

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Lithuania

January 2014 Update

Authors of the 2014 Update:

Natalija Bitiukova

Franet contractor: Lithuanian Social Research Centre

Authors of the 2010 Update and 2008 report:

Edita Ziobiene

DISCLAIMER: This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU, Comparative legal analysis, Update 2015'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Contents

Executive summary	1
A. Implementation of Employment Directive 2000/78/EC	10
A.1. The Law on Equal Treatment	12
A.2. Legal standing of associations	13
A.3. The shift of the burden of proof	15
A.4. The complaint procedures available to victims of discrimination on the ground of sexual orientation	16
A.5. The establishment of bodies for promotion of equal treatment	18
A.6. Sanctions and remedies	20
A.7. Exceptions to equal treatment.....	25
B. Freedom of movement	27
C. Asylum and subsidiary protection.....	30
D. Family reunification	33
E. Freedom of assembly	34
E.1. Freedom of assembly and the LGBT community—first attempt.....	35
E.2. Freedom of assembly and the LGBT community—second attempt	36
E.3. Freedom of assembly and the LGBT community—third attempt	36
E.4. Freedom of assembly and the LGBT community—Baltic Pride 2010	38
E.5. Freedom of assembly and the LGBT community—Baltic Pride 2013	40
E.6. Problematic aspects of regulation of the right to assembly	42
E.7. Legislative initiatives restricting freedom of assembly on moral grounds	44
F. Criminal law	46
F.1. Hate speech.....	46
F.2. Hate crimes and homophobic motivation	51
F.3. Legislative initiatives limiting the application of hate speech laws to homophobic speech	53
G. Transgender issues	54
H. Miscellaneous	60
H.1. Freedom of expression	61
H.2. The Law on the Protection of Minors	61
H.3. Legislative initiatives, attempting to criminalise “propagation” of homosexuality	64
H.4. Legislative initiatives constitutionally defining “a family”	65
H.5. Family life and same-sex partnerships	67
I. Good practices.....	69
J. Intersex	71
Annex 1 – Case law	74
Annex 2 – Statistics	106

Executive summary

Implementation of Employment Directive 2000/78/EC

The June, 2008 amendments to the Law on Equal Treatment formally eliminated large part of implementation gaps, expanded the scope of the law to include additional equality grounds;¹ however, the transposition is still insufficient.

In 2011, the Code of Civil Procedure [Civilinio proceso Kodeksas] of the Republic of Lithuania was amended, broadening the scope of organizations that could potentially engage in litigation on behalf of the victims of discrimination in the civil courts.² However, there have not been any case brought on behalf of a victim of discrimination (or on any of the non-discrimination grounds) either before the Ombudsperson, or before the courts brought by an association/trade union/non-governmental organization, therefore it is not absolutely clear how the courts would interpret the standing provisions in the national laws.

The provisions regarding the burden of proof were transposed into the Law on Equal Treatment in 2008.³ Recent case law showed that national courts do shift the burden of proof, after a claimant establishes a prima facie discrimination cases.⁴ What exactly a “prima facie” case entails is however unclear, and remains to be decided on case by case basis. Nevertheless, even with the burden of proof shifted to the respondent, the only two discrimination on the ground of sexual orientation cases have not succeeded.⁵

An institution for promotion of equality of persons, not only regardless of racial or ethnic origin, but also regardless of other characteristics, including sexual orientation, was established in 2005 by the Law on Equal Treatment, which gave competence to the Ombudsperson to investigate complaints by natural and legal persons on grounds of discrimination.

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, but can be overruled by a court. Applying to the Equal Opportunities Ombudsperson does not prevent a complainant from lodging a claim with a court on the same matter. In practice the Ombudsperson often acts as a mediator – according to the Ombudsperson, peaceful resolution of discrimination is one of its main objectives.

The number of complaints alleging discrimination on the ground of sexual orientation brought to the Ombudsperson has been decreasing since 2007, and in 2013 the Ombudsperson has received no complaints on this ground at all.⁶ Such trend may be attributed to the fact that the

¹ Lithuania, The law on the amendment of the law on equal treatment (*Lygių galimybių įstatymo pakeitimo įstatymas*), No X-1602, 17 June 2008, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=323620&p_query=&p_tr2= All hyperlinks were accessed on 28 April 2014.

² Lithuania, Law on equal treatment (*Lygių galimybių įstatymas*), No. 114-5115, 18 November 2003, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179.

³ Lithuania, The law on the amendment of the law on equal treatment (*Lygių galimybių įstatymo pakeitimo įstatymas*), No X-1602, 17 June 2008, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=323620&p_query=&p_tr2=

⁴ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. 2A-2140-464/2011, 8 March 2013.

⁵ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. 2A-2140-464/2011, 8 March 2013.

⁶ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2005 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2005 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2006 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2006 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2007 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2007 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2008 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2008 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2009 (*Lygių galimybių kontrolieriaus tarnybos*

applicants do not find the sanctions imposed by the Ombudsperson proportionate to the gravity of their rights violation; effective and dissuasive. In addition, effectiveness of the follow-through on the recommendations issued by the Ombudsperson is questionable, and thus remains a subject of concern.

The two discrimination on the ground of sexual orientation cases brought to the court showed that it is still complicated to establish a strong case of discrimination before the Lithuanian courts. In both cases, the applicant asserted that when applying for the job of a university lecturer, he was discriminated on two grounds simultaneously – because of his sexual orientation and social status. Although, in both cases the courts found that the applicant established a *prima facie* discrimination on the grounds of sexual orientation and social status case and shifted the burden of proof to the respondent, eventually the fact of discrimination on either of the grounds was not established. With regard to sexual orientation, the courts noted that the members of either of the selection commissions’ were not aware of the applicant’s sexual orientation, did not raise any questions to this regard during the hearing and did not make any alleged remarks. This conclusion was made despite the fact that, as the applicant explained in his submissions to the court, he was a well-known openly gay person in Lithuania who, in his capacity of a researcher and University professor (before he was dismissed from his previous workplace) published extensively on the topic of homophobia in Lithuania.

Freedom of movement

According to the Migration Department under the Ministry of the Interior [*Migracijos departamentas prie Vidaus reikalų ministerijos*], the main governmental institution which grants residence permits to foreigners in Lithuania, a person in a same-sex marriage or same-sex partnership with the EU citizen is considered to be a family member of the EU citizen for the purpose of Paragraph 4 Article 2 of Law on the Legal Status of Aliens [*Užsieniečių teisinės padėties įstatymas*].⁷ The same should apply to the Lithuanian citizens, i.e. a person in a same-sex marriage or same-sex partnership with Lithuanian citizen should be considered “a family member”.

However, even if the notion of a “family member” for the purpose of entering and staying in the country is interpreted broadly, i.e. including same-sex partnerships and same-sex marriages, same-sex couples face major obstacles when living in Lithuania, since neither same-sex marriages, nor same-sex partnerships are recognized here.

There is, however, no information about cases in Lithuania where LGBT persons sought to obtain a residence permit or to benefit from freedom of movement in any form on the ground of the presence of their LGBT partner or spouse in Lithuania. Therefore it is impossible to identify specific new trends for the reporting period.

veiklos 2009 m. ataskaita); Activity report of the Office of the Equal Opportunities Ombudsperson for 2010 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2010 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2011 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2011 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2012 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2012 m. ataskaita*); available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁷ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

Asylum and subsidiary protection

Theoretically, persecution of LGBT persons due to their sexual orientation would be examined as persecution of LGBT persons as possible members of a particular social group.

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees came into force in the Republic of Lithuania in 1997, but the first asylum application on the ground of persecution due to sexual orientation was not received until the end of 2007.

The first case of an asylum application due to sexual orientation clearly showed the drawbacks of reception conditions for asylum seekers. The asylum seeker in the case was beaten and received further threats from other asylum seekers. Feeling insecure, the homosexual asylum seeker concerned left the Republic of Lithuania. In the absence of further cases, it is impossible to identify specific new trends for the reporting period.

According to the Migration Department, a practice known as 'phallometry' or 'phalometric testing' has never been applied in the asylum procedures in Lithuania, nor it is prescribed by any legislation.⁸ The Migration Department has asserted that 'no special procedures are applied in the cases where asylum is requested on the ground of persecution due to sexual orientation'.⁹ The media has not reported any cases where 'phallometry' or 'phalometric testing' had been applied for in asylum proceedings in Lithuania. Therefore it is impossible to identify specific new trends for the reporting period.

Family reunification

The definition of a "family member" is set for in Paragraph 26 of Article 2 the Law on the Legal Status of Aliens and includes "the spouse or the person with whom a registered partnership has been contracted, children (adopted children) (hereinafter – children) under the age of 18, including the children under the age of 18 of the spouse or the person with whom a registered partnership has been contracted, on condition that they are not married and are dependent, as well as direct relatives in the ascending line who have been dependent for at least one year and are unable to use.

"Family reunification" remains the most common ground for issuing a temporary residency permit in Lithuania (in 2013 – 5020 permits were issued on this ground;¹⁰ in 2012 -4876;¹¹ in 2011-4798¹²). However, the available statistics is not desegregated according to the form of the union (partnership or marriage), or according to the sexual orientation of the spouses/partners. Therefore it is unclear how many same-sex partners/spouses have benefited from family reunification in Lithuania and impossible to identify specific new trends for the reporting period.

⁸ Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Phone communication of NFP-Lithuania, 28 April 2014.

⁹ Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Phone communication of NFP-Lithuania, 28 April 2014.

¹⁰ Lithuania Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*), Migration yearbook 2013, available at: www.migracija.lt/index.php?1357390560, p. 52.

¹¹ Lithuania Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*), Migration yearbook 2012, available at: www.migracija.lt/index.php?1357390560, p. 53.

¹² Lithuania Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*), Migration yearbook 2011, available at: www.migracija.lt/index.php?1357390560, p. 50.

There have been case law on family reunification in general, but have been none regarding family reunification of LGBT spouses/partners, thus it is impossible to discern any trends/legal practices.¹³

Freedom of assembly

Until very recently the LGBT community and organisations were ‘invisible’ in public life in Lithuania. The first attempt to organise a public LGBT event took place in May 2007. However, the administration of the Vilnius city municipality refused to issue permission, stating that, due to ‘objective information’ received from the police, there was a great possibility of violent protests and demonstrations, and that law enforcement institutions were not able to ensure public order and safety for this event. The legality of the municipality’s decision was not challenged in court. However, there are indications that the real motivation for not allowing the event to take place was the fact that the event publicly addressed the issue of sexual orientation.

Several other attempts, such as The second attempt to organise the same public LGBT event took place in October 2007, but again authorisation was denied. The LGBT organisation submitted a complaint regarding this decision to the court. The court of first instance as well as the court of second instance rejected this complaint. However, the interpretation of certain provisions of the Law on Assemblies by the municipality, and approval of this by both highlighted certain problematic aspects of the regulation of the right to assembly. It seems that certain provisions of the Law on Assemblies are not sufficiently precise, and can be interpreted differently by national courts.

In August 2007, once again the LGBT event under the “For diversity. Against discrimination” campaign were refused permission by both Vilnius and Kaunas cities municipalities. Although the decision was not appealed on the basis of the Law on Assemblies, dispute among the Ombudsperson for Equal Opportunities, who refused to evaluate the action of the municipality in the light of the Law on Equal Treatment, and LGBT organisation resulted in a case, where some provisions of national anti-discrimination law were tested in practice.

The court of first instance provided interpretation of the law, which narrowed the circle of subjects, as well as excluded oral statements of officials from the scope of the Law on Equal Treatment. The appellate court upheld the lower court’s judgment. It confirmed that LGBT organisation did not have the standing in the case since it challenged a decision adopted in relation to a third party, i.e. the PR company. Notwithstanding procedural issue of legal standing, the court stressed that the fact of discrimination was not established in this case. The case highlighted difficulties that can be encountered while enforcing broadly defined provisions of the Law on Equal Treatment.

The two subsequent attempts to exercise freedom of assembly – Baltic Pride 2010 and Baltic

¹³ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.praktika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/teismo-sprendimai_115.html.

Pride 2013 – were more successful. In addition to increasing the visibility of the LGBT community, they resulted in three precedent-setting cases, which are instrumental in interpreting freedom of assembly legislation.

In the context of LGBT assemblies, the reliance on the Recommendation CM/Rec(2010)5 of the *Council of Europe Committee of Ministers to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, by the national courts in two Baltic Pride cases is a commendable practice.¹⁴ For the future LGBT assemblies and the legal disputes they might bring about, it is very important that the national courts interpret the Law on Assemblies in line with relevant ECtHR jurisprudence. In both Baltic Pride 2010 and Baltic Pride 2013 cases, the highest administrative court in Lithuania, - the Lithuanian Supreme Administrative Court, - relied on the European Convention of Human Rights and the case-law of the European Court of Human Rights, in finding that “the state has the positive obligation to ensure effective enjoyment of the right to freedom of assembly for all, including individuals with unpopular views or minority groups.”¹⁵ It further found that the essential clause of effective exercise of freedom of assembly is a presumption of lawfulness, which is infringed when refusing to sanction a gathering and preventing minorities from participation. Negative consequences to the freedom of assembly cannot be avoided if legal remedies are applied only after the intended date of the gathering.¹⁶

However, on May 10, 2013 MP Petras Gražulis introduced a draft law on administrative liability for “denigration of constitutional values” aimed at restricting freedom of assembly of the LGBT community. Such amendment, if adopted, would bar or significantly limit the community’s right to hold protests and assemblies in the future.

Hate speech and criminal law

According to official statistics, no investigations regarding incitement of hatred in regard to sexual orientation were started in the period 2004-2006.

However, the number of pre-trial investigations increased significantly in the recent years. In 2009, 37 offences regarding incitement of hatred in regard to sexual orientation (Article 170 of the Criminal Code) were registered, and 9 cases ended up in the courts. In 2010 the ratio was 158 to 22, in 2011 – 328 to 123, in 2012 - 266 to 71 and in 2013 - 152 to 45 accordingly.¹⁷ The dramatic rise in the number of criminal investigations on the basis of incitement of hatred against a group of persons on grounds of their sexual orientation can be explained by the following reasons. First, the year 2007 was a turning point for the LGBT community, when the first attempts to appear in public life (organise public events, social advertising) were made. This attracted significant media attention. As a consequence, most of the criminal

¹⁴ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010. Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. A⁸⁵⁸-2475/2013, 23 July 2013.

¹⁵ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010. Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013.

¹⁶ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010.

¹⁷ The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania (*Informatikos ir ryšių departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

investigations were conducted in regard to incitement of hatred in comments in articles on internet news portals.

Nevertheless, the comparison of the number of the registered hate speech offences and the number of the cases which reach the courts indicates that even if the pre-trial investigations are launched, they rarely result in the actual judgment. This is mainly due to the nature of the offence (95% of hate speech offences are committed online and thus it is often problematic to identify a perpetrator), and a low quality of the pre-trial investigations. Notably, the Department of Special Investigations of the General Prosecution Service which has become more active in this field, was closed due to budgetary and structural considerations.¹⁸

Until recently the concept of hate crimes was not taken into account by the national legal system. However, in June, 2009, the amendments to Criminal Code took place and homophobic motivation (*inter alia* hatred concerning other equality grounds) is now included in the list of aggravating circumstances of the crime.

At least one case of violence against a person on grounds of his sexual orientation¹⁹ was publicised by the media.²⁰ However, no information as to whether this case was brought to the police attention/court and what was the outcome of the investigation is available. No case-law in respect of the above listed articles is available on the case-law databases either. Therefore it is impossible to identify specific new trends for the reporting period.

The study conducted by the Human Rights Monitoring Institute in 2013 has found that “[t]he high-level of hate crimes underreporting in Lithuania is [...] also due to the inaccurate classification of the offences committed. Inaccurate classification itself is a result of non-compliance with the State’s obligation to unmask a bias motive, be it a racial, ethnic, homophobic or any other.”²¹ In practice, hate crimes are often classified as mere hooliganism, without law establishing a biased motive of the perpetrator.²²

Transgender issues

The present legal situation of transgender persons is very problematic. Due to a legal vacuum in national legislation, persons cannot change their sex by medical means in Lithuania.

As the national legislation which provides protection against discrimination does not have any specific provisions as regards transgender persons, it is difficult to estimate how the issue of discrimination against a transgender person would be considered in practice. As yet, there have been no cases of discrimination against transgender persons brought before national courts or to the Office of the Equal Opportunities Ombudsperson.

As the issue of gender reassignment provokes controversial debates in society and among politicians, it is not clear whether the necessary changes in the legislation will be made in the

¹⁸ Special investigation division of the General prosecutor’s office (*Generalinės prokuratūros specialiuju tyrimu skyrius*) (2014), available at: www.prokuraturos.lt/nbspnbspnusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx

¹⁹ See C. *Asylum and subsidiary protection*.

²⁰ Alfa.lt (2008), ‘Spaudos apzvalga: cecenai pabegeliu centre muša politinio prieglobscio norinti geju’, *Alfa.lt*, 3 January 2008, available at: www.alfa.lt/straipsnis/163261/Spaudos_apzvalga..cecenai_pabegeliu_centre_musa_politinio_prieglobscio_norinti_geju=2008-01-03_09-15/#.Uw5wr4VDVJQ.

²¹ P. 15. Human Rights Monitoring Institute (*Zmogaus teisiu stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisiu stebėjimo institutas, available at: www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDA1.pdf

²² P. 15. Human Rights Monitoring Institute (*Zmogaus teisiu stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisiu stebėjimo institutas, available at: www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDA1.pdf

immediate future.

Meanwhile, transsexuals are undergoing gender reassignment surgeries abroad (usually - in Thailand) and obtaining rulings from the national courts ordering registry services to change their personal identification documents and birth certificates. The following data is being changed: name, family name, sex, and personal identification code.²³

Some of those who had undergone gender-reassignment surgeries abroad and obtained new personal identification documents, also sued the state for moral damages incurred due to the lengthy national procedures they had to undergo in order to change the documents and the absence of legal regulation on gender-reassignment.²⁴ At least two cases for moral (non-pecuniary) damages have been successful.²⁵

Miscellaneous

The year of 2009 was marked with legislative initiatives, aimed at criminalising “propagation” of homosexuality or limiting the freedom of expression on the matter. One of the most notorious initiatives, aimed at possibly limiting freedom of expression of LGBT community was the adoption of the Law on the Protection of Minors from Detrimental Effect of Public Information in July 2009. After lengthy debates and criticism it was amended to exclude information on homosexuality from the list, however, current wording still leaves room for interpretation disfavouring homosexuals.

The controversial provision of the law has been applied for the first time in 2013, to restrict the screening of the social video produced in anticipation to the Baltic Pride 2013.

A number of other homophobic legal initiatives, ranging from the attempts to criminalize “propagation” of homosexuality²⁶ to the ones defining “a family” by excluding same-sex couples²⁷ were debated.

On July 9, 2009 draft laws, supplementing the Penal Code 126 and Code of Administrative Offences were proposed to the Parliament. The amendments suggested (1) to establish

²³ Lithuania, Vilnius city 2nd Regional court (*Vilniaus miesto 2 apylinkės teismas*), No. 2-1450-553/2008, 20 March 2008.

²⁴Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁵⁰²-1255/2012, 26 April 2012; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁸⁵⁸-1452/2010, 29 November 2010.

²⁵ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁵⁰²-1255/2012, 26 April 2012; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁸⁵⁸-1452/2010, 29 November 2010.

²⁶ Lithuania, Draft law supplementing criminal code with article 310(1) (*Baudžiamojo kodekso papildymo 310(1) straipsniu įstatymo projektas*), No. XIP-668, 25 May 2009, available at:

www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=344470&p_query=&p_tr2=; Lithuania, Draft law supplementing criminal code with Article 310(1) (*Baudžiamojo kodekso papildymo 310(1) straipsniu įstatymo projektas*), No. XIP-668(2), 16 June 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346178&p_query=&p_tr2=; Lithuania, Draft law on supplementing the code of administrative offences with article 214(30) and 224 and 259(1) (*Administracinių teisės pažeidimų kodekso papildymo 214(30) straipsniu ir 224 bei 259(1) straipsnių papildymo įstatymo projektas*), No. XIP-667(2), 16 June 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346176&p_query=&p_tr2=.

²⁷ Lithuania, Draft law on amending and supplementing article 38 of the Constitution (*Konstitucijos 38 straipsnio papildymo ir pakeitimo įstatymo projektas*), No. XIP-3981, 15 December 2011, available at:

www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=414644; Lithuania, Draft law on amending and supplementing article 38 of the Constitution (*Konstitucijos 38 straipsnio papildymo ir pakeitimo įstatymo projektas*), No. XIIP-1217, 15 November 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=459884. One MP, Arvydas Mockus, later denounced his vote; Lithuania, Draft law on amending and supplementing article 7 of the law on the fundamentals of the protection of the rights of the child (*Vaiko teisių apsaugos pagrindų įstatymo papildymo 7 straipsnio pakeitimo ir papildymo įstatymo projektas*), No. XIIP-473, 18 April 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446661.

administrative liability for propagation of homosexual relationship and the financing of public propagation of homosexuality and (2) criminalise public agitation for homosexual relationship.

After the Constitutional Court's ruling, on November 15, 2013, 95 MPs tabled a draft amendment to Article 38 of the Constitution providing that "a family is created by a free-will agreement between a man and a woman [when they] enter into marriage."

On April 18, 2013, the group of 18 MPs registered an amendment to the Law on the Fundamentals of Protection of the Rights of the Child. The proposal seeks to insert the following wording: "Every child has the natural right to a father and a mother, emanating from sex differences and mutual compatibility between motherhood and fatherhood".

Good practices

There are no legal provisions or legal interpretations in the Lithuanian legal system which could be presented as good practice in tackling homophobia, and/or discrimination on the ground of sexual orientation and/or of transgender people, or which are innovative and could serve in this context as models for other Member States and European Union institutions.

The information presented in this report speaks clearly to the fact that both social and legal contexts LGBT individuals in Lithuania find themselves in are hostile, to say the least. As it is evident from the information presented below, including the fact that ILGA-Europe Rainbow Europe's Index of May 2013 ranked Lithuania 31st among 49 European countries in terms of laws and policies affecting the human rights of LGBTI people,²⁸ that legal provisions with regard to the LGBT individuals are not innovative and are not recommended to be transferred to other Member States.

Unfavourable legal context is to some extent mitigated by strong and active non-governmental organizations and cooperation established between the Office of the Equal Opportunities Ombudsperson and the civil society.

Intersex

Intersex people are not specified in the national legislation and the ground of "intersex" is not included under national non-discrimination legislation. 'Intersex' is not included in Lithuanian non-discrimination policies either.

Lithuanian names and family names are gender-sensitive and clearly indicate the gender of a person. Lithuanian legislation does not provide parents or medical practitioners with a possibility to omit indicating a gender of a new born.

Three orders by the Minister of Health specify the type of intervention applicable when a person is diagnosed with any sub-condition of 'indeterminate sex and pseudohermaphroditism' (Q56), depending on the severity of the condition.²⁹

²⁸ Delfi.lt (2013), 'ILGA-Europe is seriously concerned with the state of human rights of LGBTI people in Lithuania', *Delfi.lt*, 3 December 2013, available at: www.en.delfi.lt/58511/ilga-europe-is-seriously-concerned-with-the-state-of-human-rights-of-lgbti-people-in-lithuania-201358511. For more information see *Chapter H. Miscellaneous*.

Lithuania, The Minister of Health (*Sveikatos apsaugos ministras*), Order regarding special requirements for the [provision] of urology services to children and adults (*Isakymas dėl Specialiuju stacionariniu urologijos paslaugu vaikams ir suaugusiesiems teikimo reikalavimu patvirtinimo*), No. V-899, 3 November 2006, available at: www.e-

\According to the *Law on the Rights of Patients and Compensation for the Damage to Their Health*³⁰, a patient above 16 years of age shall be provided health care services only with his consent, except for the cases of the provision of emergency medical services, when the patient is not capable of expressing his will by himself.

tar.lt/portal/forms/legalAct.html?documentId=TAR.3027B1FA0FFB&dsRid=549&dswid=-9751; Lithuania, The Minister of Health (*Sveikatos apsaugos ministras*), Order regarding special requirements for the [provision] of second and third level endocrinology services to children and adults (*Dėl vaikų endokrinologijos antrinio ir tretinio lygio paslaugų teikimo specialiųjų reikalavimų*), No. V-395, 27 May 2004, available at: www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.46829F042FD7&dsRid=661&dswid=-9751; Lithuania, The Minister of Health (*Sveikatos apsaugos ministras*), Order regarding special requirements for the [provision] of third level services such as surgeries for congenital diseases (*Dėl įgimtų vaikų ligų chirurgijos stacionariųjų tretinio lygio paslaugų teikimo specialiųjų reikalavimų*), No. V-645, 14 December 2000, available at: http://sena.sam.lt/lt/main/teisine_informacija/ministro_isakymai?id=24128.

³⁰ Lithuania, Law on the rights of patients and compensation for the damage to their health (*Pacientų teisių ir žalos sveikatai atlyginimo įstatymas*), No. 102-2317, 3 October 1996, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=458070.

A. Implementation of Employment Directive 2000/78/EC

Initially, an explanation of the general legal framework in Lithuania on anti-discrimination and equal treatment in regard to constitutional provisions on grounds of sexual orientation must be given.³¹

Article 25 of the *Lietuvos Respublikos Konstitucija* [Constitution of the Republic of Lithuania], on freedom of expression, has a clause limiting freedom of expression in cases of discriminatory actions. It states that: 'Freedom to express convictions or impart information shall be incompatible with criminal actions such as the instigation of national, racial, religious or social hatred, violence or discrimination or the dissemination of slander or misinformation.'³²

Article 26 of the Constitution proclaims freedom of thought, conscience and religion: 'Freedom of thought, conscience and religion shall not be restricted. Each human being shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious practices, to practice and teach his belief. No one may compel another person or be compelled to choose or profess any religion or belief.'³³

A general equality clause is included in Article 29 of the Constitution, stating that: 'All persons shall be equal before the law, the court, and other State institutions and officials. The rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.' The ground of sexual orientation is not explicitly mentioned in the Constitution. However, according to the *Lietuvos Respublikos Konstitucinis Teismas* [Constitutional Court of the Republic of Lithuania],³⁴ the list of non-discrimination grounds in Article 29 of the Constitution cannot be considered as exhaustive, and sexual orientation is presumably included.³⁵

According to the jurisprudence of the Constitutional Court of the Republic of Lithuania, these constitutional provisions are directly applicable and each individual may defend his or her rights on the basis of the Constitution.³⁶ Any person whose constitutional rights or freedoms are violated has the right to appeal to a court. However, as cases where persons base their claim solely on constitutional provisions are non-existent in practice, these provisions should be implemented through the national legislation.

³¹ Lithuania, Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=237975&Condition2=.

³² Lithuania, Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=237975&Condition2=.

³³ Lithuania, Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=237975&Condition2=.

³⁴ Lithuania, Constitutional Court of the Republic of Lithuania (*Lietuvos Respublikos Konstitucinis teismas*), Conclusion on the compliance of articles 4, 5, 9, 14 as well as article 2 of protocol no 4 of the European Convention for the protection of human rights and fundamental freedoms with the constitution of the Republic of Lithuania (*Išvada dėl Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 4, 5, 9, 14 straipsnių ir jos Ketvirtąjo protokolo 2 straipsnio atitikimo Lietuvos Respublikos Konstitucijai*), No. 9-199, 24 January 1995, available at: www.lrkt.lt/dokumentai/1995/i5a0124a.htm.

³⁵ Although the ground of sexual orientation has not been explicitly mentioned in the above-cited conclusion of the Constitutional Court.

³⁶ 'The Constitution shall be an integral and directly applicable act. Everyone may defend his rights by invoking the Constitution.' (Article 6 of the Constitution). Lithuania, Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=237975&Condition2=.

The general principle of equality of persons embodied in the Constitution is repeated in a number of laws, for example *Darbo Kodeksas* [Labour Code], *Civilinis kodeksas* [Civil Code] of the Republic of Lithuania. However, the ground of sexual orientation is explicitly mentioned in only a few national legal enactments. Equality of labour law subjects, regardless of *inter alia* their sexual orientation, is embodied in Article 2 of the Labour Code of the Republic of Lithuania.³⁷ Additionally, Article 129 of the Labour Code states that *sexual orientation*, among other grounds, cannot be considered as a legitimate reason to terminate an employment contract.³⁸

Article 169 of the *Baudžiamasis Kodeksas* [Criminal Code] of the Republic of Lithuania prohibits severe discriminatory behavior on the basis of sexual orientation, among other grounds: ‘A person who has committed acts aimed at a certain group or members thereof on account of their ethnic background, race, sex, *sexual orientation*, origin or religion with a view to interfering with their right to participate as equals of other persons in political, economic, social, cultural or employment activity or to restrict the human rights or freedoms of such a group or its members, shall be punished with (a) community service work (b) a fine (c) detention or (d) imprisonment for up to 3 years.’³⁹

Additionally, Article 170 of the Criminal Code also prohibits incitement against certain groups of residents: ‘A person who, by making public statements orally, in writing or by using the public media, ridicules, expresses contempt of, urges hatred towards or encourages discrimination against a group of residents or against a specific person, on account of his or her sex, *sexual orientation*, race, nationality, language, ethnicity, social status, faith, religion or beliefs, shall be punished with (a) a fine, (b) detention or (c) imprisonment for up to 3 years’.⁴⁰

The *Visuomenės informavimo pakeitimo įstatymas* [Law on the Provision of Information to the Public] prohibits the publishing of information which ‘instigates war or hatred, sneer, scorn, instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, *sexual orientation*, race, nationality, language, origins, social status, religion, beliefs or standpoints’ (Article 19 Paragraph 1(3)).⁴¹ The *Bausmių vykdymo Kodeksas* [Code of the Enforcement of Punishments] of the Republic of Lithuania states that all convicted persons are equal before the law, *inter alia* regardless of their sexual orientation.⁴²

Sexual orientation is not explicitly mentioned in any other laws, except the *Lietuvos Respublikos Lygių galimybių įstatymas* [Law on Equal Treatment of the Republic of Lithuania], which is the main legal act implementing Directives 2000/43/EC (Racial Equality Directive) and 2000/78/EC (Employment Equality Directive) in the national legislation.

³⁷ Lithuania, The law on the approval, enactment and implementation of the Labour Code. Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), No. 64-2569. 4 June 2002, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463924.

³⁸ Lithuania, The law on the approval, enactment and implementation of the Labour Code. Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), No. 64-2569. 4 June 2002, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463924.

³⁹ Lithuania, The law on the approval and of the Criminal Code. Criminal Code (*Baudžiamojo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Baudžiamasis kodeksas*), No. 89-2741. 26 September 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465371.

⁴⁰ Lithuania, The law on the approval and of the Criminal Code. Criminal Code (*Baudžiamojo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Baudžiamasis kodeksas*), No. 89-2741. 26 September 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465371.

⁴¹ Lithuania, The law on the provision of information to public (*Visuomenės informavimo įstatymas*), No.71-1706, 2 July 1996, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=459047.

⁴² Lithuania, The law on the approval of the code on execution of punishments. The code on execution of punishments (*Bausmių vykdymo kodekso patvirtinimo įstatymas. Bausmių vykdymo Kodeksas*), No 73-3084, 27 June 2002, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=427553.

A.1. The Law on Equal Treatment

The Employment Equality Directive 2000/78/EC was introduced into national legislation together with the Racial Equality Directive 2000/43/EC on 18.11.2003. No discussions regarding the quality of the transposition or the substance of the Law on Equal Treatment, which implements the directives, took place in the Parliament.

The Law on Equal Treatment, passed on 18.11.2003, came into force on 01.01.2005.⁴³ The law was amended twice: on June 17, 2008⁴⁴ and on July 2, 2013.⁴⁵

The purpose of the law, as it is outlined in the Article 1, is to ensure the implementation of the principle of Equality of persons on grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, as it is outlined in the Constitution of the Republic of Lithuania, and to implement the EU laws, mentioned in the annex of the law (namely Directives 2000/43/EC and 2000/78/EC). The omission of mentioning sexual orientation in the latest amendments was caused by the pressure from the conservative Parliament groups, which favoured mentioning of the Constitutional equality clause, where sexual orientation is not explicitly mentioned. However, sexual orientation is later mentioned in other articles of the law that provide definitions of discrimination, harassment and other provisions.

Although the Employment Equality Directive prohibits discrimination only in the field of employment and occupation, in the Law on Equal Treatment protection against discrimination on the grounds of gender, race, nationality, language, descent, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion (Article 2 Paragraph 1) is extended to the scope covered by the Race Directive, thus people are protected against discrimination on the ground of sexual orientation in the fields of access to goods and services and education as well.

On the other hand, it is disputed, whether self-employment is covered by the current wording of the Law on Equal Treatment. The provisions, concerning employment (recruitment conditions, promotion, professional training, etc.) are established in the Law on Equal Treatment. However, these provisions should also be transposed to specialised laws, governing self-employment, because it is not clear from the Law on Equal Treatment whether self-employment is covered. The laws relating to specific professions, such as the Attorney Law,⁴⁶ Law on the Health Protection System,⁴⁷ Accountancy Law⁴⁸, Audit Law and Dentistry Law⁴⁹ and others, do not contain non-discrimination clauses, definitions of discrimination on any regulations on protection against discrimination and lack direct prohibition of discrimination on grounds, covered by the Directives.

⁴³ Lithuania, Stenograph of the 29th (439) Parliament's sitting (*Seimo dvidešimt devintojo (439) posėdžio stenograma*), No. 243, 18 November 2003, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=221498.

⁴⁴ Lithuania, The law on the amendment of the law on equal treatment (*Lygių galimybių įstatymo pakeitimo įstatymas*), No X-1602, 17 June 2008, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=323620&p_query=&p_tr2=.

⁴⁵ Lithuania, The Law amending and supplementing article 5 of the law on equal treatment (*Lygių galimybių įstatymo 5 straipsnio pakeitimo ir papildymo įstatymas*), No XII-473, 23 July 2013, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?a=453405&b=.

⁴⁶ Lithuania, Law on the bar (*Advokatūros įstatymas*), No. 50-1632, 18 March 2004, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453986.

⁴⁷ Lithuania, Law on health system (*Sveikatos sistemos įstatymas*), No. 63-1231, 19 July 1994, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454090.

⁴⁸ Lithuania, Law on audit (*Audito įstatymas*), No. 59-1916, 15 June 1999, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450783.

⁴⁹ Lithuania, Law on stomatological care (assistance) (*Stomatologinės priežiūros (pagalbos) įstatymas*), No. 4-36, 18 December 2003, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=232525, available at:

Additionally, Article 5 of the Law on Equal Treatment provides for a wide-ranging, and broadly defined obligations for state and local governmental institutions or agencies, within the scope of their competence, (1) to ensure that in all the legal acts drafted and passed by them, equal rights and treatment, regardless of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, social status, language or convictions, are laid down, (2) to draft and implement programmes and measures designed to ensure equal treatment, regardless of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, social status, language or convictions, (3) in the manner prescribed by the laws, to provide assistance to the programmes of religious communities, associations and centres, other non-governmental organisations, public agencies and charity and sponsorship foundations which assist in the implementation of equal treatment of persons, without regard to their age, sexual orientation, disability, racial or ethnic origin, religion, beliefs, social status, language or convictions.⁵⁰ However, the case-law showed that it is problematic to enforce the implementation of this generally defined duty in practice.⁵¹

Since adoption the law was criticised for not transposing the requirements of the directives in many important areas. Although many significant implementation gaps were formally eliminated by latest amendments, and the scope of the law was expanded to include additional equality grounds (social status, language and convictions) however, the transposition is still insufficient with regards to the following aspects.

A.2. Legal standing of associations

First of all, the rights of associations to engage in judicial proceedings on behalf or in support of the victim of discrimination, as it is outlined in the Employment Equality Directive, remain problematic to implement in practice.

It is theoretically possible for NGOs and associations to engage in administrative procedure on behalf of the victim in administrative courts. According to Article 49 Paragraph 3 of the Law on Lithuanian Administrative Procedure,⁵² mandatory legal representation is ‘usually, but not necessarily’ exercised by an attorney, which leaves an opening for possible representation by associations. However, this opportunity has never been used in practice, and it is hard to predict whether it would be accepted by the courts.

The wording of the Article 12 Paragraph 2 of the Law on Equal Treatment states, that associations and other legal bodies, whose field of activity, as stated in their founding documents, encompasses representation of victims of discrimination on a particular ground of discrimination at courts, have a right to engage on behalf or in support of the complainant, with his or her approval, in judicial and administrative procedure, in a manner prescribed by law.⁵³ This provision does not explicitly include or exclude trade unions.

In 2011, the Code of Civil Procedure [Civilinio proceso Kodeksas] of the Republic of Lithuania was amended.⁵⁴ The amendments of Article 56 broadened the list of subjects who are allowed to

⁵⁰ Lithuania, Law on equal treatment (*Lygių galimybių įstatymas*), No. 114-5115, 18 November 2003, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179.

⁵¹ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. A662-665/2010, 19 May 2010.

⁵² Lithuania, Law on administrative procedure (*Administracinių bylų teisenos įstatymas*), No. 13-308, 14 January 1999, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462189.

⁵³ Lithuania, Law on equal treatment (*Lygių galimybių įstatymas*), No. 114-5115, 18 November 2003, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179.

⁵⁴ Lithuania, The Law amending and supplementing the Civil Procedure Code (*Civilinio proceso kodekso pakeitimo ir papildymo įstatymas*), No. XI-1480, 21 June 2011, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?a=403087&b=.

appear before the court as a party's legal representatives. Now, the according to Article 56 Paragraph 1, the right to legally represent a person before the court is also granted to "trade unions, when they represent the unions' members in the labour disputes" and "associations or other public legal bodies, when the defence of rights and representation before the court of a certain group is stipulated in their founding documents as one of the objectives, and if they represent a member⁵⁵ of the association or other public legal person in the cases that fall within one of the activity objectives stipulated in the founding documents. In both cases, the person to appear before the court is "the sole governing body, [or] members of the collegial management body entrusted by the law or the founding document [of the union] or mandated representatives – employees with the university degree in law and (or) lawyers (associate lawyers)".

The wording of the amended Article 56 of the Civil Procedure Code appears to be narrower than the one of the Article 12 Paragraph 2 of the Law on Equal Treatment. Seems that those NGOs that hold a legal status of public organization (*viešoji įstaiga*) and are not membership-based (as opposed to associations which are membership-based) are barred from representing victims of discrimination, since they are not their members. Although this particular provision has not been tested in courts yet, the Ministry of Justice also considers that victim can be represented by an association only if he or she is formally a member of such organisation. Hence it seems there is an inconsistency between the wording, provided by the Law on Equal Treatment (also the Employment Directive) and the Code of Civil Procedure.

Associations and other NGOs can, however, initiate administrative procedures at the *Lygių galimybių kontrolieriaus tarnyba* [Office of the Equal Opportunities Ombudsperson]. In practice administrative procedures at the Office of the Equal Opportunities Ombudsperson were initiated by the main LGBT rights organisation in Lithuania *Lietuvos gėjų lyga* [Lithuanian Gay League] (LGL). However, the available case-law on the issue provided narrower interpretation of the Law on Equal Treatment, which contradicted to the practise of the Ombudsperson. In spite of the fact, that in the past associations were addressing the Ombudsperson in cases, where their rights were not directly affected by particular actions or omissions, however, the court ruled, that only persons, whose rights were directly affected by particular decisions have a right to appeal to the Ombudsperson.⁵⁶

There have not been any case brought on behalf of a victim of discrimination (on any of the non-discrimination grounds) either before the Ombudsperson, or before the courts by an association/trade union/non-governmental organization, therefore it is not absolutely clear whether the courts would interpret the standing provisions in the national laws in line with the interpretations provided above. The Human Rights Monitoring Institute is currently working on the test case and is planning to file a discrimination complain on behalf of a victim of disability discrimination before the administrative court.⁵⁷ The case will clarify whether non-governmental organizations can appear before the administrative courts as the representatives of discrimination victims.

⁵⁵ Article 2.45 of the Civil Code stipulates that „[a] member of a legal person (shareholder, member, part-owner etc.) shall be the person, which enjoys the right of ownership to the property of a legal person, or the person, who, irrespective of his failure to maintain the right of ownership to the property of a legal person, acquires the obligatory rights and duties related to the legal person.“ Lithuania, Law on approval, enactment and implementation of the civil code. Civil code (*Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas*), No. 74-2262, 18 July 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465506.

⁵⁶ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁶⁶²-665/2010], 19 April 2010.

⁵⁷ Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2014), Phone communication of NFP-Lithuania, 25 April 2014.

A.3. The shift of the burden of proof

The shift of the burden of proof was formally introduced to the Law on Equal Treatment only in June, 2008.⁵⁸ Current wording of Article 4⁵⁹ repeats the provision of the Directive, not going into details. Despite the implementation gap which existed in the law, the Equal Opportunities Ombudsperson applied the shift of the burden of proof while investigating complaints on various grounds of discrimination since 2005 (as the Ombudsperson is not bound by the Code of Civil Procedure).

In the beginning, taking advantage of this provision at courts of civil jurisdiction seemed to be difficult in practice, since the Code of Civil Procedure provides the general rule that the burden of proof falls upon the applicant.⁶⁰ There are no other legal acts that explain the procedure in anti-discrimination case in detail, thus the interpretation of the law would depend on the judge.

However, recent case-law shows⁶¹ that it is possible to shift the burden of proof using existing legal provisions and the courts recognize it. Article 182 of the Code of Civil Procedure also has the provision which states that the parties are not obliged to prove circumstances that are presumed by laws. Since there is the provision on the shift of the burden of proof in the Law on Equal Treatment, these provisions can be used together to convince the court to shift the burden of proof. However, the criteria will completely depend on the circumstances of the case in hand as well as the position of the judge.

Despite the fact that the Code of Civil Procedure does not provide any clear guidance regarding the distribution of the burden of proof in discrimination cases, the first discrimination case showed that it is possible to shift the burden of proof using existing legal provisions. In that first case which concerned discrimination in employment on the ground of ethnic origin, the judge stated that the complainant (a woman of Roma ethnic origin who claimed to be discriminated when applying for the job) had established a *prima facie* case and shifted the burden of proof to the other party. When doing so, the judge relied on Article 182 of the Code of Civil Procedure⁶² which states that the parties are not obliged to prove circumstances that are presumed by laws⁶³ and on Article 10 of 2000/78 Directive. In the subsequent discrimination cases, including two cases concerning discrimination on the ground of sexual orientation, the courts used the same provisions and shifted the burden of proof from an alleged victim of discrimination to the respondent.⁶⁴

In the first discrimination case (the fact of the case are discussed in a greater detail in *Chapter*

⁵⁸ Lithuania, The law on the amendment of the law on equal treatment (*Lygių galimybių įstatymo pakeitimo įstatymas*), No. X-1602, 17 June 2008, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=323620&p_query=&p_tr2=-.

⁵⁹ Where in the course of the hearing of complaints, petitions, applications, notifications or claims of natural or legal persons about discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion before a court or other competent authority, the complainant establishes facts from which it may be presumed that there has been direct or indirect discrimination, it shall be presumed that direct or indirect discrimination, harassment or instruction to discriminate has occurred. The respondent shall have to prove that there has been no breach of the principle of equal treatment.

⁶⁰ Lithuania, Law on approval, enactment and implementation of the civil procedure code. Civil procedure code (*Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas*), No. 36-13640, 28 February 2002, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462215.

⁶¹ Lithuania, Vilnius District Court (*Vilniaus apgardo teismas*), No. 2140-464/2011, 11 November 2011; Lithuania, Vilnius District Court (*Vilniaus apgardo teismas*), No. 2A-1051-258/2013, 8 March 2013.

⁶² Lithuania, Law on approval, enactment and implementation of the civil procedure code. Civil procedure code (*Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas*), No. 36-13640, 28 February 2002, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462215.

⁶³ Lithuania, Law on approval, enactment and implementation of the civil procedure code. Civil procedure code (*Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas*), No. 36-13640, 28 February 2002, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462215.

⁶⁴ Lithuania, Vilnius District Court (*Vilniaus apgardo teismas*), No. 2A-2140-464/2011, 11 November 2011.

A.6. *Sanctions and remedies*),⁶⁵ the courts (first instance and appellate court) found that the applicant established a *prima facie* discrimination on the grounds of sexual orientation and social status case, and shifted the burden of proof to the respondent. The appellate court however highlighted that the mere fact of a public “coming out” cannot be regarded as a presumption of discrimination. Unfortunately, the court failed to go into details and list the factors instrumental in establishing a *prima facie* case, thus the notion of “prima facie case” remains subject to interpretation and is decided on case-by-case basis. Regarding sexual orientation discrimination cases, it could be argued that *prima facie* case is a very context-dependent notion and in the countries where the level of hostility towards LGBT is as high as it is in Lithuania,⁶⁶ the threshold to establish a *prima facie* sexual orientation discrimination case should not be too high. In the second discrimination case,⁶⁷ the courts found again that the applicant established a *prima facie* discrimination on the grounds of sexual orientation and social status case, and shifted the burden of proof to the respondent. Notably, the applicant requested to turn to the Court of Justice of the EU for the preliminary ruling, in particular, regarding the interpretation of the “prima facie case”. However, the appellate court concluded that the substance of the EU law in the present case was clear and the preliminary reference to the CJEU would not change the outcome of the case.

A.4. The complaint procedures available to victims of discrimination on the ground of sexual orientation

According to national legislation, persons who have experienced discrimination on the ground of sexual orientation have several procedural ways to protect their rights.

Firstly, the Constitution of the Republic of Lithuania guarantees the right of every person to appeal to a court or other competent institution for the protection of rights under the Constitution which have been violated. The general principle of equality of persons is embodied in a number of laws (e.g. Civil Code of the Republic of Lithuania, Labour Code). However, the Code of Civil Procedure and other procedural laws do not comprise special judicial, administrative or conciliation procedures for cases of discrimination. Thus, in civil or administrative cases, victims of discrimination must rely on general procedures, which can be very difficult to apply in discrimination cases.

Another possibility is to start a criminal process under the previously mentioned provisions of the Criminal Code of the Republic of Lithuania, including the provision which prohibits discrimination (Article 169). However, in this case, only severe discriminatory acts can be brought before the court, and so far these provisions have rarely been used in practice.

Thirdly, in the case of a labour dispute, a person could take advantage of procedures established by the *Darbo kodeksas* [Labour Code].⁶⁸ However, it must be mentioned that the Labour Code does not directly provide any sanctions for workplace discrimination; the sanctions for violations of labour laws are provided for in the *Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas* [Administrative Violations Code].⁶⁹ A person can address the *Darbo ginčų komisija* [Employment Disputes Commission] or courts directly.

⁶⁵ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. 2A-2140-464/2011, 11 November 2011.

⁶⁶ See *Chapter H. Miscellaneous* for more information.

⁶⁷ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. 2A-1051-258/2013, 8 March 2013.

⁶⁸ Lithuania, Vilnius 2nd regional court (*Vilniaus miesto 2-jo apylinkės teismas*), No. 2-1189-545/2008, 30 June 2008.

⁶⁹ Lithuania, Code of administrative offences (*Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas*), No. 1-1, 13 December 1984, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463861.

Until 2012, the Employment Dispute Commissions were organized within a company or institution and consisted of equal number of the employer's and employees' representatives. However, in 2012 the Labour Code was amended to introduce permanent Commissions organized under the local chapters of the State Labour Inspectorate [Valstybinė darbo inspekcija].⁷⁰ Commissions became a mandatory pre-trial stage for labour disputes, except for the ones concerning employee's suspension or dismissal. An unsatisfactory Commission's decision can be appealed before the court. However, due to the fact that there are no special procedures outlined in the Labour Code (which applies to the labour dispute resolution before the Employment Dispute Commissions) regarding discrimination cases (e.g. rules for the representation of a discrimination victim), it may be problematic for a victim of sexual orientation discrimination to address the Employment Dispute Commissions.

Additionally, it is possible to address the *Valstybinė darbo inspekcija* [State Labour Inspectorate], which controls compliance with laws regulating labour relations and inspects for compliance with the provisions of the Labour Code, including those related to employment contracts, payment for work, organisation of work and rest periods, as well as the enforcement of relevant resolutions of the government of the Republic of Lithuania and orders of the *Socialinės apsaugos ir darbo ministerija* [Ministry of Social Security and Labour]. Theoretically, the State Labour Inspectorate could impose administrative sanctions on employers who discriminate against employees, and thus violate the provisions of the Employment Code. Sanctions are imposed by a general provision in the Administrative Violations Code.⁷¹ In practice, however, State Labour Inspectorate officials do not address issues of workplace discrimination as it is considered to be the mandate of the Office of the Equal Opportunities Ombudsperson. According to the cooperation practice between the State Labour Inspectorate and the Equal Opportunities Ombudsperson, if the Inspectorate receives a case where discrimination is being alleged or where the fact of discrimination could be potentially established, it forwards the case to the Ombudsperson.⁷²

Finally, the most widely used possibility in practice is to address the Equal Opportunities Ombudsperson. The Office of the Equal Opportunities Ombudsperson was created by the Law on Equal Treatment, which expanded the mandate of the previous institution (the Ombudsman of Equal Opportunities for Men and Women), and can thus be considered as a national equality body in terms of Article 13 of Race Directive 2000/43/EC. The procedure at the Office of the Equal Opportunities Ombudsperson is quite simple and reasonably inexpensive. Each natural or legal person has a right to file a complaint with the Equal Opportunities Ombudsperson about the violation of rights to equal treatment.

Complaints should be made in writing: the complainant or her or his representative may send the complaint to the Equal Opportunities Ombudsperson by post, fax, email or bring it in person to the office. If a complaint has been received by word of mouth or by telephone, or if the Equal Opportunities Ombudsperson has found indications of violation of equal rights in the mass media or other sources of information, the investigation may be started on the initiative of Ombudsperson. The Ombudsperson may also decide to investigate anonymous complaints. The

⁷⁰ Lithuania, Law on amending article 204 and chapter XIX of the labour code (*Darbo kodekso 204 straipsnio ir XIX skyriaus pakeitimo įstatymas*) No XI-2127, 26 June 2012, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?a=429157&b=.

⁷¹ Article 41. Lithuania, Code of administrative offences (*Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas*), No. 1-1, 13 December 1984, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463861.

⁷² Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2007 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2007 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

time-limit for filing complaints is three months after the commission of the acts against which the complaint is being filed. Complaints filed after the expiry of this time-limit are not investigated unless the Equal Opportunities Ombudsperson decides otherwise. The decisions of the Equal Opportunities Ombudsperson when applying administrative sanctions are of binding character and can be sued by a court.

A.5. The establishment of bodies for promotion of equal treatment

Lygių galimybių kontrolierius [The Equal Opportunities Ombudsperson] is the main national anti-discrimination body, founded in order to fulfil the requirements of the Racial Equality Directive. When the Law on Equal Treatment came in force in 2005 it expanded the mandate of the previous *Moterų ir vyrų lygių galimybių kontrolierius* [Ombudsman of Equal Opportunities for Men and Women]. Thus a new institution – the Equal Opportunities Ombudsperson – covering all grounds of discrimination, embodied in directives 2000/43/EC, 2000/78/EC and gender ground, started working since January 1st, 2005. In June 2008, three additional grounds – social status, language and convictions – were added to the list of protected grounds. The Ombudsperson supervises the implementation of the Law on Equal Treatment in the manner prescribed by the- Law on Equal Opportunities for Women and Men.⁷³ The Ombudsperson is appointed by the Parliament for 5 years term (there is no limit of terms) and financed from the fiscal budget. It is the main national institution dealing with equality and non-discrimination.

The Ombudsperson exercises its functions with respect to all grounds, covered by both Race and Employment Equality Directives as well as gender, language, convictions and social status (the later 3 were added in June, 2008). In accordance with the Article 12 of Law on Equal Opportunities for Men and Women, the Equal Opportunities Ombudsperson:

1. Investigates complaints regarding direct, indirect discrimination, harassment and sexual harassment and provides objective and impartial consultations with regard to this function;
2. Exercises independent research, related to the complaints of discrimination, drafts independent reports and overviews of the situation of discrimination, reports on the implementation of this law to the Parliament, and submits recommendations to governmental and municipal institutions and organisations of the Republic of Lithuania on the revision of legal acts and priorities in the policy of implementation of equal rights;
3. Exchanges information with analogous institutions of other Member States.

Providing independent consultations to victims of discrimination in pursuing their complaints about discrimination, conducting independent research and overviews concerning discrimination, preparation of reports as foreseen in the Article 13 of the Racial Equality Directive, were included to the competence of the Ombudsperson only recently.⁷⁴ The Ombudsperson is obliged to provide consultations for state or municipal institutions and organisations. In practice, the Ombudsperson is usually invited to advise the Parliament and the Government, as well as other governmental or municipal institutions, when issues of equal opportunities arise.

Although awareness raising on discrimination does not fall under the competence of the

⁷³ Lithuania, Law on equal opportunities for women and men (*Moterų ir vyrų lygių galimybių įstatymas*), No. 112-3100, 1 December 1998, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454180.

⁷⁴ The latest amendments to the Law on Equal Opportunities for Women and Men took place July 14th, 2009.

Ombudsperson according to the law, in practice, however, the Ombudsperson is involved in those activities. A number of educational, awareness raising and research functions were allocated to the Ombudsperson by the Government (since the Ombudsperson was appointed the main national body, implementing the European Year of Equal Opportunities for All 2007 and was involved in the National Anti-discrimination Programme for 2006–2008,⁷⁵ Governmental program for the Integration of Roma 2008 – 2010⁷⁶, Strategy on the Development of the National Minority Policy until 2015⁷⁷), although the Ombudsperson is not obliged to exercise such activities according to the law.

The Ombudsperson actively engages with national NGOs and implements various projects funded under the EU funding schemes, e.g. European Social Fund, aimed at raising awareness of equality principles and non-discrimination, and encompassing research and educational activities. For example, in 2013–2014 the Ombudsperson together with LGL and the Lithuanian Forum of the Disabled [Lietuvos neįgalųjų forumas] implemented the project “DIVERSITY.LT” [“ĮVAIROVĖ.LT”], in 2012–2014 – the project “The Diversity Park”⁷⁸ [“Įvairovės parkas”] promoting equal opportunities in the labour market.⁷⁹

Finally and most importantly, according to Paragraph 1 of Article 12 of the Law on Equal Opportunities for Women and Men, it has the power to investigate complaints regarding direct and indirect discrimination, harassment and sexual harassment. Quasi-judicial function is the main activity of the Ombudsperson. It not only can investigate complaints as well as start investigation on its own initiative, but can also issue administrative sanctions in accordance with the Administrative Violations Code of the Republic of Lithuania. The Equal Opportunities Ombudsperson may take the following decisions:

- to refer relevant material to investigatory bodies if indications of an offence have been established;
- to address an appropriate person or institution with a recommendation to discontinue actions violating equal opportunities, or to repeal a legal act related to such violations;
- to hear cases of administrative offences and impose administrative sanctions for violations of the Law on Equal treatment and the Law on Equal Opportunities. In accordance with Article 41(6) of the Administrative Violations Code, in such cases it can issue a fine of from 100 to 2,000 Litas (from 29 to 580 euros approximately). Where the same violation is committed repeatedly, a fine of from 2,000 to 4,000 Litas can be imposed on the same subject.
- to admonish those who have committed a violation;
- to halt advertisement activities temporarily, if there is sufficient data to indicate that an advertisement campaign may incite hatred towards or encourage discrimination against a group of residents or against a specific person, on account of his or her sex, sexual orientation, race, nationality, ethnicity, age, disability, faith, religion or beliefs;
- to issue binding decisions to stop discriminatory advertisement campaigns.

⁷⁵ Lithuania, The Government decision on the approval of the national anti-discrimination programme for 2006–2008 (*Vyriausybės nutarimas „Dėl Nacionalinės antidiskriminacinės 2006–2008 metų programos patvirtinimo*), No. 90, 19 September 2006, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=282802&p_query=&p_tr2=.

⁷⁶ Lithuania, The Government order on the approval of the roma integration into Lithuanian society programme for 2008–2010 (*Vyriausybės nutarimas dėl romų integracijos į Lietuvos visuomenę 2008–2010 metų programos patvirtinimo*), No. 309, 26 March 2008, available at:

www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=317530&p_query=&p_tr2=.

⁷⁷ Lithuania, The Government order on the approval of the 2015 strategy for the national minorities policy development (*Vyriausybės nutarimas „Dėl Tautinių mažumų politikos plėtros iki 2015 m. strategijos patvirtinimo*), No. 1132, 17 October 2007, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307551&p_query=&p_tr2=.

⁷⁸ Lithuania, Diversity Park (*Įvairovės parkas*), available at: <http://ivairove.lt/>.

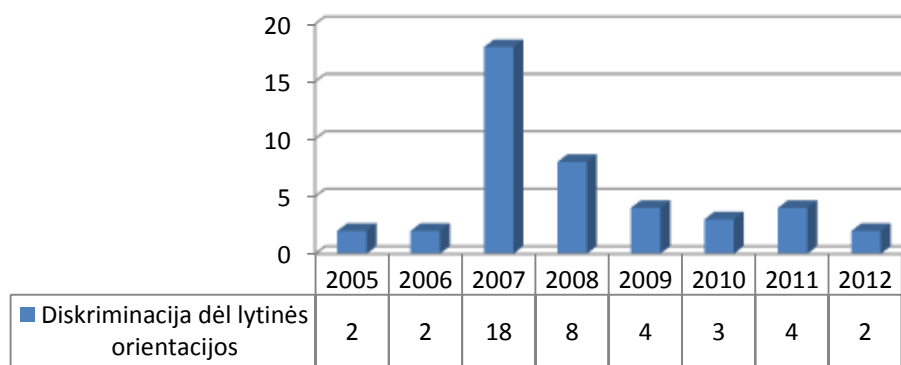
⁷⁹ Lithuania, Office of the Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) (2014), ‘Šiuo metu vykdomi projektai’, *Lygybe.lt*, available at: www.lygybe.lt/lt/projektai/vykdomi-projektai.ht.

However, although the Ombudsperson was given competence to investigate complaints on discrimination, the decisions of the Equal Opportunities Ombudsperson do not include compensation for damage to the victim of sexual orientation discrimination. The Ombudsperson has the right to impose administrative sanctions (in accordance with the Administrative Violations Code), however these can hardly be considered to be of effective, proportionate and dissuasive character (especially for large companies or institutions).

In 2005 as well as in 2006, the Office of the Equal Opportunities Ombudsperson received two complaints regarding discrimination on the ground of sexual orientation.⁸⁰ In 2007, the Office of the Ombudsperson started one investigation on its own initiative and received 18 complaints (mostly these

concerned the banning of LGBT events.⁸¹ In 2008 the Ombudsperson received 8 complaints, concerning sexual orientation. The complaints were in most cases presented by various human rights organisations, mostly by major LGBT organization in Lithuania LGL.

From 2008, the number of investigation on the grounds of sexual orientation performed by the Ombudsperson almost steadily declined. The chart below shows the number of the investigations for the given year and includes both *ex officio* investigations and the ones resulting from the complaints.⁸²



According to the press release issued by the Ombudsperson's Office, no complaints on the ground of sexual orientation were received in 2013.⁸³

A.6. Sanctions and remedies

Generally, sanctions in Lithuania in discrimination cases cannot be considered to be effective, proportionate and dissuasive. There are sanctions embodied in the Criminal Code which are imposed in cases of severe discriminatory acts. There are also sanctions in the Administrative

⁸⁰ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2005 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2005 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2006 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2006 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁸¹ This is discussed in detail in *H.I. Freedom of expression*.

⁸² P. 13. Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2012 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2012 m. ataskaita*); available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁸³ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) (2014), '2013 m. gauta daugiausiai skundų per visą tarnybos veiklą. Dažniausiai tirti pareiškimai dėl socialinės padėties diskriminacijos. 70 proc. atvejų dėl visų diskriminacijos pagrindų skundėsi vyrai', Press release, 7 January 2014, available at: www.lygybe.lt/lt/naujienos/pranesimai-spaudai/2013-m.-gauta-5zdf.html.

Violations Code for breach of the laws on equal opportunities (these sanctions are issued by the Equal Opportunities Ombudsperson). The sanctions available in certain labour disputes are specified in the Labour Code. The Employment Disputes Commission [Darbo ginčų komisija] or the court can order the employer to restore employee's rights and compensate up to the amount of the average wage for the period of time the employee was unlawfully suspended from work or unlawfully dismissed.⁸⁴ These instances include suspension or dismissal resulting from discrimination on the ground of sexual orientation. The general rules for the compensation of pecuniary and non-pecuniary damages are stipulated in the Civil Code. However, none of them apply exclusively to discrimination cases.

Decisions of the Office of the Equal Opportunities Ombudsperson do not have any compensatory effect for a victim. In accordance with the Administrative Violations Code, it can impose administrative sanctions (issue a warning or a fine), but rarely does so in practice. In practice the Ombudsperson rarely exercises the issuance of fines as an administrative sanction.

Decisions of the Equal Opportunities Ombudsperson to apply administrative sanctions are binding, but can be overruled by court. Applying to the Equal Opportunities Ombudsperson does not prevent a complainant from lodging a claim with a court on the same matter. In practice the Ombudsperson often acts as a mediator – according to the Ombudsperson, peaceful resolution of discrimination is one of its main objectives.⁸⁵

In 2005 out of all cases on all grounds of discrimination decisions to issue a fine formed 4%, in 2006 – 2%, in 2007, 2008, 2009, 2010 and 2011 no decisions to issue a fine were taken. In 2012 in 1% of cases the Ombudsperson issued a fine.⁸⁶

The outcome of the investigation of the complaints on the ground of sexual orientation in the Ombudsperson's Office is as follows:

- In 2005 Ombudsperson investigated two complaints on the ground of sexual orientation. In one case the Ombudsperson issued a warning to stop discriminatory action, in the second case no fact of discrimination was established.⁸⁷ Both cases concerned allegedly

⁸⁴ Paragraph 1 and 3 of Article 300 of the Labour Code. Lithuania, The law on the approval, enactment and implementation of the Labour Code. Labour Code (*Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas*), No. 64-2569. 4 June 2002, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463924.

⁸⁵ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2005 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2005 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2006 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2006 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2007 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2007 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2008 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2008 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2009 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2009 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2010 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2010 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2011 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2011 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2012 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2012 m. ataskaita*); available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁸⁶ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2005 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2005 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2006 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2006 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2007 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2007 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2008 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2008 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2009 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2009 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2010 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2010 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2011 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2011 m. ataskaita*); Activity report of the Office of the Equal Opportunities Ombudsperson for 2012 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2012 m. ataskaita*); available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁸⁷ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) (2014), Phone communication of NFP-Lithuania, 28 April 2014.

discriminatory actions in the area of access to services.⁸⁸

- In 2006 two complaints were received and again a warning to stop discriminatory actions was issued in one case.
- In 2007 the number of complaints increased dramatically, due to public events of LGBT organizations, which were banned by the municipality of Vilnius. However most of the complaints were inquiries and encouragements to act. In 2007 no binding decisions were taken because either the material was referred to investigative bodies (when indications of an offence had been established) the complaint was dismissed (when violations mentioned in it had not been corroborated), or investigation was discontinued when objective information concerning the violation, which has been committed, was lacking. Out of 8 complaints regarding discrimination on the ground of sexual orientation in 2008, no breach anti-discrimination law was established.⁸⁹ One decision of the Ombudsperson to discontinue investigation of the allegedly discriminatory actions of Vilnius city municipality was challenged at the Administrative court, which resulted in the second discrimination case in the legal practice, where sexual orientation was concerned.⁹⁰
- In 2009,⁹¹ there were 4 complaints regarding discrimination on the ground of sexual orientation received. In one case the investigation was not opened due to the abstract nature of the violation; in 2 cases the investigation was suspended due to the fact that the victim initiated the proceedings before the court, and only one case was referred to the General Prosecutor's office as allegedly concerning hate speech.
- In 2010,⁹² 3 complaints were received. In one case the victim was advised to file a complaint with the General Prosecutor's office, in one case discrimination was not established, and in the last one the owner of a pool bar who used a discriminatory advertising was advised to avoid "ambiguous wording" in the future.
- In 2011,⁹³ 4 complaints were received: in 2 cases no discrimination was established; one other complaint was not investigated since the applicant failed to sign the complaint and submit more information. The last one concerned allegedly discriminatory questionnaire for the blood donors, namely the question for male donors "Have you ever had sexual intercourse with other men?" The Ombudsperson recommended the Ministry of Health to change the wording in the questionnaire in order to avoid equating homosexuality to "risky sexual behavior".

⁸⁸ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) (2014), Phone communication of NFP-Lithuania, 28 April 2014.

⁸⁹ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) Activity report of the Office of the Equal Opportunities Ombudsperson for 2008 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2008 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁹⁰ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁶⁶²-665/2010], 19 April 2010.

⁹¹ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2009 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2009 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁹² Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2010 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2010 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁹³ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2011 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2011 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

- In 2012,⁹⁴ the Ombudsperson received 2 complaints. In one of them, filed by the LGL the fact of discrimination in access to goods and services was established. The Ombudsperson found that the transfer company declining to rent a bus for the LGL, acted in a discriminatory manner. The Ombudsperson recommended the owner of the company to organize the business in line with the principles of equal treatment. The second complaint was not investigated.
- In 2013,⁹⁵ no complaints alleging discrimination on the grounds of sexual orientation were received.

A decreasing number of discrimination on the ground of sexual orientation complaints to the Ombudsperson may be attributed to the fact that the applicants do not find the sanctions imposed by the Ombudsperson proportionate to the gravity of their rights violation; effective and dissuasive. Taking for example the case of 2012,⁹⁶ where although the Ombudsperson found a transfer company to act in a discriminatory manner by declining to rent transport to the LGL, it failed to impose any “hard” sanctions, e.g. a fine, for an obviously grave violation of the principle of equal treatment. A recommendation “to organize the business in line with the principles of equal treatment” can hardly be seen as a dissuasive sanction in a society where homophobic attitudes prevail.⁹⁷

The effectiveness of the follow-through on the recommendations issued is also a subject of concern. For example, in 2011 the Ombudsperson recommended the Ministry of Health to change the wording in the questionnaire for blood donors in order to avoid equating homosexuality to “risky sexual behavior”. Nevertheless, the question for male donors “Have you ever had sexual intercourse with other men?” remains in the questionnaire up to this day,⁹⁸ thus once again stigmatizing homosexual men.

There were two cases⁹⁹ concerning discrimination on the ground of sexual orientation decided by the national court during the period under review. Both cases were brought by the same person, alleging discrimination in employment, during the hiring process. These cases were the first and remain the only ones throughout the national jurisprudence where discrimination on the ground of sexual orientation was alleged and considered.

In the first case,¹⁰⁰ the applicant claimed that during the selection procedure for a position of a sociology lecture in Vilnius College he was directly discriminated by the selection commission on the grounds of sexual orientation and social status, i.e. the selection commission did not take into account his qualifications, including education and experience, which was better than of the other candidates and during the interview he experienced open contempt towards himself, he was harassed and asked unrelated questions. According to the applicant, he was not selected for the

⁹⁴ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2012 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2012 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁹⁵ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) (2014), ‘2013 m. gauta daugiausiai skundų per visą tarnybos veiklą. Dažniausiai tirti pareiškimai dėl socialinės padėties diskriminacijos. 70 proc. atvejų dėl visų diskriminacijos pagrindų skundėsi vyrai’, Press release, 7 January 2014, available at: www.lygybe.lt/lt/naujienos/pranesimai-spaudai/2013-m.-gauta-5zd.html.

⁹⁶ Lithuania, Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*), Activity report of the Office of the Equal Opportunities Ombudsperson for 2012 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2012 m. ataskaita*), available at: www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html.

⁹⁷ For the detailed data on the public polls, see Chapter H. Miscellaneous.

⁹⁸ Lithuania, National Blood Centre (*Nacionalinis kraujo centras*) (2013), Questionnaire for donors of blood and blood components (EN), *Kraujodonoryste.lt*, available at: www.kraujodonoryste.lt/donoro-apklauso-anketa/.

⁹⁹ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), Nr. 2A-2140-464/2011, 11 November 2011; Lithuania, Ilius District Court (*Vilniaus apygardos teismas*), No. 2A-1051-258/2013, 8 March 2013.

¹⁰⁰ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), Nr. 2A-2140-464/2011, 11 November 2011.

position, because of his sexual orientation (being openly gay and well-known in Lithuania) and because of his research on the phenomenon of homophobia. He alleged multiple discrimination: on the grounds of social status and sexual orientation.

The first instance court, after establishing a *prima facie case* of discrimination and shifting the burden of proof to the respondent, found that the applicant was indirectly discriminated on the basis of social status, because the hired candidate was a member of the College staff. In relation to the applicant's unfavorable treatment on the ground of his sexual orientation, the court established that the members of the commission were not aware of the applicant's sexual orientation, did not raise any questions to this regard during the hearing and did not make any alleged remarks. The appellate court reversed the decision of the lower court finding that the applicant was not discriminated on either of the grounds. It agreed with the lower court's arguments regarding the absence of discrimination on the ground of sexual orientation. In relation to discrimination on the ground of social status, the court held that a minor procedural breach cannot be considered a violation of equal treatment.

In the second case,¹⁰¹ the same applicant challenged the decision by the selection commission of the Lithuanian University of Educational Sciences [*Lietuvos edukologijos universitetas*] not to hire him during the open competition for the positions of a part-time lecturer at the department of Sociology and political sciences. The applicant claimed that the selection commission did not take into account his qualification, which was better than of the other two candidates who were finally selected (e.g. he was the only one to hold PhD degree in the relevant field of science). In addition, during the interview the applicant claimed that he was asked more questions than the other two candidates and felt that the commission's attitude was hostile towards him. He asserted that the commission was well aware of his homosexual orientation, of the wrongful dismissal proceedings that he initiated against his former employer (a university) and about his publications where he examined the phenomenon of homophobia. Again, he claimed discrimination on the grounds of social status and sexual orientation.

The court of the first instance found the applicant established a *prima facie case* of discrimination and shifted the burden of proof to the respondent. According to the court, the respondent proved that the applicant was not discriminated, since the selection requirements were applied equally to all the candidates; the applicant was asked more questions than the others only because he had not previously worked with the respondent (while other two candidates did); there was no ground to assert the hostility towards the applicant during the interview, as well as there was no ground to assert that the members of the commission were aware of the applicant's sexual orientation. The appellate court upheld the lower court's judgment and its analysis as a whole. In response to the applicant's request to turn to the Court of Justice of the EU for the preliminary ruling, in particular, regarding the interpretation of the "prima facie case" in the claims concerning multiple discrimination, the court concluded that the substance of the EU law in the present case was clear and the preliminary reference to the CJEU would not change the outcome of the case. The request was denied.

Both cases show that it is still complicated to establish a strong case of discrimination before the Lithuanian courts. Notably, it seems that the Equal Opportunities Ombudsperson is also not always on the side of the alleged victims of discrimination. In the second case, the Equal Opportunities Ombudsperson gave an expert opinion in both instances. Before the first instance court it testified that the applicant was not discriminated on the grounds of sexual orientation and/or social status. Before the appellate court it confirmed that the first instance court did not err in applying the rules on the burden of proof by shifting it to the respondent. Given that both

¹⁰¹ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. 2A-1051-258/2013, 8 March 2013.

cases where lost by the applicant, the amount of the damages which could be awarded should the court find discrimination on the ground of sexual orientation, is subject to speculation. However, in both cases the applicant was ordered to cover the legal costs of the other party (e.g. in the second case the legal costs amounted to LTL 4.214,43 while the average salary in Lithuania in 2013 was LTL 1.662,6/month net¹⁰². Possibly, high legal costs are one of the factors that dissuades the victims of discrimination from pursuing legal actions against private companies.

A.7. Exceptions to equal treatment

The latest amendments of the Law on Equal Treatment eliminated significant part of the weaknesses of the implementation of the Directive. However, some of the amendments raised concerns about possible misuse of newly included provisions and interpretations, disadvantaging LGBT persons. The amendment introduced a new article in the Law on Equal Treatment, which expanded the list of exceptions to the scope of equal treatment. Although the law has general provision on genuine occupational requirements, it also takes advantage of the provisions of Paragraph 2 of Article 4 of the Employment Equality Directive.

Article 3 of the Law on Equal Treatment states, that the law does not apply to:

- teachers, employees and personnel of religious communities, associations, centres, as well as associations and legal persons (the ethos of which is based on the same religion or belief to serve the same purposes) founded by these religious communities or their members, where, by reason of the nature of the activities of these subjects, or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, with regard to the organisation's ethos;
- the provision of goods and services (where the purpose of these is of religious character) exercised by religious communities or associations, as well as associations founded by these religious communities or their members;
- the acceptance for admission of persons to schools or other scholarly institutions, founded by religious communities or associations, as well as schools, institutions, organisations (where education is not the main activity of these bodies) founded by religious communities or their members, which were founded with the purpose of maintaining the values of these religious communities and associations, where the refusal to accept a person is necessary in order to preserve the ethos of these religious communities;
- the process of education about the beliefs of religious communities or associations, as well as education programs, textbooks, teaching tools, where it is necessary to ensure the right of religious communities to profess and/or practice their beliefs, or teach about them.

It must be mentioned that the Catholic Church played a significant role in the introduction of these provisions in the Law on Equal Treatment.¹⁰³ Bearing in mind the negative attitude of the Church to sexual minorities in Lithuania, which has been publicly expressed many times,¹⁰⁴ it

¹⁰² Lithuania, Lithuanian Department of Statistics (*Lietuvos Statistikos departamentas*) (2013), Average salary per month (*Vidutinis mėnesinis darbo užmokestis*), available at: <http://db1.stat.gov.lt/statbank/selectvarval/saveselections.asp?MainTable=M3060801&PLanguage=0&TableStyle=&Buttons=&PXSId=4177&IQY=&TC=&ST=ST&rvar0=&rvar1=&rvar2=&rvar3=&rvar4=&rvar5=&rvar6=&rvar7=&rvar8=&rvar9=&rvar10=&rvar11=&rvar12=&rvar13=&rvar14=>

¹⁰³ The Minister of Social Affairs and Labour publicly admitted that the inclusion of these provisions was discussed with the Lithuanian Bishop's Conference, and that the draft law and these particular provisions were approved by Lithuanian Bishop's Conference. Lithuania, Seimas (2009), Stenograph of the 6th (327) Parliament's sitting (*Seimo šeštojo (327) posėdžio stenograma*), No. 180, 18 September 2007, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466.

¹⁰⁴ Utyra, E. (2007), 'Viešumo siekiantiems gėjams – skaudūs smūgiai', *Delfi.lt*, 15 May 2007, available at: www.delfi.lt/archive/article.php?id=13210101.

can be expected that these broad provisions might be used to discriminate not only on the grounds of religion or belief alone.

Current wording leaves enough room for interpretations, that could be used to limit the freedom of expression of LGBT people, particularly limiting educational and awareness raising activities. Some members of the Parliament, notorious for opposing homosexuality and protecting 'traditional values', identified the connection between these provisions and the issue of sexual orientation during the hearing, and stated that it could be used as a 'self-defence tool for the elimination of 'non-traditional' sexual orientation from schools and the education system in general.¹⁰⁵

There are serious doubts that these provisions correspond to the purpose of the Employment Equality Directive. First, the provisions are broader in scope when compared to the wording provided in the Directive. Secondly, it is not clear which organisations, institutions, schools or legal persons could take advantage of them.¹⁰⁶ Wide interpretation of these neither detailed, nor precise provisions could in practice be disadvantageous to sexual minorities. Thirdly, there are no clear and evident facts that such national practice, as outlined in Article 13 of the draft law existed prior to the implementation of the Directive, as is required by Article 4 of the Directive.

¹⁰⁵ Lithuania, Seimas (2009), Stenograph of the 6th (327) Parliament's sitting (*Seimo šeštojo (327) posėdžio stenograma*), No. 180, 18 September 2007, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=304466.

¹⁰⁶ It is not clear how many members of the religious community should be the founders of a particular organisation, school or institution.

B. Freedom of movement

The legal status of foreigners in the Republic of Lithuania is regulated by *Užsieniečių teisinės padėties įstatymas* [Law on the Legal Status of Aliens].¹⁰⁷ According to Paragraph 4 Article 2 of the law ‘family members of a citizen of an EU Member State’ means that citizen’s spouse or the person with whom a registered partnership has been contracted, his or her direct descendants who are under the age of 21 or are dependants, including direct descendants of the spouse or person with whom the registered partnership has been contracted, who are under the age of 21 or those who are dependants, the dependent direct relatives in the ascending line of a citizen of an EU Member State, of the spouse or of the person with whom that person has contracted a registered partnership.’

According to the Migration Department under the Ministry of the Interior [*Migracijos departamentas prie Vidaus reikalų ministerijos*], the main governmental institution which grants residence permits to foreigners in Lithuania, a person in a same-sex marriage or same-sex partnership with the EU citizen is considered to be a family member of the EU citizen for the purpose of Paragraph 4 Article 2 of Law on the Legal Status of Aliens [*Užsieniečių teisinės padėties įstatymas*].¹⁰⁸ The same should apply to the Lithuanian citizens, i.e. a person in a same-sex marriage or same-sex partnership with Lithuanian citizen should be considered “a family member”.

However, even if the notion of a “family member” for the purpose of entering and staying in the country is interpreted broadly, i.e. including same-sex partnerships and same-sex marriages, same-sex couples might face major obstacles when living in Lithuania, since neither same-sex marriages, nor same-sex partnerships are recognized here.

The definition of marriage in national law is provided in the Civil Code of the Republic of Lithuania. Article 3.7 of the Code defines marriage as a formalised agreement between a man and a woman only.¹⁰⁹ In practice, partnerships in Lithuania do not exist and are not recognised, due to a legal vacuum which has been left open since 2001. The regulation of partnerships is partially governed by the Civil Code of the Republic of Lithuania. According to the Civil Code, detailed regulation of partnerships should be outlined in a subsidiary law on partnerships. The Civil Code came into force on 01.07 2001, and a law on partnerships has not yet been passed.¹¹⁰ However, the situation in regard to partnerships is also disadvantageous to same-sex couples. According to the Article 3.229 of the Civil Code, only a union between a man and a woman can be recognised as a partnership, and then only if it was duly registered and made with the intention of marriage in the future. Thus partnerships between same-sex persons cannot be recognised in the current state of Lithuanian law.

¹⁰⁷ Lithuania, Law on the legal status of aliens (*Įstatymas dėl užsieniečių teisinės padėties*), No. 73-2539, 29 April 2004, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448.

¹⁰⁸ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

¹⁰⁹ Lithuania, Law on approval, enactment and implementation of the civil code. Civil code (*Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas*), No. 74-2262, 18 July 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465506.

¹¹⁰ For more information see *Chapter H.5. Family life and same-sex partnerships*.

It also seems that the *same-sex marriages validly concluded abroad* will not be recognized in Lithuania for purposes other than migration law, i.e. for the purpose of inheritance law, tax regulations, labour law, and others.

Paragraph 4 of Article 1.25 of the Civil Code provides that:

*4. A marriage validly performed abroad shall be recognized in the Republic of Lithuania, except in cases when both spouses domiciled in the Republic of Lithuania performed the marriage abroad with the purpose of evading grounds for nullity of their marriage under Lithuanian law.*¹¹¹

However, if a couple that concluded a marriage abroad would want it to be recognized in Lithuania for the purpose of inheritance law, tax regulations, labour law, etc., it has to be included in the Lithuanian Registry. To have the marriage which was performed abroad included in the Lithuanian Registry, the couple has to submit a request to the municipal registry division [*Civilinės metrikacijos skyrius*]. According to the Rule No. 80 of the Rules of Municipal Registries [*Civilinės metrikacijos taisyklės*], adopted by the Ministry of Justice, „*Municipal registry divisions include in registry only those marriages, which were registered according to the rules stipulated in the Articles 3.12-3.17 of the Lithuanian Civil Code*“.¹¹²

Article 3.12 of the Civil Code specifically stipulates:

*Article 3.12. Prohibiting marriage of persons of the same gender
Marriage may be contracted only with a person of the opposite gender.*¹¹³

The Minister of Justice in one of the interviews affirmed that to be recognized in Lithuania „[t]he marriage should be concluded between persons of different sex“.¹¹⁴

Therefore, this means that same-sex marriages concluded in other countries will not be recognized in Lithuania and such couples will lose all the benefits they might have had in the country where the union was concluded (e.g. tax benefits, rights regarding spousal care, inheritance issues, etc.). The Civil Code and the Rules of Municipal Registries do not provide any information whatsoever as to the recognition of same-sex or different sex partnerships concluded abroad. Such situation indirectly impedes freedom of movement.

Some authors, however, argue that same-sex marriages validly concluded abroad should be recognized in Lithuania by virtue of the Paragraph 4 of Article 1.25 of the Civil Code.¹¹⁵ In the

¹¹¹ Lithuania, Law on approval, enactment and implementation of the civil code. Civil code (*Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas*), No. 74-2262, 18 July 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465506.

¹¹² Lithuania, Rules of Municipal Registries (*Civilinės metrikacijos taisyklės*), No. IR-160, 19 May 2006, available at: <http://www.tm.lt/dok/IR-160>.

¹¹³ Lithuania, Law on approval, enactment and implementation of the civil code. Civil code (*Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas*), No. 74-2262, 18 July 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465506.

¹¹⁴ Krastonaujienos.lt (2014), ‘Ką reikia žinoti apie užsienyje sudarytas santuokas?’, Krastonaujienos.lt, 28 April 2014, available at: <http://krastonaujienos.lt/2014/04/ka-reikia-zinoti-apie-uzsienyje-sudarytas-santuokas/>

¹¹⁵ Trofimovienė, L. (2010), ‘Apie vienalytes santuokas ir jų ignoravimo pasekmes’, Delfi.lt, 6 December 2010, available at: <http://www.delfi.lt/news/ringas/lit/litrofimoviene-apie-vienalytes-santuokas-ir-ju-ignoravimo-pasekmes.d?id=39362417>

absence of any case-law on this matter,¹¹⁶ it is difficult to tell how the national courts would interpret Paragraph 4 of Article 1.25 of the Civil Code, and whether they might find that the Rules of Municipal Registries contradict the provisions of the Civil Code.

The Migration Department does not collect information as of how many LGBT persons sought to obtain a residence permit in Lithuania or benefit from freedom of movement in any form, due to the presence of their LGBT partner or spouse in Lithuania.¹¹⁷

There have been case law regarding freedom of movement in general, but have been none regarding freedom of movement of LGBT persons specifically, thus it is impossible to discern any trends/legal practices.¹¹⁸

¹¹⁶ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infollex.pratika. <http://www.infollex.lt/tp/>; Eteismai. www.eteismai.lt; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

¹¹⁷ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

¹¹⁸ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infollex.pratika. <http://www.infollex.lt/tp/>; Eteismai. www.eteismai.lt; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

C. Asylum and subsidiary protection

Procedures for granting asylum in the Republic of Lithuania are outlined in the Law on the Legal Status of Aliens.¹¹⁹ This law determines that refugee status shall be granted to an asylum applicant who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear is unwilling, to avail herself or himself of the protection of that country (Article 86).

According to the national law, subsidiary protection may be granted to an asylum applicant who is outside his or her country of origin, and is unable to return to it owing to a well-founded fear that: 1) she or he will be tortured, subjected to cruel, inhuman or degrading treatment or punishment; 2) there is a threat that his or her human rights and fundamental freedoms will be violated; 3) her or his life, health, safety or freedom is under threat as a result of endemic violence which spread in an armed conflict or which has placed her or him at serious risk of systematic violation of his human rights (Article 87).

These provisions are considered to be in compliance with the provisions of the 1951 Convention Relating to the Status of Refugees (hereinafter: the Convention), the 1967 Protocol Relating to the Status of Refugees (hereinafter: the Protocol) and the 2004 Qualification Directive.¹²⁰ The Convention and the Protocol came into force in the Republic of Lithuania in 1997, but the first asylum application on the ground of persecution due to sexual orientation was not received until the end of 2007.

As there was only one asylum application received, it is difficult to comment on the possible practice of the Migration Department under the Ministry of Internal Affairs (hereinafter: the Migration Department), which is responsible for taking decisions on the granting or refusal to grant refugee status or subsidiary protection. Article 10(1)(d) of the 2004 Qualification Directive was literally transposed into national laws on 04.05.2007.¹²¹ Therefore, in principle, the persecution of LGBT persons due to their sexual orientation would be examined as persecution of LGBT persons as possible members of a particular social group.

Since 1997, when the Convention and the Protocol came into force in the Republic of Lithuania, the media has reported only about one asylum application on the ground of persecution due to sexual orientation that was received at the end of 2007. This case of application for asylum due to sexual orientation clearly highlighted the need to improve the reception conditions for asylum seekers.

¹¹⁹ Lithuania, Law on the legal status of aliens (*Įstatymas dėl užsieniečių teisinės padėties*), No. 73-2539, 29 April 2004, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448.

¹²⁰ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection, and the content of the protection granted, OJ 2004 L304.

¹²¹ Lithuania, Ministry of Interior (*Vidaus reikalų ministerija*) (2004), Order amending the order No. 1V-361 of the Ministry of Interior of the Republic of Lithuania of 15 November regarding the description of the rules on the deliberation of the requests by the foreigners to provide asylum, as well as the adoption of decision and their implementation (*Įsakymas dėl Lietuvos Respublikos vidaus reikalų ministro 2004 m. lapkričio 15 d. įsakymo Nr. 1V-361 „Dėl užsieniečių prašymų suteikti prieglobstį nagrinėjimo, sprendimų priėmimo ir jų vykdymo tvarkos aprašo patvirtinimo“ pakeitimo*), No. 53-2069, 4 May 2007, available at: www.asylum-online.lt/docs/isakymas-pr-pr.doc.

Upon receiving the above-mentioned asylum application, the Migration Department issued their decision to provide the asylum seeker with temporary territorial asylum, and to accommodate him in the Foreigners' Registration Centre until the final decision on asylum was made. While accommodated in the Foreigners' Registration Centre, the asylum seeker was beaten and received further threats from other asylum seekers.¹²² After the incident, the beaten asylum seeker called the police, but the police did not react with due attention. Feeling insecure, the homosexual asylum seeker then left the Foreigners' Registration Centre.

Initially, LGL accommodated the beaten asylum seeker in hotel for two nights. Later, the person himself and LGL approached the Lithuanian Red Cross asking for assistance with accommodation. The Lithuanian Red Cross reached an agreement with another non-governmental organisation, Vilnius Caritas, and proposed accommodation in the Vilnius Caritas common lodging-house. However, the asylum seeker did not go to the common lodging-house, and a couple of days later information was received that the asylum seeker had left the Republic of Lithuania and gone to Luxembourg, where he had complained about reception conditions for asylum seekers in the Republic of Lithuania.¹²³

The media, or non-governmental organizations, have not reported about other asylum applications received on the ground of persecution due to sexual orientation. Since The Migration Department does not desegregate information about successful and unsuccessful asylum applications as to the ground on which they were requested and granted,¹²⁴ it is impossible to discern any trends as to the number of successful/unsuccessful asylum applications on the ground of sexual orientation in the past years.

According to Article 79 of the Law on the Legal Status of Aliens, an asylum seeker may be accommodated in the Foreigners' Registration Centre, or in his or her own place of residence. However, in both cases an asylum seeker can face certain problems. First, there is no separate building for vulnerable groups of asylum seekers, such as single women or homosexuals, and it is complicated for the police and administrative officers of the Foreigners' Registration Centre to ensure security in the common building. Secondly, the alternative of accommodation in his or her own place of residence is only permitted if the asylum seeker has entered the Republic of Lithuania legally, and in such cases the state does not provide him or her with any kind of financial support.

According to the Migration Department, a practice known as 'phallometry' or 'phallometric testing' has never been applied in the asylum procedures in Lithuania, nor it is prescribed by any legislation.¹²⁵ The Migration Department has asserted that 'no special procedures are applied in

¹²² Gudavičiūtė D. (2012), 'Lietuva privalės teikti prieglobstį lytį pakeitusiems pabėgėliams', *Lrytas.lt*, 23 January 2012, available at: www.lrytas.lt/-13273220751325183215-lietuva-prival%20teikti-prieglobst%20AF-lyt%20AF-pakeitusiems-pab%2097g%2097liams.htm.

¹²³ Gudavičiūtė D. (2012), 'Lietuva privalės teikti prieglobstį lytį pakeitusiems pabėgėliams', *Lrytas.lt*, 23 January 2012, available at: www.lrytas.lt/-13273220751325183215-lietuva-prival%20teikti-prieglobst%20AF-lyt%20AF-pakeitusiems-pab%2097g%2097liams.htm.

¹²⁴ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

¹²⁵ Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Phone communication of NFP-Lithuania, 28 April 2014.

the cases where asylum is requested on the ground of persecution due to sexual orientation'.¹²⁶ The media has not reported any cases where 'phallometry' or 'phallometric testing' had been applied for in asylum proceedings in Lithuania.

There have been case law regarding asylum/subsidiary protection in general, but there have been none regarding persecution of LGBT persons due to their sexual orientation and/or gender identity and/or the interpretation of the concept of 'family member' for the purpose of asylum/subsidiary protection, thus it is impossible to discern any trends/legal practices.¹²⁷

The acceptance of LGBT partners as family members in the context of asylum and/or subsidiary protection in the national legal system:

According to Paragraph 22 Article 2 of the Law on the Legal Status of Aliens,¹²⁸ the definition of the family members of an asylum seeker covers the spouse of the asylum seeker or a person who has concluded a partnership agreement with her or him, in so far as the family already existed in the country of origin, and during the examination of the asylum application the family members are present in Lithuania (Article 2). Unmarried LGBT partners would not be accepted as family members of an asylum seeker.

According to the Migration Department under the Ministry of the Interior [*Migracijos departamentas prie Vidaus reikalų ministerijos*], a person in a same-sex marriage or same-sex partnership with an asylum seeker is considered to be a family member of the asylum seeker for the purpose of Paragraph 22 Article 2 of Law on the Legal Status of Aliens [*Užsieniečių teisinės padėties įstatymas*].¹²⁹

In the absence of relevant case-law, it is impossible to identify specific new trends for the reporting period.

¹²⁶ Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Phone communication of NFP-Lithuania, 28 April 2014.

¹²⁷ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company "LEXNET". Both types of case-law databases were consulted filtering the search by the name of the law combined and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.praktika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt/; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

¹²⁸ Lithuania, Law on the legal status of aliens (*Įstatymas dėl užsieniečių teisinės padėties*), No. 73-2539, 29 April 2004, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448.

¹²⁹ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

D. Family reunification

According to Paragraph 27 of Article 2 the Law on the Legal Status of Aliens,¹³⁰ family reunification means the entry into and residence in the Republic of Lithuania of family members of an alien, who is not a citizen of the European Union but is residing lawfully in the Republic of Lithuania, in order to preserve the family, irrespective of whether the family relationship arose before or after the alien's arrival.

The definition of a "family member" is set for in Paragraph 26 of Article 2 the Law on the Legal Status of Aliens and includes "the spouse or the person with whom a registered partnership has been contracted, children (adopted children) (hereinafter – children) under the age of 18, including the children under the age of 18 of the spouse or the person with whom a registered partnership has been contracted, on condition that they are not married and are dependent, as well as direct relatives in the ascending line who have been dependent for at least one year and are unable to use the support of other family members resident in a foreign country."

Given that the Migration Department under the Ministry of the Interior [Migracijos departamentas prie Vidaus reikalų ministerijos] recognizes persons who concluded same-sex marriages and same-sex partnerships as family members of the EU citizen and of the asylum seeker, it is very likely that persons who concluded same-sex marriages and same-sex partnerships would also be considered family members for the purpose of paragraph 27 of Article 2.

There have been case law on family reunification in general, but have been none regarding family reunification of LGBT spouses/partners, thus it is impossible to discerns any trends/legal practices.¹³¹

"Family reunification" remains the most common ground for issuing a temporary residency permit in Lithuania (in 2013 – 5020 permits were issued on this ground;¹³² in 2012 -4876;¹³³ in 2011-4798¹³⁴). However, the available statistics is not desegregated according to the form of the union (partnership or marriage), or according to the sexual orientation of the spouses/partners. Therefore it is unclear how many same-sex partners/spouses have benefited from family reunification in Lithuania.

¹³⁰ Lithuania, Law on the legal status of aliens (*Istatymas dėl užsieniečių teisinės padėties*), No. 73-2539, 29 April 2004, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448.

¹³¹ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company "LEXNET". Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infollex.praktika. <http://www.infollex.lt/tp/>; Eteismai. www.eteismai.lt/; Liteko.

<http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lai.lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/teismo-sprendimai_115.html.

¹³² Lithuania Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*), Migration yearbook 2013, available at: www.migracija.lt/index.php?1357390560, p. 52.

¹³³ Lithuania Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*), Migration yearbook 2012, available at: www.migracija.lt/index.php?1357390560, p. 53.

¹³⁴ Lithuania Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*), Migration yearbook 2011, available at: www.migracija.lt/index.php?1357390560, p. 50.

E. Freedom of assembly

Until very recently, the LGBT community and its organisations were ‘invisible’ in the public life of Lithuania. However, the year 2007 was a turning point in this respect.

LGL, the leading LGBT rights protection organisation in Lithuania, made a couple of attempts to organise public events for the first time, and was confronted with opposition from some sections of society,¹³⁵ and most importantly from politicians. Freedom of assembly remained one of the most pressing points at issue for the human rights of the LGBT community since 2007.

Freedom of assembly is a constitutional provision, embodied in Article 36 of the Constitution of the Republic of Lithuania. It states, that: ‘Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings. This right may not be limited otherwise than by law and only when it is necessary to protect the security of the State or society, public order, people’s health or morals, or the rights and freedoms of other persons’.¹³⁶

In practice, there were only a few public demonstrations against homosexuals, with less than 30 participants. In 2007 at least two public meetings were lead by *Piliečių sąjauka* „*Už dorą tautą*“ [Citizens movement „For the honest nation“], some politicians, right wing extremists and priests took part in it. The participants of the meeting were holding poster with slogans opposing homosexuality, avoiding open incitement of hatred. None of such meetings were interrupted by the police.

This constitutional right is detailed in the *Lietuvos Respublikos susirinkimų įstatymas* [Law of Assemblies].¹³⁷ This law provides rules on the procedures for the organisation of public meetings, provides a list of prohibited meetings, and sets the rights and duties of the organisers of meetings and of state officials and law enforcement institutions. Article 22 of this law states that state officials and the police must ensure organisational possibilities for the implementation of legitimate meetings, as well as protection of the rights and safety of the participants of such meetings.¹³⁸ The *Lietuvos Respublikos Konstitucinis Teismas* [Constitutional Court of the Republic of Lithuania] in one of its rulings¹³⁹ stressed the importance of this provision, identified important jurisprudence of the European Court of Human Rights, and stated that ‘the right to freely arrange peaceful assemblies includes not only the negative duty of the State not to interfere with the arrangement of a peaceful assembly but also its positive duty to ensure proper protection for the participants of such an assembly’.¹⁴⁰

¹³⁵ Dainoras, L. (2007), ‘Gėjai išprovokavo emocišnes audras’, *Kaunodiena.lt*, 14 February 2008, available at: www.kaunodiena.lt/lt/?id=6&aid=47329.

¹³⁶ Lithuania, The Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=237975&Condition2=.

¹³⁷ Lithuania, Law on assemblies (*Susirinkimų įstatymas*), No. 69-139, 2 December 1993, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437993.

¹³⁸ Lithuania, Law on assemblies (*Susirinkimų įstatymas*), No. 69-139, 2 December 1993, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437993.

¹³⁹ Lithuania, Law on assemblies (*Susirinkimų įstatymas*), No. 69-139, 2 December 1993, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437993.

¹⁴⁰ Lithuania, Constitutional Court (*Konstitucinis teismas*) (2000), Decision on the compliance with the constitution of Article 6 Paragraph 2 of the law on assemblies of the republic of Lithuania (*Dėl Lietuvos Respublikos Susirinkimų įstatymo 6 straipsnio 2 dalies atitikimo Lietuvos Respublikos Konstitucijai*), No. 3-78, 07 January 2000, available at: www.lrkt.lt/dokumentai/2000/n000107.htm.

E.1. Freedom of assembly and the LGBT community—first attempt

The first attempt to organise a public LGBT event took place in May 2007 during the ‘For diversity. Against Discrimination’ campaign national event in Lithuania. A group of NGOs was involved in the preparation for the visit of the European anti-discrimination truck to Lithuania, which was organised by the local public relations company, *Baltijos viešųjų ryšių grupė* [BVRG]. The LGL planned to organise a public event—the unfurling of a 30 metre long rainbow flag—on the same day (25.05.2007). The announcement of this initiative by the LGL received significant attention from the media.¹⁴¹

BVRG hired a private company, *Pirmoji kava*, to organise the visit of the Anti-discrimination Truck and accompanying events. *Pirmoji kava* applied to the administration of Vilnius city municipality to obtain permission, as it is required by the Law on Assemblies. However, the administration of Vilnius city municipality refused to issue permission, stating that, due to ‘objective information’ received from the police, there was a strong possibility of violent protests and demonstrations, and that the law enforcement institutions were not able to ensure public safety and order for this event. This resulted in the cancellation of the EU anti-discrimination campaign truck visit to Lithuania.

The reaction of the European Commission to the decision of Vilnius city municipality was modest. The Commission expressed its regrets that the event was not welcomed in Vilnius.¹⁴² As neither BVRG nor the private company which applied for the permission were willing to start legal proceedings against Vilnius city municipality, the legality of the municipality’s decision was not challenged in court.

However, there are clear indications that the real motivation not to allow the event to take place was the fact that the event publicly addressed the issue of sexual orientation (among other grounds of discrimination). Even before the decision not to issue permission was taken, the mayor of Vilnius (a member of the Order and Justice (Liberal Democrats) party) publicly stated that, ‘as we give priority to the traditional family and are seeking to promote family values, we oppose the public demonstration of homosexual ideas in Vilnius city’.¹⁴³

Additionally, the presidium of the Order and Justice (Liberal Democrats) party drafted a resolution advising municipality council members belonging to the party not to support events which might escalate discord among Vilnius city residents of different convictions. The leader of the Order and Justice party publicly admitted that the resolution was drafted particularly for this LGL event and any other similar events in the future.¹⁴⁴

Although the refusal to issue permission for the event was not challenged in court, the Equal Opportunities Ombudsperson started investigation of whether there was a breach of the Law on Equal Treatment. Although the Ombudsperson publicly stated that the decision of the

¹⁴¹ *Lrytas.lt* (2007), ‘Sostinėje kunkuliuoja aistros dėl gėjų’, *Lrytas.lt*, 14 February 2008, available at: www.lrytas.lt/?data=20070519&id=nuo19_so070519&view=2.

¹⁴² *Euro.lt* (2007), ‘European Commission outraged with Vilnius authorities’ decision to ban antidiscrimination action’, *Euro.lt*, 22 May 2007, available at: www.euro.lt/en/news/lithuanias-membership-in-the-eu/news/632/.

¹⁴³ Utyra, E. (2007), ‘Viešumo siekiantiems gėjams – skaudūs smūgiai’, *Delfi.lt*, 15 May 2007, available at: www.delfi.lt/archive/article.php?id=13210101.

¹⁴⁴ *Lrytas.lt* (2007), ‘Sostinėje kunkuliuoja aistros dėl gėjų’, *Lrytas.lt*, 14 February 2008, available at: www.lrytas.lt/?data=20070519&id=nuo19_so070519&view=2.

municipality contained legal errors (it was based on a non-existent clause of the Law on Assemblies),¹⁴⁵ without mentioning the reasoning and substance of it, the investigation of this case was finally discontinued without any public statement.

As the decision of the municipality was not challenged in court, it is difficult to say whether it was legally well-founded. However, bearing in mind the jurisprudence of the European Court of Human Rights, refusal to allow a public event only on the basis that opposing events could cause a threat to public order can presumably be considered as not sufficiently legally founded.

E.2. Freedom of assembly and the LGBT community—second attempt

The second attempt to organise the same public LGBT event took place in October 2007. This time, LGL applied to the administration of Vilnius city municipality asking for permission, but authorisation was not granted. The municipality based their refusal on a few arguments. First, construction works were taking place in the town hall (which appeared to be true). Secondly, the municipality stated that public security could not be ensured, due to construction works in the town hall, and due to the fact that during the first attempt to organise such an event in May, ‘objective data’ was available that indicated that violent demonstrations could oppose the similar event in October.

LGL submitted a complaint regarding this decision to the court. The court of first instance and the court of second instance both rejected the complaint. Court of Cassation procedures for this type of case are not foreseen in the law. Thus the case at court was decided in favour of the municipality.

Part of the arguments (regarding construction works) of the municipality can be considered as sufficiently legally founded. However, the interpretation of certain provisions of the Law on Assemblies by the municipality and its approval by both courts gave rise to serious concerns as to whether public LGBT events which raise issues of sexual orientation can be successfully held in the future.¹⁴⁶

LGL, however, did not submit an application to the European Court of Human Rights regarding this case.

E.3. Freedom of assembly and the LGBT community—third attempt

Another attempt to organise an LGBT event took place in August, 2008, again during “For Diversity. Against Discrimination” campaign truck visit. Once again, since additional events, highlighting homosexual orientation were planned to take place, former mayor of Vilnius city publicly stated, that while he remains in the office “there will be no advertisements of sexual

¹⁴⁵ Utyra, E. (2007), ‘Lygių galimybių kontrolieriai tiria atwsakymą gėjams’, *Delfi.lt*, 14 February 2008, available at: www.delfi.lt/archive/article.php?id=13315947.

¹⁴⁶ See *E.4. Freedom of assembly and the LGBT community-third attempt*.

minorities”.¹⁴⁷ It must be added, that a few weeks before the truck visit The Rules on Disposal and Cleanness of Vilnius city municipality were amended to make it easier to reject the inquiry for permission of the event.¹⁴⁸ The event was not given permission to take place neither in the centre of the city, nor in alternative place, where permission was inquired. In addition, Kaunas mayor also publicly stated, that city municipality would refuse to give permission to the event.¹⁴⁹

Eventually, the trucks visit was held in a privately owned parking lot of one of Vilnius supermarkets. Again, the decision of the municipality, possibly in the breach of the Law on Assemblies, was not appealed to the court, due to the fact, that once again a PR company who was implementing the campaign at national level and who applied for the permission, refused to appeal to the court.

However, the LGBT organization LGL filed a complaint to the Equal Opportunities Ombudsperson, inquiring, whether public statements of Vilnius city mayor as well as the Rules on Disposal and Cleanness were compliant with Article 5 of the Law on Equal Treatment, which provides for a general duty of state and municipal institutions to implement equal opportunities. The Ombudsperson discontinued the investigation, claiming, that (1) the LGL was not a proper subject to apply to the Ombudsperson, since only persons, whose rights were directly violated by the action of municipality can file a complaint, (2) the case falls under the category of disputes, which, according to the Law on Equal Treatment, must be litigated in courts (this is the case regarding the implementation of the Law on Assemblies), (3) public statements of officials do not fall under the scope of the Law on Equal Treatment.¹⁵⁰ Since the decision was partially incompliant with the former practice of the Ombudsperson, the LGL appealed to the court on January 5, 2009.

On May 13, 2009 *Vilniaus apygardos administracinis teismas* [Vilnius district administrative court] ruled in favour of the Ombudsperson,¹⁵¹ providing interpretation of some important provisions of the Law on Equal Treatment.

The court approved the reasoning of the Ombudsperson that public statements of officials do not fall under the scope of the Law on Equal Treatment, not going into details of the concept of instructions to discriminate. Although the applicant was asking the Ombudsperson to evaluate the actions of the municipality in the light of Article 5 of the Law on Equal Treatment (generally defined duty to implement equal opportunities), not questioning the legality of the decision not to issue permit for the event, however, the court approved the reasoning of the Ombudsperson, that LGL was not a proper subject to complaint, since the decision of the municipality not to issue a permission did not affect the rights of the LGL directly.

On April 19, 2009, Supreme Administrative Court of Lithuania [Lietuvos vyriausiasis administracinis teismas] upheld the lower court’s judgment. It confirmed that LGL did not have the standing in the case since it challenged a decision adopted in relation to a third party, i.e. “Integrity PR”. LGL failed to submit any documents proving that it acted on behalf of “Integrity

¹⁴⁷ 15min.lt (2008), ‘Imbrasas: Gėjams vietos nėra’, *15min.lt*, 21 July 2008, available at: www.15min.lt/naujiena/aktualu/lietuva/imbrasas-gejams-vietos-nera-56-672.

¹⁴⁸ See E.4. *Freedom of assembly and the LGBT community-third attempt*.

¹⁴⁹ Alfa.lt (2008), ‘Kaunas irgi nenori į miestą įsileisti homoseksualų Tolerancijos vilkiko’, *Alfa.lt*, 7 August 2008, available at: www.alfa.lt/straipsnis/193273/kaunas-irgi-nenori-i-miestai-isileisti-homoseksualu-tolerancijos-vilkiko#.Uw5VU4VDVJQ.

¹⁵⁰ Lithuania, Equal Opportunities Ombudsperson (Lygių galimybių kontrolieriaus tarnyba), Activity report of the Office of the Equal Opportunities Ombudsperson for 2008 (*Lygių galimybių kontrolieriaus tarnybos veiklos 2008 m. ataskaita*); available at: www.lygybe.lt/lt/metines-tamybos-ataskaitos.html.

¹⁵¹ Lithuania, Vilnius district administrative court (*Vilniaus apygardos administracinis teismas*), No. I-876-437/2009, 13 May 2009.

PR”.¹⁵² Notwithstanding procedural issue of LGL’s standing, the court stressed that the fact of discrimination was not established in this case.

This case clearly highlighted difficulties that can be encountered while enforcing broadly defined provisions of the Law on Equal Treatment.

E.4. Freedom of assembly and the LGBT community—Baltic Pride 2010

2010 saw the first LGBT pride to take place in Lithuania. Three Baltic countries – Lithuania, Latvia and Estonia – agreed to rotate every three years in hosting the pride. The first Baltic Pride organized in Vilnius, Lithuania was surrounded by public controversy and wide media coverage and resulted in a precedent-setting legal case.

On 23 April, 2010 Vilnius city municipality issued a certificate for the LGL to organize the march “For Equality” (otherwise known as the Baltic Pride) on May 8, 2010. On March 10, 50 MPs led by MP Petras Gražulis issued a public appeal to the General Prosecutor requesting to „protect the public interest“ and take actions regarding the march. The MPs invoked the Law on the Protection of Minors against the Detrimental Effect of Public Information,¹⁵³ arguing that the march violated the law and promoted the ideas contrary to „catholic interests“.¹⁵⁴

On May 3, 2010, three days prior to the scheduled date of the march, a member of Kaunas City Municipality Council S.B. and the Prosecutor General lodged two complaints with Kaunas District Administrative Court requesting to annul the municipality’s certificate, and, until the court deliberates the issue, to apply interim measures and temporarily suspend the validity of the certificate for the march. The complaints grounded their claim on a possibility of public disruptions. Besides, S.B. argued that the march would violate “values precious to the families”.¹⁵⁵

Specifically, the prosecutor claimed he had information that some members of radical and destructive movements were going to protest against the march and that various provocations were being planned. According to him, suspension of the certificate would have been the only way to ensure the enforceability of the court order in the main case, i.e. if the march would have taken place, then the court’s judgment in the case for certificate annulment became meaningless. The prosecutor did not provide more detailed information on the possible unrest “due to confidentiality reasons.”¹⁵⁶

Vilnius District Administrative Court temporarily suspended the validity of the certificate stating that the suspension should not be an obstacle to organize the march later on. The organizers immediately appealed. They specifically relied on the statements by the heads of the police forces

¹⁵²Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A662-665/2010, 19 May 2010.

¹⁵³ See H.2. *The Law on the Protection of Minors*.

¹⁵⁴ Delfi.lt (2010), ‘P.Gražulis buria Seimo narius prieš gėjų eitynes’, *Delfi.lt*, 10 March 2010, available at: www.delfi.lt/news/daily/lithuania/pgrazulis-buria-seimo-narius-pries-geju-eitynes.d?id=29873979.

¹⁵⁵ Lietuvos vyriausiojo administracinio teismo 2010 m. gegužės 7 d. nutartis administracinėje byloje Nr. AS⁸²²-339/2010 [*Lithuanian Supreme Administrative Court*, Decision of May 7, 2010, Case No. AS⁸²²-339/2010].

¹⁵⁶ Lietuvos vyriausiojo administracinio teismo 2010 m. gegužės 7 d. nutartis administracinėje byloje Nr. AS⁸²²-339/2010 [*Lithuanian Supreme Administrative Court*, Decision of May 7, 2010, Case No. AS⁸²²-339/2010].

who had claimed having enough manpower to ensure security, with approximately 800 officers being assigned ahead of time to police the event.¹⁵⁷

Commissioner for Human Rights, Thomas Hammarberg, Members of the European Parliament Ulrike Lunacek, Michael Cashman and Sophie in't Veld, representatives of the ILGA-Europe and Amnesty International condemned the decision of the first instance court and pledged in support of the organizers and participants of the Baltic Pride 2010.¹⁵⁸ Lithuanian MP Rokas Žilinskas said the ban was “a terrible shame”. Lithuanian MEP Leonidas Donskis affirmed Lithuania was becoming “similar to Russia” in its disrespect of minority rights and the rule of law.¹⁵⁹

On May 7, one day prior to the scheduled date of the march, the appellate court upheld the complaint and quashed the decision of the lower court. The Supreme Administrative Court held that according to the European Convention of Human Rights and the case-law of the European Court of Human Rights, the state has the positive obligation to ensure effective enjoyment of the right to freedom of assembly for all, including individuals with unpopular views or minority groups. The essential clause of effective exercise of freedom of assembly is a presumption of lawfulness, which is infringed when refusing to sanction a gathering and preventing minorities from participation. Negative consequences to the freedom of assembly cannot be avoided if legal remedies are applied only after the intended date of the gathering.¹⁶⁰

The Baltic Pride 2010 took place on May 8 in a relatively remote location, on the riverbank – the date and the location were specified in the initial certificate. It gathered around 400 participants. Special buses brought participants to the location. They took an indirect route in order to avoid the violent mob of protesters gathering around the area of the march. The marching territory of one square kilometre was surrounded by a fence and secured by 800 heavily equipped police officers, including riot prevention troops, helicopters, police dogs and mounted officers.¹⁶¹ The crowd of protesters of about 1500 people gathered around the fence, equipped with crucifixes, national flags, red and black nationalist symbols and posters with such slogans as “Gays Killed My Friend”, “Animals Behind the Fence”, “Stop Homo-Nazi”, “Fags Go Home”, “Hands off Our Children”, “Gays Today – Paedophiles Tomorrow”, “Shame!” and alike.¹⁶²

18 counter-protesters who did not abide the police and the ones drinking in public were arrested. Three of them spent 24 hours in a police detention facility, others were released almost immediately.¹⁶³ Criminal investigation was launched against 6 counter-protesters for violation of

¹⁵⁷ Lietuvos vyriausiojo administracinio teismo 2010 m. gegužės 7 d. nutartis administracinėje byloje Nr. AS⁸²²-339/2010 [*Lithuanian Supreme Administrative Court*, Decision of May 7, 2010, Case No. AS⁸²²-339/2010].

¹⁵⁸ Ilga-europe.org (2010), ‘Baltic Pride appeals temporary permit suspension’, *Ilga-europe.org*, 6 May 2010, available at: www.ilga-europe.org/home/news/for_media/media_releases/baltic_pride_appeals_temporary_permit_suspension.

¹⁵⁹ Ilga-europe.org (2010), ‘Baltic Pride appeals temporary permit suspension’, *Ilga-europe.org*, 6 May 2010, available at: www.ilga-europe.org/home/news/for_media/media_releases/baltic_pride_appeals_temporary_permit_suspension.

¹⁶⁰ Lietuvos vyriausiojo administracinio teismo 2010 m. gegužės 7 d. nutartis administracinėje byloje Nr. AS⁸²²-339/2010 [*Lithuanian Supreme Administrative Court*, Decision of May 7, 2010, Case No. AS⁸²²-339/2010].

¹⁶¹ Davydova, D. (2010), *Baltic Pride 2010: Articulating Sexual Difference and Heteronormative Nationalism in Contemporary Lithuania*, 2010, available at: http://o.b5z.net/i/u/10034758/f/Baltic_Pride_2010.pdf.

¹⁶² Davydova, D. (2010), *Baltic Pride 2010: Articulating Sexual Difference and Heteronormative Nationalism in Contemporary Lithuania*, 2010, available at: http://o.b5z.net/i/u/10034758/f/Baltic_Pride_2010.pdf.

¹⁶³ Lrytas.lt (2011), ‘Iš areštinės paleisti visi per gėjų eitynes sulaikyti asmenys’, *Lrytas.lt*, 10 April 2011, available at: www.lrytas.lt/-12734916721272374705-i%C5%A1-are%C5%A1tin%C4%97s-paleisti-visi-per-g%C4%97j%C5%B3-eitynes-sulaikyti-asmenys.htm#.UvvZEbRDVJQ.

public order,¹⁶⁴ at least one was found guilty of “riots”¹⁶⁵ and imprisoned for 1,5 years.¹⁶⁶ Two MPs – Petras Gražulis and Kazimieras Uoka – were fined 200 LTL each for crossing a “stop” line which separated the participants of the march from the counter-demonstrators. The two parliamentarians were tried for only one violation, although the police had registered three counts of administrative violation. In addition to crossing the police line, the MPs disobeyed the police and refused to obey their legitimate orders. Two latter charges were dropped after the Parliament refused to strip MP Uoka and MP Gražulis of their legal immunity against prosecution for violations that would have been punishable by administrative arrest.¹⁶⁷

E.5. Freedom of assembly and the LGBT community—Baltic Pride 2013

On January 11, 2013 LGL notified Vilnius city municipality about the Baltic Pride march to take place on the main avenue of the city of Vilnius. The organizers proposed the following route: the participants would march from the beginning to the middle of the avenue where, on a nearby square, a concert would take place. Vilnius city municipality adopted the decision allowing the march to take place on the same date, but in a completely different location – a relatively remote street on the riverbank, where the Baltic Pride 2010 took place. The organizers appealed against the decision to the court.¹⁶⁸

The first instance court temporarily repealed a part of the Municipality’s Decision and obliged the Municipality to coordinate the process of the organization of the march with LGL anew. The Municipality appealed against the decision.¹⁶⁹

The Appellate Court upheld the decision of the lower court. Relying heavily on its previous judgment in the Baltic Pride case issued on May 7, 2010,¹⁷⁰ it emphasized that the State has a positive obligation to ensure the effective exercise of the right to freedom of peaceful assembly for individuals or groups with unpopular views or minority groups in order to facilitate democratic pluralism. According to the court, the Law on Public Meetings does not foresee the right for municipal authorities to indicate another location of the proposed assembly if the initial notification of the event is not being agreed upon. Otherwise, it would undermine the exercise of the right to peaceful assembly through notification.¹⁷¹

The Appellate Court ordered a new negotiation procedure to take place as soon as possible, i.e.

¹⁶⁴ Lrytas.lt (2011), ‘Iš areštinių paleisti visi per gėjų eitynes sulaikyti asmenys’, *Lrytas.lt*, 10 April 2011, available at: www.lrytas.lt/-12734916721272374705-i%C5%A1-are%C5%A1tin%C4%97s-paleisti-vedi-per-g%C4%97j%C5%B3-eitynes-sulaikyti-asmenys.htm#UvvZEbRDVJQ.

¹⁶⁵ Paragraph 2 of Article 283 of the Criminal Code, „A person who, when carrying out the actions provided for in paragraph 1 of this article, uses a firearm or explosives or resists a police officer or another person performing the functions of public administration shall be punished by imprisonment for a term of up to six years“.

¹⁶⁶ Delfi.lt (2011), ‘Nuteistas per gėjų eitynes policininkus užsipoelęs vyras’, *Delfi.lt*, 28 April 2011, available at: www.delfi.lt/news/daily/lithuania/nuteistas-per-geju-eitynes-policininkus-uzsipoles-vyras.d?id=44857721.

¹⁶⁷ 15min.lt (2012), ‘MPs Kazimieras Uoka and Petras Gražulis fined for misbehaving during Vilnius gay pride’, *15min.lt*, 17 April 2012, available at: www.15min.lt/en/article/in-lithuania/mps-kazimieras-uoka-and-petras-grazulis-fined-for-misbehaving-during-vilnius-gay-pride-525-211772.

¹⁶⁸ Lithuania, Vilnius District Court (*Vilniaus apgardos teismas*), No. I-2457-208/2013, 11 April 2013.

¹⁶⁹ Lithuania, Vilnius District Court (*Vilniaus apgardos teismas*), No. I-2457-208/2013, 11 April 2013.

¹⁷⁰ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiosios administracinės teismas*), No. AS⁸²²-339/2010, 7 May 2010.

¹⁷¹ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiosios administracinės teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013.

following the brief terms foreseen in the legal acts. However, the renewed negotiations between the Vilnius Municipality and the organizers were not successful and resulted in the second legal case.¹⁷² Following the meeting between the organizers, the representatives of the Municipality and the Police Department, on June 26, the Vilnius City Municipality issued a decision where it was explicitly stated that they disagree with the location, time and form of the event proposed by the organizers. LGL appealed against the decision to the court.¹⁷³

The first instance court repealed the Municipality's decision and ordered it to agree on the location specified in the initial application of January 11, 2013. It found that the Municipality exceeded its administrative competence by refusing to agree upon the time and form of the assembly and failed to implement the judgment of the Lithuanian Supreme Administrative Court of June 20, 2013.¹⁷⁴

The Appellate Court upheld the decision of the lower court. It stated that the intention by the claimant to organize the march on this location was not unusual or extraordinary. With regards to the proportionality of limitations, it emphasized the limited duration of the march in question – in case any inconveniences arose, they would be temporary. There was no data allowing to conclude that it was impossible to ensure the security of society, public order and traffic if the march took place on the location preferred by the claimant.¹⁷⁵

The Baltic Pride 2013 took place on the date, place and time initially suggested by LGL.

According to the data from the police, around 500 LGBT community members and their supporters participated in the march. A total of 1,200 people took part in the parade and in the protest against it. About 50 protesters tried to storm a concert stage where activists were to speak, but police forced them off. The protesters also threw eggs, hitting Lithuanian lawmaker Giedre Purvaneckiene and Sweden's European Union Affairs Minister Birgitta Ohlsson, who were standing at the front of the parade along with other dignitaries.¹⁷⁶ Twenty-eight people were detained and two pre-trial investigations were launched.¹⁷⁷

A total number of counter-demonstrators was not specified by the police, but it was estimated to be slightly bigger if compared to the number of demonstrators (around 700). It cannot be said for sure how many counter demonstrations were organized as majority of counter-demonstrators acted alone on in small groups. One MP, Mr. Gražulis, was actively involved in protesting against LGBT pride and arrested during the Baltic Pride for trying to get through the police cordon .¹⁷⁸ MP Gražulis was thrown face-down on the ground and carried off in handcuffs by police, though the lawmaker soon reappeared at the protest after being released from police custody.¹⁷⁹ He was subsequently taken to the police station where he was fined 200 LTL. MP appealed the fine to Vilnius regional Court. Gražulis was also charged with resisting the police officers and noncompliance with the lawful demands of police officers. As the offence may carry an

¹⁷² Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiosios administracinės teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013.

¹⁷³ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. Nr I-4265-561/2013, 5 July 2013.

¹⁷⁴ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. Nr I-4265-561/2013, 5 July 2013.

¹⁷⁵ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiosios administracinės teismas*), No. A⁸⁵⁸-2475/2013, 23 July 2013.

¹⁷⁶ Valentinavičius V. (2013), 'Lithuania Gay Pride Celebration Disrupted By Protesters', Huffingtonpost.com, 27 July 2013, available at: www.huffingtonpost.com/2013/07/27/lithuania-gay-pride- n_3663849.html/.

¹⁷⁷ Lithuaniantribune.com (2013), 'Police detain 28 in minor incidents during Baltic Pride 2013', *Lithuaniantribune.com*, 27 July 2013, available at: www.lithuaniantribune.com/46103/police-detain-28-in-minor-incidents-during-baltic-pride-2013-201346103/.

¹⁷⁸ Lithuaniantribune.com (2013), 'Police detain 28 in minor incidents during Baltic Pride 2013', *Lithuaniantribune.com*, 27 July 2013, available at: www.lithuaniantribune.com/46103/police-detain-28-in-minor-incidents-during-baltic-pride-2013-201346103/.

¹⁷⁹ Valentinavičius V. (2013), 'Lithuania Gay Pride Celebration Disrupted By Protesters', Huffingtonpost.com, 27 July 2013, available at: www.huffingtonpost.com/2013/07/27/lithuania-gay-pride- n_3663849.html/.

administrative arrest of up to 30 days, the Lithuanian Parliament had to vote to strip Gražulis' legal immunity. On October 8, 2013 the Parliament voted against the removal of the MP's legal immunity of.¹⁸⁰

In October 2013 Vilnius regional Court did not satisfy the appeal of MP Petras Gražulis for the fine of 200 LTL. The Court ruled that it was proven beyond a doubt that MP Gražulis violated the Article 187 of the Code of Administrative Offences. Therefore, the appeal was dismissed.¹⁸¹

E.6. Problematic aspects of regulation of the right to assembly

The 2008 case of Vilnius city municipality illustrated certain problematic aspects of the regulation of the right to assembly. It seems that certain provisions of the Law on Assemblies¹⁸² are not sufficiently precise and can be interpreted by national courts differently. First, it is not clear whether national legislation does not allow certain assemblies which can cause threats to public safety purely due to their character and opposition to them by some part of the society, in spite of the fact that their objective is legitimate and intention is peaceful (for instance, Pride events).

Secondly, the Law on Assemblies provides a list of 'public places', namely streets, squares, parks, public gardens of towns and settlements, as well as other public places and publicly used buildings.¹⁸³ The municipality, in refusing to permit the organisation of the event in the town hall, had an obligation to suggest an alternative place. It suggested that such types of events (LGBT events) can take place in publicly used buildings only (which was later approved as a legitimate alternative by both courts).

Thirdly, clearer procedural requirements must be set in the Law on Assemblies in regard to the relationship between the responsibilities of the municipality and the police.¹⁸⁴ Because according to the law, those applying for the permission to organise an event are obliged to provide their request to the head of the executive body of the municipality, where among other issues (such as the purpose of the event, the time and the date, etc.) a request to the police regarding assurance of the public order during event must be mentioned.¹⁸⁵ The request is later examined by the executive body of the municipality in a joint meeting with a representative of the police. Thus, according to the law, the organisers of an assembly are not obliged to apply to the police directly. This uncertainty resulted in an ambiguous reasoning of the court in LGL case, where court stated, that municipality is not obliged to ensure public safety of the event, because it falls under competence of the police.

Although the case was lost at national level, the interpretation of the law by the courts of first

¹⁸⁰ Lgl.lt (2014), 'Court terminated case of MP Petras Gražulis', *Lgl.lt*, 5 January 2014, available at: www.lgl.lt/en/news/the-court-terminated-the-case-of-mp-petras-grazulis/.

¹⁸¹ Lgl.lt (2014), 'Court terminated case of MP Petras Gražulis', *Lgl.lt*, 5 January 2014, available at: www.lgl.lt/en/news/the-court-terminated-the-case-of-mp-petras-grazulis/.

¹⁸² Lithuania, Law on assemblies (*Susirinkimų įstatymas*), No. 69-139, 2 December 1993, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437993.

¹⁸³ Article 6 of the Law on Assemblies. Lithuania, Law on assemblies (*Susirinkimų įstatymas*), No. 69-139, 2 December 1993, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437993.

¹⁸⁴ The ruling of the Constitutional Court mentioned above is not clear on all these issues.

¹⁸⁵ Lithuania, Law on assemblies (*Susirinkimų įstatymas*), No. 69-139, 2 December 1993, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437993.

and second instance raises reasonable doubts as to whether their decision was in accordance with international human rights standards and whether all the arguments and motives of the municipality were taken into account.

This can be supported by later public statements made by the municipality administration officials about ‘traditional family values’, which clearly indicate that, at the very least, goodwill in decision making and cooperation in this case was clearly lacking. This can also be illustrated by the following action taken by the municipality.

On 14.11.2007, the Council of the Municipality of Vilnius made an amendment to *Tvarkymo ir švaros taisyklės* [Rules on Disposal and Cleanness]¹⁸⁶ including a provision stating that the municipality can refuse to issue approval to events which could evoke negative reaction in society, or when objective information is received that such events could cause breaches of law. According to this amendment, such events can take place only in buildings or publicly used buildings. Unofficial information indicates that this particular provision was created to avoid public LGBT events in open spaces in Vilnius in the future.¹⁸⁷ It seems that the municipality took advantage of the interpretation of the Law on Assemblies which was given by the national courts in the LGL case.

On 16.07.2008 the Council of the Municipality of Vilnius expanded the provision on refusal to issue an approval to an event.¹⁸⁸ According to the latest wording, the permission can be refused “if according to the opinion of police or the commission (which decides on approval), riots could take place or the event could evoke negative reaction or resistance from the society, or objective data or any other information (written information about passed events and negative consequences, public opinion survey, etc.) is received that such event could cause breaches of law. Such event can only take place in closed spaces, where safety of participants and viewers can be ensured.” After 2008, the Rules on Disposal and Cleanness [Tvardymo ir švaros taisyklės] were amended several times, but this provision, i.e. Article 32.3.5, remained. It is quite obvious, that broad wording of the Rules allows to prevent any legitimate event, which might be opposed by part of the society.

The Rules on Disposal and Cleanness do not apply to events, that fall under the scope of the Law on Assemblies, however, since the procedure of application for permission is the same in both cases they only create additional obstacles and uncertainty for persons, willing to exercise the right to assembly.

However, three subsequent Baltic Pride cases – one of 2010, and two of 2013 – have shed more light on the application of the Law on Assemblies, specifically as far as the legitimate restrictions of freedom of assembly are concerned. In compliance with internationally recognized freedom of assembly principles, the courts have held that freedom of assembly cannot be restricted on arbitrary grounds and that convincing factual evidence are necessary in order to prove an alleged threat to a public interest, e.g. public order.

In the context of LGBT assemblies, the reliance on the Recommendation CM/Rec(2010)5 of the

¹⁸⁶ Lithuania, Vilnius city municipality (*Vilniaus miesto savivaldybė*) (2007), Decision of the council of Vilnius city municipality regarding the 19 January 2005 decision of the council No 1-655 on the rules on disposal and cleanness and regarding the council’s decision No 1-1299 (*Vilniaus savivaldybės Tarybos sprendimas dėl Tarybos 2005-01-19 Sprendimo Nr. 1-655 ‘Dėl Tvarkymo ir švaros taisyklių’ ir dėl Tarybos 2006-07-26 Sprendimo Nr.1-1299*), No. 1-263, 14 November 2007.

¹⁸⁷ Delfi.lt (2007), ‘Gėjų renginiam - užkardos Vilniuje’, *Delfi.lt*, 19 November 2007, available at: www.delfi.lt/news/daily/lithuania/geju-renginiams-uzkardos-vilniuje.d?id=15051813.

¹⁸⁸ Lithuania, Vilnius city municipality (*Vilniaus miesto savivaldybė*) (2008), Decision of the council of the Vilnius city municipality on the approval of the rules on disposal and cleanness (*Vilniaus miesto savivaldybės Tarybos sprendimas dėl Tvarkymo ir švaros taisyklių patvirtinimo*), No. 1-582, 16 July 2008.

Council of Europe Committee of Ministers to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity, by the national courts is a very welcomed practice.¹⁸⁹ For the future LGBT assemblies and the legal disputes they might bring about, it is very important that the national courts interpret the Law on Assemblies in line with relevant ECtHR jurisprudence. In both Baltic Pride 2010 and Baltic Pride 2013 cases, the highest administrative court in Lithuania, - the Lithuanian Supreme Administrative Court, - relied on the European Convention of Human Rights and the case-law of the European Court of Human Rights, in finding that “the state has the positive obligation to ensure effective enjoyment of the right to freedom of assembly for all, including individuals with unpopular views or minority groups.”¹⁹⁰ It further found that the essential clause of effective exercise of freedom of assembly is a presumption of lawfulness, which is infringed when refusing to sanction a gathering and preventing minorities from participation. Negative consequences to the freedom of assembly cannot be avoided if legal remedies are applied only after the intended date of the gathering.¹⁹¹

Nonetheless, on September 3, 2013 MP Petras Gražulis registered an amendment to the Law on Public Meetings, requesting the organizers of public assemblies to cover all the expenses in relation to ensuring safety and public order in the course of the events. This legislative motion was introduced as a response to the information provided by the Police Department, that protection of the public order and safety of the participants in the course of the Baltic Pride 2013 cost 182.000 LTL.¹⁹² The draft amendment is pending before the Parliament.¹⁹³

E.7. Legislative initiatives restricting freedom of assembly on moral grounds

On May 10, 2013 MP Petras Gražulis introduced a draft law on administrative liability for “denigration of constitutional values”. It seeks to amend the Code of Administrative Violations by introducing administrative liability for “public denigration of constitutional moral values and of constitutional fundamentals of the family life, as well as organization of public events contravening public morality”. According to the proposal, these actions would result in an administrative fine ranging from 1000 to 3000 LTL (in case of repeated violation – from 3000 to 6000 LTL)¹⁹⁴. According to the explanatory memorandum to the bill, it aims to establish that „[...] events contradicting public morals, such as marches and parades of homosexuals, are

¹⁸⁹ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁸⁵⁸-2475/2013, 23 July 2013.

¹⁹⁰ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013.

¹⁹¹ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010.

¹⁹² Atviri.lt (2013), ‘The Parliament Will Consider Five Homophobic Legislative Proposals in Autumn Session’, *Atviri.lt*, 10 September 2013, available at:

www.atviri.lt/index.php/news/the_parliament_will_consider_five_homophobic_legislative_proposals_in_autumn_session/7368.

¹⁹³ Lithuania, Draft law amending and supplementing articles 11 and 14 of the law on assemblies (*Susirinkimų įstatymo 11, 14 straipsnių papildymo ir pakeitimo įstatymo projektas*), No. XIIP-940, 3 September 2013, available at: www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=455236.

¹⁹⁴ Lithuania, Draft law amending articles 224 and 259(1) of the code of administrative offences and supplementing it with article 188(21) (*Administracinių teisės pažeidimų kodekso 224 bei 259(1) straipsnių pakeitimo ir Kodekso papildymo 188(21) straipsniu įstatymo projektas*), No. XIP-4490(2), 10 May 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=448190.

punishable by the administrative law“.¹⁹⁵

On November 26, 2013 Lithuanian Parliament voted to proceed with the consideration of the amendment. MPs voted to consider this amendment despite the fact that the parliamentary Human Rights Committee suggested to reject it.¹⁹⁶ It will be deliberated in two more readings of the Parliament.

According to the LGL, the amendment could be used to justify discrimination against lesbian, gay, bisexual and transgender individuals. Moreover, it violates the right to freedom of expression and peaceful assembly of the LGBT community.¹⁹⁷

Reacting to this and other legislative initiatives, ILGA-Europe called on „the Lithuanian parliamentarians to immediately abandon all proposed discriminatory and motivated by homophobia and transphobia legislative initiatives“ and other European countries „to react to the developments in Lithuania“.¹⁹⁸

An analogous bill was introduced by the MP Gražulis in 2010¹⁹⁹(re-introduced in 2011)²⁰⁰, in the course of the previous tenure by the Lithuanian Parliament. However, on April 26, 2012 the Parliament rejected the bill.²⁰¹

¹⁹⁵ Lithuania, The explanatory memorandum regarding the draft law amending articles 224 and 259(1) of the code of administrative offences and supplementing it with article 188(21) (*Aiškinamasis raštas dėl administracinių teisės pažeidimų kodekso 224 bei 259(1) straipsnių pakeitimo ir Kodekso papildymo 188(21) straipsniu įstatymo projekto*), No. XIP-4490(2), 10 May 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=448190, para. 2.

¹⁹⁶Lithuania, The conclusion of the human rights committee (main committee) on the draft law amending articles 224 and 259(1) of the code of administrative offences and supplementing it with article 188(21) (*Žmogaus teisių komiteto (pagrindinio komiteto) išvada Administracinių teisės pažeidimų kodekso 224 bei 259(1) straipsnių pakeitimo ir Kodekso papildymo 188(21) straipsniu įstatymo projektui*), No. XIP-4490(2), 14 November 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=459772.

¹⁹⁷ Lgl.lt (2013), ‘Lithuanian Parliament backs anti-gay proposal despite rejection by Human Rights Committee’, *Lgl.lt*, 27 November 2013, available at: www.lgl.lt/en/news/lgbt-guide-1/lithuanian-parliaments-vote-on-denigration-of-constitutional-moral-values/.

¹⁹⁸ Ilga-europe.org (2013), ‘ILGA-Europe is seriously concerned with the current developments and the state of human rights of LGBTI people in Lithuania’, *Ilga-europe.org*, 2 December 2013, available at: www.ilga-europe.org/home/news/for_media/media_releases/europe_must_react_to_escalation_of_human_rights_violations_in_lithuania.

¹⁹⁹Lithuania, Draft law amending articles 224 and 259(1) of the code of administrative offences and supplementing it with article 214(30) (*Administracinių teisės pažeidimų kodekso 224 bei 259(1) straipsnių pakeitimo ir Kodekso papildymo 214(30) straipsniu įstatymo projektas*), No. XIP-2595, 19 October 2010, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383747&p_query=Homoseksuali%F8%20santyki%F8&p_tr2=1.

²⁰⁰ Lithuania, Draft law amending articles 224 and 259(1) of the code of administrative offences and supplementing it with article 214(30) (*Administracinių teisės pažeidimų kodekso 224 bei 259(1) straipsnių pakeitimo ir Kodekso papildymo 214(30) straipsniu įstatymo projektas*), No. XIP-2595(2), 22 April 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=397252.

²⁰¹ Lithuania, Draft law amending articles 224 and 259(1) of the code of administrative offences and supplementing it with article 214(30) (*Administracinių teisės pažeidimų kodekso 224 bei 259(1) straipsnių pakeitimo ir Kodekso papildymo 214(30) straipsniu įstatymo projektas*), No. XIP-2595(2), 22 April 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=397252.

F. Criminal law

The general constitutional principle on limiting freedom of expression in case of discriminatory actions²⁰² is detailed in *Baudžiamasis Kodeksas* [Criminal Code].

As it was mentioned before, Article 169 of the *Baudžiamasis Kodeksas* [Criminal Code] of the Republic of Lithuania prohibits severe discriminatory behaviour on the basis of sexual orientation, among other grounds: ‘A person who has committed acts aimed at a certain group or members thereof on account of their ethnic background, race, sex, *sexual orientation*, origin or religion with a view to interfering with their right to participate as equals of other persons in political, economic, social, cultural or employment activity or to restrict the human rights or freedoms of such a group or its members, shall be punished with (a) community service work (b) a fine (c) detention or (d) imprisonment for up to 3 years.’²⁰³

So far, only one case where a person was charged with and found guilty of “severe discriminatory behavior” on the basis of sexual orientation was brought to the court.²⁰⁴

However, according to the survey conducted by the EU Fundamental Rights Agency (FRA), 61% of the Lithuanian LGBT community claim to have suffered discrimination or harassment based on their sexual orientation. According to the survey, this is the highest rate of hostility towards the local LGBT community among all 28 EU Member States.²⁰⁵

No victimization surveys were conducted in Lithuania during the period under review, however the results of several national public opinion polls regarding attitudes towards LGBT people can be found in *Miscellaneous* section.

F.1. Hate speech

Article 170 of the Criminal Code prohibits incitement against certain groups of residents.²⁰⁶ It was supplemented in 2009 by inserting a new Paragraph (Paragraph 1) which prohibits distribution, production, acquisition, sending, transporting and storing hate-inciting material.²⁰⁷ Today, Article 170 reads as follows:

Article 170. Incitement against Any National, Racial, Ethnic, Religious or Other Group of Persons

1. A person who, for the purposes of distribution, produces, acquires, sends, transports or stores the items ridiculing, expressing contempt for, urging hatred of or inciting discrimination against

²⁰² Lithuania, The Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=237975&Condition2=

²⁰³ Lithuania, The law on the approval and of the Criminal Code. Criminal Code (*Baudžiamojo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Baudžiamasis kodeksas*), No. 89-2741. 26 September 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465371.

²⁰⁴ Lithuania, Vilnius District Court (*Vilniaus apygardos teismas*), No. 1A-326-2010, 25 March 2011.

²⁰⁵ FRA (European Union Agency for Fundamental Rights) (2013), *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey: results at a glance*, Luxembourg, Publication Office of the European Union (Publication Office), p. 15.

²⁰⁶ Lithuania, The Law on adoption and enactment of the criminal code. The Criminal code (*Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas*), No. VIII-1968, 26 September 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465371.

²⁰⁷ Lithuania, The Law amending and supplementing criminal code with Articles 170, 191, 192 and supplementing the code with Article 170(1) (*Baudžiamojo kodekso 170, 191, 192 straipsnių pakeitimo ir papildymo ir Kodekso papildymo 170(1) straipsniu įstatymas*), No. XI-330, 9 July 2009, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?a=349515&b=

a group of persons or a person belonging thereto on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views or inciting violence, a physical violent treatment of such a group of persons or the person belonging thereto or distributes them

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to one year.

2. A person who publicly ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of persons or a person belonging thereto on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.

3. A person who publicly incites violence or a physical violent treatment of a group of persons or a person belonging thereto on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views or finances or otherwise supports such activities

*shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.*²⁰⁸

4. A legal entity shall also be held liable for the acts provided for in this Article.

In 2009, the Criminal Code was also supplemented with Article 170-1 which prohibits creation and activities of the groups and organizations aiming at discriminating a group of persons, also on the account of their sexual orientation, or inciting against it.²⁰⁹ Such criminal offence is punished “by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to one year”.²¹⁰

Article 170 of the Criminal Code was rarely invoked in practice before 2007. Official as well as unofficial statistical data on hate speech acts regarding sexual orientation of persons before 2003 are not available, thus only acts and criminal investigations initiated from 01.05.2003 can be taken into account.²¹¹

According to official statistics,²¹² no investigations regarding the incitement of hatred in regard to sexual orientation (Article 170 of the Criminal Code) were started in the period 2004-2006.

²⁰⁸ Lithuania, The Law on adoption and enactment of the criminal code. The Criminal code (*Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas*), No. VIII-1968, 26 September 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=465371.

²⁰⁹ Lithuania, The Law amending and supplementing criminal code with Articles 170, 191, 192 and supplementing the code with Article 170(1) (*Baudžiamojo kodekso 170, 191, 192 straipsnių pakeitimo ir papildymo ir Kodekso papildymo 170(1) straipsniu įstatymas*), No. XI-330, 9 July 2009, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?a=349515&b=.

²¹⁰ Lithuania, The Law amending and supplementing criminal code with Articles 170, 191, 192 and supplementing the code with Article 170(1) (*Baudžiamojo kodekso 170, 191, 192 straipsnių pakeitimo ir papildymo ir Kodekso papildymo 170(1) straipsniu įstatymas*), No. XI-330, 9 July 2009, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?a=349515&b=.

²¹¹ Lithuania, Special investigation division of the General prosecutor's office (*Generalinės prokuratūros specialiųjų tyrimų skyrius*) (2008), Activity report of the Special investigation division for 2007 (*Specialiųjų tyrimų skyriaus veiklos 2007 metais ataskaita*), No. 12.14-2, Lithuania, Generalinė prokuratūra, available at: www.prokuraturos.lt/nbspnbspnusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx.

²¹² IT and Communications Department under the Ministry of Interior (*Informatikos ir ryšių departamentas prie Vidaus Reikalų Ministerijos*), Data about the crimes committed in the Republic of Lithuania between January and December 2006 (2007), available at: www.ird.lt/viewpage.php?page_id=197.

However, the number of pre-trial investigations increased significantly in recent years —15 pre-trial investigations were started on the basis of incitement to hatred against a group of persons on grounds of their sexual orientation in 2007.²¹³ In 2008 this number doubled – 36 investigations started, according to the annual report of the General Prosecution Service department of Special investigations.²¹⁴

In 2009, 37 offences regarding incitement of hatred in regard to sexual orientation (Article 170 of the Criminal Code) were registered, and 9 cases ended up in the courts. In 2010 the ratio was 158 to 22, in 2011 – 328 to 123, in 2012 - 266 to 71 and in 2013 - 152 to 45 accordingly.²¹⁵ The dramatic rise in the number of criminal investigations on the basis of incitement of hatred against a group of persons on grounds of their sexual orientation can be explained by the following reasons. First, the year 2007 was a turning point for the LGBT community, when the first attempts to appear in public life (organise public events, social advertising) were made. This attracted significant media attention. As a consequence, most of the criminal investigations were conducted in regard to incitement of hatred in comments in articles on internet news portals.

Secondly, civil society organisations became much more active in informing *Žurnalistų ir leidėjų etikos komisija* [Ethics Commission of Journalists and Publishers] (the journalists' ethics body) and the *Lietuvos Respublikos Generalinė Prokuratūra* [General Prosecution Service] about cases of incitement of hatred on the internet.²¹⁶

Nevertheless, the comparison of the number of the registered hate speech offences and the number of the cases which reach the courts indicates that even if the pre-trial investigations are launched, they rarely result in the actual judgment. Several problems might be identified in this regard.

Firstly, the nature of the crime. Around 95% of the offences are committed on the Internet,²¹⁷ either by perpetrators creating hate-inciting websites²¹⁸ or posting hate-inciting comments in the commentary section under the on-line articles.²¹⁹ The investigations of cybercrimes are complicated due to the difficulties related to the identification of a perpetrator – in many cases the same IP address is used by several users (e.g. at the workplace, at home or in public Internet cafes) and thus sometimes the officers cannot find the real author of a hate-inciting comment.²²⁰

²¹³ Lithuania, General Prosecutor's Office (*Generalinė prokuratūra*) (2008), Communication of the Lithuanian human rights centre (Lietuvos žmogaus teisių centras), 2 January 2008.

²¹⁴ Lithuania, Special investigation division of the General prosecutor's office (*Generalinės prokuratūros specialiuju tyrimu skyrius*) (2009), Activity report of the Special investigation division for 2008 (*Specialiuju tyrimu skyriaus veiklos 2008 metais ataskaita*), No. 12.14.-2, Lithuania, Generalinė prokuratūra, available at: www.prokuraturos.lt/nbspnbspnusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx.

²¹⁵ The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania (*Informatikos ir ryšiu departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

²¹⁶ Lithuania, Special investigation division of the General prosecutor's office (*Generalinės prokuratūros specialiuju tyrimu skyrius*) (2008), Activity report of the Special investigation division for 2007 (*Specialiuju tyrimu skyriaus veiklos 2007 metais ataskaita*), No. 12.14.-2, Lithuania, Generalinė prokuratūra, available at: www.prokuraturos.lt/nbspnbspnusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx.

²¹⁷ Lithuania, Special investigation division of the General prosecutor's office (*Generalinės prokuratūros specialiuju tyrimu skyrius*) (2011), Activity report of the Special investigation division for 2010 (*Specialiuju tyrimu skyriaus veiklos 2010 metais ataskaita*), No. 17.9.-234, Lithuania, Generalinė prokuratūra, available at: www.prokuraturos.lt/nbspnbspnusikaltimai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx, p. 10.

²¹⁸ Lithuania, Vilnius District Court (*Vilniaus apgardo teismas*), No. 1A-326-2010, 25 March 2011.

²¹⁹ Lithuania, Panevėžys District Court (*Panevėžio apgardo teismas*), No. 1A-845-366/2011, 1 December 2011; Lithuania, Klaipėda District Court (*Klaipėdos apgardo teismas*), No. 1A-411-107/2011, 26 May 2011; Lithuania Supreme Court (*Lietuvos aukščiausiasis teismas*), No. 2K-677/2012, 18 December 2012.

²²⁰ Lithuania, Special investigation division of the General prosecutor's office (*Generalinės prokuratūros specialiuju tyrimu skyrius*) (2011), Activity report of the Special investigation division for 2010 (*Specialiuju tyrimu skyriaus veiklos 2010 metais ataskaita*), No. 17.9.-234, Lithuania, Generalinė prokuratūra, available at:

Secondly, the quality of the pre-trial investigations remains low. It is a common practice for the law enforcement officers investigating hate speech cases to refer an allegedly hate-inciting piece (e.g. a comments, a statement) to experts for their opinion. The pieces are commonly referred to the Office of the Inspector of Journalist Ethics, occasionally – other institutions, such as the Equal Opportunities Ombudsperson or the Lithuanian Social Research Center.²²¹ The law-enforcement officers often fully rely on the opinion provided by the experts and refrain from determining themselves whether an act incites hatred and thus constitutes an offence. In the research conducted by the Human Rights Monitoring Institute, an interviewed law-enforcement officer confirmed that “*the elements of the offence in the Article 170 of Criminal Code are phrased in a difficult way, thus a person’s liability completely depends on the findings of an external expert, who enjoys a wide margin of interpretation, even though I lack the expertise to comment on their methods. However, different specialists evidently assess comments differently. Even the ones that are manifestly violence-inciting are not considered such and vice versa.*”²²²

The officers also lack training²²³ on the methods and best practices of investigating hate speech cases. Notably, the General Prosecution Service Department of Special Investigations which was tasked with developing the unified practice with regard to, *inter alia*, hate speech and hate crime investigations and in this capacity produced reports²²⁴ and recommendations,²²⁵ was closed down on January 17, 2011. Currently there is only one prosecutor in the General Prosecution Service specializing in investigating hate offences.²²⁶

Thirdly, the courts sometimes face problems with determining *mens rea* in hate speech cases.²²⁷ According to the case-law, a crime of hate speech should be committed intentionally, i.e. a person should understand that by a particular expression he/she “ridicules, expresses contempt of, urges hatred towards or encourages discrimination against a group of residents or against a specific person, on account of his or her sex, sexual orientation, race, nationality, language, ethnicity, social status, faith, religion or beliefs” and should want to act in that way. In other words, such crimes should be committed with a direct intent.²²⁸ In hate speech cases, when determining the intention of a speaker, the courts sometimes resort to merely asking the accused about his intentions and do not analyse the context or the content of the remark. Also, the courts may, without any additional explanation, dismiss the findings of experts.²²⁹ The Lithuanian Supreme Court set a particularly worrying precedent in the criminal case where the accused posted a homophobic comment reacting to the article describing a protest “Kisses against homophobia”.

www.prokuraturos.lt/nbspnbspnusikaltimai%20C5%BEmoni%20C5%A1kumui/tabid/221/Default.aspx, p. 10.

²²¹ Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisių stebėjimo institutas, available at:

www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDA1.pdf, p. 16.

²²² Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisių stebėjimo institutas, available at:

www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDA1.pdf, p. 16.

²²³ Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisių stebėjimo institutas, available at:

www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDA1.pdf, p. 16.

²²⁴ Prokuratūros.lt (2014), ‘Nusikaltimai žmoniškumui. Nusikaltimai lygiateisiškumui ir sąžinės laisvei’, *Prokuratūros.lt*, available at: www.prokuraturos.lt/nbspnbspnusikaltimai%20C5%BEmoni%20C5%A1kumui/tabid/221/Default.aspx.

²²⁵ Lithuania, General Prosecutor’s Office (*Generalinė prokuratūra*) (2009), Methodological recommendations on organization, coordination and implementation of the pre-trial investigation of the criminal offences committed on the racial, nationalistic, xenophobic, homophobic and other discriminatory grounds (*Metodinės rekomendacijos dėl nusikalstamų veikų, padarytų rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumų*). No. 12.14-40, 23 January 2009, available at: www.prokuraturos.lt/nbspnbspnusikaltimai%20C5%BEmoni%20C5%A1kumui/tabid/221/Default.aspx.

²²⁶ Prokuratūros.lt (2014), ‘Nusikaltimai žmoniškumui. Nusikaltimai lygiateisiškumui ir sąžinės laisvei’, *Prokuratūros.lt*, available at: www.prokuraturos.lt/nbspnbspnusikaltimai%20C5%BEmoni%20C5%A1kumui/tabid/221/Default.aspx.

²²⁷ Lithuania, Panevėžys District Court (*Panevėžio apgardos teismas*), No.1A-845-366/2011, 1 December 2011

²²⁸ Lithuania, Panevėžys District Court (*Panevėžio apgardos teismas*), No.1A-845-366/2011, 1 December 2011

²²⁹ Lithuania, Panevėžys District Court (*Panevėžio apgardos teismas*), No.1A-845-366/2011, 1 December 2011

Instead of analysing the impugned statement, the court focused on the actions of the persons described in the article, i.e. those who organized and participated in the protest against homophobia. The court ruled that since the protest in question was held without a certificate and “failed to attain to the fact that a vast majority of Lithuanians respects traditional family values”, the commentator’s reaction was normal. The author of the impugned statement was acquitted.²³⁰ No application to the ECtHR has been lodged in this regard.

In 2011, hate speech against LGBT was used during some political campaigning for the municipal elections. In February 2011, the political party *Young Lithuania [Jaunoji Lietuva]* unveiled a slogan “For Lithuania Without Blue, Black, Red, and Gypsies From the Encampment”. *Young Lithuania* explained the slogan saying, “for Lithuania [...] without blue [...] the ideology of sexual perversion that is being imposed on us from abroad”. The photo next to the slogan depicted a person wearing a rainbow flag.²³¹ A number of Lithuanian human rights organizations complained to the Prosecutor General on the grounds that the party’s homophobic and racist speech violated the country’s law regulating political parties and campaigning.²³² On June 27, 2011 Kaunas City District Prosecutor terminated the pre-trial investigation, finding that the party’s political campaign did not incite hatred.²³³ Although according to Paragraph 5 of Article 214 of the Criminal Procedure Code,²³⁴ the complainants could have appealed against the prosecutor’s decision, the decision had not been challenged. The decision remained unchallenged, because Lithuanian non-governmental organizations do not have sufficient financial resources to cover fees of attorneys-at-law, i.e. litigators, or sufficient human resources to proceed with the legal action on their own. The political party *Young Lithuania* won four seats at Kaunas City Municipality Council.²³⁵

Furthermore, unwarranted hate speech coming from the top elected politicians in Lithuania became a major problem in the recent years. For example, MP Aloyzas Sakalas implied that homosexuality destroys the foundation of the state: “*In the light of variety of opinions, it can be concluded that this problem requires a clear answer to the question, whether homosexuality, despite being deplorable, is a social norm or is just a deviation from that norm. Clear legal decisions are possible only upon the possession and this answer and upon the estimation, to what extent homosexuality destroys the foundations of the State.*”²³⁶

However, MP Petras Gražulis has been the most notorious in this regard. For example, on May 16, 2012, MP Petras Gražulis interrupted the press conference of the International Day Against Homophobia and Transphobia. MP Gražulis disrupted the event, attended by LGBT rights advocates and ambassadors, asking: “*How are homosexuals better than necrophiliacs or paedophiles?*”²³⁷ On November 12, 2013 he delivered a ridiculing and humiliating “present” for the LGL – jeans trousers with a hole and a zipper at the back.²³⁸ MP Gražulis disrupted both

²³⁰ Lithuania, Lithuanian Supreme Court (*Lietuvos aukščiausiasis teismas*), No 2K-677/2012, 18 December 2012.

²³¹ Čekutis, R. (2011), ‘Patriotai Vilniuje balsuoja už partiją „Jaunoji Lietuva“’, Nr. 12, *Patriotai.lt*, 4 February 2011, available at: www.patriotai.lt/straipsnis/2011-02-04/patriotai-vilniuje-balsuoja-uz-partija-jaunoji-lietuva-nr-12.

²³² Hrmi.lt (2011), Request to launch a pre-trial investigation and apply temporary protective measures (Prašymas pradėti ikiteisminį tyrimą ir pritaikyti laikinąsias apsaugos priemones), *Hrmi.lt*, 9 February 2011, available at: www.hrmi.lt/uploaded/PDF%20dokai/Koalicija_Prasymas_GP_Jaunoji_Lietuva_20110215_1.pdf.

²³³ Lithuania, Kaunas city regional prosecutor’s office (*Kauno miesto apylinkės prokuratūra*), Decision to terminate pre-trial investigation (*Nutarimas nutraukti ikiteisminį tyrimą*), 27 June 2011, available at: www.hrmi.lt/uploaded/PDF%20dokai/Kauno%20prokuraturos%20nutarimas_20110627_Jaunoji%20Lietuva.pdf.

²³⁴ Lithuania, Law on approval, enactment and implementation of the civil procedure code. Civil procedure code (*Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas*), No. 37-1341, 14 March 2002, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=468093.

²³⁵ Lithuania, Supreme election Commission (*Vyriausioji rinkimų komisija*) (2014), Kaunas city council. The council seats (*Kauno miesto taryba. Tarybos sudėtis*), 18 February 2014, available at: www.2013.vrk.lt/2011_savivaldybiu_tarybu_rinkimai/output_lt/savivaldybiu_tarybu_sudetis/rapg_7136.html.

²³⁶ Sakalas, A. (2013), ‘A.Sakalas. Homoseksualų norai ir valstybės politika’, *Delfi.lt*, 9 April 2013, available at:

www.delfi.lt/news/ringas/politics/asakalas-homoseksualu-norai-ir-valstybes-politika.d?id=61078069#ixzz2Q25dRrIk.

²³⁷ Digrytė, E. (2012), ‘Petras Gražulis: reikia varyti visus gėjus ir ambasadorius iš Lietuvos’, *15min.lt*, 16 May 2012, available at: www.15min.lt/naujiena/aktualu/lietuva/petras-grazulis-reikia-varyti-visus-gejus-ir-ambasadorius-is-lietuvos-56-219120.

²³⁸ *Lgl.lt* (2013), ‘MP Petras Gražulis personally delivers a hateful “gift” to the LGBT* community centre’, *Lgl.lt*, 12 November 2013, available at: www.lgl.lt/en/news/lgbt-guide-lt/mp-petras-grazulis-personally-delivers-a-hateful-gift-to-the-lgbt-community-

Baltic Pride marches and tabled several homophobic initiatives restricting freedom of assembly and expression of the LGBT community.²³⁹

Yet, neither of the MPs has been held legally responsible for the homophobic statements.

F.2. Hate crimes and homophobic motivation

One of the latest developments in criminal law was the inclusion of homophobic motivation to the list of aggravating circumstances of crime in June, 2009.²⁴⁰ Thus a concept of hate crimes was introduced to national law.

Until then the concept of hate crimes was not taken into account by the national legal system. However, in June, 2009, the amendments to Criminal Code took place and homophobic motivation (*inter alia* hatred concerning other equality grounds) is now included in the list of aggravating circumstances of the crime.²⁴¹ Although the Criminal Code does not provide definition of hate crimes, however, the General Prosecution Service issued recommendations regarding pre-trial investigations of such crimes, considering all crimes that are motivated with hate towards persons of particular sexual orientation as hate crimes (in addition to previously mentioned Articles 169 and 170 of the Criminal Code).²⁴² Thus a concept of hate crimes was introduced to national law.

In addition to general clause, which provides a list of aggravating circumstances (Paragraph 1(10) of Article 60 of the Criminal Code), the provision is repeated in Articles that foresee liability for particular crimes: murder (Paragraph 2(13) of Article 129), intentional grievous bodily injury (Paragraph 2(13) of Articles 135) and intentional slight bodily injury (Paragraph 2(13) of Article 138).

The statistics on Paragraph 1(10) of Article 60 of the Criminal Code is not collected.²⁴³ In 2008-2013 there have been no registered offences on Paragraph 2(13) of Article 129, Paragraph 2(13) of Articles 135 and Paragraph 2(13) of Article 138.²⁴⁴ In the absence of relevant case-law, it is impossible to identify specific new trends for the reporting period.

At least one case of violence against a person on grounds of his sexual orientation²⁴⁵ was

center/.

²³⁹ See *E. Freedom of assembly* and *H. Miscellaneous*.

²⁴⁰ Lithuania, Law supplementing articles 60, 129, 135 and 138 of the criminal code (*Baudžiamojo kodekso 60, 129, 135 ir 138 straipsnių papildymo įstatymas*), No. XI-303, 16 June 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc?p_id=347281.

²⁴¹ Lithuania, Law supplementing articles 60, 129, 135 and 138 of the criminal code (*Baudžiamojo kodekso 60, 129, 135 ir 138 straipsnių papildymo įstatymas*), No. XI-303, 16 June 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc?p_id=347281.

²⁴² Lithuania, General Prosecutor's Office (*Generalinė prokuratūra*) (2009), Methodological recommendations on organization, coordination and implementation of the pre-trial investigation of the criminal offences committed on the racial, nationalistic, xenophobic, homophobic and other discriminatory grounds (*Metodinės rekomendacijos dėl nusikalstamų veikų, padarytų rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumų*). No. 12.14-40, 23 January 2009, available at: www.prokuraturos.lt/nbspnbspnusikalstamai%C5%BEmoni%C5%A1kumui/tabid/221/Default.aspx.

²⁴³ The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania (*Informatikos ir ryšių departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

²⁴⁴ The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania (*Informatikos ir ryšių departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

²⁴⁵ See *C. Asylum and subsidiary protection*.

publicised by the media.²⁴⁶ However, no information as to whether this case was brought to the police attention/court and what was the outcome of the investigation is available. No case-law in respect of the above listed articles is available on the case-law databases either. The study conducted by the Human Rights Monitoring Institute in 2013 has found that “[t]he high-level of hate crimes underreporting in Lithuania is [...] also due to the inaccurate classification of the offences committed. Inaccurate classification itself is a result of non-compliance with the State’s obligation to unmask a bias motive, be it a racial, ethnic, homophobic or any other.”²⁴⁷ In practice, hate crimes are often classified as mere hooliganism, without law establishing a biased motive of the perpetrator.²⁴⁸

Unofficial reports produced by the non-governmental organizations prove that the phenomenon of hate crimes in Lithuania is hidden rather than non-existent. For example, in 2013 the LGL documented homophobic and transphobic violence in Lithuania by inviting victims and witnesses to fill-in an anonymous online questionnaire.²⁴⁹ In the monitoring report, LGL reports receiving 43 fully completed forms: 3 of them were identified as false, 24 of them were submitted by victims, and 19 by witnesses.²⁵⁰ Out of 12 incidents that occurred in January–November 2013, there “was one case of extreme physical violence, four cases of assault, four cases of damage against property and three cases of psychological violence recorded.”²⁵¹ However, only five out of twelve cases were reported to the law enforcement authorities.²⁵² For instance, one victims reported a particularly grave hate crime case:

“the victim was assaulted and raped by three colleagues after work. It is mentioned in the questionnaire that this was done in order to express hatred towards the victim’s sexual orientation and ethnicity. Since the mentioned person is open about his sexual identity, it can be assumed that the perpetrators knew this fact in advance. This was evident from the fact that the victim was verbally abused and the verbal abuse referred to his sexual orientation”²⁵³.

Underreporting of hate crimes is often caused by the fact that people do not expect to receive help. According to the report of the LGL, “[e]ven if they do apply to the law enforcement authorities, victims describe the police’s behaviour as careless and sometimes mocking in particular cases.”²⁵⁴ This finding is supported by other national studies.²⁵⁵

²⁴⁶ Alfa.lt (2008), ‘Spaudos apžvalga: čekėnai pabėgėlių centre muša politinio prieglobsčio norintį gėjų’, *Alfa.lt*, 3 January 2008, available at:

www.alfa.lt/straipsnis/163261/Spaudos.apzvalga.cecenai.pabegeliu.centre.musa.politinio.prieglobscio.norinti.geju=2008-01-03_09-15/#.Uw5wr4VDVJQ.

²⁴⁷ Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisių stebėjimo institutas, available at:

www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDAI.pdf, p. 15.

²⁴⁸ Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisių stebėjimo institutas, available at:

www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDAI.pdf, p. 15.

²⁴⁹ Lithuania, Lithuanian Gay League (*Lietuvos gėjų lyga*) (2013), *Homophobic and transphobic hate crimes in Lithuania*, ISBN 978-609-420-338-1, Vilnius, Lietuvos gėjų lyga, available at: www.lgl.lt/assets/Stebesenos-ataskaita-EN-internet.pdf.

²⁵⁰ Lithuanian Gay League (*Lietuvos gėjų lyga*) (2013), *Homophobic and transphobic hate crimes in Lithuania*, ISBN 978-609-420-338-1, Vilnius, Lietuvos gėjų lyga, available at: www.lgl.lt/assets/Stebesenos-ataskaita-EN-internet.pdf, p. 15.

²⁵¹ Lithuanian Gay League (*Lietuvos gėjų lyga*) (2013), *Homophobic and transphobic hate crimes in Lithuania*, ISBN 978-609-420-338-1, Vilnius, Lietuvos gėjų lyga, available at: www.lgl.lt/assets/Stebesenos-ataskaita-EN-internet.pdf, p. 15.

²⁵² Lithuanian Gay League (*Lietuvos gėjų lyga*) (2013), *Homophobic and transphobic hate crimes in Lithuania*, ISBN 978-609-420-338-1, Vilnius, Lietuvos gėjų lyga, available at: www.lgl.lt/assets/Stebesenos-ataskaita-EN-internet.pdf, p. 16.

²⁵³ Lithuanian Gay League (*Lietuvos gėjų lyga*) (2013), *Homophobic and transphobic hate crimes in Lithuania*, ISBN 978-609-420-338-1, Vilnius, Lietuvos gėjų lyga, available at: www.lgl.lt/assets/Stebesenos-ataskaita-EN-internet.pdf, p. 18.

²⁵⁴ Lithuanian Gay League (*Lietuvos gėjų lyga*) (2013), *Homophobic and transphobic hate crimes in Lithuania*, ISBN 978-609-420-338-1, Vilnius, Lietuvos gėjų lyga, available at: www.lgl.lt/assets/Stebesenos-ataskaita-EN-internet.pdf, p. 37.

²⁵⁵ Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*) (2013), *Protection of hate crime victims’ rights: the case of Lithuania*, Vilnius, Žmogaus teisių stebėjimo institutas, available at: www.hrmi.lt/uploaded/Documents/Hate%20Crimes%20Victims%20Rights%20Study%20EN%202013%20SPAUDAI.pdf, p. 18..

F.3. Legislative initiatives limiting the application of hate speech laws to homophobic speech

On June 11, 2013 a group of MPs proposed to supplement Article 170 of the Criminal Code²⁵⁶ by adding Paragraph 5: *“critics or discussion of sexual behaviour, sexual practices, convictions and views, or attempts to persuade to change such behaviours, practices, convictions and views, is not to be regarded in itself as sneer, belittlement, discrimination or incitement to discriminate”*.²⁵⁷

According to the explanatory memorandum, the amendment was proposed upon the request by some civil society actors in order to establish that *“criticisms and remarks on sexual orientation would not be comprehended as discrimination, harassment, incitement to hatred, offence or slander”*.²⁵⁸ Furthermore, the drafters claimed to protect the constitutional right to freedom of expression, because *“the recent years had witnessed an increase in pre-trial investigations under the Article 170 of the Criminal Code on the grounds of any negative comments towards a group of persons or a person belonging thereto”*.²⁵⁹

On September 12, 2013 the Parliament accepted the proposal for deliberation,²⁶⁰ despite the disapproval of the Legal Department²⁶¹ and the European Law Department.²⁶² Both departments explained that the legislative initiative went against the principle of equality enshrined in the Lithuanian Constitution and the international human rights treaties. On November 13, 2013 the Government officially rejected to implement this legislative initiative.²⁶³ The draft amendment is still pending before the Parliament’s committees.

This amendment, together with several others, was criticized by a group of members in the Parliamentary Assembly of the Council of Europe (PACE). As stated in their written declaration of October 3, 2013, *“taken together, these initiatives constitute both a serious attack on the exercise of fundamental rights by a vulnerable minority and a general incitement to discrimination. As such, they have no place in a parliament which respects the principles of democracy and human rights.”*²⁶⁴

²⁵⁶ See F.1. Hate Speech

²⁵⁷Lithuania, The Draft law supplementing Article 170 of the Criminal Code (*Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projektas*), No. XIIP-687, 11 June 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450517.

²⁵⁸Lithuania, The explanatory memorandum to the draft law supplementing Article 170 of the Criminal Code (*Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projekto aiškinamasis raštas*), No. XIIP-687, 11 June 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450519.

²⁵⁹Lithuania, The explanatory memorandum to the draft law supplementing Article 170 of the Criminal Code (*Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projekto aiškinamasis raštas*), No. XIIP-687, 11 June 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450519.

²⁶⁰Lithuania, Parliament (*Seimas*) (2013), ‘Siūlymui papildyti Baudžiamojo kodekso 170 straipsnį po pateikimo pritarta’, Press release, 12 September 2013, available at: www3.lrs.lt/pls/inter/w5_show?p_r=4445&p_d=139515&p_k=1.

²⁶¹Lithuania, The conclusion of the legal department on the draft law supplementing Article 170 of the Criminal Code (*Teisės departamento išvada Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projektui*), No. XIIP-687, 17 June 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=451042.

²⁶²Lithuania, The conclusion of the European law department on the draft law supplementing Article 170 of the Criminal Code (*Europos teisės departamento išvada Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projektui*), No. XIIP-687, 4 July 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=452992.

²⁶³Lithuania, Decision on the draft law No. XIIP-687 supplementing Article 170 of the Criminal Code (*Nutarimas dėl Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projekto Nr. XIIP-687*), No. 1029, 13 November 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=459894.

²⁶⁴ France, Parliamentary Assembly (2013), Written declaration on homophobic and transphobic legislative proposals in Lithuanian Parliament, No. 558, 3 October 2013, available at: www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20218&lang=en.

G. Transgender issues

On 11.09.2007 Lithuania lost a case *L. v. Lithuania* before the European Court of Human Rights,²⁶⁵ in regard to violation of the right to private life of a transgender person: this it led to controversial debates in society and among politicians. The present legal situation of transgender persons is very difficult due to the following reasons.

To start with, the terminology of Lithuanian language does not provide for a clear distinction between „sex“ and „gender“. Even in sociological literature the term „lytis“ is widely used to define both concepts. The national anti- discrimination law contains the term “lytis” only, which can be interpreted to encompass both sex and gender concepts. However, since case-law on transgender issues is almost non-existent, the interpretation of the national anti- discrimination law in this respect was never exercised in practice.

Secondly, due to a legal vacuum in national legislation, persons can not change their sex by medical means in Lithuania. Article 2.27 of the Civil Code, which determines the right to the change of the designation of sex, states that ‘the conditions and the procedure for the change of designation of sex shall be prescribed by law’. Since 01.07.2001, when the Civil Code came into force, no such subsidiary law has been adopted.

As the national legislation which provides protection against discrimination does not have any specific provisions regarding transgender persons, it is difficult to estimate how the issue of discrimination against transgender persons would be considered by competent institutions. There have as yet been no cases of discrimination against transgender persons brought to the courts or the Office of the Equal Opportunities Ombudsperson.

Although in *L. v. Lithuania* the European Court of Human Rights obliged the government of Lithuania to pass a law that would regulate the conditions and procedures for gender reassignment within six months, this decision was not accepted by significant number of politicians.²⁶⁶ Eventually the government of Lithuania paid the compensation of 40 000 Euros to the victim, but did not pass the laws.²⁶⁷

The Updated Action Plan submitted by the Lithuanian Government in 2013 to the Council of Europe Committee of Ministers on the implementation of individual and general measures in *L. v. Lithuania* case, suggests that the Government is not currently concerned with providing transsexuals with the effective right to undergo gender-reassignment.²⁶⁸ On the contrary, the general measures proposed by the Lithuanian government involve the elimination of the requirement to lay down gender reassignment conditions and procedures by the law through the deletion of Article 2.27, Paragraph 2, of the Civil Code. This would be replaced by:

(i) the development of non-legal medical procedures: *“the issues concerning the medical treatment are to be set in the medical norms.”*

²⁶⁵ European Court of Human Rights (ECtHR), *L. v. Lithuania*, No. 27527/03, 11 September 2007.

²⁶⁶ Digrytė, E. (2007), ‘Politikai nusiteikę sumokėti kompensaciją ir pamiršti lyties keitimą’, *Delfi.lt*, 13 September 2007, available at: www.delfi.lt/archive/print.php?id=14366811.

²⁶⁷ Digrytė, E. (2008), ‘Užuot įteisinusi lyties keitimą Lietuva pasirinko kompensaciją’, *Delfi.lt*, 1 July 2008, available at: www.delfi.lt/news/daily/lithuania/article.php?id=17580960.

²⁶⁸ France, Committee of Ministers of the Council of Europe (2013), Updated Information on the Execution of the ECHR Judgment in the case *L. v. Lithuania*, No. DH–DD(2013)657, 18 April 2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2074341&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

(ii) the introduction of simplified procedures for changing entries in official documents, by means of a Law on the Registration of the Civil Acts. These would require the register office to register gender reassignment “*after the submission of the gender reassignment certificate issued by the health care institution which meets the requirements set by the Government or its authorities*”.

Both the draft amendment to the Civil Code²⁶⁹ and the draft Law on the Registration of the Civil Acts²⁷⁰ were given “initial approval” by the Parliament on March 26, 2013 and are currently pending in parliamentary committees.

On August 21, 2013 the Human Rights Monitoring Institute [Žmogaus teisių stebėjimo institutas] and the LGL sought clarification from, *inter alia*, the Ministry of Health concerning its plans for the development of these additional procedures and, specifically, medical norms.

The response from the Ministry of Health²⁷¹ listed a number of items of secondary legislation which would have to be amended or adopted in order for the changes to the Civil Code and the draft Law on the Registration of the Civil Acts to become effective, as follows:

- (a) rules on the Registration of the Civil Acts;
- (b) order of issuing the “gender reassignment certificate”;
- (c) grounds of changing a person’s name and surname, when the change in the name and surname has to be sanctioned by an institution upon the mandate by the Government;
- (d) amendments to the rules on Provision of Personal Data to the Resident’s Register Service;
- (e) the internal regulations of the Resident’s Register Service;
- (f) the executive governmental order “On concrete amounts of budgetary fees and on rules of paying and reclaiming these fees”.

However the Ministry provided no indication as to how or when these changes would be implemented.²⁷²

Concerning the question of the norms regarding covering medical treatment, the Ministry of Health replied that: “*[d]iagnostics and methodologies of medical treatment can be developed by universities, research institutes, trade unions of medical professionals and/or expert working groups; however their development and approval are not compulsory. The Ministry of Health has not yet received any diagnostics or methodologies of medical treatment with regards to transsexual individuals.*”

On December 10, 2013 the Human Rights Monitoring Institute [Žmogaus teisių stebėjimo institutas], the LGL, ILGA-Europe and Transgender Europe submitted the comments to the Council of Europe Committee of Ministers of the Council of Europe regarding the implementation of the *L. v. Lithuania* case and the general measures proposed in the Government’s Action Plan. Referring to the inadequacy of the proposed implementation

²⁶⁹ Lithuania, Draft law amending articles 2.18, 2.19, 2.27, 3.8, 3.18, 3.24, 3.37, 3.66, 3.138, 3.139, 3.140, 3.142, 3.143, 3.144, 3.145, 3.147, 3.152, 3.157, 3.167, 4.255 of the civil code and supplementing articles 3.19, 3.20, 3.21, 3.22, 3.23, 3.25 and annulling chapter VIII of the third book of the civil code (*Civilinio kodekso 2.18, 2.19, 2.27, 3.8, 3.18, 3.24, 3.37, 3.66, 3.138, 3.139, 3.140, 3.142, 3.143, 3.144, 3.145, 3.147, 3.152, 3.157, 3.167, 4.255 straipsnių pakeitimo ir papildymo, 3.19, 3.20, 3.21, 3.22, 3.23, 3.25 straipsnių ir Kodekso trečiosios knygos VIII dalies pripažinimo netekusiais galios įstatymo projektas*), No. XIP-2018(2), 20 July 2012, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=430523.

²⁷⁰ Lithuania, Draft law on the registration of the civil acts (*Civilinės būklės aktų registravimo įstatymo projektas*), No. XIP-2017(2), 20 July 2012, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=430522.

²⁷¹ Lithuania, Ministry of Health (*Sveikatos apsaugos ministerija*) (2013), Communication of the Lithuanian Gay League and the Human Rights Monitoring Institute, 10 September 2013.

²⁷² Lithuania, Ministry of Health (*Sveikatos apsaugos ministerija*) (2013), Communication of the Lithuanian Gay League and the Human Rights Monitoring Institute, 10 September 2013.

measures, the organizations requested the Committee of Ministers to maintain supervision of the case until all the steps have been fully implemented and to consider monitoring the case under the enhanced supervision procedure.²⁷³

However, the draft proposal to delete Article 2.27, Paragraph 2, of the Civil Code was not the only proposal tabled by the MPs. On May 23, 2013 the Lithuanian Parliament made the first step towards explicitly prohibiting the procedure of gender reassignment in Lithuania by placing a corresponding amendment to the Civil Code on the parliamentary agenda. The initiators of the draft amendment proposed that the current provisions on gender reassignment in the Civil Code were not only deleted, but also replaced by the provision that “*gender reassignment surgery is prohibited in Lithuania*” and that “*civil registry entries concerning gender reassignment surgeries performed abroad be amended by court decision only.*”²⁷⁴ The explanatory memorandum of the proposal identified gender reassignment surgeries as “castration” of healthy individuals, who could otherwise bear children.²⁷⁵ 36 MPs voted in favour of the proposal, 3 MPs – against and 1 MP abstained.²⁷⁶ The Lithuanian Government did not support the draft amendment arguing that it could not be regarded as a proper implementation of *L. v. Lithuanian judgment*.²⁷⁷

Meanwhile, transsexuals are undergoing gender reassignment surgeries abroad (usually - in Thailand) and obtaining rulings from the national courts ordering registry services to change their personal identification documents and birth certificates. The following data is being changed: name, family name, sex, and personal identification code.²⁷⁸ With regards to the personal identification code, it should be added that according to the Law on The Residents' Register [Lietuvos Respublikos gyventojų registro įstatymas], a personal code is unique and legally cannot be changed.²⁷⁹ Nevertheless, according to the Order “Regarding the description of the rules on the personal identification code” issued by the Director of the Residents' Register Service under the Ministry of Interior of the Republic of Lithuania [Gyventojų registro tarnybos prie Lietuvos Respublikos Vidaus reikalų ministerijos direktoriaus įsakymas „Dėl asmens kodo tvarkos aprašo patvirtinimas“],²⁸⁰ a new personal identification code can be provided, *inter alia*, in instances when a person changes sex.²⁸¹

However, to change this data, the Residents' Register Service requires a person to provide a court's decision, as can be seen from case-law on this matter.²⁸² In all cases the applicants turned

²⁷³Hrmi.lt (2013), 'Submission to the Committee of Ministers: L v. Lithuania', *Hrmi.lt*, 10 December 2013, available at: www.hrmi.lt/en/new/914/.

²⁷⁴Lithuania, Draft law amending article 2.27 of the civil code (*Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas*), No. XIP-2988, 8 March 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=393793.

²⁷⁵Lithuania, Explanatory memorandum to the draft law amending article 2.27 of the civil code (*Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projekto aiškinamasis raštas*), No. XIP-2988, 8 March 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=393795.

²⁷⁶ Lithuania, Draft law amending article 2.27 of the civil code. Results of voting (*Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas. Balsavimo rezultatai*), No. XIP-2988, 8 March 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=393793.

²⁷⁷ Lithuania, Decision regarding draft law No. XIIP-17 amending article 2.27 of the civil code of the republic of Lithuania (*Nutarimas dėl Lietuvos Respublikos civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projekto Nr. XIIP-17*), No. 940, 16 October 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458143.

²⁷⁸ Lithuania, Vilnius city 2nd Regional court (*Vilniaus miesto 2 apylinkės teismas*), No. 2-1450-553/2008, 20 March 2008.

²⁷⁹ Lithuania, Law on residents' registry (Gyventojų registro įstatymas), No. 5-78, 20 February 1992, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=429785.

²⁸⁰ Lithuania, Residents' registry office under the Ministry of Interior (*Lietuvos gyventojų registro tarnyba prie Vidaus reikalų ministerijos*), Order regarding the rules on the personal code (*Įsakymas dėl asmens kodo suteikimo tvarkos aprašo patvirtinimo*), No. (29)4R-61, 28 September 2007, available at: www.gyvreg.lt/html/teises_aktai/4246.htm.

²⁸¹ Lithuania, Residents' registry office under the Ministry of Interior (*Lietuvos gyventojų registro tarnyba prie Vidaus reikalų ministerijos*), Order regarding the rules on the personal code (*Įsakymas dėl asmens kodo suteikimo tvarkos aprašo patvirtinimo*), No. (29)4R-61, 28 September 2007, available at: www.gyvreg.lt/html/teises_aktai/4246.htm, para. 3.5.

²⁸² Lithuania, Vilnius city 2nd Regional court (*Vilniaus miesto 2 apylinkės teismas*), No. 2-1450-553/2008, 20 March 2008; Lithuania, Vilnius city 1st Regional court (*Vilniaus miesto 1 apylinkės teismas*), No. 2-13394-640/2009, 8 October 2009;

to the Residents' Register Service first, were refused to have the data changed, and had to file a complaint with the court; the court subsequently ordered the the Residents' Register Service to change their personal identification documents.²⁸³ In deciding the matter the courts relied on the medical documents produced by the applicants proving that they had undergone transition from one sex to the other by virtue of a gender reassignment surgery. In only one case, the applicant was not able to produce such documents (for the reasons not detailed in the decision), and the court ordered to perform a medical expertise in order to confirm that an irreversible gender-reassignment surgery took place. To comply with the order, the claimant had to travel from Ireland to Lithuania with the personal documents where male sex was indicated.²⁸⁴ In two other cases, the applicants were able to produce the required documents and no medical expertise was ordered.²⁸⁵ None of these decisions were appealed by the state institutions.

Some of those who had undergone gender-reassignment surgeries abroad and obtained new personal identification documents, also sued the state for moral damages incurred due to the lengthy national procedures they had to undergo in order to change the documents and the absence of legal regulation on gender-reassignment.²⁸⁶ At least two cases for moral (non-pecuniary) damages have been successful.²⁸⁷

In one case,²⁸⁸ the claimant underwent male-to-female gender-reassignment surgery in Thailand and following the surgery, she continued to be treated with drugs and attended psychotherapy sessions in Ireland (which she made a permanent place of her residence after finding out that no treatment for transsexuals is available in Lithuania). Following the surgery, she requested the Residents' Register Service to change her personal identification documents, but was refused and had to go to the court in order to get the documents changed.

The first instance court dismissed the claim as unsubstantiated, while the Appellate Court reversed the lower court's judgment and with regard to the claim of pecuniary damages established that the applicant failed to present any documents proving that she, at any point of time, had turned to the Lithuanian doctors seeking for medical assistance. Thus, she made a choice to undergo treatment in Ireland and in Thailand. Although Lithuania indeed failed to implement *L. v. Lithuania* judgment not adopting a law on gender-reassignment, the applicant did not have an abstract right to claim damages for state inaction. With regard to the claim of non-pecuniary damages, the court found that the applicant's divorce was finalized on 26 June, 2006, this is when her right to request change of the personal identification documents arose. The procedure where the applicant had to turn to the court in order to get her documents changed indeed caused additional inconvenience and violated the principle of equality, since she was in a less favourable situation if compared to a person who requested the change of the entries for the reasons other than a medical change of sex (that person would not need to go to the court). The claimant was awarded LTL 300 for non-pecuniary damages.

Lithuania, Vilnius city 1st Regional court (*Vilniaus miesto 1 apylinkės teismas*), No. 2-12484-466/2011], 1 August 2011.

²⁸³ Lithuania, Vilnius city 2nd Regional court (*Vilniaus miesto 2 apylinkės teismas*), No. 2-1450-553/2008, 20 March 2008;

Lithuania, Vilnius city 1st Regional court (*Vilniaus miesto 1 apylinkės teismas*), No. 2-13394-640/2009, 8 October 2009;

Lithuania, Vilnius city 1st Regional court (*Vilniaus miesto 1 apylinkės teismas*), No. 2-12484-466/2011], 1 August 2011.

²⁸⁴ Lithuania, Vilnius city 2nd Regional court (*Vilniaus miesto 2 apylinkės teismas*), No. 2-1450-553/2008, 20 March 2008.

²⁸⁵ Lithuania, Vilnius city 1st Regional court (*Vilniaus miesto 1 apylinkės teismas*), No. 2-13394-640/2009, 8 October 2009;

Lithuania, Vilnius city 1st Regional court (*Vilniaus miesto 1 apylinkės teismas*), No. 2-12484-466/2011], 1 August 2011.

²⁸⁶ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. A⁵⁰²-1255/2012,

26 April 2012; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No.

A⁸⁵⁸-1452/2010, 29 November 2010.

²⁸⁷ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*),

No. A⁵⁰²-1255/2012, 26 April 2012; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji*

administracinis teismas), No. A⁸⁵⁸-1452/2010, 29 November 2010.

²⁸⁸ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausioji administracinis teismas*), No. A⁵⁰²-1255/2012,

26 April 2012.

In another civil suit,²⁸⁹ the claimant underwent male-to-female gender-reassignment surgery in Thailand. The claimant attended psychotherapy sessions in Lithuania, was planning to undergo gender reassignment surgery, but later she was informed that such surgeries were not performed in Lithuania. In 2008, the claimant underwent male-to-female gender-reassignment surgery in Thailand. The claimant did not receive any post-surgical treatment or care in Lithuania. Following the surgery, she requested the Residents' Register Service to change her personal identification documents, but was refused and had to go to the court in order to get the documents changed.

The first instance court awarded the claimant 30.000 LTL in non-pecuniary damages. After the claimant's appeal, the Appellate Court found that Lithuania indeed failed to implement *L. v. Lithuania* judgment and such inaction was unlawful. However, the Lithuanian laws on healthcare and insurance did not foresee that the costs of gender-reassignment surgery were to be covered by the state. The complainant speculated that had Lithuania adopted the Law on gender-reassignment, it would have been under the obligation to cover the costs of such surgeries, however, provided nothing to support this statement. Moreover, the court found that "the costs incurred by the applicant cannot be unequivocally considered as pecuniary damages, because there is no information in the case-file that the gender-reassignment surgery was the form of treatment, which had to be applied in treating the complainant's disease". Thus, the applicant could not claim pecuniary damages. In reference to non-pecuniary damages, the court found that they should be awarded because of (i) the absence of legal regulation on gender-reassignment and treatment, and (ii) absence of an adequate procedure to change personal identification documents following the gender reassignment surgery. The claimant was finally awarded 30.000 LTL in non-pecuniary damages

The available case-law suggests that the courts are not receptive to the claims of pecuniary damages, i.e. reimbursement of costs of gender-reassignment treatment, including the surgeries performed abroad, due to the absence of legal regulation on gender-reassignment and treatment. The main argument of the court was that even had Lithuania adopted such legislation, it was not a given that the costs for such surgeries would be covered by the state. However, in respect to non-pecuniary damages, the courts are likely to hold the state liable for the following violations: (i) the absence of legal regulation on gender-reassignment and treatment, and (ii) absence of an adequate procedure to change personal identification documents following the gender reassignment surgery. With regard to the first violation it was however crucial whether a person had addressed Lithuanian medical institutions requesting medical assistance before turning to such institutions abroad. Without doing so, the claim is not likely to succeed, as the courts do not deal with the *claims in abstracto*.

One claim by a transsexual applicant was also investigated by the Seimas Ombudsman [Lietuvos Respublikos Seimo kontrolierius]. On February 10, 2009, *Lietuvos Respublikos Seimo kontrolierius* [Seimas Ombudsman] issued a decision, recommending Ministry of Health of the Republic of Lithuania as well as the Human rights committee of the *Seimas* [Parliament] to take appropriate measures to eliminate legal uncertainty in field of gender reassignment.²⁹⁰ The decision was taken after the investigation of the complaint by P. G. who complained, that the Ministry of Health does not ensure the right for gender reassignment, although P.G. possess the

²⁸⁹ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiosios administracinės teismas*), No. A⁸⁵⁸-1452/2010, 29 November 2010.

²⁹⁰ Lithuania, Seimas Ombudsperson (*Seimo kontrolierius*), Decision regarding the complaint of P.G. against the ministry of health of the republic of Lithuania (*Pažyma dėl P.G. skundo prieš Lietuvos Respublikos sveikatos apsaugos ministeriją*), No. 4D-2008/I-1644, 10 February 2009, available at: www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=3466.

documents identifying the state of health and has a permanent residence permit. As it is apparent from the information above, neither the Human rights committee, nor the Ministry of Health had taken any measures to eliminate legal uncertainty in the field of gender reassignment. Seimas Ombudsman failed to take any further actions.²⁹¹

²⁹¹ Sources consulted: The Seimas Ombudsmen's Office of the Republic of Lithuania (Lietuvos Respublikos Seimo kontrolierių įstaiga), Annual activity reports 2009 – 2013, available at: www.lrski.lt/lt/seimo-kontrolieriu-veikla/metines-seimo-kontrolieriu-veiklos-ataskaitos.html?limitstart=0.

H. Miscellaneous

According to ILGA-Europe Rainbow Europe's Index of May 2013, Lithuania came 31st among 49 European countries in terms of laws and policies affecting the human rights of LGBTI people.²⁹² Notably, Lithuania received 0 % scores in two categories: "legal gender recognition" category (mainly due to the absence of clear legal procedures for name and documents change after/during the gender reassignment treatment) and "family" category (due to the fact that neither same-sex marriages, nor any alternatives to marriage are legally recognized in Lithuania; adoption or medically assisted insemination is unavailable for same-sex couples).²⁹³

The national public opinion poll conducted by the Human Rights Monitoring Institute in 2012 has shown that in respondent's opinion "sexual minorities" is the fourth most discriminated group in Lithuania (the first being people with psychosocial disabilities, the second – elderly people and the third – people with disabilities) among seven. The three less discriminated groups were women, children and national minorities.²⁹⁴

The public opinion survey conducted by the Institute for Ethnic Studies in 2012 has shown that 51,6% of respondents would not like to have a homosexual person as a neighbour (third highest hostility rate, first two: Roma and ex-prisoners), 39,5% would not like to have a homosexual person as a co-worker (third highest hostility rate, first two: Roma and persons with psychosocial disabilities), and 56,7% of respondents would not like to rent an apartment to a homosexual person (third highest hostility rate, first two: Roma and ex-prisoners). The majority of the respondents said that in the last five years their opinion about homosexual persons has gotten worse (67,1%), only 12,5% affirmed that their opinion has gotten better, whereas the rest (20,4%) have chosen the answer "I don't know". Such tendency might be attributed to the fact that 2010 has seen the first ever LGBT pride in Lithuania – Baltic Pride – which has divided the society into "gay-friendly" and "anti-gay".

On a bright side, the most recent survey carried out on 18-29 October 2013 by Spinter Tyrimai (Spinter Surveys) for the Office for Equal Opportunities Ombudsman showed that discrimination of homosexual individuals is falling. As compared with a 2007 survey, the number of persons saying they would be afraid to have a homosexual teacher for their children has dropped from 58 % to 42 %, while the percentage of those saying they would not be part of any organisation that involves homosexual members went down from 61 to 37 %. Nevertheless, the number of those saying that homosexual individuals should not become Seimas members remains virtually unchanged (28 % and 30 %). According to the 2013 survey, about half of those polled (52 %) think that homosexual persons should enjoy the same

²⁹² Delfi.lt (2013), 'ILGA-Europe is seriously concerned with the state of human rights of LGBTI people in Lithuania', *Delfi.lt*, 3 December 2013, available at: www.en.delfi.lt/58511/ilga-europe-is-seriously-concerned-with-the-state-of-human-rights-of-lgbti-people-in-lithuania-201358511.

²⁹³ ILGA-Europe (2013), Rainbow Europe Index 2013, available at: www.ilga-europe.org/home/publications/reports_and_other_materials/rainbow_europe.

²⁹⁴ Lithuania, Human Rights Monitoring Institute (Žmogaus teisių stebėjimo institutas) (2012), Vilnius public opinion poll (Vilnius visuomenės nuomonės apklausa), available at: www.hrmi.lt/uploaded/PDF%20dokai/TYRIMAI/Vilnius%20visuomenes%20nuomones%20apklausa_Santrauka_2012.pdf, p. 13.

opportunities on the labour market as their heterosexual peers.²⁹⁵

H.1. Freedom of expression

In May 2007, LGL, while implementing the EQUAL project ‘Open and safe at work’, planned to launch a social advertising campaign. It was planned that the statements ‘A lesbian can work at school’, ‘A gay can work as a police officer’, and ‘Homosexuals can be open and safe at work’ would be displayed on trolleybuses in the cities of Vilnius and Kaunas.

The initiative failed, because of opposition from the municipalities of both cities. No legal arguments were made in order to justify this opposition. The mayor of Vilnius publicly stated that such slogans are demonstrations of homosexual ideas, which cannot be approved.²⁹⁶

Although this initiative was funded partly by the government of the Republic of Lithuania (through the EQUAL project), no official statements were issued by the Ministry of Social Affairs and Labour in regard to this ban. Although the banning of the advertisement campaign was not challenged in court, it can, however, be clearly considered as a limitation of freedom of expression.

On June 30, 2011 an amendment to Article 39 of the Law on Provision of Information became effective. The amendment aimed to ensure that advertising and audio-visual commercial communication must not discriminate or incite to discriminate on a variety of grounds, including sexual orientation.²⁹⁷ Inclusion of sexual orientation as a ground of discrimination followed a heated debate which included claims by opponents of the amendment that a ban on discrimination would open doors for “homosexual propaganda”. One of the opponents, MP Rimantas Smetona added that “[b]y removing the prohibition against encouraging manifestations of sexual orientation, you entrench in Lithuanian law the encouragement, implementation, and dissemination of sexual orientation, including sexual perversions, in the public space”.²⁹⁸

H.2. The Law on the Protection of Minors

One of the most notorious legislative initiatives, aimed at possibly limiting freedom of expression of LGBT community was the adoption of the Law on the Protection of Minors from Detrimental Effect of Public Information in July 2009.

²⁹⁵ BNS (2013), ‘Poll: Gay tolerance is on the rise in Lithuania’, Delfi.lt, 27 November 2013, available at: www.en.delfi.lt/58024/poll-gay-tolerance-is-on-the-rise-in-lithuania-201358024.

²⁹⁶ Utyra, E. (2007), ‘Viešumo siekiantiems gėjams – skaudūs smūgiai’, Delfi.lt, 15 May 2007, available at: www.delfi.lt/archive/article.php?id=13210101.

²⁹⁷ Lithuania, Law on amending articles 25, 31 and 39 of the law on the provision of information to public (*Visuomenės informavimo įstatymo 25, 31 ir 39 straipsnių pakeitimo įstatymas*), No. XI-1454, 16 June 2011, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?a=402018&b=-.

²⁹⁸ Želnieienė, L. (2011), ‘Seimas atmetė Petro Gražulio pataisas – reklamoje diskriminuoti seksualines mažumas bus draudžiama’, 15min.lt, 16 July 2011, available at: www.15min.lt/naujiena/aktualu/lietuva/seimas-atmete-petro-grazulio-pataisas-reklamoje-diskriminuoti-seksualines-mazumas-bus-draudziama-56-156230.

Initial version of the Law was passed by the Parliament, overruling Presidents' veto by 87 votes to 6 (25 abstentions), on July 14, 2009.²⁹⁹ The law, planned to come into force on March 1st, 2010, defined public information, which might have a detrimental effect to minors, and set the rules for its provision to the public. Among other clauses, it stated, that the following information, *inter alia*, has detrimental effect to minors: propagation of homosexual, bisexual and polygamous relationships; Information, which distorts family relationship and its values. The law did not provide definitions for "propagation", "family values", "homosexual, bisexual and polygamous relationship" as well as other important concepts. Thus it was not clear how it would be interpreted in practise.

The law was widely criticised for its vague wording and the lack of clear definitions not only by various local and international NGOs (Amnesty International, ILGA Europe, etc.), but was vetoed by the President as well. Most of the critics expressed concerns that the afore-mentioned provisions left too much room for interpretation, which might be disadvantageous towards sexual minorities, their right to freedom of expression and information. The debate around the adoption of the law and the arguments of its initiators unambiguously focused on the possibility of banning any information on homosexuality from schools and public life. The initiators of the amendments stated, that they see a causal link between the propagation of homosexual life-style and the growing number of homosexuals in the country.

However, due to pressure from various international institutions³⁰⁰ as well as the visit of the Council of Europe Commissioner for Human Rights October 19-20, 2009, and his subsequent letters of inquiry to the Prime Minister and The Chair of the Seimas [Parliament],³⁰¹ the law was amended on December 22nd, 2009,³⁰² prior coming into force. The President of the Republic of Lithuania formed a working group of experts, who prepared and presented amendments to the law on November 5th, 2009.³⁰³ After lengthy debates, which focused largely on the notorious clauses regarding homosexuality, the new version of the law was passed on 22nd of December 2009. Although the latest version of the law has still been criticized for vague wording and lack of precision, it does not explicitly mention that information on homosexuality is considered as causing detrimental effect to minors. However, Article 4 still addresses sexuality and family relations, stating (*inter alia*) that the following information is detrimental to minors: "15) which promotes sexual relations; 16) which expresses contempt for family values, encourages the concept of entry into a marriage and creation of a family other than that

²⁹⁹ Lithuania, Law on the protection of minors from the detrimental effect of information (*Nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas*), No. 91-3890, 10 September 2010, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410367, No. 91-3890, 10 September 2010.

³⁰⁰ France, European Parliament (2009), European Parliament resolution of 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information, No. P7_TA(2009)0019, 17 September 2009, available at: www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0019&language=EN.

³⁰¹ France, Office of the Commissioner for Human Rights Communication Unit (2010), 'Commissioner Hammarberg continues dialogue with Lithuanian authorities on discrimination issues and minority rights', Press release, 17 February 2010, available at: wcd.coe.int/ViewDoc.jsp?Ref=PR132%282010%29&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=FDC864.

³⁰² Lithuania, Law supplementing and amending articles 1, 2, 3, 4, 5, 7, 9 of the law on the detrimental effect of information on minors (*Nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymo 1, 2, 3, 4, 5, 7, 9 straipsnių pakeitimo ir papildymo įstatymas*), No. 86-3637, 22 December 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=361998.

³⁰³ Lithuania, Stenograph of the Parliament morning plenary sitting No. 135 of 18 November 2009 (*Seimo rytinio plenarinio posėdžio Nr. 135 stenograma*), No. 77, 18 November 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=357210&p_query=Nepilname%20E8i%20F8%20apsaugos%20nuo%20neigiamo%20vie%20F0osios%20informacijos%20poveikio%20%20&p_tr2=2.

stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania;³⁰⁴ As the concept of “family values” is not defined in the law, the implementation of the law in practise remained unclear for a long.

On July 7, 2013 the Commission of the Lithuanian Radio and Television [Lietuvos radijo ir televizijos komisija] (LRT, the national broadcaster) censored two (out of two) promotional video produced in anticipation to the Baltic Pride 2013 agreeing to broadcast them only during the night hours and only branded as an adult content. The Deputy Director General of the LRT has officially stated that this limitation was based on the Article 4(2)(16) of the Law on the Protection of Minors from Detrimental Effect of Public Information.³⁰⁵

In the first video, some members of the Lithuanian LGBT community and their friends expressed support for the Baltic Pride 2013. Each person on the video stated his/her sexual orientation.³⁰⁶ The second video captured the diversity of the Lithuanian society by depicting five social groups (people with disabilities, elderly people, immigrants, representatives of alternative cultures and same-sex couples) and indicating that they were an integral part of the society.³⁰⁷

LGL lodged a complaint with the Lithuanian Office of the Inspector of Journalist Ethics [Lietuvos žurnalistų etikos inspektorius]. On October 7, 2013 the Inspector found the complaint unsubstantiated. The Inspector found the first video to be detrimental to minors, because one person in the video was wearing a t-shirt with the slogan “For family diversity” and thus, as stipulated in Article 4 Paragraph 16 of the *Law on the Protection of Minors from Detrimental Effect of Public Information*, “encourage[d] the concept of entry into a marriage and creation of a family other than that stipulated in the Constitution of the Republic of Lithuania”.³⁰⁸ Although the second video was found to comply with the law, the Inspector highlighted that the LRT did not ban it, but simply limited it in a certain way.³⁰⁹ Anyway, the Inspector found that a governmental agency cannot order a broadcaster to broadcast any kind of commercial information, in other words, the LRT was not under any legal obligation to broadcast the videos produced by LGL.³¹⁰ Although LGL did not appeal against the Inspector’s decision to the court.

According to information provided by the LGL, several commercial news web-sites have established the practice of branding any LGBT-related articles as an adult content, thus sending

³⁰⁴ Article 38 of the Constitution of the Republic of Lithuania provides that “Marriage shall be concluded upon the free mutual consent of a man and a woman.” Lithuania, The Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*), 25 October 1992, available at: www3.lrs.lt/pls/inter3/oldsearch.preps2?Condition1=237975&Condition2=-.

³⁰⁵ Delfi.lt (2013), ‘Seksualinių mažumų eitynių reklama – su „S” ženklų’, *Delfi.lt*, 15 July 2013, available at: www.delfi.lt/verslas/media/seksualiniu-mazumu-eityniu-reklama-su-s-zenklu.d?id=61861311.

³⁰⁶ Lithuanian Gay League (2013), Baltic Pride 2013 promotional video (with English subtitles), Youtube.com, 13 May 2013, available at: www.youtube.com/watch?v=YoiETPPIGAI.

³⁰⁷ Lithuanian Gay League (2013), Video on tolerance and diversity in the Lithuanian society (Baltic Pride 2013) (English subtitles), Youtube.com, 13 May 2013, available at: www.youtube.com/watch?v=wCaGtQEYY0w.

³⁰⁸ Klaipėda.diena.lt (2013), ‘Ekspertai: gėjų eitynių reklamoje - nepilnamečiams žalingas užrašas ant marškinėlių’, *Kaunodiena.lt*, 16 September 2013, available at: www.klaipeda.diena.lt/naujienos/lietuva/salies-pulsas/ekspertai-spres-del-geju-eityniu-reklamos-413824#UvafPbRDVlQ.

³⁰⁹ Delfi.lt (2013), ‘LRT pagrįstai riboja seksualinių mažumų eitynių reklama’, *Delfi.lt*, 23 September 2013, available at: www.delfi.lt/verslas/media/lrt-pagristai-riboja-seksualiniu-mazumu-eityniu-reklama.d?id=62419677.

³¹⁰ Delfi.lt (2013), ‘LRT pagrįstai riboja seksualinių mažumų eitynių reklama’, *Delfi.lt*, 23 September 2013, available at: www.delfi.lt/verslas/media/lrt-pagristai-riboja-seksualiniu-mazumu-eityniu-reklama.d?id=62419677.

a clear message that any (i.e. both positive and negative) depiction of LGBT issues qualifies as detrimental information to minors.³¹¹ These practices were not challenged before the Inspector for Journalists' Ethics or the court.

The practices remain unchallenged, because Lithuanian non-governmental organizations do not have sufficient financial resources to cover fees of attorneys-at-law, i.e. litigators, or sufficient human resources to proceed with the legal action on their own.

H.3. Legislative initiatives, attempting to criminalise “propagation” of homosexuality

The year of 2009 was additionally marked with even far reaching discussions concerning sexual orientation, part of which resulted in clearly homophobic legislative initiatives.

On July 9 2009 draft laws, supplementing the Penal Code³¹² and Code of Administrative Offences,³¹³ were proposed to the Parliament on July 9, 2009 by a group of parliamentarians (mainly “Homeland Union – Lithuanian Christian- Democrats” party members). The amendments suggested (1) to establish administrative liability for propagation of homosexual relationship and the financing of public propagation of homosexuality and (2) criminalise public agitation for homosexual relationship. According to the proposed legislation, such actions might be punished by public works, fine or arrest (the draft law did not elaborate on sanctions, thus the Courts would apply general rules, depending on the grievance of the crime). Legal persons were also considered liable for these actions.

The wording of the proposed bill was not precise, to say the least. The term “agitation” was not defined in the Criminal code, thus it was not clear how it would be interpreted in practice and what public actions would be considered as illegal. The ambiguity of this proposal and contradiction the Constitutional right to information, freedom of expression and possible breach of international commitments of the Republic of Lithuania was stressed by the European Law Department under the Ministry of Justice.³¹⁴ Although the initiators denied discriminatory character of these draft laws, however, the discussions in the Parliament during the approval unambiguously indicated, that the aim of the bill is to prevent the happening of any public events, raising the issue of homosexuality. In spite of criticism the Parliament approved further

³¹¹Human Rights Monitoring Institute (HRMI) and Lithuanian Gay League (LGL) (2013), *Lithuania: follow-up report, September 2013*, available at: www.hrmi.lt/uploaded/Lithuania%20FU%20LGL%20and%20HRMI%20Combined%20Report.pdf.

³¹² Lithuania, Draft law supplementing criminal code with Article 310(1) (*Baudžiamojo kodekso papildymo 310(1) straipsniu įstatymo projektas*), No. XIP-668(2), 16 June 2009, available at:

www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346178&p_query=&p_tr2=.

³¹³ Lithuania, Draft law on supplementing the code of administrative offences with article 214(30) and 224 and 259(1) (*Administracinių teisės pažeidimų kodekso papildymo 214(30) straipsniu ir 224 bei 259(1) straipsnių papildymo įstatymo projektas*), No. XIP-667(2), 16 June 2009, available at:

www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346176&p_query=&p_tr2=.

³¹⁴ Lithuania, Conclusion of the European law department on the draft law supplementing criminal code with article 310(1) (*Europos teisės departamento išvada Baudžiamojo kodekso papildymo 310(1) straipsniu įstatymo projektui*), No. XIP-668(2), 7 July 2000, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=348021.

consideration of this legislative initiative in the committees of the Parliament (concerning supplementing the Penal Code by votes of 48 to 9 (13 abstentions) and 42 against 8 (16 abstentions) in case of Code of Administrative Offences).³¹⁵ The Parliament's committees have never deliberated the draft law, therefore it has never been brought to the Parliament for the voting on adoption.³¹⁶

It must be added, that few weeks before the presentation of the previously mentioned draft laws, the Parliament had rejected the amendments of the Criminal Code, initiated by the same group of parliamentarians, which suggested the punishment of propagation of homosexuality, zoophilia and necrophilia by deprivation of freedom for the term of up to one year.³¹⁷ During the presentation of the draft law homosexuality was equated to necrophilia and zoophilia, excerpts from the Old Testament were cited.³¹⁸ The draft law was rejected by 26 to 12 votes (with 16 abstentions).

H.4. Legislative initiatives constitutionally defining “a family”

The Article 38 of the Constitution of the Republic of Lithuania [Lietuvos Respublikos Konstitucija] reads as follows:

“The family shall be the basis of society and the State. Family, motherhood, fatherhood and childhood shall be under the protection and care of the State. Marriage shall be concluded upon the free mutual consent of man and woman.”

The Constitution, however, does not provide a definition of the “family”. In 2008, the Lithuanian Parliament made an attempt to define a family by adopting the Resolution of June

³¹⁵ Lithuania, Stenograph of the Parliament plenary sitting No. 99 of 9 July 2009 (*Seimo vakarinio plenarinio posėdžio Nr. 99 stenograma*), No. 56, 14 September 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=348492&p_query=Baud%FEiamo%20o%20kodekso%20papildymo%20310%281%29%20straipsniu%20C1STATYMO%20PRO%20JEKTAS&p_tr2=2

³¹⁶ Search results for the draft law No XIP-668(2) (Lithuania, Draft law supplementing criminal code with Article 310(1) (*Baudžiamojo kodekso papildymo 310(1) straipsniu įstatymo projektas*), No. XIP-668(2), 16 June 2009, available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346178&p_query=&p_tr2=\):](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346178&p_query=&p_tr2=):)
http://www3.lrs.lt/pls/inter3/dokpaieska.rezult_l?p_nr=XIP-668%282%29&p_nuo=&p_iki=&p_org=&p_drus=&p_kalb_id=1&p_title=&p_text=&p_pub=&p_met=&p_lnr=&p_denr=&p_es=0&p_tid=&p_tkid=&p_t=0&p_tr1=2&p_tr2=2&p_gal=&p_rus=1; Search results for the draft law No XIP-667(2) (Lithuania, Draft law on supplementing the code of administrative offences with article 214(30) and 224 and 259(1) (*Administracinių teisės pažeidimų kodekso papildymo 214(30) straipsniu ir 224 bei 259(1) straipsnių papildymo įstatymo projektas*), No. XIP-667(2), 16 June 2009, available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346176&p_query=&p_tr2=\):](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346176&p_query=&p_tr2=):)
http://www3.lrs.lt/pls/inter3/dokpaieska.rezult_l?p_nr=XIP-667%282%29&p_nuo=&p_iki=&p_org=&p_drus=&p_kalb_id=1&p_title=&p_text=&p_pub=&p_met=&p_lnr=&p_denr=&p_es=0&p_tid=&p_tkid=&p_t=0&p_tr1=2&p_tr2=2&p_gal=&p_rus=1;

³¹⁷ Lithuania, Draft law supplementing criminal code with article 310(1) (*Baudžiamojo kodekso papildymo 310(1) straipsniu įstatymo projektas*), No. XIP-668, 25 May 2009, available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=344470&p_query=&p_tr2=\):](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=344470&p_query=&p_tr2=):)

³¹⁸ Lithuania, Stenograph of the Parliament plenary sitting No. 88 of 11 June 2009 (*Seimo vakarinio plenarinio posėdžio Nr. 88 stenograma*), No. 50, 22 June 2009, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=345987&p_query=Baud%FEiamo%20o%20kodekso%20papildymo%20310%281%29%20straipsniu%20C1STATYMO%20PRO%20JEKTAS&p_tr2=2

3, 2008 “On the Approval of the State Family Policy Concept” (Concept). According to the Concept, the family was deemed to be “spouses and their children (including adopted), if any”.³¹⁹ On September 28, 2011 Lithuanian Constitutional Court [Lietuvos Konstitucinis teismas] found the State Family Policy Concept to be unconstitutional.³²⁰ According to the Court, “*the constitutional concept of family is based on mutual responsibility between family members, understanding, emotional affection, assistance and similar relations, as well as on the voluntary determination to take on certain rights and responsibilities, i.e. the content of relationships, whereas the form of expression of these relationships has no essential significance for the constitutional concept of family.*”³²¹

After the Constitutional Court’s ruling, on December 15, 2011, 95 MPs³²² tabled a draft amendment to Article 38 of the Constitution³²³ providing that “*a family is created by a free-will agreement between a man and a woman [when they] enter into marriage.*” The amendment was harshly criticized by many human rights organizations and some MPs as discriminatory to unmarried and same-sex couples.³²⁴ Conservative MP Rimantas Jonas Dagys revealed the rationale behind the draft amendment: “*The amendment unambiguously prevents legalization of same-sex marriage. That is our major decision.*”³²⁵ On 19 June, 2012 the amendment failed to be approved in the final reading only by one vote, receiving 93 instead of 94 required votes in the Parliament.³²⁶

On November 15, 2013 an analogous amendment to Article 38 of the Constitution linking family to marriage was tabled again, this time by 108 MPs.³²⁷ After the first hearing on December 11, 2013, 65 MPs voted yes for amending the Constitution, 8 voted against, while another 11 abstained.³²⁸ To be adopted, the amendment to the Constitution must be endorsed

³¹⁹ Lithuania, Decision on the approval of state family policy (*Nutarimas dėl valstybinės šeimos politikos koncepcijos patvirtinimo*), No. 69-2624, 17 June 2008, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=322152.

³²⁰ Lithuania, Constitutional Court (*Konstitucinis teismas*) (2011), On the compliance of the provisions of the state family concept as approved by resolution of the Seimas of the Republic of Lithuania No. X-1569 “On the Approval of the State Family Policy Concept” of 3 June 2008 with the Constitution of the Republic of Lithuania, No. 21/2008, 28 September 2011, available at: www.lrkt.lt/dokumentai/2011/r110928.htm, para. 15.1.

³²¹ Lithuania, Constitutional Court (*Konstitucinis teismas*) (2011), On the compliance of the provisions of the state family concept as approved by resolution of the Seimas of the Republic of Lithuania No. X-1569 “On the Approval of the State Family Policy Concept” of 3 June 2008 with the Constitution of the Republic of Lithuania, No. 21/2008, 28 September 2011, available at: www.lrkt.lt/dokumentai/2011/r110928.htm, para. 15.1.

³²² Lithuania, Draft law on amending and supplementing article 38 of the Constitution (*Konstitucijos 38 straipsnio papildymo ir pakeitimo įstatymo projektas*), No. XIP-3981, 15 December 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=414644&p_daug=2.

³²³ Lithuania, Draft law on amending and supplementing article 38 of the Constitution (*Konstitucijos 38 straipsnio papildymo ir pakeitimo įstatymo projektas*), No. XIP-3981, 15 December 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=414644.

³²⁴ Želnienė, L. (2012), ‘Lithuanian Parliament one vote short from approving constitutional amendment on family definition’, *15min.lt*, 19 June 2012, available at: www.15min.lt/en/article/politics/lithuanian-parliament-one-vote-short-from-approving-constitutional-amendment-on-family-definition-526-227415.

³²⁵ Želnienė, L. (2012), ‘Lithuanian Parliament one vote short from approving constitutional amendment on family definition’, *15min.lt*, 19 June 2012, available at: www.15min.lt/en/article/politics/lithuanian-parliament-one-vote-short-from-approving-constitutional-amendment-on-family-definition-526-227415.

³²⁶ Želnienė, L. (2012), ‘Lithuanian Parliament one vote short from approving constitutional amendment on family definition’, *15min.lt*, 19 June 2012, available at: www.15min.lt/en/article/politics/lithuanian-parliament-one-vote-short-from-approving-constitutional-amendment-on-family-definition-526-227415.

³²⁷ Lithuania, Draft law on amending and supplementing article 38 of the Constitution (*Konstitucijos 38 straipsnio papildymo ir pakeitimo įstatymo projektas*), No. XIIP-1217, 15 November 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=459884. One MP, Arvydas Mockus, later denounced his vote.

³²⁸ Lithuania, Draft law on amending and supplementing article 38 of the Constitution. Results of the voting on 10 December

by at least 94 MPs, i.e. 2/3 of the MPs, in the next two hearings.

H.5. Family life and same-sex partnerships

Currently, Lithuanian legislation provides only one legal possibility to enter into family-type union – the marriage. With regard to the civil partnership, there is a dedicated chapter in the Civil Code of the Republic of Lithuania, and the first article of that chapter, Article 3.229, reads as follows:

“The provisions of this Chapter shall regulate the relations in property of a man and a woman who, after registering their partnership in the procedure laid down by the law, have been cohabiting at least for a year with the aim of creating family relations without having registered their union as a marriage (cohabitees)”

Although the Civil Code entered into force on July 1, 2001, the Law on Partnership has been never adopted. According to the rules annexed to the Civil Code, Article 3.229 and the whole chapter were to enter into force once the Law on Partnership was adopted, thus they were never effective.

Nonetheless, in November 2011, the Lithuanian Ministry of Justice has drafted a law recognizing the status of cohabiting unmarried different-sex partners, yet has never submitted it for the Government’s review.³²⁹ In 2013, in the second attempt, the revised draft law was submitted to the Government. The proposed package of amendments to the Civil Code recognizes the right to enter into partnership only to different-sex couples.³³⁰

In 2011, MP Pavilionienė also registered a draft partnership law for both same-sex and different-sex partners.³³¹ The draft law is still pending before the Parliament’s committees. So far, only the Committee on Legal Affairs has issued its conclusion, where it found the draft law to possibly contradict Article 38 of the Constitution.³³²

In February 2013 the Lithuanian President has said that she thought that discussions on civil partnerships for gay couples were “premature”. She said: *“I think these discussions are very premature and are only starting in Lithuania. I think it’s worth holding discussions on any issue in Lithuania. And when the time comes, then we’ll decide. I think it’s a very premature discussion.”*³³³

2013 (*Konstitucijos 38 straipsnio papildymo ir pakeitimo įstatymo projektas. 2013 m. gruodžio 10 d. balsavimo rezultatai*), No. XIIP-1217, 15 November 2013, available at: www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-17273&p_var=2. One MP, Arvydas Mockus, later denounced his vote.

³²⁹Bernardinai.lt (2011), ‘Teisingumo ministerija siūlo pripažinti partnerystę tik tarp vyro ir moters’, *Bernardinai.lt*, 10 November 2011, available at: www.bernardinai.lt/straipsnis/-/71897.

³³⁰Lithuania, Draft law on amending articles 2.18, 2.19, 3.16, 3.140, 3.150, 3.229, 3.230, 3.231, 3.232, 3.233, 3.234, 3.235, 5.13 of the civil code and supplementing [it] with articles 3.229/1, 3.234/1 (*Lietuvos Respublikos civilinio kodekso 2.18, 2.19, 3.16, 3.140, 3.150, 3.229, 3.230, 3.231, 3.232, 3.233, 3.234, 3.235, 5.13 straipsnių pakeitimo ir kodekso papildymo 3.229/1, 3.234/1 straipsniais įstatymo projektas*), No. 13-3108-01, 11 October 2013, available at: www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=203482&p_org=8&p_fix=y&p_gov=n.

³³¹Lithuania, Draft law on partnership (cohabitating without being married) (*Partnerystės (bendro gyvenimo neįregistravus santuokos) įstatymo projektas*), No. XIIP-3687, 12 October 2011, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=408151.

³³²See section H.4. *Legislative initiatives constitutionally defining “a family”*.

³³³15min.lt (2013), ‘Lithuanian president says discussions on same-sex partnership are premature’, *15min.lt*, 21 February 2013,

On April 18, 2013, the group of 18 MPs registered an amendment to the Law on the Fundamentals of Protection of the Rights of the Child.³³⁴ The proposal seeks to insert the following wording: “*Every child has the natural right to a father and a mother, emanating from sex differences and mutual compatibility between motherhood and fatherhood*”. It also establishes that in the course of adoption or foster care procedure the priority is given to the need of a child to have different-sex (foster) parents, who would be able to bear the duties of fatherhood and motherhood in the family. One of the proponents of the amendment, MP Jonas Rimantas Dagys, has indicated that this legislative initiative is aiming at preventing any further public discussions on the issue of same-sex adoption.³³⁵ The Government has rejected the bill.³³⁶ Currently, it is pending before the Parliament.

available at: www.15min.lt/en/article/politics/lithuanian-president-says-discussions-on-same-sex-partnership-are-premature-526-309293.

³³⁴Lithuania, Draft law on amending and supplementing article 7 of the law on the fundamentals of the protection of the rights of the child (*Vaiko teisių apsaugos pagrindų įstatymo papildymo 7 straipsnio pakeitimo ir papildymo įstatymo projektas*), No. XIIP-473, 18 April 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446661.

³³⁵Lgl.lt (2013), ‘The Parliament Will Consider Five Homophobic Bills in Autumn Session’, *Lgl.lt*, 10 September 2013, available at: www.lgl.lt/en/news/the-parliament-will-consider-five-homophobic-bills-in-autumn-session/.

³³⁶Lithuania, Government decision on the draft law No XIIP-472 amending article 3.3 of the civil code and draft law No XIIP-473 on amending and supplementing article 7 of the law on the fundamentals of the protection of the rights of the child (*Lietuvos Respublikos Vyriausybė nutarimas dėl Lietuvos Respublikos civilinio kodekso 3.3 straipsnio pakeitimo įstatymo projekto Nr. XIIP-472 ir Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymo papildymo 7 straipsnio pakeitimo ir papildymo įstatymo projekto Nr. XIIP-473*), No. 1167, 11 December 2013, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462130.

I. Good practices

There are no legal provisions or legal interpretations in the Lithuanian legal system which could be presented as good practice in tackling homophobia, and/or discrimination on the ground of sexual orientation and/or of transgender people, or which are innovative and could serve in this context as models for other Member States and European Union institutions.

Even more, the foregoing speaks clearly to the fact that both social and legal contexts LGBT individuals in Lithuania find themselves in have been hostile, to say the least. As it is evident from the information presented above, including the fact that ILGA-Europe Rainbow Europe's Index of May 2013 ranked Lithuania 31st among 49 European countries in terms of laws and policies affecting the human rights of LGBTI people,³³⁷ legal provisions with regard to the LGBT individuals are not innovative and are not recommended to be transferred to other Member States.

The interpretation given to the legal provisions by the national courts is also sometimes questionable. The good example of legal interpretation in the context of LGBT assemblies, could be the courts' decisions in Baltic Pride 2010 and Baltic Pride 2013 cases. The reliance on the Recommendation CM/Rec(2010)5 of the Council of Europe Committee of Ministers to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity, in the freedom of assembly jurisprudence is a commended practice³³⁸ It is also very important that the national courts interpret the Law on Assemblies in line with relevant ECtHR jurisprudence. In both Baltic Pride 2010 and Baltic Pride 2013 cases, the highest administrative court in Lithuania, - the Lithuanian Supreme Administrative Court, - relied on the European Convention of Human Rights and the case-law of the European Court of Human Rights, in finding that "the state has the positive obligation to ensure effective enjoyment of the right to freedom of assembly for all, including individuals with unpopular views or minority groups."³³⁹ It further found that the essential clause of effective exercise of freedom of assembly is a presumption of lawfulness, which is infringed when refusing to sanction a gathering and preventing minorities from participation. Negative consequences to the freedom of assembly cannot be avoided if legal remedies are applied only after the intended date of the gathering.³⁴⁰ The cases are discussed in more detail in Chapters E.4. Freedom of assembly of the LGBT community – Baltic Pride 2010 and Chapter E.5. Freedom of assembly and the LGBT community – Baltic Pride 2013.

³³⁷ Delfi.lt (2013), 'ILGA-Europe is seriously concerned with the state of human rights of LGBTI people in Lithuania', *Delfi.lt*, 3 December 2013, available at: www.en.delfi.lt/58511/ilga-europe-is-seriously-concerned-with-the-state-of-human-rights-of-lgbti-people-in-lithuania-201358511. For more information see *Chapter H. Miscellaneous*.

³³⁸ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁸⁵⁸-2475/2013, 23 July 2013.

³³⁹ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010; Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. A⁴⁴⁴-1968/2013, 20 June 2013.

³⁴⁰ Lithuania, Lithuanian Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*), No. AS⁸²²-339/2010, 7 May 2010.

Unfavourable legal context is to some extent mitigated by strong and active non-governmental organizations and cooperation established between the Office of the Equal Opportunities Ombudsperson and the civil society. As said above, the Ombudsperson actively engages with national NGOs and implements various projects funded under the EU funding schemes, e.g. European Social Fund, aimed at raising awareness of equality principles and non-discrimination, and encompassing research and educational activities. For example, in 2013–2014 the Ombudsperson together with LGL and the Lithuanian Forum of the Disabled [Lietuvos neįgaliųjų forumas] implemented the project “DIVERSITY.LT” [“ĮVAIROVĖ.LT”], in 2012–2014 – the project “The Diversity Park”³⁴¹ [“Įvairovės parkas”] promoting equal opportunities in the labour market.³⁴²

³⁴¹ Lithuania, Diversity Park (Įvairovės parkas), available at: <http://ivairove.lt/>.

³⁴² Lithuania, Office of the Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*) (2014), ‘Šiuo metu vykdomi projektai’, *Lygybe.lt*, available at: www.lygybe.lt/lt/projektai/vykdomi-projektai.ht.

J. Intersex

Intersex people are not specified in the national legislation and the ground of “intersex” is not included under national non-discrimination legislation. The Law on Equal Treatment provides protection against discrimination on the grounds of gender, race, nationality, language, descent, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin and religion (Article 2 Paragraph 1).³⁴³ The list of grounds is closed. There have not been any legal cases pending/decided that would concern intersex people. ‘Intersex’ is not included in Lithuanian non-discrimination policies either.

According to the Lithuanian legislation, gender is not indicated in the birth certificates.³⁴⁴ However, Lithuanian names and family names are gender-sensitive and clearly indicate the gender of a person. Moreover, a newborn receives a personal identification code, which is also gender-sensitive: the first number indicates the gender – either male, or female (no other option available).³⁴⁵ Lithuanian legislation does not provide parents or medical practitioners with a possibility to omit indicating a gender of a newborn.

Lithuanian medical system fully relies on the International Classification of Diseases (ICD-10). The following medical conditions are considered as falling under the umbrella notion of ‘intersex’: ‘indeterminate sex and pseudohermaphroditism’ (Q56), including ‘hermaphroditism, not elsewhere classified’ (Q56.0); ‘male pseudohermaphroditism, not elsewhere classified’ (Q56.1); ‘female pseudohermaphroditism, not elsewhere classified’ (Q56.2); ‘pseudohermaphroditism, unspecified’ (Q56.3); and ‘indeterminate sex’ unspecified (Q.56.4).

Three orders by the Minister of Health specify the type of intervention applicable when a person is diagnosed with any sub-condition of ‘indeterminate sex and pseudohermaphroditism’ (Q56), depending on the severity of the condition. The following types of interventions could be performed:

- A surgical diagnostics (*Operacinė diagnostika*)³⁴⁶
- A surgical correction of the functions of gonads (*Gonadų funkcijų koreguojančios operacijos*)³⁴⁷
- A surgical correction of genitalia (*Lytinius organus koreguojančios operacijos*)³⁴⁸

³⁴³ Lithuania, Law on equal treatment (Lygių galimybių įstatymas), No. 114-5115, 18 November 2003, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179.

³⁴⁴ Lithuania, Ministry of Justice (*Teisingumo ministerija*) (2006), Order approving the rules on civil metrics (*Įsakymas dėl Civilinės metrikacijos taisyklių patvirtinimo*), No. 1R-160, 19 May 2006, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=277920, para. 33.

³⁴⁵ Lithuania, Order by the Residents’ registry office under the Ministry of Interior regarding the rules on the personal code (*Lietuvos gyventojų registro tarnyba prie Vidaus reikalų ministerijos įsakymas dėl asmens kodo suteikimo tvarkos aprašo patvirtinimo*), No. (29)4R-61, available at: 28 September 2007, available at: www.gyvreg.lt/html/teises_aktai/4246.htm.

³⁴⁶ Lithuania, Order by the Minister of Health regarding special requirements for the [provision] of urology services to children and adults (*Sveikatos apsaugos ministro įsakymas dėl Specialiųjų stacionariųjų urologijos paslaugų vaikams ir suaugusiesiems teikimo reikalavimų patvirtinimo*), No. V-899, 3 November 2006, available at: www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.3027B1FA0FFB&dsRid=549&dswid=-9751, para. 3.2.

³⁴⁷ Lithuania, Order by the Minister of Health regarding special requirements for the [provision] of urology services to children and adults (*Sveikatos apsaugos ministro įsakymas dėl Specialiųjų stacionariųjų urologijos paslaugų vaikams ir suaugusiesiems teikimo reikalavimų patvirtinimo*), No. V-899, 3 November 2006, available at: www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.3027B1FA0FFB&dsRid=549&dswid=-9751.

³⁴⁸ Lithuania, Order by the Minister of Health regarding special requirements for the [provision] of urology services to children

The following medical procedures (where applicable) should be conducted before any of the three above-listed interventions is performed: ultrasound; excretory urography; computed tomography; hormone tests.³⁴⁹

In addition, a person may be prescribed a drug treatment (*Medikamentinis gydymas*), but before that, a doctor must conduct the following medical procedures: hormone tests, biochemical tests, radiological tests, genetic tests, spiral computed tomography; and magnetic resonance imaging.³⁵⁰

A person can be also prescribed a reconstructive surgery of the urogenital system (*Urogenitalinės sistemos rekonstrukcinės operacijos*), but before that the doctor must perform ultrasound; radiological tests and hormone tests.³⁵¹

The *Law on the Rights of Patients and Compensation for the Damage to Their Health*³⁵² talks about the informed consent of a patient when medical interventions are carried out. Article 14 of the said Law stipulates the following:

1. The patient above 16 years of age shall be provided health care services only with his consent, except for the cases of the provision of emergency medical services, when the patient is not capable of expressing his will by himself.

2. The minor patient under 16 years of age shall be provided health care services only with the consent of his representatives, except for the cases of the provision of emergency medical services. In all cases health care professionals must choose such diagnostic and treatment methods which would most adequately correspond to the interests of the minor, taking account, first of all, of the will of the minor as well as that of his representatives. In the event of disagreement between the patient under 16 years of age and his representatives, diagnostic and treatment methods shall be chosen by a consultation of doctors taking into account the interests of the minor.

3. The minor patient under 16 years of age who, on the doctor's reasoned opinion expressed

and adults (*Sveikatos apsaugos ministro įsakymas dėl Specialiųjų stacionariųjų urologijos paslaugų vaikams ir suaugusiesiems teikimo reikalavimų patvirtinimo*), No. V-899, 3 November 2006, available at: www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.3027B1FA0FFB&dsRid=549&dswid=-9751.

³⁴⁹ Lithuania, Order by the Minister of Health regarding special requirements for the [provision] of urology services to children and adults (*Sveikatos apsaugos ministro įsakymas dėl Specialiųjų stacionariųjų urologijos paslaugų vaikams ir suaugusiesiems teikimo reikalavimų patvirtinimo*), No. V-899, 3 November 2006, available at: www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.3027B1FA0FFB&dsRid=549&dswid=-9751.

³⁵⁰ Lithuania, Order by the Minister of Health regarding special requirements for the [provision] of second and third level endocrinology services to children and adults (*Sveikatos apsaugos ministro įsakymas dėl vaikų endokrinologijos antrinio ir tretinio lygio paslaugų teikimo specialiuju reikalavimų*), No. V-395, 27 May 2004, available at: www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.46829F042FD7&dsRid=661&dswid=-9751.

³⁵¹ Lithuania, Order by the Minister of Health regarding special requirements for the [provision] of third level services such as surgeries for congenital diseases (*Sveikatos apsaugos ministro įsakymas dėl įgimtų vaikų ligų chirurgijos stacionariųjų tretinio lygio paslaugų teikimo specialiuju reikalavimų*), No. V-645, 14 December 2000. senas.sam.lt/main/teisine_informacija/ministro_isakymai?id=24128.

³⁵² Lithuania, Law on the rights of patients and compensation for the damage to their health (*Pacientų teisių ir žalos sveikatai atlyginimo įstatymas*) (1996), No. 102-2317, 3 October 1996, available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458070.

in medical records, is capable of assessing his state of health, shall have the right on his own to apply for and decide on the provision of health care services required for him, except for the cases specified by laws.

4. Laws may provide for cases when only the adult patient shall be entitled to give consent for the provision of health care services.

Regarding Article 14 Paragraph 4, there is no information that any of the laws would provide for “intersex” as a case “when only the adult patient shall be entitled to give consent for the provision of health care services.”

Article 15 details the procedure for the written consent:

1. If there is a possibility in a particular health care institution to choose diagnostic and treatment methods applied therein, the patient must be informed thereof and his choice must be confirmed by the patient’s signature.

2. Prior to performing a surgical operation, invasive and/or interventional procedure on the patient, the patient’s informed consent to have a particular surgical operation, invasive and/or interventional procedure must be obtained. Such consent must be expressed in writing by signing the form complying with the requirements approved by the Minister of Health.

3. For the purpose of obtaining informed consent for a surgical operation, invasive and/or interventional procedure, information shall be considered appropriate when the patient has been explained about the essence of such a surgical operation or invasive and/or interventional procedure, their alternatives, nature, purposes, known and possible complications (undesirable effects), other circumstances that may affect the patient’s decision to accept or reject the intended surgical operation or invasive and/or interventional procedure, as well as about possible consequences of rejecting the intended surgical operation or invasive and/or interventional procedure.

4. Prior to performing a surgical operation, invasive and/or interventional procedure on the patient, the doctor must give the patient the information specified in paragraph 3 of this Article, taking into account his age and state of health, in a comprehensible form, explaining special medical terms.

Annex 1 – Case law

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	Civilinė byla Nr. 2A-2140-464/2011 (Appellate court).
Decision date	November 11, 2011 There is no information that the appellate court's decision was appealed by either of the parties.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vilniaus apygardos teismo 2011 m. lapkričio 11 d. nutartis civilinėje byloje Nr. 2A-2140-464/2011 [Vilnius District Court, Decision of November 11, 2011, Case No. 2140-464/2011].
Key facts of the case (max. 500 chars)	In June, 2009, Vilnius College [Vilniaus kolegija] held a competition for a vacant position of a sociology lecturer. The applicant (A.Z.) claimed that during the selection procedure he was directly discriminated by the selection commission of the Vilnius College on the grounds of sexual orientation and social status. The applicant claimed that the selection commission did not take into account his qualifications, including education and experience, which was better than of the other candidates. In addition, during the interview the applicant claimed to have experienced open contempt towards himself, he was harassed and asked unrelated questions. According to A.Z., he was not selected for the position, because of his sexual orientation (being openly gay and well-known in Lithuania) and because of his research on the phenomenon of homophobia.
Main reasoning/argumentation (max. 500 chars)	Vilnius College, the respondent, denied any allegations of harassment or discrimination or even being aware of the A.Z.'s sexual orientation. The commission decision was determined entirely by the assessment of relevant qualifications and motivation of the candidates and they proved to be better of the other candidate.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The first instance court found that the applicant was indirectly discriminated on the basis of social status, because the hired candidate was a member of the College staff and had a chance to participate in one of the department’s deliberations (which took place prior to the commission’s hearing) where she was able to promote her candidacy. In relation to the applicant’s unfavorable treatment on the ground of his sexual orientation, the court established that the members of the commission were not aware of A.Z.’s sexual orientation, did not raise any questions to this regard during the hearing and did not make any alleged remarks.</p> <p>The appellate court reversed the decision of the lower court finding that A.Z. was not discriminated on either of the grounds. It agreed with the lower court’s arguments regarding the absence of discrimination on the ground of sexual orientation. In relation to discrimination on the ground of social status, the court held that a minor procedural breach cannot be considered a violation of equal treatment. In comparison with A.Z., the other candidate was simply more motivated and, contrary to A.Z., was not surprised or frustrated when learning about the long working hours.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The first instance court found that the applicant was indirectly discriminated on the basis of social status and ordered Vilnius College to organize a new competition for the same position and awarded A.Z. 10.893,84 LTL in pecuniary damages and 26.940 LTL in non-pecuniary damages as well as coverage of A.Z.’s legal and other related costs. The appellate court found that A.Z. was not discriminated and ordered A.Z. to cover legal costs of the respondent (Vilnius Colleague) incurred in the first and appellate instances.</p> <p>Both courts shifted the burden of proof to the respondent. The appellate court, however, found that the mere fact of a public “coming out” should not be regarded as a presumption of discrimination. Although this is true in general, it does not clarify the notion of <i>prima facie</i> discrimination case under the Lithuanian law. Moreover, it could be argued that <i>prima facie</i> case is a very context-dependent notion and in the countries where the level of hostility towards homosexual people is as high as it is in Lithuania, the threshold to establish a <i>prima facie</i> sexual orientation discrimination case should not be too high.</p>

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

Case title	Civilinė byla Nr. 2A-1051-258/2013 (Appellate court).
Decision date	March 8, 2013 There is no information that the appellate court's decision was appealed by either of the parties.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vilniaus apygardos teismo 2013 m. kovo 8 d. nutartis civilinėje byloje Nr. 2A-1051-258/2013 [Vilnius District Court, Decision of March 8, 2013, Case Nr. 2A-1051-258/2013].
Key facts of the case (max. 500 chars)	In February 2011, Lithuanian University of Educational Sciences [Lietuvos edukologijos universitetas] held an open competition for two vacant positions of a part-time lecturer at the department of Sociology and political sciences. The applicant (A.Z.) claimed that during the selection procedure he was discriminated against by the selection commission of the Lithuanian University of Educational Sciences on grounds of sexual orientation and social status. The applicant claimed that the selection commission did not take into account his qualification, which was better than of the other two candidates who were finally selected (e.g. he was the only one to hold PhD degree in the relevant field of science). In addition, during the interview the applicant claimed that he was asked more questions than other two candidates and felt that the commission's attitude was hostile towards him. He asserted that the commission was well aware of his homosexual orientation, of the wrongful dismissal proceedings that he initiated against his former employer (a university) and about his publications where he examined the phenomenon of homophobia. This added to the commission's unfavorable judgment towards him.
Main reasoning/argumentation (max. 500 chars)	The commission claimed that the selection procedure was transparent and abided to the principles of non-discrimination and equal treatment. Only one out of 9 members of the commission was aware of the applicant's homosexual orientation. The fact that the applicant conducted studies on homophobia was not indicative to the members of the commission to conclude that he was of the homosexual orientation. Overall, two other candidates were better suited to take the positions.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court of the first instance found the applicant established a <i>prima facie</i> case of discrimination and shifted the burden of proof to the respondent. According to the court, the respondent proved that the applicant was not discriminated, since the selection requirements were applied equally to all the candidates, the applicant was asked more questions than the others only because he had not previously worked with the respondent (while other two candidates did), there was no ground to assert the hostility towards the applicant during the interview, as well as there was no ground to assert that the members of the commission were aware of the applicant's sexual orientation. The appellate court upheld the lower court's judgment and its analysis as a whole. In response to the applicant's request to turn to the Court of Justice of the EU for the preliminary ruling, in particular, regarding the interpretation of the "<i>prima facie</i> case" in the claims concerning multiple discrimination, the court concluded that the substance of the EU law in the present case was clear and the preliminary reference to the CJEU would not change the outcome of the case. The request was denied.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court of the first instance dismissed the complaint finding no violation of the principle of the equal treatment. The applicant was ordered to pay 4.214,43 LTL for the legal costs. The judgment was upheld on the appeal.</p> <p>The Equal Opportunities Ombudsperson gave an expert opinion in both instances. Before the first instance court it testified that the applicant was not discriminated on the grounds of sexual orientation and/or social status. Before the appellate court it confirmed that the first instance court did not err in applying the rules on the burden of proof by shifting it to the respondent.</p>

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3

Case title	No more case law in this respect ³⁵³
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

³⁵³ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.pratika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt/; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 5

Case title	No more case law in this respect ³⁵⁴
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

³⁵⁴ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.pratika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt/; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC, case 1

Case title	No case law in this respect ³⁵⁵
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

³⁵⁵ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.pratika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt/; Liteko. <http://liteko.teismai.lt/viesasprendimupaiseska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	No case law in this respect ³⁵⁶
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

³⁵⁶ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.pratika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt; Liteko. <http://liteko.teismai.lt/viesasprendimupaiseska/detalipaiseska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1

Case title	No case law in this respect ³⁵⁷
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

³⁵⁷ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.pratika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt/; Liteko. <http://liteko.teismai.lt/viesasprendimupaiseska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 1

Case title	No case law in this respect ³⁵⁸
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

³⁵⁸ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.pratika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt/; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Chapter E, Freedom of assembly, case 1

Case title	Civilinė byla Nr. 15317-101/2007 (Court of first instance). Civilinė byla Nr. 2S-1104-52/2007 (Appellate court).
Decision date	October 24, 2007 (Court of first instance). December 21, 2007 (Court of appeal). According to the national law cassation is not allowed in this particular category of cases.
Reference details (type and title of court/body; in original language and English [official translation, if available])	First instance: Vilniaus miesto 1 apylinkės teismo 2007 m. spalio 24 d. nutartis civilinėje byloje Nr. 15317- 101/2007 [Vilnius city 1 st . Regional Court, Decision of October 24, 2007, Case No. 15317-101/2007]. Appellate court: Vilniaus apygardos teismo 2007 m. gruodžio 21 d. nutartis civilinėje byloje Nr. 2S-1104-52/2007 [Vilnius District Court, Decision of December 21, 2007, Case No. 2S-1104-52/2007].
Key facts of the case (max. 500 chars)	LGBT organisation <i>Lietuvos gėjų lyga</i> [Lithuanian Gay League] (LGL) applied to the Vilnius city municipality asking for permission to organise a public event – a spreading of a wide rainbow flag in the town hall. The municipality refused to allow it, stating, that public security could not be ensured because (1) construction works that were taking place in the town hall and (2) due to the fact that during the first attempt to organise such an event in May, ‘objective data’ was available that indicated that violent demonstrations could oppose the similar event. LGL submitted a complaint regarding this decision to the court. The court of first instance and the court of second instance both rejected the complaint.
Main reasoning/argumentation (max. 500 chars)	Courts of both instances approved the decision of municipality, stating that: LGL could not ensure public security at the time and the place of the event, because construction works were taking place in the town hall; According to the courts, the Law on Assemblies provides a list of ‘public places’, namely streets, squares, parks, public gardens of towns and settlements, as well as other public places and publicly used buildings. By refusing to allow the event to take place, the municipality suggested to arrange it in a building instead. According to the courts, ‘publicly used buildings’ is an appropriate alternative to any other public place. The municipality was reasonably concerned about public safety, because during the first attempt to organise such an event in May, ‘objective data’ was available that indicated that violent demonstrations

	<p>could occur in a similar event. The municipality is not responsible for the ensuring of public safety, because it falls under the competence of police.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The case illustrates certain problematic aspects of the regulation of the right to assembly. It seems that certain provisions of the Law on Assemblies are not sufficiently precise and can be interpreted by national courts differently. Firstly, it is not clear whether national legislation does not allow certain assemblies which can cause threats to public safety purely due to their character and opposition to them by some part of the society, in spite of the fact that their objective is legitimate and intention is peaceful. Secondly, clearer procedural requirements must be set in the Law on Assemblies in regard to the relationship between the responsibilities of the municipality and the police (according to the national law, the organisers of an assembly, asking for the permission to organise a public event at the municipality are not obliged to apply to the police directly as well). This uncertainty resulted in an ambiguous reasoning of the court in LGL case, where court stated, that municipality is not obliged to ensure public safety of the event, because it falls under competence of the police.</p>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Courts approved the decision of the municipality not to allow the public event to take place.</p>

Chapter E, Freedom of assembly, case 2

Case title	<p>Lietuvos Gėjų Lyga [Lithuanian Gay League] v. Lygių galimybių kontrolieriaus tarnyba [Equal Opportunities Ombudsperson], administrative case No. I-876-437/2009 (First instance). Administrative case No. A⁶⁶²-665/2010 (Appellate court)</p>
Decision date	<p>May 13, 2009 (First instance) April 19, 2010 (Court of appeal) Lietuvos Vyriausiasis administracinis teismas [<i>Lithuanian Supreme Administrative Court</i>], which acted as the appellate court in this case, is the court of the highest instance for the administrative cases in Lithuania. Its decisions are final.</p>

Reference details (type and title of court/body; in original language and English [official translation, if available])	First instance: Vilniaus apygardos administracinio teismo 2009 m. gegužės 13 d. sprendimas byloje Nr. I-876-437/2009 [Vilnius District Administrative court of May 13, 2009 in the case No. I-876-437/2009]. Appellate court: Lietuvos vyriausiojo administracinio teismo 2010 m. balandžio 19 d. nutartis administracinėje byloje Nr. A ⁶⁶² -665/2010 [<i>Lithuanian Supreme Administrative Court</i> , Decision of April 19, 2010, Case No. A ⁶⁶² -665/2010].
Key facts of the case (max. 500 chars)	LGBT event was planned to take place in August, 2008, during “For Diversity. Against Discrimination” campaign truck visit. Former mayor of Vilnius city publicly stated, that while he remains in the office “there will be no advertisements of sexual minorities”. A company “Integrity PR” requested a permission to hold an assembly, but was refused. Moreover, a month in advance the Council of the Municipality of Vilnius had amended The Rules on Disposal and Cleanness by broad provisions, allowing to prevent any event, which might be opposed by part of the society. However, the LGBT organization (LGL) filed a complaint to the Equal Opportunities Ombudsperson. As the Ombudsperson refused to investigate the matter, organisation challenged its decision at court.
Main reasoning/argumentation (max. 500 chars)	The Ombudsperson claimed, that it discontinued the investigation, because (1) the LGL was not a proper subject to apply to the Ombudsperson, since only persons, whose rights were directly violated by the action of municipality can file a complaint, (2) the case falls under the category of disputes, which, according to the Law on Equal Treatment, must be litigated in courts (this is the case regarding the implementation of the Law on Assemblies), (3) public statements of officials do not fall under the scope of the Law on Equal Treatment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court approved the reasoning of the Ombudsperson that public statements of officials do not fall under the scope of the Law on Equal Treatment, not going into details of the concept of instructions to discriminate. Although the applicant was asking the Ombudsperson to evaluate the actions of the municipality in the light of Article 5 of the Law on Equal Treatment (generally defined duty to implement equal opportunities), not questioning the legality of the decision not to issue permit for the event, however, the court approved the reasoning of the Ombudsperson, that LGL was not a proper subject to complaint, since the decision of the municipality not to issue a permission did not affect the rights of the LGL directly. The appellate court upheld the lower court’s judgment. It confirmed that LGL did not have the standing in the case since it challenged a decision adopted in relation to a third party, i.e. “Integrity PR”. LGL failed to submit any documents providing that it acted on behalf of “Integrity PR”. Notwithstanding procedural issue of LGL’s standing, the court stressed that the fact of discrimination was not established in this case.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The case highlighted difficulties that can be encountered while enforcing broadly defined provisions of the Law on Equal Treatment.

Chapter E, Freedom of assembly, case 3

Case title	Administracinė byla Nr. AS ⁸²² -339/2010 (Appellate court).
Decision date	May 7, 2010 Lietuvos Vyriausiasis administracinis teismas [<i>Lithuanian Supreme Administrative Court</i>], which acted as the appellate court in this case, is the court of the highest instance for the administrative cases in Lithuania. Its decisions are final, effective immediately and not subject to any further appeal.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Lietuvos vyriausiojo administracinio teismo 2010 m. gegužės 7 d. nutartis administracinėje byloje Nr. AS ⁸²² -339/2010 [<i>Lithuanian Supreme Administrative Court, Decision of May 7, 2010, Case No. AS⁸²²-339/2010</i>].
Key facts of the case (max. 500 chars)	On April 23, 2010 Vilnius city municipality issued a certificate for the Lithuanian Gay League [Lietuvos gėjų lyga] to organize the march “For Equality” (otherwise known as the Baltic Pride) on May 8, 2010. On May 3, 2010, three days prior to the scheduled date of the march, a member of Kaunas Municipality Council S.B. and the Prosecutor General lodged two complaints with Kaunas District Administrative Court requesting to annul the municipality’s certificate, and until the court deliberates the issue, to apply interim measures and temporarily suspend the march “For Equality”. The complaints grounded their claim on the possibility of public disruptions. Besides, S.B. argued that the march would violate “values precious to the families”.
Main reasoning/argumentation (max. 500 chars)	The prosecutor claimed he had information that some members of radical and destructive movements were going to protest against the march and that various provocations were being planned. The Prosecutor requested to temporarily suspend the validity of the certificate. According to him, it would have been the only way to ensure that the order of the court would be enforced still pending the final ruling. The prosecutor did not provide more detailed information on the possible unrest due to confidentiality reasons.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The first instance court temporarily suspended the validity of the certificate stating that the suspension should not be an obstacle to organize the march later on. The organizers appealed.</p> <p>The appellate court upheld the complaint and quashed the decision of the lower court. The Supreme Administrative Court concluded that according to the European Convention of Human Rights and the case-law of the European Court of Human Rights, the state has the positive obligation to ensure effective enjoyment of the right to freedom of assembly for all, including individuals with unpopular views or minority groups. The essential clause of effective exercise of freedom of assembly is a presumption of lawfulness, which is infringed when refusing to sanction a gathering and preventing minorities from participation. Negative consequences to the freedom of assembly cannot be avoided if legal remedies are applied only after the intended date of the gathering.</p>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The march took place on May 8, 2010. Notably, the Supreme Administrative Court extensively relied on the <i>Recommendation CM/Rec(2010)5 of the Committee of Ministers to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity</i> , Articles 4, 15 and 16 specifically.

[Chapter E, Freedom of assembly, case 4

Case title	Administracinė byla Nr. A ⁴⁴⁴ -1968/2013 (Appellate court).
Decision date	June 20, 2013 Lietuvos Vyriausiasis administracinis teismas [<i>Lithuanian Supreme Administrative Court</i>], which acted as the appellate court in this case, is the court of the highest instance for the administrative cases in Lithuania. Its decisions are final, effective immediately and not subject to further appeal.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Lietuvos vyriausiojo administracinio teismo 2013 m. birželio 20 d. nutartis administracinėje byloje Nr. A ⁴⁴⁴ -1968/2013 [<i>Lithuanian Supreme Administrative Court</i> , Decision of June 20, 2013, Case No. A ⁴⁴⁴ -1968/2013].

Key facts of the case (max. 500 chars)	On January 11, 2013 the Lithuanian Gay League[Lietuvos Gėjų Lyga] notified Vilnius city municipality about the Baltic Pride March to take place on the main avenue of the city of Vilnius. The organizers proposed the following route: the participants would march from the beginning to the middle of the avenue where, on a nearby square, a concert would take place. Vilnius City Municipality adopted the decision allowing the march to take place on the same date, but in a completely different location – a relatively remote street on the riverbank, where the Baltic Pride 2010 took place. The organizers appealed against the decision to the court.
Main reasoning/argumentation (max. 500 chars)	<p>The organizers argued that the location stipulated in the Municipality’s decision was not the one the organizers of the assembly had agreed upon and that the Municipality failed to adduce any convincing reasons why the location had to be changed. They also asserted that moving the meeting away from the central and the most visible part of the city contradicts the purpose of the meeting itself, i.e. to increase the visibility of the marginalized LGBT community.</p> <p>The Municipality argued that the determination of the location of public assemblies was not an infringement upon the right to freedom of peaceful assembly. In order to protect participants’ rights and freedoms, the State’s and general public’s security and public order, a more favorable location for holding the march was Upės Street, where the march had been already organized by the applicant in 2010. Not only an alternative location for the planned march, but also a more favorable form of the event from the point of view of the public order and public security was proposed to the applicant.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The first instance court temporarily repealed a part of the Municipality’s Decision and obliged the Municipality to coordinate the process of the organization of the march with the Lithuanian Gay League anew. The Municipality appealed against the decision.</p> <p>The Appellate Court upheld the decision of the lower court. Relying heavily on its previous judgment in the Baltic Pride case issued on May 7, 2010 (see <i>Annex I. Chapter E, Freedom of assembly, case 3</i>), it emphasized that the State has the positive obligation to ensure the effective exercise of the right to freedom of peaceful assembly for individuals or groups with unpopular views or minority groups in order to facilitate democratic pluralism. According to the court, the Law on Public Meetings does not foresee the right for municipal authorities to indicate another location of the proposed assembly if the initial notification of the event is not being agreed upon. Otherwise, it would undermine the exercise of the right to peaceful assembly through notification.</p>

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Appellate Court ordered the new negotiation procedure to take place as soon as possible, i.e. following the brief terms foreseen in the legal acts.</p> <p>The Appellate Court essentially established the practice of addressing the legal disputes under the Law on Public Meetings through the accelerated procedure in order to resolve a legal dispute before the actual date of the planned event.</p> <p>However, the renewed negotiations between Vilnius Municipality and the organizers were not successful and resulted in the second legal case (see <i>Annex I. Chapter E, Freedom of assembly, case 5</i>).</p>
---	--

[Chapter E, Freedom of assembly, case 5]

Case title	Administracinė byla Nr. A ⁸⁵⁸ -2475/2013 (Appellate court)
Decision date	<p>July 23, 2013</p> <p>Lietuvos Vyriausiasis administracinis teismas [<i>Lithuanian Supreme Administrative Court</i>], which acted as the appellate court in this case, is the court of the highest instance for the administrative cases in Lithuania. Its decisions are final, effective immediately and not subject to further appeal.</p>
Reference details (type and title of court/body; in original language and English [official translation, if available])	Lietuvos vyriausiojo administracinio teismo 2013 m. liepos 23 d. nutartis administracinėje byloje Nr. A ⁴⁴⁴ -1968/2013 [<i>Lithuanian Supreme Administrative Court, Decision of July 23, 2013, Case No. A⁸⁵⁸-2475/2013</i>].
Key facts of the case (max. 500 chars)	<p>After the judgment in <i>Lithuanian Supreme Administrative Court, Decision of June 20, 2013, Case No. A⁴⁴⁴-1968/2013</i> (see <i>Annex I. Chapter E, Freedom of assembly, case 4</i>) was issued, a new procedure of negotiation between the Lithuanian Gay League and Vilnius City Municipality with regards to the initial notification of January 11, 2013 on the planned Baltic Pride took place. Following the meeting between the organizers, the representatives of the Municipality and the Police department, on June 26, the Municipality issued the decision explicitly stating that it disagrees with the location, time and form of the event proposed by the organizers. The Lithuanian Gay League appealed against the decision to the court.</p>

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The organizers argued that Vilnius City Municipality failed to implement the judgment of the <i>Lithuanian Supreme Administrative Court</i>, Decision of June 20, 2013, CaseNo.A⁴⁴⁴-1968/2013 (see <i>Annex I. Chapter E, Freedom of assembly, case 4</i>), discriminated against them on the ground of sexual orientation and failed to adduce any convincing arguments as to the alleged threat to the public order, morality, public security, and rights and freedoms of others.</p> <p>The Municipality argued that it sought to strike the balance between the applicant’s right to freedom of assembly and public interest, i.e. the interest of the whole community in order to protect rights and freedoms of the others, and that there would be no threat to public security and public order. According to the Municipality, the fair balance would have not been guaranteed, if the interests of the rest of the society had been disproportionately restricted due to the exercise of the constitutional right by one particular social group.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The first instance court repealed the Municipality’s decision and ordered it to agree on the location specified in the initial application of January 11, 2013. It found that the Municipality exceeded its administrative competence by refusing to agree upon the time and form of the assembly and failed to implement the judgment of the <i>Lithuanian Supreme Administrative Court</i>, Decision of June 20, 2013, CaseNo.A⁴⁴⁴-1968/2013. The Municipality appealed.</p> <p>The Appellate Court upheld the decision of the lower court. It stated that the intention by the claimant to organize the march on this location was not unusual or extraordinary. With regards to the proportionality of limitations, it emphasized the limited duration of the march in question – in case any inconveniences arose, they would be temporary. There was no data allowing to conclude that it was impossible to ensure the security of the society, public order and traffic if the march was to take place on the location preferred by the claimant.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>When upholding the lower court’s decision, the appellate court, however, amended the ruling by removing the obligation to agree on the location specified in the initial application of January 11, 2013. Instead, it ordered Vilnius City Municipality to agree on the location following the procedure established in the law, i.e. after the negotiations.</p> <p>Most importantly, the Appellate Court established that the right to freedom of peaceful assembly can be restricted only by providing substantiated factual evidence, which has to be provided by the subject, which is seeking to limit the exercise of the right. This obligation cannot be transferred to the individuals, who are seeking to exercise their right to freedom of peaceful assembly.</p> <p>The Baltic Pride 2013 took place on the date, place and time initially suggested by the Lithuanian Gay League.</p>

Chapter F, Hate speech, case 1

Case title	Baudžiamoji byla Nr. 1A-845-366/2011 (Appellate court).
Decision date	December 1, 2011 There is no information that the Appellate Court's decision was appealed by either of the parties.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Panevėžio apygardos teismo 2011 m. gruodžio 1 d. nutartis baudžiamojoje byloje Nr. 1A-845-366/2011 [<i>Panevėžys District Court</i> , Decision of May December 1, 2011, Case No.1A-845-366/2011].
Key facts of the case (max. 500 chars)	A.K. was charged under Article 170(1) of the Criminal Code for “inciting hatred” against a person on the ground of his homosexual orientation. Later, the prosecutor requested to change the charges to “publicly ridiculing, expressing contempt for, and inciting discrimination against a group of persons” on the ground of homosexual orientation, under Article 170 (2) of the Criminal Code. According to the facts presented in the indictment, in January 2010, under the on-line article “Dismissed gay sued university rector” published on www.lrytas.lt (on-line media outlet) A.K. posted the following comment “ <i>I think, that the right decision was made, if you are that way, [then] keep silent and hide [yourself]. Would not like him to teach my kids, this is contagious</i> ”.
Main reasoning/argumentation (max. 500 chars)	A.K. confessed to posting the comment, but alleged that she had merely expressed her opinion, and had no intent to incite hatred or discrimination or insult any person of homosexual orientation. She claimed that in her opinion no one should advertise his/her sexual orientation. She did not mean to say that homosexual orientation was a disease, but rather thought that propaganda of homosexual orientation (such as parades, shows) may attract heterosexual youth. The prosecutor argued that expressing one's opinion by ridiculing a person is not compatible with the Constitution of the Republic of Lithuania or the European Convention of Human Rights.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The first instance court found A.K. not guilty, as she merely expressed her opinion without transgressing the limit of freedom of speech. The Appellate Court upheld the lower court's judgment. It found that the applicant was consistent in testifying that she did not intend to insult persons of homosexual orientation. According to the court, there was nothing in the comment that could incite other persons to discriminate homosexuals; A.K. merely expressed her position as to whether it was right or wrong to dismiss the university professor (the topic of the article).

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>A.K. was found not guilty by both courts.</p> <p>Notably, the court failed to establish <i>mens rea</i> of the crime. According to the appellate court, the crime of hate speech could only be committed with the <i>direct intent</i>, meaning that the criminal responsibility would arise only when a person <i>understands</i> that his/her public statements incite hatred or discriminate against a group of persons and <i>wants to act that way</i>. In the instant case, A.K. did not understand that or wanted to act that way. The absence of direct intent on the part of the perpetrator is often argued by the courts in hate speech cases. The means to establish direct intent are, however, questionable. For example, in the present case the court relied merely on the A.K.'s testimony. It even disregarded the expert opinion provided by the Equal Opportunities Ombudsperson which clearly stated that although homosexuality is no longer considered as a crime, "it is still common for the commentators to equate homosexual relations with a disease, and to call homosexual persons sick, so to derogate and insult them". The Appellate Court found the expert's opinion to be of a general nature and not related it to the A.K.'s comment.</p>
---	---

Chapter F, Hate speech, case 2

Case title	Baudžiamoji byla Nr. 1A-411-107/2011 (Appellate court).
Decision date	<p>May 26, 2011</p> <p>There is no information that the Appellate Court's decision was appealed by either of the parties.</p>
Reference details (type and title of court/body; in original language and English [official translation, if available])	Klaipėdos apygardos teismo 2011 m. gegužės 26 d. nuosprendis baudžiamojoje byloje Nr. 1A-411-107/2011 [Klaipėda District Court, Judgment of May 26, 2011, Case No. 1A-411-107/2011].
Key facts of the case (max. 500 chars)	V.M. was charged under Article 170(3) of the Criminal Code for "inciting violence and physical violent treatment" of a person on the ground of his homosexual orientation. According to the facts presented in the indictment, in February 2010, under an on-line article V.M. posted the following comment " <i>Children should be raised [in the way] not to become faggots. But if they want to become one, [they] should be thrown out of the house as a piece of garbage</i> ".

Main reasoning/argumentation (max. 500 chars)	V.M. confessed to posting the comment, but claimed that he posted the comment in response to other commentator who called Lithuania a country of retards, alcoholics and criminals. He also alleged that he had no direct intent to incite violence or physical violent treatment, there was not a word in his statement which would incite such actions. What he meant was that parents should sever ties with a child who decides to become gay, because such child is already an autonomous personality, “who forms his own sexual orientation and does not take into account the parents’ opinion opposing to such wish”.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The first instance court found V.M. guilty. The Appellate Court reversed the lower court’s judgment in part. The Appellate Court found that V.M. did not incite violence, however, by suggesting to sever the ties with a family member of a homosexual orientation, he incited discrimination against persons on the ground of sexual orientation. The court qualified the criminal offence under Article 170(2) for “incit[ing]discrimination against a group of persons or a person belonging thereto on grounds of [...] sexual orientation”.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The first instance court found V.M. guilty under Article 170(2) and fined him for 1040 LTL. The Appellate Court reversed the judgment and found V.M. guilty under Article 170(3) and ordered to pay a fine of 650 LTL. Notably, the Appellate Court expressly disagreed with the expert opinion by the Equal Opportunities Ombudsperson provided in the case. The court found Ombudsperson’s conclusion that V.M. incited violence on the grounds of sexual orientation to be erroneous. According to the court, even if V.M.’s statement could be qualified as psychological violence, such type of violence is covered by Article 170(2) of the Criminal Code: “ <i>A person who publicly ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of persons or a person belonging thereto on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views</i> ”.

Chapter F, Hate speech, case 3

Case title	Baudžiamoji byla Nr. 1A-326-2010 (Appellate court).
Decision date	March 25, 2011 There is no information that the Appellate Court’s decision was appealed by either of the parties.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vilniaus apygardos teismo 2011 m. kovo 25 d. nuosprendis baudžiamojoje byloje Nr. 1A-326-2010 [<i>Vilnius District Court</i> , Judgment of March 25, 2011, Case No. 1A-326-2010].

Key facts of the case (max. 500 chars)	E.G. was charged under Article 169 and Article 170(1) of the Criminal Code for “carrying out the actions aimed at hindering the rights and freedoms of people because of their sexual orientation” and inciting hatred against people on the ground of sexual orientation. According to the facts presented in the indictment, in May 2007 E.G. created a website and posted statements calling for prohibiting a public LGBT event scheduled to take place in 9 days (e.g. “ <i>Stop the Rainbow colours!</i> ”, “ <i>If you think that Lithuania is not a place for homosexuals, pedophiles, lesbians and other perverts to organize parades and celebrations promoting their lifestyle and normalizing it, we invite you to join ANTI-action!</i> ”). On the same website he created a commentary section allowing to spread hatred towards homosexuals and posted such comments himself.
Main reasoning/argumentation (max. 500 chars)	E.G. argued that a person who provided an expert’s opinion in the case (a lawyer from the Equal Opportunities Ombudsperson’s Office) was “financially tied” to the Tolerant Youth Association, LGBT organization which filed a complaint to the prosecutor’s office about the E.G.’s website. He argued that he did not spread hatred towards homosexuals, but was looking for people to organize a counter-demonstration. He alleged that since “sexual orientation” is not defined by the law, his indictment and further conviction violated his legitimate expectations.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The first instance court found E.G. guilty. The Appellate Court reversed the lower court’s judgment in part by applying a different sanction. Both courts agreed with the prosecutor, that by creating the website which was aimed to obstruct the LGBT event, E.G. discriminated against people on the ground of sexual orientation – he understood his actions and wanted to act so. By creating a commentary section and posting the comments where he specifically “equated homosexual people, who are tolerated in Europe, to pedophiles” he incited hatred against people on the ground of their sexual orientation, and again – understood his actions and wanted to act so.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The first instance court found E.G. guilty under Article 169 and Article 170(1) and fined him for 1040 LTL. The Appellate Court reversed the judgment in part finding E.G. guilty under Article 169 and Article 170(1), ordering to pay a smaller fine, i.e.910 LTL.</p> <p>In this case, the court relied on the expert opinion provided by the Equal Opportunities Ombudsperson. The lawyer, who gave the opinion in this case, argued that in 2007, when she drafted the opinion, the Office had no common projects with the Tolerant Youth Association (as opposed to the .E.G’s statement that they were financially tied).</p> <p>Notably, it was the first time the court was requested to define sexual orientation. In this regard, the appellate court stated “the criminal law lists different groups of people, not only “sexual orientation”, but also “race”, “language”, “beliefs” and others, however none of them is defined, as it is clear to every reasonable person what each of the concepts means”. This quick conclusion, in the absence of any clarification on the part of the court, is arguable in general, e.g. it is still not clear whether “bisexuality” or “asexuality” would fall under the definition of “sexual orientation” in Lithuania, similarly, “belief” can be interpreted very broadly.</p>

Chapter F, Hate speech, case 4

Case title	Baudžiamoji byla Nr. 2K-677/2012 (Court of cassation).
Decision date	December 18, 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Lietuvos aukščiausiojo teismo 2012 m. gruodžio 18 d. nutartis baudiamojoje byloje Nr. 2K-677/2012 [Lithuanian Supreme Court, Decision of December 18, 2012, Case No 2K-677/2012]
Key facts of the case (max. 500 chars)	J.J. was charged under Article 170(2) of the Criminal Code for “publicly ridiculing, expressing contempt for, and inciting discrimination against a group of persons” on the ground of their sexual orientation. According to the facts presented in the indictment, in November 2009, J.J. posted the following comment under the video “Young people protesting in front of the Parliament were not heard”(the article covered the event “Kisses against homophobia”) published on www.lrytas.lt (online media portal): <i>“those who sympathize with those faggots, are perverts and mentally sick themselves. Here, the comments are written by the participants of that perverse assembly. Shame on the organizers and participants of that hideous event. There is a word – a REPROBATE – which defines a person, who has no control over his senses. So, reprobates are in front of my eyes. And not just ordinary ones, but reprobates of a special kind – PERVERTS. They should be quickly collected and transferred to the psychiatric facility. Their place is THERE.”</i>
Main reasoning/argumentation (max. 500 chars)	J.J. argued that the assembly “Kisses against homophobia” was illegal, since the participants failed to obtain a certificate from the Municipality. Thus, in her comment she expressed her civic and human opinion by condemning those who tolerated unlawful assemblies. She alleged that she did not intend to ridicule or otherwise incite hatred against homosexual people.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The first instance court found J.J. guilty under Article 170(2), the Appellate Court upheld the lower court's judgment. The Supreme Court reversed both judgments and acquitted J.J. The Supreme Court held that the lower courts did not analyze all the circumstances of the case, in particular, they failed to take into account the context in which the statement was made. The assembly in question was indeed held without a certificate and thus was unlawful, therefore J.J.'s negative reaction is understandable. The assembly was provocative and "the eccentric behavior of the participants did not add to the mutual understanding between [them and] people holding different views and did not promote tolerance". The participants of the assembly failed to respect other people's rights and failed to attain to the fact that the vast majority of Lithuanians respects traditional family values, where family is a union of a man and a woman. J.J.'s opinion although unethical, did not attain the level of severity to bring it within the scope of criminal law.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The first instance court and the Appellate Court found J.J. guilty under Article 170(2) and fined her for 130 LTL. The Supreme Court reversed the judgment and acquitted J.J.</p> <p>This judgment sets a worrying precedent in the hate speech jurisprudence, since the court failed to undertake a proper analysis of the impugned statement, but instead focused on the actions of the persons described in the article which was not the point of the case. The invocation of "traditional family values" was inappropriate, given that it is a moral, rather than legal notion. The Supreme Court also disregarded without any explanation the expert opinion provided by the Journalist Ethics Inspector Office that J.J.'s statement publicly insulted, ridiculed and expressed contempt of people on the basis of their sexual orientation.</p> <p>Notably, the Supreme Court explicitly established that hate speech targets a certain group of people or such group's particular member(s), but the criminal law does not require identifying an individual victim.</p>

Chapter F, Hate crimes, case 1

Case title	No case law in this respect ³⁵⁹
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

[copy template for next four cases]

³⁵⁹ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.praaktika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Chapter G, Applicability of legislation on trans gender issues, case 1

Case title	Administracinė byla Nr. A ⁵⁰² -1255/2012 (Appellate court).
Decision date	April 26, 2012 Lietuvos Vyriausiasis administracinis teismas [<i>Lithuanian Supreme Administrative Court</i>], which acted as the appellate court in this case, is the court of the highest instance for the administrative cases in Lithuania. Its decisions are final, effective immediately and not subject to further appeal.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Lietuvos vyriausiojo administracinio teismo 2012 m. balandžio 26 d. nutartis administracinėje byloje Nr. A ⁵⁰² -1255/2012 [<i>Lithuanian Supreme Administrative Court, Decision of April 26, 2012, Case No. A⁵⁰²-1255/2012</i>].
Key facts of the case (max. 500 chars)	<p>For a long time the claimant was suffering due to the contradiction between her physical and psychological sex. After finding out that no treatment was accessible in Lithuania, the claimant moved to Ireland, where she was diagnosed with the gender identity disorder ICD-10 and assigned drug treatment. In 2005, two years later, the claimant underwent male-to-female gender-reassignment surgery in Thailand. Following the surgery, she continued to be treated with drugs and attended psychotherapy sessions in Ireland.</p> <p>In 2005, following the surgery, she requested Vilnius Civil Registry Office to change her personal identification entries (name, family name, personal identification code, and sex), but was refused. Following the court's ruling ordering the civil registry office to change her personal identification entries (see <i>Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1</i>), the applicant initiated a new set of the proceedings against the Republic of Lithuania, represented by the Government, claiming non-pecuniary damages.</p>
Main reasoning/argumentation (max. 500 chars)	<p>The applicant requested the court to award her with 70.000 LTL in non-pecuniary damages which she suffered due to (i) the fact that there was no law on gender-reassignment adopted in Lithuania and thus she had no means to undergo surgery or any other treatment in Lithuania; (ii) inadequate regulation on the change of the personal documents which made her travel from Ireland to Lithuania with the personal documents where male sex was indicated.</p> <p>The Ministry of Justice, the respondent, argued that the claimant was married till 2007 and thus she would not be eligible for any gender-reassignment surgery or other treatment and could not change her personal identification documents anyway.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The first instance court dismissed the claim as unsubstantiated.</p> <p>The Appellate Court reversed the lower court's judgment and established that the applicant failed to present any documents proving that she, at any point of time, had turned to the Lithuanian doctors seeking for medical assistance. Thus, she made a choice to undergo treatment in Ireland and in Thailand. Although Lithuania indeed failed to implement <i>L. v. Lithuania</i> judgment not adopting a law on gender-reassignment, the applicant did not have an abstract right to claim damages for state inaction.</p> <p>The applicant's divorce was finalized on 26 June, 2006, this is when her right to request change of the personal identification documents arose. The procedure where the applicant had to turn to the court in order to get her documents changed indeed caused additional inconvenience and violated the principle of equality, since she was in a less favorable situation if compared to a person who requested the change of the entries for the reasons other than a medical change of sex (that person would not need to go to the court).</p>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The first instance court dismissed the claim. The Appellate Court reserved the lower court's judgment and ordered the Republic of Lithuania to pay the applicant LTL 300 for non-pecuniary damages.

Chapter G, Applicability of legislation on trans gender issues, case 2

Case title	Administracinė byla Nr. A ⁸⁵⁸ -1452/2010 (Appellate court).
Decision date	November 29, 2010 Lietuvos Vyriausioji administracinis teismas [<i>Lithuanian Supreme Administrative Court</i>], which acted as the appellate court in this case, is the court of the highest instance for the administrative cases in Lithuania. Its decisions are final, effective immediately and not subject to further appeal.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Lietuvos vyriausiojo administracinio teismo 2010 m. lapkričio 29 d. nutartis administracinėje byloje Nr. A ⁸⁵⁸ -1452/2010 [<i>Lithuanian Supreme Administrative Court</i> , Decision of November 29, 2010, Case No. A ⁸⁵⁸ -1452/2010].

<p>Key facts of the case (max. 500 chars)</p>	<p>In 2007, the claimant was diagnosed with transsexuality. The claimant attended psychotherapy sessions, was planning to undergo gender reassignment surgery, but later she was informed that such surgeries were not performed in Lithuania. In 2008, the claimant underwent male-to-female gender-reassignment surgery in Thailand. The claimant did not receive any post-surgical treatment or care in Lithuania.</p> <p>In 2005, she requested Vilnius Civil Registry Office to change her personal identification entries (name, family name, personal identification code, and sex), but was refused. While the case against the Civil Registry Office was still pending (see <i>Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 3</i>), the applicant initiated a new set of the proceedings against the Republic of Lithuania, represented by the Government, claiming pecuniary and non-pecuniary damages.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The claimant argued that after being diagnosed with transsexuality, she turned to Lithuanian doctors who refused her treatment, and did not provide her any consultation as to where she could obtain such treatment. In the absence of any medical assistance, the claimant had to travel to Thailand and cover the travelling expenses and the costs of the surgery herself. She also could not obtain any post-surgical care in Lithuania, although it was clear that she needed further medical assistance and hormone therapy, at least. She also had to travel with the personal documents not corresponding to her present sex and she could not obtain new documents in Lithuania. She alleged the state's failure to implement <i>L v. Lithuania</i> judgment by not introducing a law on gender reassignment.</p> <p>Overall, the situation claimant found herself in was a clear violation of her right to private life and made her live a "double-life". She requested the court to award 31.243,32 LTL in pecuniary and 100.000 LTL in non-pecuniary damages.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The first instance court awarded the claimant 30.000 LTL in non-pecuniary damages. The applicant appealed.</p> <p>The Appellate Court found that Lithuania indeed failed to implement <i>L. v. Lithuania</i> judgment and such inaction was unlawful. However, the Lithuanian laws on healthcare and insurance did not foresee that the costs of gender-reassignment surgery were to be covered by the state. The complainant speculated that had Lithuania adopted the Law on gender-reassignment, it would have been under the obligation to cover the costs of such surgeries, however, provided nothing to support this statement. Moreover, the court found that "the costs incurred by the applicant cannot be unequivocally considered as pecuniary damages, because there is no information in the case-file that the gender-reassignment surgery was the form of treatment, which had to be applied in treating the complainant's disease". Thus, the applicant could not claim pecuniary damages.</p> <p>In reference to non-pecuniary damages, the court found that they should be awarded because of (i) the absence of legal regulation on gender-reassignment and treatment, and (ii) absence of an adequate procedure to change personal identification documents following the gender reassignment surgery.</p>

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The first instance court awarded the claimant 30.000 LTL in non-pecuniary damages. The Appellate Court upheld the first instance court's judgment.
---	--

Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1

Case title	Civilinė byla Nr. 2-1450-553/2008 The decision was not appealed and should be considered final.
Decision date	March 20, 2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vilniaus miesto 2 apylinkės teismo 2008 m. kovo 20 d. nutartis civilinėje byloje Nr. 2-1450-553/2008 [Vilnius city 2 nd Regional court, Decision of March 20, 2008, Case No. 2-1450-553/2008].
Key facts of the case (max. 500 chars)	For a long time the claimant was suffering due to the contradiction between her physical and psychological sex. After finding out that no treatment was accessible in Lithuania, the claimant moved to Ireland, where she was diagnosed with the gender identity disorder ICD-10 and assigned drug treatment. In 2005, two years later, the claimant underwent male to female gender-reassignment surgery in Thailand. Following the surgery, she continued to be treated with drugs and attended psychotherapy sessions in Ireland. In 2005, following the surgery, she requested Vilnius Civil Registry Office to change her personal identification entries (name, family name, personal identification code, and sex), but was refused.
Main reasoning/argumentation (max. 500 chars)	The claimant filed a complaint with the court requesting to oblige the civil registry office to change her personal identification entries.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court ordered to perform a medical expertise in order to confirm that an irreversible gender-reassignment surgery took place. To comply with the order, the claimant had to travel from Ireland to Lithuania with the personal documents where male sex was indicated.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The court granted the complaint and ordered state institutions to change her personal identification entries in the following way: “sex” entry from “male” to “female” “Name” and “Family name” entries from L.G. to E.L.G.</p> <p>The claimant received a new personal identification document (passport) with the entries amended as ordered by the court on May 26, 2008.</p>
---	---

Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 2

Case title	<p>Civilinė byla Nr. 2-12484-466/2011 The decision was not appealed and should be considered final.</p>
Decision date	August 1, 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	<p>Vilniaus miesto 1 apylinkės teismo 2011 m. rugpjūčio mėn. 1 d. nutartis civilinėje byloje Nr. 2-12484-466/2011 [Vilnius city 1st Regional court, Decision of August 1, 2011, Case No. 2-12484-466/2011].</p>
Key facts of the case (max. 500 chars)	<p>The claimant was the applicant in the <i>L. v. Lithuania</i> case.</p> <p>In 2009 a complete gender reassignment surgery was carried out on L. abroad and his sex has been completely changed from female to male. However, the Civil Registry Office refused to change his personal identification entries (birth certificate and personal identification number).</p> <p>The applicant managed to get his name, surname and sex changed before 2000, but his personal code remained unchanged and identified him as female. The Civil Registry Office refused to change his records.</p>
Main reasoning/argumentation (max. 500 chars)	<p>The applicant filed the complaint with the court requesting to order the Civil Registry Office to change his birth certificate records and the personal identification code.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	N/A

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court ordered the Civil Registry Office to change the applicant's birth certificate records, and the Residents' Register Service to change his personal identification code.
---	--

Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 3

Case title	Civilinė byla Nr. 2-13394-640/2009 The decision was not appealed and should be considered final.
Decision date	October 8, 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vilniaus miesto 1 apylinkės teismo 2009 m. spalio 8 d. nutartis civilinėje byloje Nr. 2-13394-640/2009 [Vilnius city 1 st Regional court, Decision of October 8, 2009, Case No. 2-13394-640/2009].
Key facts of the case (max. 500 chars)	In 2007, the claimant was diagnosed with transsexuality. The claimant attended psychotherapy sessions, was planning to undergo gender reassignment surgery, but later she was informed that such surgeries were not performed in Lithuania. In 2008, the claimant underwent male-to-female gender-reassignment surgery in Thailand. The claimant did not receive any post-surgical treatment or care in Lithuania. In 2005, she requested the Vilnius Civil Registry Office to change her personal identification entries (name, family name, personal identification code, and sex), but was refused.
Main reasoning/argumentation (max. 500 chars)	The claimant filed a complaint with Vilnius District Court requesting to oblige the Civil Registry Office to change her personal identification entries.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	N/A
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court granted the complaint and ordered the state institutions to change the applicant's personal identification entries.

Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1

Case title	No case law in this respect ³⁶⁰
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

³⁶⁰ Sources consulted: in Lithuania case-law of the courts of all instances is available online via searchable and daily updated case-law databases used by all legal professionals. The databases are of two types (i) free-access operated by the Governmental institutions; (ii) paid-access operated by the private company “LEXNET”. Both types of case-law databases were consulted filtering the search by the name of the law combined/and not combined with relevant keywords, thus the results present an accurate picture of the jurisprudence or of the absence of it. The following databases were consulted: Infolex.praaktika. <http://www.infolex.lt/tp/>; Eteismai. www.eteismai.lt; Liteko. <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>; Lietuvos aukščiausiojo teismo nutartys (Decisions by the Lithuanian Supreme Court). <http://www.lat.lt/lt/teismo-nutartys/nutartys-nuo-2006-6bt1.html>; Lietuvos aukščiausiojo teismo sprendimai (Decisions by the Lithuanian Court of Appeal). http://www.apeliacinis.lt/lt/teismo-sprendimai_115.html.

Annex 2 – Statistics

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total complaints of discrimination on the ground of sexual orientation (equality body , tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment,	0	0	0	0	0	2	2	18	8	5	3	5	2	0
Total finding of Discrimination confirmed (by equality body , tribunals, courts etc.): if possible disaggregated according to social areas of						1	1	1	0	0	1	1	1	0
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing,						1- warning	1- warning	0	0	0	1	1	1	0
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods									N/A	N/A	Recommendations to discontinue discriminatory practice		N/A	

Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data

³⁶¹ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

Number of LGBT partners who claimed their right to residence but were denied this right	0	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data
---	---	---	---	---	---	---	---	---	---	---------	---------	---------	---------	---------	---------

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation³⁶²

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data

Chapter C, Asylum and subsidiary protection, protection of LGBT partners³⁶³

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data
Number of LGBT partners of persons enjoying refugee/subsidiary protection status	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data

Chapter D, LGBT partners benefiting family reunification³⁶⁴

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of LGBT partners of third country nationals residing in your country	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data

³⁶² The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

³⁶³ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

³⁶⁴ The Migration Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania (*Migracijos departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	0	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data
--	---	---	---	---	---	---	---	---	---	---------	---------	---------	---------	---------	---------

Chapter E, LGBT people enjoyment of freedom of assembly

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades,	0	0	0	0	0	0	0	0	0	1	1	0	1	1
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	0	0	0	0	0	0	1	0	0	1

Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court cases regarding homophobic hate speech initiated	No data	No data	No data	0	0	0	0	15	36	22	148	No data	No data	No data
Number of convictions regarding homophobic hate speech (please indicate)								1	No data	No data	No data	No data	No data	No data
Range of sanctions issued for homophobic hate speech									No data	No data	No data	No data	No data	No data
Number of non-criminal court cases initiated for homophobic statements	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data	No data

Chapter F, Homophobic motivation of crimes as aggravating factor³⁶⁵

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court decisions in which homophobic motivation was used as an	0	0	0	0	0	0	0	0	No data	No data	No data	No data	No data	No data

³⁶⁵ ³⁶⁵ The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania does not collect such data. Lithuania, Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania (*Informatikos ir ryšių departamentas prie Lietuvos Respublikos Vidaus reikalų ministerijos*) (2014), Communication of NFP-Lithuania, 19 February 2014.

Chapter G, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of name changes effected due to change of gender	0	0	0	0	0	0	0	0	1	1	0	1	0	0
Number of persons who changed their gender/sex in your country under the applicable	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		The constitutionality of the Forced/ automatic divorce will be examined by the Constitutional Court in 2014.

										(see case Court of Cassation (<i>Corte di Cassazione</i>) no. 14329, 6 June 2013).	
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.	
LU										No provisions in force, praxis varies.	
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.	
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis	
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.	
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice	
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected	
RO				✓	✓	✓	✓				
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board	
SI										No formalities for change of name	
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.	
UK										Change of name requires no formalities	
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex	

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✖=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ³⁶⁶	All areas of RED [*]		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	

³⁶⁶ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ³⁶⁶	All areas of RED*		
IT	✓			✓	Minister of Public Administration's Decree 31 May 2012 has extended the competence of UNAR from the field of discrimination based on the grounds of race and ethnic origin to include discrimination based on the grounds covered in Directive 2000/78. Therefore, in relation to sexual orientation, it operates only in the field of employment.
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to 'gender identification'.
DE			✓	Constitutional amendment proposal by opposition ('sexual identity')
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to 'other issues related to gender'.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered 'sex' discrimination. The new ground 'transgender identity or expression' now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the 'gender reassignment' protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under "medical supervision" and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category ‘groups of society’. Penal Code was amended to include hate motivated crimes against ‘certain groups of society’. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people. A bill is currently under discussion in Parliament (Italy, Senate, Bill on the fight of homophobia and transphobia (Disposizioni in material di contrasto all’omofobia e alla transphobia) no. 1052),

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ³⁶⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU <i>acquis</i> , confirms the notion that a family member includes the <i>de facto</i> partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities’ discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.

³⁶⁷ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement ³⁶⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT	✓	✓	✓	✓	✓	✓	<p>Article 2 para. 4 of the Law on the Legal Status of Aliens (entered into force on 29.04.2004) provides that . “[f]amily members of a citizen of an EU Member State” shall mean “the person’s spouse or the person with whom a registered partnership has been contracted, his direct descendants who are under the age of 21 or are dependants, including direct descendants of the spouse or person with whom the registered partnership has been contracted, who are under the age of 21 or those who are dependants, the dependent direct relatives in the ascending line of a citizen of an EU Member State, of the spouse or of the person with whom the person has contracted a registered partnership”.</p> <p>Article 4 para. 22 of the same Law provides that “Family members of an asylum applicant” shall mean “the spouse of the asylum applicant or the person with whom a registered partnership has been contracted, the children of the couple or one of them (adopted children irrespective of whether they have been adopted according to the legal acts of the Republic of Lithuania) (hereinafter – children) under the age of 18, on condition that they are not married, as well as the father (adoptive father), mother (adoptive mother) (hereinafter – father, mother) or a guardian (custodian) of the minor asylum applicant, where the family already existed in the country of origin and the family members are present in the territory of the Republic of Lithuania during the examination of the asylum application.</p> <p>Article 4 para. 26 of the same Law provides a definition of a “family member” (applicable to the third country nationals who do not fall within the definition an “asylum seeker”) which is “the spouse or the person with whom a registered partnership has been contracted, children (adopted children) (hereinafter – children) under the age of 18, including the children under the age of 18 of the spouse or the person with whom a registered partnership has been contracted, on condition that they are not married and are dependent, as well as direct relatives in the ascending line who have been dependent for at least one year and are unable to use the support of other family members resident in a foreign country.”</p>
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.

Country Codes	Free movement ³⁶⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	8	15	8	13	8	12	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.