



COMMISSIONER FOR HUMAN RIGHTS

Warsaw, 14-07-2021

**Adam Bodnar**

**XI.505.10.2020.FR**

**Ms. Helena Dalli**  
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**Subject:** liability of managing authorities and beneficiaries of EU cohesion policy funds for non-compliance with the principle of non-discrimination on the grounds of sexual orientation or gender identity

*Dear Madam Commissioner,*

As Commissioner for Human Rights, holding also the role of independent equality body, I – pursuant to Article 18 of the *Act of 3 December 2010 transposing certain European Union regulations in the area of equal treatment* (Polish Journal of Laws of 2020, item 2156) that implements EU equal treatment and anti-discrimination directives<sup>1</sup> – take action to protect the rights of LGBTIQ persons, violated by local government entities that adopt discriminatory resolutions, in particular against the so-called “LGBT ideology”. In this regard, I actively monitor the correspondence of the European Commission Directors-General

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<sup>1</sup> The Act implements to the Polish legal framework the Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359, 19/12/1986); Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19/07/2000, p. 22); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16); Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23), and Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures to facilitate the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

for Employment, Social Affairs and Inclusion, and for Regional and Urban Policy with Polish local government entities, related to ensuring that managing authorities and beneficiaries of the European Union cohesion policy funds respect the principle of non-discrimination on the grounds of sexual orientation or gender identity.

In this letter, I would like to draw the attention of the European Commission to the actions taken by me in connection with the above mentioned correspondence, and to additional circumstances illustrating the impact of the said resolutions on the local communities. I hope that you will find this information useful in the context of the implementation of the European Commission LGBTIQ Equality Strategy 2020-2025, the adoption of which I consider as a milestone in the protection of human rights of LGBTIQ people in Europe.

In a letter of 27 May 2020 (ref. no.: EMPL/REGIO/JC/db (2020) 8845638) the Directors-General for Employment, Social Affairs and Inclusion and for Regional and Urban Policy inquired Polish managing authorities and beneficiaries of EU cohesion policy funds, i.e. the Marshals of the Lubelskie, Łódzkie, Małopolskie, Podkarpackie and Świętokrzyskie voivodeships, whether the European Union funds are and will be disbursed in line with the horizontal principle of non-discrimination. The letter pointed out that the adopted resolutions against the “LGBT ideology” as well as the Local Government Charters on the Rights of the Family are contrary to the values set out in Article 2 TEU and may violate the prohibition of discrimination and harassment in employment on the grounds of sexual orientation, provided for in the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02/12/2000 P.0016-0022).

Fully sharing the above-mentioned concerns, on 5 and 6 June 2020 I sent letters to all Polish local government entities that had adopted resolutions against the “LGBT ideology”, requesting them to indicate what activities they intended to take to ensure that EU cohesion policy funds and other funds are spent in accordance with the principle of non-discrimination<sup>2</sup>. Without describing the contents of the dozens of the received responses, it should be noted that an argument commonly used in them was that the resolutions constituted solely ideas-expressing declarations and had no binding legal effect. In my view, this statement is incorrect, as I explain in the applications which I filed with administrative courts (see herein below) in order to have those resolutions revoked. In the received responses I could not find any information about new, more comprehensive activities combating LGBTIQ persons’ discrimination caused by the existence of the resolutions against the “LGBT ideology”. On

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<sup>2</sup> The correspondence and the replies of the individual bodies are available at the Commissioner for Human Rights website: <https://www.rpo.gov.pl/pl/content/rpo-samorzadowe-uchwaly-anty-lgbt-moga-grozic-cofnieciem-funduszy-unijnych>

the contrary, in some cases, local government entities directly supported the content of their resolutions.

Therefore, I welcomed the European Commission's recommendations for managing authorities of regional operational programmes, set out in a letter of 25 September 2020 (ref. no.: Ares (2020)5040335) in reply to the responses of the Polish local government entities to the letter of 27 May 2020. The recommendations included, primarily, the signing of diversity charters to confirm the commitment to non-discrimination; cooperation with non-governmental organisations operating in support of LGBTI people; appointment of equal opportunity coordinators, and extensive educational activities on counteracting discrimination on the grounds of sexual orientation or gender identity.

In connection with the above-mentioned correspondence, on 17 May 2021 I wrote letters to five managing authorities of regional operational programmes – Marshals of the Lubelskie, Świętokrzyskie, Łódzkie, Małopolskie and Podkarpackie voivodeships, inquiring whether the European Commission recommendations set out in the letter of the Directors-General for Employment, Social Affairs and Inclusion, and for Regional and Urban Policy of 25 September 2020 (ref. no.: Ares (2020)5040335) had been implemented by them and if so, by what means<sup>3</sup> (given that all my letters had the same wording, I am forwarding to you only the letter to the Marshal of the Lubelskie Voivodeship whose reply had been the first one received by my Office (see herein below).

I would like to point out that my letter related also to the European Commission's comments on the draft Partnership Agreement with the European Union for the period 2021-2027, according to which the five above-mentioned managing authorities which have adopted the resolutions "against the LGBT ideology" or the "Local Government Charters on the Rights of the Family" are unable to guarantee compliance with the horizontal principle of non-discrimination in the expenditure of the EU funds, and therefore their role in the funding distribution system has been undermined<sup>4</sup>. In view of those concerns, my letters to the managing authorities also contained the questions of whether the marshals were aware of the doubts the Commission had as to their role in the EU funding distribution system, and whether they had taken or intended to take any new positive measures in order to ensure that the funds are spent in accordance with the principle of equality.

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<sup>3</sup> The correspondence with the marshals of the voivodeships is available at: <https://www.rpo.gov.pl/pl/content/uchwaly-przeciw-ideologii-lgbt-szkodza-wszystkim-rpo-do-marszalkow-wojewodztw>

<sup>4</sup> The text of the European Commission informal comments to the draft Partnership Agreement 2021-27 Poland (version received on 18.1.2021): "Five regional authorities who adopted resolutions on "Freedom from LGBT ideology", "Regional Charter on Family Rights" etc. are also indicated to be part of the system of institutions involved in the implementation of the Partnership Agreement. Part of the role of a Managing Authority is to prevent any kind of discrimination. Therefore in case of these five institutions, their capacity to ensure compliance with the horizontal principle of non-discrimination in the implementation, is questionable and needs to be ensured."

To date, the Office of the Commissioner for Human Rights has received replies sent by the Marshal of the Lubelskie, Małopolskie, Podkarpackie and Świętokrzyskie Voivodeships. According to the replies, the Marshals have generally (with an exception being made to a certain extent for the Świętokrzyskie Voivodeship) had not taken any additional, new initiatives aimed at counteracting discrimination of LGBTI people. In their replies, the Marshals limited themselves to enumerating the anti-discrimination mechanisms already specified in earlier correspondence sent to the Directorate General for Employment, Social Affairs and Inclusion and the Directorate General for Regional and Urban Policy. Yet, it does not clearly follow from the received replies that the anti-discrimination mechanisms indicated in the earlier correspondence with the Commission are strictly related to discrimination on the grounds of sexual orientation or gender identity. Although these grounds for discrimination are, formally, included among the other prohibited grounds for discrimination, the aspect of sexual orientation or gender identity has not been covered by more extensive, specifically dedicated protection measures as is the case with discrimination on the grounds of gender or disability. The Marshals do not consider the recommendations of the European Commission representatives, referred to in the letter of 25 September 2020 (ref. no.: Ares (2020)5040335) to be binding, and regard them solely as examples of good practices, which implementation may be considered in future.

I would like to emphasize that the problem of the discriminatory resolutions has not been solved until today. So far, only 7 local government entities<sup>5</sup> have repealed their resolutions. Yet, there are still 94 resolutions against the “LGBT ideology” or “Local Government Charters on the Rights of the Family” remaining in effect in Poland<sup>6</sup>. This applies also to the local government entities represented by the five managing authorities of regional operational programmes, i.e. the Voivodeship Marshals of the Lubelskie, Łódzkie, Świętokrzyskie, Małopolskie and Podkarpackie voivodeships<sup>7</sup>.

At present, 9 proceedings are pending before administrative courts as a result of applications filed by the Commissioner for Human Rights seeking the annulment by the courts of the resolutions against the “LGBT ideology”, that have been adopted by 9 different local

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<sup>5</sup> This applies to the local governments of: Sztum powiat, Radziechowy Wieprz municipality, Tomaszów Mazowiecki municipality, Nowa Dęba municipality, Nowa Sarzyna municipality, Kraśnik municipality and Przemyśl municipality.

<sup>6</sup> See data available at the Atlas Nienawiści [Atlas of Hate] website: <https://atlasnienawisci.pl/>

<sup>7</sup> The legislative bodies (voivodeship assemblies) of these local governments adopted either resolutions against the “LGBT ideology”, or Local Government Charters on the Rights of the Family, which, as a rule, are addressed to all other bodies of the given local government, including its executive body i.e. voivodeship executive boards (headed by voivodeship marshal).

government entities<sup>8</sup>. In four of the cases, the voivodeship administrative courts upheld the Commissioner's complaints and annulled the resolutions which were found to be discriminatory. In the remaining five cases, the voivodeship administrative courts concluded that they were not competent to examine the cases. However, none of the above-mentioned cases has yet ended with a final ruling – until the review judgments by the Supreme Administrative Court, the resolutions remain effective and their future legal force is not certain. Nevertheless, I believe that we will soon see the positive results of this strategic litigation.

I would also like to draw your attention to the worrying examples, known *ex officio* by the Commissioner for Human Rights, demonstrating that, contrary to the claims about the solely ideological and non-binding character of the resolutions in question, they affect the lives of the locally governed communities in a manner which seems to be in line with the intentions of their authors.

The first case concerns the municipal government of the city of Kielce located in the Świętokrzyskie Voivodeship. The adopted regulations on the Kielce city participatory budget, i.e. the local government's instrument for funding projects proposed and selected by local residents in a voting process, includes a statement that the projects proposed to be funded within the participatory budget should be characterized by "ideological neutrality"<sup>9</sup>. According to press reports and explanations of the Kielce City Mayor, the "ideological neutrality" requirement was introduced in response to one of the projects proposed for funding within the participatory budget, which aimed to set in the public space street benches with rainbow painting. The project was considered as "ideologically expressive" by some of the city councillors. As a result, the regulations on the Kielce city participatory budget for 2021 include the requirement concerning "ideological neutrality" of the projects. A similar provision is planned to be included in the participatory budget regulations for 2022.

The wording of the discussed provision of the participatory budget regulations may raise doubts in view of the resolutions against the "LGBT ideology" adopted within the Świętokrzyskie Voivodeship. The Kielce City Council is not among the local government bodies that adopted such resolutions. However, such resolutions were adopted by the regional assembly of the Świętokrzyskie Voivodeship (see: Resolution no. XI/125/19 of the Regional Assembly of the Świętokrzyskie Voivodeship of 19 June 2019 objecting to the introduction

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<sup>8</sup> The applications filed by the CHR concern the resolutions adopted by: Kłwów Municipal Council, Niebylec Municipal Council, Serniki Municipal Council, Lipinki Municipal Council, Istebna Municipal Council, Osiek Municipal Council, Tarnów Powiat Council, Ryki Powiat Council and legislative assembly of the Lubelskie Voivodeship. The limited number of 9 applications filed with regard to the resolutions has been caused by the lack of funding to challenge all the adopted resolutions, and to ensure their appropriate selection depending on the competencies of the different voivodeship administrative courts and the type of a given local government entity.

<sup>9</sup> Article 1(2)(13) of the Kielce participatory budget regulations for 2021 (attached to the resolution no. XXVIII/552/2020 of the Kielce Municipal Council of 14 May 2020, Official Journal of the Świętokrzyskie Voivodeship of 19 May 2020, item 1915).

of the LGBT ideology to locally governed communities and to the promotion of the ideology in public life) and by the Kielce Powiat Council (statement of the Kielce Powiat Council of 23 August 2019 objecting to the introduction of the LGBT ideology to locally governed communities). In both resolutions, the local government bodies expressed their objection against the alleged “LGBT ideology” and pointed to the need to remove it from the functioning of the local governments. The resolution of the Świętokrzyskie Voivodeship regional assembly called upon other local governments within the Voivodeship, including the Kielce municipal authorities, to clearly oppose the attempts to introduce the “LGBT ideology” into the public life.

The second case concerns the intervention undertaken in the city of Tarnów (Małopolskie Voivodeship) by the Voivodeship Superintendent for Education (who is answerable before the governmental administration and supervises educational institutions in the voivodeship). As part of an educational project aimed at drawing attention to discrimination of LGBTI persons, the group of students – in cooperation with the mayor of Tarnów – organized a photography exhibition with photos of persons who identify themselves as LGBTI community members. The objections of local right-wing communities got the attention of the media. As a result, on 13 May 2021 the Voivodeship Superintendent for Education issued a statement addressed, inter alia, to school principals in which she declared the promotion of LGBTIQ equality as harmful and based on “segregation of children according to their alleged sexual orientation”<sup>10</sup>. The pressure by the media and administrative authorities resulted in the closure of a part of the exhibition.

The situation described above needs to be interpreted in the context of the resolutions against the “LGBT ideology”, adopted by certain local governments within the Małopolskie voivodeship, in particular the resolution of the Tarnów Powiat Council of 30 April 2019 on halting the LGBT ideology by the local government<sup>11</sup>, and the declaration of the Małopolskie Voivodeship Regional Assembly of 19 April 2019 objecting to the introduction of the LGBT ideology to locally governed communities<sup>12</sup>. Although the Małopolskie Voivodeship Superintendent for Education is not a local government body as such (but a body answerable before the governmental administration), the superintendent influences the activities of institutions (primarily educational ones) operated by local governments. Educational institutions are run by local governments at various levels: the level of powiat (e.g. the Tarnów Powiat Council) and the level of voivodeship (e.g. the Małopolskie Voivodeship legislative assembly). Such local governments have significant competences in the field of education, including the establishment and operation of schools, of teacher training institutions and

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<sup>10</sup> <https://kuratorium.krakow.pl/komunikat-malopolskiego-kuratora-oswiaty-dla-dyrektorow-szkol-nauczycieli-rodzicow-uczniow-miasta-tarnowa/>

<sup>11</sup> [https://bip.malopolska.pl/sptarnow\\_m,308837,2018-2023.html](https://bip.malopolska.pl/sptarnow_m,308837,2018-2023.html)

<sup>12</sup> <https://bip.malopolska.pl/umwm,a,1594074,deklaracja-nr-119-sejmiku-wojewodztwa-malopolskiego-z-dnia-29-kwietnia-2019-r-w-sprawie-sprzeciwu-wo.html>

libraries. It should be remembered, however, that the aforementioned resolutions against the “LGBT ideology”, taken by the Tarnów Poviát Council and the Małopolskie Voivodeship legislative assembly, were aimed mainly at eliminating anti-discrimination contents related to sexual orientation and gender identity from education. Therefore, the actions of the Office of the Małopolskie Voivodeship Superintendent for Education legitimize and strengthen the policy directed by the local government resolutions against the “LGBT ideology”, as they use the same rhetoric of limiting the rights of LGBTI people. This is a good illustration of some Polish local governments’ reluctance to provide legal protection of LGBTI persons.

I hope that the above information will contribute to clarifying the circumstances relating to the assessment, undertaken by the European Commission, of the disbursement of funds by the managing authorities in the current EU financial perspective in accordance with the principle of non-discrimination. At the same time, I would like to emphasize that the main postulate in this area is to repeal the resolutions against the alleged “LGBT ideology”, and to implement the recommendations set out by the European Commission with regard to fight discrimination of LGBTIQ community.

Once again, I would like to express my deepest appreciation for your work for the LGBTIQ rights in Europe and in Poland, especially considering the European Commission’s first ever LGBTIQ Equality Strategy. I would also like to thank you for our co-operation in the field of equal treatment. I strongly believe that only working together we can advance equality in Europe and that the Commissioner for Human Rights of the Republic of Poland will remain a valuable partner in your future activities.

Yours sincerely,

Adam Bodnar

Commissioner for Human Rights

/- digitally signed /

**CC:**

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**Appendices:**

1. letter of the Commissioner for Human Rights to the Marshal of the Lubelskie Voivodeship of 17 May 2021, XI.505.10.2020;
2. letter of the Marshal of the Lubelskie Voivodeship to the Commissioner for Human Rights of 28 May 2021, ZRPO-VI.410.34.2021;
3. letter of the Marshal of the Małopolskie Voivodeship to the Commissioner for Human Rights of 10 June 2021, ZPO-I-410.22.1.2020;
4. letter of the Marshal of the Świętokrzyskie Voivodeship to the Commissioner for Human Rights of 15 June 2021, IR-II.410.12.32.2021;
5. letter of the Marshal of the Podkarpackie Voivodeship to the Commissioner for Human Rights of 17 June 2021, RP-III.410.84.2020.