

SCO report on follow-up to recommendations by the Human Rights Committee

Lithuania

The 27th of July, 2020

Discrimination on the grounds of sexual orientation and gender identity

Submitted by the National LGBT rights organization LGL



With the support of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World)
and the Center for Civil and Political Rights (CCPR-Centre)



INTRODUCTION

The fourth periodic report of Lithuania on the State's compliance with the International Covenant on Civil and Political Rights (ICCPR) was examined by the **United Nations Human Rights Committee** (the Committee) in July 2018. As a result of the review, the Committee adopted the **Concluding observations CCPR/C/LTU/CO/4** which include a set of recommendations to the State party.¹

Paragraph 32 of the Concluding observations states that “In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party is requested to provide, by 27 July 2020, information on the implementation of the recommendations made by the Committee in paragraphs 10 (**discrimination on the grounds of sexual orientation and gender identity**), 20 (migrants and asylum seekers) and 22 (persons deprived of liberty and detention conditions) above.”

The purpose of this report is to contribute to the Committee's evaluation by providing the **perspective of civil society organizations** on the measures taken by the State to implement the recommendations on discrimination on the grounds of sexual orientation and gender identity selected for the follow-up procedure.

Submitted by:

National LGBT rights organization LGL

With the support of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) and the Center for Civil and Political Rights (CCPR-Centre).

¹ Concluding observations of the Human Rights Committee on the initial report of Belize are available here: <https://bit.ly/3cgNyWe>

DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY

Paragraph 9: The Committee is concerned at the persistence of stereotypical attitudes, prejudice, hostility and discrimination against lesbian, gay, bisexual, transgender and intersex persons. Recalling its previous recommendation (see CCPR/C/LTU/CO/3, para. 8), the Committee remains concerned that certain legal instruments, such as the Law on the Protection of Minors against the Detrimental Effect of Public Information, may be applied, including by the Office of the Inspector of Journalist Ethics, to restrict media and other content in a manner that unduly restricts freedom of expression regarding lesbian, gay, bisexual, transgender and intersex issues and contributes to discrimination. While noting the information provided by the State party, the Committee remains concerned at various legislative initiatives, including proposed amendments to the Code of Administrative Offences, the Constitution and the Civil Code, which would limit the enjoyment of the rights of lesbian, gay, bisexual, transgender and intersex persons under the Covenant. The Committee is also concerned that same-sex couples are not legally recognized in the State party, including those legally married and recognized outside Lithuania. The Committee is further concerned about the lack of clarity in legislation and procedures concerning the change of civil status with respect to gender identity, in particular, the absence of legislation enabling gender reassignment procedures and change of civil status without undergoing gender reassignment surgery (arts. 2, 3, 16, 17, 19, 23 and 26).

**Recommendations of the Committee:
(Paragraph 10)**

Measures taken by the State to implement the Committee's recommendations:

The State party should **intensify its efforts to eliminate discrimination**, in law and in practice, against persons on the basis of their sexual orientation or gender identity,

In June, 2019, the Office of the Equal Opportunities Ombudsperson conducted an in-depth study and issued a national report on the situation of transgender people in Lithuania. The report found that due to a lack of regulations in place, transgender people in Lithuania face numerous challenges in healthcare, private and family life and other areas. In December, 2019, a corresponding conference on Transgender issues was organized as a part of the National Human Rights Forum.

Despite the above noted mainstreaming efforts carried out by the Office of the Equal Opportunities Ombudsperson, only 23 % of Lithuanian Transgender respondents claimed that they are aware of at least one Equality body in Lithuania, according to the most recent European Union Agency for Fundamental Rights (FRA) survey, conducted in 2019 (this result falls within 3 lowest percentages for this answer category among the EU countries as well as Macedonia and Serbia).

Also, the same survey results indicated that Lithuanian LGBTI respondents felt discriminated the most in 8 areas of life (i.e. looking for a job; at work; looking for housing; by healthcare or social services personnel; by school/university personnel; at a café, bar or nightclub; at a shop; when showing your ID or any official document that identifies your sex) among all survey participants from 30 European countries.

However official statistics provided by the Office of the Equal Opportunities Ombudsperson suggest that the issues noted above are mostly latent in nature and have not been addressed sufficiently and effectively since there were only 17 complaints regarding discrimination based on sexual orientation received by the Ombudsperson during the reporting period.

In September, 2019 Lithuanian Parliament began to review a new legislative proposal on Lithuanian Law of Equal Treatment amendments, initiated by the Office of the Equal Opportunities Ombudsperson.

While draft law introduced quite a few important developments, such as including the definition of associative discrimination, despite the earlier non-legislative initiatives and

research efforts by the Office of the Equal Opportunities Ombudsperson, it did not *expressis verbis* include gender identity as one of prohibited grounds of discrimination, despite that the judgement of the Constitutional Court of January 11, 2019 expanded the principle of non-discrimination including gender identity as one of the protected grounds established in Article 29 of the Constitution of the Republic of Lithuania.

It must be noted that a public establishment “Free Society Institute” which has not openly disclosed their financing sources, most notable for pursuing anti-LGBT, anti-abortion, anti-feminist policy and possibly having ties with the Lithuanian Farmers and Greens Union political party leaders, declared to have been involved in working on the Lithuanian Law of Equal Treatment draft in its annual report of the year 2019, although it is not indicated in which respect.

Civil initiative for improving legal conditions of transgender community has met with a failure. On the 18th of June, 2019 Lithuanian Parliament rejected the petition initiated by group of Lithuanian citizens pleading to include gender identity and gender expression in the grounds of non-discrimination in the Labour Code of the Republic of Lithuania and the Law on Equal Opportunities of the Republic of Lithuania.

In terms of hate crime situation, LGL recorded five likely homophobic bias motivated incidents in 2019, including arson of the LGL office for which the pre-trial investigation was indefinitely suspended without identifying the perpetrator. According to the results of interviews LGL conducted in 2019, the lack of actual knowledge on hate crime concept and its specifics, as well as lack of recognition of hate crime victim needs are still very prevalent among law enforcement professionals despite the rather elaborate and sufficient legal base. However, the methodological recommendations of the new version of the pre-trial investigation regarding hate crimes, inciting hate speech, that were approved by the Prosecutor General’s Office of the Republic of Lithuania, came into force on the 1st of April, 2020. Ministry of the Interior also formalized an intersectional working group consisting and CSO experts as well as representatives of public authorities to promote a more effective response to hate speech and hate crime on February 20, 2020.

[Lithuanian Draft Law of Equal Treatment: Another Missed Opportunity?](#)

[Protocol of the Seimas of the Republic of Lithuania regarding the rejection of the transgender rights petition](#)

[EU Fundamental Rights Agency's survey on experiences of LGBTI people in Europe](#)

[Annual Report by the Office of the Equal Opportunities Ombudsperson, infographics](#)

[Free Society Institute Annual Report for 2019 \(In Lithuanian\)](#)

[Recommendations on the investigation of hate crimes and hate speech have entered into force](#)

ensure that legislation **is not interpreted and applied** in a discriminatory manner against lesbian, gay, bisexual, transgender and intersex persons

Law on the Protection of Minors against the Detrimental Effect of Public Information of the Lithuanian Republic was yet again interpreted in a discriminatory manner. Current provisions defined in Article 4 (2)(16) information *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 shall be attributed to information which has a detrimental effect on minors.*

An example of a recent discriminatory application is illustrated by the following case in 2019.

A group of activists promoting so-called “traditional values” initiated protests in November, 2019 and filed a complaint to the Government-approved broadcaster regulatory authority against the National broadcaster program featuring a male same-sex couple. All of the upcoming episodes of the same series “Spalvos” (“Colours” in Lithuanian) featuring LGBT topics were postponed until regulatory authority took a decision stating that a program depicting daily life challenges of gay parents is indeed in comply with the relevant Lithuanian regulations.

Many cases of discriminatory application of the provisions laid down in the Law on the Protection of Minors against the Detrimental Effect of Public Information have been documented since the said law entered into force in 2009. Some of such examples are listed below:

- In 2013, LGL prepared a social campaign inviting the public to participate in the quickly approaching Baltic Pride March for Equality, which would take place in Vilnius. The organization submitted the video clip to the national TV broadcaster LRT. LRT offered to air the clip with an Adult rating and only after 11 PM, when the highest advertising fees are charged. The organization appealed to the Office of the Inspector of Journalistic Ethics, complaining about LRT’s decision to censor the video clip showing the variety of Lithuania’s residents. Experts at the Office of the Inspector of Journalistic Ethics deemed one video clip suitable for general viewing, and the other, only for broadcast with an Adult rating.

	<p>- In 2014, censorship got in the way again when LGL tried to get a promotional clip for its social campaign “Change it!” broadcast on TV. This time, representatives of the commercial channel TV3 were the ones who appealed to the Office of the Inspector of Journalistic Ethics for clarification on whether LGL’s clip violated the Law on the Protection of Minors against the Detrimental Effect of Public Information. Based on recommendations from the Office of the Inspector of Journalistic Ethics on the clip’s “harmfulness to minors”, the channel offered to air the clip between the hours of 23:00 and 6:00 with an “adult” rating. Finally the channel INFO TV broadcasted the clip, for which it later received the Media Voice Award at the National Equality and Diversity Awards.</p>
<p>Public Reaction to “Gay Dads” Program Confirms Severe LGBT Acceptance Issues in Lithuania LRT cleared of violating law with show about gay dads Law on the Protection of Minors Against the Detrimental Effect of Public Information of the Republic of Lithuania</p>	
<p>and refrain from adopting any legislation that would impede the full enjoyment of their Covenant rights.</p>	<p>Recently established Christian party, following the example of the current developments in Hungary, on the 30th of June, 2020 declared its intent to prohibit legal gender reassignment (recognition) procedures (LGR).</p>
<p>Christian Union Party Aims to Prohibit Legal Gender Reassignment in Lithuania</p>	

It should review relevant legislation to fully recognize the equality of **same-sex couples**

No new developments by the Legislative were made in terms of same-sex family rights recognition, although following the landmark CJEU ruling in *Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* case the Constitutional Court of the Lithuanian pronounced a judgment on the January 11, 2019 stating that the Republic of Lithuania must issue a residence permit to a foreigner, who entered into the same-sex marriage with a Lithuanian citizen thus partially recognizing marriages concluded by same-sex couples abroad. The Court also noted that *In the context of the constitutional justice case at issue, it should be noted that, unlike the constitutional concept of marriage, the **constitutional concept of the family, among other things, is neutral in terms of gender.***

In May 2018 then newly appointed Minister of Justice Elvinas Jankevičius expressed the need to discuss the LGBT rights situation in Lithuania, including same-sex partnerships, without disclosing his own position on the matter. However no follow up actions by the Ministry of Justice have been documented since then.

In 2019 LGL received several inquiries from LGBT individuals currently serving a custodial sentence regarding the lack of access to long-term (i.e. lasting up to 24 hours) meetings with family members (in LGBT family cases, their same-sex partners) because current regulation does not recognize their partners as a family member/spouse.

It has been almost 20 years since the Civil Code laid down generic provisions on civil unions (partnerships), however no follow-up law that would disclose exact contents of such provision (i.e. definitions, procedures of registration, etc.) has been adopted since and all legislative initiatives in this regard have been unsuccessful. Thus, partnership, marriage, child adoption or custody, joint mortgage, legal spousal privileges (e.g. spousal testimonial privilege in criminal proceedings), paid leave to provide nursing care for the partner/partner's child and many other legal guarantees available for the married individuals are not yet accessible to same-sex couples.

Mediation became mandatory in the Family Law cases since the 1st of January, 2020 and more political and legal means have been taken to protect and provide support services to

	<p>the victims of the domestic violence, however LGBT families have no access to any of these measures and still are subjected to legal void.</p>
<p>On issuing a temporary residence permit in Lithuania to a foreign national in the event of family reunification Lithuania Is Obligated to Recognize Foreign Same-sex Marriages: What does This Judgement of the Constitutional Court Actually Mean?</p>	
<p>and ensure that legislation concerning the change of civil status with respect to gender identity is clear and applied in accordance with the rights guaranteed under the Covenant, including through the enactment of legislation on gender reassignment procedures.</p>	<p>Transgender individuals continued to access legal gender recognition (reassignment) LGR through a judicial procedure without the requirement of surgery and/or sterilization. 9 successful cases were recorded in 2019.</p> <p>Although more than 12 years has passed since the landmark ECtHR ruling in <i>L. vs. Lithuania</i> case back in 2007, Lithuania still has not laid down specific regulations for LGR nor established a respective administrative procedure, leaving transgender individuals with a single option to access LGR through time consuming and costly judicial procedure. No legislative measures were taken on establishing conditions and administrative procedures of gender recognition (reassignment) although since 2014 Lithuania is subjected to the enhanced supervision procedure applied by the Committee of Ministers of the Council of Europe with the view to facilitate the execution of the binding ECtHR judgement.</p> <p>No legislative proposals aiming to establish a respective administrative procedure for LGR or corresponding policy measures have been recorded recently, however Christian party has declared its intent to prohibit legal gender reassignment (recognition) procedures (LGR) on the 30th of June, 2020.</p>
<p>Transgender Youth in Lithuania Face Overwhelming Challenges in Education and Employment</p>	