

/Translation from Lithuanian/

THIRD INTERESTED PARTIES:

Vladimiras Simonko
Chairman of the Lithuanian Gay League

Eduardas Platovas
Project Coordinator of the Lithuanian Gay League

Vytautas Valentinavičius
Member of the Board of the Tolerant Youth Association

TO THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA
Handed over via Vilnius Regional Administrative Court
Žygimantų g. 2, Vilnius

APPLICANTS:

Prosecution Service of the Republic of Lithuania
Rinktinės g. 5A, Vilnius

Member of Kaunas City Municipality Council Stanislovas Buškevičius
Laisvės al. 96, Kaunas

RESPONDENT:

Vilnius City Municipal Government Administration
Konstitucijos pr. 3, Vilnius

5 May 2010

SEPARATE APPEAL

Regarding the Decision adopted on 05/05/2010 by Vilnius Regional Administrative
Court

On 5 May 2010, Vilnius Regional Administrative Court considered applications lodged
by Stanislovas Buškevičius, member of Kaunas City Municipality Council, and the
Prosecutor General of the Republic of Lithuania requesting that executive order No. 40-

352 of 23/04/2010 of the director of Vilnius City Municipal Administration ‘Regarding permission to organise the march “For Equality”’ be revoked, on the basis of which we, Vladimiras Simonko, Eduardas Platovas, and Vytautas Valentinavičius, were issued a permit ‘Regarding the agreed location, time, and form of the event’ for the march ‘For Equality’ on 8 May 2010 12:00–14:

The court, having investigated the applications lodged, decided to grant the applicant’s requests and to suspend the validity of Clauses 1–4 of executive order No. 40-352 of 23/04/2010 of the director of Vilnius City Municipal Administration ‘Regarding permission to organise the march “For Equality”’ until the day of the court ruling coming into effect.

We do not agree with the decision of Vilnius Regional Administrative Court of 05/05/2010 and believe it to be ungrounded and unlawful for the reasons stated below.

1. Application of provisional security measure is ungrounded

The right to assembly in peaceful meetings is entrenched in *Article 36 of the Constitution of the Republic of Lithuania* which stipulates that ‘*Citizens may not be prohibited or hindered from assembling in unarmed peaceful meetings. This right may not be subjected to any restrictions except those which are provided by law and are necessary to protect the security of the State or the community, public order, people’s health or morals, or the rights and freedoms of other persons.*’

This constitutional provision shows that the right to the freedom of assembly is not absolute and may be limited on the grounds laid down in the law. These grounds are itemised in *Article 11 (1) (2) of the Law on Assemblies of the Republic of Lithuania*: ‘*<...> the refusal to issue such a permit, if the organisation of a meeting may infringe the security of the State or the community, public order, people’s health or morals, or the rights and freedoms of other persons.*’

By way of analogy, a conclusion may be drawn that the principle of the security of the State or the community, public order, people’s health or morals, or the rights and freedoms of other persons are the only grounds for both restricting the right to the freedom of assemblies by denial of the permit regarding the agreed location, time, and form of the meeting (hereinafter—the Permit) and, should any new circumstances occur, by repealing the issued Permit and applying measures to secure the request which, actually, would mean restriction of the right to organise a peaceful meeting

(Article 71 of the Law on Administrative Proceedings). In the latter case, any other grounds for restricting the exercise of the right to assemblies are considered to have no legal effect.

It should be noted that in the Ruling of 07/01/2007 the Constitutional Court of the Republic of Lithuania 2007-01-07 established that '*the head of the executive body of the Municipality Council or his delegated representative adopting a decision to deny a permit to the organiser of a meeting regarding the agreed location, time, and form of the meeting is bound by the grounds for restriction of the freedom to meetings stipulated in Paragraph 2 of Article 36 of the Constitution: by adopting a decision he must provide clear evidence of how specifically the meeting will infringe the security of the State or the community, public order, people's health or morals, or the rights and freedoms of other persons.'*

As has been stated above, this interpretation of the Constitutional Court has legal effect and *mutatis mutandis* is applied when deciding the legitimacy of revocation of the issued permit or restriction of a peaceful meeting by applying measures to secure a request. This means that the applicants had a legal obligation to provide specific factual evidence regarding application of the grounds for limiting the freedom of assemblies specified by them.

From the application lodged by the Prosecutor General of the Republic of Lithuania on 03/05/2010 it is evident that the Prosecutor General based both his request to revoke executive order No. 40-352 of 23/04/2010 of the director of Vilnius City Municipal Administration 'Regarding permission to organise the march "For Equality" and the request to suspend the validity of Clauses 1–4 of executive order No. 40-352 of 23/04/2010 of the director of Vilnius City Municipal Administration 'Regarding permission to organise the march "For Equality"' by applying measures to secure the request on the ground that '*<...> the health of people participating in the march may be damaged by organising the meeting <...>*'. This is one of the grounds stipulated in Article 11 (1) (2) of the Law on Assemblies, which, following the above interpretation provided by the Constitutional Court, must be based on clear evidence.

The application of the Prosecutor General provides statistical information that specifies the number of pre-trial investigations started on the basis of Article 170 of the Criminal Code. It should be noted that the majority of these investigations carried out because of comments that appear on the internet which are incitements against members of various groups; however, there are no current cases of law where any violence has been exercised against people of non-traditional sexual orientation or any physical destructive acts against them. Therefore, the said statistical information is of an abstract

nature and does not reflect the current situation, but only possible trends and therefore cannot be treated as specific evidence of possible damage to the health of the participants of the meeting.

The application of the Prosecutor General also contains the abstract phrase that '*the information is available that members of radical and ill-disposed groups are planning to protest against the march "BalticPride 2010" on May 8 by organising various provocations.*' In this specific case no data is provided: no individuals or groups of individuals who are arranging provocations are identified, no pre-trail investigation has been started either on grounds of Article 170 (3) of the Criminal Code regarding public incitement of violence or physical violence against a group of persons on grounds of their sexual orientation or on the grounds of Article 170¹ of the Criminal Code regarding accomplices or establishment of an organised group or organisation, participating in or supporting it aiming to discriminate against a group of individuals on grounds of their sexual orientation.

The 'data' provided in the application of the Prosecutor General are in contrast with the public statements of 05/05/2010 of the Mayor of Vilnius, Juozas Navickas¹; of 04/04/2010 of the Deputy Chief of the Police, Saulius Skvernelis², and of 04/04/2010 of the Chief of the Police of Vilnius District, K. Lančinskas³, where these officials maintained that the police were ready to ensure public order and security of the participants and guests during the march 'For Equality'. Since in their preparation for the march the appellants closely cooperated with Vilnius City Municipal Government and the police, these institutions have sufficient information about the preparation for the peaceful meeting and the absence of any external threat from radical groups.

According to the standard practice of the Supreme Administrative Court in Lithuania, the issue of the security of request must be considered in view of the nature of the request, factual basis provided, the rights granted by the contested act and possible actual exercise of these rights, their impact on other individuals, and also whether the application of the security measure, according to the established circumstances, would

¹ <http://www.alfa.lt/straipsnis/10355592/?Geju.eitynes.pakibo.ant.plauko=2010-05-05> (enclosed)

² <http://www.diena.lt/naujienos/miestas/policija-dar-karta-patikino-esanti-pasirengusi-geju-eitynems-276690>, see 05/05/2010 (enclosed)

³ <http://www.delfi.lt/news/daily/lithuania/vilniaus-policijos-vadovas-policija-yra-pasirengusi-uztikrinti-viesaja-tvarka-per-eitynes.d?id=31838165>; see 05/05/2010 (enclosed)

be adequate to the aim sought and would not violate the principle of proportionality, balance of interests of the parties of the proceeding, and public interests (Ruling of the Supreme Administrative Court of Lithuania of 21 September 2006 in the administrative case AS⁶-496/2006; Ruling of 23 November 2006 in the administrative case AS¹⁵-622/2006; and Ruling of 30 September 2008 in the administrative case AS⁵⁵⁶ – 548/2008).

When expressing its arguments with regard to the Decision passed, the Court noted as follows: "The totality of the evidence available in the case allows us to draw the conclusion that the application of the demand assurance measure as provided for in item 3 of paragraph 2 of article 71 of the Law on the Proceedings of Administrative Cases is adequate with the view of the objective being pursued and does not violate the principle of proportionality or the proceedings parties' interests or public interests. Taking into consideration the fact that the Prosecution Service has not taken any legal measures in order to prevent the incitement of hatred and physical violence with regard to the participants and organisers of the "For Equality" march and no criminal proceedings have been initiated with regard to the possible inciters of hatred, and considering the protection of public order ensured by Vilnius City Municipal Government and the Police, it should be concluded that when passing the ruling being disputed Vilnius Regional Administrative Court did not have any information about possible instances of damage being caused to health during the planned meeting.

In the absence of any evidence of threats to the safety of the participants and guests of the "For Equality" march, Vilnius Regional Administrative Court did not have the right to base its reasoning on the issue of people's health and to apply the demand assurance measure which would prohibit the holding on 8 May 2010 of the planned "For Equality" march.

It should be noted that the demand of 30 April 2010 of Kaunas City Municipal Government Council Member Stanislovas Buškevičius did not list any basis for the restriction of the freedom of assemblies or evidence of any possible threat posed by the "For Equality" march to the values listed in item 2 of paragraph 1 of article 11 of the Law of the Republic of Lithuania on Assemblies. Taking into consideration the fact that the demand of Kaunas City Municipal Government Council Member Stanislovas Buškevičius to apply the demand assurance measure should be acknowledged as unsubstantiated, Vilnius Regional Administrative Court should not have taken the demand into consideration when passing the Decision being disputed.

2. The application of the temporary measure is not compulsory in a democratic state

The European Court of Human Rights (ECHR), when applying the proportionality test, considers whether restriction of the freedom of self-expression was necessary in a democratic society (see *Refah Partisi et al. v. Turkey*, § 86-89; *Christian Democratic Peoples Party v. Moldova*; *Baczkowski et al. v. Poland*, § 61). The European Court of Human Rights defines a democratic society as pluralistic, tolerant, and broadminded (see *Young, James and Webster v. UK*, ruling of 13 August 1981, § 63; *Chassagnou et al. v. France*, § 112). The court also emphasised this provision in the case *Baczkowski* (§ 63), stating that when talking about the essence of the concept of a “democratic society” particular attention is given to pluralism, tolerance, and broadmindedness.

In its turn, the Constitutional Court of the Republic of Lithuania noted as follows in its Ruling of 7 January 2007: “the constitutional stipulation of the freedom of assemblies means that it is viewed as one of the fundamental human freedoms and values in a democratic society and as an integral characteristic of the democratic order. It is an important condition for the implementation of the seeking for an open, just, and harmonious civil society and rule of law stipulated in the Constitution. The freedom of assemblies is the citizens’ right to participate in such assemblies and freely express their opinion and views, which ensures the expression of a person’s civic activity in society and state”.

Taking into consideration the fact that the Constitution of the Republic of Lithuania, the Law of the Republic of Lithuania on Assemblies, and the ratified international human rights conventions (such as the European Convention on Human Rights) all provide for the freedom of assemblies, taking into account that Vilnius Municipal Government has already issued a permit with regard to the assembly being organised (“For Equality” march), and, what is even more important, the Head of Vilnius Police Kęstutis Lančinskas has publicly confirmed (a copy of the article “Head of Vilnius Police: the Police is ready to ensure public order during the march” is attached) that “the Police are ready to ensure public order during the sexual minorities march”, a reasonable question arises of whether, while the Police is ready to ensure public order during the event, is it actually necessary to restrict to the maximum the applicants’ freedom of assemblies, i.e. to prohibit the assembly being planned (the “For Equality” march) and not to permit holding it as planned on 8 May 2010.

3. The application of the temporary measure is a disproportional measure for the objective being pursued

We would like to point out that the application of the temporary measure is not temporary and that it essentially prohibits the holding of the sanctioned assembly (event), i.e. the “For Equality” march.

The Court specified in its Decision as follows: “Taking into consideration the nature of the dispute, the demand to ensure the application of the demand—the temporary suspension of the validity of Order No. 40-352 of 23 April 2010 of the Director of Vilnius City Municipal Government Administration, will not create any obstacles to the holding of such a march later in the case where the Court, having considered the case based on the applicants’ claim, acknowledges Order No. 40-352 of 23 April 2010 of the Director of Vilnius City Municipal Government Administration as lawful and substantiated”.

Although the Decision has been passed by the Court and the temporary measures, i.e. suspension, have been imposed, the application of these measures—as was mentioned before—is not temporary, i.e. the measure is not being applied until the date of the event but rather is valid until the dispute is settled in court – that is, after the date of the event. This means that the Court has actually not applied temporary measures but has rather prohibited the holding of the event (the “For Equality” march) which had been approved according to the procedure set in legislation. We believe that such restriction of our freedom of assemblies to the maximum extent is neither lawful nor proportional to the objective being pursued.

Taking into consideration the circumstances of the case and the fact that only two days remain until the date of the peaceful assembly to be held, i.e. the “For Equality” march (5 May 2010), we hereby ask that the Separate Appeal being submitted be considered according to the urgent written proceedings.

Taking into consideration the aforementioned and pursuant to the provisions of article 36 of the Constitution of the Republic of Lithuania, article 11 of the European Convention on Human Rights, and item 3 of paragraph 2 of article 71 of the Law of the Republic of Lithuania on the Proceedings of Administrative Cases,

we hereby request as follows:

1. To annul the Decision of 5 May 2010 of Vilnius Regional Administrative Court as unlawful and unsubstantiated.

ANNEXES:

1. Copy of the announcement of 22/01/2010 about the organisation of the march – 4 pages.
2. Certificate No LGL 201005051 of 05/05/2010 issued by the Lithuanian Gay League – 1 page.
3. Extract from the Meeting of the Board of the Lithuanian Gay League No. 201001-04 of 01/05/2010 – 1 page.
4. Extract from the Centre of Registers confirming that Vytautas Valentinavičius is a member of the Board of the Tolerant Youth Association – 1 page.
5. Copy of Decree No. 40-352 of 23/04/2010 of the Director of Vilnius City Municipality Administration Regarding the Permission to Organise the march "For Equality" – 2 pages.
6. Copy of Permission (certificate) No. A35-120(2.3.4.2-SM3) of 23/04/2010 issued by Vilnius City Municipality Administration Regarding the Agreed Place, Time and Form of the Event (Meeting) - 2 pages.
7. Copy of Application No. D2-145 of 30/04/2010 of Mr. Stanislovas Buškevičius, member of the Board of Kaunas City Municipality to Vilnius Regional Administrative Court – 2 pages.
8. Copy of Application No 13.9-9 of 03/05/2010 of the Prosecutor General of the Republic of Lithuania defending the public interest – 3 pages.
9. Copy of the resolution of Vilnius Regional Administrative Court of 05/05/2010 – 3 pages.
10. "Head of Vilnius Police: the police is ready to ensure public order during the march", Delfi.lt, 4 May 2010 – 1 page.
11. "Court suspends the permission to organise gay march - the President is surprised", Delfi.lt, 05/05/2010 – 2 pages.
12. "Irena Degutienė: once the permission is issued, the task of the police is to ensure order", Delfi.lt, 5 May 2010 – 1 page.
13. "Gay march is on the line", Alfa.lt, 5 May 2010 – 1 page.
14. "The police assured that they are ready for the gay march", Diena.lt, 5 May 2010 – 2 pages.

Vladimiras Simonko
Chairperson of the Board of the Lithuanian Gay League

(signature)

Eduardas Platovas
Project Coordinator of the Lithuanian Gay League

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Vytautas Valentinavičius
Member of the Board of the Tolerant Youth Association

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