



“WE ARE PEOPLE, NOT PROPAGANDA”: SITUATION OF LGBT* PEOPLE IN LITHUANIA

Brief Assessment of the Implementation of the 1st Cycle UPR Recommendations

In 2011, during the UPR Cycle 1, the Lithuania received 15 recommendations focusing on LGBT* issues. Lithuania accepted 10 of these recommendations (e.g. combating hate crimes, ensuring rights to freedom of expression and freedom of peaceful assembly, etc.), while remaining 5 recommendations were postponed for further deliberations on the national level (i.e. censoring LGBT* related public information, acknowledging family diversity and eliminating discrimination on grounds of gender identity). In 2012 the Government declared that all LGBT* related recommendations had been already implemented. Nevertheless, no concrete legislative or public policy measures have been taken based on these UPR recommendations.

The general process of implementing UPR recommendations in Lithuania was executed through organizing 4 meetings of coordination in the period 2012-2016. App. 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 in a two-hour meeting organized once a year. Therefore the process of implementing the UPR recommendations could be described as highly formalistic, i.e. seeking to showcase the process of coordination, but not delivering any concrete measures, strategies or solutions.

THE RIGHTS MOST COMMONLY VIOLATED:

Right to Freedom of Expression
Right to Equality and Non-discrimination
Right to Freedom of Peaceful Assembly
Right to Life, Liberty and Security of a Person

Right to Education
Right to Privacy
Right to Health

Challenges

1. Anti-Gay Propaganda Legislation

The *Law on the Protection of Minors against the Detriment 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* and the *Civil Code*”. 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 LGBT* persons.

Cases, Facts, Comments

Case 1. Baltic Pride 2013 Promotional Videos

In 2013 the association LGL approached the national broadcaster with the view of broadcasting Baltic Pride 2013 promotional videos. The broadcaster indicated that the videos can be broadcasted only after 11 PM and marked as an “adult content”. According to the broadcaster, “[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*.” The decision was appealed. The Inspector of Journalist Ethics issued a binding decision that the national broadcaster reasonably refused to broadcast the video.

Case 2: Fairy Tale Book “Amber Heart”

In 2014 the Inspector of Journalist Ethics issued a recommendation that two fairy tales about same-sex relationships within the fairy tale book “Amber Heart” “portray same-sex relationships as normal and self-evident and thus are detrimental to the fragile worldview of a child”. Based on this recommendation, the publisher of the book terminated the dissemination of the book. The author appealed before the national courts. The courts dismissed the author’s complaint as unfounded.

Case 3: Promotional Video “CHANGE IT!”

In 2014 the Inspector of Journalist Ethics issued a recommendation with the view of assessing a social video “CHANGE IT!” The expert group concluded that “by showing same-sex couples engaging in various activities together, [...] the idea is being imposed that family can be created by two persons of the same sex. [...] Therefore the information in the video clip has detrimental effect on the emotional, spiritual, psychological development and health of the minors.” Multiple commercial television channels refused to broadcast the video. The decision was appealed before the national courts. The courts refused to accept the complaint, because allegedly no legal rights and obligations emanate from a recommendation.

2. Homophobic and/or Transphobic Legislative Initiatives

In 2012-2016 the Parliament considered seven openly homophobic and/or transphobic legislative initiatives with the view of limiting rights and freedoms of LGBT* persons. This situation imposes a threat for LGBT* persons, because the consideration of these initiatives on the highest political level legitimizes the notion that human rights of LGBT* persons could be effectively limited.

- (a) **The amendment to the Civil Code No. XIIP-17** seeks to place a total ban on gender reassignment surgeries.
- (b) **The amendment to the Criminal Code No. XIIP-687** seeks to establish that criticism of homosexuality and attempts to change someone's sexual orientation would not qualify as discrimination or harassment on the ground of sexual orientation.
- (c) **The amendment to the Law on Public Meetings No. XIIP-940** proposes that organizers of public assemblies cover all expenses in relation to ensuring safety and public order in the course of an event.
- (d) **The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-473** 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".
- (e) **The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-1469(2)** seeks to establish that "it is forbidden for same-sex couples to adopt citizens of the Republic of Lithuania."
- (f) **The amendment to the Article 38 of the Constitution No. XIIP-1217** seeks to redefine the constitutionally protected concept of "family life" as emanating from a marriage between a man and a woman.
- (g) **The amendment to the Code of Administrative Violations No. XIIP-4490(3)** introduces administrative liability for any public defiance of the constitutionally established "family values".

3. Hate Crimes and Hate Speech

Law enforcement officials downplay the phenomenon of hate speech on the ground of sexual orientation by refusing to investigate complaints. The aggravating circumstance in the *Criminal Code* has been never applied with the view of qualifying a particular offence as a hate crime on the grounds of sexual orientation.

In 2013-2015 the association LGL submitted twenty four complaints based on two hundred and six instances of alleged hate speech online. All the pre-trial investigations, based on these complaints, were either halted or terminated, thus not leading to the actual punishment of alleged perpetrators.

Case Example: Hate Speech Online

In 2014 two gay men posted a public picture of a same-sex kiss on Facebook. It received more than 800 comments. The majority of online comments were directly threatening two men in question. Some examples were "Faggots should be burnt", "You are fucking gays, you should be exterminated" and "Kill them!" The public prosecution refused to start a pre-trial investigation. The decision was appealed before the national courts. 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 behaviour really does not contribute to social cohesion among individuals with different views in the society and promotion of tolerance." In 2015 the two men in question submitted a complaint to the ECtHR which is still pending.

4. Gender Reassignment

Lithuania has no *de facto* or *de jure* procedures of legal gender recognition and medical gender reassignment. Despite the fact that 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", the enabling legislation has never been adopted.

As transgender people are not able to receive necessary medical services, they are forced to seek these services in other countries. After undergoing gender reassignment treatment abroad, transgender people have to apply before national courts for new identity documents. Lithuanian courts do not cover gender reassignment costs.

The absence of legal gender recognition and medical gender reassignment has direct negative consequences on the daily lives of transgender people in Lithuania:

- transgender people are smuggling hormonal medication from foreign countries and using it without any medical supervision, thus causing catastrophic health hazards;
- transgender people do not have the possibility of changing their identity documents before undergoing gender reassignment surgery;
- transgender people who already live according to their preferred gender, but do not want to go through gender reassignment treatment, are exposed to constant discrimination, harassment and violence;
- authorities do not provide for the opportunity of changing one's identity documents prior to the complete gender reassignment treatment, which is not available in the Lithuanian health care system;
- legal system does not recognize the category of "gender identity", thus rendering discrimination against transgender people technically not punishable by law.

Recommendations:

1. Ensure that the Law on the Protection of Minors is not applied with the view of censoring LGBT* related public information and that any limitations on the right to freedom of expression can be challenged through an effective legal remedy at the national level.
2. Reject the adoption of the seven currently pending openly homophobic and/or transphobic legislative initiatives based on scientific information and constructive public debate.
3. Ensure effective investigation of hate speech and hate crimes on grounds of sexual orientation and/or gender identity.
4. Adopt national legislation on legal gender recognition and ensure that transgender people can receive necessary medical services.
5. Adopt the comprehensive Interinstitutional Action Plan on Non-Discrimination of LGBT* People and implement the SOGIESC recommendations through this plan.