

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/4/37/Add.1, March 27, 2007: Poland

559. On 5 December 2006, the Special Representative together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an urgent appeal concerning the banning of public events organised by the lesbian, gay, bisexual and transgender community as well as discrimination against this community. According to information received, on 15 November 2005, the mayor of the city of Poznan banned a public event known as the Equality March, which had been organised by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organizations. The march was planned to take place on 19 November 2005 and was intended to provide a platform for a discussion about tolerance, anti-discrimination and respect for the rights of sexual minorities. The ban was issued on the grounds of security concerns, despite the fact that security measures had already been agreed to between the municipality and the organisers of the march. Despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration. The demonstrators were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth who shouted discriminatory slogans at them including 'Let's get the fags', and 'We'll do to you what Hitler did with Jews'. The police only intervened toward the end of the march to disperse the crowd. It is reported that in so doing the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. Moreover, in November 2004, the Equality Parade was stopped when the police failed to protect the demonstrators from members of the All Polish Youth who blocked the event. In September 2005 a Warsaw court had declared illegal the decision of the Mayor to ban the Equality Parade. In light of the fact that Equality Parades had also been banned in Warsaw in June 2004 and in May 2005, concern is expressed that the banning of Equality March in Poznan was based primarily on intolerance towards the LGBT community in Poland. This is highlighted by the fact that political figures are reported to have publicly made homophobic statements. For example, when the Equality Parade of May 2005 was banned, Mr Lech Kaczynski, the current President of Poland and former Mayor of Warsaw, had stated that the parade would be 'sexually obscene' and offensive to other people's religious feelings. Less than a week after this parade was to take place, the Mayor authorised another march to take place during which members of the All Polish Youth reportedly shouted slogans inciting intolerance and homophobia. Other political figures were also reported to have made public homophobic statements, including that if 'homosexuals try to infect others with their homosexuality, then the State must intervene in this violation of freedoms'. Other public figures called for no tolerance for homosexuals and deviants and called on the public not to mistake the brutal propaganda of homosexual attitudes for calls for tolerance. Concern was further expressed in light of the recent abolition of the Office of the Government Plenipotentiary for the Equality of Men and Women which body was responsible, inter alia, for the promotion of equal treatment sexual minorities.

560. On 26 April 2006, the Special Representative together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an urgent appeal concerning the third annual Krakow March for Tolerance, due to take place in Krakow, Poland on 28 April 2006. The Krakow March for Tolerance is a peaceful march organized by the Campaign against Homophobia in Poland

and aims to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of all persons regardless of their perceived sexual orientation. According to the information received, a number of organizations have indicated their fear that past violence against this type of peaceful demonstration is likely to occur on this occasion. In 2004 peaceful participants in the Krakow March for Tolerance became victims of physical attacks by extreme nationalist groups. In November 2005 demonstrators in Poznan were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth. At both events it was reported that the police stood by and failed to protect the demonstrators from being harassed and intimidated by members of the All Polish Youth who shouted discriminatory slogans at them including "Let's get the fags", and "We'll do to you what Hitler did to the Jews". Furthermore, when the police did intervene it was reportedly done in a violent manner against the peaceful demonstrators. The Poznan event was brought to the attention of the Government in a communication sent by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Representative on 5 December 2005. The Special Rapporteur and Special Representative thank the Government of Poland for its prompt response to their communication and acknowledge the findings of the Constitutional Tribunal and notes that the abovementioned decisions banning the marches were subsequently quashed in appeal proceedings. Nevertheless, we would like to express our continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and encourage the Government of Poland to protect participants of the Krakow March for Tolerance against any possible discriminatory or hateful abuse. Concern was expressed that such harassment may prevent peaceful demonstrators from carrying out their legitimate human rights activities.

562. On 19 October 2006 the Special Representative sent an urgent appeal concerning threats and acts of intimidation against Katarzyna Hejna, member of Kampania Przeciw Homofobii (Campaign against Homophobia) in Torun. She is also a founding member of ALERT, an organization which supports civil society in Poland and is a volunteer with Polska Akcja Humanitarna (Polish Humanitarian Organization). According to the information received, Katarzyna Hejna has been the subject of a campaign organized by a group calling themselves "Redwatch" who have established a website identifying people who they claim are "engaged in anti-fascist, anti-racist activities... all kinds of supporters and activists of broadly understood homosexual lobby[ing]". In October 2005, Ms Hejna was actively involved in organizing a peaceful demonstration "Marsz rownosci idzie dalej" (Equality March Goes Further) to protest against the authorities' decision to ban public assemblies of LGBT groups in Poznan. According to reports, Ms Hejna's personal details have been published on the website, including photographs of her, with her name, telephone number and email address, despite the fact that according to Polish law it is illegal to publish such details without the consent of the individual concerned. Since the publication of her details on the aforementioned website, Ms Hejna has reportedly received threatening emails and has been verbally harassed in the street. It is reported that Ms Hejna has made a written statement to the police but she is not aware of any progress that has been made with regard to her case. Concern was expressed for the safety and security of Ms Hejna as it was feared that the publication of her name on the "Redwatch" website may have represented an attempt to

deter her from carrying out her legitimate activities in defence of human rights, in particular the defence of LGBT rights. It was alleged that an individual, who was named on the "Redwatch" website was stabbed on the Warsaw subway in June 2006.

Communications received

563. In a letter dated 21 February 2006, the Government replied to the communication of 5 December 2006. The Government stated that on 26 March 2006 an application was made by the International Lesbian and Gay Culture Network (ILGCN) for permission to organize an Equality Parade in May 2004. On 24 May 2004 the Mayor of Warsaw issued a decision banning the Equality Parade on the grounds that it could pose a potential threat to lives, health and property. The ILGCN appealed against the various decisions made in 2004, and on 10 October 2005 the Voivodeship Administrative Court discontinued proceedings as immaterial. The Government noted that in November 2005 the Voivodeship Administrative Court held that a decision to prohibit a proposed demonstration was based on Article 8 paragraph 2 of the Law on Assemblies and that the court did not anticipate a threat from the organizers but rather from opponents of the planned gathering. It was noted that Article 57 of the Constitution of Poland guarantees freedom of assembly and that a limitation on such freedom may be imposed by statute. On 18 January 2006 the Constitutional Tribunal ruled that Article 65 of the Law on Road Traffic, 1997 was incompatible with Article 57 of the Polish Constitution with the incorporation of the word "assemblies". The Tribunal noted that freedom of assembly was a special political freedom of the individual subject to constitutional protection. The Government stated that freedom of assembly constituted a basic human right and that the public authorities were obliged to protect groups taking part in public assembly. The Government also noted that problems pertaining to discrimination are discussed during training provided by State institutions and many professional groups, such as the PHARE training project of 2002. It was also noted that steps have been taken by the Polish authorities to provide judicial officials with anti-discrimination training.

564. In a letter dated 14 June 2006, the Government replied to the communication of 26 April 2006. The Government stated that all necessary measures were taken by the authorities to ensure that the March for Tolerance could take place in Krakow. It was noted that the Mayor of Krakow authorized two gatherings to take place on 28 April 2006. All-Poland Youth was the first organization to apply for permission to hold a gathering on Krakow Tradition and Culture. The demonstration, named March for Tolerance, was organized by the Culture for Tolerance Foundation. The Government noted that in order to avoid possible confrontation between the two events the organizers for the March for Tolerance proposed a procession route in consultation with the Krakow police. As the organization of both events met with legal requirements there were no grounds to prohibit either. The police held meetings with the organisers prior to the events to set out the route for both processions. Given that in the past participants in the March for Tolerance had been attacked by hooligans, the police decided that special security measures be put in place and a total of 435 police officers were assigned to protect both demonstrations. Both marches began peacefully, however when the March for Tolerance was attacked the police made two attempts to disperse the crowd and eventually used force to avoid a riot. It was noted that the measures taken by the police were commensurate with the situation and excessive force was avoided in order to

disperse the demonstrators. During the disturbances the police detained 11 individuals. The Government stated that during preparations for the demonstration and the subsequent security operation, officials were guided by the need to respect fundamental human rights and freedoms and that all measures were taken to ensure the safety of those participating in the event.

565. In a letter dated 11 January 2007, the Government replied to the communication of 27 June 2006. The Government stated that the National In-Service Training Centre (NITTC) is responsible for teacher training at all levels in Poland and accordingly all documents published by the NITTC should be consistent with the contents of the national curricula. The current curriculum was introduced by the Regulation of the Minister of National Education and Sport of 26 February 2002. It was noted that Compass – ‘a manual on human rights education for young people’, contains chapters related to sexuality, homophobia and sexual orientation. The Government indicated that the contents of the manual were not suitable as a teaching aid and that it was contradictory to the general education curriculum of Poland which conforms with the Constitution of Poland, which protects marriage defined as a ‘union of a man and a woman’. It was also noted that the English translation of the document differs from the Polish document and that a number of links to Polish gay websites are included in the document. The Government concluded that Mr Sieltaycki was responsible for teacher training within the national curriculum and that as Deputy Chairman of the National Committee for the European Year of Citizenship through Education, Mr Sielatyecki was in a position to suggest to the Committee that the manual be published without the NITTC’s involvement. Mr Sieltaycki was dismissed in accordance with Article 38.1 of the Act on the System of Education.

Observations

566. The Special Representative thanks the Government of Poland for its detailed responses to her communications and is encouraged by its willingness to investigate alleged violations. Nevertheless the Special Representative would like to express her continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and would encourage the Government of Poland to protect participants of public demonstrations such as the Krakow March for Tolerance against any possible discriminatory or hateful abuse. The Special Representative wishes to remind the Government of its obligations under Articles 6 (b) and (c), 7 and 12 of the Declaration on human rights defenders.