

# **WE ARE PEOPLE, NOT PROPAGANDA**

**Monitoring Implementation of the Council of Europe Recommendation  
CM/Rec(2010)5 to Member States on Measures to Combat  
Discrimination on Grounds of Sexual Orientation or Gender Identity**

**DOCUMENTATION REPORT  
LITHUANIA**

This documentation report was developed within the framework of the project "Review of the Implementation of the Council of Europe Recommendation on LGBT Rights CM/Rec(2010)5" (project No. C-COM-II-08) supported by ILGA-Europe's Human Rights Violations Documentation Fund. The successful drafting of this documentation report was also partially supported by Transgender Europe (TGEU) with its expert resources. The opinions expressed in this report do not necessarily reflect any official position of ILGA-Europe or other donors.



The National LGBT\* Rights Organization LGL is a national, non-governmental, non-profit organization that advocates for the rights of LGBT individuals in Lithuania. LGL fights against homophobia, biphobia and transphobia, discrimination and social exclusion, and is inclusive of all sexual orientations, gender identities and

gender expressions within its advocacy work. As the main LGBT rights organization in Lithuania, LGL undertakes activities in the fields of advocacy, awareness raising and capacity building. LGL also engages with strategic litigation activities with the aim of ensuring effective exercise of legal rights for the members of the local LGBT community. Since 2009 LGL has acted as a Lithuanian organizer of the *Baltic Pride* festival in the Baltic States. More information on the organization can be found at [www.lgl.lt/en](http://www.lgl.lt/en) and [www.facebook.com/lgl.lt](https://www.facebook.com/lgl.lt).

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# BACKGROUND INFORMATION

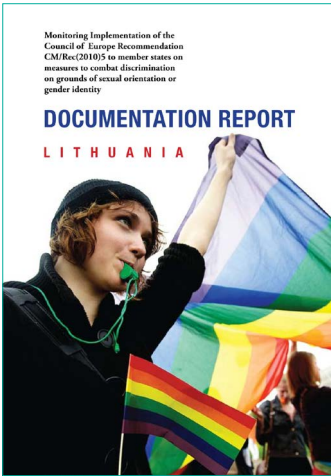
In March, 2010 the Committee of Ministers of the Council of Europe adopted the Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, i.e. the first Europe-wide instrument dealing specifically with sexual orientation and gender identity discrimination.<sup>1</sup> The Recommendation sets out how international human rights standards apply to lesbian, gay, bisexual and transgender (LGBT) persons, recognizes the seriousness of discrimination against them, and agrees on a wide range of measures that Member States should implement to combat this discrimination. Although the Recommendation itself is not a legally binding document, it is solidly based on Member States' existing binding human rights obligations and carries a strong moral obligation on Governments to implement its detailed measures, not least because each of the Member States has agreed to the text.

The Recommendation CM/Rec(2010)5 consists of a Preamble and a short Operative Part, supported by a longer detailed Appendix. The **Operative Part** addresses the need for Member States to: (a) examine existing legislative and other measures, and eliminate any discrimination in them; (b) collect and analyze data for use in combating discrimination; (c) adopt legislative and other measures to combat discrimination, to ensure respect for LGBT people, and promote tolerance towards them; (d) ensure that victims of sexual orientation and (or) gender identity discrimination can obtain justice. The **Appendix** lists the detailed actions needed to implement the broad recommendations set out in the Operative Part across the areas of life where sexual orientation and (or) gender identity discrimi-

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<sup>1</sup> "Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity", adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c-f40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c-f40a).

nation are or could be a problem: **right to life, security and protection from violence, freedom of association, expression and assembly, respect for private and family life, employment, education, health, sports, and asylum.** It also addresses the role of **national human rights structures.**



The first review process of the Recommendation CM/Rec(2010)5 took place in 2013. Shadow reporting by the civil society organizations ensured that the process gained importance and provided a lot of relevant information.<sup>2</sup> The Steering Committee for Human Rights (CDDH) at its 77th meeting adopted its report on the implementation of the Recommendation encouraging Member States *“to continue their efforts to implement the various provisions of the*

*Recommendation.”*<sup>3</sup> In 2017 the CDDH committed itself in conducting the second follow-up exercise to the Recommendation following the first follow-up done in 2013. The current documentation report on monitoring the implementation of the Recommendation CM/Rec(2010)5 in Lithuania is a part of the second follow-up exercise and seeks to feed into the broader pan-European effort to contribute to the ambitious objective of the full implementation of the Recommendation in all Member States.

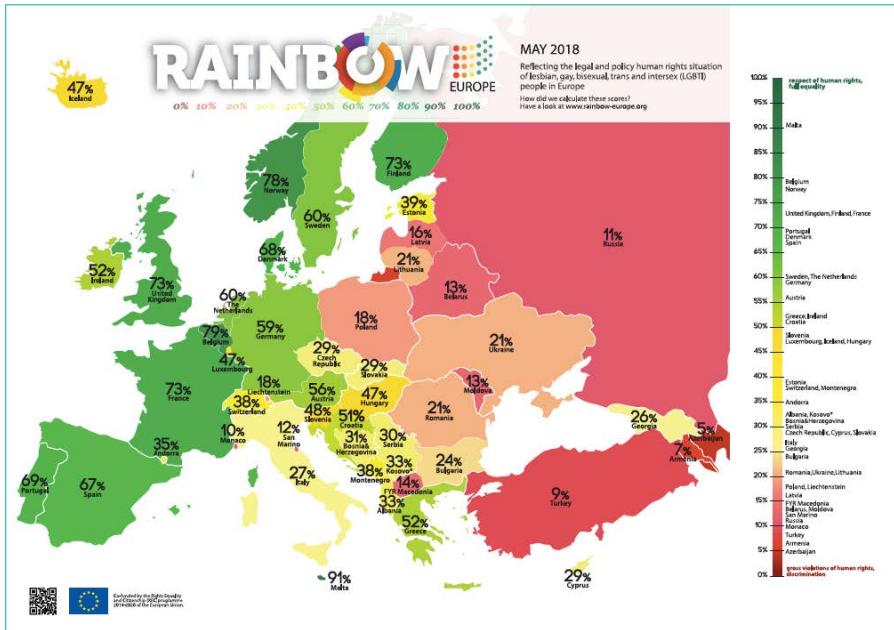
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2 The National LGBT\* Rights Organization LGL contributed to the first review process of the Recommendation CM/Rec(2010)5 by developing the first documentation report on monitoring the implementation of the Recommendation in Lithuania; see: <http://www.lgl.lt/en/files/FN-ataskaita-Sveicaru-internet.pdf>.

3 Steering Committee for Human Rights, "Report on the implementation of the Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity", 77th Meeting, 19-22 March 2013, [https://rm.coe.int/168045fdfb\\_para\\_01](https://rm.coe.int/168045fdfb_para_01).

# COUNTRY PROFILE

According to the annual “Rainbow Europe Map” by the international organization ILGA-Europe,<sup>4</sup> **Lithuania ranks 37th among 49 European countries** in terms of legal protections for LGBT(I) people.



The general prohibition of discrimination on the grounds of sexual orientation in the Lithuanian legal system is established by the *Law on Equal Opportunities*,<sup>5</sup> which transposes the Employment Equality Framework Directive 2000/78/EC. The scope of the national equality legislation is much wider than mandated by the EU Directive, i.e. discrimination on the grounds of sexual orientation is prohibited not only in the sphere of employment and occupation but also in the spheres of provision of goods and services, education and in the

4 ILGA-Europe, “Rainbow Map Europe. Country Ranking”, May 2018, <https://rainbow-europe.org/country-ranking>.

5 Law on Equal Opportunities of the Republic of Lithuania, No. IX-1826, last amendments on 27 July 2017, [https://www.e-tar.lt/portal/lt/legalAct/TAR\\_0CC6CB2AgE42/TYmbevkrZH](https://www.e-tar.lt/portal/lt/legalAct/TAR_0CC6CB2AgE42/TYmbevkrZH).

course of all actions by public authorities. The prohibition of discrimination on the grounds of sexual orientation is also established in the *Labor Code*<sup>6</sup> (Articles 2.1, 26, 59.2 and 75.1.2), the *Law on the Protection of Minors against the Detrimental Effect of Public Information*<sup>7</sup> (Article 4.2.12) and the *Law on Provision of Information to the Public*<sup>8</sup> (Article 19.1.3). The *Criminal Code*<sup>9</sup> contains a combination of general and specific penalty-enhancement provisions for hate crimes, as well as a substantive offence. Article 129.2.13 (i.e. murder), Article 135.2.13 (i.e. severe health impairment) and Article 138.2.13 (i.e. non-severe health impairment) establishes penalty enhancement in case these particular offences are committed out of bias motivation on grounds of sexual orientation. Article 60.12.1 qualifies acts committed in order to express hatred on the ground of sexual orientation as an aggravating circumstance (i.e. prohibition of hate crimes), while Article 170 prohibits incitement to hatred based on sexual orientation (i.e. prohibition of hate speech).

While sexual orientation is a protected ground under the Lithuanian legislation, the same does not apply to the ground of gender identity and (or) gender expression. To put it in other words, **discrimination and hate-motivated incidents against transgender or gender non-conforming people would not technically qualify as punishable offences** in Lithuania.

Despite the fact that Lithuanian legislation, in theory, provides for quite extensive legal guarantees against discrimination on the grounds of sexual orientation, its implementation in practice is, at

6 Labor Code of the Republic of Lithuania, No. XII-2603, 14 September 2016, <https://e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/PuJjRmfzLF>.

7 Law on the Protection of Minors against the Detrimental Effect of Public Information, No. IX-1067, last amendments on 5 November 2011, [https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS\\_410367](https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS_410367).

8 Law on the Provision of Information to the Public of the Republic of Lithuania, No. I-1418, 11 July 2006, <https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/wRduXQRGbc>.

9 Criminal Code of the Republic of Lithuania, No. VIII-1968, last amendments on 29 November 2017, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/ZpNMZQSaRN>.

best, described as ineffective. Instances of discrimination on the grounds of sexual orientation remain highly underreported. For example, the Office of the Equal Opportunities Ombudsperson, i.e. the public body responsible for the implementation of the *Law on Equal Opportunities*, received no complaints regarding alleged instances of discrimination on the ground of sexual orientation in 2013, four in 2014, five in 2015, three in 2016 and three in 2017.<sup>10</sup> Taking into account the widespread phenomenon of discrimination on the grounds of sexual orientation indicated by international surveys and opinion polls, it can be concluded that the national equality body is not perceived as an effective remedy with the view of addressing experienced injustices.

Despite the fact that there are no comprehensive national surveys on the situation of LGBT people in Lithuania, various international surveys and opinion polls indicate that Lithuania remains one of the most socially hostile societies against LGBT people in Europe. According to the LGBT Survey by the EU Agency for Fundamental Rights (FRA), 61 % of the Lithuanian respondents experienced discrimination or harassment in the last twelve months on grounds of their actual or perceived sexual orientation.<sup>11</sup> In addition to this, 27 % of the Lithuanian respondents felt discriminated against in the last twelve months when looking for a job and (or) at work.<sup>12</sup> These negative patterns correlate with attitudes by members of the general public. According to the *Special Eurobarometer 437* survey, 44 % of the Lithuanian respondents would feel uncomfortable working with an LGB person, while this number increases to 49 % regarding a

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10 The Annual Report of the Office of the Equal Opportunities Ombudsperson, Vilnius, 2017, <http://lygybe.lt/data/public/uploads/2018/03/lygiu-galimybiu-kontrolieri-aus-2017-m-veiklos-ataskaita.pdf>, p. 27

11 EU Agency for Fundamental Rights, European Union lesbian, gay, bisexual and transgender survey. Results at a glance, Vienna, 2013, [http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance\\_en.pdf](http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf), p. 15.

12 Ibid., p. 16.



trans colleague.<sup>13</sup> Furthermore, 79 % of the Lithuanian respondents would feel totally uncomfortable if their children were in a love relationship with a person of the same sex and 82 % would feel totally uncomfortable if their children dated a transgender person.<sup>14</sup> It can be concluded that the **social acceptance of LGBT persons in Lithuania remains to be very low.**

## PURPOSE OF THE REPORT — — — — —

Despite the challenging legal and social situation of LGBT persons in Lithuania, significant advancements on LGBT human rights recently have been made through strategic litigation efforts before the national and international courts. **The Recommendation CM/Rec(2010)5 has served as a soft law measure** informing the strategic litigation process both in terms of identifying relevant legal gaps and encouraging the courts to apply the European standards in responding to these legal challenges. The first documentation report on monitoring the implementation of the Recommendation CM/Rec(2010)5 in Lithuania, produced by LGL in 2013,<sup>15</sup> assisted the organization in developing its evidence-based advocacy and impact litigation strategies. The second documentation report seeks to enable the organization to forward its advocacy agenda on the national level, especially taken into account that its priorities are already supported by the ongoing strategic litigation efforts. While the second documentation report covers all thematic areas outlined in the Appendix of the Recommendation, it specifically focuses on the following priority areas, namely: (a) "anti-gay propaganda" legislation (**freedom of expression**), (b) legal recognition of same-sex relationships (**right to respect for family life**), (c) legal gender rec-

13 European Commission, 'Discrimination in the EU in 2015. Report', Special Eurobarometer 437, 2015, <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68004>, p. 54, 63.

14 Ibid., p. 56, 65.

15 Supra 2.

ognition (**right to respect for private life**) and (d) effective response to anti-LGBT hate crimes and hate speech (**right to life, security and protection from violence**). The main purpose of the second documentation report is to demonstrate the failure by the Lithuanian authorities in implementing the necessary protections for LGBT people in these particular areas and thus to support the ongoing advocacy and strategic litigation efforts. By documenting the extent to which the Recommendation's measures remain to be implemented in Lithuania, the reporting organization will be able to better inform its efforts based on the standards by the Council of Europe. The second documentation report does not reveal absolutely new gaps in implementing the Recommendation. However, it serves as an **effective tool to monitor the progress** (in comparison to the first documentation report) and as a **repeated reminder** to the Lithuanian Government on what remains to be done.

In addition to its national objectives, the second documentation report also seeks to strengthen the Council of Europe's work on sexual orientation and gender identity by informing various stakeholders (i.e. the Human Rights Commissioner, the European Commission against Racism and Intolerance (ECRI) and the Council of Europe SOGI Unit) about the LGBT human rights situation in the individual Member States. It is expected that strong pressure from civil society organizations at both national and European levels will ensure ongoing engagement of national governments in the implementation of the Recommendation CM/Rec(2010)5, especially in countries where there is a lack of political will to work on LGBT human rights.

## METHODOLOGY

The second documentation report on monitoring the implementation of the Recommendation CM/Rec(2010)5 in Lithuania closely follows the internal structure of the Recommendation and its Annex.

The report briefly discusses the implementation of the broader recommendations set out in the Operative Part of the Recommendation and then provides more detailed information regarding the thematic areas outlined in the Appendix. Each section is concluded by **corresponding recommendations** to the national authorities with the view of ensuring better implementation of the Recommendation CM/Rec(2010)5 at the national level. The current documentation report does not strictly follow the "checklist approach" employed by the *Compliance Documentation Report*, which will be submitted to the Council of Europe by the national governments in order to document their assessment of the implementation process. Nevertheless, it is expected that the information contained in this report will supplement the information provided by the Government and will enable more detailed and nuanced assessment on the status of implementation of the Recommendation CM/Rec(2015)5 in Lithuania.

The methodology on documenting the implementation of the Recommendation CM/Rec(2010)5 in Lithuania combined both the **primary and secondary documentation activities**. In March, 2018 the National LGBT\* Rights Organization LGL reached out to the Lithuanian ministries and public institutions by submitting the official requests for information on their activities in implementing the particular measures within the Recommendation and its Annex. In total LGL submitted 15 requests for information. Each request for information outlined the specific measures within the Recommendation CM/Rec(2010)5 and its Annex, falling under the ambit of activities of that particular public body, and requested information on specific actions that were implemented to comply with the Recommendation in the period between 2012 and 2018. All inquired ministries and public institutions have provided their official responses, although the extent of the provided information varied. Lithuanian ministries and public institutions that provided information are as follow:

Public Body	Date of Inquiry	Date of Response
Ministry of Justice	26 March 2018	11 May 2018
Prison Department under the Ministry of Justice		2 May 2018
Office of the Equal Opportunities Ombudsperson		19 April 2018
Police Department under the Ministry of Interior		27 April 2018
Migration Department under the Ministry of Interior		3 May 2018
Ministry of Social Security and Labor		24 April 2018
Office of the Inspector of Journalist Ethics		11 May 2018
Ministry of Culture		11 July 2018
Ministry of Education and Science		10 April 2018
Department of Physical Education and Sports		19 April 2018
Ministry of Health		26 April 2018
Ministry of National Defense	7 May 2018	

Public Body	Date of Inquiry	Date of Response
Office of the Parliamentary Ombudsperson	26 March 2018	5 April 2018
Office of the Ombudsperson for Children Rights		20 April 2018
Prosecutor's Office		6 April 2018

The secondary documentation activities encompassed collection, analysis and processing of the available data on discrimination of LGBT persons in Lithuania. For the purpose of preparing the second documentation report, both national and international sources were researched. From the international perspective, the ILGA-Europe's Rainbow Map (2018),<sup>16</sup> the Transgender Europe's Trans Map & Index (2018),<sup>17</sup> the *Special Eurobarometer* on discrimination (2015),<sup>18</sup> results of the FRA's LGBT survey (2013),<sup>19</sup> FRA's reports on comparative legal analysis (2015)<sup>20</sup> and attitudes by professionals in education, healthcare and law enforcement (2016)<sup>21</sup> and other sources were used. From the national perspective, data records and research primarily collected by the National LGBT\* Rights Organization LGL, e.g. the National School Climate Survey (2018)<sup>22</sup> on experiences by LGBT

16 Supra 4.

17 Transgender Europe, "Trans Map & Index", May 2018, <https://tgeu.org/trans-rights-map-2017>.

18 Supra 13.

19 Supra 11.

20 FRA, "Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU. Comparative legal analysis", 2015, [http://fra.europa.eu/sites/default/files/fra\\_uploads/protection\\_against\\_discrimination\\_legal\\_update\\_2015.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf).

21 FRA, "Professionally speaking: challenges to achieving equality for LGBT people", 2016, [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-lgbt-public-officials\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-lgbt-public-officials_en.pdf).

22 "Safety at School for Every Student: Possibility, or Utopia?", lgl.lt, 10 January 2018, <http://www.lgl.lt/en/?p=19200>.

students at Lithuanian schools, the representative public opinion survey on attitudes towards LGBT topics (2017, not published), the documentation report on experiences of trans persons in the Lithuanian labor market (2016)<sup>23</sup> and other sources, were used. The second documentation report also employed data, which is not necessarily produced in a form of a report or a publication. That included information about pre-trial investigations concerning anti-LGBT hate crimes and hate speech, processed complaints on grounds of sexual orientation by the national equality body, records on the instances of discrimination or violence submitted by the LGBT community members and other types of data. This information was predominantly used for documenting individual cases and examples that can provide evidence of the failure by the national authorities in implementing the specific measures outlined in the Recommendation CM/Rec(2010)5.

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23 Tomas V. Raskevičius, "#TRANS\_LT: Documenting Experiences of Transgender People in Employment", 2016, [http://www.lgl.lt/en/files/TRANS\\_LT-Documenting-Experiences-of-Transgender-People-in-Employment-2016.pdf](http://www.lgl.lt/en/files/TRANS_LT-Documenting-Experiences-of-Transgender-People-in-Employment-2016.pdf).

# EXECUTIVE SUMMARY

The second documentation report on monitoring the implementation of the Recommendation CM/Rec(2010)5 in Lithuania reveals that in the period between 2012 and 2018 the national authorities did not implement any comprehensive strategy with the view of improving LGBT human rights situation in the country. The identified advancements pertaining to the right to freedom of peaceful assembly and legal gender recognition have been made exclusively through strategic litigation efforts before the national and international courts (i.e. the judicial branch). The report reveals that the executive branch also took some symbolic steps in addressing the specific needs by the LGBT population within the framework of the national policies (e.g. trainings for law enforcement officers on anti-LGBT crimes, sexual orientations and gender identity as legitimate grounds for granting asylum, etc.). However, the biggest challenges are related to the legislative branch. In the period between 2012 and 2018 the Lithuanian Parliament actively considered nine legislative initiatives, seeking to further limit the fundamental rights and freedoms of LGBT persons, including total ban on legal gender recognition and constitutional amendment limiting the concept of “family life” to different-sex marriage. It seems that at the moment there is no political will to advance on LGBT human rights in Lithuania.

Regarding the operative text of the Recommendation CM/Rec(2010)5, it can be concluded that the national authorities did not make any effort in monitoring and reviewing the national legislation with the aim of redressing discrimination on the grounds of sexual orientation or gender identity. There is no national survey on the social and legal situation of LGBT persons in Lithuania available and the national action plans on equality and non-discrimination include LGBT topics passingly. In 2015 the civil society organization proposed an *Action Plan on Non-Discrimination of LGBT People*, but it was only formally

acknowledged by the Ministry of Social Security and Labor. Contrary to the recommendation to the Member States to be guided by the principles of the Recommendation CM/Rec(2010)5 in its legislation, the Lithuanian Parliament was actively considering various legislative initiatives with the view of limiting the rights of LGBT persons. While the text of the Recommendation CM/Rec(2010)5 is officially translated in the Lithuanian language, it was not actively disseminated among the relevant stakeholders. However, the national courts seem to be quite knowledgeable of the Recommendation and its principles, as they have been directly referring to its principles in several judgments regarding LGBT human rights (i.e. right to freedom of peaceful assembly, legal gender recognition).

The second documentation report has revealed that the Lithuanian authorities systematically fail in effectively investigating reported instances of hate speech and hate crimes on the grounds of sexual orientation and (or) gender identity (i.e. **right to life, security and protection from violence**). In some cases, law enforcement officials simply refused to start pre-trial investigations, thus leaving members of the local LGBT community without any possibility for legal redress. The European Court of Human Rights (ECtHR) will have an opportunity to access this situation in the case of *Beizaras v. Lithuania*, which was communicated to the Lithuanian Government in 2017. The case concerns failure by the national authorities to investigate into the extreme instances of homophobic hate speech online. Furthermore, various surveys indicate that the negative phenomenon of anti-LGBT hate crimes in Lithuania is defined by underreporting, i.e. LGBT persons do not report the experienced instances of hate crimes and hate speech. One of the reasons for underreporting is the lack of trust in law enforcement agencies.

There are major challenges in securing the right to **freedom of expression** for LGBT persons in Lithuania. The *Law on the Protection of Minors against the Detrimental Effect of Public Information*



(i.e. “anti-gay propaganda” legislation) was applied on three different occasions with the view of censoring LGBT related public information in the period between 2013 and 2014. The Lithuanian authorities claim that this discriminatory interference with the right to freedom of expression is necessary to protect “emotional, spiritual, psychological development and health of the minors”, thus creating a chilling effect on talking publicly about LGBT issues in the Lithuanian society. On the other hand, public authorities have effectively assisted the local LGBT community in exercising its right to **freedom of peaceful assembly**. While the application of the *Law on Public Meetings* for LGBT pride events had to be clarified by the national courts in 2013, there were no limitations to this right ever since.

Lithuanian remains one of few jurisdictions in Europe without any legal recognition of same-sex relationships (i.e. **right to family life**). The Lithuanian Parliament not only dismissed a bill on introducing gender-neutral registered partnerships, but is now considering a legislative motion on “cohabitation agreements” which would strip same-sex couples of family status all together. The failure by the national authorities in recognizing same-sex marriages conducted abroad for the purposes of immigration resulted in a case before the Constitutional Court, which should clarify the extent to which the recent developments in the EU *acquis* are applicable in the Lithuanian legal system.

Lithuania still has no administrative procedures of legal gender recognition and gender affirming treatment (i.e. **right to private life**). Despite the fact that transgender people remain disproportionately affected by discrimination, harassment and violence, gender identity and gender expression are not covered by the Lithuanian anti-discrimination and hate crime legislation. Since April 2017, as a result of strategic litigation efforts, the right to legal gender recognition is granted by the national courts without the sterilization requirement, i.e. based solely on psychiatric diagnosis and self-iden-

tification. However, the Lithuanian Parliament does not place on the legislative agenda the *Law on Recognition of Gender Identity* and the corresponding health care protocol, which would enable transgender persons to exercise their rights through a quick, transparent and accessible procedure.

While discrimination on the grounds of sexual orientation in the field of **employment** is explicitly prohibited by the national laws, the national authorities did not implement any positive measures with the view of counteracting the negative tendencies of stigmatization, discrimination and exclusion of LGBT persons in the Lithuanian labor market. Transgender persons are not covered by the national equality legislation in the field of employment. While the Lithuanian authorities claim that LGBT persons can freely serve in the armed forces of Lithuania, the everyday examples indicate that there are some negative practices of filtering out gay men and transgender persons even from the compulsory military service.

In the sphere of **education** the newly adopted guidelines on sexual education provide for quite comprehensive recommendations on covering the topics pertaining to sexual orientation and gender identity. However, there is a documented lack of methodological tools and trainings with the view of enabling teachers and school staff to cover these issues in scientific and objective manner. For example, some extreme documented instances indicate that LGBT persons are referred to as "sodomasochists", "cannibals" or "rapists" by some teachers, while some methodological tools for teachers promote conversion therapies for "fixing" sexual orientation or gender identity.

The national authorities do not consider the LGBT population as facing significant barriers in accessing services in the area of **health**. While gay men are effectively prevented by secondary legislation from becoming blood donors, in 2018 the Ministry of Health en-

abled the treatment of HIV+ patients immediately after the diagnosis. There are no targeted trainings or suicide prevention programmes, seeking to address the specific needs of LGBT populations. As a result, the civil society organizations are initiating various training initiatives with the view of providing relevant information and skills for health care providers on LGBTI topics. However, these initiatives are project run and therefore not sustainable.

Well-founded fear of being persecuted on the grounds of sexual orientation and (or) gender identity constitutes a legitimate ground for claiming **asylum** in Lithuania. According to a ministerial order, since 2016 the migration authorities cannot turn down an asylum request on the ground that the applicant can escape persecution in the country of origin by keeping their sexual orientation secret. While it is difficult to estimate how these provisions are implemented in practice, there are known cases when asylum was granted on the grounds of sexual orientation in Lithuania. However, the staff who is processing asylum applications do not receive any LGBT-specific trainings.

Finally, since 2018 Lithuania has an accredited **national human rights institution**. However, within the framework of collecting information for this documentation report, the institution in question failed to provide any relevant information on its priorities and activities in the field of LGBT human rights.

# RECOMMENDATIONS

## Recommendation CM/Rec(2010)5

1. Collect relevant official statistical data on legal and social situation of LGBT persons in the country and use this data to conduct comprehensive review of existing legislation and other measures in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation and (or) gender identity.
2. Reject consideration and adoption of nine currently pending openly homophobic and (or) transphobic legislative initiatives based on human rights principles.
3. Adopt the comprehensive Interinstitutional Action Plan on Non-Discrimination of LGBT People, allocate sufficient funding for LGBT-specific measures/programmes and use this plan to fully implement the Recommendation CM/Rec(2010)5 at the national level.
4. Include the categories of gender identity and gender expression as protected grounds in the national equality legislation.

## Appendix to the Recommendation CM/Rec(2010)5

### I. Right to Life, Security and Protection from Violence

#### A. "Hate Crimes" and Other Hate-Motivated Incidents

5. Ensure effective investigation and prevention (e.g. providing comprehensive trainings for law enforcement officers, organizing awareness raising campaigns, establishing specific LGBT units/focal points in police headquarters, etc.) of hate crimes on grounds of sexual orientation and (or) gender identity.
6. Introduce the protected grounds of "gender identity" and "gender expression" in the relevant provisions of the Criminal Code.
7. Allocate sufficient financial resources with the view of implementing measures in the Recommendation CM/Rec(2010)5 on effectively combating anti-LGBT hate crimes.

## B. "Hate Speech"

**8.** Ensure effective investigation and prevention (e.g. providing comprehensive trainings for law enforcement officers, organizing awareness raising campaigns, thoroughly monitoring online spaces, etc.) of hate speech on grounds of sexual orientation and (or) gender identity.

**9.** Criminalize hate speech on the grounds of gender identity and gender expression.

**10.** Step up efforts to cooperate with civil society organizations, working in the field of hate speech prevention.

## II. Freedom of Association

**11.** Expand and consolidate cooperation with civil society organization working in the field of LGBT human rights with the aim of fully implementing the Recommendation CM/Rec(2010)5 at the national level.

**12.** Increase the amount of available public funding for LGBT organization with the view of comprehensively addressing the complexity of LGBT human rights issues in Lithuania.

## III. Freedom of Expression and Peaceful Assembly

### A. Freedom of Expression

**13.** Amend Article 4.2.16 of the *Law on the Protection of Minors* so that it is not applied with the view of censoring LGBT related public information in the future.

### B. Freedom of Assembly

**14.** Maintain current standards, practices and procedures with the view of continuously facilitating the exercise of the right to freedom of peaceful assembly for the local LGBT communities according to the standards of the Recommendation Rec/CM(2010)5.

## IV. Respect for Private and Family Life

**15.** Introduce legal recognition of same-sex relationships granting the rights and obligations of "family members" for same-sex partners.

## A. Trans Specific Issues (Including Access to Health Care)

**16.** Establish quick, transparent and accessible administrative procedure for legal gender recognition.

**17.** Enable appropriate healthcare services for transgender individuals within the framework of the public health care system, covered by the national health insurance scheme.

**18.** Adopt the *Law on Recognition of Gender Identity* and the corresponding health care protocol.

## V. Employment

**19.** Conduct comprehensive national survey on the situation of the LGBT populations in the Lithuanian labor market and adopt corresponding measures with the aim of combating discrimination on the grounds of sexual orientation and (or) gender identity in the field of employment and occupation according to the standards in the Recommendation CM/Rec(2010)5.

**20.** Explicitly prohibit discrimination on the grounds of gender identity and (or) gender expression in the field of employment and occupation through amending the corresponding provisions in the *Law on Equal Opportunities* and the *Labor Code*.

## VI. Education

**21.** Develop and disseminate educational materials, comprehensively covering LGBT topic in objective and scientific manner, including human rights perspective.

**22.** Provide targeted trainings for teachers and other school staff on covering LGBT topics through school curriculum.

**23.** Develop and implement targeted anti-bullying measures, specifically covering bullying on the grounds of sexual orientation and (or) gender identity.

## VII. Health (Other than Trans Specific Issues)

**24.** Develop and implement comprehensive training programs for health care providers on LGBT-inclusive health care. Cooperate with civil society organizations with the view of developing effective measures to respond to discrimination on grounds of sexual orientation and gender identity in health care.

**25.** Develop and implement targeted suicide prevention programs, taking specific needs of LGBT persons into account.

**26.** Cooperate with civil society organizations with the view of developing effective measures to respond to discrimination on grounds of sexual orientation and gender identity in health care.

## VIII. Housing

**27.** Integrate the specific needs of LGBT persons within the framework of victim support and shelter provision services pertaining to temporary accommodation through adopting legislative and policy guidelines, as well as through providing relevant trainings for social workers and other relevant staff.

## IX. Sports

**28.** Develop national guidelines and recommendations on inclusion of LGBT persons in sports.

## X. Right to Seek Asylum

**29.** Ensure that the staff of the Migration Department that is responsible for processing asylum requests is provided with appropriate training on specific issues encountered by LGBT asylum seekers. Provide similar trainings to the staff of administrative detention centers, police officers, healthcare providers and social workers, who are dealing with asylum seekers after they have been granted with the refugee status.

## XI. National Human Rights Structures

**30.** Provide clear mandate to the national human rights structures to deal with discrimination on the grounds of gender identity.

**31.** Provide relevant information about the priorities and activities by the national human rights institution, i.e. the Office of the Seimas' Ombudsperson, in the field of LGBT human rights.

## XII. Discrimination on Multiple Grounds

**32.** Consider the possibility of introducing into the national legislation the corresponding definition and preventive measures in order to effectively address the negative phenomenon of multiple discrimination.



# DOCUMENTATION REPORT

## THE RECOMMENDATION - - - - -

The operative text of the Recommendation CM/Rec(2010)5 includes **five main requirements:**

- a)** to examine existing legislative and other measures, keep them under review, and collect and analyze relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
- b)** to ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
- c)** to ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
- d)** to be guided in legislation, policies and practices by the principles and measures contained in the Appendix to this Recommendation; to ensure [...] that this Recommendation, including its Appendix, is translated and as widely as possible.

To the knowledge by the National LGBT\* Rights Organization LGL no comprehensive review of existing legislation and other measures in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation and (or) gender identity has been conducted. According to the **Ministry of Social Security and Labor**, *"the Ministry is continuously taking care that existing and draft legislation complies with the principles of equal opportunities and non-discrim-*

ination”.<sup>24</sup> However, no detailed explanations or concrete examples on how this “review” process works were provided. Furthermore, the **Ministry of Social Security and Labor** indicated that “no official statistics on LGBT issues are collected, because [...] the collection of this personal data could imply certain infringements regarding data protection regulations.”<sup>25</sup> Regarding the representative opinion surveys of the general public on LGBT topics, the **Ministry of Social Security and Labor** was able to refer only to the Special Eurobarometer on discrimination in the EU, performed by the European Commission in 2015.<sup>26</sup>

If discrimination on the grounds of sexual orientation occurs within the scope of the *Law on Equal Opportunities*<sup>27</sup> (i.e. in the spheres of employment, provision of goods and services, education, actions by all public authorities, or advertising), a person may file a complaint to the Office of the Equal Opportunities Ombudsperson.<sup>28</sup> The categories of gender identity and (or) gender expression are not included as prohibited grounds of discrimination within the *Law on Equal Opportunities* or other relevant national legislation. However, the **Office of the Equal Opportunities Ombudsperson** indicated that “despite the fact that the *Law on Equal Opportunities* does not include the protected ground of gender identity, the Office, upon receiving a complaint, would initiate an investigation on the alleged discrimination on the grounds of gender”.<sup>29</sup> The Equal Opportunities Ombudsperson may impose an administrative sanction to the defendant. However, it may not award damages to the victim of discrimination. The appli-

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24 Ministry of Social Security and Labor, “Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe”, No. SD-2412, 24 April 2018, p. 1.

25 Ibid., p. 2.

26 Ibid., p. 2.

27 Supra 5.

28 For more detailed information, see: [www.lygybe.lt](http://www.lygybe.lt)

29 Office of the Equal Opportunities Ombudsperson, “Regarding Request for Information”, No. (18)PAK-95)S-264, 19 April 2018, p. 2.

cant would have to seek redress independently through the judicial procedure. LGL is not aware of any instances, when damages were awarded to the victims of discrimination by the court's decision in the period between 2012 and 2018.

**Case Study: Discrimination on Grounds of Gender Identity (Provision of Goods and Services)<sup>30</sup>**

In 2015 a transgender woman was denied access to breast augmentation surgery, because she was "biologically male". Despite the fact the Office of the Equal Opportunities Ombudsperson initiated an investigation, it was terminated due to "*the lack of objective data about the alleged violation of equal opportunities on the grounds of gender*".

Discrimination based on sexual orientation is also prohibited under the criminal law (i.e. Article 169 of the *Criminal Code*).<sup>31</sup> According to the information provided by the **Police Department**, in the period between 2014 and 2018 there were no criminal offences registered under the Article 169.<sup>32</sup> It can be concluded that this criminal provision is not applied in practice.

The Lithuanian Government has previously implemented several national anti-discrimination programmes, the latest of which, i.e. the *Action Plan for Promoting Non-Discrimination 2017-2019*,<sup>33</sup> was adopted by the Ministry of Social Security and Labor in May, 2017. According to the **Ministry of Social Security and Labor**, several measures within the Action Plan are relevant for implementing the Recommendation CM/Rec(2010)5, namely: (a) raising awareness on equal opportunities and non-discrimination; (b) organizing seminars,

30 For more information, see: "Romanian Trans Woman Denied Surgery in Lithuania", IGLt, 28 July 2015, <http://www.lgl.lt/en/?p=10577>.

31 Supra 9.

32 Police Department under the Ministry of Interior, "Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe", No. 5-S-4061, 27 April 2018, p. 3.

33 Order by the Minister of Social Security and Labor "Regarding Approval of the Action Plan for Promoting Non-Discrimination 2017-2019", No. A1-250, 15 May 2017, <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363>.

meeting and trainings for politicians on LGBT human rights topics; (c) organizing trainings for law enforcement officials about anti-LGBT hate crimes.<sup>34</sup> While some of these measures are indeed relevant for improving the legal and social situation of LGBT people in Lithuania, they primarily aim at documenting already existing *ad hoc* initiatives, usually implemented by or in cooperation with the civil society organizations. To put it in other words, the *Action Plan for Promoting Non-Discrimination 2017-2019* does not approach LGBT topics strategically, but rather makes a symbolic effort to acknowledge LGBT human rights as a token within the national policy on equal opportunities and non-discrimination. This statement is supported by the fact that the *Action Plan for Promoting Non-Discrimination 2017-2019* does not foresee any funding for the listed measures, which are relevant for implementing the Recommendation CM/Rec(2010)5. In comparison, the National LGBT\* Rights Organization LGL issued a comprehensive Action Plan on Non-Discrimination of LGBT\* People 2015-2020,<sup>35</sup> which was formally acknowledged, but not taken into account by the Ministry of Social Security and Labor in the course of developing, implementing and evaluating its policies.<sup>36</sup>

The invitation to be guided by the Recommendation's principles in legislation, policies and practices is hardly followed by Lithuania. The transposition of the Employment Equality Framework Directive 2000/78/EC through the adoption of the *Law on Equal Opportunities*<sup>37</sup> in 2003 marked the last legislative advancement in the field of LGBT human rights. Ever since, Lithuanian legislators have taken quite the opposite direction. In the period between 2012 and 2018 the Lithuanian Parliament considered in total nine openly homophobic and (or) transphobic legislative initiatives with the view of

34 Supra 24.

35 "Action Plan on Non-Discrimination of LGBT\* People 2015-2020", lgl.lt, 2015, <http://www.lgl.lt/en/files/Nediskriminavimo-planas-FN-2015-2020-internet.pdf>.

36 "LGL Presents the Government with an Inter-institutional Action Plan for the Non-Discrimination of LGBT\* People", lgl.lt, 18 May 2015, <http://www.lgl.lt/en/?p=9799>.

37 Supra 5.

further limiting civil and political rights of LGBT persons. Despite the fact that none of these legislative initiatives have been adopted by the Lithuanian Parliament yet, they are still in different stages of the legislative process, i.e. none of them have been definitively rejected. This situation imposes a constant threat for LGBT persons, because the consideration of these initiatives on the highest political level legitimizes the notion that human rights of LGBT persons could be effectively limited. In other words, many local politicians push for a homophobic and (or) transphobic agenda with the view of further reinforcing socially hostile atmosphere for LGBT persons in Lithuania. What follows is a list of the homophobic and (or) transphobic legislative initiatives pending before the Lithuanian Parliament as of 1 July 2018.

### **Case Study: Homophobic and Transphobic Legislative Initiatives (as of 1 July 2018)**

**a) The amendment to the Civil Code No. XIIP-17<sup>38</sup>** seeks to place a total ban on gender affirming surgeries. The bill was included on the Parliament's agenda on 23 May 2013 and has not been considered since then.<sup>39</sup>

**b) The amendment to the Criminal Code No. XIIP-687<sup>40</sup>** seeks to establish that the criticism of homosexuality and attempts to change one's sexual orientation would not qualify as discrimination or harassment on the grounds of sexual orientation. The bill was included on the Parliament's agenda on 12 September 2013.<sup>41</sup> It passed the first hearing on 19 June 2014.<sup>42</sup> The Parliamentary Committee on Education, Science and Culture temporarily postponed the adoption of the bill on 16 December 2014 by returning the bill to the initiators for "further improvements".

38 Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas, No. XIIP-17, 21 November 2011, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437749&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437749&p_tr2=2).

39 Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-16029](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-16029).

40 Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projektas, No. XIIP-687, 11 June 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=450517&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450517&p_tr2=2).

41 Seimo rytinio posėdžio protokolas, No. SPP-76, 12 September 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=455777&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=455777&p_tr2=2).

42 Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-18431](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-18431).

**c) The amendment to the Law on Public Meetings No. XIIP-940**<sup>43</sup>, proposes that the organizers of the public assemblies cover all expenses in relation to ensuring safety and public order in the course of an event. This legislative motion was introduced as a retaliatory measure for the successfully executed *Baltic Pride* 2013 March for Equality. The Parliament has not yet voted on the inclusion of this bill to its agenda.

**d) The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-473**<sup>44</sup> (together with **the amendment to the Civil Code No. XIIP-472**<sup>45</sup>) stipulates that "every child has the natural right to a father and a mother, emanating from sex differences and mutual compatibility between motherhood and fatherhood". The bill was included on the Parliament's agenda on 21 May 2013.<sup>46</sup>

**e) The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-1469(2)**<sup>47</sup> seeks to establish that "it is forbidden for same-sex couples to adopt citizens of the Republic of Lithuania." The bill was included on the Parliament's agenda on 15 September 2015.<sup>48</sup>

**f) The amendment to the Article 38 of the Constitution No. XIIP-1217(2)**<sup>49</sup> seeks to redefine the constitutionally protected concept of "family life" as emanating from a traditional marriage between a man and a woman, and stipulates that family arises from motherhood and fatherhood. The bill was included on the Parliament's agenda

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43 Susirinkimų įstatymo 11, 14 straipsnių papildymo ir pakeitimo įstatymo projektas, No. XIIP-940, 3 September 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=455236&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=455236&p_tr2=2).

44 Vaiko teisių apsaugos pagrindų įstatymo papildymo 7 straipsnio pakeitimo ir papildymo įstatymo projektas, No. XIIP-473, 18 April 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=446661&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446661&p_tr2=2).

45 Civilinio kodekso 3.3 straipsnio pakeitimo įstatymo projektas, No. XIIP-472, 18 April 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=446664&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446664&p_tr2=2).

46 Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-15995](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-15995).

47 Vaiko teisių apsaugos pagrindų įstatymo Nr. I-1234 26 straipsnio pakeitimo įstatymo projektas, No. XIIP-1469(2), 27 January 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464939](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464939).

48 Voting results: [http://www.lrs.lt/sip/portal/show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-21015](http://www.lrs.lt/sip/portal/show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-21015).

49 Konstitucijos 38 straipsnio pakeitimo įstatymo projektas, No. XIIP-1217, 17 June 2016, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/obe20cb0348411e6a222b0cd86c2adfc>.

on 10 December 2013.<sup>50</sup> The amendment was accepted for the Parliament's consideration on 28 June 2016.<sup>51</sup>

**g) The amendment to the Code of Administrative Violations No. XIIP-4490(3)**<sup>52</sup> introduces administrative liability for any public defiance of the constitutionally established "family values". By carrying out public speeches, demonstrating posters, slogans and audiovisual materials, as well as organizing public events such as gay prides and other kind of actions, one would act against the law. The bill was included on the Parliament's agenda on 21 January 2014.<sup>53</sup> The Parliament postponed the final adoption phase on 13 March 2014,<sup>54</sup> and once again on 12 November 2015.<sup>55</sup>

**h) The amendment to the Civil Code No. XIIIIP-750**<sup>56</sup> seeks to introduce an "agreement for cohabitation" that would allow two or more cohabitants to realize certain property rights without an intention to create family relations. The proponents of this bill claim that the "agreement for cohabitation" would be suitable form of legal recognition for same-sex couples. However, it effectively prevents same-sex couples from enjoying the status of "family members". The bill was included on the Parliament's agenda on 30 May 2017.<sup>57</sup>

**i) The amendment to the Civil Code No. XIIIIP-1327**<sup>58</sup> places a total ban on both medical and legal gender reassignment in Lithuania. The bill was registered in the Parliament on 10 November 2017, but the Parliament has not deliberated on the proposal yet.

50 Seimo vakarinio posėdžio protokolai, No. SPP-111, 10 December 2010, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=461791&p\\_query=XIIP-1217&p\\_tr2=1](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=461791&p_query=XIIP-1217&p_tr2=1).

51 Voting results: [http://www.lrs.lt/sip/portal/show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-23696&p\\_var=1](http://www.lrs.lt/sip/portal/show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-23696&p_var=1).

52 Administracinių teisės pažeidimų kodekso 224 ir 259(1) straipsnių pakeitimo ir Kodekso papildymo 188(21) straipsniu įstatymų projektas, No. XIIP-4490(3), 15 January 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464145&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464145&p_tr2=2).

53 Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale\\_bals?p\\_bals\\_id=-17616](http://www3.lrs.lt/pls/inter/w5_sale_bals?p_bals_id=-17616).

54 Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale\\_bals?p\\_bals\\_id=-17656](http://www3.lrs.lt/pls/inter/w5_sale_bals?p_bals_id=-17656).

55 Voting results: [http://www.lrs.lt/sip/portal/show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-21395](http://www.lrs.lt/sip/portal/show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-21395).

56 Civilinio kodekso 6.589, 6.969, 6.971, 6.973, 6.978 straipsnių pakeitimo įstatymo projektas, No. XIIIIP-750, 23 May 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/2eed4fd03fbc11e-7b8e5a254f4e1c3a7>.

57 Voting results: [http://www.lrs.lt/sip/portal/show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_klaus\\_stadija&p\\_svarst\\_kl\\_stad\\_id=-26165](http://www.lrs.lt/sip/portal/show?p_r=15275&p_k=1&p_a=sale_klaus_stadija&p_svarst_kl_stad_id=-26165).

58 Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas, No. XIIIIP-1327, 10 November 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/66fe0380c61711e782d4fd2c44cc67af?-jfwid=-19syzywy9ez>.

The official translation of the Recommendation CM/Rec(2010) and its Annex to Lithuanian was produced by the **Representation of the Lithuanian Government before the European Court of Human Rights (ECtHR)** and is available at the websites of the Representation<sup>59</sup> and the Ministry of Social Security and Labor.<sup>60</sup> The National LGBT\* Rights Organization LGL is not aware of any steps that have been taken by the Government to ensure wide dissemination of the translated Recommendation among the relevant ministries and other stakeholders. Nevertheless, the Recommendation CM/Rec(2010)5 has served as a soft law measure informing the national courts and encouraging them to apply the Council of Europe's standards in ensuring LGBT human rights at the national level. The examples of references to the standards of the Recommendation include the decision of the Supreme Administrative Court of Lithuania on the right to organize the *Baltic Pride* 2013 March for Equality **(right to peaceful assembly)**<sup>61</sup> and the decisions by the Vilnius City District Court on legal gender recognition **(right to respect for private life)**.<sup>62</sup> It can be concluded that the national courts in Lithuania are aware of the LGBT human rights standards in the Recommendation CM/Rec(2010)5.

### Recommendations:

1. *Collect relevant official statistical data on legal and social situation of LGBT persons in the country and use this data to conduct comprehensive review of existing legislation and other measures in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation and (or) gender identity.*
2. *Reject consideration and adoption of nine currently pending openly*

59 <http://lrv-atstovas-ezt.lt/page/europos-tarybos-ministru-komiteto-rekomendacijos>.

60 <https://socmin.lrv.lt/lt/veiklos-sritys/socialine-integracija/lygios-galimybes>.

61 Supreme Administrative Court of Lithuania, Case No. Nr. A444-1968/2013, 20 June 2018, <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=33211a6d-0a40-4a6d-8989-ff2733aca46c>.

62 For example, see: Vilnius City District Court, Case No. e2YT-5329-934/2017, 7 April 2017, <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=8e1c8a82-195f-462c-ac29-03fa-f042379a>.



*homophobic and (or) transphobic legislative initiatives based on human rights principles.*

**3.** *Adopt the comprehensive Interinstitutional Action Plan on Non-Discrimination of LGBT People, allocate sufficient funding for LGBT-specific measures/programmes and use this plan to fully implement the Recommendation CM/Rec(2010)5 at the national level.*

**4.** *Include the categories of gender identity and gender expression as protected grounds in the national equality legislation.*

# Appendix to the Recommendation CM/Rec(2010)5

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## I. Right to Life, Security and Protection from Violence

### A. “Hate Crimes” and Other Hate-Motivated Incidents

The **key recommendations** in Section I.A. cover:

1. Effective, prompt and impartial investigations into alleged cases of crimes and other incidents, which are suspected to be related to sexual orientation or gender identity of the victim; with special attention when allegedly committed by law enforcement officials.
2. Taking anti-LGBT bias motive when determining sanctions.
3. Encouraging victims to report these crimes and incidents.
4. Training of police officers, judiciary and prison staff.
5. Taking protective measures for LGBT prisoners, with special attention be given to respecting gender identity of transgender persons.
6. Gathering and analyzing relevant data on prevalence and nature of anti-LGBT hate crimes.

The *Criminal Code*<sup>63</sup> contains a combination of general and specific penalty-enhancement provisions for hate crimes, as well as a substantive offence. Article 129.2.13 (i.e. murder), Article 135.2.13 (i.e. severe health impairment) and Article 138.2.13 (i.e. non-severe health impairment) of the *Criminal Code* establishes penalty enhancement in case these particular offences are committed out of bias motivation on grounds of sexual orientation. Article 60.12.1 qualifies acts committed in order to express hatred on the grounds of sexual orientation as an aggravating circumstance within the framework of criminal proceedings. While sexual orientation is a protected ground under the Lithuanian criminal legislation, the same does not apply to the grounds of gender identity and (or) gender expression. The

<sup>63</sup> Supra 9.

**Police Department** provided the following statistical information about the criminal offences on the grounds of sexual orientation registered between 2012 and 2018.<sup>64</sup>

	2012	2013	2014	2015	2016	2017	2018
Article 129.2.13	0	0	0	0	0	0	0
Article 135.2.13	0	0	0	0	0	0	0
Article 138.2.13	1	0	0	1	0	1	0
Offences by Law Enforcement Officers	0	0	0	0	0	0	0

The **Prosecutor's Office** also provided information that it is not possible to determine on how many instances the Article 60.1.12 of the Criminal Code had been used in order to enhance penalty for hate crimes on grounds of sexual orientation, because this data is not collected for the purposes of the official statistics.<sup>65</sup> To the knowledge of the National LGBT\* Rights Organization LGL, the aggravating circumstance under the Article 60.1.12 of the Criminal Code has never been applied in practice. In essence this data indicates that anti-LGBT hate crimes in Lithuania are alarmingly underreported.

According to quantitative research by the Center for Research and Prejudice of the University of Warsaw (2015), 27.9 % of the Lithuanian LGBT respondents have experienced hate crimes or harassment on grounds of their actual or perceived sexual orientation in the course

<sup>64</sup> Supra 32, p. 3.

<sup>65</sup> General Prosecutor's Office, "Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe", No. 17.2-1955, 6 April 2018, p. 1.

of the past five years.<sup>66</sup> However, as many as 80 % did not report it to the national authorities.<sup>67</sup> The most often quoted reasons for not reporting hate-related incidents to the competent authorities are: *"did not think they would do anything"*, *"did not think they could do anything"* and *"fear of a homophobic and (or) transphobic reaction from the police"*.<sup>68</sup>

CASE STUDY: HOMOPHOBIC HATE CRIME	
Elements	Description
Date, time and location	11 November 2017; night (3 AM), Šakiai (app. 5'000 inhabitants)
Place	1At home (based on the report it was a house of the victim's partner)
Type	Physical assault, verbal violence, humiliation, verbal threats
Source of Information	Victim's report through the mobile application "UNI-FORM"
Victim(s) involved	One gay man (partner also present during the incident, but does not seem to be affected by the incident)
Bias motivation	Sexual orientation
Bias indicators	The victim and his partner were sleeping together in one bed, homophobic language
Number and Type of Perpetrator(s)	One man (allegedly the partner's brother), who was violent, and another man, who was filming the incident
Description	The victim and his partner were sleeping at the house of the partner; the victim was woken up by physical blows; there was a man in the room, who later was identified as the partner's brother; there was another man in the room, filming the incident; the perpetrator was shouting at the victim by asking why the victim and his brother were sleeping in one bed; the perpetrator called the couple "faggots" and delivered few additional blows to the victim's face; in total app. 5-6 blows were delivered; the perpetrator was yelling that the couple in question should have been killed; the perpetrator (and allegedly the man, who was filming the incident) was removed from the scene by the partner's parents, who were residing at the same house

66 The Center for Research and Prejudice of the University of Warsaw, Hate No More. Quantitative Study Report, Warsaw, 2015, p. 50.

67 Ibid., p. 57.

68 Ibid., p. 72.

CASE STUDY: HOMOPHOBIC HATE CRIME

Elements	Description
Response of Public Authorities	The incident was reported to the police, as the police was summoned to the place of the incident; the victim indicated that he had not reported bias motivation to the police, because it "was uncomfortable to speak with unfamiliar people about my sexual orientation"; however, the bias motivation on grounds of sexual orientation was identified and recorded during the subsequent pre-trial investigation
Status of the Case	Investigation was closed and the perpetrator has received criminal sanction
Impact on the Victim(s) and the Community	The victim reported stress and anxiety after the incident; the anxiety was predominantly related to the fear that the video recording of the incident will become public; the incident affected the victim's relationships, because the partner was requesting the victim to drop charges against the partner's brother; the victim has received assistance from a qualified psychologists

The *Victims' Rights Directive*<sup>69</sup> was transposed to the national legislation in the period between 2015 and 2016 through the introduction of amendments to the *Code of Criminal Procedure*<sup>70</sup> and the adoption of enabling secondary legislation. In the context of anti-LGBT hate crimes, the most notable improvements were related to the adoption of the *Report on Informing the Aggrieved Person on His/Her Rights*<sup>71</sup> (i.e. obligation to inform a victim about their rights in the course of criminal proceedings) and the *Recommendations on Assessing Special Protection Needs by the Aggrieved Person*<sup>72</sup> (i.e. guidelines on assessing vulnerability of a victim). While these guidelines

69 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN>.

70 Code of Criminal Procedure of the Republic of Lithuania, No. IX-785, last amendments on 1 January 2018, [https://www.e-tar.lt/portal/lt/legalAct/TAR\\_EC588C321777](https://www.e-tar.lt/portal/lt/legalAct/TAR_EC588C321777).

71 General Prosecutor of the Republic of Lithuania, "Nukentėjusiojo teisių išaiškinimo protokolai", <https://e-seimas.lrs.lt/rs/lasupplement/TAP/24ee7b60056a11e687e0fbad81d-55a7c/618ea770056a11e687e0fbad81d55a7c>.

72 General Prosecutor of the Republic of Lithuania, "Dėl Rekomendacijų dėl nukentėjusiųjų specialių apsaugos poreikių vertinimo patvirtinimo", No. I-63, <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>.

and recommendations provide for a substantial basis for ensuring the victims' rights in the course of the criminal proceedings, they do not take the specific needs of LGBT victims into account. For example, the recommendations do not explicitly mention sexual orientation and (or) gender identity, even though the acknowledgement of these characteristics are instrumental in protecting LGBT victims of hate crimes from secondary victimization. While it remains to be seen how law enforcement agencies and victim support service providers will apply the new guidelines in practice, it seems that the current framework does not guarantee that all rights of victims of anti-LGBT hate crimes will be respected.

In 2017 the National LGBT\* Rights Organization LGL interviewed 20 law enforcement officers and victim support service providers with the view of assessing the capacity by the criminal justice system to respond to the negative phenomenon of anti-LGBT hate crimes.<sup>73</sup> The research revealed that even though anti-LGBT hate crimes are criminalized in Lithuania, the response by the law enforcement agencies to this phenomenon is not effective. High levels of underreporting result from the insufficient legal protections for LGBT victims, the lack of victim-centered support services and generally hostile social atmosphere on LGBT issues. Law enforcement officers tend to apply an 'LGBT-blind' approach, which manifests itself in a reluctance to discuss and acknowledge the specific needs of LGBT people in the course of criminal procedures. The majority of the interviewed police officers did not consider anti-LGBT crimes to be a serious issue. Furthermore, there are no victim support services in Lithuania specifically tailored for the needs of LGBT people. These services are usually performed by non-governmental organizations with limited financial and organizational resources. LGBT individuals are reluctant to seek appropriate support services due to a range of reasons which contribute to underreporting (e.g. fear of disclos-

73 It is expected that the research will be published by November, 2018. When published, the research will be available at <http://www.lgbthatecrime.eu/resources/research-book>.

ing one's sexual orientation). Therefore it can be concluded that the main training need pertaining to the key stakeholders, namely law enforcement agencies and victim support service providers, in the field of anti-LGBT hate crimes, is first and foremost related to raising awareness on the situation and needs of LGBT persons in the criminal justice system.

In their responses to the requests of information both the **Police Department** and the **General Prosecutor's Office** indicated that they organize targeted trainings for police officers and prosecutors with the aim of increasing their capacities to respond to anti-LGBT hate crimes. For example, the Police Department quoted the order by the Police Commissioner General on approving the training programme "Actions by Law Enforcement Officers in Responding to Hate Motivated Incidents".<sup>74</sup> This training programme is implemented by the Lithuanian Police School. 12 police officers were trained in 2017 and it is expected to train 200 police officers in 2018. Taken into account that this is a state-sponsored training programme, these numbers are relatively low. For example, in September-December, 2016 the National LGBT\* Rights Organization LGL successfully conducted LGBT-sensitivity trainings for 160 law enforcement officers.<sup>75</sup> Nevertheless, it has to be emphasized that the approved training programme is implemented in close cooperation with the civil society organizations. Each training session includes LGBT-specific module, lectured by a representative of LGBT community. However, this cooperation is based on voluntary engagement, as there are no resources available to compensate the external lecturers for their training services.

The National LGBT\* Rights Organization LGL is not aware of the spe-

74 Order by the Police Commissioner General, "Regarding the Approval of the Training Programme "Actions by Law Enforcement Officers in Response to Hate Motivated Incidents", No. 5-V-718, 21 August 2017.

75 "LGL launched a series of trainings on homophobic hate crimes for the Lithuanian law enforcement", lgl.lt, 23 September 2016, <http://www.lgl.lt/en/?p=14534>.

cial police liaison officers, who are tasked with maintaining the contact with the local LGBT communities. None of the law enforcement officers have attended the community events, organized by the association LGL, with the view of establishing the relationship of trust. However, the **Police Department** has indicated that this function could potentially fall under the responsibility of 'community officers', who are tasked with communicating with social partners and providing information.<sup>76</sup>

In response to the request for information, the **Prison Department under the Ministry of Justice** has indicated that they had provided all relevant information on the implementation of the Recommendation CM/Rec(2010)5 in the course of the first monitoring exercise back in 2012.<sup>77</sup> In essence it means that no special regulations or measures have been adopted in order to secure adequate protections and respect for LGBT persons at places of detention between 2012 and 2018. Back in 2012, the Prison Department under the Ministry of Justice stated that officers in a detention facility are responsible for the safety of detainees.<sup>78</sup> However, it failed to outline any measures suitable for minimizing the dangers of physical assault, rape and other forms of sexual abuse for LGBT persons at detention facilities. Furthermore, there are no special procedures foreseen by the law that would regulate the placement of transgender prisoners at a detention facility or the protection of their rights. Transgender identity of a person is not taken into account when deciding on placement of a prisoner. Finally, there is a lack of research and no statistical data that would indicate the prevalence of ill-treatment experienced by LGBT persons in detention facilities. The National LGBT\* Rights Organization LGL is not aware of any instances when

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76 Supra 32, p. 2.

77 Prison Department under the Ministry of Justice, "Regarding Provision of Information", No. 1S-1610, 2 May 2018.

78 Prison Department under the Ministry of Justice, "Regarding Provision of Information", No. 73-249, 30 April 2012.



LGBT persons have raised issues of human rights violations that occurred in detention facilities. The underreporting may be a result of hostile and negative attitudes towards LGBT persons and fear of retaliation.

Since 2018, the Information Technology and Communications Department under the Ministry of Interior ([www.ird.lt](http://www.ird.lt)) provides the official disaggregated statistical data on hate crimes and hate speech, committed on the specific grounds, including sexual orientation. The **Police Department** has indicated that hate motivated incidents on the grounds of gender identity could be potentially qualified as committed under the grounds of gender.<sup>79</sup> However, according to the official statistics, no hate crimes on the grounds of gender were committed in Lithuania between 2012 and 2018.

#### **Recommendations:**

- 1. Ensure effective investigation and prevention (e.g. providing comprehensive trainings for law enforcement officers, organizing awareness raising campaigns, establishing specific LGBT units/focal points in police headquarters, etc.) of hate crimes on grounds of sexual orientation and (or) gender identity.*
- 2. Introduce the protected grounds of "gender identity" and "gender expression" in the relevant provisions of the Criminal Code.*
- 3. Allocate sufficient financial resources with the view of implementing measures in the Recommendation CM/Rec(2010)5 on effectively combating anti-LGBT hate crimes.*

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<sup>79</sup> Supra 32, p. 1.

## B. “Hate Speech”

The **key recommendations** in Section I.B. cover:

1. To combat all forms of “hate speech”, including in the media and on the Internet.
2. Public disavowal of such speech by government officials.
3. To raise awareness among public authorities and public institutions about their responsibility regarding refraining from “hate speech”.
4. Promoting tolerance and respect for human rights of LGBT persons.

The *Criminal Code*<sup>80</sup> contains the general prohibition of hate speech. Article 170 prohibits incitement to hatred and violence on the exhaustive list of grounds, including sexual orientation. Taking into account that hate speech is explicitly criminalized, the incitement to hatred and violence is considered as a specific form of hate crime in Lithuania. However, the law does not include the grounds of gender identity and (or) gender expression. Considering that the list of grounds provided by the law is exhaustive, it can be doubted whether Article 170 of the *Criminal Code* also covers instances of hate speech on the grounds of gender identity. The **Police Department** provided the following statistical information about the registered criminal offences under the Article 170 on the grounds of sexual orientation between 2012 and 2018.<sup>81</sup>

	2012	2013	2014	2015	2016	2017	2018
Article 170	47	55	57	32	8	2	1

In the course of a pre-trial investigation regarding hate speech, law enforcement institutions can apply before the **Office of the Inspector of Journalist Ethics** with the request to assess, whether the

80 Supra 9.

81 Supra 32, p. 3.

specific comment, public statement or piece of information incites hatred or discrimination. The Office of the Inspector of Journalist Ethics provided the following statistical information about the identified instances of hate speech on the grounds of sexual orientation<sup>82</sup> between 2012 and 2018:<sup>83</sup>

	2012	2013	2014	2015	2016	2017	2018
Incitement to Hatred	16	50	15	22	31	3	N/A
Contempt, Ridicule	14	140	23	48	46	3	N/A
Incitement to Violence	16	50	15	19	23	3	N/A
Total	46	240	53	89	100	9	N/A

Based on the official statistics, it can be inferred that numbers of the registered instances of hate speech on the grounds of sexual orientation were gradually decreasing in the period between 2015 and 2018. However, this tendency is very closely related to the fact that in the period between 2012 and 2015 the majority of complaints were submitted by the civil society organizations. For example, in the period between 2013 and 2015 the National LGBT\* Rights Organization LGL submitted 24 complaints based on 206 instances of alleged hate speech online to law enforcement structures. Based on these complaints, 28 pre-trial investigations were initiated in 2013, 13

82 It has to be noted that the statistics, provided by the Office of the Inspector of Journalist Ethics, does not indicate how many individual 'acts of communication' were assessed. To put it differently, the same online comment can be qualified as inciting hatred and expressing contempt at the same time. Therefore the provided numbers could be potentially higher than actually assessed number of comments, public statements or pieces of information.

83 Office of the Inspector of Journalist Ethics, "Regarding Provision of Information", No. (G-251) S-359, 11 May 2018.

in 2014 and eight in 2015. Interestingly enough, all of these pre-trial investigations were either halted or terminated, thus not leading to the actual identification and (or) punishment of the alleged perpetrators. Based on the fact that these efforts in reporting homophobic hate speech to the law enforcement agencies were not producing effective response, in 2015 the organization decided not to produce individual complaints and rather to engage with strategic litigation efforts.



### **Case Study: Systematic Failure to Investigate Hate Speech Online**

In order to illustrate the systematic failure by the national authorities in investigating hate speech on grounds of sexual orientation, one example is examined in more detail. In December 2014 two gay men posted a public picture on a personal *Facebook* profile. The picture depicted a kiss between the men in question. The picture received more than 2,400 “likes” and more than 800 comments. The majority of online comments were inciting

hatred and violence against LGBT people in general, while a number of comments were directly threatening the two gay men in question. Some examples of the posted comments include “Faggots should be burnt” (Lith. “*Sudegint pidarastus*”), “You both should be thrown into gas chambers” (Lith. “*I duju kameras abu*”), “You are fucking gays, you should be exterminated” (Lith. “*Gėjai jūs supisti, jus naikinti nx.*”) and “Kill them!” (Lith. “*zudyt!*”).

The National LGBT\* Rights Organization LGL lodged a complaint on behalf of the two gay men in question to the Prosecutor General regarding 31 comments on their social media profile. The complaint was lodged under the Article 170 of the *Criminal Code* (i.e. prohibition of hate speech). It was indicated that comments in question ridicule gay people and incite discrimination, hatred and violence against them. On 30 December 2014 the Klaipėda District Prosecutor’s Office issued a decision not to start a pre-trial investigation regarding the

complaint in question.<sup>84</sup> The association LGL appealed against this decision before the Klaipėda District pre-trial investigation judge. In January, 2015 the District Court of Klaipėda City dismissed the appeal. The Court stated that *“the individual by posting a picture of two kissing men in a public sphere should have and must have foreseen that **eccentric behavior really does not contribute to social cohesion among individuals with different views in the society** and promotion of tolerance.”*<sup>85</sup> The decision by the first instance court was upheld by the second instance court. In February, 2015 the Klaipėda Regional Court indicated that *“[t]he owner of the social network profile by exercising the freedom to express his convictions and to promote tolerance had to take into account that freedom is inseparable from obligation to respect the views and traditions of other individuals. [...] Therefore this action can be interpreted as an **attempt to intentionally tease or shock individuals with different views or encourage posting of negative comments**”*.<sup>86</sup>

In August 2015 the two gay men in question submitted a complaint to the European Court of Human Rights (ECtHR), alleging that the failure by national authorities to investigate the above described instances of hate speech has violated their **rights to private life** and the **right to an effective legal remedy** taken in conjunction with the general **prohibition of discrimination**.<sup>87</sup> In June 2017 the ECtHR informed the Lithuanian Government that it will consider the petition. While communicating the case, the ECtHR has raised two particular questions to the parties. First of all, the Court is inquiring whether there has been a violation of the Convention on account of the domestic authorities' decision to discontinue the criminal investigation concerning the comments on the applicants' *Facebook* social network page. Secondly, the Strasbourg court would like to know, whether the applicants suffered discrimination on the grounds of their sexual orientation. The Court referred to the applicants' grievance about the Lithuanian authorities' predisposed bias against a “homosexual minority”, given that the two applicants' same-sex kiss picture had been interpreted by those authorities as *“eccentric be-*

84 Klaipėdos apygardos prokuratūros Klaipėdos apylinkės prokuratūra, „Nutarimas atsisakyti pradėti ikiteisminį tyrimą“, 30 December 2014.

85 District Court of Klaipėda City, Case No. 25.8.30-963/2015, 23 January 2015, p. 2.

86 Klaipėda Regional Court, Case No. 1S-72-417/2015, 18 February 2015, p. 2-3.

87 Beizaras and Levickas v. Lithuania, App. No. 41288/15, communicated on 16 June 2017, <http://hudoc.echr.coe.int/eng?i=001-175326>.

havior” and as “attempt to deliberately tease or shock individuals with different views or to encourage the posting of negative comments” which, in turn, also led those authorities to discontinue the criminal investigation.

After the ECtHR’s judgment in the case *Delfi AS v. Estonia*<sup>88</sup> in 2015, the Lithuanian online media outlets (e.g. [www.delfi.lt](http://www.delfi.lt), [www.15min.lt](http://www.15min.lt), etc.) have introduced effective monitoring and removal systems for online comments inciting hatred and violence. These measures have most certainly helped in decreasing the prevalence of anti-LGBT hate speech online. However, sometimes the speedy removal of particular online comments prevents them from being submitted to the competent national authorities for criminal investigation. Finally, it has to be noted that the Lithuanian stakeholders have been successfully cooperating with the IT companies (i.e. *FaceBook*, *Twitter*, *Google/Youtube* and *Microsoft*) with the view of monitoring the European Commission’s Code of Conduct on countering illegal hate speech online.<sup>89</sup> For instance, in November-December, 2017, the National LGBT\* Rights Organization LGL reported 105 instances of homophobic and transphobic hate speech on *FaceBook* and *YouTube*. 99% of these cases resulted in removal of illegal content.<sup>90</sup> The Office of the Inspector of Journalist Ethics serves as the primary point of contact for implementing the Code of Conduct in Lithuania. For example, in February the Office reported 192 hate comments to the IT companies, 96 % of which were identified as hate speech on

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88 The case concerned the positive obligation by an online media outlet to remove the content (i.e. online comments by Internet users), which could potentially qualify as hate speech. For more information, see: *Delfi AS v. Estonia* (App. No. 64569/09), ECtHR, 16 June 2015, <http://hudoc.echr.coe.int/eng/?i=001-155105>.

89 “Code of Conduct on Countering Illegal Hate Speech Online”, [http://ec.europa.eu/news-room/document.cfm?doc\\_id=42985](http://ec.europa.eu/news-room/document.cfm?doc_id=42985).

90 “LGL Supports EU Efforts to Combat Hate Speech Online”, [lgl.lt](http://www.lgl.lt/en/?p=19560), 16 March 2018, <http://www.lgl.lt/en/?p=19560>.

grounds of sexual orientation.<sup>91</sup>

**Recommendations:**

- 1. Ensure effective investigation and prevention (e.g. providing comprehensive trainings for law enforcement officers, organizing awareness raising campaigns, thoroughly monitoring online spaces, etc.) of hate speech on grounds of sexual orientation and (or) gender identity.*
- 2. Criminalize hate speech on the grounds of gender identity and gender expression.*
- 3. Step up efforts to cooperate with civil society organizations, working in the field of hate speech prevention.*

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<sup>91</sup> "Vasario mėnesio neapykantos kalbos socialinėje medijoje apžvalga", zeit.lt, 6 March 2018, <http://www.zeit.lt/lt/naujienos/vasario-menesio-neapykantos-kalbos-socialineje-medijoje-apzvalga/366>.

## II. Freedom of Association

The **key recommendations** in Section II cover:

1. Ensure that LGBT organizations can gain official registration and are able to operate freely.
2. Provide access of NGOs to public funding without discrimination.
3. Protect LGBT human rights organizations from hostility and aggression.
4. Consult LGBT human rights organizations on the adoption and implementation of measures which can have impact on LGBT persons.

The National LGBT\* Rights Organization LGL is not aware of any instances when organizations that are working in the field of human rights and (or) LGBT rights have been prevented from the official registration or have experienced any unlawful interference on behalf of public authorities into their activities. On the contrary, the public authorities have increasingly acknowledged expertise and encouraged input by civil society organization working in the field of human rights. For example, the representatives of the National LGBT\* Rights Organization LGL were invited to participate in the institutional working groups on combating hate crimes<sup>92</sup> and drafting the law on legal gender recognition.<sup>93</sup> LGBT organizations are also actively involved in building national coalitions with other civil society organizations with the view of influencing national policies in the field of equality and non-discrimination. For example, the National LGBT\* Rights Organization LGL is an active member organization of the National Equality and Diversity Forum (NEDF)<sup>94</sup> and the national Human Rights Coalition (HRC).<sup>95</sup> Nevertheless, some public institu-

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92 Minister of Interior of the Republic of Lithuania, Order No. 1V-183 "Regarding Establishment of Working Group", 21 November 2016.

93 Minister of Justice of the Republic of Lithuania, Order No. 1R-129, "Regarding Establishment of Working Group", 16 May 2017.

94 For more information, see: <http://nlif.lt/category/news>.

95 For more information, see: <http://manoteises.lt/organizacija/zmogaus-teisiu-organizacija-koalicija>.



tions are more open to cooperation with civil society organizations working in the field of human rights. While the Office of the Equal Opportunities Ombudsperson, the Ministry of Justice, the Ministry of Interior and the Ministry of Foreign Affairs are particularly open for cooperation with LGBT civil society organizations, the Ministry of Social Security, the Ministry of Education and Science and the Ministry of Health have been traditionally much more reluctant to cooperate.

Civil society organizations working in the field of LGBT human rights are not facially discriminated in regard to access to public funding, provided by the state-sponsored programs and agencies. There are no documented instances when LGBT organizations were prevented from taking part in the application for funding under certain state-sponsored schemes that were open for other civil society organizations. In its response to the request for information the **Ministry of Social Security and Labor** indicated that in the period between 2012 and 2018 public funding for LGBT civil society organizations was awarded on three different occasions, amounting to app. EUR 55'000 in total.<sup>96</sup> However, it has to be noted the amount of financial support provided is not substantial or adequate to remedy the LGBT human rights issues in Lithuania. Due to the fact that the State does not allocate sufficient resources to combat discrimination on all protected grounds, LGBT organizations in the country are usually dependent on the external (i.e. foreign) funding.

#### **Recommendations:**

- 1.** Expand and consolidate cooperation with civil society organization working in the field of LGBT human rights with the aim of fully implementing the Recommendation CM/Rec(2010)5 at the national level.
- 2.** Increase the amount of available public funding for LGBT organization with the view of comprehensively addressing the complexity of LGBT human rights issues in Lithuania.

<sup>96</sup> Supra 24, p. 5.

### III. Freedom of Expression and Peaceful Assembly

The **key recommendations** in Section III cover:

1. Guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity.
2. Encourage pluralism and non-discrimination in media.
3. Protection of lawful assemblies.
4. Condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

#### A. Freedom of Expression

Article 4.2.16 of the *Law on the Protection of Minors against the Detrimental Effect of Public Information* stipulates that “public information shall be attributed to information which has a detrimental effect on minors [...] which expresses contempt for family values, encourages the concept of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania”.<sup>97</sup> Concerns regarding the potentially discriminatory application of this legal provision with the view of disproportionately limiting the right to freedom of expression of LGBT persons were already raised in the first cycle of the Universal Periodic Review (UPR) by the Human Rights Council of the United Nations (i.e. Rec. Nos. 90.10 and 90.11)<sup>98</sup> in 2011, the concluding observations on the third periodic report of Lithuania under the International Covenant of Civil and Political Rights (ICCPR) (i.e.

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<sup>97</sup> Supra 7.

<sup>98</sup> UN Human Rights Council, “Report of the Working Group on the Universal periodic Review. Lithuania”, 19th Session, No. A/HRC/19/15, 19 December 2011, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/174/85/PDF/G1117485.pdf?OpenElement>.

Rec. No. 8)<sup>99</sup> in 2012 and the second UPR cycle (i.e. Rec. Nos. 100.87, 100.88, 100.89, 100.90 and 100.91)<sup>100</sup> in 2016. In the period between 2013 and 2014 the provision in question was applied on three different occasions with the view of disproportionately interfering with the right to freedom of expression of LGBT persons. Ironically, Article 4.2.12 of the same law states that “public information shall be attributed to information which has a detrimental effect on minors [...] which mocks or stigmatizes an individual or a group of individuals on the grounds of [...] sexual orientation [...] or other similar grounds.”<sup>101</sup>

### **Case Study: Application of “Anti-Gay Propaganda” Legislation (1)**

In May 2013 the National LGBT\* Rights Organization LGL approached the national broadcaster LRT with an inquiry about the possibility of broadcasting promotional videos for the *Baltic Pride* 2013<sup>102</sup> festival on the national television. On 4 July 2013 the national broadcaster indicated that the videos can be broadcasted only during the restricted timeframes (i.e. after 11 PM for video (A) and after 9 PM for video (B)) and marked with corresponding age indexes (i.e. “S” as an “adult content” for video (A) and “N-14” as not suitable for minors under 14 years of age for video (B)). According to the national broadcaster, these limitations were necessary, because “[t]he clips potentially encourage the concept of entry into a marriage and creation of a family other than stipulated in the *Constitution* and the *Civil Code*.”<sup>103</sup> The association LGL appealed this decision before the Office of the Inspector of Journalist Ethics, i.e. the public body responsible for the supervision of the implementation of the *Law on the Protection of Mi-*

99 Concluding Observations Adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, No. CCPR/C/LTU/CO/3, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspsglUubPkaTnjMnKleQtzmKzv5EKMNU37hg-BO8vvhoj7r1QmQmxCuAyR6T7pH1HBEDXPILz%2bRRQb7%2fmjliSSoHwDRvShCgWigAbt-GEwhx%2bn>.

100 UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review. Lithuania”, 34th Session, No. A/HRC/34/9, 27 December 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/441/60/PDF/G1644160.pdf>.

101 Supra 7.

102 The videos in question can be seen here: (A) [https://www.youtube.com/watch?v=8rDP\\_t2Qcml](https://www.youtube.com/watch?v=8rDP_t2Qcml) and (B) <https://www.youtube.com/watch?v=wCaGtQEYYow>.

103 Lithuanian National Radio and Television, „Dėl LGL socialinės reklamos transliavimo LRT televizijos eteryje“, No. 4RA-673-(TV1), 4 July 2013.

nors. On 23 September 2013 the Inspector of Journalist Ethics issued a **legally binding decision**, indicating that the national broadcaster reasonably refused to broadcast the video clips during the daytime to comply with the objective of the protection of minors.<sup>104</sup>

### **Case Study: Application of “Anti-Gay Propaganda” Legislation (2)**

Upon receiving a complaint from the Ministry of Culture, on 8 April 2014 the Inspector of Journalist Ethics issued a **recommendation** No. G-190/S-244, indicating that two fairy tales about same-sex relationships within the fairy tale book “Amber Heart”<sup>105</sup> “portray same-sex relationships as normal and self-evident and thus are detrimental to the fragile worldview of a child, [...] therefore causing detrimental effect upon minors under 14 years of age”.<sup>106</sup> Based on this recommendation, the publisher of the book (i.e. the Lithuanian University of Educational Sciences) terminated the dissemination of the book. The author appealed the decision by the Inspector of Journalist Ethics before the national courts. On 24 July 2014 the Vilnius Regional Administrative Court dismissed the author’s complaint as unfounded. According to the court, the recommendation No. G-190/S-244 “does not cause any rights or obligations either to the author, or to the publisher. [...] Therefore the documents complained about cannot be the object of litigation before the administrative court.”<sup>107</sup> As a result, the author made a legal claim against the publishing house directly. On 16 April 2015 the Vilnius City District Court did not establish any facts of discrimination by the publisher and dismissed the legal claim by the author.<sup>108</sup> On 2 March 2016 the Vilnius Country Court upheld the decision.<sup>109</sup> On 6 December 2016 the Supreme Court of Lithuania reversed the judgment by the second instance court by stating that “the second instance court [...] has

104 The Office of the Inspector of Journalist Ethics, “Dėl Lietuvos gėjų lygos socialinių reklamų (klipų) skleidimo”, No. SPR-93, 23 September 2013.

105 The audio recordings of the two fairy-tales in question about same-sex relationships in Lithuanian language can be listened to here: <http://manoteises.lt/enciklopedija/pasaku-rinkinys-gintarine-sirdis>.

106 The Office of the Inspector of Journalist Ethics, Decision No. G-190/S-244, 8 April 2014.

107 The Vilnius Regional Administrative Court, Case No. I-9157-142/2014, 24 July 2014, <http://eteismai.lt/byla/180577795820795/I-9157-142/2014>.

108 The Vilnius City District Court, Case No. e2-3003-432/2015, 16 April 2015.

109 The Vilnius Country Court, Case No. e2A-310-262/2016, 2 March 2016.

failed to conduct an independent assessment of the contents of the book in question and to assess its impact upon the minors regarding the proportionality of the limitation in question."<sup>110</sup> The Supreme Court has ordered a retrial of the case in question. On 2 March 2018 Vilnius City District Court once again dismissed the applicant's claim by stating that "given the current concept of family in the State, [...] the interference *[with the applicant's right to freedom of expression]* was proportionate to the aim sought, i.e. to protect interests of minors belonging to the certain age group."<sup>111</sup> The applicant once again appealed the decision before the Vilnius Country Court.

### Case Study: Application of "Anti-Gay Propaganda" Legislation (3)

Upon a request by the National LGBT\* Rights Organization LGL, on 24 September 2014 the Inspector of Journalist Ethics issued a **recommendation** No. (SK-123)S-542<sup>112</sup> with the view of assessing a social video.<sup>113</sup> The expert group within the Office concluded that "by showing same-sex couples engaging in various activities together, [...] the idea is being imposed that the family can be created by two persons of the same gender. [...] Therefore the information in the video clip has detrimental effect on emotional, spiritual, psychological development and health of the minors." Multiple commercial television channels have refused to broadcast the video based on this recommendation. The association LGL has appealed recommendation No. (SK-123)S-542 before the national courts. On 24 October 2014 the Vilnius Regional Administrative Court<sup>114</sup> and on 15 December 2014 the Lithuanian Supreme Administrative Court<sup>115</sup> refused to accept the applicant's complaint, because allegedly no legal rights and obligations emanate from a recommendation in question. It can be concluded that the association LGL did not have any effective legal remedy with the view of challenging the imposed limitation on its

110 The Supreme Court of Lithuania, Case No. e3K-3-497-611/2016, 6 December 2016.

111 The Vilnius City District Court, Case No. e2-1611-466-2018, 2 March 2018.

112 The Office of the Inspector of Journalist Ethics, „Dėl išvados pateikimo“, No. (SK-123)S-542, 24 September 2014.

113 The video can be seen here: [https://www.youtube.com/watch?v=jmiakuCrJ\\_c](https://www.youtube.com/watch?v=jmiakuCrJ_c).

114 Vilnius Regional Administrative Court, Administrative Case No. I-10326-643/2014, 24 October 2014.

115 Lithuanian Supreme Administrative Court, Administrative Case No. AS602-1262/2014, 15 December 2015.

right to freedom of expression within the framework of the national legal system.

In 2016, within the framework of providing information on follow-up to the concluding observations on the third periodic report of Lithuania under the ICCPR, the Lithuanian Government stated explicitly that *“according to the Law, it is not the depiction of gender diversity that has detrimental effect on minors [...], but rather encouraging of family relationships between people of the same sex.”*<sup>116</sup> Furthermore, the Lithuanian Government claimed that the interference with the right to freedom of expression of LGBT people and LGBT organizations meets the requirements of *lawfulness* (i.e. prescribed by law), *necessity* (i.e. necessary in democratic society) and *proportionality* (i.e. proportionate to the aim sought).<sup>117</sup> However, the Lithuanian Government failed in elaborating why it deems it necessary to limit public information about a socially vulnerable group and what exact values of a democratic society are being protected. Also, the legal provision in question (i.e. Article 4.2.16) has never been applied with the view of limiting any other, i.e. non-LGBT related, public information, thus indicating that it was designed specifically for this purpose. The application of the law with the view of censoring LGBT related public information has caused a **chilling effect** among the online media outlets, as they have started branding news items pertaining to LGBT issues as suitable only for adults. It can be concluded that the limited positive information about LGBT issues in the public sphere further reinforces a socially hostile atmosphere for LGBT people in Lithuania. Finally, the Lithuanian Government in its information on follow-up to the concluding observations states

116 Human Rights Committee, “Concluding Observations on the Third Periodic Report of Lithuania. Addendum. Information Received from Lithuania on Follow-Up to the Concluding Observations”, No. CCPR/C/LTU/CO/3/Add.2, date received: 12 January 2016, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fL-TU%2fCO%2f3%2fAdd.2&Lang=e](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fL-TU%2fCO%2f3%2fAdd.2&Lang=e), para. [20].

117 Ibid., para. [26].

that “[i]t is extremely important that the application of the Law by the Inspector has not been recognized as discriminatory or unduly restricting the freedom of expression on the basis of sexual orientation by any court or other state authority.”<sup>118</sup>

The identical position was reiterated by the **Ministry of Culture** in its response to the request for information.<sup>119</sup> The Ministry of Culture once again stated that the law does not seek to limit information “on topics pertaining to sexual orientation or gender identity, but rather the promotion of family relationships between same-sex persons, i.e. targeted information, which encourages minors to take upon concrete actions, obtain or change their habits, views, inclinations or behavior.” The Ministry of Culture also emphasized that the Lithuanian Government officially noted (i.e. dismissed) certain recommendations within the second UPR cycle, which encouraged the amendments to the Article 4.2.16 of the *Law on the Protection of Minors*. It can be concluded that the Ministry of Culture does not interpret this legal provision as disproportionately interfering with the right to freedom of expression for LGBT individuals in Lithuania. On the other hand, the **Office of the Inspector for Journalist Ethics** in its response to the request for information explicitly stated that “the Office is of a position that the discussed legal provisions require revision.”<sup>120</sup> However, given the current legal regulations, the Office claimed that it applied the limitations in question according to the principles of lawfulness, necessity and proportionality.

LGL is not aware of any instances when public authorities would have publicly condemned interferences with the freedom of expression for LGBT community. The **Ministry of Social Security and Labor**, i.e. the main ministry responsible for the national equality

118 Ibid., para. [27].

119 Ministry of Culture, “Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe”, No. S2-1913, 11 July 2018.

120 Supra 83.

policy, in its response to the request for information stated that it "has no competence to decide, whether the provisions of the Law on the *Protection of Minors against the Detriment Effect of Public Information* have been applied disproportionately."<sup>121</sup>

### Recommendations:

1. Amend Article 4.2.16 of the Law on the Protection of Minors so that it is not applied with the view of censoring LGBT related public information in the future.

## B. Freedom of Assembly

The exercise of the right to freedom of assembly in Lithuania is regulated by the *Law on Public Meetings*.<sup>122</sup> In 2012 the Lithuanian Parliament adopted the new version of this law, which established the **procedure of notification** rather than the procedure of authorization with the view of exercising the right to freedom of assembly. To put it in other words, the public authorities have the positive obligation to facilitate public assemblies rather than issuing "permits" or "authorizations". This paradigm is fully compatible with international human rights standards pertaining to the right to freedom of peaceful assembly.<sup>123</sup> However, the application of the new edition of the *Law on Public Meetings* with the aim of facilitating public meetings and gatherings for the local LGBT community was not straightforward and required engagement with an extensive strategic litigation process in order to ensure the correct application of the law.

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121 Supra 24, p. 6.

122 Law on Public Meetings of the Republic of Lithuania, No. I-317, last amendments on 1 March 2018, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5644/gtGWcJfFeP>.

123 For example, see: European Commission for Democracy through Law (Venice Commission), "Compilation of Venice Commission Opinions Concerning Freedom of Assembly", 4 October 2012, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL\(2012\)014rev2-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL(2012)014rev2-e), para. [4.1].



## Case Study: Strategic Litigation for the Right to Organize Baltic Pride 2013 March for Equality

The incorrect application and interpretation of the national legislation on the right to freedom of peaceful assembly for the local LGBT community was highlighted by the discriminatory application of the provisions of the *Law on Public Meetings* regarding the Baltic Pride 2013 March for Equality. First of all, the Vilnius City Municipality factually agreed to facilitate the Baltic Pride 2013 March for Equality. However, they unilaterally relocated the March from the central avenue in the downtown of Vilnius to rather isolated and inaccessible area on the riverbank. The National LGBT\* Rights Organization LGL challenged this decision before the national courts. On 20 June 2013 the Supreme Administrative Court of the Republic of Lithuania ruled that the unilateral relocation of the planned assembly by the municipal authorities was illegal and obliged the Municipality to restart the negotiations with the organizers of the event.<sup>124</sup> On 26 June 2013 the Vilnius City Municipality Administration refused to agree upon time, location and form of the Baltic Pride 2013 March for Equality, thus effectively banning the event.<sup>125</sup> The ban was founded on the provision in the *Law on Public Meetings* (i.e. Article 4(3)) that the public assemblies shall take place no closer than 25 meters from the state institutions and no closer than 75 meters from the court buildings. However, this limitation was never applied to any other marches or assemblies, taking place on the central avenue in the downtown of Vilnius (i.e. Gediminas Avenue). In the period between December, 2012 and May, 2013 more than 70 public events by various social and political groups took place on a virtually identical route and the legal limitation according to the Article 4(3) was never applied. The National LGBT\* Rights Organization LGL once again challenged this decision before the national courts. On 23 July 2013 the Supreme Administrative Court of Lithuania ruled that the application of this particular legal limitation (i.e. the Article 4(3) of the *Law on Public Meetings*) on the exercise of the right to freedom of peaceful assembly in the case of Baltic Pride 2013 March for Equality was disproportional.

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124 Supra 62.

125 "Vilnius Municipal Authorities Ban Upcoming Baltic Pride 2013 March for Equality", atviri.lt, 27 June 2013, [http://www.atviri.lt/index.php/news/vilnius\\_municipal\\_authorities\\_ban\\_upcoming\\_baltic\\_pride\\_2013\\_march\\_for\\_equality/7351](http://www.atviri.lt/index.php/news/vilnius_municipal_authorities_ban_upcoming_baltic_pride_2013_march_for_equality/7351).

tionate and thus not necessary in a democratic society.<sup>126</sup> However, the Court has explicitly refused to elaborate on the organizer's claim with regards to discriminatory application of the law by stating that "the actions by the Municipality had a clear legal basis". The Baltic Pride 2013 March for Equality took place on Gediminas Avenue on 27 July 2013.<sup>127</sup>

The strategic litigation process for the right to organize the *Baltic Pride* 2013 March for Equality had significant positive impact on exercising the right to freedom of peaceful assembly. The public authorities successfully facilitated the *Baltic Pride* 2016 March for Equality with more than 3'000 participants and other public gatherings by the local LGBT community.<sup>128</sup> On 26 April 2016 the Vilnius City Municipality Administration accepted a notification on the *Baltic Pride* 2019 March for Equality without requesting any modifications regarding the time, location and form of the event. Other lower-scale public events and gatherings by the local LGBT community, e.g. *Rainbow Day* events around the International Day against Homophobia and Transphobia (IDAHOT), proceed without any interference from the public authorities and with protection by the local police as well. Furthermore, it should be emphasized that law enforcement agencies actively seek to engage with the local LGBT communities in order to protect and facilitate their exercise of the right to freedom of peaceful assembly. The engagement by the police structures with the view of protecting safety and public order during the *Baltic Pride* March for Equality events both in 2013 and in 2016 could be described as highly professional and not dis-

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126 Supreme Administrative Court of Lithuania, Case No. A858-2475/2013, 23 July 2013, <http://liteko.teismai.lt/viesasprendimupaiaska/tekstas.aspx?id=8b70a809-7fd9-45fe-b887-63agb8bb9bd2>.

127 For the more detailed description of the strategic litigation process concerning the Baltic Pride 2013 March for Equality case, please see: Tomas V. Raskevičius, "Documentation Report on Strategic Litigation Process for the Right to Organize the Baltic Pride 2013 March for Equality", Igl.lt, Vilnius, 2013, <http://www.lgl.lt/en/files/ataskaita-FN.pdf>.

128 "Vilnius Celebrated Baltic Pride 2016", Igl.lt, 22 June 2016, <http://www.lgl.lt/en/?p=13828>.

proportionately interfering with the effective exercise of the right to peaceful assembly. Based on the above outlined information, it can be concluded that the right to freedom of public assembly for the local LGBT community in Lithuania is fully secured based on the standards of the Recommendation CM/Rec(2010)5.

**Recommendations:**

1. Maintain current standards, practices and procedures with the view of continuously facilitating the exercise of the right to freedom of peaceful assembly for the local LGBT communities according to the standards of the Recommendation Rec/CM(2010)5.

## IV. Respect for Private and Family Life

### The key recommendations in Section IV cover:

1. Ensuring that any legislation criminalizing adult same-sex sexual acts is repealed.
2. Ensuring that any personal data regarding person's sexual orientation and gender identity are not collected.
3. Removing any abusive requirements in the process of legal gender recognition for transgender persons.
4. Providing full legal gender recognition of person's gender in a quick, transparent and accessible way.
5. Ensure that transgender persons are able to marry after gender reassignment.
6. Ensure rights and obligations to same-sex partners which are equivalent to unmarried heterosexual couples.
7. Ensure that rights of registered same-sex partnerships are equivalent to those of heterosexual partners in a comparable situation.
8. Provide legislative solutions which addresses problems of social reality in which same-sex and unmarried heterosexual partners live.
9. Ensuring that decision about primary custody of a child regarding parental responsibility or guardianship is taken without discrimination based on SOGI.
10. Ensuring that decision about adoption of a child, when possible for single individuals, is taken into consideration without discrimination based on SOGI.
11. Ensuring that access to assisted reproductive treatment for single women, if supported by national legislative, is permitted without discrimination on grounds of SOGI.

The Lithuanian legislation does not criminalize same-sex consensual sexual activity and there is no difference in age of consent. Under Article 151<sup>1</sup>(1) of the *Criminal Code* the age of consent is 16 years.<sup>129</sup> The National LGBT\* Rights Organization LGL has no information that public authorities would systematically collect any personal data regarding person's sexual orientation and (or) gender identity. Ar-

<sup>129</sup> Supra g.

title 2(8) of the *Law on Legal Protection of Personal Data* qualifies personal data on sexual life as "special category of personal data".<sup>130</sup> According to Article 5(2) of the same law, "it is prohibited to process special categories of personal data, except in the cases prescribed by law."

Lithuania remains one of few jurisdictions in the European Union without any legal recognition of same-sex families and their relationships. The Article 38 of the *Constitution* explicitly states that "[m]arriage shall be concluded upon the free mutual consent of man and woman"<sup>131</sup>, while the Article 3.339 of the Civil Code foresees a separate law that should lay down the procedure for registering a partnership between a man and a woman.<sup>132</sup> Despite the fact that the Civil Code was adopted in 2000, the law on registered partnerships (for different-sex couples) has never been adopted. In 2011 the Lithuanian Constitutional Court provided a progressive interpretation of the constitutional concept of "family life" by indicating that "*lit* does not mean that [...] the Constitution does not protect and defend families **other than those founded on the basis of marriage**, *inter alia*, the relationship of a man and a woman living together without concluding a marriage, which is based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, shared upbringing of the children and similar ones, as well as on the voluntary determination to take on certain rights and responsibilities [...]".<sup>133</sup> While the Constitutional Court did not mention same-sex families in its judgment explicitly, the legal reading of this judgment in-

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130 Law on Legal Protection of Personal Data of the Republic of Lithuania, No. 1374, last amendments on 1 January 2017, <https://www.e-tar.lt/portal/lt/legalAct/TAR.5368B592234C/nDiSWRpGj>.

131 Constitution of the Republic of Lithuania, 25 October 1992, <http://www3.lrs.lt/home/Konstucija/Constitution.htm>.

132 Civil Code of the Republic of Lithuania, No. VIII-1864, 18 July 2000, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687/oaIrOuAMgJ>.

133 Constitutional Court of the Republic of Lithuania, Case No. 21/2008, 28 September 2012, <http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta159/content>.

dicates that same-sex families potentially fall under the ambit of the constitutional concept of "family life".

In 2016 the Lithuanian Parliament voted in favor of the constitutional amendment, which seeks to limit the constitutional concept of "family life" as emanating exclusively from a marriage between a man and a woman and from a relationship of "motherhood and fatherhood".<sup>134</sup> This vote implicates that at some point the Parliament will hold the first hearing with the view of adopting this constitutional amendment. In order for it to be adopted, the Parliament will have to vote in favor of the amendment twice, securing the majority of 94 votes (out of 141 votes) in favor on both occasions. There has to be at least three months break between the two votes. The proposed amendment would effectively exclude same-sex couples from the constitutional protection of "family life". In practice the exclusion from the constitutional protection of "family life" implicates the loss of various economic and social benefits, such as the right to receive information on patient's health, not to testify against each other in the course of criminal proceedings, to inherit without additional taxation, etc. The exclusion from the status of "family life" also bears significant moral implications, resulting in social stigmatization as not leading the "proper lifestyle". The further consideration of this constitutional amendment was included on the Parliament's agenda as recently as in March, 2018.<sup>135</sup> The current motion for the constitutional amendment is analogous to the one introduced in 2012 as a response to the above-mentioned progressive judgement by the Lithuanian Constitutional Court.<sup>136</sup> In 2012 the first hearing of adoption failed by one vote (i.e. it collected 93 votes in favor instead of the

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134 Draft Bill on Amending the Article 38 of the Constitution of the Republic of Lithuania, No. XIIP-2017(2), 17 June 2016, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/obe20cb0348411e-6a222b0cd86c2adfc>.

135 "Lithuanian Parliament to Consider Further Limitations on LGBT\* Rights", Igl.lt, 16 March 2018, <http://www.lgl.lt/en/?p=19563>.

136 Supra 133.

required majority of 94 votes).<sup>137</sup>

In 2017 the Lithuanian Parliament voted down a proposal to amend the Civil Code aiming to recognize the legal status of both unmarried different-sex and same-sex couples.<sup>138</sup> 29 MPs voted in favor of the progressive proposal, 59 voted against and 20 abstained. In parallel, an alternative proposal to regulate partnerships by so-called “agreements of cohabitation” was introduced.<sup>139</sup> The “agreement of cohabitation” would allow two or more cohabitants to realize certain property rights without an intention to create family relations. If adopted, this amendment would once again prevent same-sex couples from effective protection of their family life, because they would be considered as “business partners” rather than “family members”. Furthermore, this amendment would not solve any challenges faced by same-sex families outside the realm of financial matters (e.g. prohibition to testify against family members in criminal procedure). This proposal has been approved by the Parliament for consideration in May, 2017. Furthermore, the Lithuanian Parliament is proactively eliminating other references to “family life” for same-sex couples in other legal acts as well. For example, in July, 2017 the Lithuanian Parliament amended the *Law on Equal Opportunities*, so that it would not cover same-sex registered partners from other EU countries.<sup>140</sup> To put it in other words, after these amendments the same-sex registered partners of EU citizens will not be considered as family members and will not be able to file a complaint to the Office of the Equal Opportunities Ombudsperson regarding discrimination based on their nationality.

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137 “Lithuanian Parliament One Vote Short from Approving Constitutional Amendment on Family Definition”, 15min.lt, 19 June 2012, <https://www.15min.lt/en/article/politics/lithuanian-parliament-one-vote-short-from-approving-constitutional-amendment-on-family-definition-526-227415>.

138 “29 Lithuanian MPs Vote in Favor of Same-Sex Partnership as the Proposal Gets Rejected”, lgl.lt, 15 June 2017, <http://www.lgl.lt/en/?p=17529>.

139 Supra 56.

140 “LGL Urges President to Veto Amendments to Law on Equal Opportunities”, lgl.lt, 13 July 2017, <http://www.lgl.lt/en/?p=17782>.

## Case Study: Recognition of Same-Sex Marriage

In December, 2016 the Lithuanian Constitutional Court was asked to examine whether the decision by the national migration authorities to refuse residence permit on grounds of family reunification for a Belarusian citizen, who has entered in the same-sex marriage with a Lithuanian citizen abroad, is in line with the country's Constitution.<sup>141</sup> The *Law on the Legal Status of Aliens*<sup>142</sup> does not explicitly prohibit the reunification of same-sex couples. To put it in other words, the law does not specify that the marriage must be between persons of the opposite-sex. However, the migration authorities rejected the application for the residence permit, pointing out that the same-sex marriage was not permitted under the Lithuanian law, and therefore the couple's marriage could not be given legal recognition in Lithuania. Should the Constitutional Court decide that exclusion of same-sex partners, who have obtained legal recognition of their relationships abroad, is unconstitutional, the judgment would significantly strengthen legal protections afforded to same-sex couples in Lithuania.<sup>143</sup> It has to be noted that the present case before the Lithuanian Constitutional Court closely resonates with the recent decision by the Court of Justice of the European Union (CJEU) in the case *Coman and Others v Inspectoratul General pentru Imigrări*,<sup>144</sup> where the European Union's court has concluded that the term "spouse" within the meaning of the provisions of EU law on freedom of movement for EU citizens and their family members includes spouses of the same sex. This decision of the CJEU fully applies to Lithuania, as the EU member state.

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141 The Supreme Administrative Court of Lithuania, Case No. eA-4175-624/2016, 5 December 2016, [http://www.lrkt.lt/~prasymai/22\\_2016.htm](http://www.lrkt.lt/~prasymai/22_2016.htm).

142 Law on the Legal Status of Aliens, No. IX-2206, 29 April 2004, <https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD>.

143 "Gay Couple Case Gives Lithuania's Highest Court a Chance to Strengthen Rights Protections", liberties.eu, 26 January 2017, <https://www.liberties.eu/en/news/lithuania-same-sex-couples-marriage-family-reunion/11236>.

144 Relu Adrian Coman and Others v Inspectoratul General pentru Imigri and Others, Case No. Case C-673/16, 8 June 2018, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd421605a600024f29a6a7b58329d81e6e.e34KaxilC3qMb40Rch-oSaxyNchn0?text=&docid=202542&pageIndex=0&doclang=EN&mode=req&dir=&occ=-first&part=1&cid=155425>.



Concerning the decisions regarding the parental authority or the guardianship of a child the provisions of the *Civil Code* do not establish any different treatment due to a person's sexual orientation and (or) gender identity.<sup>145</sup> Article 3.156 establishes the principle of equal authority between the parents and secures equal rights and duties of both the mother and the father of a child. Article 3.161(3) of the *Civil Code* provides that a child has a right to live together with the parents, be brought up and cared for by the parents' family, communicate with the parents, regardless of whether the parents live together or separately, and communicate with their relatives, if this does not contradict the interest of the child. The **Office of the Ombudsperson for Children Rights** in its response to the request for information indicated that in the period between 2012 and 2018 it did not receive any complaints regarding the alleged discrimination on grounds of sexual orientation and (or) gender identity regarding the exercise of the parental authority.<sup>146</sup>

According to the Article 3.210 of the *Civil Code*, only married couples have the right to adopt a child. As marriage equality has not been introduced in Lithuania, in practice it means that same-sex families do not have the right to adopt. Nevertheless, it has to be noted that the *Civil Code* foresees the right for single-parent adoption only "under exceptional circumstances". The National LGBT\* Rights LGL is not aware of any instances, when this right was exercised by an LGBT person. In 2016 the Lithuanian Parliament adopted the *Law on Assisted Reproduction*.<sup>147</sup> According to Article 5(3) of this law, assisted reproduction treatment is available only to couples that are married or have concluded a registered partnership. The law does not fore-

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145 Supra 132.

146 Office of the Ombudsperson for Children Rights, Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe", No. (6.5.-2018-21)2-534, 20 April 2018.

147 Law on Assisted Reproduction of the Republic of Lithuania, No. XII-2608, last amendments on 1 January 2018, <https://www.e-tar.lt/portal/lt/legalAct/074c2b707e7311e6b-969d7ae07280e89/HletHkXlme>.

see the possibility for the assisted reproductive treatment for single mothers. As same-sex couples have no possibility for legally registering their relationships in Lithuania, assisted reproduction services remain unavailable for them.

### **Recommendations:**

1. Introduce legal recognition of same-sex relationships granting the rights and obligations of “family members” for same-sex partners.

## **A. Trans Specific Issues (Including Access to Health Care)**

Lithuania has no administrative procedure for legal gender recognition and gender affirming healthcare. Despite the fact that the Article 2.27 of the *Civil Code* establishes that “*in unmarried natural person of full age enjoys the right to the change of designation of sex in cases when it is feasible from the medical point of view*”,<sup>148</sup> the enabling legislation has never been adopted. In 2007 the European Court of Human Rights (ECtHR) delivered a judgment in the case *L. v. Lithuania*, indicating that the existing legal vacuum constitutes a violation of the right to private life.<sup>149</sup> Based on observations by civil society organizations,<sup>150</sup> the Committee of Ministers of the Council of Europe applied the enhanced supervision procedure in September, 2014 with the view of implementing the judgment.<sup>151</sup> Despite the fact that 18 years have passed since the introduction of the right

148 Supra 132.

149 *L. v. Lithuania* (App no 27527/03, ECtHR), 11 September 2007, <http://hudoc.echr.coe.int/eng/?i=001-82243>.

150 For the extensive communication among the civil society organizations, the Lithuanian Government and the Committee of Ministers with the view of monitoring the process of implementing the *L. v. Lithuania* judgement, please see: [http://www.coe.int/t/dghl/monitoring/execution/Themes/Add\\_info/LIT-L\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/LIT-L_en.asp).

151 1208DH meeting of the Ministers' Deputies, CM/Del/OJ/DH(2014)/1208/10, 26 September 2014, <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH%282014%291208/10&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEF&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

to gender reassignment in the *Civil Code*, 11 years since the adoption of the ECtHR judgment, and three years since the application of the enhanced supervision procedure, the Lithuanian authorities still have not adopted any legal measures with the view of facilitating gender reassignment procedures.

As transgender persons are not able to receive necessary medical services within the framework of the Lithuanian public health-care system (i.e. healthcare providers simply refuse to provide services and (or) it is not covered by the national health care insurance scheme), they are forced to seek these services from private providers or abroad. Until 2017 transgender people, after undergoing gender affirming treatment abroad, had to apply before the national courts for new identity documents. The new identity documents were issued **only after a transgender person had undergone gender affirming surgery resulting in sterilization**. In the period of 2008-2017 the Lithuanian courts had developed a consistent jurisprudence in mandating that new identity documents were issued after the accomplished gender affirming surgery abroad. However, the Lithuanian courts do not award transgender applicants compensation for pecuniary damages, covering the costs incurred for obtaining gender affirming treatment.<sup>152</sup> It can be concluded that not only were transgender individuals forced outside the country to undergo treatment they seek, but they also had to go through a litigation procedure in order to obtain corresponding identity documents upon their return. This critical situation has dramatically improved since April, 2017, as the national courts started granting legal gender recognition without the requirement for mandatory gender affirming surgery implying sterilization.

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<sup>152</sup> It has to be noted that on one occasion the Supreme Court of Lithuania in the case No. 3K-3-257/2012 on 30 May 2012 awarded a transgender applicant with pecuniary damages with the view of reimbursing the costs related to the gender affirming treatment. However, this judgment is classified; therefore it is not accessible to the general public and cannot be used as a precedent in further litigation attempts.

The judicial decisions of 7 April 2017<sup>153</sup> and 2 May 2017<sup>154</sup> by the Vilnius City District Court have changed the course of domestic jurisprudence of granting legal gender recognition. The cases concerned two transgender individuals, who had not undergone irreversible gender affirming surgeries (implying sterilization) due to the fact that this medical procedure is currently not available in Lithuania. Both applicants have obtained psychiatric diagnosis of "gender dysphoria" (ICD-10 code F64.0), started hormone replacement therapy, performed mastectomy (i.e. breast reduction surgery) and purposefully constructed their social identity as male individuals in the public sphere. Both applicants requested the civil registry to change their personal identification documents, but were refused due to the absence of the relevant national legislation. The applicants turned to the court, which by respective judgments granted both of them with the right to change their gender marker and personal identification number in their identity documents. After these positive developments, personal identity documents were changed for 16 transgender individuals without the requirement for gender affirming surgery (implying sterilization). Based on the courts' jurisprudence, the material conditions for obtaining legal gender recognition in Lithuania at the moment are the requirement for psychiatric diagnosis of "gender dysphoria" (ICD-10 code F64.0) and self-identification by a transgender person as belonging to the opposite gender. Nevertheless, it has to be emphasized that at the moment legal gender recognition in Lithuania could be sanctioned only by the court's decision. **No administrative procedure is still available.** Furthermore, the requirement for psychiatric diagnosis goes against the self-determination model and bears pathologizing implications upon legal gender recognition procedure. At the moment legal gender recognition is not available for non-binary trans people in Lithuania.

In 2017 corresponding working groups were established in the Min-

<sup>153</sup> Vilnius City District Court, Case No. e2YT-5329-934/2017, 7 April 2017.

<sup>154</sup> Vilnius City District Court, Case No. e2YT-5326-987/2017, 2 May 2017.

istry of Health and the Ministry of Justice with the aim of developing the necessary legal acts to enable administrative legal gender recognition procedure in Lithuania.<sup>155</sup> The working group in the Ministry of Health was tasked with preparing a health care protocol, enabling the provision of the primary health care services for transgender individuals, namely – psychological counselling, psychiatric assessment and hormone replacement therapy. Upon receiving these services within the framework of the Lithuanian public healthcare system, transgender individuals would be able to apply before the national courts with the aim of obtaining legal gender recognition. The working group in the Ministry of Justice was tasked with preparing the comprehensive *Law on Recognition of Gender Identity*,<sup>156</sup> which would create an administrative procedure for obtaining legal gender recognition in Lithuania. Despite the fact that these legal acts were successfully prepared by the indicated deadlines, as of 1 July 2018 they still remain to be adopted. To put it in other words, there is still no administrative procedure for legal gender recognition and healthcare services for transgender individuals remain unavailable within the framework of the public healthcare system.

In November 2017 the group of 31 MPs in the Lithuanian Parliament registered a legislative proposal, which aims at banning legal gender recognition and all medical procedures pertaining to gender reassignment treatment.<sup>157</sup> This proposal stands in a sharp contrast with the jurisprudence of the national courts, granting legal gender

155 Human Rights Committee, "Fourth periodic report submitted by Lithuania under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018", No. CCPR/C/LTU/4, 29 November 2017, [http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspSxglUbPkaTnjMnKleQtzm7WnwNWroHoWlolyLs2218y%2bHeKEysGlAVNyzuBnPHZwak4CqOnk7s%2f1mrR7HqExefnOoNTpjvKnFEuvD-8MILkW\\_para\\_l6l](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspSxglUbPkaTnjMnKleQtzm7WnwNWroHoWlolyLs2218y%2bHeKEysGlAVNyzuBnPHZwak4CqOnk7s%2f1mrR7HqExefnOoNTpjvKnFEuvD-8MILkW_para_l6l).

156 Lietuvos Respublikos asmens lytinės tapatybės pripažinimo įstatymo projektas, No. 17-12650, 3 November 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/bc2a5010c09111e-7af36e75c0ac79247?positionInSearchResults=0&searchModelUUID=82956dc3-2605-4c22-b705-0094ec4db8ec>.

157 Supra 59.

recognition based on self-identification of a transgender person and corresponding psychiatric diagnosis. It has been interpreted that this radical proposal had been tabled as a response to the progressive draft *Law on Recognition of Gender Identity*,<sup>158</sup> registered by the Ministry of Justice. After the submission, the regressive proposal on banning gender reassignment procedure was not deliberated upon in the Parliament, but it was included on the Parliament's agenda as recently as in March, 2018.<sup>159</sup>

The absence of administrative procedure for legal gender recognition and medical gender reassignment has very direct negative consequences on the daily lives of transgender persons in Lithuania. First of all, the negative phenomenon of unsupervised hormone treatment is widespread among the members of the local transgender community. Transgender people are smuggling hormonal medication from foreign countries and using it without any medical supervision, thus causing catastrophic health hazards (e.g. high risk of venous thrombosis while using estrogen). Secondly, transgender people, who are undergoing gender affirming treatment abroad, do not have the possibility of changing their identity documents through quick, accessible and transparent administrative procedure, because legal gender recognition still has to be sanctioned by the Lithuanian courts. Thirdly, transgender people who already live according to their true gender, but do not have the necessary resources to obtain legal gender recognition through the judicial procedure, are exposed to constant discrimination, harassment and violence. Every time they are requested to display their identity documents, they are immediately outed as a transgender person, because Lithuanian authorities do not provide for the opportunity of changing one's identity documents through the quick, accessible and transparent administrative procedure. Finally, the Lithuanian legal system does not recognize the legal categories of "gender

<sup>158</sup> Supra 156.

<sup>159</sup> Supra 135.

identity" and (or) "gender expression", thus rendering discrimination against transgender people technically not punishable by law. It can be concluded that transgender people, due to the absence of any legal protections, remain the most vulnerable group within LGBT community as a whole.

After obtaining legal gender recognition (i.e. changing name, surname, gender marker and personal identification number) through the judicial procedure, transgender persons **do not face any barriers in legally marrying a person of the opposite legal gender.** As the *Law on Recognition of Gender Identity* has not been adopted yet, the procedures of ensuring corresponding changes after legal gender recognition in the key documents originated by state and non-state actors remain largely undefined and thus executed on an *ad hoc* basis. Transgender persons are usually requested to provide the executing authority with the corresponding court judgment on legal gender recognition. This practice is highly problematic, because it does not provide for the adequate protection of a person's private life. To put it other words, transgender persons are forced to disclose their transgender identity to multiple actors even after the successfully obtained legal gender recognition. Despite the lack of privacy protection, on the majority of instances transgender persons are able to obtain the updated documents from state and non-state actors. Up to the present date some transgender individuals faced some challenges only in updating their certificates of higher education.

### **Case Study: Updating Higher Education Certificates after Legal Gender Recognition**

According to the order by the Minister of Education and Science, the "duplicate" of a higher education certificate can be issued only upon

a loss or a destruction of the original certificate.<sup>160</sup> In March, 2018 a transgender woman applied before the Lithuanian University of Educational Sciences with a request to update her higher education diploma on the grounds of the successfully obtained legal gender recognition. The University instructed the applicant to submit an advertisement to the newspaper of the national relevance about the "loss" of her original diploma to denounce its validity. As a result, the applicant, in violation of her privacy, was forced to announce publicly that her diploma under the male name is not valid anymore.<sup>161</sup>

### **Recommendations:**

- 1.** Establish quick, transparent and accessible administrative procedure for legal gender recognition.
- 2.** Enable appropriate healthcare services for transgender individuals within the framework of the public health care system, covered by the national health insurance scheme.
- 3.** Adopt the *Law on Recognition of Gender Identity* and the corresponding health care protocol.

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160 Minister of Education and Science, Order No. V-362 "Dėl Diplomų, diplomų priedėlių ir studijų pažymėjimų blankų privalomosios formos rengimo, gamybos, apskaitos, registracijos ir išdavimo tvarkos aprašo ir Diplomo priedėlio pildymo rekomendacijų patvirtinimo", 15 May 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/2863764039aa11e79f4996496b137f39>.

161 "LEU privertė translytę apsimesti, kad diplomą ji pametė – tuomet išduos dublikatą", 15min.lt, 7 March 2018, <https://www.15min.lt/naujiena/aktualu/svietimas/leu-priverte-translyti-apsimesti-kad-diploma-jis-pamete-tuomet-isduos-dublikata-233-936266>.



## V. Employment

The **key recommendations** in Section V cover:

1. Provide effective protection against discrimination on the grounds of sexual orientation and gender identity in employment, including legislation and policies prohibiting discrimination.
2. Specific measures which ensure protection of right to privacy of transgender persons in employment, especially to avoid any irrelevant disclosure of their gender identity and former name.

The *Law on Equal Opportunities*<sup>162</sup> prohibits discrimination on the grounds of sexual orientation in the field of employment and occupation. However, the law does not cover the grounds of gender identity and (or) gender expression. Article 7 of the law covers access to employment (recruitment), promotion, working conditions, vocational training, performance assessment, dismissal, equal pay for equal work, (sexual) harassment prevention, protection from retaliation after submitting a complaint on discrimination and reasonable accommodation. It also has to be noted that the *Law on Equal Opportunities* covers different types of discrimination, i.e. direct discrimination, indirect discrimination, harassment, sexual harassment and instruction to discriminate.

The new edition of the *Labor Code*<sup>163</sup>, adopted in 2016, also explicitly covers discrimination on the grounds of sexual orientation. However, it does not cover the grounds of gender identity and (or) gender expression. Article 2(1) establishes equal standing within the framework of the national labor law on the grounds of, *inter alia*, sexual orientation. Article 26(1) prohibits direct and indirect discrimination, harassment, sexual harassment and instruction to discriminate on the grounds of, *inter alia*, sexual orientation. Article 26(2) outlines that the principle of non-discrimination on the grounds of, *inter alia*, sexual orientation covers access to employment (recruitment), vo-

<sup>162</sup> Supra 5.

<sup>163</sup> Supra 6.

cational training, performance assessment, dismissal, equal pay for equal work, (sexual) harassment prevention and protection from retaliation after submitting a complaint on discrimination. Article 59(2) prohibits dismissal from work on the incentive by an employer in case an employee submitted a complaint on alleged discrimination on the grounds of, *inter alia*, sexual orientation. Finally, according to Article 26(6), an employer, who employs more than 50 employees, have to adopt an internal policy on promoting equal opportunities at the workplace.

The **Office of the Equal Opportunities Ombudsperson** in its response to the request of information indicated that there were no complaints received on the alleged discrimination on the grounds of sexual orientation in the field of employment and occupation between 2012 and 2017.<sup>164</sup> This information stands in a sharp contrast with the results of the FRA LGBT survey (2012), which revealed that 19 % of the Lithuanian LGBT respondents felt discriminated while looking for a job and 27 % felt discriminated at work.<sup>165</sup> It can be concluded that LGBT persons in Lithuania are not likely to report the experienced instances of discrimination in the field of employment and occupation to the competent national authorities. The National LGBT\* Rights Organization LGL is also not aware of any instances, when a complaint on the alleged discrimination on the grounds of sexual orientation in the field of employment or occupation would have been processed before the State Labor Inspectorate. The Ministry of Social Security in its response to the request for information indicated that it did not implement any positive measures with the view of promoting LGBT inclusion in the field of employment and occupation between 2012 and 2018, because “there were no official complaints received”.<sup>166</sup> Similarly, the **Ministry of Social Security** and Labor openly indicated that it did not conduct any relevant

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<sup>164</sup> Supra 29.

<sup>165</sup> Supra 11.

<sup>166</sup> Supra 24.

research into the situation of LGBT persons in the Lithuanian labor market.

In 2016 the Lithuanian Government reintroduced the compulsory military service for men up to 26 years old based on the national lottery. The **Ministry of National Defense** in its response to the request for information indicated that "*the Law on Compulsory Military Service*<sup>167</sup> indicates that the personal data on the conscripts' sexual orientation or gender identity is not collected".<sup>168</sup> Furthermore, the Ministry of Defense noted that it had not received any complaints regarding discrimination on the grounds of sexual orientation or gender identity in the military service. However, in 2015 the Minister of National Defense amended the *Soldiers' Code of Ethics*<sup>169</sup> to explicitly prohibit discrimination on the grounds of sexual orientation in the military service. Article 6.9 states that a soldier "has to respect and protect dignity and fundamental rights and freedoms of every individual, regardless of their [...] sexual orientation." Article 14 further provides that "soldiers cannot restrict each other's rights or make privileges on the grounds of [...] sexual orientation." These amendments were introduced after the Office of the Equal Opportunities Ombudsperson received a complaint from a potential military conscript, who was concerned that internal military policies do not explicitly prohibit harassment and discrimination on the grounds of sexual orientation.<sup>170</sup>

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167 Law on Compulsory Military Service, No. XI-1508, last amendments on 5 July 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.402806/aQZFJYBUQB>.

168 Ministry of National Defense, "Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe", No. 12-011-662, 7 May 2018.

169 Minister of National Defense, Order No. V-561 "Regarding Approval of Lithuanian Soldiers' Code of Ethics", last amendments on 27 August 2015, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.256186/hjIhnyGkBO>.

170 Office of the Equal Opportunities Ombudsperson, Annual Report 2015, [http://www.lygybe.lt/data/public/uploads/2016/04/lygiu-galimybiu-kontrolieriaus-tarnybos-2015-m.-ataskaita.pdf\\_p.26](http://www.lygybe.lt/data/public/uploads/2016/04/lygiu-galimybiu-kontrolieriaus-tarnybos-2015-m.-ataskaita.pdf_p.26).

## Case Study: Gay Men in Lithuanian Military

In February 2015, the online portal "Klaipėdos diena" published the article *"No Gays in the Lithuanian Military"*, in which conscripts shared their stories of being surprised by psychoanalytical questions about flowers and desire to be a woman during the medical assessment for military service.<sup>171</sup> When journalists looked into whether the military is actually filtering out gay service members, Kęstutis Ramanauskas, a psychiatrist with multiple decades of experience at Klaipėda's recruitment center, confirmed that this is exactly the case. When asked where the problem is with LGBT individuals, the psychiatrist said that they were unfit for military service. *"That is why I write them off. Although it is said that it is not a disease, it certainly is. Psychosocial disorders are not an orientation. Though others may think differently. Either way, such a person would be subject to bullying in the military and would not be able to serve the full nine months,"* said the psychiatrist. The story prompted the attention by the Minister of National Defense. The politician said that national laws contain *"no discrimination on the grounds of sexual orientation."* *"Heterosexuals and homosexuals can serve in the military, we do not exclude anyone fit to serve in the Lithuanian Armed Forces,"* reassured the Minister.

In 2016 the National LGBT\* Rights Organization LGL conducted a research on the **situation of transgender persons in the Lithuanian labor market**.<sup>172</sup> Interviews with the members of the local transgender community have revealed that these individuals face multiple instances of discrimination at work. However, discriminatory incidents are not being reported to the public authorities, because there is a lack of trust among the local transgender community in public institutions. In addition, there is factually no legal basis for reporting as transgender identity is not covered by the national non-discrimination legislation. As a result, policy and decision makers first and foremost should include the prohibition of discrimination on the grounds of gender identity and (or) gender expression in

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171 "Lietuvos kariuomenė – be gėjų", *klaipeda.diena.lt*, 17 June 2015, <http://klaipeda.diena.lt/naujienos/lietuva/salies-pulsas/lietuvos-kariuomene-be-geju-696433#.VYESCUBw-QQ>.

172 Supra 23.

the Lithuanian legal system. In comparison, the **Ministry of Social Security and Labor** in its response to the request for information did not indicate any special employment programs that would focus specifically on securing employment opportunities for transgender persons in Lithuania.

**Recommendations:**

1. Conduct comprehensive national survey on the situation of the LGBT populations in the Lithuanian labor market and adopt corresponding measures with the aim of combating discrimination on the grounds of sexual orientation and (or) gender identity in the field of employment and occupation according to the standards in the Recommendation CM/Rec(2010)5.
2. Explicitly prohibit discrimination on the grounds of gender identity and (or) gender expression in the field of employment and occupation through amending the corresponding provisions in the Law on *Equal Opportunities* and the *Labor Code*.

## VI. Education

The **key recommendations** in Section VI cover:

1. Ensure that the right to education can be enjoyed without discrimination on the grounds of gender identity and sexual orientation, including measures to provide protection from bullying and social exclusion.
2. Take measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students.

In 2016 the Ministry of Education and Science adopted the new *General Program on Health, Sexual Education and Family Planning*.<sup>173</sup> The program seeks “to ensure the successful development of a child’s health and sexuality and preparation for family life, as well as to contribute to the child’s spiritual, physical, mental, social well-being and successful functioning in the spheres of employment, interpersonal relationships and family.” The program also provides for concrete guidelines on specific knowledge that children should obtain on sexuality and gender diversity through formal education according to their age range. For example, pupils from seventh to eighth grade should know that “persons can be of heterosexual, homosexual, bisexual sexual orientations; they know that it is part of sexual diversity in human beings and are able to describe psychological and social consequences of sexual orientations.” Pupils from ninth to tenth grade should be able to justify that “every individual is respected and considered valuable regardless of their sexual orientation; they are able to reflect upon emotional experiences of persons belonging to diverse sexual orientations.” Finally, pupils from eleventh to twelfth grade should “accept themselves and other people with different sexual orientations; [...] they are able to comprehend expe-

<sup>173</sup> Minister of Education and Science, Order No. V-941 “Regarding Approval of General Program on Health, Sexual Education and Family Planning”, 25 October 2016. [https://www.smm.lt/uploads/documents/Pedagogams/Bendroji\\_dalis.pdf](https://www.smm.lt/uploads/documents/Pedagogams/Bendroji_dalis.pdf)

periences of persons with diverse sexual orientations in personal and social contexts, are able to identify discrimination and to prevent social exclusion." Also, the program prohibits "the provision of physically or psychologically harmful, incorrect, biased or one-sided information, as well as information which encourages dissatisfaction with one's body, appearance or sexual orientation, or discourages acceptance of these traits." Despite the fact that the new *General Program on Health, Sexual Education and Family Planning* provides for quite comprehensive guidelines on sexual education pertaining to the topics of sexual orientation and (or) gender identity, it appears that the relevant stakeholders, who are responsible for the successful implementation of the program, are unsure of how to practically implement these program provisions in practice.

### **Case Study: Homosexuality as "Sexual Deficiency"**

In 2017 the Tolerant Youth Association submitted a complaint to the Office of the Equal Opportunities Ombudsperson and the Ministry of Education and Science regarding the educational materials uploaded at the website of the Education Development Centre.<sup>174</sup> The website in question includes a database of educational materials, which are recommended for the teachers in covering certain topics in the classroom. The list of educational materials for covering sexual education at schools included a publication, which described homosexuality as "sexual deficiency" and recommended treating same-sex attraction through psychological counseling. After the investigation by the Office of the Equal Opportunities Ombudsperson, the Education Development Center removed the publication in question from the list of recommended educational materials.<sup>175</sup> However, the Ministry of Education of Science have not taken any further measures with the view of conducting comprehensive review of all recommended educational materials, so that they portray the topics pertaining to sexual orientation and (or) gender identity in objective and scientific manner.

174 "Tolerantiško jaunimo asociacija įžvelgia homofobijos kurstymą pasitelkiant valstybinės institucijas", bns.lt, 21 September 2017, <https://sc.bns.lt/view/item/244747>.

175 "Ministerija pašalino ugdymo priemonę, skatinusią diskriminuoti homoseksualius žmones", lygybe.lt, 16 November 2017, <http://lygybe.lt/lt/naujienos/ministerija-pasalino-ugdymo-priemone-skatinusia-diskriminuoti-homoseksualius-zmones/821>.

The **Ministry of Education and Science** in its response to the request for information did not provide any information about training programs for teachers or other school staff to address issues related to LGBT topics, enabling to detect, analyze and effectively respond to discrimination on grounds of sexual education and (or) gender identity at schools.<sup>176</sup> It is believed that LGBT topics are either absent or presented in a negative way within the curricula and educational materials at schools. Some experts note that public schools have distanced themselves from these topics with a wall of silence and significant problem is also teachers' unwillingness to become acquainted with this issue.<sup>177</sup>

### **Case Study: Homosexuality in Religious Education**

In April, 2017 a student from Žemaitė Gymnasium in Telšiai published photos from a class on religious education on "Facebook".<sup>178</sup> The photos displayed slides shown to the tenth grade students by their teacher. The slides contained information that homosexual persons are "murderers and cannibals, often enjoy sadomasochism and rape children". "Most serial killers who killed and ate their victims were homosexuals," stated one of the slides. The Office of the Equal Opportunities Ombudsperson and the General Prosecutor's Office started official investigations into the matter. The Minister of Education and Science publicly stated that "the teacher providing such materials for students should not be teaching in a public school." However, after the investigation by General Prosecutor's Office was terminated, the teacher in question received an administrative sanction of warning and continued teaching.

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176 Ministry of Education and Science, "Regarding Provision of Information", No. SR-1552, 10 April 2018.

177 "Lytiškumo ugdymas mokyklose lieka neįgyvendintu pažadu: „Mokytojai jaučiasi palikti likimo valiai", 15min.lt, 15 September 2017, <https://www.15min.lt/naujiena/aktualu/svietimas/lytiskumo-ugdymas-mokyklose-liko-neigyvendintu-pazadu-mokytojai-jauciasi-palikti-likimo-valiai-233-852842>.

178 Photos can be seen here: <https://www.facebook.com/ipabijonaviciute/posts/1306027432777827?pnref=story>.



The **Ministry of Education and Science** in its response to the request for information indicated that in 2016 the *Law on Education*<sup>179</sup> was amended in order to respond to the negative phenomenon of violence and bullying at schools in more efficient manner.<sup>180</sup> These amendments oblige the schools to take upon proactive measures against violence and bullying, to implement preventive measures and to organize psychological counseling for victims and perpetrators. Furthermore, in 2017 the Minister of Education and Science adopted *Recommendations on Implementation of Violence Prevention at Schools*.<sup>181</sup> These recommendations establish that all employees at school should react to violence and bullying regardless of personal characteristics of the persons involved. However, these recommendations do not cover the grounds of sexual orientation and (or) gender identity explicitly. While these measures clearly indicate that the Ministry of Education and Science acknowledge the serious problem of violence and bullying at the Lithuanian schools, they do not seem to take the specific needs of LGBT students into account.

In 2015 the **House of Diversity and Education** conducted a survey on bullying on the grounds of sexual orientation and gender identity at the Lithuanian schools.<sup>182</sup> The respondents of the survey included the general population of the students, i.e. the survey was not limited to LGBT students. The survey demonstrated that 85 % of respondents in their school environment are aware of homophobic or transphobic bullying. The words "gay" or "lesbian" have been identified as carrying an extremely negative connotation. It means that

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179 Law on Education, No. I-1489, last amendments on 5 July 2018, <https://www.e-tar.lt/portal/lt/legalAct/TAR.gA3AD08EA5D0/rtjabACXQY>.

180 Supra 176.

181 Minister of Education and Science, Order No. V-190 "Regarding Approval of Recommendations on Implementation of Violence Prevention at Schools, 22 March 2017, <https://www.e-tar.lt/portal/lt/legalAct/1da317500f9911e79800e8266c1e5d1b>.

182 House of Diversity and Education, "Sexual Orientation and Gender Identity Based Bullying in Lithuanian Schools. Survey Data Analysis", Vilnius, 2015, <http://ivairovesnamailt/uploads/8/6/1/6/8616620/report.pdf>.

these words are used to bully not only LGBT students and are considered as generally derogatory. It was revealed that the teachers and other school staff in the context of homophobic and transphobic bullying currently have a minimal and sporadic role. The teachers choose not to intervene with homophobic or gender identity based bullying or become bullies themselves. The study also revealed a strong correlation that bullying based on sexual orientation and (or) gender identity was significantly more common among male than female respondents – they were more often nicknamed, and more often became bullies themselves.



*This topic is a taboo in our school. Neither teachers nor school staff talk about LGBT topics and our library contains just one book about homophobic bullying.*



*Once during a lesson the teacher said that people of the other sexual orientation are ill and gave examples of how a person can recover from this.*



In 2015 the **National LGBT\* Rights Organization LGL** conducted an on-line survey among LGBT students about their experiences of homophobic, biphobic and (or) transphobic bullying at schools.<sup>183</sup> The survey attracted responses from 644 LGBT high school students between the age range of 14 and 18. It showed that half of LGBT young people feel unsafe at school because of their sexual orientation and (or) gender identity. Only 5% of LGBT students have never experienced homophobic, biphobic or transphobic hate speech in educational settings. LGBT students are

forced to go through traumatic bullying incidents alone, because teachers and school staff not only do not know how to properly react to this type of bullying, but also often initiate bullying themselves. According to the survey results, 90% of LGBT students are thinking

183 "Safe and Inclusive School Environment for Every Student", Igl.lt, Vilnius, 2018, <http://www.igl.lt/en/files/Safe-and-Inclusive-School-Environment-for-Every-Student-Brochure.pdf>.

about emigrating abroad after finishing secondary education.

Finally, the National LGBT\* Rights Organization LGL is not aware of any measures that would enable response to the specific needs of transgender students in their school environment, for example with regard to changing name or gender marker in school documents. The draft *Law on Recognition of Gender Identity*<sup>184</sup> foresees the possibility of adopting legal gender recognition for minors from 16 years old through the judicial procedure. However, the comprehensive strategy of accommodating the specific need of transgender students at schools should not be limited to legal provisions and should encompass various internal guidelines and recommendations.

**Recommendation:**

- 1.** Develop and disseminate educational materials, comprehensively covering LGBT topic in objective and scientific manner, including human rights perspective.
- 2.** Provide targeted trainings for teachers and other school staff on covering LGBT topics through school curriculum.
- 3.** Develop and implement targeted anti-bullying measures, specifically covering bullying on the grounds of sexual orientation and (or) gender identity.

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184 Supra 156.

## VII. Health (Other than Trans Specific Issues)

The **key recommendations** in Section VII cover:

1. Ensure that the highest attainable standard of health can be enjoyed without discrimination on the grounds of sexual orientation and gender identity.
2. Take into account specific needs of LGBT people in developing national health plans, including suicide prevention measures, health surveys, curricula and training courses.
3. Withdraw medical textbooks and other documents that treat homosexuality as a disease.

As the *Law on Equal Opportunities*<sup>185</sup> is applicable to the spheres of provision of goods and services and all actions by public authorities, the general prohibition of discrimination on the grounds of sexual orientation could be considered as applicable both to public and private healthcare. The **Office of the Equal Opportunities Ombudsperson** in its response to the request for information indicated that in the period between 2012 and 2018 it had not received any complaints regarding the alleged discrimination on the ground of sexual orientation in the field of healthcare.<sup>186</sup> According to the FRA LGBT survey (2012), 14 % of LGBT respondents from Lithuania felt personally discriminated against by healthcare personnel.<sup>187</sup> This number clearly indicates that LGBT persons from Lithuania are not likely to report the experienced instances of discrimination in the field of healthcare to the competent national authorities.

The *Law on Patients' Rights and Compensation for Damage to Health* foresees the rights and obligations by the patient, the peculiarities of the representation of the patient, the investigation into the patient's complaints and the grounds for compensation for damages

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185 Supra 5.

186 Supra 29, p. 4.

187 Supra 11.

to the patient's health.<sup>188</sup> The law stipulates that the relationships among the patient, the health care providers and the health care institution are based on the principles of mutual respect, understanding and assistance and that the patient's rights are ensured in accordance to the general conditions of the health care system, established by the State. The Article 1(2)3 stipulates that the rights of the patient should not be infringed on the grounds of, *inter alia*, sexual orientation. However, this article does not include the grounds of gender identity and (or) gender expression. The Article 3(3) stipulates that the patient has the right to the health care treatment and to the conduct by the health care providers, which would not infringe upon the patient's dignity. The Article 8(1) stipulates that the confidential information about the conditions of the patient's health can be provided not only to a spouse, but also to a lifetime partner. Also, the same article indicates that the patient can designate any person to receive confidential information about their health by a signed request in the medical records. After being processed and not satisfied by the health care institution, the patient's complaint can be appealed before the State Health Care Accreditation Agency under the Ministry of Health. Up to the present date there have been no publicly know instances under the jurisdiction of this public body, when the patient was complaining that their rights had been infringed on the grounds of sexual orientation and (or) gender identity in the course of receiving health care services.

### **Case Study: Gay Men as Blood Donors**

In 2011 the Office of the Equal Opportunities Ombudsperson issued the recommendation on requirements for blood in repose to the complaint on the alleged instance of discrimination on the grounds of sexual orientation.<sup>189</sup> A gay man complained that he was prevent-

188 Law on Patients' Rights and Compensation for Damage to Health, No. I-1562, last amendments on 1 July 2018, [https://www.e-tar.lt/portal/lt/legalAct/TAR\\_C6E4170DB704/zTAJFxmORW](https://www.e-tar.lt/portal/lt/legalAct/TAR_C6E4170DB704/zTAJFxmORW).

189 Office of the Equal Opportunities Ombudsperson, "Note on Requirements for Blood Donors" No. (11)-SN-107, 7 November 2011.

ed from becoming a blood donor, because he had admitted in the course of the screening questionnaire of having sex with another man. The applicant alleged that he had been discriminated on the grounds of sexual orientation. The Equal Opportunities Ombudsperson had concluded that the equation of the risky sexual practices with homosexuality humiliates and potentially discriminates against gay men. The secondary legislation recommends on excluding individuals, who engage in risky sexual practices (e.g. anal sex), from the pool of potential blood donors. As a result, the screening questionnaire should seek in identifying individuals with the patterns of risky sexual behavior rather than automatically eliminating gay men from the pool of potential blood donors. The Ombudsperson also emphasized the fact that statistically gay men in Lithuania contribute only to app. 10 % of new HIV+ infections, while the absolute majority of the new cases result from using intravenous drugs. As a result, it cannot be concluded that homosexuality predisposes prevalence of infectious agents in the blood of gay men, thus justifying their immediate exclusion from the pool of potential blood donors. The Ombudsperson of Equal Opportunities recommended to the Ministry of Health to amend the necessary secondary legislation, so that it would not be used as a pretext for fostering stereotypes on equating homosexuality with "risky sexual behavior". As of July, 2018 the secondary legislation preventing gay men from becoming blood donors has not been amended by the Ministry of Health.

In February, 2018 the Ministry of Health enabled HIV+ treatment immediately after diagnosis, as opposed to having to wait for the virus to progress.<sup>190</sup> This treatment is covered through the public health care insurance scheme. Previously HIV+ patients were made to wait for their CD4 count to be between 200 and 350 cells/mm<sup>3</sup>. This test is used as a snapshot to evaluate how the immune system is functioning. A healthy CD4 count ranges from 500-1500 cells/mm<sup>3</sup>, and HIV+ develops into AIDS when the CD4 count drops below 200 cells/mm<sup>3</sup>.

The **Ministry of Health** in its response to the request for information

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<sup>190</sup> "Lithuanian Ministry of Health Enables Immediate Access to HIV Treatment", lgl.lt, 21 February 2018, <http://www.lgl.lt/en/?p=19486>.

has indicated that “in Lithuania homosexuality is not considered as an illness and all corresponding legal acts and documents are developed in accordance to this principle position.”<sup>191</sup> When inquired about the training programmes for healthcare professionals on LGBT-inclusive healthcare, the Ministry of Health responded that “sexual orientation is not considered an illness; therefore no additional training is needed for healthcare professionals.” Similarly, when inquired about LGBT-specific suicide prevention measures, the Ministry of Health responded that “suicide prevention in Lithuania is targeting regions with the highest suicide rates, without specifically focusing on LGBT community members.” Based on these blunt responses, it can be concluded that the Ministry of Health does not consider LGBT population as facing significant barrier is accessing health care services in Lithuania.

In October, 2017 the National LGBT\* Organization LGL piloted a training module for health care providers on LGBT-inclusive healthcare.<sup>192</sup> The training covers the topics of terms and concepts, health inequalities experienced by LGBT persons, inclusive practice and communication and trans and intersex health. The training module received high interest from the medical community and is being currently replicated in cooperation with two major public hospitals among their staff members.

### **Recommendations:**

- 1.** Develop and implement comprehensive training programs for health care providers on LGBT-inclusive health care.
- 2.** Develop and implement targeted suicide prevention programs, taking specific needs of LGBT persons into account. Cooperate with civil society organizations with the view of developing effective measures to respond to discrimination on grounds of sexual orientation and gender identity in health care.

<sup>191</sup> Ministry of Health, “Regarding Responses to the Questionnaire”, No. (10.1.1.1.421)10-3374, 26 April 2018.

<sup>192</sup> “Health4LGBTI: Reducing Health Inequalities Experienced by LGBTI People”, lgl.lt, [http://www.lgl.lt/en/?page\\_id=15591](http://www.lgl.lt/en/?page_id=15591).

## VIII. Housing

The **key recommendations** in Section VIII cover:

1. Ensure that access to adequate housing can be enjoyed without discrimination based on SOGI, especially in regards to evictions.
2. Ensure non-discriminatory measures in providing free access to shelter and emergency accommodation, addressing the risk of homelessness faced by LGBT people, including young persons and their families.

As the Law on *Equal Opportunities*<sup>193</sup> is applicable to the spheres of provision of goods and services and all actions by public authorities, the general prohibition of discrimination on the grounds of sexual orientation could be considered as indirectly applicable to the area of housing as well. However, the law does not explicitly cover the grounds of gender identity and gender expression. **The Office of the Equal Opportunities Ombudsperson** in its response to the request for information indicated that in the period between 2012 and 2018 it had received one complaint on the alleged discrimination on the grounds of sexual orientation in the field of housing.<sup>194</sup> In 2017 a same-sex couple was refused a tenancy agreement for a rented apartment in Vilnius. However, the investigation was terminated on the grounds that there were no objective information, indicating that the tenancy agreement was refused due to the residents' sexual orientation. According to the FRA LGBT survey (2012), 18 % of LGBT respondents from Lithuania felt personally discriminated against when looking for a house or apartment to rent or buy.<sup>195</sup> This number clearly indicates that LGBT persons from Lithuania are not likely to report the experienced instances of discrimination in the field of housing to the competent national authorities.

The **Ministry of Social Security in Labor** in its response to the re-

<sup>193</sup> Supra 5.

<sup>194</sup> Supra 29, p. 2, 5.

<sup>195</sup> Supra 11.



quest for information indicated that comprehensive victim support services (including temporary accommodation) for the victims of domestic violence are “provided without distinction on the grounds of sexual orientation or gender identity”.<sup>196</sup> Similarly, the Ministry of the Social Security and Labor indicated that shelter services for homeless youth are “provided regardless of their sexual orientation”. However, the Ministry did not provide any information on whether certain legal provisions or policy recommendations are in place to ensure non-discriminatory access to shelter and (or) other emergency accommodation services in regard to sexual orientation and (or) gender identity. Also, the Ministry did not provide any information on whether any social programs, including support programs, have been established to address factors, which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighborhood support and security. In general, there is very little information and data available on the extent of homelessness and on groups most vulnerable to this issue.

In 2016 the National LGBT\* Rights Organization conducted a needs assessment on establishing a LGBT shelter in Lithuania.<sup>197</sup> The needs assessment revealed that there is a pressing need for temporary accommodation services for LGBT youth between 14 and 18 years old, who have lost parental support due to the coming out.

### **Recommendations:**

- 1.** Integrate the specific needs of LGBT persons within the framework of victim support and shelter provision services pertaining to temporary accommodation through adopting legislative and policy guidelines, as well as through providing relevant trainings for social workers and other relevant staff.

<sup>196</sup> Supra 24.

<sup>197</sup> “LGBT jaunimo gerovės centras Lietuvoje. Poreikių ir steigimo galimybių vertinimo studija”, Igl.lt, Vilnius, 2016, <http://www.igl.lt/assets/LGBT-Jaunimo-Geroves-Centras-Lietuvoje.pdf>.

## IX. Sports

The **key recommendations** in Section IX cover:

1. Combat all forms of discrimination based on sexual orientation and gender identity in sports, through effective measures to prevent, counteract and punish the use of discriminatory insults in connection with sports events.
2. Encourage partnerships between LGBT organizations and sports clubs, as well as development of anti-discrimination campaigns.

The **Department of Physical Education and Sports** under the Government of the Republic of Lithuania in its response to the request for information indicated that "the Department is not aware of any instances, when athletes were excluded from sport competitions in Lithuania exclusively on the grounds of their sexual orientation and (or) gender identity."<sup>198</sup> The Department also pointed out that requirements for the participants in sport competitions are not regulated by the national laws and it is established through the regulations by the organizers of the particular event. The response to the request of information also indicated that "there was no information received by the Department about homophobic and (or) transphobic chanting during the sport events in the period between 2012 and 2018". Finally, the Department indicated that they do "no not have any information about any kind of exclusion that prevents transgender persons from participating in sport events in Lithuania." However, there was no further information provided about any specific measures aiming at removing obstacles encountered by transgender persons in participating in sport (e.g. accessing dressing rooms) and recognizing their preferred gender pronouns.

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<sup>198</sup> Department of Physical Education and Sports under the Government of the Republic of Lithuania, "Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe", No. S-551, 19 April 2018.

### Case Study: Homophobic Chanting during Basketball Match

In 2013 the Lithuanian MP Petras Gražulis was seen leading basketball fans in an anti-gay chant during the *Eurobasket* championship in Slovenia. The video was published on the social platform *YouTube*.<sup>199</sup> In the video MP is seen initiating and then leading a group of Lithuanian basketball fans in a repeated chant of "*Whoever is not Jumping is a Faggot!*" The video has more than 28'000 views and it is still available online. The Lithuanian Basketball Federation condemned the incident.<sup>200</sup>

According to the FRA LGBT survey (2012), 18 % of LGBT respondents from Lithuania felt personally discriminated against at a sport or fitness club.<sup>201</sup>

#### Recommendation:

1. Develop national guidelines and recommendations on inclusion of LGBT persons in sports.

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199 The video can be seen here: [https://www.youtube.com/watch?time\\_continue=12&v=Beb\\_zt8PPu4](https://www.youtube.com/watch?time_continue=12&v=Beb_zt8PPu4).

200 "Pagal homoseksualus įžeidžiančią dainelę šokinėja ir krepšininkai, federacija žada pasmerkti netolerancijos apraiškas", 15min.lt, 26 September 2016, <https://bit.ly/2JufabK>.

201 Supra 11.

## X. Right to Seek Asylum

The **key recommendations** in Section X cover:

1. Recognize fear of prosecution based on sexual orientation and gender identity as a valid ground for granting the refugee status, when international obligations exist.
2. Ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they would face the risk of torture, inhuman or degrading treatment or punishment on grounds of SOGI.
3. Provide protection to asylum seekers from any discriminatory policies or practices on these grounds of sexual orientation and (or) gender identity.

In Lithuania the procedure of granting asylum is regulated by the *Law on Legal Status of Aliens*<sup>202</sup> and the *Procedure for Granting and Withdrawing Asylum*.<sup>203</sup> Article 86(1) of the Law stipulates that "[r]efugee status shall be granted to an asylum applicant who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, **membership of a particular social group** or political opinion, is outside the country of citizenship and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country [...]" Article 116(1)6 of the Procedure explicitly stipulates that membership of a particular social group can be identified on the grounds of the applicant's gender and gender identity, while Article 116(1)7 indicates that membership of a particular social group can be identified on the grounds of the applicant's sexual orientation, even if the applicant is hiding or not expressing this personal characteristic. To put it other words, asylum requests are not being turned down on the ground that the applicant can escape perse-

202 Law on Legal Status of Aliens, No. IX-2206, last amendments on 1 July 2018, <https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD/qbNuiNIQtR>.

203 Minister of Interior, Order No. 1V-131 "Regarding Approval of Procedure for Granting and Withdrawing Asylum in the Republic of Lithuania", last amendments on 23 December 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0ag18630dc0311e59019a599c5cbd673/TG-pKawfDQQ>.

cution in the country of origin by keeping their sexual orientation secret. Based on these legal provisions, it can be concluded that well-founded fear of being persecuted on the grounds of sexual orientation and (or) gender identity constitutes a legitimate ground for claiming refugee status in the Republic of Lithuania.

The **Migration Department** under the Ministry of Interior in its response to the request for information indicated that another form of asylum, i.e. subsidiary protection, is granted to the applicants who are reasonably afraid of certain actions, which are not related to the personal characteristic and (or) behavior by the applicant (e.g. torture, corporal punishment, violence during armed conflicts, etc.).<sup>204</sup> As a result, the applicant's sexual orientation and (or) gender identity is not taken into consideration when considering an application for subsidiary protection. To put it in other words, well-grounded fear of being persecuted on the grounds of sexual orientation and (or) gender identity qualifies asylum seekers to apply for the refugee status directly. The Migration Department did not provide any numbers on how many times the refugee status was granted to the applicants on the grounds of sexual orientation and (or) gender identity in the period between 2012 and 2018.

### **Case Study: Lithuania Grants Asylum to Two Gay Chechens Fleeing Persecution**

In May, 2017 the Minister of Foreign Affairs announced that Lithuania had issued visas to two men fleeing Chechnya (Russian Federation) due to persecution caused by their sexual orientation.<sup>205</sup> In April, the Russian newspaper *Novaja Gazeta* reported that over 100 gay men had been arrested and taken to detention camps in Chechnya. According to the information by the National LGBT\* Rights Organization LGL, the refugee status was granted to the men in question in April, 2018.

204 Migration Department under Ministry of Interior. "Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe", No. (15/2-3)10K-17193. 3 May 2018.

205 "Lithuania First Country to Grant Asylum to Gay Men Escaping Chechnya", gaystarnews.com, 18 May 2017, <https://www.gaystarnews.com/article/lithuania-first-country-to-grant-asylum-to-gay-men-escaping-chechnya/#gs.PXimDKw>.

The **Migration Department** under the Ministry of Interior in its response to the request for information indicated that staff responsible for processing asylum requests are not provided with trainings specifically addressing problems encountered by LGBT asylum seekers.<sup>206</sup> However, the Department indicated that LGBT topics are covered in the course of various trainings organized in cooperation with various non-governmental and international organizations (e.g. Office of the United Nations High Commissioner for Refugees, Lithuanian Red Cross Association, and International Migration Organization). Similarly, no information was provided on whether specific trainings on LGBT topics are delivered for the staff of administrative detention centers, police officers, healthcare providers and social workers, who are dealing with asylum seekers after they have been granted with the refugee status.

**Recommendations:**

1. Ensure that the staff of the Migration Department that is responsible for processing asylum requests is provided with appropriate training on specific issues encountered by LGBT asylum seekers. Provide similar trainings to the staff of administrative detention centers, police officers, healthcare providers and social workers, who are dealing with asylum seekers after they have been granted with the refugee status.

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206 Supra 204.

## XI. National Human Rights Structures

The **key recommendations** in Section XI cover:

1. Ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation and gender identity, in particular to make recommendations on legislation and policies, raise awareness among general public and examine individual complaints and participate in the court proceedings.

In February, 2018 the Office of the Seimas' Ombudsperson attested its compliance with the UN Paris Principles as the national human rights institution.<sup>207</sup> This status was enabled by the corresponding amendments to the *Law on Seimas Ombudsperson*.<sup>208</sup> Article 191(1) stipulates that the Office of the Seimas' Ombudsperson is the national human rights institution. Article 192(1) outlines the main functions of the national human rights institution, namely: (1) monitoring human rights situation in Lithuania and preparing corresponding human rights reports; (2) implementing awareness raising and educational activities on human rights; (3) presenting human rights situation in Lithuania to the international organizations and providing information on the international obligations of the Republic of Lithuania; (4) providing recommendations to the public institutions on human rights; (5) promoting compliance between the national legislation and the international obligations in the field of human rights; (6) initiating investigations on human right challenges.

The **Office of the Seimas' Ombudsperson** in its response to the request for information failed to provide any relevant information about the priorities and activities by the national human rights insti-

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207 "The Seimas Ombudsmen's Office was Granted a Certificate during GANHRI General Assembly", lrski.lt, 24 February 2018, <http://www.lrski.lt/en/news/576-seimas-ombudsmen-s-office-was-granted-a-certificate-during-ganhri-general-assembly.html>.

208 Law on Seimas Ombudsperson, No. VIII-950, last amendments on 1 January 2018, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.69069/hBQImOpWvc>.

tution in the field of LGBT human rights.<sup>209</sup> The provided information limited itself to outlining the legal provisions on the functions by the national human rights institution and pointed out to the competences of the **Office of the Equal Opportunities Ombudsperson** as the main public body for ensuring the implementation of the principles of non-discrimination and equal opportunities in Lithuania.

The Office of the Equal Opportunities Ombudsperson is an independent public body that deals exclusively with issues pertaining to discrimination and investigation of complaints. *The Law on Equal Opportunities*<sup>210</sup> includes the general prohibition of discrimination on the grounds of sexual orientation, but does not explicitly cover the ground of gender identity. Therefore, the Equal Opportunities Ombudsperson has the clear competence to investigate complaints on the grounds of sexual orientation, but has no clear competence to investigate the complaints on the grounds of gender identity. However, The **Office of the Equal Opportunities Ombudsperson** in its response to the request for information has reiterated on several occasions that the complaints on the alleged discrimination on the grounds of gender identity would be processed as complaints on the grounds of gender.<sup>211</sup>

Under Article 12(2) of the *Law on Equal Opportunities for Women and Men*<sup>212</sup>, the Office of the Equal Opportunities Ombudsperson also has the competence to "conduct independent investigations into cases of discrimination and independent surveys on the state of discrimination, publish independent reports, put forward conclusions and recommendations on any discrimination related issues

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209 Office of the Seimas' Ombudsperson, "Regarding Provision of Information on Implementation of the Recommendation CM/Rec(2010)5 by the Committee of Ministers of the Council of Europe", No. 1/3D-964, 5 April 2018.

210 Supra 5.

211 Supra 29.

212 Law on Equal Opportunities for Women and Men, No. VIII-947, last amendments on 1 July 2017, <https://e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/FLcEVzJmSQ>.



with regard to the implementation of this Law, as well as proposals to state and municipal institutions and agencies of the Republic of Lithuania concerning the improvement of legal acts and priorities in the policy on the implementation of equal rights". The Office of the Equal Opportunities Ombudsperson provides its recommendations on legislation and policies each year through its annual reports. Unfortunately, the Equal Opportunities Ombudsperson has no competence to initiate judicial proceedings on behalf of individual victims before the national courts.

**Recommendations:**

1. Provide clear mandate to the national human rights structures to deal with discrimination on the grounds of gender identity.
2. Provide relevant information about the priorities and activities by the national human rights institution, i.e. the Office of the Seimas' Ombudsperson, in the field of LGBT human rights.

## XII. Discrimination on Multiple Grounds

The **key recommendations** in Section XII cover:

1. Ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity.
2. National human rights structures should have a broad mandate to enable them to tackle such issues.

The concept of discrimination on multiple grounds is not established in the national legislation. For example, despite the fact that the *Law on Equal Opportunities*<sup>213</sup> prohibits discrimination on the grounds of gender, race, nationality, language, creed, social status, religion, beliefs, age, **sexual orientation**, disability and ethnicity, it does not address the negative phenomenon of “multiple discrimination”. The **Office of the Equal Opportunities Ombudsperson** in its response to the request for information indicated that in essence it could process a complaint on alleged discrimination on multiple grounds.<sup>214</sup> However, in the period between 2012 and 2018 the Office did not receive any complaints on multiple discrimination, including the grounds of sexual orientation and (or) gender identity.

### Recommendations:

1. Consider the possibility of introducing into the national legislation the corresponding definition and preventive measures in order to effectively address the negative phenomenon of multiple discrimination.

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213 Supra 5.

214 Supra 29, p. 9.

# “WE ARE PEOPLE, NOT PROPAGANDA”:

## Monitoring Implementation of the Council of Europe Recommendation CM/Rec(2010)5 to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity

### DOCUMENTATION REPORT LITHUANIA

In 2010 the Committee of Ministers of the Council of Europe adopted the Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. All Member States including Lithuania agreed upon this Recommendation.

In 2018 the National LGBT\* Rights Organization LGL prepared a documentation report to assess what actions have been taken by the Lithuanian authorities to implement the Recommendation CM/Rec(2010)5 at the national level. The report identifies the main areas of concern for securing human rights of LGBT persons in Lithuania:

- » “anti gay propaganda” legislation to censor LGBT-positive public information;
- » legal recognition not available for same-sex families;
- » no administrative procedure for quick, accessible and transparent procedure for legal gender recognition and corresponding healthcare;
- » systematic failure in preventing anti-LGBT hate crimes and hate speech.

