

Submission to the United Nations Human Rights Council for its
Universal Periodic Review

LITHUANIA

The Status of Lesbian, Gay, Bisexual and Transgender Rights

INTRODUCTION

This information is submitted by ILGA-Europe¹ and the Lithuanian Gay League (LGL)² in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual and transgender (LGBT) people in Lithuania.

OVERVIEW

1. HOMOPHOBIC LEGISLATIVE INITIATIVES THREATENING FREEDOM OF EXPRESSION

1.1. Law on the Protection of Minors against the Detrimental Effect of Public Information

The seemingly fundamental homophobic undercurrent within the Lithuanian parliament (Seimas) voiced itself in September 2007. An amendment was tabled to provide that the Law on the protection of Minors against Detrimental Effect of Public Information should prevent the “propagation of homosexuality” to minors. This amendment was initially backed by a majority of the Parliament, despite criticism from European institutions and civil society.³

In its original version the law amendment prohibited the publication of “information which propagates homosexual, bisexual and polygamous relations” in places including schools, public spaces and media which are accessible to persons under 18 years of age. In the light of international criticism and the misgivings of the Lithuanian President, the law was amended again on 28 December 2009, before entering into force.

The final version of the amended Law came into effect on 1 March 2010.⁴ Among other topics deemed unfit for minors is information “which promotes sexual intercourse” (Article 4(15)) and

¹ ILGA-Europe, the European Region of the International Lesbian, Gay, bisexual, trans and intersex Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 47 European countries.

² Association Lithuanian Gay League (LGL) was founded in Vilnius, Lithuania in 1995 and is the only NGO in Lithuania working specifically for the rights of LGBT people.

³ Amnesty International, Public Statements - <http://www.amnesty.org/en/region/lithuania?page=3>

⁴ Law on the Protection of Minors against the Detrimental Effect of Public Information - Nr. XI-333, 2009-07-14, Žin., 2009, Nr. 86-3637 (2009-07-21) - http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=362891 [25-02-

information "which scorns family values and promotes the concept of marriage and family formation, other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania." (Article 4(16)). According to the Lithuanian Constitution, marriage is based on free agreement between a man and a woman, but it doesn't give the exact definition of what it should be. There is no family definition in the Civil Code either, and the chapter applying to legal family relations only includes rights and obligations for spouses, children and parents.

In view of the resolution⁵ of the European Parliament of 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information as well as the resolution⁶ of 19 January 2011 on the violation of freedom of expression and discrimination on the basis of sexual orientation in Lithuania, specific and consistent actions must be taken to improve the situation of the LGBT community in Lithuania.

RECOMMENDATIONS

We urge the Lithuanian Government to:

- Remove discriminatory articles from the Law on the Protection of Minors against the Detrimental Effect of Public Information
- Ensure that public information serves to enhance understanding of and respect for diverse sexual orientations and gender identities, including the particular needs of minors, their parents and family members related to these grounds
- Take necessary legislative measures and policies to recognise the diversity of forms of family

1.2. Law on the Amendment of the Code on Administrative Offences with new article "Public promotion of homosexual relations"

In June 2009 MP Petras Grazulis introduced legislative amendments to the Administrative and Penal Codes, to criminalize the promotion of homosexual relations in public places. He proposed a new Article 310(1) in the Penal Code⁷ which states that "a person promoting homosexual relations in public places is committing a criminal offense which is punishable with community work or a fine or imprisonment"; and a new Article 214(30) in the Code of Administrative Offences⁸ which states that "the promotion of homosexual relations or financing of the promotion in public places is to be punished by a fine from one thousand to five thousand litas."

However, on 19 October 2010, MP Petras Grazulis withdrawn these amendments and submitted a new bill two days later: bill No. XIP-2595 to amend Code of Administrative Offences with a

2011], Amendments: *Nr. XI-594, 2009-12-22, Žin., 2009, Nr. 154-6959 (2009-12-28)* -

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=361998

⁵

http://www.atviri.lt/index.php/news/european_parliament_resolution_of_17_september_2009_on_the_lithuanian_law_on_the_protection_of_minors_against_the_detrimental_effects_of_public_information/2526 [25-02-2011]

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0019+0+DOC+XML+V0//EN>

⁷ Amendment registered under number XIP-668(2) and entitled "Promotion of homosexual relations in public places"

⁸ Amendment registered under number XIP-667(2) and entitled "Promotion of homosexual relations or financing of promotion in public places,"

new Article 214 (30).⁹ This amendment would introduce a new Article in the Code on Administrative Offences, on “Public promotion of homosexual relations“; it states that “public promotion of homosexual relations is to be punished by a fine of two thousand to ten thousand litas (€580 - €2900, \$792 - \$3955)". The right to draw up reports on administrative offences is exercised by officers of the interior and the police¹⁰. District (city) courts (judges of local courts) shall examine the cases of administrative offences provided for in Article 214 (30) afterwards.

According to the initiators of the bill, its purpose is “to assert that there would be administrative responsibility for public defiance of just and harmonious society values, and public encouragement to score them“.¹¹ MP Petras Grazulis argues that this proposal is implementing the Law on the Protection of Minors against the Detrimental Effect of Public Information.

In a first reading on 12 November 2010 Lithuania's parliament decided to go ahead with legislation: 31 legislators voted in favour and 7 were against the draft law.¹² It could now be voted into law, despite the fact that both the Ministry of Justice and the president have condemned the bill. On 12 January 2011 the government has issued a statement expressing its opposition to the draft legislation, saying that "the provisions of the bill are contrary to both international and EU law". This statement was published in the State's gazette (“Valstybes Zinios”) on 21 January. However, this question is still on the Parliament's agenda, and it could be adopted during the spring session, even if the actual schedule remains unclear.

RECOMMENDATIONS

We urge the Lithuanian Government to:

- Reject discriminatory law initiatives and ensure freedom of expression for all, including LGBT people
- Encourage a constructive public and political debate on the rights of LGBT people
- Encourage Lithuanian Equal Opportunities Ombudsperson to be more proactive combating discrimination and initiating political debate on LGBT rights

1.3. Law on amendment of the Law on Provision of Information

On 18 October 2010 a new Law amending the Law on Provision of Information came into effect.¹³ It is now stated in the Law that advertising and audiovisual commercial communication must not contain manifestation or promotion of sexual orientation¹⁴. These provisions,

⁹ Law Amendment Project No. XIP - 2595

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383747&p_query=Homoseksuali%F8%20santyki%F8&p_tr2=1

¹⁰ According to the Articles 259, 259(1), 260 and 260(1) of the Code on Administrative Offences and Articles 1 and 2 Law of the Amendment of the Code on Administrative Offences in the cases of administrative offences, which are examined by the bodies referred to in Articles 221 and 224 of the Code, the right to draw up reports of administrative offences shall be exercised by officers of the interior and the police

¹¹ Explanatory letter (Law Amendment Project No. XIP – 2595)

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=383749

¹² http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-9810

¹³ http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=382799 [25-02-2011]. The full name of the adopted law is: Law on amendment of Articles 2, 5, 19, 22, 25, 26, 28, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 44, 47, 48, 49, 50, 52, and 54 and the Annex to the Law on Provision of Information and supplement of the Law with Articles 34(1), 34(2), and 40(1) and a new section three

¹⁴ The amended Article 39 of the Law on Provision of Information states that advertising and audiovisual commercial communication must not prejudice respect for human dignity, discrimination on grounds of race, sex or

according to the definitions provided by Article 2 of the same law, apply to all forms of TV and non-TV commercial communication and advertising.

This law goes even further than the amendments to Law on the Protection of Minors against the Detrimental Effect of Public Information, since this Law applies not only to information to minors, but information in general. This Law is obviously meant to restrict information and “promotion” of homosexual relationships and there is a great possibility that this will be used in the future against LGBT related information. This issue was raised in public by LGL on 8 November 2010 in an article published on the news portal *Delfi*.¹⁵ The position of the government¹⁶ was mentioned in this article. A representative of the competent Ministry reacted by stating there had been no intention to amend the law this way and that part of the Law Article wasn’t meant to be amended at all. He said that it must have been a mistake of correction by linguists. V. Stundys, Chairman of Committee on Education, Science and Culture of the Seimas also said that there must have been a technical mistake by linguists. He said that it should be corrected in time.

However, despite these attempts by competent authorities to understate the consequences of the new provisions, no corrections were made until now. Only one MP, A. M. Pavilioniene, came up with a personal initiative on 11 February 2011 (Project No. XIP-2911) to amend Article 39 by removing discriminatory wording¹⁷.

RECOMMENDATIONS

We urge the Lithuanian Government to:

- Remove discriminatory article from the Law on Provision of Information
- Ensure that public information serves to enhance equality, tolerance and respect for human rights for all, including LGBT people

2. ATTEMPTS TO RESTRICT FREEDOM OF EXPRESSION

2.1. Notable incidents in 2007

The first notable incident in 2007 happened in May after the LGL used a substantial amount of funding to display advertisements encouraging tolerance towards lesbian and gay workers, on the trolleybuses in Kaunas and Vilnius. The action was followed by a press release issued by the Mayor of Vilnius stating that “We do not approve the public demonstration of homosexual ideas in the city of Vilnius” , and the blunt refusal of bus drivers in Kaunas to drive the buses.

In the same month, the anti-discrimination truck sponsored by the European Union, which was touring Europe in the frame of the EU Year of Equal Opportunities for All, was refused permission to stop in Vilnius. The city authorities claimed their decision was justified based on the security risk that the public’s potential disapproval would create.

ethnic origin, nationality, citizenship, religion or faith, disability, and age, neither must it contain manifestation or promotion of sexual orientation, be offensive to religious or political beliefs, encourage behaviour prejudicial to health and safety, or behaviour largely detrimental to environmental protection.

¹⁵ *Delfi* news portal <http://verslas.delfi.lt/Media/gejai-pasipiktino-reklamos-cenzura-seimas-teisinasi-technine-klaida.d?id=38310085>

¹⁶ Ministry of Culture which submitted the project to amend the law

¹⁷ http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_1?p_id=392410

Another incident also involved the authorities withholding permission for another public event planned by LGL in conjunction with ILGA-Europe's annual conference, which took place in Vilnius in October 2007. The planned event included the display of a rainbow flag by the conference delegates in the Town Hall Square. Permission for the gathering was refused, officially because of the security risk that the ongoing construction works in the square constituted. Shortly after the decision of the city authorities, LGL took the question to Vilnius court. When the latter decided to uphold the ban, the former took the case to a higher court. It was defeated a second time. However, the event couldn't take place anyway - it was already too late.

2.2. The case of the Baltic Pride Vilnius 2010

The Law on the Protection of Minors against the Detrimental Effect of Public Information was already used to try to ban the first LGBT pride event ever organised in Lithuania, which finally took place as planned on 8 May 2010: in March 2010, 53 (out of 141) Lithuanian Parliamentarians signed a petition calling for the authorisation for the march to be revoked on the grounds that it would violate this new law.

However, the most serious threat arose less than a week before the event. On 3 May 2010 Raimondas Petrauskas, Lithuania's Interim Prosecutor General and Stanislovas Buškevičius, member of the Kaunas City Council applied to the court to ban the Baltic Pride/March for Equality scheduled for 8 May, which was previously authorized by the Mayor of Vilnius. The Prosecutor General based his request on the ground that '<...> *the health of people participating in the march may be damaged by organising the meeting <...>*'. However, he failed to provide reasonable proof. Moreover, the 'data' provided in the application of the Prosecutor General was in contrast with the public statements of 05/05/2010 of the Mayor of Vilnius, Juozas Navickas¹⁸, of 04/04/2010 of the Deputy Chief of the Police, Saulius Skvernelis¹⁹, and of 04/04/2010 of the Chief of the Police of Vilnius District, K. Lančinskas²⁰. In their statements, these officials had maintained that the police were ready to ensure public order and security in the event.

On 5 May the lower Vilnius Regional Administrative Court, having investigated the applications lodged, decided to accept the applicant's requests and to suspend the validity of Clauses 1–4 of executive order No. 40-352 of 23/04/2010 of the director of Vilnius City Municipal Administration 'Regarding permission to organize the march "For Equality"' until the day of the court ruling coming into effect. On the same day Baltic Pride organizers submitted separate appeal regarding the decision by Vilnius Regional Administrative Court. Lithuania's Supreme Administrative Court overruled the Vilnius Regional Administrative Court decision on 7 May. The court finally said that European Union law obligates the nation to protect the rights to free expression and assembly and "the state has a duty to ensure the right to peaceful assembly, even of people whose opinions are not popular or represent minorities".

RECOMMENDATIONS

We urge the Lithuanian Government to:

- Ensure freedom of expression and right to assembly for all, including LGBT people

¹⁸ <http://www.alfa.lt/straipsnis/10355592/?Geju.eitynes.pakibo.ant.plauko=2010-05-05>

¹⁹ <http://www.diena.lt/naujienos/miestas/policija-dar-karta-patikino-esanti-pasirengusi-geju-eitynems-276690>

²⁰ <http://www.delfi.lt/news/daily/lithuania/vilniaus-policijos-vadovas-policija-yra-pasirengusi-uztikrinti-viesaja-tvarka-per-eitynes.d?id=318381651>

- Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity
- Ensure that perpetration of such violence is vigorously investigated, and that those responsible are prosecuted, tried and duly punished
- Encourage a public debate and undertake campaigns of awareness-raising on the rights of LGBT people, discrimination and hate crimes

3. ABSENCE OF GOVERNMENTAL RESPONSE TO ENFORCE THE HUMAN RIGHTS OF LGBT PEOPLE

Recommendation CM/Rec (2010)5 of 31 March 2010 of the Committee of Ministers of the Council of Europe ‘to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity’ proposes to review existing legislative and other measures in line with the requirements of the Recommendation in order to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them²¹. On 20 January 2011, the association LGL called on the President²² of the Republic of Lithuania and the Prime Minister²³ to form an interdepartmental work group for the preparation of an action plan for implementation of the requirements laid down in the Council of Europe’s recommendation.

On 14 February 2011 Ministry of Social Security and Labour issued a response (No. (21.4.7-82) SD – 1001) stating that “there are no discriminative norms in Lithuanian legal acts and they are in accordance with legal acts of European Union”, so there is no need to form working group for analysis of Lithuanian law. On 22 February 2011 Office of the President of the Republic of Lithuania responded similarly, also stating that Recommendation CM/Rec (2010)5 is recommendatory and it is not clear what such working group should do and achieve (No. (1D-270)-2D-1154).

It must be noted that in the spring 2009 the Government of the Republic of Lithuania has adopted the national antidiscrimination programme 2009–2011 which seeks to develop society’s tolerance and mutual understanding regarding gender, age, sexual orientation, race, ethnicity, religion, beliefs, and disability and to improve the legal framework on anti-discrimination.²⁴ According to this programme, more favourable conditions are to be created for the activities of associations defending human rights; research in the area of discrimination is to be initiated, and information and education campaigns on anti-discrimination are to be organised. However, implementation of this programme has been in jeopardy from the start.

RECOMMENDATIONS

We urge the Lithuanian Government to:

- Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity
- Form an interdepartmental work group for the preparation of an action plan for implementation of the requirements laid down in the Council of Europe recommendations, specifically Recommendation CM/Rec (2010)5 of 31 March 2010.

²¹ <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>

²² http://www.atviri.lt/uploads/files/dir113/dir5/15_0.php

²³ http://www.atviri.lt/uploads/files/dir113/dir5/16_0.php

²⁴ http://www.lrvk.lt/bylos/Teises_aktai/2009/04/12493.doc