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123<sup>rd</sup> Session of the Human Rights Committee  
Review of the Forth Periodic Report of Lithuania (LOIPR)

**Additional Information on the List of Issues (CCPR/C/LTU/QPR/4)**  
**Question No. 8 – Rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People**  
**Question No. 9 – Hate Crimes and Hate Speech**

## **“We Are People, Not Propaganda”: Situation of LGBTI People in Lithuania**

Submitting Organization:



**National LGBT\* Rights Organization LGL**

[www.lgl.lt/en](http://www.lgl.lt/en)

Supporting Organizations:



**ILGA**  
[www.ilga.org](http://www.ilga.org)



**ILGA-Europe**  
[www.ilga-europe.org](http://www.ilga-europe.org)

### **Contact Person:**

Tomas Vytautas Raskevičius  
Policy Coordinator (Human Rights)  
National LGBT\* Rights Organization LGL  
Address: Pylimo Str. 21, LT-01141 Vilnius, Lithuania  
Tel: +370 5 261 0314  
E-mail: [tomas@gay.lt](mailto:tomas@gay.lt)

## TABLE OF CONTENTS

<b>Questions</b>	<b>3</b>
<b>Recommendations</b>	<b>3</b>
<b>EXECUTIVE SUMMARY</b>	<b>4</b>
<b>Progress and Gaps in Implementation of Concluding Observations CCPR/C/LTU/CO/3</b>	<b>5</b>
<b>Background Information</b>	<b>7</b>
<b>Right to Freedom of Expression [Article 19 of ICCPR]</b>	<b>8</b>
<i>Discriminatory Application of the Law on the Protection of Minors against the Detrimental Effect of Public Information</i>	<i>8</i>
<b>Right to Family Life, Equality and Non-Discrimination [Article 17 and Article 26 of ICCPR]</b>	<b>11</b>
<i>Absent Legal Recognition of Same-Sex Relationships</i>	<i>11</i>
<b>Right to Life, Liberty and Security of the Person [Article 6 and Article 9 of ICCPR]</b>	<b>13</b>
<i>Hate Speech and Hate Crime on the Ground of Sexual Orientation and (or) Gender Identity</i>	<i>13</i>
<b>The Right to Privacy [Article 17 of ICCPR]</b>	<b>15</b>
<i>Failure to Establish Administrative Legal Gender Recognition and Medical Procedures</i>	<i>15</i>
<b>Right to Equality and Non-Discrimination [Article 26 of ICCPR], Right to Life, Liberty and Security of the Person [Article 6 and Article 9 of ICCPR], Right to Privacy and Family Life [Article 17 of ICCPR], Right to Freedom of Expression [Article 19 of ICCPR], Right to Freedom of Peaceful Assembly [Article 22 of ICCPR]</b>	<b>18</b>
<i>Homophobic and Transphobic Legislative Initiatives</i>	<i>18</i>

## QUESTIONS

1. Why interferences with the right to freedom of expression of LGBTI people and LGBTI organizations under the *Law on the Protection of Minors* are considered to meet the requirements of *lawfulness, necessity* and *proportionality*? Has the Article 4.2.16 of the *Law on the Protection of Minors* been used to censor any other, i.e. non-LGBTI related, public information? Does the Government have any plans to amend the Article 4.2.16 of the *Law on the Protection of Minors*?
2. Are same-sex couples, living in stable *de facto* relationships, considered as “family members” under the Lithuanian legal system? Does the Government have any particular plans (including specific timeframe) to ensure legal recognition of same-sex families?
3. According to the official data, eight instances of hate crimes on grounds of sexual orientation were registered in 2016, two instances in 2017 and five instances in 2018. Do these numbers reflect the actual prevalence of anti-LGBTI hate crimes in the country? If not, what are the underlying reasons?
4. What are the main challenges with the aim of introducing administrative procedure for legal gender recognition, especially taken into account the established jurisprudence by the national courts on changing personal identification documents for transgender persons?

## RECOMMENDATIONS

1. To amend Article 4.2.16 of the *Law on the Protection of Minors* so that it is not applied with the view of censoring LGBTI related public information in the future.
2. To introduce legal recognition of same-sex relationships granting the rights and obligations of “family members” for same-sex partners.
3. Ensure effective investigation and prevention (e.g. providing comprehensive trainings for law enforcement officers, organizing awareness raising campaigns, establishing specific LGBTI units/focal points in police headquarters, etc.) of hate speech and hate crimes on grounds of sexual orientation and (or) gender identity.
4. Establish quick, transparent and accessible administrative procedure for legal gender recognition. Enable appropriate healthcare services for transgender individuals within the framework of the public health care system.

## KEY WORDS

LGBTI, sexual orientation, gender identity, censorship, freedom of expression, same-sex relationships, family life, hate speech, hate crimes, legal remedy, legal gender recognition, gender reassignment treatment, homophobic and (or) transphobic legislative initiatives.

## EXECUTIVE SUMMARY

1. This submission, developed by the civil society organization National LGBT\* Rights Organization LGL, and supported by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and ILGA-Europe, outlines the main challenges in ensuring civil and political rights for LGBTI people in Lithuania. In the period between 2012 and 2018 the Lithuanian authorities did not seek to comprehensively address the tendencies of social, legal and institutional discrimination on the grounds of sexual orientation and (or) gender identity. On the contrary, certain aspects indicate that respect for human rights of LGBTI people in Lithuania is deteriorating.
2. First of all, the *Law on the Protection of Minors against the Detrimental Effect of Public Information* has been applied on three different occasions with the view of **censoring LGBTI related public information**. The Lithuanian authorities claim that this discriminatory interference with the right to freedom of expression is necessary to protect the “emotional, spiritual, psychological development and health of the minors”, thus creating a chilling effect on talking publicly about LGBTI issues in the Lithuanian society.
3. Secondly, Lithuania remains one of a few jurisdictions in the European Union **without any legal recognition of same-sex relationships**. The Lithuanian Parliament has not only dismissed a bill on introducing gender-neutral registered partnerships, but now is considering a legislative motion on “cohabitation agreements” which would strip same-sex couples of the family status all together.
4. Thirdly, the Lithuanian authorities have systematically failed in investigating reported instances of **hate speech and hate crimes** on grounds of sexual orientation and (or) gender identity. In some cases, the law enforcement officials simply refused to start pre-trial investigations, thus leaving the members of the local LGBTI community without any possibility for legal redress.
5. Fourthly, Lithuania remains one of a few European jurisdictions without any administrative procedures of **legal gender recognition and gender reassignment treatment**. Despite the fact that transgender people remain disproportionately affected by instances of discrimination, harassment and violence, gender identity is not covered by Lithuanian anti-discrimination and hate crime legislation. Since April, 2017 as a result of strategic litigation efforts the right to legal gender recognition is granted by the national courts without the sterilization requirement, i.e. based solely on mental diagnosis of ‘gender dysphoria’ and self-identification.
6. Finally, in the period between 2012 and 2018 the Lithuanian Parliament has considered nine openly **homophobic and (or) transphobic legislative initiatives**, effectively seeking to limit the rights and freedoms of LGBTI people. The vivid public debate around these legislative proposals has negatively impacted the social climate for LGBTI people in Lithuania, because it seemed as if fundamental rights and freedoms of LGBTI people could be simply revoked on a whim of political opportunism or discriminatory animus.

## PROGRESS AND GAPS IN IMPLEMENTATION OF CONCLUDING OBSERVATIONS CCPR/C/LTU/CO/3

7. In 2012, in its concluding observations on the third periodic report of Lithuania, the Human Rights Committee expressed its concerns that “*certain legal instruments such as the Law on the Protection of Minors against the Detrimental Effect of Public Information [...] may be applied in a manner unduly restrictive [...] and may have the effect of justifying discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals*”<sup>1</sup> and recommended that the State Party “*take all necessary measures to ensure that its **legislation is not interpreted and applied in a discriminatory manner against persons on the basis of their sexual orientation or gender identity.***”<sup>2</sup> In its concluding observations the Human Rights Committee also emphasized the importance of **awareness-raising campaigns, trainings for law enforcement officials, adoption of targeted national action plan and guaranteeing the rights to freedom of expression and freedom of assembly** in order to counter negative sentiments against LGBTI individuals in Lithuania.
8. In 2016, the Lithuanian Government provided additional information to the Human Rights Committee on follow-up to the concluding observations. According to the Lithuanian Government “*the Law [on the Protection of Minors against the Detrimental Effect of Public Information] considers as detrimental to minors not the public information in which the diversity or relationship of sexual minorities is depicted, but rather the one which encourages the notion 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. Therefore, **according to the Law, it is not the depiction of gender diversity that has detrimental effect on minors and is therefore restricted (not prohibited), but rather encouraging of family relationship between people of the same sex.***”<sup>3</sup> Furthermore, the Lithuanian Government claimed that interferences with the right to freedom of expression of LGBTI people and LGBTI organizations meet the requirements of *lawfulness* (i.e. prescribed by law), *necessity* (i.e. necessary in democratic society) and *proportionality* (i.e. proportionate to the aim sought).<sup>4</sup>
9. The LGBTI-specific recommendations, formulated by the Human Rights Committee in the concluding observations on the third periodic report of Lithuania, were reiterated by other human rights protection mechanisms as well. For example, within the second UPR cycle in 2016, Lithuania received 22 recommendations that directly focused on LGBTI issues.<sup>5</sup> Five of

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<sup>1</sup> Concluding Observations Adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, No. CCPR/C/LTU/CO/3,

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspsglUbPkaTnjMNLleQtzmKzv5EKMNU37hgBO8vvh0j7r1QmQmxCuAyR6T7pH1HBEDXPILz%2bRR9b7%2fmjliSSoHwDRvShCgWi9AbtGEwhx%2bn>, p. 2.

<sup>2</sup> Ibid., p. 3.

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

<sup>4</sup> Ibid., [26].

<sup>5</sup> UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review. Lithuania”, 34<sup>th</sup> Session, No. A/HRC/34/9, 27 December 2016, <https://daccess-ods.un.org/TMP/3726024.92570877.html>.

these recommendations focused on the discriminatory application of the *Law on the Protection of Minors against the Detrimental Effect of Public Information* (Rec. Nos. 100.87, 100.88, 100.89, 100.90 and 100.91), two recommendations encouraged the adoption of comprehensive legislation on legal gender recognition (Rec. Nos. 100.80, 100.93 and 100.94), and nine recommendations encouraged the Lithuanian Government to improve its response to hate crimes and hate speech on grounds of sexual orientation or gender identity (Rec. Nos. 100.73, 100.74, 100.75, 100.79, 100.81, 100.82, 100.83, 100.84 and 100.85). In 2017, the Lithuanian Government informed the Human Rights Council that it does not support recommendations 100.87 and 100.89, namely to amend and review the *Law on the Protection of Minors against the Detrimental Effect of Public Information*. The Government expressed its position that “*this Law is necessary for the protection of the child’s rights, and that proper, i.e. non-discriminatory application of the Law is facilitated by educational measures. The monitoring of the application of this Law does not indicate that the Law is being implemented in a discriminatory manner.*”<sup>6</sup> To put it in other words, the Lithuanian Government explicitly refused to consider the possibility of amending the legislative article, which up to the present day has been used exclusively with the view of censoring positive LGBTI-related public information.

10. The national process of coordinating the implementation of recommendations by the Human Rights Committee is executed within the general framework of discussing multiple recommendations, received from the international human rights protection mechanisms and treaty bodies. In the period between 2013 and 2017 once a year the Ministry of Justice organized meetings of coordination with the view of discussing the general issues pertaining to the process of implementing international recommendations. These meetings took place on 19 April 2013, 12 June 2014, 8 June 2015, 25 February 2016 and 6 April 2017. The association LGL was invited to participate in all of the above outlined meetings and used the opportunity to draw the relevant stakeholders’ attention to the lack of commitment by the national authorities in implementing the recommendations by the Human Rights Committee pertaining to human rights of LGBTI persons. Approximately 17 stakeholders (i.e. various NGOs and public institutions) were invited to participate in these meetings, thus rendering it extremely difficult to comprehensively address any substantive issues pertaining to effective implementation of the recommendations by the Human Rights Committee in a two-hour meeting organized once a year. In 2013, the Ministry of Justice encouraged other public institutions to organize separate meetings with the relevant stakeholders with the view of ensuring effective implementation of the international recommendations. In the period between 2013 and 2017 no additional meetings were organized with the view of discussing the LGBTI-related recommendations.
11. Taking all the above-mentioned considerations into account, the process of implementing the recommendations by the Human Rights Committee on the national level could be described as highly formalistic, i.e. seeking to showcase the process of coordination, but not delivering any concrete measures, strategies or solutions. As a result, we conclude that the recommendations made by the Human Rights Committee on LGBT human rights in 2012 have not been fully implemented by the Lithuanian Government.

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<sup>6</sup> UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review. Lithuania. Addendum. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review”, 34<sup>th</sup> Session, No. A/HRC/34/9/Add.1, 1 March 2017, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/34/9/Add.1&Lang=E>.

## BACKGROUND INFORMATION

12. The general prohibition of discrimination on the ground of sexual orientation in the Lithuanian legal system is established by the *Law on Equal Opportunities*,<sup>7</sup> which transposes the Employment Equality Framework Directive 2000/78/EC. The scope of the national equality legislation is much wider than mandated by the EU Directive, i.e. discrimination on the ground of sexual orientation is prohibited not only in the sphere of employment and occupation but also in the spheres of provision of goods and services, education and in the course of actions by all public authorities. The prohibition of discrimination on the ground of sexual orientation is also established in the *Labor Code*<sup>8</sup> (Article 2.1, Article 26, Article 59.2 and Article 75.1.2), the *Law on the Protection of Minors against the Detrimental Effect of Public Information*<sup>9</sup> (Article 4.2.12) and the *Law on Provision of Information to the Public*<sup>10</sup> (Article 19.1.3). Article 170 of the *Criminal Code*<sup>11</sup> prohibits incitement to hatred based on sexual orientation (i.e. prohibition of hate speech), while Article 60.12.1 qualifies acts committed in order to express hatred on the ground of sexual orientation as an aggravating circumstance within the framework of criminal proceedings (i.e. prohibition of hate crimes). While sexual orientation is a protected ground under the Lithuanian legislation, the same does not apply to the ground of gender identity and (or) gender expression. To put it in other words, **discrimination and hate-motivated incidents against transgender or gender non-conforming people would not technically qualify as punishable offences** in Lithuania.<sup>12</sup> Equally, the Lithuanian legislation does not cover intersex people, as it does not acknowledge sex characteristics or intersex status as a protected ground.
13. Despite the fact that Lithuanian legislation, in theory, provides for quite extensive legal guarantees against discrimination on the ground of sexual orientation, its implementation in practice is, at best, described as ineffective. Instances of discrimination on the ground of sexual orientation remain highly underreported. The Office of the Equal Opportunities Ombudsperson, i.e. the public body responsible for the implementation of the Law on Equal Opportunities, received four complaints regarding alleged instances of discrimination on the ground of sexual orientation in 2009, three in 2010, four in 2011, two in 2012, none in 2013, four in 2014, five in 2015, three in 2016 and three in 2017.<sup>13</sup> Taking into account the

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<sup>7</sup> Law on Equal Opportunities of the Republic of Lithuania, No. IX-1826, last amendments on 27 July 2017, <https://www.e-tar.lt/portal/lt/legalAct/TAR.0CC6CB2A9E42/TYmbevkrZH>.

<sup>8</sup> Labour Code of the Republic of Lithuania, No. XII-2603, 14 September 2016, <https://e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89/PuJiRmfzLF>.

<sup>9</sup> Law on the Protection of Minors against the Detrimental Effect of Public Information, No. IX-1067, last amendments on 5 November 2011, [https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS\\_410367](https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS_410367).

<sup>10</sup> Law on the Provision of Information to the Public of the Republic of Lithuania, No. I-1418, 11 July 2006, <https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/wRduXQRGBC>.

<sup>11</sup> Criminal Code of the Republic of Lithuania, No. VIII-1968, last amendments on 29 November 2017, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/ZpNMZQSaRN>.

<sup>12</sup> For example, in 2015 a transgender woman was denied access to breast augmentation surgery, because she was “biologically male”. The Office of the Equal Opportunities Ombudsperson did not accept the trans woman’s claim regarding possible discrimination, because the Law on Equal Opportunities prohibiting discrimination in the sphere of providing goods and services does not cover the ground of gender identity; for further reference, please see: “Romanian Trans Woman Denied Surgery in Lithuania”, *lgl.lt*, 28 July 2015, <http://www.lgl.lt/en/?p=10577>.

<sup>13</sup> The Annual Report of the Office of the Equal Opportunities Ombudsperson, Vilnius, 2017, <http://lygybe.lt/data/public/uploads/2018/03/lygiu-galimybiu-kontrolieriaus-2017-m.-veiklos-ataskaita.pdf>, p. 27.

widespread phenomenon of discrimination on the ground of sexual orientation indicated by international surveys and opinion polls (*see paragraph 8*), it can be concluded that the national equality body is not perceived as an effective remedy with the view of addressing experienced injustices.

14. Despite the fact that there are no comprehensive national surveys on the situation of LGBTI people in Lithuania, various international surveys and opinion polls indicate that Lithuania remains one of the most socially hostile societies against LGBTI people in the European Union (EU). According to the LGBTI Survey by the EU Agency for Fundamental Rights (FRA), 61 % of the Lithuanian respondents experienced discrimination or harassment in the last twelve months on grounds of their actual or perceived sexual orientation.<sup>14</sup> In addition to this, 27 % of the Lithuanian respondents felt discriminated against in the last twelve months when looking for a job and (or) at work.<sup>15</sup> These negative patterns correlate with attitudes by members of the general public. According to the *Special Eurobarometer 437* survey, 44 % of the Lithuanian respondents would feel totally uncomfortable working with an LGB person, while this number increases to 49 % regarding a trans colleague.<sup>16</sup> Furthermore, 79 % of the Lithuanian respondents would feel totally uncomfortable if their children were in a love relationship with a person of the same sex and 82 % would feel totally uncomfortable if their children dated a transgender person.<sup>17</sup> It can be concluded that the social acceptance of LGBTI persons in Lithuania remains to be very low, thus subjecting them to instances of discrimination, harassment and violence.

#### **RIGHT TO FREEDOM OF EXPRESSION [ARTICLE 19 OF ICCPR]**

##### ***Discriminatory Application of the Law on the Protection of Minors against the Detrimental Effect of Public Information***

15. Article 4.2.16 of the *Law on the Protection of Minors against the Detrimental Effect of Public Information* stipulates that “public information shall be attributed to information which has a detrimental effect on minors [...] which expresses contempt for family values, encourages the concept of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania”.<sup>18</sup> Concerns regarding the potentially discriminatory application of this legal provision with the view of disproportionately limiting the right to freedom of expression of LGBTI persons were raised by the first UPR cycle in 2011 (i.e. Rec. Nos. 90.10 and 90.11)<sup>19</sup>, the concluding observations on the third periodic report of Lithuania under the ICCPR (i.e. Rec. No. 8)<sup>20</sup> and

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<sup>14</sup> EU Agency for Fundamental Rights, *European Union lesbian, gay, bisexual and transgender survey. Results at a glance*, Vienna, 2013, [http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance\\_en.pdf](http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf), p. 15.

<sup>15</sup> *Ibid.*, p. 16.

<sup>16</sup> European Commission, ‘Discrimination in the EU in 2015. Report’, *Special Eurobarometer 437*, Brussels, 2015, <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68004>, p. 54, 63.

<sup>17</sup> *Ibid.*, p. 56, 65.

<sup>18</sup> *Supra* 9.

<sup>19</sup> UN Human Rights Council, “Report of the Working Group on the Universal periodic Review. Lithuania”, 19<sup>th</sup> Session, No. A/HRC/19/15, 19 December 2011,

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/174/85/PDF/G1117485.pdf?OpenElement>.

<sup>20</sup> *Supra* 1.



the second UPR cycle (i.e. Rec. Nos. 100.87, 100.88, 100.89, 100.90 and 100.91)<sup>21</sup>. In the period between 2013 and 2014 the provision in question was applied on three different occasions with the view of interfering with the right to freedom of expression of LGBTI persons.

16. In May, 2013 the association LGL approached the national broadcaster LRT with an inquiry about the possibility of broadcasting promotional videos for the *Baltic Pride 2013*<sup>22</sup> on national television. On 4 July 2013 the national broadcaster indicated that the videos can be broadcasted only during the restricted timeframes (i.e. after 11 PM for video (A) and after 9 PM for video (B)) and marked with corresponding age indexes (i.e. “S” as an “adult content” for video (A) and “N-14” as not suitable for minors under 14 years of age for video (B)). According to the national broadcaster, these limitations were necessary, because “[t]he clips potentially encourage the concept of entry into a marriage and creation of a family other than stipulated in the *Constitution* and the *Civil Code*.”<sup>23</sup> The association LGL appealed this decision before the Office of the Inspector of Journalist Ethics, i.e. the public body responsible for the supervision of the implementation of the *Law on the Protection of Minors*. On 23 September 2013 the Inspector of Journalist Ethics issued a **legally binding decision**, indicating that the national broadcaster reasonably refused to broadcast the video clips during the daytime to comply with the objective of the protection of minors.<sup>24</sup>
17. Upon receiving a complaint from the Ministry of Culture, on 8 April 2014 the Inspector of Journalist Ethics issued a **recommendation** No. G-190/S-244, indicating that two fairy tales about same-sex relationships within the fairy tale book “Amber Heart”<sup>25</sup> “portray same-sex relationships as normal and self-evident and thus are detrimental to the fragile worldview of a child, [...] therefore causing detrimental effect upon minors under 14 years of age”.<sup>26</sup> Based on this recommendation, the publisher of the book (i.e. the Lithuanian University of Educational Sciences) terminated the dissemination of the book. The author appealed the decision by the Inspector of Journalist Ethics before the national courts. On 24 July 2014 the Vilnius Regional Administrative Court dismissed the author’s complaint as unfounded. According to the court, the recommendation No. G-190/S-244 “does not cause any rights or obligations either to the author, or to the publisher. [...] Therefore the documents complained about cannot be the object of litigation before the administrative court.”<sup>27</sup> As a result, the author made a legal claim against the publishing house directly. On 16 April 2015 the Vilnius City District Court did not establish any facts of discrimination by the publisher and dismissed the legal claim by the author.<sup>28</sup> On 2 March 2016 the Vilnius Country Court upheld the decision.<sup>29</sup> On 6 December 2016 the Supreme Court of Lithuania reversed the

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<sup>21</sup> *Supra* 5.

<sup>22</sup> The videos in question can be seen here: (A) [https://www.youtube.com/watch?v=8rDP\\_t2QcmI](https://www.youtube.com/watch?v=8rDP_t2QcmI) and (B) <https://www.youtube.com/watch?v=wCaGtQEYY0w>.

<sup>23</sup> Lithuanian National Radio and Television, „Dėl LGL socialinės reklamos transliavimo LRT televizijos eteryje“, No. 4RA-673-(TV1), 4 July 2013.

<sup>24</sup> The Office of the Inspector of Journalist Ethics, “Dėl Lietuvos gėjų lygos socialinių reklamų (klipų) skleidimo“, No. SPR-93, 23 September 2013.

<sup>25</sup> The audio recordings of the two fairy-tales in question about same-sex relationships in Lithuanian language can be listened to here: <http://manoteises.lt/enciklopedija/pasaku-rinkinys-gintarine-sirdis>.

<sup>26</sup> The Office of the Inspector of Journalist Ethics, Decision No. G-190/S-244, 8 April 2014.

<sup>27</sup> The Vilnius Regional Administrative Court, Case No. I-9157-142/2014, 24 July 2014, <http://eteismai.lt/byla/180577795820795/I-9157-142/2014>.

<sup>28</sup> The Vilnius City District Court, Case No. e2-3003-432/2015, 16 April 2015.

<sup>29</sup> The Vilnius Country Court, Case No. e2A-310-262/2016, 2 March 2016.

judgment by the second instance court by stating that “the second instance court [...] has failed to conduct an independent assessment of the contents of the book in question and to assess its impact upon the minors regarding the proportionality of the limitation in question.”<sup>30</sup> The Supreme Court has ordered a retrial of the case in question.

18. Upon a request by the association LGL, on 24 September 2014 the Inspector of Journalist Ethics issued a **recommendation** No. (SK-123)S-542<sup>31</sup> with the view of assessing a social video.<sup>32</sup> The expert group within the Office concluded that “by showing same-sex couples engaging in various activities together, [...] the idea is being imposed that the family can be created by two persons of the same gender. [...] Therefore the information in the video clip has detrimental effect on the emotional, spiritual, psychological development and health of the minors.”<sup>33</sup> Multiple commercial television channels have refused to broadcast the video based on this recommendation. The association LGL has appealed recommendation No. (SK-123)S-542 before the national courts. On 24 October 2014 the Vilnius Regional Administrative Court<sup>34</sup> and on 15 December 2014 the Lithuanian Supreme Administrative Court<sup>35</sup> refused to accept the applicant’s complaint, because allegedly no legal rights and obligations emanate from a recommendation in question. It can be concluded that the association LGL did not have any effective legal remedy with the view of challenging the imposed limitation on its right to freedom of expression within the framework of the national legal system.
19. In 2016, within the framework of providing information on follow-up to the concluding observations on the third periodic report of Lithuania under the ICCPR, the Lithuanian Government stated explicitly that “*according to the Law, it is not the depiction of gender diversity that has detrimental effect on minors [...], but rather encouraging of family relationships between people of the same sex.*”<sup>36</sup> Furthermore, the Lithuanian Government claimed that the interference with the right to freedom of expression of LGBTI people and LGBTI organizations meets the requirements of *lawfulness* (i.e. prescribed by law), *necessity* (i.e. necessary in democratic society) and *proportionality* (i.e. proportionate to the aim sought).<sup>37</sup> However, the Lithuanian Government fails in elaborating why it deems it necessary to limit public information about a socially vulnerable group and what exact values of a democratic society are being protected. Also, the legal provision in question (i.e. Article 4.2.16) has never been applied with the view of limiting any other, i.e. non-LGBTI related, public information, thus indicating that it was designed specifically for this purpose. Finally, the application of the law with the view of censoring LGBTI related public information has caused a chilling effect among the online media outlets, as they have started branding news items pertaining to LGBTI issues as suitable only for adults. It can be concluded that the limited positive information about LGBTI issues in the public sphere further reinforces a socially hostile atmosphere for LGBTI people in Lithuania. Finally, the Lithuanian Government in its information on follow-up to the concluding observations states that “[i]t is

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<sup>30</sup> The Supreme Court of Lithuania, Case No. e3K-3-497-611/2016, 6 December 2016.

<sup>31</sup> The Office of the Inspector of Journalist Ethics, „Dėl išvados pateikimo“, No. (SK-123)S-542, 24 September 2014.

<sup>32</sup> The video can be seen here: [https://www.youtube.com/watch?v=jmiakuCrJ\\_c](https://www.youtube.com/watch?v=jmiakuCrJ_c).

<sup>33</sup> *Supra* 31.

<sup>34</sup> Vilnius Regional Administrative Court, Administrative Case No. I-10326-643/2014, 24 October 2014.

<sup>35</sup> Lithuanian Supreme Administrative Court, Administrative Case No. AS<sup>602</sup>-1262/2014, 15 December 2015.

<sup>36</sup> *Supra* 3, para. [20].

<sup>37</sup> *Ibid.*, para. [26].

extremely important that the application of the Law by the Inspector has *not* been recognized as discriminatory or unduly restricting the freedom of expression on the basis of sexual orientation by any court or other state authority.”<sup>38</sup> As a result of the Supreme Court’s judgment of 6 December 2016,<sup>39</sup> this defensive statement by the Lithuanian Government should be considered as factually incorrect.

## **RIGHT TO FAMILY LIFE, EQUALITY AND NON-DISCRIMINATION [ARTICLE 17 AND ARTICLE 26 OF ICCPR]**

### ***Absent Legal Recognition of Same-Sex Relationships***

20. Lithuania remains one of a few jurisdictions in the European Union without any legal recognition of same-sex families and their relationships. The Article 38 of the Constitution explicitly states that “[m]arriage shall be concluded upon the free mutual consent of man and woman”<sup>40</sup>, while the Article 3.339 of the Civil Code foresees a separate law that should lay down the procedure for registering a partnership between a man and a woman.<sup>41</sup> Despite the fact that the Civil Code was adopted in 2000, the law on registered partnerships (for different-sex couples) has never been adopted. In 2011 the Lithuanian Constitutional Court provided a progressive interpretation of the constitutional concept of “family life” by indicating that “[it] does not mean that [...] the Constitution does not protect and defend families **other than those founded on the basis of marriage**, *inter alia*, the relationship of a man and a woman living together without concluding a marriage, which is based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, shared upbringing of the children and similar ones, as well as on the voluntary determination to take on certain rights and responsibilities [...]”.<sup>42</sup> While the Constitutional Court did not mention same-sex families in its judgment explicitly, the legal reading of the judgment indicate that same-sex families potentially fall under the ambit of the constitutional concept of “family life”.
21. In 2016 the Lithuanian Parliament voted in favor of the constitutional amendment, which seeks to limit the constitutional concept of “family life” as emanating exclusively from a marriage between a man and a woman and from a relationship of “motherhood and fatherhood”.<sup>43</sup> This vote implicates that at some point the Parliament will hold the first hearing with the view of adopting this constitutional amendment. In order for it to be adopted, the Parliament will have to vote in favor of the amendment twice, securing the majority of 94 votes (out of 141 votes) in favor on both occasions. There has to be at least three months break between the two votes. The proposed amendment would effectively exclude same-sex couples from the constitutional protection of “family life”. In practice the exclusion from the constitutional protection of “family life” implicates the loss of various economic and social benefits, such as the right to receive information on patient’s health,

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<sup>38</sup> *Ibid.*, para. [27].

<sup>39</sup> *Supra* 30.

<sup>40</sup> Constitution of the Republic of Lithuania, 25 October 1992, <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

<sup>41</sup> Civil Code of the Republic of Lithuania, No. VIII-1864, 18 July 2000, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687/oarOuAMgl>.

<sup>42</sup> Constitutional Court of the Republic of Lithuania, Case No. 21/2008, 28 September 2012, <http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta159/content>.

<sup>43</sup> Draft Bill on Amending the Article 38 of the Constitution of the Republic of Lithuania, No. XIIP-2017(2), 17 June 2016, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/0be20cb0348411e6a222b0cd86c2adfc>.

not to testify against each other in the course of criminal proceedings, to inherit without additional taxation, etc. The exclusion from the status of “family life” also bears significant moral implications, resulting in social stigmatization as not leading the “proper lifestyle”. The further consideration of this constitutional amendment was included on the Parliament’s agenda as recently as in March, 2018.<sup>44</sup> The current motion for the constitutional amendment is analogous to the one introduced in 2012 as a response to the above-mentioned progressive judgement by the Lithuanian Constitutional Court.<sup>45</sup> In 2012 the first hearing of adoption failed by one vote (i.e. it collected 93 votes in favor instead of the required majority of 94 votes).

22. In 2017 the Lithuanian Parliament voted down a proposal to amend the Civil Code aiming to recognize the legal status of both unmarried different-sex and same-sex couples.<sup>46</sup> 29 MPs voted in favor of the progressive proposal, 59 voted against and 20 abstained. In parallel, an alternative proposal to regulate partnerships by so-called “agreements of cohabitation” was introduced.<sup>47</sup> The “agreement of cohabitation” would allow two or more cohabitants to realize certain property rights without an intention to create family relations. If adopted, this amendment would once again prevent same-sex couples from effective protection of their family life, because they would be considered as “business partners” rather than “family members”. Furthermore, this amendment would not solve any challenges faced by same-sex families outside the realm of financial matters (e.g. prohibition to testify against family members in criminal procedure). This proposal has been approved by the Parliament for consideration in May, 2017. Furthermore, the Lithuanian Parliament is proactively eliminating other references to “family life” for same-sex couples in other legal acts as well. For example, in July, 2017 the Lithuanian Parliament amended the Law on Equal Opportunities, so that it would not cover same-sex registered partners from other EU countries.<sup>48</sup> To put it in other words, after these amendments the same-sex registered partners of the EU citizens will not be considered as family members and will not be able to file a complaint to the Office of the Equal Opportunities Ombudsperson regarding discrimination based on their nationality.
23. In December, 2016 the Lithuanian Constitutional Court was asked to examine whether the decision by the national migration authorities to refuse residence permit on grounds of family reunification for a Belarusian citizen, who has entered in the same-sex marriage with a Lithuanian citizen abroad, is in line with the country’s Constitution.<sup>49</sup> The *Law on the Legal Status of Aliens*<sup>50</sup> does not explicitly prohibit the reunification of same-sex couples. To put it in other words, the law does not specify that the marriage must be between persons of the opposite-sex. However, the migration authorities rejected the application for the residence permit, pointing out that the same-sex marriage was not permitted under the Lithuanian

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<sup>44</sup> “Lithuanian Parliament to Consider Further Limitations on LGBT\* Rights”, *lgl.lt*, 16 March 2018, <http://www.lgl.lt/en/?p=19563>.

<sup>45</sup> *Supra* 42.

<sup>46</sup> “29 Lithuanian MPs Vote in Favor of Same-Sex Partnership as the Proposal Gets Rejected”, *lgl.lt*, 15 June 2017, <http://www.lgl.lt/en/?p=17529>.

<sup>47</sup> *Supra* 44.

<sup>48</sup> “LGL Urges President to Veto Amendments to Law on Equal Opportunities”, *lgl.lt*, 13 July 2017, <http://www.lgl.lt/en/?p=17782>.

<sup>49</sup> The Supreme Administrative Court of Lithuania, Case No. eA-4175-624/2016, 5 December 2016, [http://www.lrkt.lt/~prasymai/22\\_2016.htm](http://www.lrkt.lt/~prasymai/22_2016.htm).

<sup>50</sup> Law on the Legal Status of Aliens, No. IX-2206, 29 April 2004, <https://www.e-tar.lt/portal/lt/legalAct/TAR.42837E5A79DD>.

law, and therefore the couple's marriage could not be given legal recognition in Lithuania. Should the Constitutional Court decide that exclusion of same-sex partners, who have obtained legal recognition of their relationships abroad, is unconstitutional, the judgment would significantly strengthen legal protections afforded to same-sex couples in Lithuania.<sup>51</sup> It has to be noted that the present case before the Lithuanian Constitutional Court closely resonates with the recent decision by the Court of Justice of the European Union (CJEU) in the case *Coman and Others v Inspectoratul General pentru Imigrări*,<sup>52</sup> where the European Union's court has concluded that the term "spouse" within the meaning of the provisions of EU law on freedom of residence for EU citizens and their family members includes spouses of the same sex. This decision of the CJEU fully applies to Lithuania, as the EU member state.

## **RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON [ARTICLE 6 AND ARTICLE 9 OF ICCPR]**

### ***Hate Speech and Hate Crime on the Ground of Sexual Orientation and (or) Gender Identity***

24. Law enforcement officials in Lithuania seek to downplay the phenomenon of hate speech on the ground of sexual orientation by refusing to investigate submitted complaints. In the period between 2013 and 2015 the association LGL submitted 24 complaints based on 206 instances of alleged hate speech online to law enforcement structures. Based on these complaints, 28 pre-trial investigations were initiated in 2013, 13 in 2014 and eight in 2015. Interestingly enough, all of these pre-trial investigations were either halted or terminated, thus not leading to the actual identification and (or) punishment of alleged perpetrators. According to the official disaggregated data, eight instances of hate speech on grounds of sexual orientation were registered in 2016, two instances in 2017 and five instances in 2018.<sup>53</sup> These extremely low numbers of officially recorded incidents of homophobic hate speech potentially indicate that the law enforcement officials might be reluctant in accurately identifying and correctly recording the corresponding anti-LGBTI offences.
25. To the knowledge of the association LGL, the aggravating circumstance established under the Article 60.12.1 of the *Criminal Code* has been never applied in practice with the view of qualifying a particular criminal offence as a hate crime on the ground of sexual orientation. According to quantitative research by the Center for Research and Prejudice of the University of Warsaw (2015), 27.9 % of the Lithuanian LGBTI respondents have experienced hate crimes or harassment on grounds of their actual or perceived sexual orientation in the

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<sup>51</sup> "Gay Couple Case Gives Lithuania's Highest Court a Chance to Strengthen Rights Protections", *liberties.eu*, 26 January 2017, <https://www.liberties.eu/en/news/lithuania-same-sex-couples-marriage-family-reunion/11236>.

<sup>52</sup> *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others*, Case No. Case C-673/16, 8 June 2018,

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd421605a600024f29a6a7b58329d81e6e.e34KaxiLc3qMb40Rch0SaxyNchn0?text=&docid=202542&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=155425>.

<sup>53</sup> The data about criminal offences, punishable under the separate articles of the Criminal Code, is provided by the Information Technology and Communications Department under the Ministry of Interior of the Republic of Lithuania. Since recently, the data under the Article 170 (i.e. prohibition of hate speech) specifies, under which ground the offence was committed. For example, for the statistical data in 2018, please see:

[https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteismini-tyrimu-statistika-1/view\\_item\\_datasource?id=7249&datasource=22978](https://www.ird.lt/lt/paslaugos/nusikalstamu-veiku-zinybinio-registro-nvzr-paslaugos/ataskaitos-1/nusikalstamumo-ir-ikiteismini-tyrimu-statistika-1/view_item_datasource?id=7249&datasource=22978).

course of the past five years.<sup>54</sup> However, as many as 80 % did not report it to the national authorities.<sup>55</sup> The most often quoted reasons for not reporting hate-related incidents to the competent authorities are: “*did not think they would do anything*”, “*did not think they could do anything*” and “*fear of a homophobic and (or) transphobic reaction from the police*”.<sup>56</sup> Therefore, the protection from hate crimes on the ground of sexual orientation offered by the Lithuanian legal system is theoretical and illusory rather than practical and effective.

26. In order to illustrate the systematic failure by national authorities in investigating hate speech and hate crimes on grounds of sexual orientation and (or) gender identity, we would like to draw the Human Right Committee’s attention to one exemplary case. On 7 December 2014 two gay men posted a public picture on a personal *Facebook* profile.<sup>57</sup> The picture depicted a kiss between the men in question. The picture received more than 2,400 “*likes*” and more than 800 comments. The majority of online comments were inciting hatred and violence against LGBTI people in general, while a number of comments were directly threatening the two gay men in question. Some examples of the posted comments include “*Faggots should be burnt*” (Lith. “*Sudegint pidarastus*”), “*You both should be thrown into gas chambers*” (Lith. “*I duju kameras abu*”), “*You are fucking gays, you should be exterminated*” (Lith. “*Gėjai jūs supisti, jus naikinti nx.*”) and “*Kill them!*” (Lith. “*zudyt!*”).
27. On 12 December 2014 the association LGL lodged a complaint on behalf of the two gay men in question to the Prosecutor General regarding 31 comments on their social media profile. The complaint was lodged under the Article 170 of the *Criminal Code* (i.e. prohibition of hate speech). It was indicated that comments in question ridicule gay people and incite discrimination, hatred and violence against them. On 30 December 2014 the Klaipėda District Prosecutor's Office issued a decision not to start a pre-trial investigation regarding the complaint in question.<sup>58</sup> The association LGL appealed against this decision before the Klaipėda District pre-trial investigation judge. On 23 January 2015 the District Court of Klaipėda City dismissed the appeal. The Court stated that “*the individual by posting a picture of two kissing men in a public sphere should have and must have foreseen that **eccentric behavior really does not contribute to social cohesion among individuals with different views in the society and promotion of tolerance.***”<sup>59</sup>
28. The decision by the first instance court was upheld by the second instance court. On 18 February 2015 the Klaipėda Regional Court indicated that “[*t*]he owner of the social network profile by exercising the freedom to express his convictions and to promote tolerance had to take into account that freedom is inseparable from obligation to respect the views and traditions of other individuals. [...] Therefore this action can be interpreted as an **attempt to intentionally tease or shock individuals with different views or encourage posting of negative comments**”.<sup>60</sup>

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<sup>54</sup> The Center for Research and Prejudice of the University of Warsaw, *Hate No More. Quantitative Study Report*, Warsaw, 2015, p. 50.

<sup>55</sup> *Ibid.*, p. 57.

<sup>56</sup> *Ibid.*, p. 72.

<sup>57</sup> The picture in question and the corresponding comments can be seen here:

<https://www.facebook.com/photo.php?fbid=825439160832543&set=a.278499395526525.70713.100000994007045&type=3&theater>.

<sup>58</sup> Klaipėdos apygardos prokuratūros Klaipėdos apdylinės prokuratūra, „Nutarimas atsisakyti pradėti ikiteisminį tyrimą“, 30 December 2014.

<sup>59</sup> District Court of Klaipėda City, Case No. 25.8.30-963/2015, 23 January 2015, p. 2.

<sup>60</sup> Klaipėda Regional Court, Case No. 1S-72-417/2015, 18 February 2015, p. 2-3.

29. In 2015 the two gay men in question submitted a complaint to the European Court of Human Rights (ECtHR), alleging that the failure by national authorities to investigate the above described instances of hate speech has violated their rights to private life and the right to an effective legal remedy taken in conjunction with the general prohibition of discrimination.<sup>61</sup> In June, 2017 the ECtHR informed the Lithuanian Government that it will consider the petition. While communicating the case, the ECtHR has raised two particular questions to the parties. First of all, the Court is inquiring whether there has been a violation of the Convention on account of the domestic authorities' decision to discontinue the criminal investigation concerning the comments on the applicants' Facebook social network page. Secondly, the Strasbourg court would like to know, whether the applicants suffered discrimination on the grounds of their sexual orientation. The Court referred to the applicants' grievance about the Lithuanian authorities' predisposed bias against a homosexual minority, given that the two applicants' same-sex kiss picture had been interpreted by those authorities as "eccentric behaviour" and as "attempt to deliberately tease or shock individuals with different views or to encourage the posting of negative comments" which, in turn, also led those authorities to discontinue the criminal investigation. The ECtHR's judgment in this particular case is expected in 2019.

## THE RIGHT TO PRIVACY [ARTICLE 17 OF ICCPR]

### ***Failure to Establish Administrative Legal Gender Recognition and Medical Procedures***

30. Lithuania has no administrative procedure for legal gender recognition and medical gender reassignment. Despite the fact that the Article 2.27 of the *Civil Code* establishes that "[a]n unmarried natural person of full age enjoys the right to the change of designation of sex in cases when it is feasible from the medical point of view",<sup>62</sup> the enabling legislation has never been adopted. In 2007 the European Court of Human Rights (ECtHR) delivered a judgment in the case *L. v. Lithuania*, indicating that the existing legal vacuum constitutes a violation of the right to private life.<sup>63</sup> Based on observations by civil society organizations,<sup>64</sup> the Committee of Ministers of the Council of Europe applied the enhanced supervision procedure in September, 2014 with the view of implementing the judgment.<sup>65</sup> Despite the fact that 18 years have passed since the introduction of the right to gender reassignment in the *Civil Code*, 11 years since the adoption of the ECtHR judgment, and three years since the application of the enhanced supervision procedure, the Lithuanian authorities still have not adopted any legal measures with the view of facilitating gender reassignment procedures.
31. As transgender persons are not able to receive necessary medical services within the framework of the Lithuanian public healthcare system, they are forced to seek these services from private providers or abroad. Until 2017 transgender people, after undergoing gender

<sup>61</sup> *Beizaras and Levickas v. Lithuania*, App. No. 41288/15, communicated on 16 June 2017, <http://hudoc.echr.coe.int/eng?i=001-175326>.

<sup>62</sup> *Supra* 41.

<sup>63</sup> *L v. Lithuania* (App no 27527/03, ECtHR), 11 September 2007, <http://hudoc.echr.coe.int/eng?i=001-82243>.

<sup>64</sup> For the extensive communication among the civil society organizations, the Lithuanian Government and the Committee of Ministers with the view of monitoring the process of implementing the *L. v. Lithuania* judgement, please see: [http://www.coe.int/t/dghl/monitoring/execution/Themes/Add\\_info/LIT-L\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/LIT-L_en.asp).

<sup>65</sup> 1208DH meeting of the Ministers' Deputies, CM/Del/OJ/DH(2014)/1208/10, 26 September 2014, <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH%282014%291208/10&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

reassignment treatment abroad, had to apply before the national courts for new identity documents. The new identity documents were issued **only after a transgender person had undergone gender reassignment surgery resulting in sterilization**. In the period of 2008-2017 the Lithuanian courts had developed a consistent jurisprudence in mandating that new identity documents were issued after the accomplished gender reassignment surgery abroad. However, the Lithuanian courts do not award transgender applicants compensation for pecuniary damages, covering the costs incurred for obtaining gender reassignment treatment.<sup>66</sup> It can be concluded that not only were transgender individuals forced outside the country to undergo treatment they seek but they also had to go through a litigation procedure in order to obtain corresponding identity documents upon their return. This critical situation has dramatically improved since April, 2017, as the national courts started granting legal gender recognition without the requirement for mandatory gender reassignment surgery implying sterilization.

32. The judicial decisions of 7 April 2017<sup>67</sup> and 2 May 2017<sup>68</sup> by the Vilnius City District Court have changed the course of domestic jurisprudence of granting legal gender recognition. The cases concerned two transgender individuals, who had not undergone irreversible gender reassignment surgeries (implying sterilization) due to the fact that this medical procedure is currently not available in Lithuania. Both applicants have obtained mental diagnosis of “gender dysphoria” (ICD-10 code F64.0), started hormone replacement therapy, performed mastectomy (i.e. breast reduction surgery) and purposefully constructed their social identity as male individuals in the public sphere. Both applicants requested the civil registry to change their personal identification documents, but were refused due to the absence of the relevant legal basis. The applicants turned to the court, which by respective judgments granted both of them with the right to change their gender marker and personal identification number in their identity documents. After these positive developments, personal identity documents were changed for 16 transgender individuals without the requirement for gender reassignment surgery (implying sterilization). Based on the courts’ jurisprudence, the material conditions for obtaining legal gender recognition in Lithuania at the moment are the requirement for mental diagnosis of “gender dysphoria” (ICD-10 code F64.0) and self-identification by a transgender person as belonging to the opposite gender. Nevertheless, it has to be emphasized that at the moment legal gender recognition in Lithuania could be sanctioned only by the court’s decision. No administrative procedure is still available.
33. In its fourth periodic report the Lithuanian Government rightfully points out that in 2017 corresponding working groups were established in the Ministry of Health and the Ministry of Justice with the aim of developing the necessary legal acts to enable administrative legal gender recognition procedure in Lithuania.<sup>69</sup> The working group in the Ministry of Health

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<sup>66</sup> It has to be noted that on one occasion the Supreme Court of Lithuania in the case No. 3K-3-257/2012 on 30 May 2012 awarded a transgender applicant with pecuniary damages with the view of reimbursing the costs related to the gender reassignment treatment. However, this judgment is classified; therefore it is not accessible to the general public and cannot be used as a precedent in further litigation attempts.

<sup>67</sup> Vilnius City District Court, Case No. e2YT-5329-934/2017, 7 April 2017.

<sup>68</sup> Vilnius City District Court, Case No. e2YT-5326-987/2017, 2 May 2017

<sup>69</sup> Human Rights Committee, “Fourth periodic report submitted by Lithuania under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018”, No. CCPR/C/LTU/4, 29 November 2017, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspsexglUbPkaTnjMnk>



was tasked with preparing a health care protocol, enabling the provision of the primary health care services for transgender individuals, namely – psychologic counselling, psychiatric assessment and hormone replacement therapy. Upon receiving these services within the framework of the Lithuanian public healthcare system, transgender individuals would be able to apply before the national courts with the aim of obtaining legal gender recognition. The working group in the Ministry of Justice was tasked with preparing the comprehensive *Law on Recognition of Gender Identity*,<sup>70</sup> which would create an administrative procedure for obtaining legal gender recognition in Lithuania. Despite the fact that these legal acts were successfully prepared by the indicated deadlines, as of 1 June 2018 they still remain to be adopted. To put it in other words, there is still no administrative procedure for legal gender recognition in Lithuania.

34. In November, 2017 the group of 31 MPs in the Lithuanian Parliament registered a legislative proposal, which aims at banning legal gender recognition and all medical procedures pertaining to gender reassignment treatment.<sup>71</sup> This proposal stands in a sharp contrast with the jurisprudence of the national courts, granting legal gender recognition based on self-identification of a transgender person and corresponding mental diagnosis. It has been interpreted that this radical proposal by the group of 31 MPs has been tabled as a response to the progressive draft *Law on Recognition of Gender Identity*,<sup>72</sup> registered by the Ministry of Justice. The draft *Law on Recognition of Gender Identity* seeks to establish administrative procedure, which would enable transgender persons to change their identity documents based on their self-identification and corresponding mental diagnosis. After the submission, the regressive proposal on banning gender reassignment procedure was not deliberated upon in the Parliament, but it was included on the Parliament's agenda as recently as in March, 2018.<sup>73</sup>
35. The absence of administrative procedure to enable legal gender recognition and medical gender reassignment has very direct negative consequences on the daily lives of transgender persons in Lithuania. First of all, the negative phenomenon of unsupervised hormone treatment is commonly widespread among the members of the local transgender community. Transgender people are smuggling hormonal medication from foreign countries and using it without any medical supervision, thus causing catastrophic health hazards (e.g. high risk of venous thrombosis while using estrogen). Secondly, transgender people, who are undergoing gender reassignment treatment abroad, do not have the possibility of changing their identity documents through quick, accessible and transparent administrative procedure, because legal gender recognition still has to be sanctioned by the Lithuanian courts. Thirdly, transgender people who already live according to their preferred gender, but do not have the necessary resources to obtain legal gender recognition through the judicial

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<sup>70</sup> Lietuvos Respublikos asmens lytinės tapatybės pripažinimo įstatymo projektas, No. 17-12650, 3 November 2017,

[https://e-](https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/bc2a5010c09111e7af36e75c0ac79247?positionInSearchResults=0&searchModelUUID=82956dc3-2605-4c22-b705-0094ec4db8ec)

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<sup>71</sup> Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas, No. XIIP-1327, 10 November 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/66fe0380c61711e782d4fd2c44cc67af?ifwid=-19syzywy9ez>.

<sup>72</sup> *Supra* 70.

<sup>73</sup> *Supra* 44.

procedure, are exposed to constant discrimination, harassment and violence. Every time they are requested to display their identity documents, they are immediately outed as a transgender person, because Lithuanian authorities do not provide for the opportunity of changing one's identity documents through the quick, accessible and transparent administrative procedure. Finally, the Lithuanian legal system does not recognize the legal categories of "gender identity" and (or) "gender expression", thus rendering discrimination against transgender people technically not punishable by law.<sup>74</sup> It can be concluded that transgender people, due to the absence of any legal protections, remain the most vulnerable group within LGBTI people as a whole.

**RIGHT TO EQUALITY AND NON-DISCRIMINATION [ARTICLE 26 OF ICCPR], RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON [ARTICLE 6 AND ARTICLE 9 OF ICCPR], RIGHT TO PRIVACY AND FAMILY LIFE [ARTICLE 17 OF ICCPR], RIGHT TO FREEDOM OF EXPRESSION [ARTICLE 19 OF ICCPR], RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY [ARTICLE 22 OF ICCPR]**

***Homophobic and Transphobic Legislative Initiatives***

36. Despite the challenging human rights situation for LGBTI persons in Lithuania, legislators and policy makers have not taken any further steps with the view of expanding legal protection for LGBTI people. On the contrary, in the period between 2012 and 2018 the Lithuanian Parliament considered in total nine openly homophobic and (or) transphobic legislative initiatives with the view of further limiting civil and political rights of LGBTI people. Despite the fact that none of these legislative initiatives have been adopted by the Lithuanian Parliament yet, they are still in different stages of the legislative process, i.e. none of them has been definitively rejected. This situation imposes a constant threat for LGBTI people, because the consideration of these initiatives on the highest political level legitimizes the notion that the human rights of LGBTI people could be effectively limited. In other words, many local politicians push for a homophobic and (or) transphobic agenda with the view of further reinforcing socially hostile atmosphere for LGBTI people in Lithuania.
37. What follows is a list of the homophobic and (or) transphobic legislative initiatives pending before the Lithuanian Parliament as of 1 June 2018:
- (a) **The amendment to the Civil Code No. XIIP-17**<sup>75</sup> seeks to place a total ban on gender reassignment surgeries. The bill was included on the Parliament's agenda on 23 May 2013 and has not been considered since then.<sup>76</sup>
- (b) **The amendment to the Criminal Code No. XIIP-687**<sup>77</sup> seeks to establish that the criticism of homosexuality and attempts to change someone's sexual orientation would not qualify as discrimination or harassment on the ground of sexual orientation. The bill was included on the Parliament's agenda on 12 September 2013.<sup>78</sup> It passed the first hearing on 19 June

<sup>74</sup> This fact is confirmed by the Lithuanian Government in providing information on follow-up to the concluding observations on the third periodic report of Lithuania under the ICCPR, *supra* 33, para. [13].

<sup>75</sup> Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas, No. XIIP-17, 21 November 2011, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437749&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437749&p_tr2=2).

<sup>76</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-16029](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-16029).

<sup>77</sup> Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projektas, No. XIIP-687, 11 June 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=450517&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450517&p_tr2=2).

<sup>78</sup> Seimo rytinio posėdžio protokolai, No. SPP-76, 12 September 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=455777&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=455777&p_tr2=2).

2014.<sup>79</sup> The Parliamentary Committee on Education, Science and Culture temporarily postponed the adoption of the bill on 16 December 2014 by returning the bill to the initiators for “further improvements”.

(c) **The amendment to the Law on Public Meetings No. XIIP-940<sup>80</sup>**, proposes that the organizers of the public assemblies cover all expenses in relation to ensuring safety and public order in the course of an event. This legislative motion was introduced as a retaliatory measure for the successfully executed *Baltic Pride* 2013 March for Equality. The Parliament has not yet voted on the inclusion of this bill to its agenda.

(d) **The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-473<sup>81</sup>** (together with **the amendment to the Civil Code No. XIIP-472<sup>82</sup>**) stipulates that “every child has the natural right to a father and a mother, emanating from sex differences and mutual compatibility between motherhood and fatherhood”. The bill was included on the Parliament’s agenda on 21 May 2013.<sup>83</sup>

(e) **The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-1469(2)<sup>84</sup>** seeks to establish that “it is forbidden for same-sex couples to adopt citizens of the Republic of Lithuania.” The bill was included on the Parliament’s agenda on 15 September 2015.<sup>85</sup>

(f) **The amendment to the Article 38 of the Constitution No. XIIP-1217(2)<sup>86</sup>** seeks to redefine the constitutionally protected concept of “family life” as emanating from a traditional marriage between a man and a woman, and stipulates that family arises from motherhood and fatherhood. The bill was included on the Parliament’s agenda on 10 December 2013.<sup>87</sup> The amendment was accepted for the Parliament’s consideration on 28 June 2016.<sup>88</sup>

(g) **The amendment to the Code of Administrative Violations No. XIIP-4490(3)<sup>89</sup>** introduces administrative liability for any public defiance of the constitutionally established “family values”. By carrying out public speeches, demonstrating posters, slogans and audiovisual materials, as well as organizing public events such as gay prides and other kind of actions,

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<sup>79</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-18431](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-18431).

<sup>80</sup> Susirinkimų įstatymo 11, 14 straipsnių papildymo ir pakeitimo įstatymo projektas, No. XIIP-940, 3 September 2013,

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=455236&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=455236&p_tr2=2).

<sup>81</sup> Vaiko teisių apsaugos pagrindų įstatymo papildymo 7 straipsnio pakeitimo ir papildymo įstatymo projektas, No. XIIP-473, 18 April 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=446661&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446661&p_tr2=2).

<sup>82</sup> Civilinio kodekso 3.3 straipsnio pakeitimo įstatymo projektas, No. XIIP-472, 18 April 2013,

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=446664&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446664&p_tr2=2).

<sup>83</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-15995](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-15995).

<sup>84</sup> Vaiko teisių apsaugos pagrindų įstatymo Nr. I-1234 26 straipsnio pakeitimo įstatymo projektas, No. XIIP-1469(2), 27 January 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464939](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464939).

<sup>85</sup> Voting results: [http://www.lrs.lt/sip/portal.show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-21015](http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-21015).

<sup>86</sup> Konstitucijos 38 straipsnio pakeitimo įstatymo projektas, No. XIIP-1217, 17 June 2016,

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/Obe20cb0348411e6a222b0cd86c2adfc>.

<sup>87</sup> Seimo vakarinio posėdžio protokolai, No. SPP-111, 10 December 2010,

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=461791&p\\_query=XIIP-1217&p\\_tr2=1](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=461791&p_query=XIIP-1217&p_tr2=1).

<sup>88</sup> Voting results: [http://www.lrs.lt/sip/portal.show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-23696&p\\_var=1](http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-23696&p_var=1).

<sup>89</sup> Administracinių teisės pažeidimų kodekso 224 ir 259(1) straipsnių pakeitimo ir Kodekso papildymo 188(21) straipsniu įstatymų projektas, No. XIIP-4490(3), 15 January 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464145&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464145&p_tr2=2).

one would thus act against the law. The bill was included on the Parliament's agenda on 21 January 2014.<sup>90</sup> The Parliament postponed the final adoption phase on 13 March 2014,<sup>91</sup> and once again on 12 November 2015.<sup>92</sup>

(h) **The amendment to the Civil Code No. XIIIIP-750**<sup>93</sup> seeks to introduce an "agreement for cohabitation" that would allow two or more cohabitants to realize certain property rights without an intention to create family relations. The proponents of this bill claim that the "agreement for cohabitation" would be suitable form of legal recognition for same-sex couples. However, it effectively prevents same-sex couples from enjoying the status of "family members". The bill was included on the Parliament's agenda on 30 May 2017.<sup>94</sup>

(i) **The amendment to the Civil Code No. XIIIIP-1327**<sup>95</sup> places a total ban on both medical and legal gender reassignment in Lithuania. The bill was registered in the Parliament on 10 November 2017, but the Parliament has not deliberated on the proposal yet.

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<sup>90</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-17616](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-17616).

<sup>91</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-17656](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-17656).

<sup>92</sup> Voting results: [http://www.lrs.lt/sip/portal.show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-21395](http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-21395).

<sup>93</sup> Civilinio kodekso 6.589, 6.969, 6.971, 6.973, 6.978 straipsnių pakeitimo įstatymo projektas, No. XIIIIP-750, 23 May 2017, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/2eed4fd03fbe11e7b8e5a254f4e1c3a7>.

<sup>94</sup> Voting results: [http://www.lrs.lt/sip/portal.show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_klaus\\_stadija&p\\_svarst\\_kl\\_stad\\_id=-26165](http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_klaus_stadija&p_svarst_kl_stad_id=-26165).

<sup>95</sup> *Supra* 71.

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**National LGBT\* Rights Organization LGL** a national, non-governmental, non-profit organization that advocates for the rights of LGBTI individuals in Lithuania. LGL fights against homophobia and transphobia, discrimination and social exclusion, and is inclusive of all sexual orientations, gender identities and gender expressions within its advocacy work. As the main LGBTI rights organization in Lithuania, LGL undertakes activities in the fields of advocacy, awareness raising and capacity building. These activities encompass monitoring national policies, advocating for legal change, organizing large-scale awareness raising events, and developing community building strategies. LGL also engages with strategic litigation activities with the aim of ensuring effective exercise of legal rights for the members of the local LGBTI community. Since 2009 LGL has acted as a Lithuanian organizer of the Baltic Pride festival in the Baltic States.

**International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)** is the world federation of national and local organisations dedicated to achieving equal rights for lesbian, gay, bisexual, trans and intersex (LGBTI) people. ILGA is an umbrella organization of more than 1200 member organisations presented in six different regions: Pan Africa ILGA, ILGA-Asia, ILGA-Europe, ILGA-LAC (Latin America and the Caribbean), ILGA North-America and ILGA-Oceania (Aotearoa/New Zealand, Australia and Pacific Islands). Established in 1978, ILGA enjoys consultative status at the UN ECOSOC. As the only global federation of LGBTI organisations, ILGA voices its agenda in various United Nations fora.

**ILGA-Europe** is an independent, international non-governmental umbrella organization bringing together more than 500 organizations from 45 European countries. They are part of the wider international ILGA organization, but ILGA-Europe was established as a separate region of ILGA and an independent legal entity in 1996. Their vision is of a world where dignity, freedoms and full enjoyment of human rights are protected and ensured to everyone regardless of their actual or perceived sexual orientation, gender identity, gender expression and sex characteristics.