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Original version

## Memorandum on the stigmatisation of LGBTI people in Poland

### Introduction

1. The present memorandum by the Council of Europe Commissioner for Human Rights (hereinafter, “the Commissioner”) addresses certain aspects of the situation of lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Poland.<sup>1</sup> It forms a response to the emergence of a widespread pattern of stigmatisation and statements targeting LGBTI people in Poland in recent years, including by politicians, public officials, opinion leaders and other prominent bodies and figures in society, and therefore focuses on these aspects in particular.
2. The memorandum builds on the Commissioner’s work for the protection of [the human rights of LGBTI people](#) across all Council of Europe member states. It also draws on her previous work focusing on Poland specifically, particularly the June 2019 [report](#) following her country visit in March 2019, and her continuous monitoring of the situation of LGBTI people in the country, which has already led her to express concern publicly on a number of occasions.<sup>2</sup>
3. Lastly, a key step in the preparation of the memorandum was the online consultation with Polish authorities, national human rights structures and non-governmental organisations working on the rights of LGBTI people held between 12 and 23 October 2020. The Commissioner had an opportunity to talk, in particular, to Anna Schmidt, Government Plenipotentiary for Equal Treatment, Marcin Warchoń, Secretary of State, and Marcin Romanowski, Under-Secretary of State in the Ministry of Justice, General Jarosław Szymczyk, Chief of Police, and Adam Bodnar, Polish Commissioner for Human Rights (Ombudsman institution). The Commissioner would like to thank the Polish authorities in Strasbourg and in Warsaw for their assistance in organising and facilitating her meetings with officials. She is grateful to all the people she spoke to in Poland for sharing their views, knowledge and insights.
4. The memorandum begins with observations on the general situation of LGBTI people in Poland, including both public opinion and trends and gaps in the legal framework (Section I). It then examines in more detail some of the most striking examples of stigmatisation and statements targeting LGBTI people by politicians, public officials, opinion leaders, and other prominent bodies and figures in society (Section II). The memorandum also looks at the conduct of law enforcement agencies, including the treatment of LGBTI people and activists, and the situation of Pride marches (Section III). Each section is followed by the Commissioner’s conclusions and recommendations.

### I. General situation of LGBTI people in Poland

#### a. Public opinion and trends

5. Stigmatisation of LGBTI people is a long-standing problem in Poland. Homophobic statements by leading public figures, creating an atmosphere of hate and intolerance, were one of the main

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<sup>1</sup> The inclusive acronym LGBTI is used throughout this Memorandum unless reference is made to specific documents, citations or events for which another acronym is used, including LGBT and LGBT+.

<sup>2</sup> See, for example, the Commissioner’s [tweet](#) of 12 October 2018, her [press release](#) of 15 March 2019 following her country visit to Poland, and her [statement](#) of 15 May 2020, “Hate mongering against LGBTI people has no place in today’s Europe”.

areas of concern identified in a previous Commissioner's Memorandum to the Polish Government as far back as 2007.<sup>3</sup>

6. Although Polish society's attitudes towards LGBTI people have improved gradually over the past decade, recent years have been marked by a worrying turn for the worse. Survey results published in 2019 by the Polish public opinion survey centre, the CBOS, found that although public acceptance of homosexuality had been growing slowly for a number of years before 2017, it had decreased since.<sup>4</sup> In recent years, Poland has fallen to 42<sup>nd</sup> place in the 2020 annual "Rainbow index" of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), which measures the level of respect for LGBTI people's human rights in 49 European countries.<sup>5</sup> Having ranked 33<sup>rd</sup> in the 2015 edition of the index, Poland now has the lowest standing of all the members of the European Union (EU). A [2019 survey](#) by the EU's Fundamental Rights Agency<sup>6</sup> found that 68% of LGBTI respondents from Poland – the highest ratio by a long way of all EU countries – believed that prejudice and intolerance against LGBTI people had increased in Poland over the previous five years.<sup>7</sup> The same survey of LGBTI people found Poland to be the leading state (along with Romania) of the then 28 EU member states in terms of the percentage of respondents signalling hate-motivated physical or sexual attacks against LGBTI people and in terms of the share of respondents who avoided certain places for fear of being assaulted, threatened or harassed (79%).<sup>8</sup>

#### **b. Legal and policy framework**

7. Although Poland has neither ratified nor signed Protocol No. 12 to the European Convention on Human Rights (hereinafter, the ECHR), which provides for a general prohibition of discrimination, it remains bound by the prohibition of discrimination in relation to rights enshrined in the ECHR. Article 32 of the Polish Constitution establishes a general prohibition on discrimination in political, social or economic life, on any ground. Poland's 2010 "Equal Treatment Act"<sup>9</sup> explicitly prohibits discrimination based on grounds including sexual orientation, but not – despite the priority recommendation by the European Commission against Racism and Intolerance (ECRI)<sup>10</sup> – gender identity. The Polish Labour Code allows victims to claim damages for discrimination on the ground of sexual orientation in employment, and the Civil Code allows them to claim financial and non-financial reparation for breaches of "personal rights", which include reputation, name and image.
8. Although Poland's criminal law contains a general provision requiring courts to consider the particular motivation and behaviour of perpetrators when determining their sentence, it does not explicitly prohibit hate speech or hate crime on grounds of sexual orientation or gender identity.<sup>11</sup> A legislative proposal aiming to criminalise such behaviour was defeated in 2016. Specifically, Articles 119, 256 and 257 of the Polish Criminal Code, which criminalise the use of violence or threats, incitement to hatred, public insults or violation of bodily integrity of a person or a group of people, mention a number of prohibited grounds including nationality, ethnicity, race or religious beliefs, but not sexual orientation or gender identity. Anti-LGBTI bias is also not considered to be a specific aggravating circumstance in respect of other types of offences existing in Polish criminal law. Nor are law enforcement officers required to establish whether the perpetrators of crimes had any anti-LGBTI motives, and this may mean that the

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<sup>3</sup> Assessment of the progress made in implementing the 2002 recommendations of the Council of Europe Commissioner for Human Rights, [memorandum](#), CommDH(2007)13, 20 June 2007, paras. 51-57.

<sup>4</sup> "Poles' attitudes to homosexual relationships", Centrum Badań Opinii Społecznej (CBOS), [communiqué](#) no. 90/2019 (in Polish), July 2019.

<sup>5</sup> ILGA-Europe, the "[Rainbow index](#)", 2019.

<sup>6</sup> "A long way to go for LGBTI equality", European Union's Fundamental Rights Agency, [survey](#), 14 May 2019.

<sup>7</sup> *Idem*. See Country detail > Poland > Social attitudes and government response > Perception of increase or decrease of prejudice and intolerance against LGBTI people in the past five years.

<sup>8</sup> *Idem*, on p. 41.

<sup>9</sup> Act of 3 December 2010 on the implementation of certain regulations of the European Union regarding equal treatment.

<sup>10</sup> European Commission against Racism and Intolerance (ECRI), [report](#) on Poland, Fifth Monitoring Cycle, 9 June 2015, paras 99-100, and [Conclusions](#) on the implementation of the recommendations in respect of Poland, adopted on 21 March 2018, published on 15 May 2018.

<sup>11</sup> ECRI, [report](#) on Poland, *op. cit.*, paragraph 27.

homophobic bias underlying such crimes is overlooked.<sup>12</sup> Although Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity<sup>13</sup> states that personal data on a person's sexual orientation or gender identity may be collected where this is necessary for specific, lawful and legitimate purposes, the Chief of Police told the Commissioner that Polish law did not permit law enforcement officers to collect information about the sexual orientation of victims of crime. An analysis of court rulings, carried out by the Polish Ombudsman, found that although in some cases plaintiffs had been successful in preventing the dissemination of anti-LGBTI content, courts nevertheless tended to grant protection to statements with attributes of homophobic hate speech, finding such statements to be covered by freedom of speech.<sup>14</sup>

9. In its 2015 monitoring report on Poland, ECRI recommended that sexual orientation and gender identity be added to the prohibited grounds mentioned in a number of provisions of the Criminal Code.<sup>15</sup> Poland also supported recommendations made during the 2017 Universal Periodic Review including calls to investigate and prosecute crimes motivated by anti-LGBTI sentiment as hate crimes and to recognise sexual orientation and gender identity as an aggravating circumstance for hate crimes.<sup>16</sup> However, a bill tabled in June 2020 by a group of opposition MPs, proposing to introduce sex, sexual orientation, gender identity and gender expression as prohibited grounds in the relevant provisions of the Criminal Code met with a negative opinion from the Polish government.<sup>17</sup>
10. Regarding the policy framework, as noted in the country report published by the Commissioner in June 2019, Poland has no national action plan for equality. The previous National Action Plan for Equal Treatment, which covered the years 2013-2016, expired and has not yet been replaced. In March 2019, the then Government Plenipotentiary for Civil Society and Equal Treatment informed the Commissioner that his office was engaged in the final stages of work on a new plan. During an online meeting in October 2020, the current Government Plenipotentiary informed the Commissioner that a new national action programme for equal treatment, covering the period 2021-2030, was the subject of inter-ministerial negotiations. The Government Plenipotentiary anticipated that the programme would include a chapter devoted to raising public awareness about the effects of discrimination and hate speech against minorities generally, but it would not include a specific section on LGBTI people or any other vulnerable group. The programme would be devised in close co-operation with civil society, non-governmental organisations, and the general public, who were invited to contribute ideas.<sup>18</sup>
11. Poland does not provide for the legal recognition of same-sex relationships. In this connection, the Commissioner notes that on 20 June 2020, the European Court of Human Rights (ECtHR) communicated to the Polish government several applications filed against Poland, which concern in particular the absence in Polish law of a legal framework for persons of the same sex either to marry or to have their stable relationships legally recognised, along with allegations of discrimination on the basis of sexual orientation. On 30 October 2020, the Commissioner submitted a [third-party intervention](#) in some of these cases.<sup>19</sup>
12. Poland does not have a law enabling a person to obtain official recognition of their gender (including sex markers and name) in official documents (legal gender recognition). While it has been possible, in practice, for transgender persons to obtain legal gender recognition through

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<sup>12</sup> "The legal situation of non-heterosexual and transgender persons in Poland", [report synthesis](#) by the Polish Commissioner for Human Rights, Warsaw 2019, p. 10.

<sup>13</sup> [Recommendation](#) CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers of the Council of Europe on 31 March 2010.

<sup>14</sup> "The legal situation...", op. cit., p. 11.

<sup>15</sup> ECRI, [report](#), op. cit., in para. 28.

<sup>16</sup> United Nations Human Rights Council, Universal Periodic Review – Poland, Third Cycle, [Matrix of recommendations](#), May 2017.

<sup>17</sup> Bill No. 465, and the Government's opinion, are available (in Polish) on the Sejm [website](#).

<sup>18</sup> See the Government Plenipotentiary's dedicated [webpage](#).

<sup>19</sup> In respect of the following applications: Katarzyna Formela and Sylwia Formela v. Poland and 3 other applications (nos. 58828/12, 40795/17, 55306/18, 55321/18); Cecylia Przybyszewska v. Poland and 9 other applications (nos. 11454/17, 11810/17, 15273/17, 16898/17, 24231/17, 24351/17, 25891/17, 25904/17, 30128/18, 30340/18); and Antoni Meszkes v. Poland (no. 11560/19).

court proceedings, the procedure is lengthy and taxing, as it requires civil litigation against the claimant's own parents. In 2015, with the preceding Commissioner's encouragement,<sup>20</sup> the Polish parliament passed the Gender Accordance Act which established transparent and accessible gender recognition procedures. However, the law was vetoed by the President of the Republic.

### c. Conclusions and recommendations

13. The Commissioner is concerned that Polish society's increasing acceptance of LGBTI people and rights until recently, as evidenced by opinion polls, appears to have slowed down or reversed. It is difficult to dissociate this phenomenon from the promotion of anti-LGBTI sentiment in society by public officials, examined later in this memorandum. The Commissioner stresses that if the authorities showed leadership by refraining from promoting homophobia and publicly disavowing hate speech in all its forms, this would go a long way towards promoting a more tolerant and respectful society.
14. The Commissioner considers that the rise in hateful rhetoric is at least in part facilitated by existing gaps in the legal and policy framework. Referring to the relevant recommendations of the Committee of Ministers and ECRI, she calls on the Polish authorities to take steps promptly to ensure that hate speech and hate crime based on sexual orientation, gender identity, and sex characteristics<sup>21</sup> are properly punished in law and in practice, and that this includes a recognition of bias motivated by sexual orientation and gender identity as an aggravating circumstance for hate crimes. She also calls on Poland to amend its anti-discrimination legislation to include gender identity and sex characteristics.
15. More broadly, the Commissioner stresses the importance of awareness-raising in combating homophobia and transphobia, dispelling common myths and stereotypes about LGBTI people, and countering their social stigmatisation. She calls on Poland to finally draw up the new national action plan on equality, and to do so as a matter of priority and in close consultation with civil society, particularly non-governmental organisations defending the human rights of LGBTI people. The Commissioner considers that, to be effective, the plan should include provisions explicitly addressing the discrimination of LGBTI people. The Commissioner also encourages the authorities to support and promote education campaigns designed to raise public awareness about LGBTI people and the fact that they have the same rights as everyone else, such as the "[Rainbow Fridays](#)" educational initiative, and to provide all children with comprehensive sexuality education.<sup>22</sup> The Commissioner's human rights comment on this issue provides useful guidance in this respect.<sup>23</sup>
16. The Commissioner notes that current trends in Europe are towards an increasingly hardening consensus in favour of legal recognition for same-sex couples. Indeed, at the time of writing, 30 of the 47 Council of Europe member states provide for such legal recognition in one form or another. Considering that the absence of legal recognition for same-sex couples violates their right to private and family life and that it is a form of discrimination on the ground of sexual orientation, she encourages Poland to grant effective and non-discriminatory legal recognition to same-sex couples in the form of same-sex marriage, civil unions or registered partnerships.
17. Pointing out that any person has the right to personal autonomy and to define the details of their identity, as established by the ECtHR, and that the latter has repeatedly found that the lack of access to legal gender recognition is in breach of Article 8 of the Convention, which protects the right to private and family life,<sup>24</sup> the Commissioner encourages Poland to pass a

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<sup>20</sup> See the [statement](#) of 7 October 2015.

<sup>21</sup> Sex characteristics designate the physical traits or organs that can be indicative of an individual's biological sex and are divided into primary and secondary sex characteristics. The objective of including sex characteristics in non-discrimination legislation is to protect intersex people. For more information about intersex people, see footnote 40.

<sup>22</sup> ECRI, [report](#), op. cit., in para. 101.

<sup>23</sup> "Comprehensive sexuality education protects children and helps build a safer, inclusive society", Human Rights Comment by the Commissioner, 21 July 2020, also available in [Polish](#).

<sup>24</sup> See e.g. the ECtHR's [Factsheet](#) on gender identity.

law to this effect as soon as possible. The procedure established by such law should be quick, transparent, non-pathologising, and devoid of harmful requirements.

## II. Stigmatisation of LGBTI people

### a. So-called “LGBT-free zones”

#### *The Warsaw Mayor’s “LGBT+ Declaration”*

18. On 18 February 2019, the Mayor of Warsaw signed the “Warsaw Municipal Policy for the LGBT+ community”, commonly referred to as the “LGBT+ Declaration” (“*Deklaracja LGBT+*”). The document, which was drawn up in co-operation with civil society organisations representing the LGBTI community, comprised a set of measures designed to make the city more inclusive and safer for LGBTI people such as the reactivation of an emergency shelter for LGBTI people in difficulty, the creation of a municipal mechanism for reporting and monitoring homophobic and transphobic hate crimes, and the reinforcement of anti-violence and sexuality education in schools. The document also formalised the Mayor’s patronage of the annual Pride (equality) march, established the post of city plenipotentiary for the LGBTI community and announced that a diversity charter would be signed with LGBTI-friendly employers.

#### *Emergence and proliferation of anti-LGBT declarations and “family charters”*

19. Since early 2019, largely in reaction to the Warsaw Mayor’s LGBT+ Declaration and encouraged by the subsequent backlash by some politicians and opinion makers, close to one-hundred local government entities in Poland of various levels and sizes have adopted declarations that are openly hostile to LGBT people or variations on a document called the “Local Government Charter of the Rights of the Family”.<sup>25</sup> Several entities have adopted both a declaration and a charter. According to maps developed by Polish activists to bring attention to this phenomenon, these municipalities and regions, which the activists have referred to as “LGBT-free zones”, 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).<sup>26</sup>
20. The first category, commonly referred to as “anti-LGBT declarations”, have so far been adopted by fifty-eight local government entities in Poland. Most of these declarations follow a standard template, usually declaring the municipality concerned as being “free from LGBT ideology”, pledging to fight “political correctness” and “homo-propaganda” and to “prevent [...] the early sexualisation of Polish children”. Some of the texts adopted also condemn, among other things, the “undermining by LGBT circles of the [traditional] family model”, “aggressive homosexual propaganda promoted and perpetuated as part of the ideological war by leftist-liberal circles and LGBT NGOs”, or the holding of Pride (equality) marches.
21. The second category, so-called Local Government Family Charters (hereinafter, “family charters” or “charters”), adopted by thirty-six local government entities, follow a different template.<sup>27</sup> Although they do not explicitly refer to LGBTI issues, they promote a concept of the family based on marriage between a woman and a man as the only legitimate basis for the organisation of society. Among other things, they urge local governments to withhold funding from NGOs and projects considered to overlook such values and to support entrepreneurs promoting “family-friendly solutions”. While the charters claim to be simple “moral declarations” and “programmatic documents” which are neither normative in nature nor liable to a legal challenge, they nevertheless set out “directions for action” and call for the “consolidation of affirmative attitudes” among local government bodies.<sup>28</sup> The adopted texts are usually followed by statements of reasons which place them in direct conflict with the Warsaw Mayor’s “LGBT+ Declaration”.

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<sup>25</sup> “Hate mongering against LGBTI people has no place in today’s Europe”, [statement](#) by the Commissioner, 15 May 2020.

<sup>26</sup> “Atlas Nienawiści” (“Atlas of Hate”), available at <http://atlasnienawisci.pl>

<sup>27</sup> “Local Government Charter of the Rights of the Family”, Ordo Iuris, [webpage](#), 29 March 2019.

<sup>28</sup> See the webpage of the Local Government Family Charter (in Polish) at <http://www.kartarodzin.pl/>

22. Far from being merely words on paper, these declarations and charters directly impact the lives of LGBTI people in Poland. The Commissioner has heard testimonies about the chilling effect of these documents on residents and institutions, who are increasingly reluctant to be associated with any activity related to the human rights of LGBTI people for fear of reprisals or loss of funds. The Commissioner was told that some media outlets which have reported on these documents have been targeted by legal action, leading some of them to exercise self-censorship. She has also been told about cases of LGBTI residents being refused services by local businesses (e.g. a pharmacy) or organisations being denied the opportunity to hold LGBTI awareness-raising events. Activists working to denounce such declarations have also been subjected to specious lawsuits filed by local governments or conservative organisations and a smear campaign labelling them as liars for using creative advocacy tools, the clear intention being to intimidate and silence them.<sup>29</sup> The Commissioner has received reports of many LGBTI people being shunned by fellow residents.
23. So far, only a single municipality in Poland (Sztum) has withdrawn support for its family charter, while another such document was invalidated on formal grounds by a regional governor (*wojewoda*). Challenging declarations or family charters in court is difficult as Polish law requires residents to demonstrate that they have been specifically and directly affected by their adoption. The Polish Ombudsman has challenged the adoption of several anti-LGBT declarations before local administrative courts<sup>30</sup>, obtaining their invalidation in four cases. In three other cases, administrative courts found the anti-LGBT declarations to be non-binding policy documents and refused to entertain the Ombudsman's complaints. Public prosecutors were involved in all these proceedings, petitioning courts to dismiss the Ombudsman's complaints and, in one case, appealing against a court ruling invalidating a local council's declaration even though the council concerned itself did not choose to make such an appeal. Rulings handed down in the first instance have been appealed before the Supreme Administrative Court.
24. The Government Plenipotentiary for Equal Treatment informed the Commissioner that the central government was not entitled to interfere with the substantive competences of local authorities, over whose decisions or actions it did not have any influence. She considered the declarations and charters to be mere policy documents or expressions of the views of those who adopted them. The Police Chief said that the "LGBT-free zone" label was, in fact, the result of misinformation deliberately spread by misleading road signs put up in some Polish towns by a local LGBTI activist. He went on to explain that the police force was bound to follow national law rather than local regulations, and thus the declarations and charters had no effect on police activities.

#### **b. Stigmatisation by public officials**

##### *Verbal stigmatisation*

25. Apart from prompting the adoption of anti-LGBT declarations and charters, the above-mentioned LGBT+ Declaration adopted by the Mayor of Warsaw was met with a wave of criticism by politicians and opinion makers opposed to the initiative, including high-ranking central government and public officials. In the run-up to the 2019 parliamentary election, the leader of Poland's ruling coalition called it an "attack on families and children", cautioning that it would lead to the "sexualisation" of children and warning of an "enormous LGBT onslaught" intended to bring about "the radical destruction of the moral and cultural order" of the country.<sup>31</sup> Poland's Ombudsman for Children's Rights argued that the declaration imposed the ideology of a narrow social group on parents, in breach of the Polish Constitution.

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<sup>29</sup> For the Commissioner's recommendations regarding lawsuits against public participation, see "Time to take action against SLAPPs", human rights [comment](#) by the Commissioner, 27 October 2020.

<sup>30</sup> „Uchwały o przeciwdziałaniu "ideologii LGBT" sprzeczne z zasadą legalizmu i prawami człowieka. Pierwsze sądowe skargi RPO” (“Declarations counteracting 'LGBT ideology' are contrary to the principle of legality and human rights. First complaints from the Polish Ombudsman”), [statement](#), 10 December 2019.

<sup>31</sup> „Kaczyński: Będziemy mieć do czynienia z ofensywą LGBT, ofensywą społecznego zła” (“Kaczyński: We will have an LGBT onslaught, an onslaught of social evil”, *Gazeta Wyborcza*, [press article](#), 2 October 2019.

26. Regrettably, since that time, language stigmatising LGBTI people seems to have been elevated to a prominent position in the public debate in Poland. An education superintendent in Łódź in central Poland stated that Poland was affected by an “LGBT virus (...) dehumanising society and young people”.<sup>32</sup> Although the official was subsequently dismissed, a Deputy Speaker of the Polish parliament denied that the dismissal was in connection with his statements and declared that LGBT ideology was a “nihilistic concept” intended to destroy society.<sup>33</sup> Another education superintendent from Kraków argued in a social media post that the activity of “gender and LGBTQ+ ideologues” was a bigger threat than the coronavirus pandemic.<sup>34</sup> A regional governor in Lublin, who was later appointed a staffer on the re-election campaign of the President of Poland and became Poland’s Education Minister in October 2020, called LGBTI people “not equal to normal people”, calling on Poles to defend the family against “this kind of corruption, depravity [and] absolutely immoral behaviour” and to put an end to “this idiocy relating to some sort of human rights or equality”.<sup>35</sup> Poland’s Children’s Rights Ombudsman accused LGBTI organisations of distributing hormone pills in schools to change pupils’ gender against their will.<sup>36</sup> He also encouraged parents to oppose their children’s education on sexuality and anti-discrimination by exempting them from classes dealing with topics such as sexuality, contraception, sexual diversity, LGBTI issues, homophobia, gender identity, or “other behaviour contrary to the traditional family model”.<sup>37</sup>
27. The presidential campaign in the summer of 2020 was a time when existing anti-LGBTI discourse was voiced especially loudly. In particular, the serving President, who was running for re-election, repeatedly resorted to anti-LGBTI rhetoric as an attempt to gain support. As well as using antagonising language, he pledged to defend the notion of marriage being understood solely as the union between a man and a woman and categorically rejected the idea that homosexual couples might be allowed to adopt children. He also promised to prohibit the “propagation of LGBT ideology” in public institutions, calling it “worse than Communism”.<sup>38</sup> Prior to the election runoff, the President tabled a bill, currently pending in the lower house of the Polish parliament (the Sejm), proposing to amend the Constitution to prohibit the adoption of children by “any person in a relationship with another person of the same sex”.<sup>39</sup>
28. While the vast majority of the accounts recorded by the Commissioner concerned statements made by politicians or opinion-makers affiliated with the ruling coalition, some of those she spoke to told her that opposition parties in Poland were mostly somewhat passive in their defence of LGBTI rights and reluctant to challenge the stigmatisation of LGBTI people actively.
29. The impact of stigmatising statements may be hard to quantify but it has clearly been felt by many LGBTI people in Poland. As has been the case with the upshot of anti-LGBT declarations and family charters (see paragraph 22 above), the Commissioner has received reports of a rise in public acceptance of bullying and violence against LGBTI people in Poland. The Commissioner has also been told that the current stigmatising context is taking a huge toll on the mental health of members of the LGBTI community, including children and young people, with several suicides also being reported. Members of the LGBTI rights NGOs told the Commissioner about increased routine violence against LGBTI people on the streets and

<sup>32</sup> “Education minister defends official who warned ‘LGBT virus’ threatens Polish schools”, [press article](#), Notes from Poland, 25 August 2020.

<sup>33</sup> “Terlecki: ideologia LGBT dehumanizuje społeczeństwo, trzeba bronić przed nią dzieci” (Deputy Speaker Terlecki: “LGBT ideology dehumanises society, children must be protected from it”, TVN24, [press article](#) (in Polish), 24 August 2020.

<sup>34</sup> “Małopolska kurator oświaty tłumaczy się z wpisu o LGBT” („Małopolska region education superintendent explains her social media comment on LGBT”), [press article](#) (in Polish), 27 May 2020.

<sup>35</sup> Bulwersujące słowa posła Czarnka o LGBT: “Ci ludzie nie są równi ludziom normalnym” (Czarnek MP’s shocking words about LGBT: “These people are not equal to normal people”), Tok FM, [press article](#) (in Polish), 14 June 2020.

<sup>36</sup> “Children’s ombudsman accuses sex educators of offering sex-hormones to kids. Fact-checkers find no such cases”, TVN24 News in English, [press article](#), 3 September 2020.

<sup>37</sup> „Rodzicu, zobacz, jakie oświadczenie złożyć w sprawie wizerunku i danych dziecka lub dodatkowych zajęć” (article dealing with parental consent to children’s participation in extracurricular activities), [website](#) of the Polish Ombudsman for Children’s Rights (in Polish), see in particular the “Parental statement on sexuality education classes” [template](#) (in Polish).

<sup>38</sup> See “Polish election: Andrzej Duda says LGBT ‘ideology’ worse than communism”, BBC, [press article](#), 14 June 2020.

<sup>39</sup> Bill no. 456, available (in Polish) on the Sejm [website](#).

increased demand for psychological advisory and support groups among members of the LGBTI community. Measures related to the COVID-19 pandemic exacerbate this situation by reducing access to support groups and safe spaces. The Office of the Polish Ombudsman informed the Commissioner that it had recorded an almost threefold increase in the number of complaints from LGBTI people in the period between 2017 and 2020. The Commissioner finds some of these claims to be corroborated by opinion surveys referred to earlier in the text (see paragraph 6 above). Stigmatisation of LGBTI people in Poland also has an adverse impact on parents of intersex children, which increases the risk of sex-normalising surgery without the informed consent of the children concerned.<sup>40</sup>

30. However, in their meetings with the Commissioner, representatives of the Polish executive authorities all firmly rejected the notion that any minorities, including sexual minorities, were discriminated against in Poland, and provided the Commissioner with a review of the legislative equality framework. The Government Plenipotentiary for Equal Treatment was of the opinion that there was no acceptance of discrimination either at the central or local level. She acknowledged that many unfortunate words had been used by politicians during the last presidential election, and pointed out that she had publicly criticised the authors of some of these statements, including politicians from the ruling coalition; however, she argued that many statements were covered by the speakers' freedom of expression.
31. Pointing to the adoption by Poland of women's suffrage in 1918 and the decriminalisation of homosexual relations in 1932, the Justice Ministry officials assured the Commissioner that Poland is and always has been a country of tolerance. They stressed that all branches of the Polish government respected the prohibition of discrimination anchored in the Polish Constitution. However, in their view, respect for diversity did not mean that every difference could be accepted. In particular, it did not warrant the introduction in Polish law of – in their view – unjustified privileges demanded by “aggressive, leftist LGBT groups” representing an ideological leftist-liberal narrative. They claimed that recognising the equal rights of LGBTI people would in effect amount to imposing one group's ideology on others under the veil of anti-discrimination law. They also stressed that the Polish Constitution protected marriage understood exclusively as a union between a man and a woman, reflecting Poland's cultural heritage based on Christian roots.

#### *Public funding of homophobia*

32. Stigmatisation of LGBTI people in Poland also finds expression in the distribution of public funds. In particular, the Ministry of Justice has channelled money from its “Justice Fund” designed for victims and witnesses of crime, crime prevention and after-prison support<sup>41</sup> to finance overtly homophobic initiatives. In one instance, this money was allocated to a four-year project entitled “*Counteracting offences involving violations of freedom of conscience committed under the influence of LGBT ideology*”, run by a private foundation set up in 2016 by the editor of a magazine reputed for its pro-government editorial line. The project entails the organisation of public conferences on the theme as well as the publication of a series of inserts with homophobic content in the magazine in question.<sup>42</sup> In August 2020, Poland's Justice Minister announced that the Polish municipalities which had previously been denied the European Commission's funding due to their adoption of anti-LGBT declarations would receive financial support through funding of projects under the Ministry's “Justice Fund”. One such municipality

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<sup>40</sup> Intersex people are persons who cannot be classified according to the medical norms of so-called male and female bodies with regard to their chromosomal, gonadal or anatomical sex. The Commissioner has recommended that Council of Europe member states end medically unnecessary “sex-normalising” treatment of intersex persons, including irreversible genital surgery and sterilisation, when it is enforced or administered without the free and fully informed consent of the person concerned. For more information, see Council of Europe Commissioner for Human Rights, “[Human Rights and Intersex people](#)”, 2015.

<sup>41</sup> The Fund for Assistance to Victims and Post-Penitentiary Assistance (“*Fundusz Pomocy Pokrzywdzonym oraz Pomocy Postpenitencjarnej*”), known since 2017 as the “Justice Fund” (“*Fundusz Sprawiedliwości*”), is a fund with a budget of PLN 462 million (ca. EUR 105 million, as of early 2017) administered by the Ministry of Justice.

<sup>42</sup> The [webpage](#) of the “Guardian of Remembrance” (*Strażnik Pamięci*) foundation states that the main objective of the project is to “reduce and ultimately eliminate from the Polish public space the violations of the rights of conscience of believers who suffer under the pressure of new left-wing ideologies”.



was promised government funding of PLN 250,000 (ca. EUR 57,000), i.e. three times more than the funds denied by the European Union.<sup>43</sup>

33. In their exchange with the Commissioner, the Ministry of Justice officials acknowledged that funding had been provided for the private foundation project referred to above but strongly denied that it was homophobic in nature, arguing that the funding benefitted a leading Polish opinion magazine whose publications were protected by the freedom of expression. The Ministry officials also confirmed that funding from the Justice Fund was granted to communities which had adopted the aforementioned declarations to fund their volunteer fire departments, and acknowledged that the Ministry's press conference to announce the grants had been deliberately timed to coincide with the – in their view, unjustified – withholding of EU funds.

#### *Anti-LGBTI litigation and prosecution*

34. Public support for the stigmatisation of LGBTI people is also evident in the legal measures that the Minister of Justice, who is also Prosecutor-General,<sup>44</sup> has taken to support or to endorse actions by private persons that discriminate against LGBTI people, presenting this as necessary to defend the public interest. Under Polish law, the public prosecutor can join any court proceeding if this is warranted by the need to protect the rule of law or the public interest. In one example, since 2015, the Minister of Justice, in his capacity as Prosecutor-General, has been involved in litigation in support of a print shop operator from Łódź, convicted of a misdemeanour for unfairly refusing to print promotional materials for an LGBTI organisation. Although the conviction was upheld on appeal, the Prosecutor-General successfully petitioned Poland's Constitutional Court to declare the provision on which the conviction had been based unconstitutional and subsequently had the conviction quashed by a court. In another case, in May 2020, the prosecution service subordinate to the Prosecutor-General charged a local manager of a multinational furniture company with the offence of violating religious feelings, punishable with up to two years in prison, for firing an employee who, on the company's Intranet discussion board, had called homosexuality an "abomination" and quoted excerpts from the Bible referring to death as the fate awaiting homosexuals. The Minister publicly called the dismissal an example of "legal and economic violence against those who do not share the values of homosexual activists".<sup>45</sup> The criminal proceedings are on-going. In his online meeting with the Commissioner, the Secretary of State of the Justice Ministry defended the former employee of the furniture company, arguing that he had a right to remain true to his religious convictions in the workplace and to oppose what he saw as a sinful ideology.
35. In recent years, prosecutors have also been reported to take an active role against claims made by LGBTI people in many legal proceedings. One such category are court cases concerning legal gender recognition. Persons with whom the Commissioner discussed this matter informed her that the prosecutors' involvement often delayed the proceedings or made it more difficult for the transgender person to obtain a favourable ruling. Another such category of cases are proceedings concerning the legal situation of Polish children with a foreign birth certificate and same-sex parents. In their meeting with the Commissioner, the Justice Ministry officials emphasised that a ruling by the Supreme Administrative Court in September 2020 had made it possible for children of same-sex parents born abroad to obtain a personal identification ("PESEL") number and Polish ID without the need for the "transcription" of the foreign birth certificate. In their view, this solved the issue of the formal confirmation of a child's nationality. However, civil society organisations have raised concerns that, in practice, some municipalities continue to refuse to follow the ruling or apply it selectively. According to the Justice Ministry officials, the Ministry is currently considering tabling a bill which would embed the Supreme Administrative Court's ruling in a statute.

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<sup>43</sup> "Wsparcie z Funduszu Sprawiedliwości dla gmin, które pominięto w unijnym programie „Partnerstwo miast” ("Justice Fund support granted to municipalities passed over by the European Union's town twinning programme"), [press statement](#) (in Polish), 18 August 2020.

<sup>44</sup> On the combined functions of Minister of Justice and Prosecutor-General, see the Commissioner's last country visit [report](#), op. cit., June 2019, in paras. 34-38.

<sup>45</sup> "IKEA manager in Poland charged for firing employee over anti-gay comments", [press article](#), 28 May 2020.

### c. Stigmatisation by other prominent bodies and figures in society

#### *Catholic Church*

36. Statements from senior members of the Catholic clergy are reported to carry considerable weight among believers in a predominantly Catholic country like Poland. It is of concern therefore that Church officials have actively contributed to the stigmatisation of LGBTI people in Poland in recent years. The Polish Episcopal Conference did so, for example, in its position on the Warsaw Mayor's LGBT+ Declaration", which it accused of depraving children and called to be withdrawn.<sup>46</sup> To the Commissioner's knowledge, the words of the archbishop of Kraków who, in a sermon given in August 2019, cautioned his audience against a "neo-Marxist (...) rainbow plague" designed to "dominate (...) souls, hearts and minds", have never been challenged either by the hierarchy of the Catholic Church or by the public authorities. In August 2020, the Episcopal Conference adopted an official position on LGBT+ issues which called, among other things, for the creation of "counselling centres" designed to "help people who want to regain their sexual health and natural sexual orientation".<sup>47</sup>
37. In his meeting with the Commissioner, the Secretary of State of the Justice Ministry defended the remarks of the Kraków archbishop cited above, arguing that certain participants in Pride marches had publicly derided the clergyman and made threatening gestures at a puppet representing him. In his view, LGBTI rights groups generally behaved aggressively and with contempt towards the clergy and Catholics in Poland, and some LGBTI people vandalised places of religious worship and interrupted religious ceremonies.

#### *Media and public service broadcasters*

38. Poland's public service media and some of its privately owned media have also played a role in fostering anti-LGBTI sentiment. In July 2019, a conservative Polish newspaper announced that it would distribute "LGBT-free zone" stickers in its paper issue, though distribution of the stickers was subsequently halted by a court.<sup>48</sup> Shortly before the parliamentary election of October 2019, the public service broadcaster aired a 30-minute documentary titled "Invasion", which propagated harmful stereotypes about LGBTI people, smeared LGBTI non-governmental organisations and presented Poland's Pride (equality) marches as foreign-financed. The broadcasting regulator dismissed a complaint filed by the Polish Ombudsman, finding the documentary to have been in the public interest. However, a court ordered the documentary to be taken down from Internet and banned it from airing for a year.<sup>49</sup> News tickers used by Poland's public service broadcaster regularly use expressions stigmatising LGBTI people to accompany related news items.<sup>50</sup>

#### *Anti-LGBT trucks and private citizens' bills*

39. Since at least 2019, trucks operated by a private foundation have been driven around in the streets of many Polish cities. The trucks, commonly known as "anti-LGBT trucks", carry banners and broadcast homophobic messages over loudspeakers, equating homosexuality with paedophilia, accusing LGBTI people of sexual abuse and suggesting that sexuality education in schools promotes child sex.

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<sup>46</sup> "Stanowisko Konferencji Episkopatu Polski w sprawie tak zwanej Karty LGBT" ("[Position](#) of the Polish Episcopal Conference concerning the so-called LGBT Charter"), 13 March 2019.

<sup>47</sup> "Stanowisko Konferencji Episkopatu Polski w kwestii LGBT+ ("[Position](#) of the Polish Episcopal Conference concerning LGBT+)", 2020, in point 38. See also, "Mamy w Polsce pełen zakres swobód i tolerancji". Premier poparł stanowisko Episkopatu ws. LGBT" ("Freedoms and tolerance are fully respected in Poland. Prime Minister supports the Episcopal position on LGBT"), Gazeta.pl, [press article](#) (in Polish), 29 August 2020; see also the [statement](#) of the Polish Ombudsman (in Polish), 9 October 2020.

<sup>48</sup> "Poland court bans 'LGBT-free zone' sticker from sale, BBC, [press article](#), 25 July 2019.

<sup>49</sup> "Court orders Polish state broadcaster TVP to take down online anti-LGBT film", Notes from Poland, [press article](#), 8 June 2020.

<sup>50</sup> News ticker samples are available on the public broadcaster's website in the form of web items: „Atak na Kościół, w tle propaganda LGBT" ("Church under attack, LGBT propaganda to blame"), [web item](#) (in Polish), 30 July 2019; "Esbecy pod tęczęwą flagą" ("Communist agents under the rainbow flag"), [web item](#) (in Polish), 31 July 2019.

40. Occasional attempts by pedestrians or drivers to obstruct the trucks have resulted in police interventions and the Commissioner was told by some of the people she spoke to that the trucks have sometimes been seen driving under police escort. The Chief of Police told the Commissioner that the activity of the trucks has indeed led to many complaints from concerned citizens. However, aside from an isolated incident where the police stopped one of the trucks to inspect its technical condition, the police were not entitled to assess the “educational or ideological” messaging imparted by the trucks, which was a competence of the courts. He also pointed out that the police were legally required to intervene if trucks were obstructed or damaged or if their drivers were being threatened.
41. The Commissioner has been informed that courts have routinely turned down legal challenges to the operation of these trucks, either because the criminal law on hate speech does not cover sexual orientation or gender identity, or because plaintiffs suing for defamation failed to demonstrate that they were gay or lesbian. The Justice Ministry officials informed the Commissioner that a court decision had initially set certain limits on truck operations, but the ruling was subsequently set aside by a higher court, which found that the messages displayed by the trucks were covered by freedom of expression. The Commissioner understands that the vehicles continue to circulate freely.
42. In early 2019, the private foundation operating the anti-LGBT trucks and a group of citizens tabled a bill in the Polish Sejm entitled “Stop Paedophilia”. The bill, which was accompanied by a disturbing explanatory narrative stigmatising LGBTI people, called for the introduction of harsh penalties – including possible imprisonment – for anyone acting in the educational context or in school premises who “propagates or approves the undertaking by a minor of sexual intercourse or any other sexual act”. Considering that such a broad and vague formulation could lead to the criminalisation of all sexuality education in schools, in a statement published in April 2020 the Commissioner called for the bill to be rejected and warned against fearmongering against LGBTI people.<sup>51</sup> Ultimately, however, the Sejm voted to continue examining the bill. The Commissioner further notes that another citizen’s bill entitled “Stop LGBT”, which aims to prohibit the holding of Pride (equality) marches in Poland altogether, has been tabled in the Sejm in early November 2020.

#### **d. Conclusions and recommendations**

43. The Commissioner is deeply concerned about the propagation of negative and inflammatory homophobic narratives by many public officials in Poland, including people in the highest ranks of government. Having already denounced such statements after her country visit to Poland in March 2019,<sup>52</sup> the Commissioner regrets that not only have hateful anti-LGBTI language, fearmongering about LGBTI people, and the spread of harmful stereotypes not abated, but they became central features of the parliamentary and presidential election campaigns in 2019 and 2020.
44. First of all, the Commissioner considers it important to stress that the acronym “LGBTI” describes, and has always been used to refer to, lesbian, gay, bisexual, transgender and intersex people. Sexual orientation and gender identity are not a matter of choice or opinion. The abbreviation is therefore to be understood to refer to people. The Commissioner rejects as fundamentally flawed, dangerous and insincere any interpretation of the notion as referring to an ideology and condemns the deliberate misrepresentation of this term by some politicians and opinion-makers in Poland.
45. Freedom of expression is one of the fundamental values in a democracy. However, exercising it carries duties and responsibilities, particularly for political leaders and opinion-makers, whose task is to lead by example in their public actions and discourse. Freedom of expression must not be misinterpreted as a licence to trample on the reputation or rights of others. The Commissioner, whose last country visit to Poland included paying respects to the memory of the late Mayor of Gdańsk, who was fatally stabbed at a charity event, is mindful of the fact that

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<sup>51</sup> “Commissioner urges Poland’s Parliament to reject bills that restrict women’s sexual and reproductive health and rights and children’s right to sexuality education”, [statement](#), 14 April 2020.

<sup>52</sup> See the Commissioner’s post-visit [press release](#), 15 March 2019.

the stigmatisation and hate directed at certain individuals or groups of people carries a real risk of legitimising violence, sometimes with fatal consequences. Hate and dehumanisation, especially when applied constantly or at the highest level, have an impact not just on victims but also on their communities and on the well-being of the society. They send a signal of social exclusion and threaten social cohesion and the peaceful coexistence of different groups. The Commissioner therefore strongly urges all public authorities, politicians and opinion leaders in Poland to reverse this trend and not to engage in hate speech or any discourse stigmatising LGBTI people, and to firmly denounce and counter such narratives and stigmatisation, including when they are expressed by private parties, as also indicated in the 2010 Committee of Ministers Recommendation referred to above. The Commissioner also points out that, according to this Recommendation, public officials should promote tolerance and respect for the human rights of LGBTI people whenever they engage in dialogue with key civil society representatives, including religious communities.

46. The Commissioner was dismayed to learn about public support for manifestly homophobic projects and initiatives, particularly through the use by the Ministry of Justice of the “Justice Fund”. In her view, the use of public money to support such initiatives sends an extremely alarming signal of public approval for homophobia, effectively incentivising hate, intolerance and exclusion, and rewarding such behaviour when it is engaged in both by local governments and by private persons. She urges the Polish government to put a halt to any such funding immediately and to ensure that initiatives which directly or indirectly promote hate and intolerance against LGBTI people will not receive public support.
47. The emergence of anti-LGBT declarations and family charters in a vast share of Poland’s territory is another highly alarming development. The exact legal weight – if any – of the documents which have been designated as such remains the subject of controversy and ongoing litigation, and the credence given to them by the inhabitants of those communities or the local law enforcement agencies may also be unclear. What is clear, however, is that the adoption of these documents signals an explicit, or at best implicit, exclusion of LGBTI people and their families from local community life and from equal support by municipalities. Their impact on the lived experience of stigma and discrimination by LGBTI people is also unfortunately very tangible. The Commissioner points out that access to public funding, notably for NGOs, should be secured without discrimination on grounds of sexual orientation or gender identity. Emphasising that all people are equal and deserve to be treated as such regardless of any of their personal characteristics, including their sexual orientation or gender identity, the Commissioner calls on all local municipalities and regions that have adopted anti-LGBT declarations and family charters to revoke them without delay and to reject other discriminatory initiatives in future.
48. On the other hand, the Commissioner is heartened to witness expressions of solidarity with LGBTI people, reflected for instance in the participation by numerous supporters and allies in Poland’s Pride (equality) marches. She also welcomes the very positive examples of inclusive measures taken by local governments in Poland, such as the adoption of the Warsaw Mayor’s LGBT+ Declaration and Gdańsk’s Model for Equal Treatment<sup>53</sup>, or the appointment of Kraków’s Equal Treatment Council. Implementation of these measures should be actively pursued and all other local authorities in Poland should be encouraged to take similar steps to raise public awareness and promote tolerance, inclusion and solidarity with their LGBTI residents.
49. The Commissioner considers the draft constitutional amendments tabled by the President of Poland in the context of the recent electoral campaign to be openly discriminatory towards LGBTI people. She points out that under the case law of the European Court of Human Rights, rules concerning adoption of children should be non-discriminatory and apply equally to prospective parents, irrespective of their sexual orientation.<sup>54</sup> Given that Poland allows single-parent adoption, it should remain open to any suitable single person, regardless of that person’s

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<sup>53</sup> [Report](#) following the Commissioner’s country visit to Poland from 11 to 15 March 2019, CommDH(2019)17, 28 June 2019, paras. 96 and 101.

<sup>54</sup> Paragraph 27 of [Recommendation](#) CM/Rec(2010)5 cited above states that “[t]aking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.”

sexual orientation or whether that person is “in a relationship with another person of the same sex”. The Commissioner calls for the amendments to be withdrawn or rejected. She also calls on the Polish parliament to reject the bills entitled “Stop paedophilia” and “Stop LGBT” and to remain wary of any other initiatives that seek to limit the human rights of LGBTI people or to stigmatise them or any other social group. The Commissioner considers that such initiatives have no place in a society that nurtures equality and non-discrimination as core values. In this connection, she supports the voices of officials at the highest level in the European Union, who have recently expressed their resolve in building a Union of equality that is the example to follow in the fight for diversity and inclusion.<sup>55</sup>

50. The Commissioner regards the continued circulation on Polish streets of anti-LGBT trucks as a glaring example of the gaps in the Polish legal system with regard to the scope of criminalisation of hate speech, analysed earlier in the text (see paragraphs 8-9 above). In the Commissioner’s view, the messages imparted by these trucks match the textbook definition of homophobic hate speech. She calls on the Polish authorities to halt their activities as a matter of urgency.

### **III. Conduct of the law enforcement agencies and the banning of Pride (equality) marches**

#### **a. Pride (equality) marches**

51. Poland has unquestionably come a long way since the banning of Pride marches, commonly known in Poland as “equality marches”, in Warsaw and Poznań in 2005.<sup>56</sup> The Commissioner notes that in 2019 no less than 24 peaceful equality marches took place in various cities and towns across Poland – in many places, for the first time.<sup>57</sup> Mayors of cities like Gdańsk, Płock, Wrocław and Warsaw granted the marches their patronage. In the vast majority of cases, the police properly protected the participants from violence by counter-protesters. It also responded swiftly to an attempted bombing ahead of one of the marches.
52. However, Poland’s Prides have also been confronted with repeated bans and several violent attacks over recent years. While in 2018 only one such ban was imposed – and promptly lifted by a court – in Lublin<sup>58</sup>, in the following year the same city’s mayor imposed it again and several other mayors followed suit, citing security concerns.<sup>59</sup> Ultimately, all bans were struck down by the courts. The organisation of the marches, however, continued to draw criticism from high-ranking public officials. In 2019, the then regional governor of Lublin<sup>60</sup> publicly accused equality marches of promoting “perverse, deviant and unnatural behaviour” and “anti-family, anti-Christian attitudes”.<sup>61</sup>
53. Such hateful rhetoric opens the door to violence. The Commissioner notes that the first ever Pride march organised in Białystok in July 2019 was brutally disrupted by violent attackers shouting homophobic insults and hurling firecrackers, bottles, stones and eggs at the marchers. Media accounts reported that individual participants in the march, including a child, were hunted down, assaulted and forced to seek refuge. The riot police used tear gas to disperse the attackers and arrested the most violent offenders.

#### **b. Arrests and treatment of LGBTI people and activists**

54. Stigmatising rhetoric has often been accompanied by harassment and intimidation of LGBTI activists by law enforcement agencies and the public prosecution services. In May 2019 in

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<sup>55</sup> State of the Union Address by President von der Leyen at the European Parliament Plenary, 16 September 2020; Union of Equality: The Commission presents its first-ever strategy on LGBTIQ equality in the EU, 12 November 2020, remarks of Vice-President for Values and Transparency Vera Jourová and Commissioner for Equality, Helena Dalli.

<sup>56</sup> “Assessment...”, [memorandum](#), op. cit., in para. 52.

<sup>57</sup> See the [list of cities](#) which held marches (in Polish).

<sup>58</sup> See the Commissioner’s [tweet](#) of 12 October 2018 welcoming the court’s decision.

<sup>59</sup> Examples include Kielce, Lublin and Rzeszów in south-eastern Poland.

<sup>60</sup> Referred to in paragraph 26 above.

<sup>61</sup> See the [statement](#) of the Polish Ombudsman (in Polish), 26 November 2018.

Łódź in central Poland, an LGBTI activist was detained by the police for several hours and had her home searched on suspicion of hanging up posters depicting the Virgin Mary with a rainbow halo.<sup>62</sup> In July 2020, the activist and two other people were officially charged with offending religious feelings. Similar charges were brought against LGBTI activists taken into police custody on suspicion of putting up rainbow flags on public monuments in Warsaw in July 2020.<sup>63</sup> In early August 2020, one of these activists was arrested again, this time on suspicion of involvement in the vandalising of an anti-LGBT truck and manhandling its driver. The prosecutor's request to place her in pre-trial detention as a flight risk, initially refused by a court, was granted on appeal and the activist was taken into custody and placed in solitary confinement for two months. She was eventually released on 28 August. In October 2020, the police arrested another activist who spray-painted the names of several children who had taken their own lives after being harassed on the basis of their sexual orientation on the buildings of the Ministry of Education.<sup>64</sup>

55. Members of civil society whom the Commissioner interviewed stated that members of the LGBTI community are losing trust in the law enforcement agencies in Poland. Citing specific examples, they claimed that police officers often disregarded or downplayed the seriousness of incidents of violence or hate crime committed against LGBTI people, leading some members of the community to refrain from reporting infringements of their rights to the police as they did not trust them to handle their complaints effectively or because they feared derision or repeat victimisation.
56. On 7 August 2020, spontaneous protests against the pre-trial detention of one of the activists referred to above broke out in Warsaw and later also in a number of other Polish cities.<sup>65</sup> The demonstration in Warsaw ended with the arrest of several dozen protesters. A report<sup>66</sup> published by the Polish Ombudsman in his capacity as the National Prevention Mechanism under the Optional Protocol to the Convention Against Torture (*Krajowy Mechanizm Prewencji Tortur, KMPT*) included findings that dangerous coercive measures were used against some protesters and the police made disproportionate use of handcuffs. The report also argued that searches by the police on many of the persons arrested in which they ordered them to undress entirely, and in some cases more than once, constituted humiliating treatment. A transgender woman is alleged to have been searched by a male officer although she stated her gender. The report qualified some of the above measures as “degrading” and, in some cumulative cases, “inhuman” treatment. Some of the report’s findings were corroborated by several MPs present at the scene and by media accounts. In addition, the Warsaw Bar Association and the National Chamber of Attorneys-at-Law issued statements criticising the police for preventing some of the persons arrested from accessing their lawyers.<sup>67</sup>
57. The Chief of Police did not consider that there was distrust between the police and members of the LGBTI community. In his view, despite being surprised by the intensity of the August protests and the behaviour of some of the protesters who had climbed onto patrol cars and damaged equipment, the police had acted respectfully and proportionately, arresting only the most aggressive protesters. He said that the police response had stood up to the scrutiny of the courts and been assessed favourably by the police’s Internal Control Bureau, the public prosecutor and the Polish Sejm. He claimed that the police were required by law to strip every person they arrested naked to ensure that they were not carrying dangerous items, although the Commissioner understands this to be a possibility, not an obligation under Polish law. The

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<sup>62</sup> “Activist arrested and house raided after Amnesty International meeting”, Amnesty International, [article](#), 6 May 2019; “Poland: Arrest Over Virgin Mary’s Rainbow Halo”, Human Rights Watch, [article](#), 8 May 2019.

<sup>63</sup> “Poland LGBT protests: Three charged with hanging rainbow flags off statues”, BBC, [press article](#), 5 August 2020.

<sup>64</sup> “Aktywistka zatrzymana za napisy na budynku MEN. Przesłuchanie w prokuraturze” (“Activist arrested for spray-painting Education Ministry building is questioned by prosecutors”), *Gazeta Wyborcza*, [press article](#) (in Polish), 8 October 2020.

<sup>65</sup> Examples included Białowieża, Bydgoszcz, Gdańsk, Kraków, Lublin, Łódź, Poznań, Rzeszów, Tarnów and Zielona Góra, see „Demonstracje solidarności z Margot i LGBT” (“Protests in solidarity with Margot and LGBT”, *Gazeta Wyborcza*, [press article](#) (in Polish), 10 August 2020.

<sup>66</sup> See the Ombudsman’s [final report](#) (in Polish) of 7 September 2020.

<sup>67</sup> Warsaw Bar Association, [statement](#) (in Polish) of 9 August 2020; National Chamber of Attorneys-at-Law, [statement](#) (in Polish).

Chief of Police acknowledged the need to set up a new procedure for the treatment of transgender persons during arrest. He rejected the Ombudsman's report, claiming that it was based solely on interviews with the persons taken into police custody and published without seeking the police's views.

### **c. Conclusions and recommendations**

58. The Commissioner welcomes the fact that Pride (equality) marches in Poland have been held increasingly freely and peacefully in recent years. However, she notes with concern that mayors are increasingly in the habit of banning such marches under the pretence of promoting public safety, and that this is at odds with the consistent case law of the courts, which have emphasised the authorities' responsibility to ensure the participants' safety rather than banning marches. She considers that this worrying trend may erode freedom of assembly, which is a cornerstone of democracies ruled by law and which the public authorities at all levels are required to uphold.<sup>68</sup> Drawing on her recommendations on the matter,<sup>69</sup> the Commissioner urges the Polish authorities to ensure that peaceful Pride (equality) marches can take place free from any hindrance.
59. The Commissioner was taken aback by accounts of violent attacks against the peaceful participants of the 2019 Pride march in Białystok. Pointing out that it is the public authorities' duty to safeguard the right of all persons to express their views freely in the context of public assemblies and to protect assemblies against those who wish to deny this right to others, she commends the actions taken in response by the Polish police and welcomes the Polish Prime Minister's vocal condemnation of the violence committed against the persons participating in the march. The Commissioner urges the public authorities in Poland to send a message of zero tolerance for any violence against Pride (equality) marches and to commit firmly to protecting participants and bystanders from violence. Granting official patronage to equality marches is one way in which local officials can help translate the message of public support into a safer environment on the ground.
60. The Commissioner is also worried by the numerous accounts of harassment and intimidation of LGBTI activists in Poland by law enforcement agencies and the public prosecution service. She considers that the climate of polarisation and stigmatisation which has been artificially created in Poland has led many members and sympathisers of the LGBTI community to take a stand in many different ways – peacefully in some cases and in a more provocative or confrontational fashion in others. In this connection, the Commissioner welcomes the release from pre-trial detention of the activist referred to above, for whom a number of respected personalities volunteered to act as guarantors. Without prejudice to the course or outcome of any ongoing legal proceedings, the Commissioner considers that placing the activist in pre-trial detention for two months at the prosecutor's behest was a disproportionate measure, which sent a chilling signal for LGBTI rights activism in Poland.<sup>70</sup> In general, the Commissioner calls on Poland to fully protect persons defending the rights of LGBTI people from hostility and aggression and to enable them to carry out their activities freely.
61. The Commissioner fully understands the difficulty of the task of policing assemblies and protests in the current highly polarised context. However, she points out that policing in a democratic society requires all possible efforts to respect proportionality of force by law enforcement agencies in response to protests. In particular, she calls on the Polish authorities to take urgent and decisive action on the recommendations of the latest [report](#) on police detention facilities by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which found serious deficiencies and a total absence of progress as regards the fundamental safeguards against ill-treatment of persons in police custody, including those pertaining to excessive use of force or the right of access to a

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<sup>68</sup> See e.g. European Court of Human Rights, *Bączkowski and Others v. Poland* (Appl. No. 1543/06), judgment of 3 May 2007.

<sup>69</sup> "Shrinking space for freedom of peaceful assembly", Human Rights [Comment](#) by the Commissioner, 9 December 2019

<sup>70</sup> See also the Commissioner's [tweet](#) of 8 August 2020.

lawyer and a doctor.<sup>71</sup> The Commissioner also urges the Polish authorities, including the police, to fully implement the recommendations of the Ombudsman's report referred to in paragraph 56 above. Lastly, she encourages the police to actively reach out to the organisations representing LGBTI crime victims to re-establish the mutual cooperation and trust that may have been eroded by some recent developments.

62. The Commissioner hopes that the findings, conclusions and recommendations in this memorandum will be useful to Polish society at large in reflecting on this important theme, and to the Polish authorities in particular in charting the country's path towards ever-greater compliance with the human rights standards of the Council of Europe. The Commissioner will continue to follow developments related to the rights of LGBTI people in Poland closely. In so doing, she looks forward to continued dialogue with the Polish authorities and civil society.

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<sup>71</sup> [Report](#) to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 16 September 2020, Strasbourg, 28 October 2020, CPT/Inf (2020) 31.