signed or adopted by several Polish cities, as there is no standard title for these documents, in contrast to the Family Charter.

⁴ [Stowarzyszenie Miłość Nie Wyklucza](#)

⁵ [Atlas nienawiści](#)

⁶ [Fundacja Życie i Rodzina](#).

⁷ Polska Times, 2020, Kaja Godek przekazała do Sejmu projekt ustawy Stop LGBTI zakazujący marszów równości oraz używania symboli religijnych w celach artystycznych. Available at: <https://polskatimes.pl/kaja-godek-przekazala-do-sejmu-projekt-ustawy-stop-LGBTI-zakazujacy-marszow-rownosci-oraz-uzywania-symboli-religijnych-w-celach-ar/c1-15283128>

⁸ According to [the Polish Constitution](#), in order to submit a citizens' bill, the signatures of 100 000 citizens who have the right to elect to the Sejm must be collected. More than twice as many signatures were collected under the 'Stop LGBTI' project. Then, the bill must be submitted by the representative of the legislative initiative committee to the Speaker of the Sejm, together with a list of signatures of citizens supporting the bill.

⁹ The map can be found at: <https://www.google.com/maps/d/viewer?mid=16Q2WTMO2WrNfLr4ghD0YXjzD075eR4M-&fbclid=IwAR2Vn0ReOFVW0PEKFwnhrDnJXqxp8VBeaAduDzs6oT5FbqK86f1gKscthWQ&ll=52.14747794696388%2C21.380553906737614&z=7>.

¹⁰ Council of Europe's Commissioner for Human Rights, 2020, [Memorandum on the stigmatisation of LGBTI people in Poland](#)

1. BACKGROUND OF THE FACT-FINDING VISIT

12. As of 2018, Poland became the arena of an increasingly polarised debate around issues related to LGBTI people, who found themselves on centre stage in the political debate leading up to the elections – local in 2018, legislative in 2019 and presidential in 2020. The PACE which observed the presidential elections, noted in its final statement that “the campaign was characterised by negative campaigning, a polarised environment, inflammatory language, xenophobic and homophobic rhetoric and hate speech”.¹¹

13. In February 2019, during the run-up to the parliamentary elections, the Mayor of Warsaw, Rafal Trzaskowski, signed an LGBT Declaration against homophobia. He declared that political leaders, also at the local government level, need to take a determined stand against homophobia and discrimination to bring about a positive change in social behaviour as equality was guaranteed by the Constitution of the Republic of Poland.¹²

14. Shortly thereafter, on 27 March 2019, county councillors in Świdnicki County adopted a declaration entitled “Świdnicki County Free from LGBT Ideology”.¹³ Since then, in total, 94 local and regional authorities signed a resolution or the Family Charter (55 declarations were signed and 39 Family Charters were adopted).

15. The leader (and co-founder) of the conservative Law and Justice Party (*Prawo i Sprawiedliwość* “PiS”), Jaroslaw Kaczynski, considered the signing of an “LGBT charter” by the Mayor of Warsaw an attack on children and families. He stated in April 2019 that, ‘These ideologies, philosophies, all of this is imported, these are not internal Polish mechanisms. They are a threat to Polish identity, to our nation, to its existence and thus to the Polish state.’¹⁴

16. The presidential candidate of PiS, Andrzej Duda (who went on to win the election), also campaigned widely against LGBTI rights. On 15 June 2019, Duda stated at a campaign rally in the city of Lublin, ‘They try to tell us that [LGBTI] are people, but it is an ideology’ and referred to ‘LGBT ideology’ as an ‘ideology of evil’.¹⁵ He signed a Family Charter¹⁶ at a campaign event in Warsaw¹⁷. In the section of his charter entitled ‘Protection of children against LGBT ideology’, he promised the prohibition of propagating LGBT ideology in public institutions and that parents are primarily responsible for the sexual education of their children, both assertions referring to preventing the use of the WHO Standards for Sexuality Education in schools.

17. As noted in paragraph 7 above, on 9 November 2020, a citizens’ bill ‘Stop LGBTI’ was submitted to the *Sejm*. According to the Ombudsman, the bill is against freedom of assembly as it proposes to forbid assemblies which promote same-sex relationships and non-heterosexual orientations in general. Once the legislative process of the bill is initiated, the Ombudsman is entitled to present a critical analysis of the project.

18. The positioning by local, county and province level governments around LGBTI issues has exacerbated an already polarised situation, fuelled by the election campaigns at the national level, putting the spotlight on LGBTI people in the very places they live, in their towns and cities, creating an anxiety-inducing environment conducive to hate, intolerance and exclusion.

¹¹ Council of Europe Parliamentary Assembly, 2020, [Statement of the presidential election assessment mission in Poland](#)

¹² City of Warsaw, 2019, Mayor of Warsaw signs the LGBT Declaration. Available at: <https://www.um.warszawa.pl/en/Highlights/mayor-warsaw-signs-LGBT-declaration>

¹³ ILGA Europe, 2020, [Poland Anti-LGBTI Timeline](#)

¹⁴ France 24, 2019, Kaczynski calls LGBTI rights a ‘threat’ to Poland. Available at: <https://www.france24.com/en/20190425-kaczynski-calls-LGBTI-rights-threat-poland>

¹⁵ Tilles, Daniel, 2020, Polish president condemns LGBTI “ideology of evil” in new speech as EU Commissioner issues criticism, *Notes from Poland*. Available at: <https://notesfrompoland.com/2020/06/15/polish-president-condemns-LGBTI-ideology-of-evil-in-new-speech-as-eu-commissioner-issues-criticism/>

¹⁶ [Samorządowa Karta Praw Rodzin](#)

¹⁷ TVP Info, 2020, Wsparcie rodziny, ochrona małżeństwa, dzieci i emerytów. Co zakłada Karta Rodziny. Available at: <https://www.tvp.info/48463041/prezydent-andrzej-duda-podpisal-karte-rodziny-co-zaklada-dokument-wieszwiecej>

2. ANTI-“LGBT IDEOLOGY” DECLARATIONS AND FAMILY CHARTERS

19. The signing of declarations and the adoptions of family charters were at the centre of the interviews with all the interlocutors the Delegation met during the fact-finding meeting. The Delegation sought to understand and clarify the concepts used and the motives behind the different actions taken by the local authorities and their assessment of the situation today. The Delegation met with the mayor of Wieluń which adopted the Family Charter and with the Deputy Marshall of Lublin Voivodeship which adopted a ‘Position on the introduction of the LGBT ideology in the autonomous communities’ in April 2019.

20. Before looking at the declarations and Family Charters adopted by local authorities, the Delegation would like to clarify an issue of terminology, regarding the widely publicised so-called “LGBT-Free Zones”.

2.1 The controversy around the so-called “LGBT-free zones”

21. The Delegation became aware early on in the preparations for the fact-finding mission that the use of the phrase “LGBT-free zones” widely advertised in the international media and social media is a serious bone of contention between the opposing parties around LGBTI issues.

22. Local and provincial level elected representatives from councils that had adopted either a resolution or the Family Charter whom the Rapporteurs met during the fact finding mission, stressed that this term does not correspond to any reality and/or was being used by campaigners to slander and intimidate those authorities that have signed declarations and the Family Charter.

23. As understood by the Delegation, the facts pertaining to this contention is as follows: On 17 July 2019 the Polish weekly news magazine *Gazeta Polska* announced plans to distribute in one of its issues, stickers with the text ‘*Strefa wolna od LGBT*’ (LGBT Free Zone) and a black ‘X’ across an image of a rainbow flag. Legal action against the weekly was initiated by LGBTI activist Bartosz Staszewski, Co-founder of Lublin Equality March Association, and the Warsaw District Court ruled that the sale of the weekly including the stickers be banned.¹⁸

24. Bartosz Staszewski then made a portrait series in which he made yellow signs that look like traffic signs with the text ‘LGBT-free zone’.¹⁹ He hung those signs next to the signs marking the entrance to some municipalities that had adopted a resolution, took photos of LGBTI residents of those municipalities next to the signs, and posted the photos on social media. This was picked up by international media and gave rise to protests from around the world.

25. In 2019 a group of activists launched the Atlas of Hate (see footnote 3), which maps the municipalities, counties, and voivodeships that have adopted or rejected a resolution or the Family Charter as well as those that are being lobbied to adopt a resolution or the Charter. Both the Atlas of Hate and the portrait series received widespread national and international media and political attention.

2.2 Declarations opposing ‘LGBT ideology’

26. The ‘anti-LGBT ideology’ declarations are political declarations by local and regional councils opposing ‘LGBT ideology’ (the meaning of this concept is not clear and gives the impression of having been left intentionally vague). The protection of children is often the central focus, and most touch upon one or more of four themes: schooling and the prevention of using the WHO Standards for Sexuality Education; preventing public manifestations for LGBTI rights and acceptance; preventing the recognition of any form of family that is not heterosexual and procreative; and promoting Christian values and Catholicism²⁰.

27. Those using the term anti ‘LGBT ideology’ claim to reject an ideology instead of a group of people. The Delegation heard that this conceptual twist allows the use and pursuit of a politics of exclusion and

¹⁸ Wanat, Zosia, 2019, Polish magazine dismisses court ruling on ‘LGBT-free zone’ stickers, *Politico*. Available at: <https://www.politico.eu/article/LGBTI-rights-polish-paper-dismisses-court-ruling-on-LGBT-free-zone-stickers/>

¹⁹ Claydon, Sarah (2020) Activist fights homophobia in Poland with photo series of ‘LGBT-free’ zones. *CBC Radio*, 10 February. <https://www.cbc.ca/radio/asithappens/as-it-happens-monday-edition-1.5458268/activist-fights-homophobia-in-poland-with-photo-series-of-LGBT-free-zones-1.5458271>

²⁰ Atlas nienawiści has made the texts of the declarations available on their website: <https://atlasnienawisci.pl/>

discrimination while, at the same time, technically not being in violation of legislation regarding the rights of LGBTI people.

28. The Delegation sought to find out what the Polish interlocutors understood by 'LGBT ideology' but was unable to obtain a clear explanation of what the term covers. Its users seem to have an understanding of what it represents for them and their public. The representative of the Lublin Voivodeship stated not to feel competent to explain the term. When asked by the Delegation what the difference between 'LGBT ideology' and people identifying as LGBTI is, he did not elaborate, but noted that the Polish people knew the difference. Krakow's equal treatment council chair told the Delegation that it "is hard to describe something that does not exist".

29. In contrast, the Ombudsman has argued – during the meeting with the Delegation and in legal proceedings against the declarations - that, in the absence of a definition for 'LGBT ideology', the appellation should be seen as referring directly to non-hetero-normative and transgender people. He underlined that personal characteristics, such as sexual orientation and gender identity, are not in themselves an ideology, but are part of a person's identity²¹.

30. The Delegation was told by local councillors that the declarations are intended to protect against an "excessive (LGBTI) movement" and that they had been a response to certain fears that had arisen regarding the "promotion of LGBT ideology" in the public sphere. The signatories were afraid of the consequences that could occur without this knowledge given to families as parents must agree on the education granted to their children.

31. The debates held in local and provincial councils preceding adoption of anti-LGBT ideology declarations (examples of which are available for viewing on YouTube²²) echoed this idea that there is a "promotion of LGBT ideology" and it constitutes harmful propaganda that deliberately attempts to undermine the Polish State and its Christian values, posing a threat to children and the traditional family model. These debates often included highly aggressive and discriminatory language. Discourse used included, "our determination to stop homo-terror" (Ryki County Councillor, 30 April 2019), "the aggressive, lying and harmful LGBT ideology" (Hubert Kopeć, Nowa Dęba city council 26 July 2019), "powerful world forces against family and marriage" (Starosta Adam Krzysztoń, Chairman of the Board of the Łańcut county)²³.

32. The Delegation also heard the view of other interlocutors as to the reasons behind the proliferation of such declarations by local and regional councils. Members of Parliament Mr Smiszek and Ms Gill-Piatek as well as MEP Mr Biedron emphasized that LGBTI issues had been heavily politicised since the elections. As such, opposition to LGBTI rights became an alternative way to show support for the governing party.

33. The Delegation took note of the recurring remark that, while local and regional councils adopted them, the initiative for these declarations did not emanate directly from the local councils; nor did they correspond to a consultation with the local communities. In the view of the representative of the Association of Polish Cities, these declarations were created with the involvement of a certain political party - and as an endorsement of that party - and introduced during council meetings without preparation or consultation.

34. It was suggested by some interlocutors that most of the local and regional authorities that adopted these declarations were supporters of the governing party. The Government Plenipotentiary's office informed the Delegation that there is no hierarchical subordination of local government authorities to government administration bodies and as such, the government does not have any influence on the activities carried out by local government authorities. On the other hand, it should be noted that the governors (voivodes) appointed by the government do have the authority to cancel the a resolution of a local government if it is not in line with the Polish law (see paragraph 64 for an example).

35. There have been serious consequences to the adoption of such documents by Polish cities as several European cities withdrew from "twinning" agreements with some Polish cities that adopted the so-called anti-LGBT ideology declarations. These Polish cities also lost EU funding.

²¹ [Complaint](#) of the Commissioner for Human Rights on the resolution No.XIII / 83/19 of the City Council in Osiek of October 31, 2019 for the Provincial Administrative Court in Kielce

²² [Tu nie chodzi o ludzi](#) documentary film, 2020

²³ *Ibidem*.

36. For example, in response to these developments, on 28 July 2020 the European Union Commissioner for Equality, Helena Dalli, chose to withhold EU grants ranging from €5,000 to €25,000 for Polish municipalities that had adopted declarations against 'LGBT ideology'.²⁴ In response, the Polish Ministry of Justice compensated the municipalities for the funds lost, often increasing the amount received by the municipalities.²⁵ It could be considered that such a response from the Polish government may serve as an incentive to local and regional authorities to adopt declarations against 'LGBT ideology' and/or the Family Charter.

2.3 Local government Charter of the Rights of the Family (Family Charter)

37. In addition to the declarations against 'LGBT ideology', 39 local and provincial governments²⁶ have also adopted the Family Charter, which was prepared by the Ordo Iuris Institute²⁷. According to maps developed by LGBTI activist group, the Atlas of Hate,²⁸ to bring attention to this phenomenon, these municipalities and provinces cover roughly one-third (31.3%) of Poland's territory and are inhabited by more than 12 million people (approximately 31.7% of the country's overall population), 36 counties (out of the 380 = 9.5%) and 53 municipalities (out of 2 836 = 1.9%) were involved in these proceedings.

38. The Ordo Iuris Institute presented the Family Charter as a reaction against the Warsaw LGBTI Declaration, as they explain on their website in an article dated 29 March 2019:

"The LGBTI Declaration signed by the Mayor of Warsaw, which contains a range of ideological postulates, which violate standards of ideological impartiality of public authorities, and the announcement of introduction of permissive sexual education in accordance with WHO standards to schools, which raises reasonable doubts in terms of the constitutional principle of children's protection against demoralisation, have raised the strongest objections."²⁹

39. Advocates of the Family Charter, interviewed by the Delegation, claim that it does not mention LGBTI people and as such does not impact them. The Delegation heard from the mayor of Wieluń – the Council of which adopted the Charter in June 2019 – who stressed that for his city the Family Charter is a literal translation of Article 18 of the Constitution, simply promoting family rights without discriminating against LGBTI people. This view of the Family Charter was echoed amongst others by the representative of the Association of the Polish Cities and the Government Plenipotentiary for Equal Treatment.

40. Article 18 of the Polish Constitution states that "Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland."³⁰

41. The Family Charter includes many references to the need to protect not only the family, but also marriage. It presents marriage, referring to Article 18 of the Constitution, as an integral part of the family by stating that they are "categorically against any attempts to undermine the constitutional rights of families at a local level, including the rights of parents and children and the legal status of marriage."³¹

42. One of its signatories, the mayor of Wieluń, stated that a family is a union of a woman and a man and the children born out of this relationship, noting that "natural conditions don't allow for a homosexual couple to conceive children and considered same-sex couples dysfunctional families".

43. According to the Ombudsman, there is no strict definition of a family in the Constitution, but these local authorities, with the help of Ordo Iuris, are interpreting Article 18 to use it for their own purposes. The Family Charter wants to ensure the "protection [of the family] against influences of the ideologies

²⁴ Banks, Martin, 2020, EU defends decision to reject Polish town twinning grant applications after cities declare themselves LGBT-free zones, *The Parliament*. Available at: <https://www.theparliamentmagazine.eu/news/article/eu-defends-decision-to-reject-polish-town-twinning-grant-applications-after-cities-declare-themselves-LGBT-free-zones>

²⁵ Tilles, Daniel, 2020, Polish justice ministry compensates "LGBT ideology free" district for lost EU funds, *Notes from Poland*. Available at: <https://notesfrompoland.com/2020/08/18/polish-justice-ministry-compensates-persecuted-anti-LGBTI-district-for-lost-eu-funds/>

²⁶ <https://www.kartarodzin.pl>

²⁷ For the most recent version of the Charter in English, see: [Local Government Charter of the Rights of the Family](#)

²⁸ [Atlas Nienawiści](#)

²⁹ Ordo Iuris Institute, 2019, [Website Explanation in English](#) of the Local government Charter of the Rights of the Family

³⁰ [The Constitution of the Republic of Poland](#) in English

³¹ [Local Government Charter of the Rights of the Family](#), p.7

that undermine its autonomy and identity.”³² The interpretation of Article 18 is widely discussed in the Polish legal doctrine, mostly in the context of a possible opening of the institution of marriage to same-sex couples. There are judgements of the Constitutional Tribunal, as well as an opinion of the Supreme Court on the project on civil partnerships proposed in 2012, which support such an interpretation of Article 18 that give grounds to claiming that the Constitution favours a traditional family model, based on heterosexual marriage.

44. However, even with that conservative interpretation, the Ombudsman underlined the fact that the Constitution favours traditional family model does not mean that other models are not accepted as families. Moreover, other judgements of the Constitutional Tribunal and literature assume that the term “family” concerns a pre-existing notion and that the lack of a legal definition suggests association with the sociological notion of a family - as a social group based on kinship and social ties. Yet, irrespective of that debate, the Ombudsman stressed that it remains beyond discussion that the term “family” has not been defined in the Constitution.

45. The Ombudsman argues, also in legal proceedings, that a family is any kind of a stable relation of two or more persons, based on emotional, physical and economic ties. He calls for all families, understood as such, to be under protection and care of the State (based on Article 18 of the Constitution). This interpretation is based on the definition of “family” provided in the Act on Social Assistance of 12 March 2004, article 6.14 of which states that family consists of “related or unrelated persons remaining in the actual relationship, living together and running a common household”. Similar conclusions were drawn by the Supreme Court when interpreting the notion of a cohabiting person in the meaning of Article 691(1) of the act Civil code³³.

2.4 Legal Challenges to the declarations and the Family Charter: Findings of the Courts

46. The Delegation was informed that a series of legal challenges to the declarations and Family Charters adopted have clearly showed that these documents had no legal standing, on different legal grounds.

47. The Ombudsman is the only institution that can take up this subject without being directly affected by these declarations. The Ombudsman decided to challenge some of the declarations, taking 9 of them to the administrative courts: The first ones were lost due to the courts calling them declarations of only political means, meaning they cannot be brought to the court. Regional courts have ruled 4 of them of legal value and rejected the declarations.

48. In judgments rejecting the complaints, the Province Administrative Courts (PAC) stated that the ‘adopted declarations are declarations representing only the views of councillors on ideological and moral issues. They do not impose any rights or obligations on citizens, and do not restrict or take away any rights’. Further, these Courts have ruled that the declarations do not constitute acts of local law, nor acts in the field of public administration, which would constitute a manifestation of public-law authority exercised by public administration bodies, including local governments.³⁴

49. Four Provincial Administrative Courts, in Kielce, Gliwice, Warsaw, and Lublin, have each ruled annulling declarations against ‘LGBT ideology’ that were adopted in a municipality in their respective province. The Delegation noted that these court decisions reject the claims that the declarations are symbolic and do not exclude LGBTI people. They are positive confirmations of the identity and rights of LGBTI people. They also provide insight into the harmful effects of the adopted declarations. All four of these cases have been challenged by the local authorities affected and will be brought before the Supreme Administrative Court.

50. The court decisions focused on three themes:

a. *LGBTI is not an ideology but always refers to a group of people:*

The PAC of Kielce noted that the Osiek municipality’s resolution” should be understood as the discriminatory exclusion of LGBT people from the community’;³⁵ the PAC of Gliwice stated that the

³² *Ibid.*, p.5

³³ The Polish Ombudsman’s reply to the additional questions asked by the Congress Delegation, 2020

³⁴ The Polish Government Plenipotentiary for Equal Treatment’s reply to the additional questions asked by the Congress Delegation, 2020

³⁵ Dętko, Renatsi & Armański, Krzysztof & Ziomek, Beata, 2020, [Judgment on behalf of the Republic of Poland](#), Provincial Administrative Court of Kielce, p.18

resolution “contributes to the stigmatisation of LGBTI people and increases their sense of threat and harm to them”;³⁶ the PAC of Warsaw noted that the resolution “is addressed to LGBTI people” and found that invoking ‘so-called LGBT ideology leads to the dehumanization of this social group’;³⁷ and finally the PAC of Lublin noted as regards the Serniki resolution ‘relates directly to the LGBT community, thus belonging to this group of real people who were hidden in the resolution under the concept of “LGBT ideology”’.³⁸

- b. *The declarations are not merely the expression of a position by municipal councils but comprise administrative directives:*

The PAC of Kielce noted on this issue that ‘internal declarations, even if they do not specify rights and obligations of private entities, may be qualified as an act of authority as long as they contain instructions for action for other entities within the apparatus of public administration’ and ruled that the resolution of the Osiek Commune contained such instructions for, among others, educational entities;³⁹ the PAC of Gliwice noted, regarding Istebna municipality, that ‘this is no longer an ideological declaration, but an announcement of practical actions...The resolution is also understood as implementing directives to other municipal entities - directors of schools and educational institutions, which are forbidden to cooperate with specific persons’;⁴⁰ and finally the PAC of Lublin found that the resolution is ‘an expression of a position on matters relating to public administration and outlined the directions of activities and responsibilities for the executive body of the municipality and other entities, primarily educational’.⁴¹

- c. *The declarations infringe upon rights grounded in both Polish law and international law by which Poland has agreed to abide:*

The PAC of Kielce found that the resolution violates a number of freedoms and human rights resulting from Art. 30, Art. 47, Art. 54 of the Polish Constitution as well as Article 8 of the European Convention on Human Rights (ECHR, respect for private life and family), as well as its Article 10 (right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities).⁴² The PAC of Gliwice noted that the ‘statement contained in the resolution “we will not interfere in the life of Polish families” is inconsistent with the content of the resolution, which is aimed at indicating what type of sexuality and family model will be accepted and what will not’.⁴³ ... Everyone has the right to education and therefore to access to scientific knowledge. Human sexuality is an object of...scientific knowledge that cannot be a priori declared ‘inadequate’ for the curricula.⁴⁴ The PAC of Warsaw stated that the resolution ‘violates the prohibition of discrimination resulting from Art. 32(2) of the Polish Constitution’ and ‘violates the provision of Art. 47 of the Constitution’.⁴⁵ Finally, the PAC of Lublin decided that the resolution “violates Art. 32 of the Constitution, as well as Art. 14 of the ECHR’ and is in ‘violation of Art. 21 Sec. 1 of the Charter of Fundamental Rights of the European Union’.⁴⁶

51. The Delegation has cited these decisions in length here as they provide a legal basis for requests to local authorities to withdraw the declarations. This being said,

- a. the decisions of the above-cited four provincial courts may be appealed. For example, the deputy head of the Ministry of Justice, Michał Wójcik, announced on 12 September 2020 via Twitter that he would ask the public prosecutor to appeal the decision of the Provincial Administrative Court in Gliwice annulling the resolution of the Istebna Commune Council.⁴⁷
- b. there are other provincial courts that have not adopted a similar legal reasoning as the above four. For example, the Provincial Administrative Courts in Kraków and Poznań refused to hear challenges to declarations adopted in those provinces, and other

³⁶ Apollo, Anna & Brandys-Kmiecik, Barbara & Wujek, Krzysztof, 2020, [Judgment on behalf of the Republic of Poland](#), Provincial Administrative Court in Gliwice

³⁷ Wroczyński, Marek & Owsińska-Gwiazda, Iwona & Kot, Artur, 2020, [Judgment on behalf of the Republic of Poland](#), Provincial Administrative Court in Warsaw, p.19

³⁸ Marcinowski, Jerzy & Hałabis, Robert & Strzelec, Anna, 2020, [Judgment on behalf of the Republic of Poland](#), Provincial Administrative Court in Lublin, p.22

³⁹ Dętka et al., 2020, *op.cit.*, p.10

⁴⁰ Apollo et al., 2020, *op.cit.*, p.28

⁴¹ Marcinowski et al., 2020, *op.cit.*, p.14

⁴² Dętka et al., 2020, *op.cit.*, p.19

⁴³ Apollo et al., 2020, *op.cit.*, p.36

⁴⁴ *Ibid.*, p.37

⁴⁵ Wroczyński et al., 2020, *op.cit.*, pp.18-19

⁴⁶ Marcinowski et al., 2020, *op.cit.*, p.23

⁴⁷ Wójcik, Michał, 2020, Tweet from 12 September on Twitter

Provincial Administrative Courts rejected complaints about the declarations.⁴⁸ The political conflict is reflected in the judicial domain as well.

52. The Delegation heard that the Family Charter may be more difficult to challenge legally as compared to the declarations, because it uses more veiled language. 'LGBTI' is strategically not mentioned in the Family Charter; its authors and adopters claim that it does not concern LGBTI people. However, the Delegation considers that, precisely the general, undefined and unclear terms used in the Family Charter create the risk of its being misused in the process of their application and interpretation. This was also the view of the Ombudsman.

53. Alongside legal challenges, the Delegation has queried the interlocutors on the policy framework in Poland and was informed that Poland has no national action plan for equal treatment in force at the moment (this is also noted in the country report published by the Council of Europe Commissioner of Human Rights in June 2019). The Delegation heard from the NGOs interviewed that the previous National Action Plan for Equal Treatment, which covered the years 2013-2016, had expired and as yet had not been replaced.

54. In reply to the Delegation's query on this issue, the Government Plenipotentiary replied that a new national action programme for equal treatment, covering the period 2021-2030, was the subject of inter-ministerial negotiations. It is expected that the new action plan will include local strategies and programs designed to develop activities in the area of equal treatment at the local level, including strengthening family ties, counteracting exclusion and promoting equality and non-discrimination. The aim is to cover all groups at risk of exclusion and discrimination regardless of their legally protected status. It is not clear whether the LGBTI issues will have a dedicated section in the new action plan.

55. The Government informed the Delegation that the consultation with local and regional authorities is currently carried out through a process of agreement and opinion. Letters asking for comments on the Programme were sent to all Voivodship Offices. Moreover, the Program was presented for an opinion to the Joint Commission of the Government and Local Government. In order to meet the expectations of minority groups, including LGBTI groups, it was decided to conduct wide, open consultations via the Plenipotentiary's website, where a special form for submitting comments was prepared. In addition, it is also the best way to reach non-governmental organizations that work according to the changed rules through COVID19, and regular mail, due to sanitary restrictions, may reach it in a longer time than usual.

56. Poland is a party to several international agreements relevant to human rights, including the [European Convention on Human Rights](#) and the Charter of Fundamental Rights of the European Union. Poland has also transposed EU directives against discrimination at work, including on grounds of sexual orientation. As such its public authorities are bound by their commitments to protect the rights of their citizens, in particular those belonging to minority and vulnerable groups. It is the role of local and regional representatives to ensure that all citizens in their constituencies are protected against discrimination against and exclusion.

57. The Delegation finds that, in the framework of the existing laws and jurisprudence of the courts, the continued equation in the family charters of the two concepts, i.e. family and marriage (of a man and a woman), serves a purpose not intended by law, i.e. that of protecting a certain type of family which is not LGBTI-inclusive. By adopting anti-'LGBT ideology' declarations and Family Charters, some local and provincial authorities in Poland have chosen to take positions which de facto put the rights of a part of the citizens in jeopardy, with all the negative consequences deriving from it.

3. ACTIONS FOR EQUALITY AND TO STRENGTHEN LGBTI RIGHTS AT LOCAL AND REGIONAL LEVEL

58. While the adoption of anti 'LGBT ideology' declarations and Family Charters constitutes a worrying development, there have also been local and regional councils who have countered this development by either rejecting the adoption of family charters or declarations or by annulling existing ones.

⁴⁸ For example, see: Provincial Administrative Court in Białystok, 2019, [II SA/Bk 651/19 Decision](#) on 10 October

59. In October 2019 the Lublin City Council rejected an anti 'LGBT ideology' resolution proposed by PiS Councillors. In October 2020, the Opolskie Voivodeship Council rejected the Family Charter. The Voivodeship Marshal stated that "if we see a threat to families here, we focus on this problem and solve it together in harmony, across divisions," adding that the Voivodeship already has a family policy in place since 2014 which treats all inhabitants of the voivodeship equally, not excluding anyone⁴⁹. In November 2020 and after two previous attempts, the city Council of Tomaszów Mazowiecki annulled its charter for family adopted in October 2019. Moreover, the city adopted a new resolution outlining planned actions for social policy for families and equal treatment, which include awareness raising activities on tolerance and combating violence. Citizens have also undertaken action at the local level. In Wrocław, a civic draft resolution for tolerance and respect for human rights has been submitted to the City Council.⁵⁰ In Biała Podlaska residents submitted a draft resolution to revoke the Family Charter.⁵¹

60. The Delegation also heard of various initiatives taken at local and regional level aimed at increasing equality and strengthening LGBTI rights. The Delegation took note of both declarations and policy initiatives promoting LGBTI rights in individual municipalities and regions as well as of initiatives aimed at promoting cooperation and dialogue between different communities and local and regional authorities. Several interlocutors stressed that the current political climate and polarization around LGBTI issues often discouraged local authorities of taking steps to strengthen LGBTI rights. They also noted that those who did often faced backlash.

• Declarations and policy initiatives promoting LGBTI rights at local and regional level

61. The Delegation took note that there are many local and regional authorities in Poland that have taken steps to improve the situation and protect the rights of LGBTI people.

62. Already in June 2018 the city of Gdańsk had adopted the Model for Equal Treatment, which is a municipal government initiative that implements local public policy to fight discrimination in several areas, including on the basis of sexual orientation and gender identity (SOGI).

63. As noted in paragraph 12, the Mayor of Warsaw signed a declaration in 2019 which consists of 12 points and includes ambitions to implement anti-discrimination measures in the municipality and schools, implement WHO Standards for Sexuality Education in schools⁵², and have the patronage of the Mayor of Warsaw over the Equality Parade⁵³. The Delegation heard that the text was drafted by the Love Does Not Exclude Association, who created a programme and presented it to mayoral candidates from different political parties¹ in the run-up to the local elections. They ensured that the actions promised all fell under the competence of local governments, emphasising the role local politicians can play in supporting LGBTI communities throughout Poland. They also underlined that the current political climate in Poland did not allow for furthering of LGBTI rights at the central level.

64. Since 2016, a range of local and regional councils have also signed the Diversity Charter, committing to non-discrimination in the workplace and to introducing policies that create and promote diversity.⁵⁴ The Diversity Charter is an international initiative supported and promoted by the European Commission, currently implemented in 24 European Union countries.

65. The City of Krakow informed the Delegation that they provide anti-discrimination trainings for school directors and are organizing solidarity events and exhibitions in consultation with two organizations working on homophobia at the local level and others working for homeless LGBTI people. The Krakow city council also adopted a resolution calling on the municipal Council of the Lesser Poland Voivodeship to withdraw their anti 'LGBT ideology' declaration but indicated that they did not expect the Voivodeship Council to do so.

⁴⁹ Myczka, Leszek, 2020, Opolski Sejmik odrzucił „Samorządową Kartę Praw Rodzin”. Available at: [Opolski Sejmik odrzucił „Samorządową Kartę Praw Rodzin” - Opowiecie.info](https://opolski.sejmik.odrzucil-samorzadowa-karte-praw-rodzin-opowiecie.info)

⁵⁰ Portal Samorządowy, 2020, Wrocław: "Deklaracja tolerancji i szacunku dla praw człowieka" trafi pod obrady rady miejskiej (portalsamorzadowy.pl)

⁵¹ Burda, Ewelina, 2020, Biała Podlaska: Mieszkańcy chcą uchylecia Samorządowej Karty Praw Rodzin. Złożyli projekt uchwały - Dziennik Wschodni

⁵² WHO Regional Office for Europe and BZgA, 2010, Standards for Sexuality Education in Europe. Available at:

<https://www.bzga-whocc.de/en/publications/standards-in-sexuality-education/>

⁵³ Stowarzyszenie Miłość Nie Wyklucza, 2019, Warsaw LGBT Declaration. Available at: <https://mnw.org.pl/warszawska-deklaracja-LGBTI/>

⁵⁴ In Poland the Charter was adopted in 2012 during a conference in the Chancellery of the Prime Minister. It was then held under the honorary patronage of the Government Plenipotentiary for Equal Treatment Agnieszka Kozłowska-Rajewicz, Ombudsman and Minister of Labour and Social Policy. The Charter is coordinated by the Responsible Business Forum.

66. In February 2020, the City Council of Poznan adopted the European Charter for equality between women and men in local life, which denounces discrimination based on sexual orientation. However, the Charter was annulled by the Voivodeship Marshal, whose decision was upheld by the Voivodeship court after being challenged by the City Council.⁵⁵

67. It is clear that the signing of resolution and family charters has caused serious tension between the different administrative territories in Poland, particularly in the larger, more pro-LGBTI Polish cities that are within Voivodeships (provinces) that have adopted declarations such as Krakow (Lesser Poland Voivodeship), Poznan (Poznan Voivodeship) and Lublin city (Lublin Voivodeship).

68. The Delegation was informed that several cities, including Krakow, have laid the first contacts amongst themselves to cooperate with regards the fight against discrimination and to exchange good practices with the aim of creating a Polish city coalition for equality policies.

69. To foster dialogue within the Polish society, the Marshal of the West Pomeranian Voivodeship appointed a special team to foster dialogue between local government officials and representatives of LGBTI + communities, to allow for better cooperation and acceptance. He said that "The possibility of asking questions, having a quiet conversation and gaining reliable knowledge is at a time when hate speech sounds loudest, one of the most important values for every thinking person."⁵⁶

• Position and role of the local and provincial government associations

70. Local and regional government associations work on behalf of their member councils to support, promote and improve local government and local democracy. They have an important role as a platform of dialogue as well as defending the interests of local authorities vis-à-vis the national governments.

71. The Delegation was told by the MPs participating in the fact-finding that it was regrettable that no national association of local authorities had taken sides on this issue. Their silence was problematic at a moment in Polish history when they should listen, be heard and take action.

72. The Association of Polish Cities told the Delegation that they had not been consulted during this whole process by municipalities or provinces, or by Ordo Iuris or LGBTI NGOs. Nor had they initiated any contact with the cities and regions concerned themselves, because they did not wish to take part in pre-election brawl or any political discussion. The Family Charter was not problematic for them as it provided a set of ideas for local and regional support to families and did not refer to LGBTI people, whereas the declarations created a discriminatory atmosphere. In their opinion, the Charter was adopted in regions where there was political pressure, regions which refused to adopt declarations against LGBTI people. The Union did not preclude a constructive discussion between their members once the current conflict was over; nor did they preclude discussions with LGBTI associations so as to form a bridge between LGBTI people and the regions which adopted these declarations.

73. The Union of the Provinces which brings together the voivodeships has members that have pronounced for and against these declarations of anti "LGBT ideology". As far as the Union is concerned these declarations are not recognized as a locally binding form of law. They simply are a pronouncement of a world view. They had no contact with Ordo Iuris or the LGBTI NGOs. They did underline that the Union had been rebranded in October 2020, promoting equality and the equal rights of all regions and citizens.

74. On the other hand, the Delegation was informed that the Union of Polish Metropolitan Areas (UMP), which brings together twelve of Poland's largest cities⁵⁷, has actively promoted initiatives for tolerance. To mark the International Day for Tolerance on 16 November 2020 the UMP released a statement expressing solidarity with those who are discriminated against and underlining that every

⁵⁵ Gazeta Prawna, 2020, [Poznań: Sprawa Europejskiej karty równości kobiet i mężczyzn trafi do sądu administracyjnego - Wiadomości - GazetaPrawna.pl - portal informacyjny](https://www.gazetaprawna.pl/portal/informacyjny)

Ten Poznań, 2020, [Poznań: Karta Równości Kobiet i Mężczyzn uchylona przez sąd \(tenpoznan.pl\)](https://tenpoznan.pl/)

⁵⁶ Wirwicka, Alicja, 2020, [Zachodniopomorskie: powstaje specjalny zespół. Ma zajmować się sprawami LGBTI - Wiadomości \(onet.pl\)](https://www.onet.pl/)

⁵⁷ Białystok, Bydgoszcz, Gdansk, Katowice, Krakow, Lublin, Lodz, Poznan, Rzeszow, Szczecin, Warsaw and Wrocław

citizen in their member cities “has the same rights and obligations, regardless of their nationality, religion, political views, or sexual orientation”⁵⁸.

75. The Delegation found that these two organisations had preferred to stand back in a conflict which included many of their members and which had a huge impact on the lives of LGBTI people, the Polish society and the image of Poland in the international arena, and not use the tools at their disposal to bring local and provincial authorities around a discussion table, underlining the role of local authorities to protect all their citizens’ human rights at the local level.

IV. CONSEQUENCES OF THE CONFLICT

76. The Delegation heard concerns by several interlocutors that the adoption of declarations against ‘LGBT ideology’ and the Family Charter may be increasing violence against LGBTI people and create an atmosphere of fear, discrimination and exclusion for LGBTI people. The Delegation heard from the Ombudsman that his office had received numerous complaints from people living in regions where declarations were adopted, and he noted that, ‘they all refer to the fear of being fired, of being rejected, of not being part of the local community any longer’.

77. The Ombudsman stressed that the adoption of such documents was not simply a political battle but had real consequences on the rights of LGBTI people, making it more difficult to gain access to local services such as conference rooms and public facilities. Other interlocutors were afraid of infringements on numerous rights of LGBTI people guaranteed by their Constitution, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union risk the continuation of being infringed upon, as long as the declarations and the Family Charters are in place

78. Some interlocutors found that the Charter is more dangerous than the declarations for the rights of LGBTI people because they propose concrete measures as compared to the declarations. However, while the declarations are presented as being “symbolic”, in some instances, they function as municipal directives that affect the workings of local administrations. It should be noted once again that several Provincial Administrative Courts have annulled them due to reasons mentioned above in paragraphs 48 and 49.

79. In contrast, some local and regional representatives stated that there were no incidents in their communities of discrimination or harassment against people based on their sexual orientation or gender identity. The Government Plenipotentiary underlined that Poland is a country where LGBTI people can live freely and with dignity, with an impartial justice system. They noted that, in Poland, everyone is equal before the law and enjoys the same rights, including all minorities as long as they are willing to integrate and function according to the Polish Republic. Other local representatives the Delegation met stated that the principle of equal treatment is applied at all times, without any harassment nor discrimination made against LGBTI people.

80. The Delegation considers that statements which imply that the declarations and family charters have had no adverse effect on Polish society or on the lives of LGBTI people do not coincide with the facts it has gathered during the interviews and found in news disseminated in various media.

• Intensifying hate speech and attacks against LGBTI people

81. During the election campaign, already in early April, anti-LGBTI NGOs began hate speech campaigns by spreading lies about LGBTI people and claiming they are paedophiles: ILGA-Europe reported that on 3 April 2019, ‘A car is towed with a banner featuring anti-LGBTI slogans around [the city of] Gniezno. It reads: “What the LGBTI lobby wants to teach kids: Masturbation; consenting to sex; first sexual experiences and orgasm. Stop paedophilia.” Since then, cars and trucks bearing similar messaging have consistently been seen throughout the country’.⁵⁹

82. Hate speech against LGBTI people continues to be propagated throughout Poland. Hate speech may translate into hate-motivated violence against LGBTI people. The Delegation was informed by MP Śmiszek that, ‘if the ministers of the government are expressing homophobia, the rest of society feels

⁵⁸ Unia Metropolii Polskich imienia Pawła Adamowicza, 2020, [Międzynarodowy Dzień Tolerancji to święto obchodzone corocznie 16 listopada - Unia Metropolii Polskich \(metropolie.pl\)](#)

⁵⁹ ILGA Europe, 2020, [Poland Anti-LGBTI Timeline](#)

legitimized to turn those words into violence', and also that the "declarations are not only a discursive thing but are treated as a legitimisation for physical attacks against this community". The CoE Commissioner for Human Rights has also stated that 'mindful of the fact that the stigmatisation and hate directed at certain individuals or groups of people carries a real risk of legitimizing violence, sometimes with fatal consequences'.⁶⁰

83. Several interlocutors underlined the role of some Catholic leaders and churches in intensifying anti-LGBTI sentiments through the support for discriminatory national and local legislative initiatives as well as by engaging in hate speech. In 2019, the Archbishop of Krakow warned of a "rainbow plague" and of people who "want to control our souls, our hearts and minds"⁶¹.

84. According to a representative of the Ministry of Justice who accompanied the Government Plenipotentiary during the meeting, the ministry gathers some statistics on hate crimes. The representative said that the number of registered cases of hate crimes against LGBTI people had more than doubled in recent years, from 68 in 2017 to around 150 in 2019 (3 November, Discussion during fact-finding mission). The rise in hate crimes against LGBTI people may be even more severe than is reflected by the number of cases presented by the Ministry of Justice. According to the Fundamental Rights Agency of the European Union, only 16% of Polish respondents reported 'the last incident of hate-motivated physical or sexual attack to the police, or any organization or institution' (2020). Given that only a minority of reported cases will have reached the courts, the number of hate crimes is almost certainly many times higher than the figure cited by the representative of the Ministry of Justice.

85. Displays of polarisation and hate speech seems to be particularly prevalent in the context of pride marches. During the first pride march in the City of Białystok on 20 July 2019, the roughly 1,000 LGBTI demonstrators and their allies were outnumbered by about 4,000 counter protestors, who attacked the march with bottles, rocks, and smoke bombs, among other items, and injured dozens.

86. On 28 September 2019 the second Equality March took place in the city of Lublin, and it was met with a violent counter protest. Police had to use water cannons and pepper spray against the counter protestors, and many of them were arrested. A married couple brought homemade explosives to the march, but the explosives were found before they were able to be set off. Such an occurrence demonstrates the extent of violence LGBTI people and their allies may experience at pride manifestations in Poland. The couple was not charged with terrorism but mere possession of explosives. Instead of the usual 8-year sentence for possession, the couple was sentenced to one year in prison 'minus time in pre-trial detention'.⁶²

87. The Delegation also heard of fears amongst local and regional representatives for the consequences of speaking out for LGBTI rights. The delegation heard that when the Warsaw LGBTI Declaration was publicly communicated, the media attention was extreme, attacking both the Mayor of Warsaw and LGBTI people through a "homosexual propaganda" narrative. When the Poznan City Council adopted the European Charter for Equality in 2019, threats were made by those attending the meeting. One resident was charged and potentially faces two years imprisonment for threatening local Councilors, referring to the 2019 murder of Gdansk mayor Pawel Adamowicz.⁶³ The mayor of Gdansk had come under attack in nationalist and right-wing circles for his support of migrants, LGBTI issues, and pro-EU views.⁶⁴

• Effect on Children and Young People

88. The Delegation heard from many interlocutors their concerns on the impact of the adoption of declarations against 'LGBT ideology' and family charters on the LGBTI youth. Interlocutors have referred to the increase of suicides among young people in Poland and emphasised the need to create safe centres and shelters for LGBTI youth. The Delegation was told that 30% of young people have symptoms of depression, in some cases doubled with suicidal thoughts. They take note, however, that according to government representatives, statistics regarding suicide rates among LGBTI youth do not

⁶⁰ Council of Europe Commissioner for Human Rights, [Memorandum on the stigmatization of LGBTI people in Poland](#), p.12.

⁶¹ Chadwich, Lauren, 2019, Archbishop warns of 'rainbow plague' amid LGBTI tensions in Poland. Available at: <https://www.euronews.com/2019/08/02/archbishop-warns-of-rainbow-plague-amid-LGBTI-tensions-in-poland>

⁶² Kenny, Oisin, 2020, Couple sentenced to one year in jail for carrying home-made explosives at Polish Pride parade, GCN. Available at: <https://gcn.ie/couple-explosives-polish-pride-parade/>

⁶³ Kowalski, Norbert, 2020, [Groził poznańskim radnym, gdy uchwalono kartę równości. Teraz to jemu grozi więzienie. "Tu może być gorzej niż w Gdańsku" - plus.głoswielkopolski.pl](#)

⁶⁴ Easton, Adam, 2019, [BBC News, Pawel Adamowicz: Murder on stage stuns a divided Poland - BBC News](#)

exist for the time being, and that the Ministry of Education has developed psychological education and mental health programmes to teach young people about “tolerance and respect of dignity”⁶⁵.

89. The delegation also heard that young LGBTI people feel that their freedom of expression and the freedom to be themselves is not only limited, but also condemned. This leads to fears which effect their lives in the communities that have passed the declarations, resulting in young people leaving their hometowns.

90. Many interlocutors put an emphasis on the impact of the adoption of declarations against ‘LGBT ideology’ and family charters in schools and curricula. The delegation heard that although there were schools that wanted to establish courses on tolerance, these were not accepted. The delegation was further told that the Ordo Iuris has been developing books for headmasters on “how to combat ‘LGBT ideology’”, relying upon Christian values and patriotism. This is considered one of the reasons why teachers are afraid to mention the LGBTI people in the classrooms, being under pressure from headmasters and local authorities.

91. The Delegation was told that the current Ombudsman for Children in Poland had not yet worked on the rights of LGBTI children and youth in schools since his appointment in December 2018. However, in November 2020, he identified “LGBTI people as a particularly vulnerable group in Poland”⁶⁶.

92. The Family Charter says that a speaker should be appointed who would “monitor if local government institutions, including schools, respect family rights and intervene whenever they are breached. The Speaker may hold a helpline or a contact mailbox to receive complaints. They should also keep parents informed about their rights.”⁶⁷ In only lightly veiled language, the text contests the introduction of the WHO Standards for Sexuality Education in schools.

• Financial consequences

93. The exclusion of LGBTI people from entities to be protected as a family has social and financial consequences for those who do not conform to the family as understood by the signatories of these charters. For example, during the debate on the adoption of the Family Charter in the Dębicki Powiat, the chairman of the Council stated that the Family Charter “also aims to prevent such situations where certain ideological issues are to be financed, which today, among other things, are financed in large by local governments and related to LGBT ideology.”⁶⁸

94. The Family Charter states: “It is especially crucial to exclude any chance of allocating public funds and public property for projects that undermine the constitutional identity of marriage as a relationship between a man and a woman or the autonomy of the family. The terms and conditions of local government competitions for community organisations should be supplemented with standards that support the family and marriage.”

95. The Ombudsman warned that such provisions could lead to discriminatory treatment of civil society organisations, anticipating a chilling effect. He noted that it would be unlikely for a project organized by an organization fighting for LGBTI+ rights, especially family rights, to receive financial or other support from a local government which adopted the Charter⁶⁹.

96. The Delegation understood that there are also employment related consequences. The current Labour Code bans the discrimination of LGBTI people in Poland, but also learned that this legislation was under scrutiny. In 2019, an IKEA Kraków worker was fired for posting hate speech and death threats against his LGBTI coworkers while also quoting the Bible. Represented by Ordo Iuris lawyers, the employee sued in IKEA in a civil lawsuit for wrongful dismissal, and the HR Manager has been charged by Polish prosecutors for violating the religious rights of the employee⁷⁰.

⁶⁵ For more information, see:

Government of the Republic of Poland – [Protection of Mental Health of Children and Young People](#)

Government of the Republic of Poland – [National Mental Health Programme](#)

⁶⁶ Onet Wiadomości, 2020, <https://wiadomosci.onet.pl/kraj/rzecznik-praw-dziecka-tez-upomina-sie-o-psychiatrie-dziecieca-przyznaje-ze-osoby-LGBTI/418qbd1>

⁶⁷ Ordo Iuris Institute, 2020, [Local Government Charter of the Rights of the Family](#), p.8

⁶⁸ Powiat Dębicki oraz miasto Dębica stawiają na jedną kartę, 2019. Available at [Powiat Dębicki oraz miasto Dębica stawiają na jedną kartę - YouTube](#)

⁶⁹ Meeting of the Congress Delegation with the Commissioner for Human Rights, 2 November 2020

⁷⁰ Warcholiński, Artur, 2020, ["Jestem zdziwiony, że w takiej sytuacji powołano tego księdza na biegłego". Ordo Iuris kontra IKEA, TVN24](#)

V. SUMMARY OF THE FINDINGS

97. In recent years, the rule of law and the system of consensual politics has given way to a polarised political scene in Poland. Attacks on the independence of the judiciary and the religious and gendered character of the polarisation have created a climate where discriminatory attitudes can gain ascendance over concern for human rights and equality.

98. The elections which divided the country along east-west, rural-urban, and religious lines exacerbated the negative attitudes and prejudices against LGBTI people as some political leaders instrumentalised these prejudices, using offensive language and inciting hatred.

99. The declarations and charters adopted by local and provincial authorities contributed to increasing the tension and conflict around issues related to the rights and equality of LGBTI people, putting their persons and their rights in danger as they became the focus of a political and social conflict. The extreme tone of the debate around LGBTI issues is an obstacle in the way of improving existing policies concerning anti-discrimination policies and training programmes. It appears that these documents were the outcome of a concerted effort on the part of a political party and the *Ordo Iuris* rather than a coordinated effort on the part of local authorities. The documents did not emanate directly from the local councils; nor did they correspond to a consultation with the local communities.

100. Although there are no 'LGBT-free zones' in Poland, the anti-LGBT ideology declarations and the family charters remain adopted by many local authorities and a new bill entitled "Stop LGBT" has been tabled in the *Sejm* in early November 2020 aiming to ban pride parades ("equality marches"), as well as any other public gatherings that allegedly promote non-heterosexual orientations and different gender identities.

101. The legislative framework and government action have lacunae as regards the protection of LGBTI people. The legislation on anti-discrimination does not specifically include LGBTI people. The Government's new national action programme for equal treatment, in preparation and covering the period 2021-2030, will include a section devoted to raising public awareness about the effects of discrimination and hate speech against minorities generally but it will not have a specific chapter on LGBTI people. There will be consultations with local and regional authorities and, in order to meet the expectations of minority groups, including LGBTI groups, there will be open consultations via the Plenipotentiary's website via a form to submit comments.

102. The signing of declarations and family charters has caused serious tension between the different administrative territories in Poland. The local government associations which bring together over 330 cities⁷¹ and all 16 voivodeships⁷² could have played a more prominent role than they have as a platform for dialogue and contribute to reducing the tension and conflict.

103. There are several cities in Poland that are networking to set up a coalition against discrimination and to develop good practice. These initiatives are important good practice examples. All efforts that focus on developing cooperation between cities and regions and also initiating dialogue to have 'a quiet conversation' rather than inciting conflict and violence should be supported both at national and international level.

104. The Delegation draws attention to the fact that mayors, councillors and governors are responsible for a variety of public services such as education, health and security which go hand in hand with human rights implementation. The question is how to better secure human rights while implementing the local policies that most closely affect the citizens. It is the role of local authorities to tackle conflicting situations in a non-discriminatory, transparent and inclusive manner, all the while observing human rights. International human rights standards are constantly developing, covering new generations of human rights. This makes it crucial for all policy makers to keep up with the pace, rather than retreating into denial and exclusionary policies.

Ordo Iuris, 2020, [Pracownik IKEI zwolniony za cytaty z Biblii. Ruszył proces](#)

⁷¹ Association of Polish Cities - [Związek Miast Polskich](#)

⁷² Union of Polish Regions – [Polskie Regiony](#)

105. The discussion on discrimination needs to be framed in a way that allows to address multiple types of discrimination to improve the position of multiple minority groups. In that way, the discussion can then be focused around diversity and inclusion more generally instead of focusing exclusively on LGBTI people, which facilitates the mobilisation of anti-LGBTI sentiment and action.

106. The Delegation recommends the Current Affairs Committee to prepare a specific resolution so that the Congress can address Polish local and regional authorities, reminding them of the role of local authorities to protect the rights of their constituents, inviting them to develop policies that will protect the rights of minority and vulnerable groups, urging those local and regional authorities who have signed anti-‘LGBT ideology’ declarations and family charters to withdraw these documents, and encouraging the associations and unions to take the lead and act as platforms of dialogue for local and regional authorities, with the aim of improving their role not just as service providers but also as protectors of their citizens’ human rights.

APPENDIX

30.10.2020

**FACT FINDING MISSION OF THE CONGRESS OF LOCAL AND REGIONAL
AUTHORITIES OF THE COUNCIL OF EUROPE TO POLAND**

**REMOTE MEETING FORMAT
2-3 November 2020
PROGRAMME**

Congress Delegation:

Head of Delegation:

Ms Gabriele NEFF Chair of the Current Affairs Committee of the Congress
Member of Munich City Council, Germany

Rapporteurs:

Ms Yoomi RENSTRÖM Congress Rapporteur, Member of the Current Affairs
Committee, Member of the Regional Council of Gävleborg, Sweden
Mr Andrew BOFF Congress Rapporteur, Member of the Current Affairs Committee,
Member of the London Assembly, United Kingdom

Joined by

Mr Fourat BEN CHIKHA Rapporteur of the Parliamentary Assembly of the Council of Europe,
on “Combating rising hate against LGBTII people in Europe”,
Senator, Belgium

Secretariat:

Mr Rafael BENITEZ Director of the Congress
Ms Sedef CANKOÇAK Secretary of the Current Affairs Committee
Ms Inge HANNON Co-Secretary of the Current Affairs Committee

Expert:

Mr Robert DAVIDSON Expert, University of Amsterdam

The working languages for which interpretation will be ensured are English and Polish.

Monday, 2 November 2020

MEMBERS OF THE PARLIAMENT OF POLAND

Ms Hanna GILL- PIĄTEK, Coordinator of the Parliamentary Intergroup on Cities
Mr Krzysztof ŚMISZEK, Chairman of the Parliamentary Intergroup on Equal Rights of
LGBT+ Community

COMMISSIONER FOR HUMAN RIGHTS

Mr Adam BODNAR, Commissioner for Human Rights

NATIONAL ASSOCIATION OF LOCAL AND REGIONAL AUTHORITIES

Mr Andrzej PORAWSKI, Executive Director of the Association of Polish Cities **Mr
Jakub MIELCZAREK**, Director of the Board of the Union of the Provinces of the
Republic of Poland

KAMPANIA PRZECIW HOMOFOBII / CAMPAIGN AGAINST HOMOPHOBIA

Mr Robert BIEDROŃ, Member of the European Parliament, former Congress member and founder of the KPH (Kampania Przeciw Homofobii, Campaign Against Homophobia)

LOCAL AUTHORITY: CITY OF KRAKOW

Nina GABRYŚ, Chair of the Council for Equal Treatment of Kraków

REGIONAL AUTHORITY: LUBLIN VOIVODESHIP

Mr Michał MULAWA, Vice-Marshal of Lublin Voivodeship

Tuesday, 3 November 2020

LOCAL AUTHORITY: CITY OF WIELUŃ

Mr Paweł OKRASA, Mayor of Wieluń

REPRESENTATIVES OF NON-GOVERNMENTAL ORGANISATIONS

Mr Hubert SOBECKI, Association "Love Does Not Exclude"
Mr Bartosz STASZEWSKI, Lublin Equality March Association
Mr Kamil MACZUGA, Atlas nienawiść

MINISTRY OF FAMILY, LABOUR AND SOCIAL POLICY

Ms Anna SCHMIDT, Deputy Minister,
Government Plenipotentiary for Equal Treatment