


**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**

**L I T H U A N I A**







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LGL 2013



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## SUMMARY OF KEY FINDINGS

This publication contains the executive summary, summary of key findings and recommendations. The full documentation report is available at [www.lgl.lt](http://www.lgl.lt).



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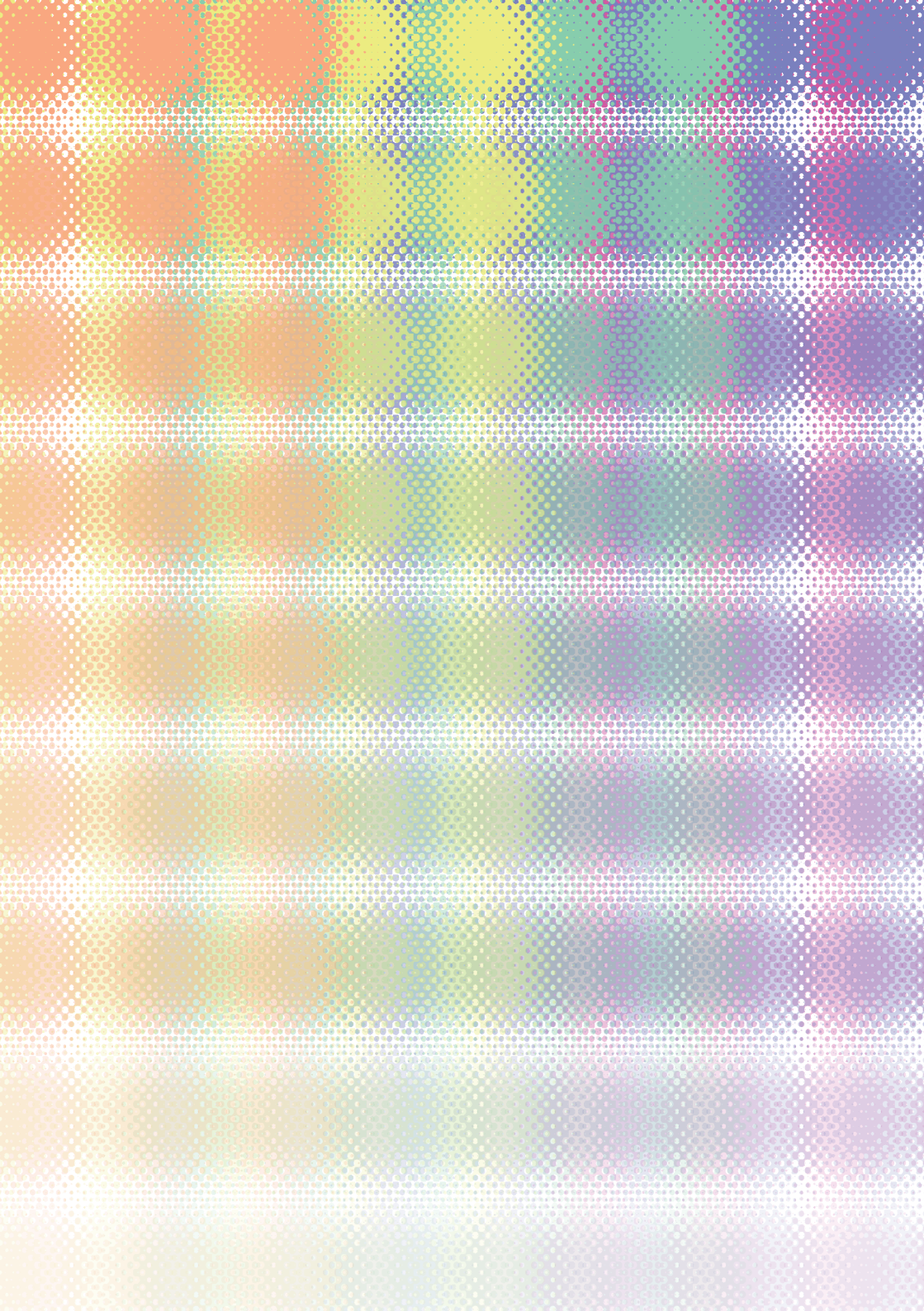
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# Glossary<sup>1</sup>

**GENDER IDENTITY** refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as "transgender" persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

**GENDER REASSIGNMENT TREATMENT** refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

**HARASSMENT** constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidat-

1 Council of Europe, Thomas Hammarberg, Discrimination on grounds of sexual orientation and gender identity in Europe, Report, 2nd edition, Appendix: terms and concepts, pp. 129-132, 2011, available at: <[http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011\\_en.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf)>, visited on 18 June 2012.

ing, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

**HATE CRIME** towards LGBT persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

**HATE-MOTIVATED INCIDENTS** are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

**HATE SPEECH AGAINST LGBT PEOPLE** refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

**HOMOPHOBIA** is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

**INTERSEX PEOPLE** are persons who are born with chromosomal, hormonal levels or genital characteristics which do not



correspond to the given standard of “male” or “female” categories as for sexual or reproductive anatomy. This word has replaced the term “hermaphrodite”, which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

**LGBT PEOPLE OR LGBT PERSONS** is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

**MULTIPLE DISCRIMINATION** describes discrimination that takes place on the basis of several grounds operating separately.

**NGO** is the abbreviation for “non-governmental organisation”.

**SEXUAL ORIENTATION** is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

**TRANSGENDER PERSONS** include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within

a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners.

**TRANSGENDERISM** refers to the fact of possessing a transgender identity or expression.

**TRANSPHOBIA** refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

# I. Introduction

## Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to Member States “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was a historic moment. The Recommendation is, as the Secretary General of the Council of Europe Mr. Thorburn Jagland has recognised, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.<sup>2</sup>

In broad terms the Recommendation proclaims three things:

- It emphasises the key principle that human rights are universal and apply to all individuals, including LGBT persons;
- It acknowledges continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out measures required from the Member States.

The Recommendation was agreed upon unanimously by the 47 Council of Europe Member States. As the Recommendation is

2 “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons” <https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

not a Convention and it is not legally binding, it is based on existing legally binding international and European human rights obligations of the Member States – they have a clear duty to implement these standards.

The Recommendation has three parts: first of all, the preamble, which sets out the background information for its adoption, and the key principles guiding it; secondly, the operative section, which briefly lists broad measures to be taken; and thirdly, the Appendix, which sets out specific measures with the view of ensuring effective enjoyment of human rights for LGBT individuals and combating human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, freedom of expression, freedom of assembly, right to respect for private and family life, employment, education, health, housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a relevant section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

## **Purpose of the report**

The purpose of this report is to assess what actions have been taken by the Lithuanian authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have and which have not been completed, it provides a base line with the view of measuring further progress in implementing the Recommendation in the coming years.

The report has two main target audiences: firstly, the political leaders and civil servants at the national level, who are responsible for implementing the Recommendation, and secondly, the Committee of Ministers of the Council of Europe, which upon adopting the Recommendation agreed to conduct a review of progress towards its implementation in March, 2013. The intention is that this report will contribute to the review.

## Methodology

The assessment of progress in the report is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist and the data, which the Lithuanian Gay League (LGL) has compiled in order to assess progress in implementing individual measures of the Recommendation, are set out in Part III of this report, titled “the Compliance Documentation Report”.

The data used to assess the progress of implementation has been obtained from a number of sources:

- Responses by individual ministries to letters from the Lithuanian Gay League (LGL) listing the relevant checklist questions and asking for comments on actions taken with the view of implementing particular measures.

In order to obtain the necessary information on the implementation of the Recommendation, LGL has sent inquiries to the following state institutions:

1. Department of Physical Education and Sports under the Government of Lithuania
2. Equal Opportunities Ombudsperson's Office
3. Migration Department under the Ministry of the Interior
4. Ministry of Culture
5. Ministry of Education and Science
6. Ministry of Health
7. Ministry of Justice
8. Ministry of National Defence
9. Ministry of Social Security and Labour
10. Office of the Inspector of Journalist Ethics
11. Police Department under the Ministry of the Interior
12. Prison Department under the Ministry of Justice

All inquired state institutions provided their replies to the requests of information, although the extent of the provided information varied, as well as timing of the submission.

- Information from secondary sources, such as the reports on Lithuania commissioned by the Council of Europe Commissioner for Human Rights (e.g. "Discrimination on grounds of sexual orientation and gender identity in Europe").
- Research and documentation assembled by the Lithuanian Gay League (LGL) and other non-governmental organisations.

## II. Executive Summary

With accession of the Republic of Lithuania to the European Union in 2004, Lithuania has implemented the main legislative acts of the EC in the sphere of anti-discrimination. The main Law ensuring equality and non-discrimination – the Law on Equal Treatment – was adopted in 2003. Although the Law includes sexual orientation as one of the grounds of prohibited discrimination, gender identity is not covered by the Law. In fact, none of the national laws addressing the issue of discrimination includes the ground of gender identity.

The situation of transgender persons remains of serious concern. Despite the European Court of Human Rights' judgment in the case *L v. Lithuania* in 2007, the needed law for establishing the conditions and order for gender reassignment has not been adopted. The legal vacuum prevents transgender persons from medical services and precludes them from obtaining new identity documents in a “quick, transparent and accessible” way as required by the Recommendation.

A high level of intolerance towards the LGBT community results in a very passive defence of violated rights. Very few complaints of discrimination based on sexual orientation have been submitted to the courts or Equal Opportunities Ombudsperson. Complaints on the ground of sexual orientation form on average only about 2% of all received complaints by the Equal Opportunities Ombudsperson. The homophobic attitudes of society are illustrated by the highest number of investigations for incitement to hatred based on sexual orientation (mostly online). Instead of taking a firm stand and advocating for inclu-

sion, tolerance and promotion of LGBT rights, public authorities initiate a number of legislative amendments that interfere mainly with the LGBT community's freedoms of speech, expression and assembly. Some politicians do not refrain from making openly homophobic and transphobic statements in public and no evident initiatives have been made by Government officials to condemn them. The LGBT community's exercise of the basic rights and especially freedom of expression and assembly remains complicated. Nevertheless, some improvement could be noticed in this regard – while some public events in 2006 and 2007 were prohibited on overtly homophobic grounds. The approval for the event of Baltic Pride was finally issued by the Supreme Administrative Court in 2010.

Same-sex couples do not enjoy any form of legal recognition of their relationships in Lithuania, thus resulting in a situation of both direct and indirect discrimination.

No measures have been adopted to address the issues of discrimination based on sexual orientation or gender identity in employment, education, housing or sports. In the field of health protection the specific needs of the LGBT community remain largely disregarded.

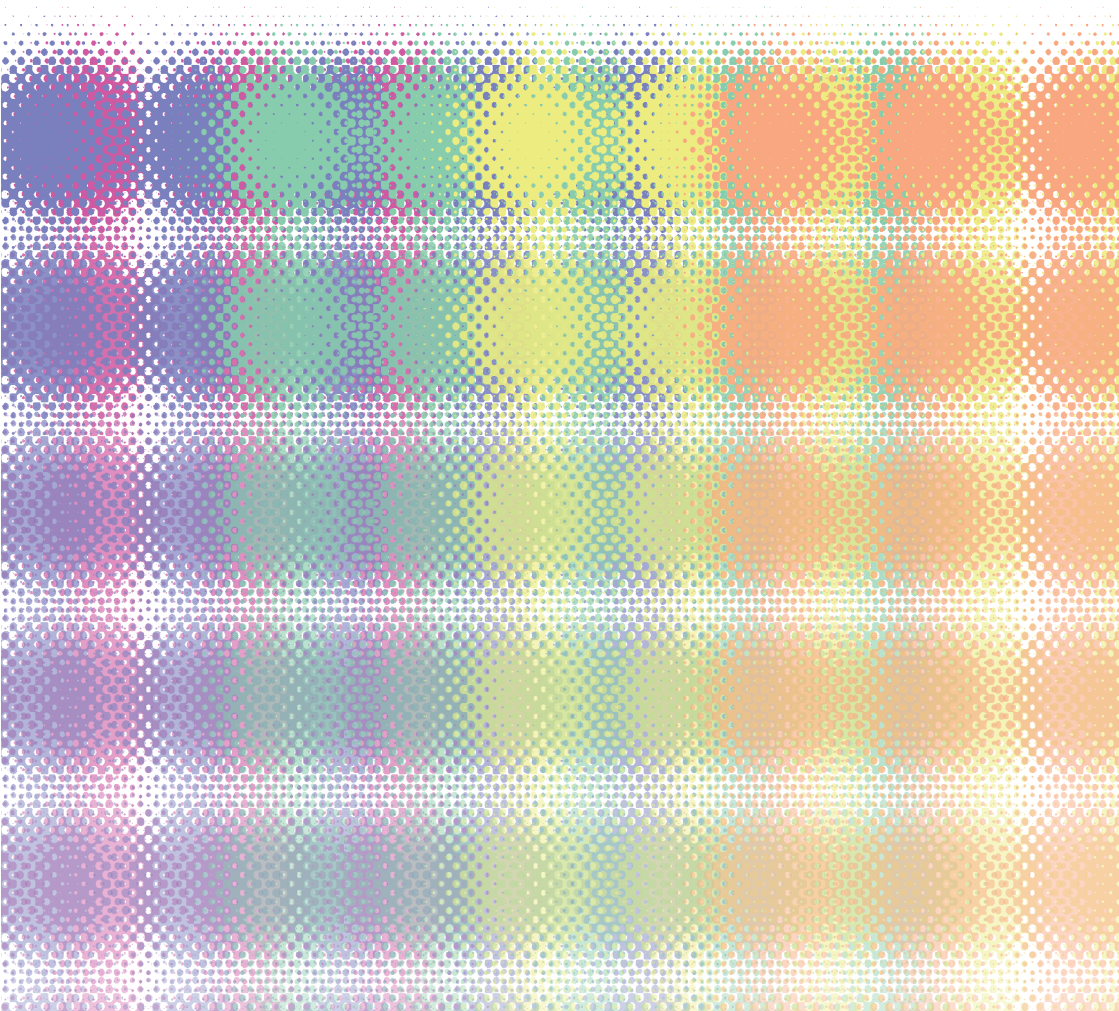
Although under the national law it seems that an application for asylum status could be obtained on the basis of existing well-founded fear of persecution based on sexual orientation or gender identity, no information is available on whether this possibility has been exercised.

Cooperation between state authorities and LGBT organisations leave room for improvement – public authorities have shown no initiative or willingness to actively engage in and cooperate with LGBT organisations when considering legislative acts or



measures that may directly affect the rights of the LGBT community.

Overall, it could be concluded that the implementation of the Recommendation CM/Rec(2010)5 by Lithuanian state authorities is rather passive. None of the state institutions that were inquired indicated that certain legislative acts would be initiated or certain measures or policies would be adopted as a result of the adopted Recommendation.





## III. Summary of Key Findings

### The Recommendation

The Recommendation includes four main steps: (i) a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity; (ii) introduction of effective measures to combat such discrimination; (iii) ensuring that victims have access to effective legal remedies, and (iv) ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

The Compliance Documentation Report reveals that the Lithuanian Government only partly implements the provisions of the Recommendation. No measures have been adopted to ensure the review of existing laws and policies seeking to eliminate any discrimination on grounds of sexual orientation or gender identity. The legislative initiatives in the past few years indicate the worrying tendency for reoccurring attempts to adopt laws that in the view of human rights defenders violate the rights of the LGBT community.

The EU Directive 2000/78/EC was transposed to the Lithuanian legal system by adopting the Law on Equal Treatment in 2003 prohibiting, *inter alia*, discrimination on the ground of sexual orientation. This ground is also included in the provisions of the Criminal Code criminalizing discrimination and incitement to hatred; it is mentioned among the principles of the Labour Code and provisions of the Code on Administrative Violations.

However, none of the legal acts includes the ground of gender identity. In addition, the European Court of Human Rights in 2007 in the case *L v. Lithuania* found Lithuania in violation of Article 8 of the Convention for the failure to adopt the Law on Gender Reassignment under Article 2.27 of the Civil Code. The needed Law remains not adopted, and legislative amendments submitted to the Parliament seek to remove the provision from Article 2.27 of the Civil Code foreseeing the duty of the legislature to adopt the implementing Law.

State authorities have not translated the Recommendation and its Appendix, and there is no supporting evidence of its dissemination among the main stakeholders. Although the Ministry of Social Security and Labour indicated that the Recommendation has been translated<sup>3</sup>, it has not been published on the Ministry's website or made available in the legislative database.

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

### I. RIGHT TO LIFE, SECURITY AND PROTECTION FROM VIOLENCE

#### A. "HATE CRIMES" AND OTHER HATE-MOTIVATED INCIDENTS

The key recommendations in Section I. (a) of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison

<sup>3</sup> Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for implementation of CoE Recommendation CM/REC(2010)5".

staff, and a range of other legislative and other measures to combat “hate crimes” and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crime legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field. In total, some 17 measures are identified under this heading in the Compliance Documentation Report.

According to the information submitted by the Police Department, trainings provided to police officers are more of a general nature and do not address specific issues of sexual orientation and gender identity. The same lack of specialised trainings is noticeable in the trainings for staff in detention facilities. No independent institution has been established for receiving and investigating hate crimes or hate motivated incidents allegedly committed by law enforcement staff.

Provisions of the Criminal Code prohibit incitement to hatred based on sexual orientation (Article 170) and establishing groups and organisations which aim at discriminating against a group of persons or inciting against them on the basis of sexual orientation; under Article 60 (12) (1) of the Criminal Code acts committed in order to express hatred on the basis of sexual orientation are considered as an aggravating circumstance; none of these provisions include the ground of gender identity. Accordingly, no data is collected on hate crimes committed on the ground of gender identity. A special division within the Prosecution Service that was in charge of investigating hate crimes and collecting data was dissolved and its functions distributed among other divisions. Statistics on hate crimes committed on the basis of sexual orientation are available on the website [www.ird.lt](http://www.ird.lt). However, it is not easy to find needed information.

There is a lack of internal regulations foreseeing treatment of victims or witnesses in cases of hate crimes based on sexual orientation and gender identity. An incident reported by LGL in 2007 shows the need for such regulations due to the failure by the police to conduct an effective investigation when a smoke bomb was thrown into an LGBT night club. The investigation was terminated even though the perpetrators had admitted in the media that this act was motivated by anti-gay prejudice. The lack of tolerance shown by police officers was emphasized in a study made in the Baltic Antidiscrimination Project in 2002.

In general, the levels of intolerance and hostility towards the LGBT community in Lithuania remain high, and recent studies indicate that less than a quarter of gay men in Lithuania are open about their sexual orientation.

No special legal provisions have been adopted in order to regulate the placement of transgender persons in detention facilities or aiming at better securing their rights.

## **B. “HATE SPEECH”**

Section I.B. of the Appendix requires measures to combat “hate speech” on grounds of sexual orientation or gender identity, including laws penalising such “hate speech”, promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, and guidelines to government officials to refrain from such speech and indeed to promote respect for the human rights of LGBT people. In all, some nine measures are identified under this heading in the Compliance Documentation Report.

Incitement to hatred is prohibited by Criminal Code provisions. However, it includes only the ground of sexual orientation, and does not cover gender identity. There are no instances of public officials condemning homophobic or transphobic statements. No guidelines have been issued requiring public officials to refrain from homophobic speech or encouraging them to promote tolerance and respect for human rights of LGBT individuals. On the contrary, state authorities have expressed their hostile views towards the LGBT community on a number of occasions. Regarding promotion of good practices by media and internet service providers, some internet news portals started to include warning notifications when providing readers with the opportunity to place their comments online. Statistics show that most instances of incitement to hatred, violence and contempt are made on the basis of sexual orientation and occur online.

## II. FREEDOM OF ASSOCIATION

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

The evidence presented in the Compliance Documentation Report indicates partial compliance with these requirements. LGBT organisations are able to gain official registration. LGL notes a lack of interest from state authorities to cooperate with

LGBT organisations when framing and implementing public policies directly affecting LGBT persons. Nevertheless, LGL takes every opportunity to express its views to public authorities through all possible means. LGBT organisations are able to access public funding earmarked for NGOs, which however is very limited and insufficient to assist in addressing discriminatory attitudes within society. While state authorities are giving due priority to supporting projects that address issues of discrimination on all anti-discrimination grounds and as LGBT issues in such projects are barely touched upon, LGBT organisations do not receive the necessary support to address LGBT issues adequately.

### III. FREEDOMS OF EXPRESSION AND PEACEFUL ASSEMBLY

This section of the Appendix requires member states to 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, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

Overall, the situation with regard to freedom of expression has been acceptable, apart from occasionally initiated legislative amendments aimed at prohibiting “homosexual propaganda”. There were no attempts made by public authorities to denounce publicly interference with LGBT people’s right to freedom of



assembly, whether resulting from prohibitions to conduct awareness raising campaigns in 2007 or with encountered obstacles in gaining permission from the Vilnius municipality for the Baltic Pride march in 2010.

### **FREEDOM OF EXPRESSION**

National legislation contains general guarantees for freedom of expression. The Lithuanian mass media has gradually started to present LGBT issues in a more respectful and objective way. Nevertheless there has been no attempt made by public authorities to encourage pluralism and non-discrimination.

On the contrary, the past few years have been characterized not by increased public visibility of the LGBT community, but rather by attempts to limit the freedom of expression and the principle of non-discrimination with regard to LGBT groups and individuals. LGL faced interference with its freedom of expression with regard to the organisation of a photo exhibition in Juodkrante in 2006, several planned public actions in 2007 and the organisation of Baltic Pride in 2010.

In the past few years a number of legislative initiatives have sought to limit LGBT people's right to freedom of expression, including: (i) Amendment to the Law on the Protection of Minors against the Detrimental Effect of Public Information; (ii) Amendments to the Code of Administrative Violations; (iii) Amendment to the Law on the Provision of Information to the Public. These legislative initiatives are a worrying sign of the presence of homophobic attitudes towards the LGBT community within the national legislature. After some debates the finally adopted amendment to the Law on the Protection of Minors against the Detrimental Effect of Public Information still contains a contradictory provision (Article 4 (2)(16)) recognis-

ing information as having a detrimental effect 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”. Considering that under provisions of the Constitution and the Civil Code marriage is allowed only between two individuals of different sex, it may be assumed that any advocacy for LGBT family rights would be seen as contravening this legal provision. In addition, the final amendments to the Law on the Provision of Information to the Public still contain the prohibition of advertising and audio-visual communication that could be regarded “offensive to religious or political beliefs”.

The lack of encouragement for non-discrimination and respect for LGBT people’s right to the freedom of expression was demonstrated by the public authorities when the Parliament failed to lift the parliamentary immunity of two MPs, who in opposition to the Baltic Pride 2010 event violated the law by trying to break through the cordon. Upon the request of the General Prosecutor, the Parliament did not vote in favour of removing the legal immunity of the MPs in question and subjecting them to criminal liability.

#### **FREEDOM OF ASSEMBLY**

Legal provisions regulating freedom of assembly are embedded in the Constitution of the Republic of Lithuania and the Law on Peaceful Assembly. Although the law protects the freedom of assembly, in practice the LGBT community faces difficulties in its exercise. The grounds most often applied by local public authorities for banning undesirable LGBT events have been protection of family values, public order or security.

Baltic Pride 2010 was nearly prohibited from taking place by challenging it before national court and requesting for application of interim measures on the ground of inability to provide security for the event due to strong opposition. The Supreme Administrative Court of Lithuania accepted LGL's appeal and rejected this request. Although the decision of the court was a positive sign, it has to be noted that the ultimately issued approval of the event was challenged before the court and that the request for interim measures was submitted by the General Prosecutor. In addition, more than one third of the MPs openly expressed their opposition to the event.

Cooperation with the police forces at Baltic Pride 2010 was efficient and effective. Nevertheless, it remains to be seen whether the same good practice will apply to the organisation of other public events in the future.

There are no examples of public officials denouncing made or attempted interferences with the LGBT community's right to freedom of assembly. On the contrary, homophobic statements were made, for instance, by the mayor of Vilnius in 2007. Some MPs are well known for being very active in opposing any LGBT public event and attempting to prevent them from happening.

#### IV. RESPECT FOR PRIVATE AND FAMILY LIFE (EXCLUDING SPECIFIC TRANSGENDER ISSUES)

Section IV, para. 18, 19, and 23 – 27 of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Apart from the question of criminalisation, Lithuania largely fails to comply with the requirements set in these paragraphs, and the authorities have taken no steps to implement them.

Lithuania has abolished criminal prosecution for voluntary homosexual activity between men contained in the Soviet Criminal Code. The age of consent in Lithuania is the same for both homosexual and heterosexual acts.

Under the Law on Legal Protection of Personal Data, data on a person's sexual life is viewed as a special category of data and is protected from processing except in cases provided by law.

In regard to family rights Lithuania does not recognise the right to marry or to register a civil partnership for same-sex couples. The right to marry and to enter into a civil partnership is recognised only for different-sex couples under the provisions of the Civil Code. However, there is no possibility for different-sex couples to register their partnership as the legislature has not adopted a Law regulating the conditions and procedure for registration of partnerships. The adoption of such a law has been mainly delayed in fear that it might open the opportunity for same-sex couples to claim the same rights.

The Ministry of Justice as an option proposes that same-sex couples conclude civil contracts certified by the notary for establishing their mutual rights and duties. The Ministry of Justice is of the view that such a possibility ensures the principle of equality. However, it fails to see the discriminatory nature of the proposal in essence pressuring same-sex couples to behave in a way that is not expected nor required from opposite-sex couples. At present, three draft laws have been submitted to the Parliament regarding the legal regulation of civil partnerships. However, the prospects of adopting the more liberal draft law

(No. XIP-3687), including same-sex couples, remain poor and the draft law itself has received contradictory opinions within the LGBT community.

Regarding the prospects for adoption by same-sex couples, Lithuanian legislation governing parental responsibility or guardianship of a child through adoption by a single person makes no reference to sexual orientation or gender identity. The authors of this report are not aware of any claims of discrimination based on sexual orientation or gender identity in this regard. However, in 2000 LGL was aware of a case where a woman lost the custody of her child following a divorce. She believed that she was not granted the child's custody because of her revealed sexual orientation during the trial, although those reasons were not stated in the judgment of the court. Same-sex couples have no right to adoption under the Civil Code. In exceptional cases, single persons may be allowed to adopt. LGL is not aware of cases where a single person from the LGBT community has been either rejected for adoption of a child or granted adoption.

The absence of any legal recognition of same-sex couples and their children means that children brought up by same-sex couples could be denied protection of their interests (e.g., guardianship of a non-biological parent over a child in a case of severe disease of a biological parent, or the right to parental leave in cases where a biological parent cannot take leave).

Since adoption of the Recommendation, the authors of this report have not identified any steps taken by the Lithuanian authorities in order to implement the Recommendation and improve the situation of the Lithuanian LGBT community discussed in this section.

## V. RESPECT FOR PRIVATE AND FAMILY LIFE AND ACCESS TO HEALTH CARE – SPECIFIC TRANSGENDER ISSUES

Section IV of the Appendix, paras 20, 21 and 22, and Section VII, paras 35 and 36 require member states to guarantee full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition (including any of a physical nature) that are abusive, and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Lithuania does not comply with the requirements concerning legal gender recognition. The legislature has not adopted the law on gender reassignment in compliance with Article 2.27 of the Civil Code that imposes the duty on the legislature to adopt the law regulating the order and conditions of gender reassignment. This legal vacuum continues to exist despite the European Court of Human Rights judgment in the case of *L v. Lithuania* in 2007 recognising Lithuania in breach of Article 8 of the Convention for not adopting the needed law.

Article 2.27 of the Civil Code allows any non-married person to change his or her legal gender if this is medically possible. However, the second paragraph states that the procedures for changing gender should be established by law. In addition, Article 2.27 of the Civil Code, foreseeing that a person must not be married, precludes married transgender persons from gender reassignment and thus from legal gender recognition. In order to

avoid obstacles for legal gender recognition, in a few cases where transgender persons performed gender reassignment operations abroad, they divorced before applying to the courts for the request to issue new identity documents.

Due to the lack of the law, persons who have undergone gender reassignment operations abroad face difficulties with the issue of new identity documents due to a given personal code which reveals the person's gender and in general once given is unchangeable. For the issue of a new personal code, passport and other identity documents, transgender persons are forced to apply to the courts. It is highly arguable whether such way of solving the problem meets the standards set by the Recommendation for guaranteeing full legal recognition of a person's gender reassignment in a "quick, transparent and accessible way".

Some members of the Parliament introduced a draft for an amendment to the Civil Code. This would as a result remove the possibility to undergo gender reassignment treatment in the country. As Lithuania has still not implemented the ECtHR judgment *L v Lithuania*, this proposal was intended to remove the legal basis for similar claims.

Due to the lack of a law regulating the conditions and order of gender reassignment, transgender persons cannot receive the necessary medical treatment or perform gender reassignment surgeries. Treatment of transgender persons in general is not covered by the state insurance plans, and transgender persons are not even entitled to free hormonal treatment. The Supreme Administrative Court of Lithuania in a case brought by a transgender person ruled that the person was not entitled to a monetary compensation for a medical operation performed abroad because in the absence of the law, it was not proved that the medical operation was the only appropriate means of treatment in the case. The courts are more inclined

however to award non-pecuniary damages for having to apply to the courts for the issue of new identity documents.

Under the current state of laws, after surgery and the issue of new identity documents, a person should not face problems in the exercise of the right to marry. LGL is not aware of any cases where after gender reassignment and legal recognition of the new gender persons have tried to get married with an opposite-sex person.

## VI. EMPLOYMENT

Section V of the Appendix requires member states to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy-related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires member states to protect the privacy of transgender individuals in employment.

The Law on Equal Treatment prohibits discrimination based on sexual orientation. However, it does not cover the ground of gender identity. The Law covers the ground of gender, but it is not clear whether the Equal Opportunities Ombudsperson or the national courts would consider the ground of gender to include gender identity when interpreting and applying the Law. Prohibition of discrimination based on sexual orientation in employment is also prohibited in the Labour Code, but also does not include the ground of gender identity. Due to the homophobic environment, most gay people remain “in the closet” and therefore few complaints have been brought to the Equal Opportunities Ombudsperson and to the national courts on the basis of sexual orientation discrimination in employ-



ment. In general, complaints based on sexual orientation form only around 2% of all complaints received by the Equal Opportunities Ombudsperson. No statistical information is collected on discrimination of transgender people in the field of employment.

The Ministry of Social Security and Labour has not indicated that special employment programs would be adopted and/or that they be focused specifically on securing employment opportunities for transgender persons. The Ministry also did not indicate that special measures would be taken to ensure the protection of personal data in cases of gender reassignment to protect a person's gender history or former name in the context of employment.

The Soldiers' Code of Ethics prohibiting discrimination includes as grounds neither sexual orientation nor gender identity. In 2011 the Equal Opportunities Ombudsperson, after examining a complaint submitted that the Code does not include the ground of sexual orientation, did not find a violation of the Law on Equal Treatment, but recommended to include it.

## VII. EDUCATION

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programs for staff, and 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, and measures to meet the special needs of transgender students.

State authorities have not indicated that measures would be adopted for the protection of LGBT pupils at school against bullying and social exclusion. There is a lack of research conducted in this regard. No official data is collected on how many LGBT pupils are bullied, harassed and experience discrimination at schools. No equality and safety policies, codes of conduct or training programs for staff have been provided for promoting tolerance and respect for LGBT pupils at schools. The Ministry of Education and Science did not indicate that there is an officially adopted sexual educational program compulsory for all schools. The sexual education program prepared previously (called Program for Preparation for the Family and Sexual Education) did not provide information on homosexuality in an objective scientific way and did not mention transgender issues at all.

An online survey reveals that 85.2% of respondents between the age of 14 and 19 agree that sexual education is needed in schools; 55.1% of respondents indicated that they are unsatisfied with currently provided sexual education; 32.4% indicated that they have never heard of sexual education; the main source of information through which children receive information about sexual education is the internet (30.6%), friends (24.8%), TV (18.7%) and parents (9.3%).

#### VIII. HEALTH – OTHER THAN TRANSGENDER SPECIFIC HEALTH ISSUES

Section VII of the Appendix paragraphs 33 and 34 require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures proposed include taking account of the specific needs of LGBT people

in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their “next of kin” without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

In Lithuania homosexuality is not considered as a disease in accordance with the WHO standards. No information is available that medical textbooks or other documents treat homosexuality as a disease.

Due to the high levels of homophobia and intolerance towards LGBT persons, a high number of individuals remains “closeted” and therefore there is little information available as to the quality of medical services provided to the LGBT community. On one occasion, in 2011 the Equal Opportunities Ombudsperson received a complaint that gay men are precluded from giving blood because of their sexual orientation. The Equal Opportunities Ombudsperson found such a practice to be in contradiction with Article 5 (1) of the Law on Equal Treatment and suggested to the Ministry of Health to change the legal regulation for blood donation so as not to exclude homosexual persons.

The Ministry of Health has not indicated that any special measures would be adopted to address the specific need of LGBT people. Training programs provided to health professionals do not address issues of sexual orientation and gender identity. The Ministry of Health asserts that programs and services in the area of sexual and reproductive health meet the needs of LGBT persons, but did not specify in what way and how exactly those needs are satisfied.

Same-sex couples are denied family rights by not considering them to be family members in case of medical emergencies. A partner may ensure that another partner gets access to medical records and treatment by issuing a warrant in advance.

No information is available that people would be forced to undergo medical treatment because of their sexual orientation or gender identity.

Overall, it can be stated that the Ministry of Health has not put efforts into implementing effectively the international standards regarding homosexuality in the Lithuanian health-care system.

## IX. HOUSING

Section VIII of the Appendix requires that adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in the provision of loans for purchase of housing, in the recognition of the rights of a tenant's partner, and evictions; also, the provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

Discrimination in the area of housing is indirectly prohibited under Article 8 of the Law on Equal Treatment, establishing that consumers should be provided with equal access to goods and services, including housing. The Law does not cover gender identity.

A few complaints have been submitted to the Equal Opportunities Ombudsperson regarding discrimination based on sexual orientation in housing (i.e. renting). In 2005 the Equal Opportunities Ombudsperson examined LGL's complaint about discrimination based on sexual orientation for having been rejected to rent premises owned by another NGO due to the specificity of LGL's activities. After examination of the complaint, the Equal Opportunities Ombudsperson decided to warn the Chair of the defendant NGO about the indirect discrimination. The discrimination experienced by LGBT persons in renting housing facilities remains mainly undocumented. No measures have been adopted to address the risks of homelessness faced by LGBT persons.

The absence of regulations governing the treatment of common property of same-sex partners who live together deprives one partner of her/his rights if the property, which was acquired during their time living together, was registered only in the name of the other partner. In this case the death of that partner or separation of the couple leaves the other partner without any rights regarding the jointly acquired property, real estate particularly. For different-sex partners in a similar situation, the provisions of the Civil Code recognise an automatic right of each partner to half of the property unless otherwise stipulated by written agreement between them.

## X. SPORTS

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of dis-

criminyatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

Issues of discrimination on the grounds of sexual orientation or gender identity are not addressed in Lithuanian sports. No measures have been taken by state authorities to prevent the risk of exclusion from participation in sports on grounds of sexual orientation and gender identity. The Department of Physical Education and Sports has not provided information that codes of conduct relating to sport and sexual orientation or gender identity for sports organisations and clubs would be drawn up and disseminated or any other measures would be taken in this regard. No information is available on instances where discriminatory incidents would have occurred during or in connection with sports events. A Sports Fan Club has been established within LGL, gathering together LGBT and other persons.

## XI. RIGHT TO SEEK ASYLUM

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender iden-

tity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

Under the national law the grounds of sexual orientation or gender identity are not listed as a basis for granting refugee status. However, the Migration Department notes that under Article 66.1 of the Procedure for examination of foreigners' requests for asylum, adoption of decision and its implementation, LGBT persons may be understood as being a "social group" – one of the legitimate bases for granting the status of asylum, if there is persecution or threat of persecution.

The Migration Department under the Ministry of the Interior after examination of the request for asylum; after conduct of thorough investigation and establishing that the asylum seeker meets the criteria provided in Article 86 para. 1 and Article 87 para. 1; after considering data established under Article 66 of the Procedure; after establishing that there are no reasons for not granting refugee status or subsidiary protection (Article 88 of the Law), may take a decision to grant refugee status or subsidiary protection due to well-grounded fear or other real threats in relation to sexual orientation or gender identity, for which there is danger towards the asylum seeker's life and freedom in their country of origin.

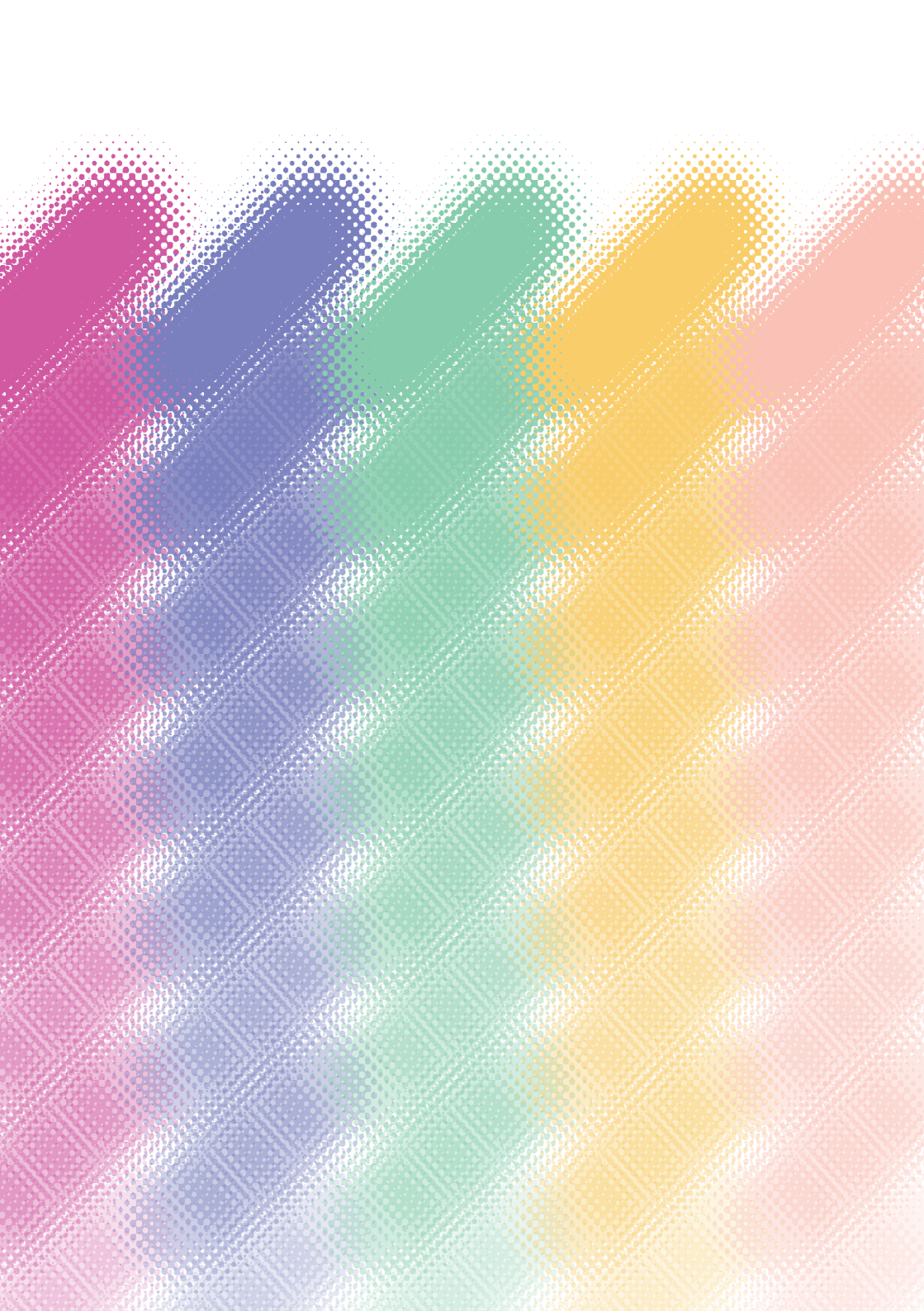
No information is available that state authorities have adopted measures to protect LGBT persons from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training on the specific problems encountered by LGBT asylum seekers.

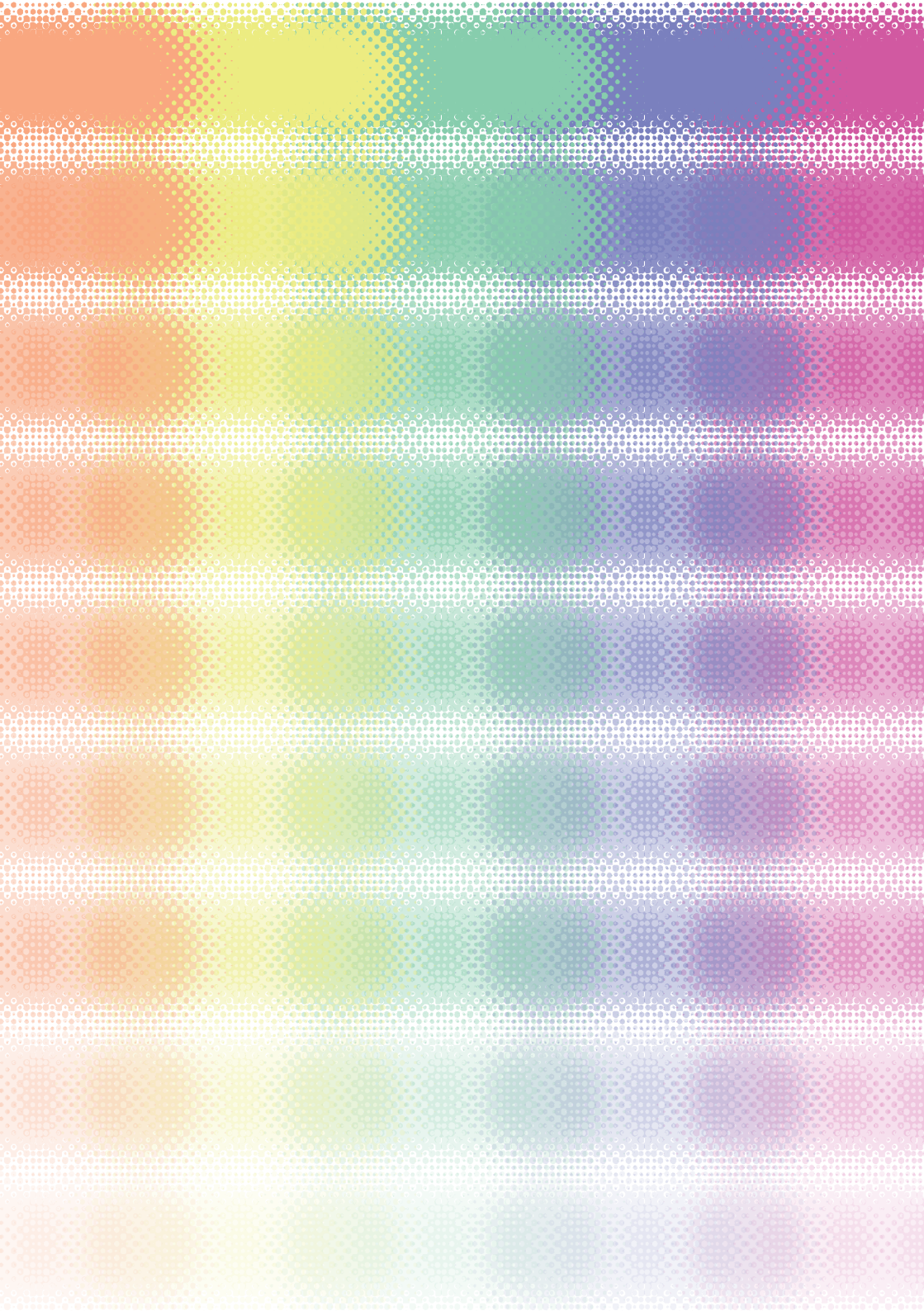
## XII. NATIONAL HUMAN RIGHTS STRUCTURES

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

There is no national human rights institution that is in compliance with the UN Paris principles. The Equal Opportunities Ombudsperson is the only state institution dealing with complaints of discrimination based on sexual orientation; however this does not explicitly cover the ground of gender identity. Due to the high level of intolerance towards LGBT persons, the Ombudsperson receives very few complaints on the ground of sexual orientation. The Ombudsperson is willing to cooperate in various projects with NGOs including LGL. Nevertheless, it is not well-known for taking a firm stand and speaking out against homophobic instances, e.g. when politicians and the mayor of Vilnius were making homophobic statements in public or when LGBT rights to freedom of expression or assembly were infringed upon.







# Recommendations

- Translate officially the Recommendation CM/Rec(2010)5 and its Appendix and take steps to disseminate it within:
  - Public administration institutions
  - Law enforcement institutions, including judiciary and penitentiary systems
  - Human rights protection institutions (e.g. Equal Opportunities Ombudsperson's Office, Seimas Ombudsman's Office, Ombudsperson for the Rights of the Child, Journalists Ethics Inspectorate, etc.)
  - Educational institutions
  - Health care institutions
  - Representatives of public and private sector employees and employers
  - Media
  - Non-governmental organisations
- Include the gender identity ground in all relevant national laws prohibiting discrimination, in particular in the:
  - Law on Equal Opportunities (No. IX-1826, 2008-06-17)
  - Articles 60 (1)(12), 169, 170, 170<sup>1</sup> of the Criminal Code (No. VIII-1968, 2012-06-30)
  - Labour Code (No. IX-926, 2012-06-29)
- Amend the Soldiers' Code of Ethics approved by the Decree of Minister of Defence on 9 May 2005, No. V-561 by supplementing Section 13 with prohibition of discrimination based on sexual orientation and gender identity.

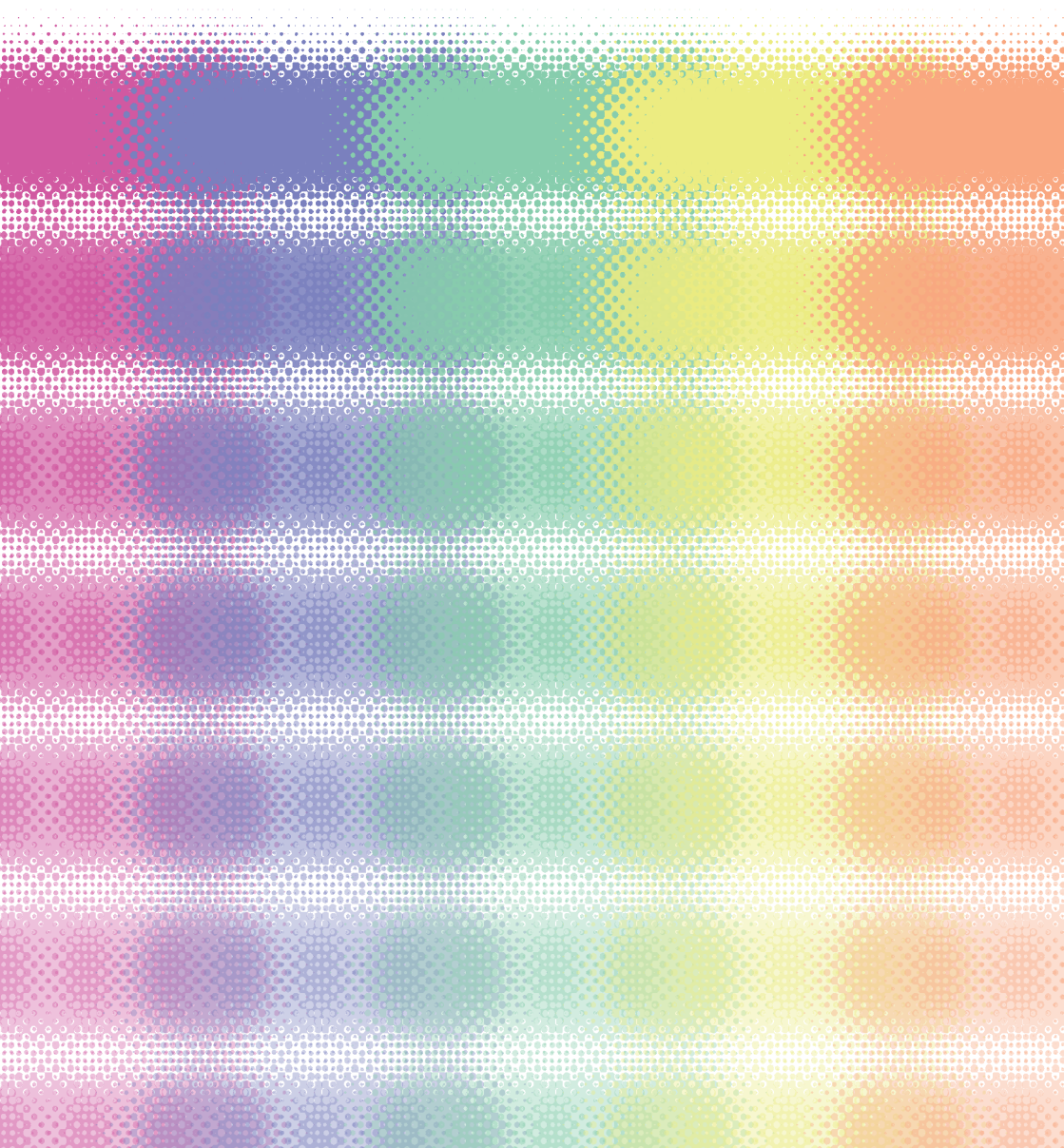
- Adopt the Law on Gender Reassignment in compliance with Article 2.27 of the Civil Code, establishing the conditions and order for gender reassignment in compliance with international human rights standards, and:
  - Ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise.
  - Set procedures to ensure that personal documents (e.g. insurance, banking documents, educational diplomas) would also be issued to gender reassigned persons by non-state institutions.
- Adopt the Law on Registered Partnerships including same-sex couples.
- Adopt recommendations for the staff of educational institutions to ensure that LGBT pupils and students receive education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment.
- Adopt a compulsory sexual education program for schools addressing issues of homosexuality and transgenderism in a respectful and objective manner.
  - Evaluate the prepared “Children and youth’s preparation for the family programs planning” (“Vaikų ir jaunimo rengimo šeimai programų rengimas”) from the human rights point of view.
- Adopt and disseminate a code of conduct on questions relating to sports and sexual orientation or gender identity for sport organisations and clubs.
- Ensure that training programs of police officers include information on investigation of homophobic and transphobic connotations in hate crimes or hate motivated incidents.

- Ensure that training programs of prison staff would include information on treatment of LGBT persons at places of detention with respect and no discrimination.
- Ensure that training programs for health professionals and social workers include information on LGBT health issues in order to enable professionals to deliver the highest attainable services in a respectful and objective way.
  - Specific training should be provided for medical experts to ensure qualitative, safe and accessible gender reassignment treatment for transgender persons.
- Ensure that the Migration Department staff responsible for processing asylum requests is provided with training on the specific problems encountered by LGBT refugees or asylum seekers, and:
  - Ensure that staff of administrative detention centres, police, medical staff and voluntary organisations dealing with cases of asylum and refugee seekers would receive appropriate training and information on issues regarding sexual orientation and gender identity.
- Include topics of sexual orientation and gender identity in initial and in-service training programs for judges and other members of the legal profession and law enforcement officials.
- Within the next Governmental Anti-discrimination Plan 2015-2017 include:
  - The ground of gender identity when adopting awareness raising measures and measures for addressing discrimination.
  - As a part of an awareness raising campaign, include preparation of a simple and comprehensive definition of “hate

crimes” that would include the motive of sexual orientation and gender identity and ensure its wide dissemination to the general public.

- Conduct public opinion surveys to assess the society’s level of intolerance towards various minorities, including LGBT persons, based on sexual orientation and gender identity.
- Conduct a public survey assessing the extent of bullying, harassment and discrimination experienced by LGBT pupils at school.
- Conduct research on the nature and causes of hostile and negative attitudes towards LGBT persons.
- Include awareness raising campaigns targeting housing agencies in order to raise their knowledge on anti-discrimination provisions, including prohibition of discrimination based on sexual orientation and gender identity.
- Adopt and disseminate guidelines among public authorities and public institutions at all levels on their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising hatred or discrimination based on sexual orientation or gender identity and the duty to encourage promotion of tolerance and respect for human rights of LGBT persons.
- Adopt recommendations for law enforcement officers and judiciary for treatment of LGBT persons in a non-discriminatory and respectful manner so that they would feel safe to report hate crimes or hate motivated incidents, whether as victims or witnesses.
- Strongly encourage state institutions to consult with the Lithuanian Gay League on the adoption and implementation of the measures affecting the rights of LGBT persons.

- Adopt a medium and a long term action plan for implementation of the Recommendation and its Appendix.







## About Lithuanian Gay League

Lithuanian Gay League (LGL) is a national non-profit and non-governmental organization uniting homosexual, bisexual, and transgender persons. LGL has been a member of the International Lesbian and Gay Association (ILGA) since 1994 and is a coordinator for the sexual orientation ground in the national Diversity and Equality Forum. LGL was officially registered in Lithuania in 1995 and is one of the longest-existing NGOs in the country.

LGL's advocacy activities are dedicated mainly to fighting homophobia and discrimination based on sexual orientation and gender identity. Through education, support, and representation of the LGBT community LGL promotes an inclusive social environment for gay men, lesbian women, bisexual and transgender (LGBT) persons.

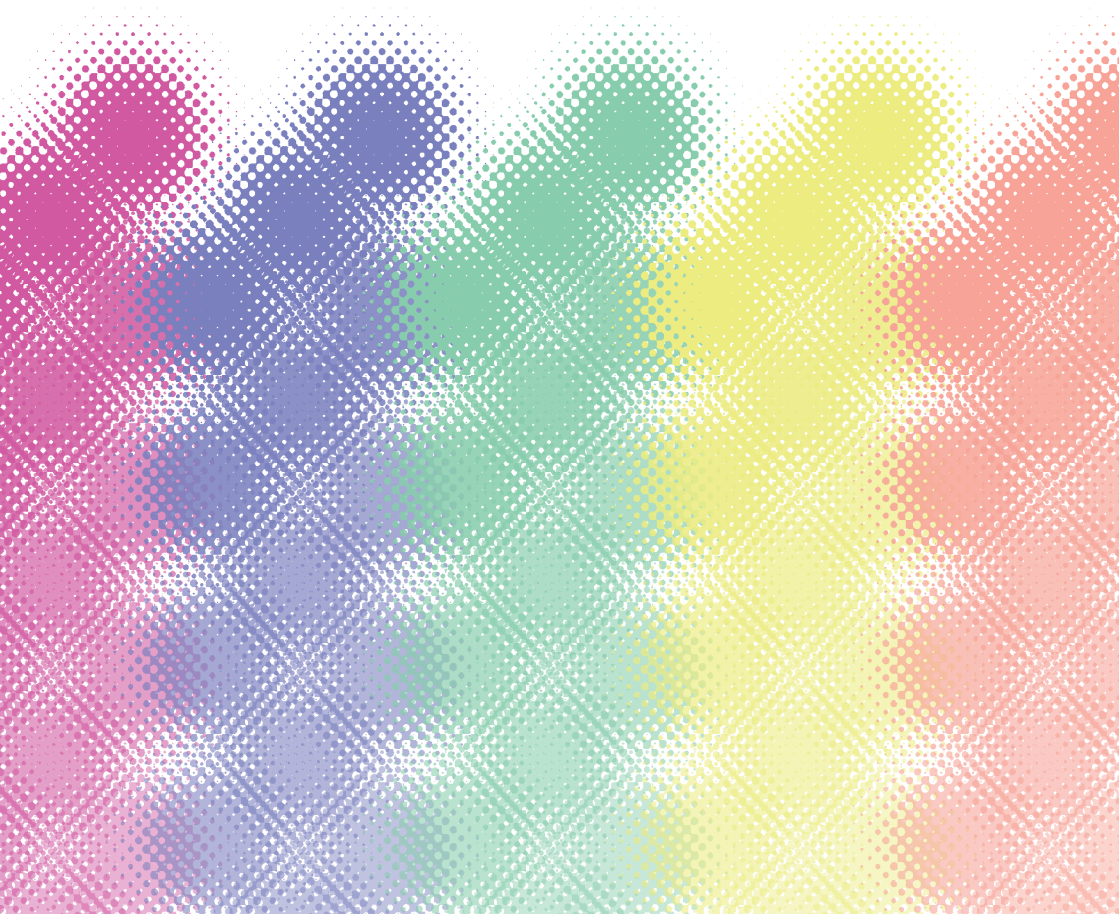
LGL's fields of activity include:

- Human rights and equal opportunities
- Employment
- Social inclusion
- Family rights
- Empowerment of LGL's members and encouragement of society to participate in its activities
- Competence and capacity building

The organization has implemented a number of projects, including conducting the first survey in the three Baltic countries on

discrimination on the grounds of sexual orientation; a project entitled “Challenges to Family Law and Policy in Europe”, followed by publications, seminars throughout the country, and the photo exhibition “Living Together”; the EC initiative EQUAL project on workplace diversity was the biggest and most ambitious project undertaken by the organization.

For more information please visit: [www.lgl.lt](http://www.lgl.lt)  
[www.atviri.lt](http://www.atviri.lt)





**On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation CM/Rec(2010)5 to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. All Member States including Lithuania agreed upon this Recommendation.**

**In 2013 LGL, the national organization advocating for LGBT rights, has prepared a report to assess what actions have been taken by the Lithuanian authorities to implement the Recommendation. The report identifies the main problems still faced by a part of the Lithuanian citizens:**

- **Same-sex couples have no possibility to legally register their relationship;**
- **Widespread discrimination and hate speech against LGBT people;**
- **Attempts to restrict freedom of expression and right to peaceful assembly;**
- **Passiveness of the authorities in securing and protecting the rights of LGBT citizens;**
- **Ignoring the rights of transgender people by leaving out protection of their rights from legal acts.**

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