

**Monitoring Implementation of
the Council of Europe Recommendation CM/Rec(2010)5 to member
states on measures to combat discrimination on grounds of sexual
orientation or gender identity**

**DOCUMENTATION REPORT
LITHUANIA**

2013

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Table of Contents

GLOSSARY.....	3
I. EXECUTIVE SUMMARY.....	5
II. SUMMARY OF KEY FINDINGS.....	6
THE RECOMMENDATION.....	6
APPENDIX TO RECOMMENDATION CM/Rec(2010)5	7
<i>i. Right to life, security and protection from violence.....</i>	<i>7</i>
<i>ii. Freedom of association.....</i>	<i>9</i>
<i>iii. Freedoms of expression and peaceful assembly.....</i>	<i>9</i>
<i>iv. Respect for private and family life (excluding specific transgender issues).....</i>	<i>11</i>
<i>v. Respect for private and family life and access to health care – specific transgender issues.....</i>	<i>12</i>
<i>vi. Employment.....</i>	<i>14</i>
<i>vii. Education</i>	<i>14</i>
<i>viii. Health – other than transgender specific health issues.....</i>	<i>15</i>
<i>ix. Housing.....</i>	<i>16</i>
<i>x. Sports.....</i>	<i>17</i>
<i>xi. Right to seek asylum.....</i>	<i>17</i>
<i>xii. National human rights structures.....</i>	<i>18</i>
I. RECOMMENDATIONS.....	19
II. INTRODUCTION.....	22
BACKGROUND.....	22
PURPOSE OF THE REPORT	23
METHODOLOGY	23
III. COMPLIANCE DOCUMENTATION REPORT.....	25
RECOMMENDATION	25
APPENDIX TO RECOMMENDATION CM/Rec(2010)5	34
<i>I. Right to life, security and protection from violence.....</i>	<i>34</i>
<i>II. Freedom of association.....</i>	<i>48</i>
<i>III. Freedom of expression and peaceful assembly.....</i>	<i>55</i>
<i>IV. Right to respect for private and family life.....</i>	<i>65</i>
<i>V. Employment.....</i>	<i>75</i>
<i>VI. Education.....</i>	<i>79</i>
<i>VII. Health.....</i>	<i>83</i>
<i>VIII. Housing.....</i>	<i>91</i>
<i>IX. Sports.....</i>	<i>93</i>
<i>X. Right to seek asylum.....</i>	<i>96</i>
<i>XI. National human rights structures</i>	<i>100</i>
APPENDIXES	103
• RECOMMENDATION CM/Rec(2010)5.....	103
• APPENDIX TO RECOMMENDATION CM/Rec(2010)5	105
ABOUT LITHUANIAN GAY LEAGUE	111

Glossary¹

Gender identity refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as "transgender" persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

Gender reassignment treatment refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

Hate crime towards LGBT persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

Hate-motivated incident are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

Hate speech against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for

¹ Council of Europe, Thomas Hammarberg, Discrimination on grounds of sexual orientation and gender identity in Europe, Report, 2nd edition, Appendix: terms and concepts, pp. 129-132, 2011, available at: <http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf>, visited on 18 June 2012.

example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

Homophobia is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

Intersex people are persons who are born with chromosomal, hormonal levels or genital characteristics which do not correspond to the given standard of “male” or “female” categories as for sexual or reproductive anatomy. This word has replaced the term “hermaphrodite”, which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

LGBT people or LGBT persons is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

Multiple discrimination describes discrimination that takes place on the basis of several grounds operating separately.

NGO is the abbreviation for “non-governmental organisation”.

Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

Transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners.

Transgenderism refers to the fact of possessing a transgender identity or expression.

Transphobia refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

I. Executive Summary

With accession of the Republic of Lithuania to the European Union in 2004, Lithuania has implemented the main legislative acts of the EC in the sphere of anti-discrimination. The main Law ensuring equality and non-discrimination – the Law on Equal Treatment – was adopted in 2003. Although the Law includes sexual orientation as one of the grounds of prohibited discrimination, gender identity is not covered by the Law. In fact, none of the national laws addressing the issue of discrimination includes the ground of gender identity.

The situation of transgender persons remains of serious concern. Despite the European Court of Human Rights' judgment in the case *L v. Lithuania* in 2007, the needed law for establishing the conditions and order for gender reassignment has not been adopted. The legal vacuum prevents transgender persons from medical services and precludes them from obtaining new identity documents in a “quick, transparent and accessible” way as required by the Recommendation.

A high level of intolerance towards the LGBT community results in a very passive defence of violated rights. Very few complaints of discrimination based on sexual orientation have been submitted to the courts or Equal Opportunities Ombudsperson. Complaints on the ground of sexual orientation form on average only about 2% of all received complaints by the Equal Opportunities Ombudsperson. The homophobic attitudes of society are illustrated by the highest number of investigations for incitement to hatred based on sexual orientation (mostly online). Instead of taking a firm stand and advocating for inclusion, tolerance and promotion of LGBT rights, public authorities initiate a number of legislative amendments that interfere mainly with the LGBT community's freedoms of speech, expression and assembly. Some politicians do not refrain from making openly homophobic and transphobic statements in public and no evident initiatives have been made by Government officials to condemn them. The LGBT community's exercise of the basic rights and especially freedom of expression and assembly remains complicated. Nevertheless, some improvement could be noticed in this regard – while some public events in 2006 and 2007 were prohibited on overtly homophobic grounds. The approval for the event of Baltic Pride was finally issued by the Supreme Administrative Court in 2010.

Same-sex couples do not enjoy any form of legal recognition of their relationships in Lithuania, thus resulting in a situation of both direct and indirect discrimination.

No measures have been adopted to address the issues of discrimination based on sexual orientation or gender identity in employment, education, housing or sports. In the field of health protection the specific needs of the LGBT community remain largely disregarded.

Although under the national law it seems that an application for asylum status could be obtained on the basis of existing well-founded fear of persecution based on sexual orientation or gender identity, no information is available on whether this possibility has been exercised.

Cooperation between the state authorities and LGBT organisations leave room for improvement – public authorities have shown no initiative or willingness to actively engage in and cooperate with LGBT organisations when considering legislative acts or measures that may directly affect the rights of the LGBT community.

Overall, it could be concluded that the implementation of the Recommendation CM/Rec(2010)5 by Lithuanian state authorities is rather passive. None of the state institutions that were inquired had indicated that certain legislative acts would be initiated or certain measures or policies would be adopted as a result of the adopted Recommendation.

II. Summary of Key Findings

The Recommendation

The Recommendation includes four main steps: (i) a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity; (ii) introduction of effective measures to combat such discrimination; (iii) ensuring that victims have access to effective legal remedies, and (iv) ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

The Compliance Documentation Report reveals that the Lithuanian Government only partly implements the provisions of the Recommendation. No measures have been adopted to ensure the review of existing laws and policies seeking to eliminate any discrimination on grounds of sexual orientation or gender identity. The legislative initiatives in the past few years indicate the worrying tendency for reoccurring attempts to adopt laws that in the view of human rights defenders violate the rights of the LGBT community.

The EU Directive 2000/78/EC was transposed to the Lithuanian legal system by adopting the Law on Equal Treatment in 2003 prohibiting, *inter alia*, discrimination on the ground of sexual orientation. This ground is also included in the provisions of the Criminal Code criminalizing discrimination and incitement to hatred; it is mentioned

among the principles of the Labour Code and provisions of the Code on Administrative Violations. However, none of the legal acts includes the ground of gender identity. In addition, the European Court of Human Rights in 2007 in the case *L v. Lithuania* found Lithuania in violation of Article 8 of the Convention for the failure to adopt the Law on Gender Reassignment under Article 2.27 of the Civil Code. The needed Law remains not adopted, and the legislative amendments submitted to the Parliament seek to remove the provision from Article 2.27 of the Civil Code foreseeing the duty for the legislature to adopt the implementing Law.

State authorities have not translated the Recommendation and its Appendix and there is no supporting evidence for its dissemination among the main stakeholders. Although the Ministry of Social Security and Labour indicated that the Recommendation has been translated², it has not been published in the Ministry's website or made available in the legislative database.

Appendix to Recommendation CM/Rec(2010)5

i. Right to life, security and protection from violence

a. "Hate crimes" and other hate-motivated incidents

The key recommendations in Section I. (a) of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of other legislative and other measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crime legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field. In total, some 17 measures are identified under this heading in the Compliance Documentation Report.

According to the information submitted by the Police Department, trainings provided to the police officers are more of a general nature and do not address specific issues of sexual orientation and gender identity. The same lack of specialised trainings is noticeable in the trainings for staff in detention facilities. No independent institution has been established for receiving and investigating hate crimes or hate motivated incidents allegedly committed by law enforcement staff.

Provisions of the Criminal Code prohibit incitement to hatred based on sexual orientation (Article 170) and establishing groups and organisations which aim at discriminating against a group of persons or inciting against them on the basis of sexual orientation; under Article 60 (12) (1) of the Criminal Code acts committed in order to express hatred on the basis of sexual orientation are considered as an aggravating

² Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for implementation of CoE Recommendation CM/REC(2010)5".

circumstance; none of these provisions include the ground of gender identity. Accordingly, no data is collected on hate crimes committed on the ground of gender identity. A special division within the Prosecution Service that was in charge of investigating hate crimes and collecting data was dissolved and its functions distributed among other divisions. Statistics on hate crimes committed on the basis of sexual orientation are available on the website www.ird.lt. However, it's not easy to find needed information.

There is a lack of internal regulations foreseeing treatment of victims or witnesses in cases of hate crimes based on sexual orientation and gender identity. An incident reported by LGL in 2007 shows the need for such regulations due to the failure by the police to conduct an effective investigation when a smoke bomb was thrown into an LGBT night club. The investigation was terminated even though the perpetrators had admitted in the media that this act was motivated by anti-gay prejudice. The lack of tolerance shown by police officers was emphasized in a study made in the Baltic Antidiscrimination Project in 2002.

In general, the levels of intolerance and hostility towards the LGBT community in Lithuania remain high, and recent studies indicate that less than a quarter of gay men in Lithuania are open about their sexual orientation.

No special legal provisions have been adopted in order to regulate the placement of transgender persons in detention facilities or aiming at better securing their rights.

b. "Hate speech"

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, and guidelines to government officials to refrain from such speech and indeed to promote respect for the human rights of LGBT people. In all, some nine measures are identified under this heading in the Compliance Documentation Report.

Incitement to hatred is prohibited by Criminal Code provisions. However, it includes only the ground of sexual orientation, and does not cover gender identity. There are no instances of public officials condemning homophobic or transphobic statements. No guidelines have been issued requiring public officials to refrain from homophobic speech or encouraging them to promote tolerance and respect for human rights of LGBT individuals. On the contrary, state authorities have expressed their hostile views towards the LGBT community on a number of occasions. Regarding promotion of good practices by media and internet service providers, some internet news portals started to include warning notifications when providing readers with the opportunity to place their comments online. Statistics show that most instances of incitement to hatred, violence and contempt are made on the basis of sexual orientation and occur online.

ii. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

The evidence presented in the Compliance Documentation Report indicates partial compliance with these requirements. LGBT organisations are able to gain official registration. LGL notes a lack of interest from the state authorities to cooperate with LGBT organisations when framing and implementing public policies directly affecting LGBT persons. Nevertheless, LGL takes every opportunity to express its views to public authorities through all possible means. LGBT organisations are able to access public funding earmarked for NGOs, which however is very limited and insufficient to assist in addressing discriminatory attitudes within society. While the state authorities are giving due priority to supporting projects that address issues of discrimination on all anti-discrimination grounds and as LGBT issues in such projects are barely touched, LGBT organisations do not receive the necessary support to address LGBT issues adequately.

iii. Freedoms of expression and peaceful assembly

This section of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

Overall, the situation with regard to freedom of expression has been acceptable, apart from occasionally initiated legislative amendments aimed at prohibiting "homosexual propaganda". There were no attempts made by public authorities to denounce publicly interference with LGBT people's right to freedom of assembly, whether resulting from prohibitions to conduct awareness raising campaigns in 2007 or with encountered obstacles in gaining permission from the Vilnius municipality for the Baltic Pride march in 2010.

Freedom of expression

National legislation contains general guarantees for freedom of expression. The Lithuanian mass media has gradually started to present LGBT issues in a more respectful and objective way. Nevertheless there has been no attempt made by public authorities to encourage pluralism and non-discrimination.

On the contrary, the past few years have been characterized not by the increased public visibility of the LGBT community, but rather by attempts to limit the freedom of expression and the principle of non-discrimination with regard to the LGBT groups and individuals. LGL faced interference with its freedom of expression with regard to the organisation of a photo exhibition in Juodkrante in 2006, several planned public actions in 2007 and the organisation of Baltic Pride in 2010.

In the past few years a number of legislative initiatives have sought to limit LGBT people's right to freedom of expression, including: (i) Amendment to the Law on the Protection of Minors against Detrimental Effect of Public Information; (ii) Amendments to the Code of Administrative Violations; (iii) Amendment to the Law on the Provision of Information to Public. These legislative initiatives are a worrying sign of the presence of homophobic attitudes towards the LGBT community within the national legislature. After some debates the finally adopted amendment to the Law on the Protection of Minors against Detrimental Effect of Public Information still contains a contradictory provision (Article 4 (2)(16)) recognising information as having detrimental effect which "expresses contempt for family values, encourages the concept of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania". Considering that under provisions of the Constitution and the Civil Code marriage is allowed only between two individuals of different sex, it may be assumed that any advocacy for LGBT family rights would be seen as contravening this legal provision. In addition, the final amendments to the Law on the Provision of Information in Public still contain the prohibition of advertising and audio-visual communication that could be regarded "offensive to religious or political beliefs".

The lack of encouragement for non-discrimination and respect for LGBT people's right to the freedom of expression was demonstrated by the public authorities when the Parliament failed to lift the parliamentary immunity of two MPs, who in opposition to the Baltic Pride 2010 event violated the law by trying to break through the cordon. Upon the request of the General Prosecutor, the Parliament did not vote in favour of removing the legal immunity of the MPs in question and subjecting them to criminal liability.

Freedom of assembly

Legal provisions regulating freedom of assembly are embedded in the Constitution of the Republic of Lithuania and the Law on Peaceful Assembly. Although the law protects the freedom of assembly, in practice the LGBT community faces difficulties in its exercise. The grounds most often applied by local public authorities for banning undesirable LGBT events have been protection of family values, public order or security.

Baltic Pride 2010 was nearly prohibited from taking place by challenging it before national court and requesting for application of interim measures on the ground of inability to provide security for the event due to strong opposition. The Supreme

Administrative Court of Lithuania accepted LGL's appeal and rejected this request. Although the decision of the court was a positive sign, it has to be noted that the ultimately issued approval of the event was challenged before the court and that the request for interim measures was submitted by the General Prosecutor. In addition, more than one third of the MPs openly expressed their opposition to the event.

Cooperation with the police forces at Baltic Pride 2010 was efficient and effective. Nevertheless, it remains to be seen whether the same good practice will apply to the organisation of other public events in the future.

There are no examples of public officials denouncing made or attempted interferences with the LGBT community's right to freedom of assembly. On the contrary, homophobic statements were made, for instance, by the mayor of Vilnius in 2007. Some MPs are well known for being very active in opposing any LGBT public event and attempting to prevent them from happening.

iv. Respect for private and family life (excluding specific transgender issues)

Section IV, para. 18, 19, and 23 – 27 of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Apart from the question of criminalisation, Lithuania largely fails to comply with the requirements set in these paragraphs, and the authorities have taken no steps to implement them.

Lithuania has abolished criminal prosecution for voluntary homosexual sexual activity between men contained in the Soviet Criminal Code. The age of consent in Lithuania is the same for both homosexual and heterosexual acts.

Under the Law on Legal Protection of Personal Data, data on a person's sexual life is viewed as a special category of data and is protected from processing except in cases provided by law.

In regard to family rights Lithuania does not recognise the right to marry or to register a civil partnership for same-sex couples. The right to marry and to enter into a civil partnership is recognised only for different-sex couples under the provisions of the Civil Code. However, there is no possibility for different-sex couples to register their partnership as the Legislature has not adopted a Law regulating the conditions and procedure for registration of partnerships. The adoption of such a law has been mainly delayed in fear that it might open the opportunity for same-sex couples to claim the same rights.

The Ministry of Justice as an option proposes that same-sex couples conclude civil contracts certified by the notary for establishing their mutual rights and duties. The

Ministry of Justice is of the view that such a possibility ensures the principle of equality. However, it fails to see the discriminatory nature of the proposal in essence pressuring same-sex couples to behave in a way that is not expected nor required from opposite-sex couples. At present, three draft laws have been submitted to the Parliament regarding the legal regulation of civil partnerships. However, the prospects of adopting the more liberal draft law (No. XIP-3687), including same-sex couples, remain poor and the draft law itself has received contradictory opinions within the LGBT community.

Regarding the prospects for adoption by same-sex couples, Lithuanian legislation governing parental responsibility or guardianship of a child through adoption by a single person makes no reference to sexual orientation or gender identity. The authors of this report are not aware of any claims of discrimination based on sexual orientation or gender identity in this regard. However, in 2000 LGL was aware of a case where a woman lost the custody of her child following a divorce. She believed that she was not granted the child's custody because of her revealed sexual orientation during the trial, although those reasons were not stated in the judgment of the court. Same-sex couples have no right to adoption under the Civil Code. In exceptional cases, single persons may be allowed to adopt. LGL is not aware of cases where a single person from the LGBT community was rejected for adoption of a child or was granted the adoption.

The absence of any legal recognition of same-sex couples and their children means that children brought up by same-sex couples could be denied protection of their interests (e.g., guardianship of a non-biological parent over a child in a case of severe disease of a biological parent, or the right to parental leave in cases where a biological parent cannot take leave).

Since adoption of the Recommendation the authors of this report have not identified any steps taken by the Lithuanian authorities in order to implement the Recommendation and improve the situation of the Lithuanian LGBT community discussed in this section.

v. Respect for private and family life and access to health care – specific transgender issues

Section IV of the Appendix, paras 20, 21 and 22, and Section VII, paras 35 and 36 require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition (including any of a physical nature) that are abusive, and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Lithuania does not comply with the requirements concerning legal gender recognition. The legislature has not adopted the law on gender reassignment in compliance with Article 2.27 of the Civil Code that imposes the duty on the legislature to adopt the law regulating the order and conditions of gender reassignment. This legal vacuum continues to exist despite the European Court of Human Rights judgment in the case of *L v. Lithuania* in 2007 recognising Lithuania in breach of Article 8 of the Convention for not adopting the needed law.

Article 2.27 of the Civil Code allows any non-married person to change his or her legal gender if this is medically possible. However, the second paragraph states that the procedures for changing gender should be established by law. In addition, Article 2.27 of the Civil Code, foreseeing that a person must not be married, precludes married transgender persons from gender reassignment and thus from legal gender recognition. In order to avoid obstacles for legal gender recognition, in a few cases where transgender persons performed gender reassignment operations abroad, they divorced before applying to the courts for the request to issue new identity documents.

Due to the lack of the law, persons who underwent gender reassignment operations abroad face difficulties with the issue of new identity documents due to a given personal code which reveals the person's gender and in general once given is unchangeable. For the issue of a new personal code, passport and other identity documents, transgender persons are forced to apply to the courts. It is highly arguable whether such way of solving the problem meets the standards set by the Recommendation for guaranteeing full legal recognition of a person's gender reassignment in a "quick, transparent and accessible way".

Some members of the Parliament introduced a draft for an amendment to the Civil Code. This would as a result remove the possibility to undergo gender reassignment treatment in the country. As Lithuania has still not implemented the ECtHR judgment *L v Lithuania*, this proposal was intended to remove the legal basis for similar claims.

Due to the lack of a law regulating the conditions and order of gender reassignment, transgender persons cannot receive the necessary medical treatment or perform gender reassignment surgeries. Treatment of transgender persons in general is not covered by the state insurance plans, and transgender persons are not even entitled to free hormonal treatment. The Supreme Administrative Court of Lithuania in a case brought by a transgender person ruled that the person was not entitled to a monetary compensation for a medical operation performed abroad because in the absence of the law, it was not proved that the medical operation was the only appropriate means of treatment in the case. The courts are more inclined however to award non-pecuniary damages for having to apply to the courts for the issue of the new identity documents.

Under the current state of laws, after surgery and the issue of new identity documents, a person should not face problems in the exercise of the right to marry. LGL is not aware

of any cases where after gender reassignment and legal recognition of new gender persons have tried to get married with an opposite-sex person.

vi. Employment

Section V of the Appendix requires member states to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires member states to protect the privacy of transgender individuals in employment.

The Law on Equal Treatment prohibits discrimination based on sexual orientation. However, it does not cover the ground of gender identity. The Law covers the ground of gender, but it is not clear whether the Equal Opportunities Ombudsperson or the national courts would consider the ground of gender as including gender identity when interpreting and applying the Law. Prohibition of discrimination based on sexual orientation in employment is also prohibited in the Labour Code, but also does not include the ground of gender identity. Due to the homophobic environment, most gay people remain “in the closet” and therefore few complaints have been brought to the Equal Opportunities Ombudsperson and to the national courts on the basis of sexual orientation discrimination in employment. In general, complaints based on sexual orientation form only around 2% of all complaints received by the Equal Opportunities Ombudsperson. No statistical information is collected on discrimination of transgender people in the field of employment.

The Ministry of Social Security and Labour has not indicated that special employment programs would be adopted and/or that they be focused specifically for securing employment opportunities for transgender persons. The Ministry also did not indicate that special measures would be taken to ensure the protection of personal data in cases of gender reassignment to protect a person’s gender history or former name in the context of employment.

The Soldiers’ Code of Ethics prohibiting discrimination includes as grounds neither sexual orientation nor gender identity. In 2011 the Equal Opportunities Ombudsperson, after examining a complaint submitted that the Code does not include the ground of sexual orientation, did not find a violation of the Law on Equal Treatment, but recommended to include it.

vii. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion

such as equality and safety policies, codes of conduct and training programs for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

State authorities have not indicated that measures be adopted for the protection of LGBT pupils at school from bullying and social exclusion. There is a lack of research conducted in this regard. No official data is collected on how many LGBT pupils are bullied, harassed and experience discrimination at schools. No equality and safety policies, codes of conduct or training programs for staff have been provided for promoting tolerance and respect for LGBT pupils at schools. The Ministry of Education and Science did not indicate that there is an officially adopted sexual educational program compulsory for all schools. The sexual education program prepared previously (called Program for Preparation for the Family and Sexual Education) did not provide information on homosexuality in an objective scientific way and did not mention transgender issues at all.

An online survey reveals that 85.2% of respondents between the age of 14 and 19 agree that sexual education is needed in schools; 55.1% of respondents indicated that they are unsatisfied with currently provided sexual education; 32.4% indicated that they never heard of sexual education; the main source of information through which children receive information about sexual education is the internet (30.6%), friends (24.8%), TV (18.7%) and parents (9.3%).

viii. Health – other than transgender specific health issues

Section VII of the Appendix paragraphs 33 and 34 require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures proposed include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

In Lithuania homosexuality is not considered as a disease in accordance with the WHO standards. No information is available that medical textbooks or other documents treat homosexuality as a disease.

Due to the high levels of homophobia and intolerance towards LGBT persons, a big number of individuals remains "closeted" and therefore there is little information available as to the quality of medical services provided to the LGBT community. On one occasion, in 2011 the Equal Opportunities Ombudsperson received a complaint that gay

men are precluded from giving blood because of their sexual orientation. The Equal Opportunities Ombudsperson found such a practice in contradiction with Article 5 (1) of the Law on Equal Treatment and suggested to the Ministry of Health to change the legal regulation for blood donation so as not to exclude homosexual persons.

The Ministry of Health has not indicated that any special measures would be adopted to address the specific need of LGBT people. Training programs provided to health professionals do not address issues of sexual orientation and gender identity. The Ministry of Health asserts that programs and services in the area of sexual and reproductive health meet the needs of LGBT persons, but did not specify in what way and how exactly those needs are satisfied.

Same-sex couples are denied family rights by not considering them as family members in case of medical emergencies. A partner may ensure that another partner gets access to medical records and treatment by issuing a warrant in advance.

No information is available that people would be forced to undergo medical treatment because of their sexual orientation or gender identity.

Overall, it can be stated that the Ministry of Health has not put efforts into implementing effectively the international standards regarding homosexuality in the Lithuanian health-care system.

ix. Housing

Section VIII of the Appendix requires that adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in the provision of loans for purchase of housing, in the recognition of the rights of a tenant's partner, and evictions; also, the provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

Discrimination in the area of housing is indirectly prohibited under Article 8 of the Law on Equal Treatment, establishing that consumers should be provided with equal access to goods and services, including housing. The Law does not cover gender identity.

A few complaints have been submitted to the Equal Opportunities Ombudsperson regarding discrimination based on sexual orientation in housing (i.e. renting). Only in 2005 the Equal Opportunities Ombudsperson examined LGL's complaint about discrimination based on sexual orientation for having been rejected to rent premises owned by another NGO due to the specificity of LGL's activities. After examination of the complaint, the Equal Opportunities Ombudsperson decided to warn the chair of the defendant NGO about the indirect discrimination. The discrimination experienced by

LGBT persons in renting housing facilities remains mainly undocumented. No measures have been adopted to address the risks of homelessness faced by LGBT persons.

The absence of regulations governing the treatment of common property of same-sex partners who live together deprives one partner of her/his rights if the property, which was acquired during their time living together, was registered only in the name of the other partner. In this case the death of that partner or separation of the couple leaves the other partner without any rights regarding the jointly acquired property, real estate particularly. For different-sex partners in a similar situation, the provisions of the Civil Code recognise an automatic right of each partner to half of the property unless otherwise stipulated by written agreement between them.

x. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

Issues of discrimination on the grounds of sexual orientation or gender identity are not addressed in Lithuanian sports. No measures have been taken by state authorities to prevent the risk of exclusion from participation in sports on grounds of sexual orientation and gender identity. The Department of Physical Education and Sports has not provided information that codes of conduct relating to sport and sexual orientation or gender identity for sports organisations and clubs would be drawn up and disseminated or any other measures would be taken in this regard. No information is available on instances where discriminatory incidents would have occurred during or in connection with sports events. A Sports Fan Club has been established within LGL, gathering together LGBT and other persons.

xi. Right to seek asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

Under the national law the grounds of sexual orientation or gender identity are not listed as a basis for granting refugee status. However, the Migration Department notes that under Article 66.1 of the Procedure for examination of foreigners' requests for asylum, adoption of decision and its implementation, LGBT persons may be understood as being a "social group" – one of the legitimate bases for granting status of asylum, if there is persecution or threat of persecution.

The Migration Department under the Ministry of Interior after examination of the request for asylum; after conduct of thorough investigation and establishment that the asylum seeker meets the criteria provided in Article 86 para. 1 and Article 87 para. 1; after considering data established under Article 66 of the Procedure; after establishing that there are no reasons for not granting refugee status or subsidiary protection (Article 88 of the Law), may take a decision to grant refugee status or subsidiary protection due to well-grounded fear or other real threats in relation to sexual orientation or gender identity, for which there is danger towards the asylum seeker's life and freedom in their country of origin.

No information is available that state authorities have adopted measures to protect LGBT persons from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training on the specific problems encountered by LGBT asylum seekers.

xii. National human rights structures

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

There is no national human rights institution that is in compliance with the UN Paris principles. The Equal Opportunities Ombudsperson is the only state institution dealing with complaints of discrimination based on sexual orientation; however this does not explicitly cover the ground of gender identity. Due to the high level of intolerance towards LGBT persons, the Ombudsperson receives very few complaints on the ground of sexual orientation. The Ombudsperson is willing to cooperate in various projects with NGOs including LGL. Nevertheless, it is not well-known for taking a firm stand and speaking out in the course of homophobic instances, e.g. when politicians and the mayor of Vilnius were making homophobic statements in public or when LGBT rights to freedom of expression or assembly were infringed upon.

I. Recommendations

- Translate officially the Recommendation CM/Rec(2010)5 and its Appendix and take steps to disseminate it within:
 - Public administration institutions
 - Law enforcement institutions, including judiciary and penitentiary system
 - Human rights protection institutions (e.g. Equal Opportunities Ombudsperson's Office, Seimas Ombudsmen's Office, Ombudsperson for the Rights of the Child, Journalists Ethics Inspectorate, etc.)
 - Educational institutions
 - Health care institutions
 - Representatives of public and private sector employees and employers
 - Media
 - Non-governmental organisations
- Include the gender identity ground in all relevant national laws prohibiting discrimination, in particular in the:
 - Law on Equal Opportunities (No. IX-1826 , 2008-06-17)
 - Articles 60 (1)(12), 169, 170, 170¹ of the Criminal Code (No. VIII-1968, 2012-06-30)
 - Labour Code (No. IX-926, 2012-06-29)
- Amend the Soldiers' Code of Ethics approved by the Decree of Minister of Defence on 9 May 2005, No. V-561 by supplementing Section 13 with prohibition of discrimination based on sexual orientation and gender identity
- Adopt the Law on Gender Reassignment in compliance with Article 2.27 of the Civil Code, establishing conditions and order for gender reassignment in compliance with international human rights standards, and:
 - Ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise
 - Set procedures to ensure that personal documents (e.g. insurance, banking documents, educational diplomas) would also be issued to gender reassigned persons by non-state institutions

- Adopt the Law on Registered Partnerships including same-sex couples.
- Adopt recommendations for the staff of educational institutions to ensure that LGBT pupils and students receive education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment.
- Adopt a compulsory sexual education program for schools addressing issues of homosexuality and transgender in a respectful and objective manner.
 - Evaluate the prepared “Children and youth’s preparation for the family programs planning” (“Vaikų ir jaunimo rengimo šeimai programų rengimas”) from the human rights point of view.
- Adopt and disseminate a code of conduct on questions relating to sports and sexual orientation or gender identity for sport organisations and clubs.
- Ensure that training programs of police officers include information on investigation of homophobic and transphobic connotations in hate crimes or hate motivated incidents.
- Ensure that training programs of prison staff would include information on treatment of LGBT persons at places of detention with respect and no discrimination.
- Ensure that training programs for health professionals and social workers include information on LGBT health issues in order to enable professionals to deliver the highest attainable services in a respectful and objective way.
 - Specific training should be provided for medical experts to ensure qualitative, safe and accessible gender reassignment treatment for transgender persons.
- Ensure that the Migration Department staff responsible for processing asylum requests is provided with training on the specific problems encountered by LGBT refugees or asylum seekers, and:
 - Ensure that staff of administrative detention centres, police, medical staff and voluntary organisations dealing with cases of asylum and refugee seekers would receive appropriate training and information on issues regarding sexual orientation and gender identity.
- To include topics of sexual orientation and gender identity in initial and in-service training programs for judges and other members of the legal profession and law enforcement officials.
- Within the next Governmental Anti-discrimination Plan 2015-2017 include:

- The ground of gender identity when adopting awareness raising measures and measures for addressing discrimination.
- As a part of an awareness raising campaign, include preparation of a simple and comprehensive definition of “hate crimes” that would include the motive of sexual orientation and gender identity and ensure its wide dissemination to the general public.
- Conduct public opinion surveys to assess the society’s level of intolerance towards various minorities, including LGBT persons, based on sexual orientation and gender identity.
- Conduct a public survey assessing the extent of bullying, harassment and discrimination experienced by LGBT pupils at school.
- Conduct research on the nature and causes of hostile and negative attitudes towards LGBT persons.
- Include awareness raising campaigns targeting housing agencies in order to raise their knowledge on anti-discrimination provisions, including prohibition of discrimination based on sexual orientation and gender identity.
- Adopt and disseminate guidelines among public authorities and public institutions at all levels on their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising hatred or discrimination based on sexual orientation or gender identity and the duty to encourage promotion of tolerance and respect for human rights of LGBT persons.
- Adopt recommendations for law enforcement officers and judiciary for treatment of LGBT persons in a non-discriminatory and respectful manner so that they would feel safe to report hate crimes or hate motivated incidents, whether as victims or witnesses.
- Strongly encourage state institutions to consult with the Lithuanian Gay League on the adoption and implementation of the measures affecting the rights of LGBT persons.
- To adopt a medium and a long term action plan for implementation of the Recommendation and its Appendix.

II. Introduction

Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to Member States “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was a historic moment. The Recommendation is, as the Secretary General of the Council of Europe Mr. Thorburn Jagland has recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat".³

In broad terms the Recommendation proclaims three things:

- It emphasises the key principle that human rights are universal and apply to all individuals, including LGBT persons;
- It acknowledges continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out measures required from the Member States.

The Recommendation was agreed upon unanimously by the 47 Council of Europe Member States. As the Recommendation is not a Convention and it is not legally binding, it is based on existing legally binding international and European human rights obligations of the Member States – they have a clear duty to implement these standards.

The Recommendation has three parts: first of all, the preamble, which sets out the background information to its adoption, and the key principles guiding it; secondly, the operative section, which briefly lists broad measures to be taken; and thirdly, the Appendix, which sets out specific measures with the view of ensuring effective enjoyment of human rights for LGBT individuals and combating human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, freedom of expression, freedom of assembly, right to respect for private and family life, employment, education, health, housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a relevant section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

³ “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”
<https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

Purpose of the report

The purpose of this report is to assess what actions have been taken by the Lithuanian authorities in implementing the Recommendation, and to highlight those areas, where further action is needed. By documenting which measures have and which have not been completed, it provides a base line with the view of measuring further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First of all, it is the political leaders and civil servants at the national level, who are responsible for implementing the Recommendation. Secondly, it is the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March, 2013. It is intended that this report will contribute to the review.

Methodology

The assessment of progress in the report is based on a checklist of specific detailed measures, required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist and the data, which the Lithuanian Gay League (LGL) has compiled in order to assess progress in implementing individual measures of the Recommendation, are set out in Part III of this report, titled “the Compliance Documentation Report”.

The data used to assess the progress of implementation has been obtained from a number of sources:

- Responses by individual ministries to letters from the Lithuanian Gay League (LGL), listing the relevant checklist questions and asking for comments on actions taken with the view of implementing particular measures.

In order to obtain the necessary information on the implementation of the Recommendation, the LGL has sent inquiries to the following state institutions:

1. Department of Physical Education and Sports under the Government of Lithuania
2. Equal Opportunities Ombudsperson Office
3. Migration Department under the Ministry of Interior
4. Ministry of Culture
5. Ministry of Education and Science
6. Ministry of Health
7. Ministry of Justice
8. Ministry of National Defence

9. Ministry of Social Security and Labour
10. Office of the Inspector of Journalist Ethics
11. Police Department under the Ministry of Interior
12. Prison Department under the Ministry of Justice

All inquired state institutions provided their replies to the requests of information, although the extent of the provided information varied, as well as timing of the submission.

- Information from secondary sources, such as the reports on Lithuania commissioned by the Council of Europe Commissioner for Human Rights (e.g. "Discrimination on grounds of sexual orientation and gender identity in Europe").
- Research and documentation assembled by the Lithuanian Gay League (LGL) and other non-governmental organisations.

III. Compliance Documentation Report

Recommendation

1. **examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**

- i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

To our knowledge no comprehensive review of existing legislation and other measures has been conducted on a regular basis by public authorities. According to the Ministry of Social Security and Labour, “the existing legal and other measures that could directly or indirectly discriminate based on sexual orientation are reviewed and amended when in need”.⁴ However, no state institution is responsible for this function. The Equal Opportunities Ombudsperson Office (E000), an institution responsible for the supervision and implementation of the main anti-discrimination law (i.e. the Law on Equal Treatment⁵), prohibiting discrimination, *inter alia*, on grounds of sexual orientation, has provided recommendations for the legislative changes in its annual reports to the Parliament. For example, the E000 has emphasized for several times that Article 5 of the Law on Equal Treatment, foreseeing the duty of State and municipal institutions and agencies to implement equal treatment, does not regulate the procedure of implementing and controlling this function.⁶ The needed amendments of the Law remain not introduced.

Under Article 12 (2) of the Law on Equal Opportunities of Women and Men⁷, the Equal Opportunities Ombudsperson has a competence to conduct independent investigations into cases of discrimination and independent surveys on the state of discrimination, publish independent reports, put forward conclusions and recommendations on any discrimination-related issues with regard to implementation of this Law, as well as proposals to state and municipal institutions and agencies of the Republic of Lithuania concerning the improvement of legal acts and policy priorities on the implementation of the principle of equal treatment. With the extended competences of the Ombudsperson, no additional funds or human resources have been allocated. Perhaps as a result, the main research studies conducted in 2007 with the financial support of the European Commission has not been updated or followed up.⁸

⁴ Republic of Lithuania Ministry of Social Affairs and Labor, 2012-05-28 No. (25.11-34)SD-3632 “Regarding the submission of information for implementation of CoE recommendation CM/REC(2010)5.

⁵ Republic of Lithuania Law on Equal Treatment, 18 November 2003 – No IX-1826 Vilnius (As last amended on 17 June 2008 – No X-1602).

⁶ Equal Opportunities Ombudsperson Office, 2012-04-24, No. 1.4-S-17-1 “Regarding request to provide information implementing CoE Recommendation CM/REC(2010)5”.

⁷ Republic of Lithuania Law on Equal Opportunities of Women and Men, 1 December 1998 – No VIII-947 (as last amended on 13 March 2012 – No XI-1926).

⁸ See The Office of Equal Opportunities Ombudsperson website, Section “Research”, available at: <<http://lygybe.lt/?pageid=10&id=66>>, visited on 12 July, 2012.

According to the Regulations for the Ministry of Social Security and Labour, confirmed by the Government's Decision on 17 July 1998, No. 892, clause 8.5.9 and 8.5.10, the Ministry makes analysis on how widespread discrimination in employment within certain groups of people is, examines its causes and consequences, foresees preventive measures and ensures the implementation of equal opportunities according to the grounds stated in the Law on Equal Treatment in the areas of the Ministry's competences.⁹ However, no studies of such analysis have been made public by the Ministry.

ii. *Are processes in place to ensure that the discrimination thus identified is redressed?*

If discrimination based on sexual orientation occurs within the scope of the Law on Equal Treatment – in the fields of employment and vocational training, provision of goods and services, education, activities of state and municipal institutions and agencies, or advertising, a person may fill in a complaint to the Equal Opportunities Ombudsperson Office. A category of gender identity is not included as one of the prohibited grounds of discrimination within the Law on Equal Treatment. The Equal Opportunities Ombudsperson has not received a single complaint based on gender identity and it remains to be clarified whether the protected ground of gender is interpreted so as to include gender identity as well. In 2011 the Equal Opportunities Ombudsperson has stated in the meeting at the Committee on Human Rights in the Parliament that provisions of the EC Gender Recast Directive 2006/54/EC “is only a guidance for Member States”, thus undermining the direct effect of the Directive on national level.¹⁰

The Equal Opportunities Ombudsperson Office may impose an administrative sanction to the defendant. However, it may not award damages to the victim of discrimination. The applicant has to seek redress independently through judicial proceedings.

Discrimination based on sexual orientation is also prohibited under the criminal law (Article 169 of the Criminal Code). Article 170 prohibits incitement to hatred against individuals and groups or organisations with the view of discriminating, *inter alia*, on the ground of sexual orientation. Once a person applies to the Prosecutor's Office, a pre-trial investigation can be initiated and the case could be brought eventually to the court. The prosecutor may also launch a pre-trial investigation on its own initiative in the defence of a public interest. However, Article 169 of the Criminal Code has rarely been applied in practice, and Article 170 of the Criminal Code mostly has been applied in cases of Internet comments. However, today there is a lack of efficient monitoring of such instances on the Internet.

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or

⁹ Republic of Lithuania Ministry of Justice, 2012-05-15, No. (1.13)PR-3655 “Regarding the provision of information on the implementation of CM Recommendation”.

¹⁰ Atviri.lt, “National equality body draws a line between “LGB” and “T”, 2011 05 13, available at: http://www.atviri.lt/index.php/news/national_equality_body_draws_a_line_between_lgb_and_t/4354, visited on 1 September 2012.

gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

- i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

The Law on Equal Treatment as well as other relevant national legal provisions does not include the ground of “gender identity”. The Lithuanian Gay League (LGL) has noted that “[t]here are many laws in Lithuania aimed at curbing discrimination and abuse based on variety of factors. These factors consistently fail to include protections based on an individual’s gender identity. Such laws include the Law on Equal Opportunities for Women and Men, which established the Office of the Ombudsperson for Equal Opportunities for Women and Men [and Law on Equal Treatment]. The Ombudsperson does not investigate complaints of harassment or discrimination based on gender identity.”¹¹

The Law on Equal Treatment, which prohibits discrimination on grounds of sexual orientation, but does not include the category of gender identity, extends the principle of equal treatment to the fields of employment and vocational training, provision of goods and services, education, and to the activities of State and municipal institutions and agencies.¹² It does not explicitly cover the areas of social security, health care and housing. The prohibition to discriminate on the ground of sexual orientation is also included into the Law on the Provision of Information to Public and the Labor Code. In addition to this, the Criminal Code qualifies anti-gay prejudice as an aggravating circumstance.

The Law on Equal Opportunities for Women and Men includes protection against discrimination also in the area of social security¹³. However, it does explicitly refer neither to the category of sexual orientation, nor to the category of gender identity.

- ii. Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

The Republic of Lithuania has previously adopted several national anti-discrimination programs¹⁴, the latest of which, i.e. the Inter-institution Plan on Anti-discrimination Promotion (Plan), has been adopted by the Government Decree on 2 November 2011. It

¹¹ Lithuanian Gay League. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, p. 9, July 2012, Geneva.

¹² See Articles 5-9 of the Law on Equal Treatment, 18 November 2003 – No IX-1826, Vilnius (as last amended on 17 June 2008 – No X-1602).

¹³ See Article 5³. Prohibition of Discrimination on Grounds of Sex in Social Security Systems. Law on Equal Opportunities of Women and Men, 1 December - No VIII-947 (as last amended on 13 March 2012- No. XI-1926)

¹⁴ The first Anti-discrimination program covered period of 2006-2008 and the second program - 2009-2011.

encompasses these tasks: to conduct research studies on discrimination (point 2 of the Plan); to organize public information and awareness raising campaigns on issues of discrimination (point 3); to conduct seminars and other educational and awareness raising activities for promotion of tolerance and respect for human diversity (point 4) and to promote activities of human rights NGOs (point 5).¹⁵ The Ministry of Social Security and Labour coordinates the implementation of the Plan 2012-2014. It is difficult to assess effectiveness and impact of the previously adopted and implemented anti-discrimination programs, since no independent evaluations were carried out.

The Inter-Institutional Plan on Anti-Discrimination Promotion covers all protected grounds in accordance with the Law on Equal Treatment. However, the section on sexual orientation in the Plan is limited to two paragraphs, indicating that the rights of "homosexual individuals" are guaranteed and effectively protected in the Republic of Lithuania. In one sentence it mentions that there are "some instances of discrimination" and that some "homosexuals individuals" face certain challenges of being "integrated in the society" due to the prevailing insecurities. There are no specific measures foreseen in the Plan, tailored exclusively for the LGBT community. The Plan on Anti-Discrimination does not mention the category of gender identity at all.

The Equal Opportunities Ombudsperson Office not only implements the activities according to the adopted national anti-discrimination program (Plan), but also independently submits project proposals to the calls for various European Commission supported programs (mainly EQUAL and PROGRESS) and carries out educational activities.¹⁶

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

- i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*

According to the national legislation, persons, who have experienced discrimination on the ground of sexual orientation, have several procedural ways to protect their rights. First of all, the Constitution of the Republic of Lithuania guarantees the right of every person to appeal before 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, etc.). 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 initiate a criminal investigation under the

¹⁵ 2012-2014 Inter-institution Plan on Anti—discrimination Promotion. Adopted by the Republic of Lithuania Government on 2 November, 2011, Decree No. 1281, Section II. Goal of the Plan, tasks, measures, financial allocations and implementing institutions, points 2-5.

¹⁶ Equal Opportunities Ombudsman Office, 2012-04-24, No. 1.4-S-17-1, "Regarding the request to submit information for implementation of CoE Recommendation CM/REC(2010)5.

relevant 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 this provision has rarely been applied in practice. Thirdly, in the case of a labour dispute, a person could take advantage of procedures established under the Labour Code. However, the Labour Code does not directly provide any sanctions for workplace discrimination – the sanctions for violations of labour laws are provided in the Code of Administrative Violations. A person can address the Employment Disputes Commission or courts directly.¹⁷

According to the Labour Code, the Employment Disputes Commission can award compensation to an individual in case of discrimination which is generally prohibited under the Labour Code (a sum of up to twice his or her annual salary can be awarded where a person proves that, as a result of a discriminatory act, he or she cannot continue to work in the same position.) However, due to the facts that there are no special procedures outlined in the law regarding discrimination cases and that the provision on the shift of the burden of proof is not formally transposed in national legislation, it may be problematic for a victim of sexual orientation discrimination to address the court in a labour dispute.¹⁸

Additionally, it is possible to address the State Labour Inspectorate, which controls compliance with the laws, regulating labour relations, and inspects 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 by the Government of the Republic of Lithuania and orders by the 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 could be imposed by a general provision in the Code of Administrative Violations. In practice, however, State Labour Inspectorate officials do not address issues of workplace discrimination.¹⁹

Finally, the most widely used possibility in practice is the application to the Equal Opportunities Ombudsperson.²⁰ Under Article 12(1) of the Law on Equal Treatment “[a] person who considers himself wronged by failure to apply equal treatment to him shall have the right to appeal to the Equal Opportunities Ombudsperson. An appeal to the Equal Opportunities Ombudsperson shall not preclude the possibility of defending his rights in court.”

If a person decides to submit a complaint to the Equal Opportunities Ombudsperson, the Ombudsperson as a result of investigation may recognise the fact of discrimination and apply administrative sanctions in accordance with the provisions of the Code of

¹⁷ Edita Ziobiene, Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Vilnius, Lithuania, February 2010, p. 16-17, available at: <[http://fra.europa.eu/sites/default/files/fra_uploads/1359-LGBT-2010_thematic-study LT.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1359-LGBT-2010_thematic-study_LT.pdf)>, visited on 10 June 2012.

¹⁸ Edita Ziobiene, p. 17.

¹⁹ Ibid.

²⁰ Ibid.

Administrative Violations and issue a warning or impose a fine. However, it occurs very rarely in practice. The Equal Opportunities Ombudsperson Office is more likely seeks to solve the issue through peaceful means. According to the annual reports by the Equal Opportunities Ombudsman Office, the administrative fines were not imposed at all throughout the period between 2007 and 2010, and the issue of warning amounted to 3 % in 2009 and to 6 % in 2010 of all adopted decisions.²¹

If a person chooses to seek personal remedy (award of pecuniary and non-pecuniary damages) through judicial proceedings, she may take advantage of legal aid provided by the State. Under the provisions of the Law on State Guaranteed Legal Aid, a person may receive the primary legal aid (legal consultation) free of charge and the secondary legal aid, i.e. representation in the judicial proceedings, depending on the income level set by the Government. The secondary legal aid may be provided free of charge or compensated up to 50 % of the total costs²²

It remains questionable whether remedies for the victims of discrimination based on gender identity exist. This ground is not covered by the national law and it is dubious whether it could be covered by the ground of gender under the Law on Equal Treatment. As today, we are not aware of any cases being brought before the national courts claiming discrimination based on gender identity.

- ii. *Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*

Information about the form and the procedure of application to the Equal Opportunities Ombudsperson Office is provided on the institution's website (i.e. www.lygybe.lt). The procedure to apply to the Office of the Equal Opportunities Ombudsperson is quite simple and reasonably inexpensive. Each natural or legal person has the right to file a complaint with the Equal Opportunities Ombudsperson about the violation of equal treatment rights. Complaints should be submitted in writing: a complainant or a representative may send a complaint to the Equal Opportunities Ombudsperson by post, fax, e-mail or bring it in person to the office. If a complaint has been received by word of mouth, 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 initiated on the initiative by Ombudsperson herself. The Ombudsperson may also decide to investigate anonymous complaints. The time-limit for filing in 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 by the Equal Opportunities Ombudsperson, when applying administrative

²¹ See Equal Opportunities Ombudsman Office Annual Report 2009, p. 20, available at: < <http://www.lygybe.lt/?pageid=7>>, visited on 5 June, 2012; Equal Opportunities Ombudsman Office Annual Report 2010, p. 21, available at: <http://www.lygybe.lt/?pageid=7>, visited on 5 June, 2012; Edita Ziobiene *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity*, Vilnius, Lithuania, February 2010, A.6. Sanctions and remedies, p. 21.

²² Law on State Guaranteed Legal Aid, 2012-06-19, in force from 2012-06-30, No. VIII-1591, available at: < http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=429287&p_query=&p_tr2=2>, visited on 8 July, 2012.

sanctions, are legally binding.²³ A decision nby the Ombudsperson to impose administrative fine is subject to an appeal before the court.

Statistics indicate that a vast majority of applications are received from the big cities, such as Vilnius region (46 %) and Kaunas (22 %).²⁴ The Equal Opportunities Ombudsperson Office does not have branches in other cities and has limited use of other means for disseminating information apart from the online platform, which limits the awareness of potential applicants about its activities living in rural areas without access to Internet.

No information is available, whether additional measures would have been adopted to inform the potential victims of discrimination about the possibility to apply to the courts, apart from the above discussed provision in the Law on Equal Treatment under Article 13 (i.e. foreseeing that a person, who has suffered discrimination on the grounds of gender and sexual orientation, have the right to claim compensation for pecuniary and non-pecuniary damages from the persons guilty through the procedure, prescribed by law).

iii. Are the remedies effective, proportionate and dissuasive?

It is hard to assess, whether remedies are effective, proportionate and dissuasive since only the courts may provide remedies to the victims of discrimination in the form of monetary compensation. A very limited number of cases have been brought to the national courts on the basis of alleged discrimination based on sexual orientation. No case of discrimination based on gender identity has been brought before national courts.

The requirements, envisaged in the EC Directive 2000/78 for sanctions to be effective, proportionate and dissuasive, in general, could be considered as not being met in Lithuanian legal system.²⁵ Sanctions embodied in the Criminal Code could be imposed only in cases of severe discriminatory acts. Sanctions for the breach of the Law on Equal Treatment could be imposed in accordance with the provisions of the Code of Administrative Violations and are relatively low, ranging from 100 Lt to 2000 Lt (29€ - 580 €).²⁶

iv. Do the remedies include, where appropriate, adequate reparation for victims?

Only the court can provide reparation for the victims of discrimination. The Law does not foresee an upper limit for the award of non-pecuniary damages. The established national **disseminated** case-law indicates that in general relatively low sums are awarded as non-pecuniary damages for the applicants. The award of pecuniary

²³ Edita Ziobiene Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Vilnius, Lithuania, February 2010, p. 17-18.

²⁴ Equal Opportunities Ombudsman Office Annual Report 2010, p. 17, available at: <http://www.lygybe.lt/?pageid=7>, visited on 5 June, 2012

²⁵ See Edita Ziobiene Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Vilnius, Lithuania, February 2010, A.6. Sanctions and remedies, p. 21.

²⁶ See Article 41⁶ of the Code of Administrative Violations.

damages is assessed in each case by the court based on evidences provided by the applicant.

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

No action.

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and as widely as possible

- i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

On 28 May 2012 the Ministry of Social Security and Labour, which is responsible for the equality and non-discrimination, in its reply to the request of information, regarding the implementation of the Recommendation, stated that the CoE's Recommendation CM/Rec(2010)5 has been translated into Lithuanian, however the translation is not official. The Ministry has not indicated, when it is expected to have an official translation of the Recommendation and its appendix and what steps has been taken to ensure wide dissemination of it among the relevant ministries and other stakeholders.

- ii. Have the Recommendation and its appendix been translated?*

According to the Ministry of Social Security and Labour, the Recommendation and its appendix are translated (unofficially). However, at the time of drafting this Report it was possible to find the translation of the Recommendation and its appendix neither at the website of the Ministry of Social Security and Labour, nor through the main legislative search database available at the Parliament's website (http://www3.lrs.lt/dokpaieska/forma_1.htm).

- iii. Have they been disseminated:*

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

The Ministry of Social Security and Labour has not indicated that it had undertaken any steps to disseminate the Recommendation and its appendix. We are not aware of the fact that the Ministry has sought to disseminate the official or unofficial translation of the Recommendation and its appendix to any of the target groups indicated above. On 24 April 2012 the Equal Opportunities Ombudsperson Office in its reply to the inquiry

of information did not indicate about the availability of the translation of the Recommendation and its appendix and/or plans to use it as a tool at the planned educational activities (seminars or conferences). The LGBT community has not received the translation of the Recommendation and its appendix from the Ministry of Social Security and Labour or any other state institution.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. **Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.**

- i. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

On 13 April 2012 the Police Department under the Ministry of Interior in its reply (No. 5-S-1519) to the inquiry for information about the implementation of the Recommendation CM/Rec(2010)5 did not indicate the availability of any training to the police officers that includes information on specific aspects of investigation of any homophobic or transphobic bias indicators in hate crimes or hate incidents, particularly where violence is involved. The Police Department stated that the department provides continues legal education trainings on a regular basis with the view of educating the heads of police institutions and other employees about the instances of discrimination in Lithuania and training them on application of the relevant legislative acts in practice, and increasing legal knowledge and awareness of the law-enforcement officers. The Police Department noted that the police impartially protects all persons at the territory of Lithuania despite their nationality, race, gender, language, origin, social status, religion, convictions or believes in accordance with Article 4 of the Law on Police Activities.

- ii. Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

The Police Department has not provided us with information that an independent institution had been established with the view of receiving and investigating reports of hate crimes or hate incidents allegedly committed by law-enforcement officers, particularly where sexual orientation or gender identity constitute one of the possible motives. We are not aware of such institution. It can be assumed that if such incidents occur in practice and allegations are made against the law-enforcement officers for

committing hate crimes or hate motivated incidents with the sexual orientation or gender identity bias, they would be investigated under the regular procedure established by the law. We are not aware that such incidents occurred in practice. Taking into consideration that there is no independent institution that investigates such complaints, these instances may be under-reported. It is also difficult to assess the real situation in the absence of relevant data.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

- i. Do legislative measures to combat "hate crimes" and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

Article 170 of the Criminal Code prohibits incitement against any national, racial, ethnic, religious or other group of persons as follows:

"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 a group of persons or a person belonging thereto on grounds of gender 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. 4. A legal entity shall also be held liable for the acts provided for in this Article."

Article 170¹ of the Criminal Code prohibits creation and activities of groups and organisations aiming at discriminating a group of persons or inciting against it and states the following:

"1. A person who creates a group of accomplices or an organised group or organisation aiming at discriminating a group of persons on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views or inciting against it or participates in the activities of such a group or organisation or finances or otherwise supports such a group or organisation 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 legal entity shall also be held liable for the acts provided for in this Article."

The Criminal Code does not provide the definition of hate crimes. However, the Prosecution Service of the Republic of Lithuania has issued recommendations on the pre-trial investigations of such crimes, considering all crimes that are motivated by hate towards persons of particular sexual orientation as hate crimes.²⁷

Gender identity is not covered neither by the Law or the issued Recommendations by the Prosecution Service.

- ii. *Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

Article 60 of the Criminal Code provides what circumstances are considered as aggravating. Section 12 (1) of Article 60 establishes that “the act [that] has been committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views” is considered an aggravating circumstance. The list of grounds in the provision is exhaustive and does not include the ground of gender identity.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

- i. *Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?²⁸*

On 13 April 2012 in the reply to the inquiry for information regarding implementation of the Recommendation and its appendix, the Police Department has not provided information that any kind of “hate crime” definition is disseminated to the general public.

The more noticeable efforts take place within the non-governmental sector, e.g. the Human Rights Monitoring Institute (HRMI) published the guidelines on understanding hate crimes in 2011.²⁹

²⁷ Generalinės prokuratūros Metodinės rekomendacijos dėl nusikalstamu veiku, padarytu rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumu, 2009-12-23 Nr.12.14-40. Available in Lithuanian at:

<<http://www.prokuraturos.lt/nbspnbspnusikalstamai%20C5%BEmoni%20C5%A1kumui/tabid/221/Default.aspx>>, visited on 18 July 2012.

²⁸ e.g. through police websites or leaflets distributed in the community.

- ii. *Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

The Police Department and the Ministry of Justice made no reference to the adopted internal regulations, foreseeing treatment of victims or witnesses in case of hate crimes based on sexual orientation or gender identity. The above mentioned Methodical recommendations³⁰ on investigation of hate crimes include recommendations on how to conduct an investigation of such crimes. However, it does not address the issue of treatment of victims or witnesses of hate crimes or hate motivated incidents on the basis of sexual orientation and gender identity.

The incident, reported by the Lithuanian Gay League (LGL) in 2007, illustrates the need for such regulations and recommendations. The organisation has reported that during the first day of the annual ILGA-Europe Conference in Vilnius, a smoke bomb was thrown into the Club Soho, where many participants of the conference were socializing. The Lithuanian police responded by arriving to the bar after the attack. Next day a police officer publicly declared that LGBT activists may have had orchestrated the bombing themselves in order to generate publicity. The statement was made despite the fact that the perpetrators of the attack gave an interview to a Lithuanian newspaper, admitting that it was motivated by anti-gay prejudice. The organisation reported that there was no evidence that police had ever followed up on this newspaper report or had found people responsible for the bombing – the investigation of the case was ultimately terminated.³¹

No recent data is available on hate crimes based on sexual orientation or gender identity. However, the results of a study, conducted by the Baltic Antidiscrimination Project in 2002, revealed that the police had not given a clear indication to the public that homophobic violence and abuse are not to be tolerated. The results of the study indicated that 27% of respondents reported that they had been the victims of at least one violent attack because of their sexual orientation. Only one third of these persons reported the respective incidents to the police. Accordingly, the police responded

²⁹ Human Rights Monitoring Institute. „Neapykantos kurstymas Lietuvoje: dažniausiai užduodami klausimai“ (Hate Incitement in Lithuania: Frequently Asked Questions”, available at: http://www.hrmi.lt/uploaded/PDF%20dokai/Neapykantos_kurstymas_DUK_20110629.pdf, visited on 19 July 2012.

³⁰ Generalinės prokuratūros Metodinės rekomendacijos dėl nusikalstamu veiku, padarytu rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumu, 2009-12-23 Nr.12.14-40. Available in Lithuanian at:

<<http://www.prokuraturos.lt/nbspnbspnusikalstamai%20C5%BEmoni%20C5%A1kumui/tabid/221/Default.aspx>>, visited on 18 July 2012.

³¹ Lithuanian Gay League and Heartland Alliance. *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report*. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, p.9

supportively only in 15% of the reported cases and with outright hostility in 39% of the reported cases.³²

- iii. *Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

Recently a special division within the Prosecution Service of the Republic of Lithuania that investigated crimes and misdemeanours against person's equal rights and freedoms of conscience under the provisions of the Criminal Code (e.g. Article 169 and 170) has been dissolved and the investigation of these crimes has been distributed among various departments within the institution.

- iv. *Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

We are not aware of the special police liaison officers, who are tasked with maintaining the contact with the local LGBT community. None of the law-enforcement officers or units has been in contact with the Lithuanian Gay League (LGL) with the view of establishing the relationship of trust.

- v. *Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

Recently the Police Department has introduced a possibility to report crimes anonymously through the online form.³³ The new possibility allows persons to report instances of discrimination and hate crimes, prohibited under the relevant provision of the Criminal Code. No data is available on how frequently crimes against LGBT persons were reported using the online reporting form.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

- i. *Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

No special regulations or measures are adopted in order to secure adequate protection and respect for LGBT persons at places of detention.

³² *Ibid*, Violations and Effects of Discrimination Based on Sexual Orientation and Gender Identity, p.10

³³ See Police Department. Report to the Police, available at: < <https://www.epolicija.lt/en/report-anonymous>>, visited on 1 August 2012.

On 30 April 2012 the Prison Department under the Ministry of Justice indicated that, according to the Correction Facilities Internal Rules, confirmed by the Decree by the Minister of Justice on 2 July 2003, No. 194 (State Gazette 2003, No. 76-3698), sections 50 and 51, relationships between the employees of correction institutions and the detainees must be based on the principle of mutual respect. The staff of correction institution is prohibited from having any relations with the detainees outside the scope of their duties. According to Article 6 of the Code of Penalties Execution, all detainees must be treated equally despite their origin, gender, social status, nationality or race, political views or belonging to a certain party, education, language, religion or other convictions, genetic characteristics, disability, sexual orientation, type of activities or character, living place and other circumstances foreseen by the laws of the Republic of Lithuania.

The Rules of Ethics that apply to the employees of the Prison Department and to the employees of institutions under the Department's supervision, confirmed by the Decree by the Prison Department Director on 29 March 2004, No. 4/07-79 (State Gazette 2004, No. 149-5448), establish the principle of respect for every person. In accordance with the principle of justice, officer is obliged to treat every person equally despite his gender, age, sexual orientation, disability, race or ethnicity, origin, social status, religion or convictions. The Educational Centre of the Prison Department includes in all its introductory seminars the topics addressing international and regional human rights standards, reviews of relevant treaties, especially the European Convention of Human Rights and the case-law of the European Court of Human Rights, the European Convention against Torture and other Inhuman and Degrading Treatment or Punishment and the European Prison Rules. However, the Prison Department has not indicated that such introductory seminars specifically address the LGBT issues

- ii. *Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

No special measures are adopted in order to minimise the dangers of physical assault, rape and other forms of sexual abuse for LGBT persons at detention facilities.

The Prison Department stated that officers in a detention facility are responsible for the safety of detainees.³⁴ Instances of the use of force are regulated by Article 120 of the Code of Penalties Execution. If circumstances permit, persons, against whom physical force is going to be applied, are orally notified about it before the actual force is being applied. The application of the special measures must be terminated as soon as no more grounds exist for its application. After the use of the special measures, an officer has to provide the medical help to a prisoner immediately, if it is necessary. In all detention facilities every day before the start of a new shift, officers are provided with brief instruction that physical force against detainees and prisoners could be applied only in accordance with the law – it cannot violate dignity of the detainees and prisoners. Officers are also reminded about the responsibility for improper behaviour with

³⁴ Prison Department under the Ministry of Justice, reply to the inquiry of Lithuanian Gay League, 2012-04-30, No. 73-249, "Regarding provision of information".

detainees or prisoners. Officers are provided regularly with educational seminars to secure prevention of illegal use of force. Article 5(3) of the Code of Penalties Execution foresees that officers in detention facilities must act in accordance with the law. The legality of the actions by officers in detention facilities are supervised by the national courts, prosecutors, the Ombudsmen of the Parliament, the Ministry of Justice and other state institutions.

iii. Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?

There is a lack of research, indicating to which institutions detainees chose to apply most often and which institutions or organisations tend to be the most efficient in dealing with the complaints by the LGBT detainees. It has to be noted that the Human Rights Monitoring Group is established within the Parliament's Ombudsperson's Office. It inspects closed institutions and examines complaints received from the residents of these institutions, including the detention facilities. The statistical data from the Annual Activities Report of 2010 of the Parliament Ombudsperson's Office indicates that the biggest number of complaints received regards human rights violations within detention facilities (44 %) ³⁵. However, it does not identify how many complaints were received from the LGBT persons.

Prisoners and detainees are free to choose to which institution or organisation to apply with the complaint. According to Article 15 of the Law on Execution of Detention and Article 100 of the Code of Penalties Execution, detainees are free to submit applications, requests, complaints to various state institutions, including state municipalities, non-governmental and international organizations, etc. When submitting such requests, complaints, and applications from detention facilities, the letters cannot be opened and read under any circumstances. Detainees chose themselves to which institution to apply due to the improper treatment received at a detention facility.

iv. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?

There are no special procedures foreseen by the law that would regulate the placement of transgender prisoners at a detention facility or aiming at better protection of his/her rights. Transgender status of a person is not taken into account when deciding on placement of a prisoner. The Prison Department in its reply to the inquiry of information has stated that when considering the question of placement of a person in a detention facility, the administration of an institution takes into consideration the level of dangerousness of the person in question, public security, type and character of the committed crime, health condition of the person, her psychological characteristics, age, efficiency to work, obtained specialization and attitude to work, as well as recommendations of internal investigations conducted by detention facilities, social rehabilitation institutions, health institutions and the number of free places available at

³⁵ Annual Report 2011 of the Parliament Ombudsmen Office of the Republic of Lithuania, p. 7, available at: <<http://www.lrski.lt/files/462.pdf>>, visited on 1 August, 2012.

detention facilities. According to the law, searches on detainees must be always conducted an officer of same sex.³⁶

There is a lack of conducted research and no statistical data is available that would indicate the prevalence of ill-treatment experienced by LGBT persons in detention facilities. We are not aware of instances when LGBT persons have raised issues of human rights violations that occurred in detention facilities. The underreporting may be a result of hostile and negative attitudes towards LGLT persons and fear of retaliation.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

- i. Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

In 2007 the Equal Opportunities Ombudsperson Office conducted the research on LGBT community's social inclusion and legal situation (*“Lesbiečių, gėjų, biseksualių ir transeksualių (LGBT) teisių apsauga ir socialinės atskirties tyrimas”*).³⁷ The study was conducted within the framework of a project, funded by the European Commission. After the end of the project, the situation in regard to the LGBT community was not followed up.

The latest public opinion survey, regarding societal attitudes towards the LGBT community, was carried out in 2006-2008 and was not followed up on a regular basis.³⁸ According to the sociological report conducted in 2008, 47 % of respondents believed that homosexuality is a disease that has to be cured and 62 % would not have liked to belong to any organization together with the members from the LGBT community.³⁹

A survey, reaching out to around 180,000 gay men across Europe, has revealed that less than a quarter of gay men in Lithuania are open about their sexuality, which is under the European average of around 40%. The results of the survey were published on 27 August, and reported by the news portal *delfi.lt*. In total 595 gay men from Lithuania participated in the survey, of which 22.7% answered the question “Can you be open

³⁶ Prison Department under the Ministry of Justice, reply to the inquiry of Lithuanian Gay League, 2012-04-30, No. 73-249, “Regarding provision of information”.

³⁷ Equal Opportunities Ombudsman Office. Research on LGBT community social inclusion, 2007, available at: <http://www.lygybe.lt/assets/LGBT%20bendruomenės%20socialinės%20atskirties%20tyrimas.pdf> , visited on 18 July, 2012.

³⁸ See e.g. „A Media for Diversity LGBT in the news – a guide for better reporting“, 2008, available at: <<http://www.atviri.lt/index.php/lgl/publications/1661>>, pp.16-21.

³⁹ See A.Tereškinas (2008) The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania, Sociological Country Report.

about your sexual orientation within your immediate environment (relatives, co-workers)” positively.⁴⁰

- ii. *Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

We are not aware that surveys into the levels of social acceptance of or hostility towards the LGBT community are conducted on a regular basis by the state institutions dealing with the issues of discrimination (e.g. the Equal Opportunities Ombudsperson Office or the Ministry of Social Security and Labor), the law enforcement institutions, investigating hate crimes and incitement to hatred under the Criminal Code provisions, or by the NGOs (due to lack of funds).

- iii. *Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

The Law does not address the ground of gender identity; therefore no statistics is collected and published on this ground.

The statistical data on crimes committed against equality and freedom of conscience should be available on the website of the Information Technology and Communications Department under the Ministry of Interior (www.ird.lt).⁴¹ However, the website is not user friendly and it seems that the published data does not include separate statistics on hate crimes and hate incidents related to sexual orientation and gender identity.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

- i. *Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

⁴⁰ BNS, “Lietuvoje tik mažiau nei ketvirtadalis gėjų yra atviri dėl savo orientacijos”, Delfi.lt, 2012-08-27, available at: < <http://www.delfi.lt/news/daily/lithuania/lietuvoje-tik-maziau-nei-ketvirtadalis-geju-ya-atviri-del-savo-orientacijos.d?id=59390949#ixzz28AslfRbm>>, visited on 29 September 2012; For LGBT Equality against Homophobia in Lithuania, “Survey: 22.7% of Lithuanian gay men are open about their sexuality”, 2012-09-04, available at: <http://www.atviri.lt/index.php/news/survey_227_of_lithuanian_gay_men_are_open_about_their_sexuality/6049>, visited on 29 September 2012.

⁴¹ Police Department under the Ministry of Interior reply to the inquiry of information regarding the implementation of Recommendation and its appendix on 13 April 2012, No. 5-S-1519.

Article 170 of the Criminal Code provides that:

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

The Law does not include the ground of gender identity. Considering that the list of grounds provided by the Law is exhaustive, it is dubious whether Article 170 of the Criminal Code also covers instances of hate speech based on gender identity.

- ii. *Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*
- *a culture of respect, tolerance and diversity, and*
 - *to avoid negative and stereotyped representations of LGBT people?*

We are not aware that media organizations have adopted the codes of conduct regarding the issues of hate speech on the Internet. The provisions of the Code of Ethics of Lithuanian Journalists and Publishers, adopted at the general meeting on 15 April 2005⁴², do not address the issue of hate speech by only referring to the general respect of human rights (e.g. under Article 1 of the Code).

Under Article 170(4) legal persons could be also held liable for the incitement of hatred. However, this provision has never been applied in practice. Nevertheless, in 2007 due to the increase in pre-trial investigations initiated by the Investigation Service Special Investigative Division with regard to the comments online under the certain articles on Internet, some of the news portals (e.g. *delfi.lt*) introduced warnings, such as: “Attention. You are reading section of comments. Comments are written by the DELFI readers. Comments are not edited or reviewed. The content of the comments does not reflect the views of the Delfi.lt editorial board”. In addition to this, the *delfi.lt* has established the readers’ self-censorship function, allowing readers to indicate whether they like or dislike a written comment or to suggest deleting it.

⁴² See at: http://www.lzs.lt/lt/teises_aktai/etikos_kodeksas.html, visited on 10 July, 2012.

The other main news portal *lrytas.lt* provides statement of responsibility for the readers, who want to write an internet comment, and it notes that the editors of the portal reserve the right to delete comments that, *inter alia*, incite hatred and have a goal to incite discrimination, physical violence with respect to group of persons or person belonging to that group because of his gender, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or convictions. The editorial board also warns that if such instances occur, it will inform the law enforcement institutions and provide all the necessary help to establish the identity of a commentator.⁴³

iii. *Has legislation for criminalising "hate speech" on the internet been implemented, and does this cover (a) homophobic and (b) transphobic "hate speech"?*

Relevant provisions of the Criminal Code addressing the issues of hate speech do not cover the ground of gender identity and therefore do not prohibit instances of transphobic hate speech *per se*.

Article 170 of the Criminal Code (i.e. prohibition of incitement to hatred) has been introduced in 2007. Therefore official as well as unofficial statistical data on hate speech acts regarding sexual orientation is not available before 2003 – only acts and criminal investigations initiated from 1 May 2003 onwards can be taken into an account.⁴⁴ The statistical data from 2010 indicated that 95 % of all crimes committed in violation of equal rights and freedom of conscience, including the crimes of incitement to hatred (e.g. Article 170 of the Criminal Code), are committed on the Internet. Therefore the law enforcement officers face difficulties in identifying perpetrators when investigating the instances.⁴⁵ Quite substantial number of investigations has been initiated under Article 170 of the Criminal Code. In its Annual report 2010 the Special Investigative Division of the Prosecution Service of the Republic of Lithuania noted that out of all 168 initiated and conducted pre-trial investigations, 8 investigations were launched on the ground of incitement to hatred against Roma ethnic group, 6 – against Jewish community, 3 – against Polish ethnic people, 2 against Russian ethnic people, and 1 against religious catholic group. The rest of the investigations were conducted on the ground of sexual orientation (148 out of 168). The same noticeable tendency can be reflected upon in the past few years as well. ⁴⁶ The same tendency was noticed in 2011. The Inspector on Journalists Ethics in 2011 annual report indicated that most of the instances of incitement to hatred, violence and contempt were made on the basis of sexual orientation (81 %) and origin or nationality (24 %). Most of the internet comments

⁴³ Lrytas.lt. Responsibility of commentators, available at: <<http://www.lrytas.lt/kiti/atsakomybe.htm>>, visited on 1 August, 2012.

⁴⁴ Edita Ziobiene Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Vilnius, Lithuania, p. 39.

⁴⁵ Annual Report 2010 of the Special Investigative Division at the General Prosecutor Office p.10, available at: <<http://www.prokuraturos.lt/nbspnbspnusikaltimeižmoniškumui/tabid/221/Default.aspx>>, visited on 19 July, 2012.

⁴⁶ Annual Report 2010 of the Special Investigative Division at the General Prosecutor Office p.7, available at: <<http://www.prokuraturos.lt/nbspnbspnusikaltimeižmoniškumui/tabid/221/Default.aspx>>, visited on 19 July, 2012.

inciting to hatred and physical violence were published on popular internet news portals (e.g. www.delfi.lt or www.lrytas.lt).⁴⁷

- iv. *Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

With regard to the rapid increase of initiated investigations under Article 170 of the Criminal Code from 2007 onwards, several public events (e.g. round table discussions, conferences, etc.) have been held including the representatives from the digital media, the Journalists Ethics Inspectorate Office and the NGOs (partially responsible for monitoring hate speech on the Internet) as the way of addressing increasing hate speech on the Internet.

- v. *If there are incidents of "hate speech", are they publicly disavowed by leading public officials?*

We are not aware of the instances when public officials have expressed contempt for incidents of hate speech on the grounds of sexual orientation or gender identity. On the contrary, some instances suggest that Lithuanian politicians fail to condemn and combat hate speech aimed at LGBT people, and they also participate in expressing it. For example, the Member of Parliament Ms. Irena Degutienė once said that "[w]e have never acknowledged and [will] never acknowledge partnerships; we [will] never acknowledge gay marriage because it is not a real family".⁴⁸ She also said that "I am not against gay people, but I wish that they do not demonstrate their views", suggesting that LGBT people should stay out from the public sphere and should hide their identity. Ms. Vilija Aleknaite-Abramikiene, the MP from the Homeland Union Party, in reference to the Baltic Pride events in Vilnius that "[a] gay and lesbian parade in Lithuania would humiliate the Lithuanian nation". She also said that the ILGA-Europe conference held in Vilnius in 2007 would "degrade the Lithuanian nation and the opinions of the majority of the Lithuanian people".⁴⁹

Recently, in September 2012, Ms. Irena Degutiene, the then Speaker of Parliament, expressed her views on same-sex partnerships legislation stating that "[t]his is directed against the survival of the country. I cannot understand how a family could have two mothers or two fathers. There should be both a mother and a father. That is self-evident".⁵⁰

⁴⁷ Inspector of Journalists Ethics, reply to inquiry of Lithuanian Gay League, 2012-08-13, No. G-330/S-644, "Regarding provision of information".

⁴⁸ Tereškinas, Artūras (2007). „Not Private Enough? Homophobic and Injurious Speech in the Lithuanian Media“, Lithuanian Gay League; Lithuanian Gay League and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, p.9

⁴⁹ Tereškinas, Artūras (2007). „Not Private Enough? Homophobic and Injurious Speech in the Lithuanian Media“, Lithuanian Gay League; Lithuanian Gay League and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, p.9

⁵⁰ For LGBT Equality against homophobia in Lithuania, "Homeland Union opposes same - sex partnerships", 2012-09-18, www.15min.lt, available at:

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

We are not aware of the issued guidelines or any other additional measures to be taken with the view of raising the awareness of public authorities and institutions about their responsibility to refrain from statements in the media that might be reasonably understood as legitimising hatred or discrimination.

The Ministry of Social Security and Labor in its reply to the inquiry of information regarding the implementation of the Recommendation and its appendix has not indicated of issuing such guidelines or adopting any additional measures.⁵¹

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

As it is stated above, the Lithuanian Gay League (LGL) has noted the statements made in public by the MP Ms. Vilija Aleknaite-Abramikiene, regarding the planned Baltic Pride events in 2010 and the ILGA-Europe conference in Vilnius in 2007.

Disregarding legislation against discrimination, there were instances when public officials expressed overt hostility against LGBT people and it may be reasonably understood as legitimising hatred and discrimination. For example, in 2008 the mayor of Vilnius City Municipality stated that a request for the European Commission truck "For Diversity. Against Discrimination" to promote its activities equals to advertising (i.e. homosexual propaganda) and assured that it will be prevented as long as he stays in the office.⁵²

The following years, i.e. from 2009 to 2011, were full of legislative initiatives that contradicted the general principle of equality. While considering these legislative initiatives in the Parliament and expressing their views on the matter, some MPs did not refrain from hateful rhetoric, e.g.: "I believe that many problems would be solved in this way, if no permission is issued for the conduct of various Gay prides, there would be no tension in the society and for us, the MPs, there would be no need to jump over the fences in order to fight various sexual perversions".⁵³

http://www.atviri.lt/index.php/news/homeland_union_opposes_same_sex_partnerships/6052, visited on 29 September 2012.

⁵¹ Ministry of Social Security and Labour, 2012-05-28, No. (25.11-34)SD-3632 "Regarding the provision of information for implementation of CoE Recommendation CM/REC(2010)5.

⁵² See Equal Opportunities Ombudsman Office, Annual Report 2008, p.65.

⁵³ The Parliament of Lithuania, morning plenary session, No. 267, stenograph No. 151, 2010-11-23, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=385963, visited on 23 June, 2012. In this statement MP P. Grazulis was referring to the incident when in protest of the Baltic Pride

It has to be noted that when some MPs violated the public order during the Baltic Pride 2010 events by not obeying the police orders and trying to break through the security cordon, the majority in the Parliament refused to strip these MPs of their parliamentary immunity by expressing indirect support for their actions.⁵⁴

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

i. Has guidance been issued to public officials and state representatives in this respect?

We are not aware of the instances when public officials and other state representatives have been encouraged to promote tolerance and respect for LGBT persons. None of such instances or any other adopted measures encouraging such behavior has been noted by the Ministry of Social Security and Labor.

The Ministry of Social Security and Labour in its reply to the inquiry of information regarding the implementation of the Recommendation and its appendix has not indicated of issuing such guidelines or adopting any other additional measures in this regard.

ii. If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?

We are not aware of the instances when public officials and other state representatives were attempting to promote tolerance for LGBT people. Unfortunately, the tendency is more in the opposite direction – some public officials do not refrain themselves from openly expressing their discriminatory and hateful views towards the LGBT community.

In 2009 the revealed “scandal” regarding the project “Gender Loops” was widely discussed in the media. In some kindergartens children were introduced to the concept of sexual orientation through telling fairy tales, when two male princes fell in love, got married and became a King and a King. This news received loads of negative attention. None of the public officials or representatives of the Ministry of Education and Science took steps to explain the advantages of the initiative or the need for its application, but rather distanced themselves from it.⁵⁵ The Minister of Social Security and Labor, Mr.

march in 2010, he jumped over the fence protected by police to express his negative attitude and protest for the event.

⁵⁴ Human Rights Monitoring Institute. Review of Human Rights Implementation in 2009-2010, p. 34, available at:

<http://www.hrmi.lt/uploaded/PDF%20dokai/Apzvalgos/Apzvalga_2009-2010_su%20virseliu_FINAL.pdf>, visited on 22 June, 2012

⁵⁵ See BNS. Dėl prieštarigai vertinamo „Gender Loops“ projekto sudaryta darbo grupė, Alfa.lt, 2009-03-23, available at:

Rimantas Jonas Dagys, ordered an immediate termination of the “Gender Loops” project, stating that it was contradictory to the Lithuanian Constitution because it promoted homosexuality to minors.⁵⁶ Finally, as a response to the unfolded “scandal”, this methodology was never implemented at schools.⁵⁷

In its review on human rights implementation in Lithuania 2009-2010 the Human Rights Monitoring Institute (HRMI) noted that Lithuania made one step back in the protection of the rights of sexual minorities. Due to the many discriminatory legislative initiatives, not effectively implemented right to freedom of association and peaceful assembly and freedom of expression, and due to the hateful rhetoric by some politicians, the intolerance against the LGBT community has increased in the society.⁵⁸

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

i. Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?

We are not aware of the instances when organizations that are working in the field of human rights protection and LGBT rights would have been not issues an official registration.

ii. If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?

http://www.alfa.lt/straipsnis/10265202/?Del.priestaringai.vertinamo.Gender.Loops.projekto.sudaryta.darbo.grupe=2009-03-23_18-10>, visited on 15 July, 2012

⁵⁶ LGL. “Tightening the Gender Loop in Lithuania”, available at: <<http://www.lgl.lt/naujienose.php?pid=31>>, visited o 25 July, 2012.

⁵⁷ LGL. “Tightening the Gender Loop in Lithuania”, available at: <<http://www.lgl.lt/naujienose.php?pid=31>>, visited o 25 July, 2012. See also LGL and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, p. 15.

⁵⁸ Human Rights Monitoring Institute. Review of Human Rights Implementation in 2009-2010, p. 32, available at: <http://www.hrmi.lt/uploaded/PDF%20dokai/Apzvalgos/Apzvalga_2009-2010_su%20virseliu_FINAL.pdf>, visited on 22 June, 2012

The registration of NGOs with public authorities, depending on their type, is governed by the rules of the Law on Public Establishments⁵⁹ or the Law on Associations. Under Article 3(2) of the Law on Associations, it is prohibited to form and operate an associations, which purpose or methods of operation is, *inter alia*, to incite racial, religious and social dissent, to violate human rights and freedoms and to perform actions that are contrary to the laws of the Republic of Lithuania and universally-recognised standards in international law.⁶⁰

We are not aware of the instances when a NGO that is working in the field of human rights were precluded from public registration relying on any of the above referred grounds. There are a few NGOs working in the field of human rights. According to statistics, only 3,3% of all NGOs are work in the field of human rights.⁶¹ The only one organization, specifically working in the field of LGBT rights, is the Lithuanian Gay League (LGL).

- iii. *Are there examples of measures taken to:*
- *ensure that LGBT organisations can operate freely,*
 - *defend their interests when necessary,*
 - *facilitate and encourage their work?*

We are not aware of the instances of adoption and implementation of any specific measures aimed at supporting the work of LGBT organisations or their activities in any special way.

- iv. *Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

There is no active initiative from the public authorities to seek for partnership arrangements with LGBT organisations. However, the Lithuanian Gay League (LGL), when framing and implementing public policies affecting the LGBT community, takes every opportunity to express its views to public authorities in various ways (i.e. formal and informal) and welcomes every effort of cooperation and mutual understanding.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

- i. *Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*

⁵⁹ See Article 4. (Founding of a Public Establishment) of the Law on Public Establishments, 3 July 1996 No I-1428 ((As last amended on 22 December 2009 – No XI-606), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=372028, visited on 1 July, 2012.

⁶⁰ Law on Associations, 22 January 2004 No IX-1969, Vilnius (As last amended on 14 December 2010 – No XI-1222), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=377614>, visited on 1 July, 2012.

⁶¹ Transparency International Lietuvos Skyrius. Section. 12. Public Society, p.235, available at: http://www.transparency.lt/new/images/lietuvos_nacionalines_at Sparumo_korupcijai_sistemas_tyrimas.pdf, visited on 22 June, 2012.

The LGBT organisations are not facially discriminated in regard to access to public funding, provided by the state supported programs and agencies. Under Article 5 of the Law on Equal Treatment the State and municipal institutions and agencies must, within their competence:

- 1) ensure that equal rights and opportunities are enshrined in all legal acts irrespective of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion;
- 2) develop, approve and implement programmes and measures designed to ensure equal treatment irrespective of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion;
- 3) in the manner prescribed by laws, support programmes of religious communities, associations and centres, public establishments, associations, as well as charitable and sponsorship foundations which assist in implementing equal treatment of persons on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

The LGL is not aware of any instances when the LGBT organisations were prevented from taking part in the application for funding under certain state sponsored scheme that was open for other NGOs.

In 2011 the Government of Republic of Lithuania adopted the Inter-Institutional Anti-Discrimination Promotion Plan 2012-2014.⁶² The Ministry of Social Security and Labor coordinates the implementation of the Anti-Discrimination Promotion Plan 2012-2014. The Plan seeks to secure the implementation of the principle of non-discrimination, raise legal awareness, mutual understanding and tolerance with regard to all protected grounds, i.e. gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. The ground of gender identity is not included in the Anti-Discrimination Promotion Plan 2012-2014.

ii. Has such funding been made available to LGBT organisations?

The Ministry of Social Security and Labor provided funding to the Lithuanian Gay League (LGL) together with other NGOs for the implementation of projects aimed at combating discrimination on all grounds of discrimination. The following projects received financial support from the Ministry: 2004-2008 EC initiative EQUAL project „Atviri ir saugūs darbe“ (“Open and safe at work”) and 2011-2012 EC PROGRESS project “Changing Attitude Fostering Equality”.

In 2011 the Lithuanian Gay League together with other NGOs received funding from the State’s budget after winning the call in selection of projects aimed at increasing tolerance and respect for human rights, combating discrimination and protecting equal

⁶² The Anti-discrimination promotion plan 2012-2014 was confirmed by the Decision No. 1281 of the Government of Republic of Lithuania on 2 November 2011.

opportunities in the field of employment on all grounds.⁶³ In 2012 the same call was launched for the selection of projects for funding for NGOs working in the field of human rights.⁶⁴

Nevertheless, the State has not yet adopted any proactive measures or established any specific activities in support for the protection of LGBT rights. The State has not adopted any programs that would set LGBT discrimination as a priority issue. The amount of financial support provided for the implementation of the above referred projects is not substantial. Actually, the provided financial support is inadequate to address the LGBT issues in Lithuania. Due to the fact that the State does not allocate substantial resources to combat discrimination on all protected grounds, the LGBT organisations do not receive sufficient financial support to address and solve the LGBT issues as well.

The protected ground on gender identity is not included in any of legislative acts or programs. Protection of rights of transgender persons is not regulated under the national law. Therefore the NGOs working in this field do not have substantial legal basis in order to fight discrimination on this ground.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

- i. Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?*

The LGL is not aware of the instances when State has failed to provide an effective protection from hostility and aggression for LGBT human rights organisations. In some instances, discussed below, the State institutions have provided protection when it was necessary.

- ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

The Lithuanian Gay League (LGL) has good experience in cooperation with the police forces during the Baltic Pride 2010 events in Vilnius, when law-enforcement officers effectively sought to secure the protection of the Baltic Pride participants (including their safety during other activities). The Police launched investigation into the incidents that occurred before the Baltic Pride events, when the office window of one of the Baltic Pride partner NGO's, i.e. the Tolerant Youth Association (Tolerantiško Jaunimo

⁶³ Ministry of Social Security and Labor of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for implementation of CoE Recommendation CM/REC(2010)5".

⁶⁴ Ibid.

Asociacija), was broken. The Police also investigated the threatening anonymous letters received by the LGL before the Baltic Pride.

The Police cooperated closely during the “Rainbow Days” in 2012 as well. It organized security during public events and other activities. These circumstances allowed for the LGL to carry out activities without obstacles and unexpected disturbances. None of the participants were injured or encountered physical harm.

However, despite the positive cooperation with the Police, the State itself has no coherent policy and solid opinion on how to provide safety and protection for LGBT events. For instance, in May 2010 the General Prosecutor applied to the Court with the request for the adoption of interim measures and sought to prevent the Baltic Pride 2010 march accordingly, claiming for the existence of potential threats and the need to protect public safety and security.⁶⁵ The request was based on statistical comparative data, i.e. the number of opened pre-trial investigations under Article 170 of the Criminal Code on alleged hate speech cases, the majority of which were made on the Internet. In the request, the Prosecutor General stated that this data is suggesting that radical groups had been planning to protest against the Baltic Pride march. Therefore, there were grounds to reasonably believe that the State is not able to ensure public order. The Prosecutor General indicated that without imposing the interim measure, it would be impossible to implement the Court’s decision later.

It has to be noted that the Prosecutor General first sent a letter to the organizers of the event, suggesting cancellation of the event without providing any supporting and argumentation. In the light of these actions, the Prosecutor General tried to place pressure on the organizers and made public statements in the media about possible riots, the State’s inability to provide security and increasing tension in the society.

According to the organizers of the Baltic Pride 2010, the Prosecutor General failed to provide any supporting evidence that certain persons or groups had been identified as wanting to initiate riots or provocations. Besides, no pre-trial investigations had been initiated under Article 170(3) of the Criminal Code on inciting violence on grounds of sex, sexual orientation, race, nationality, language, descent, social status, religion, convictions or views. The Prosecutor General’s request was based on information that did not correspond with public information, namely the statements made by the Mayor of Vilnius City Municipality Mr. Navickas on 5 May 2010, the Deputy Police Commissioner General Mr. Skvernelis on 4 April 2010, and the Head of Vilnius County Police Headquarters Mr. Lančinskas. These officials stated that the Police is ready to ensure public order and security of the participants and the guests of Baltic Pride 2010 March for Equality. The organizers noted that they had actively cooperated with the Vilnius City Municipality and the Police from the very initial stages of planning process, and therefore the safety of the event was ensured.⁶⁶

⁶⁵ Identical request for the adoption of interim measures was submitted to the court by the Member of Kaunas City Municipality Council Mr. Stanislovas Buskevicius.

⁶⁶ These events are described in the Lithuanian Gay League publication *Changing faces. First March for LGBT Equality in Lithuania* (Vilnius, 2012), pp. 93 – 94, available at: <http://www.atviri.lt/index.php/asociacija_lgl/leidiniai/1367>, visited on 1 August 2012.

On 5 May 2010 Vilnius County Administrative Court imposed an interim measure, suspending the Order of Vilnius City Municipality Government Administration regarding permission to organize the Baltic Pride March for Equality. However, this decision was repealed by the Supreme Administrative Court of Lithuania.⁶⁷

iii. *Are LGBT human rights organisations able to work with*

- *national human rights institutions and ombudsmen,*
- *the media,*
- *other human rights organisations?*

There is no national human rights institution in Lithuania meeting the UN Paris principles.

The Lithuanian Gay League (LGL) together with the Equal Opportunities Ombudsperson Office have implemented several projects relating to anti-discriminatory measures, *inter alia*, the project under the European Commission program PROGRESS 2011-2012 and the EU project “Park of Diversity” (“Įvairovės parkas”). Both institutions were partners under the EQUAL program at project “Safe and Equal at Work” („Atviri ir saugūs darbe”).

Recently some of the biggest digital media sources, e.g. the news portals www.delfi.lt and www.lrytas.lt, tend to portray the LGBT issues in quite positive and objective way. The change in attitude might be related to the established cooperation during the Baltic Pride 2010 events, the dissemination of the LGL’s newsletter on a regular basis and the conduct of various seminars and lectures (e.g. the seminar for media representatives “The Changing Image of LGBT in Media” in 2012) and dissemination of publications related to the protection of LGBT rights.

The Lithuanian Gay League (LGL) is a member organization of the Human Rights NGOs Coalition and the National Equality and Diversity Forum that unite a number of NGOs working in the field of human rights. The LGL cooperates with these NGOs in implementing projects under the European Commission PROGRESS program.

iv. *Are they able to take part in training sessions, international conferences and other human rights activities?*

The Lithuanian Gay League (LGL) has not encountered problems in this regard. Usually, the LGL is invited to participate in the events financially supported by the European Commission. For instance, in 2011 the representatives of the LGL took part in the seminars on anti-discrimination and awareness raising, organized for the local NGOs as a part of the EC initiative. However, the participation in the State organized events is more problematic.⁶⁸

⁶⁷ Ibid, pp. 95-97.

⁶⁸ See e.g. Em Šaras. LGBT NGO barred from round table discussion on human rights, February 23, 2011, available at: http://www.atviri.lt/index.php/news/lgbt_ngo_barred_from_round_table_discussion_on_human_rights/4232;mark;zingeris, visited on 1 August 2012.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

- i. Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

State institutions are not inclined to consult with the LGBT organizations. The occasional consultations usually take place upon the initiative from the NGOs. For example, in 2012 the Ministry of Justice did not seek consultation with the NGO experts, when submitting Amendments on the Law on Registered Partnership and Article 2.27 of the Civil Code on the right to gender reassignment. The LGL submitted its observations to the Ministry of Justice regarding these Laws affecting the rights of the LGBT community upon its own initiative. However, it did not receive any reply from the Ministry.

On 27 June 2011 the LGL submitted its request to the Ministry of Health for the inclusion of its representative in the State HIV/AIDS and Prevention of Sexually Transmitted Diseases and Program Coordination Council, but received a negative reply.

Upon the initiative from human rights NGOs, the Human Rights Coalition, in which the LGL participates, initiated the consultation with the representatives from public authorities, regarding the state report submission for the UN HRC Universal Periodic Review.

- ii. Have there been such consultations regarding the implementation of this Recommendation?*

The Lithuanian Gay League is not aware of the instances when the LGBT organisations or other human rights NGOs were consulted by the State institutions regarding the implementation of this Recommendation.

The LGL has taken steps to secure a better implementation of the Recommendation. However, it did not receive active support from the State authorities. On 20 January 2011 the LGL appealed to the President of the Republic of Lithuania and the Prime Minister, encouraging forming an inter-institutional working group for the preparation of an action plan for the implementation of the Recommendation. It proposed to include in the working group not only the representatives of the Ministries of Social Security and Labor, Justice, Education and Science, and Culture, but also representatives of Equal Opportunities Ombudsperson's Office, Migration Department, and non-governmental organizations defending human rights.⁶⁹

⁶⁹ See For LGBT Equality, Against Homophobia in Lithuania, "Association LGL urges to tackle problems of homosexuals in Lithuania", 2011 01 26, available at: <http://www.atviri.lt/index.php/news/association_lgl_urges_to_tackle_problems_of_homosexuals_in_lithuania/3870;mark:recommendation>, visited on 15 July 2012.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

- i. *Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*
- *activities that support the human rights of LGBT persons*
 - *publication of material*
 - *media coverage*
 - *organisation of/participation in conferences*
 - *dissemination/access to information on safe sexual practices?*

No information is available that the State authorities have taken special measures aiming at ensuring the freedom of expression for the LGBT community. The past few years have been notoriously defined as not increasing the freedom of expression for the LGBT community, but rather limiting it to the extent of being on the verge of violating the freedom of expression and the principle of non-discrimination.

The LGBT community was confronted with the obstacles in exercise its freedom of expression in the course of the first attempts to organize public events in 2007. The legislative initiatives, compromising the freedom of expression for the LGBT community, were introduced later on.

Amendment to the Law on the Protection of Minors against the Detrimental Effect of Public Information

On 14 July 2009 the Parliament approved a new amendment on the *Law on the Protection of Minors against the Detrimental Effect of Public Information*, which prohibited propagation of homosexual and bisexual relations.⁷⁰ This legislative initiative was widely condemned by the international community and was eventually abolished. The Law in its current version⁷¹ does not classify information on homosexuality *per se* as detrimental to minors and actually protects sexual minorities from discrimination by classifying information, which humiliates a person on ground of one's sexual orientation, as detrimental to the minors.⁷² Nevertheless, the Law contains

⁷⁰ See Human Rights Monitoring Institute. Review of Human Rights Implementation in Lithuania 2009-2010, Vilnius, 2011, p. 33.

⁷¹ Law on the Protection of Minors Against the Detrimental Effect of Public Information, 10 September 2002 – No IX-1067 (As last amended on 21 October 2011 – No XI-1624) Vilnius, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410974>, visited on 23 July, 2012.

⁷² Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 6, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_Lithuania_HRC105.pdf>, visited on 3 August, 2012.

provisions, classifying public information, which under Article 4(2)(16) " expresses contempt for family values, encourages the concept of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania", as having detrimental effect. Under the Civil Code and the constitutional provisions, marriage is conducted only between a man and a woman. Therefore, the Lithuanian Gay League (LGL) notes that the "Law exposes the homophobic intentions behind the adoption of this law and the motive to use it to curb public discussions on homosexuality or the public visibility of the LGBT community".⁷³ The LGL further states that "this Law has not been enforced against any LGBT activists as yet, but it is only a matter of time before this Law is used to silence and intimidate the LGBT community". The MPs have already referred to the Law in attempting to ban the Baltic Pride March in 2010, although unsuccessfully. This exposes the homophobic intentions behind the adoption of this law and the motive to use it to curb public discussions on homosexuality or the public visibility of the LGBT community.⁷⁴

Amendments to the Code of Administrative Violations

Recently some attempts were made with the view of amending the provisions of the Code of Administrative Violations and other laws with the aim of prohibiting the "promotion" of homosexuality in public places, and thus potentially violating the right to freedom of expression and freedom of peaceful assembly of LGBT individuals and those, who advocate for their rights. Although the latest attempt was voted down in the Lithuanian Parliament in June 2012, other such attempts may follow.⁷⁵

On 23 September 2010 the Lithuanian Parliament adopted its agenda for the Autumn's Session, including the consideration of legislative amendments to the Criminal Code and to the Code of Administrative Violations, which would criminalize the "public propagation of homosexual relations".⁷⁶ In October 2010 the amendment to the Criminal Code was withdrawn. However, the Parliament decided to continue the consideration of the amendment to Article 214 of the Code of Administrative Violations, introducing administrative liability for "public propagation of homosexual relations" and stating that "public promotion of homosexual relations is to be punished by a fine from 2,000 to 10,000 Litas" (approximately €580-€2,900).⁷⁷

⁷³ LGL and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, p. 14.

⁷⁴ LGL and Heartland Alliance. A Shadow Report, p. 14.

⁷⁵ See Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 7.

⁷⁶ See also Amnesty International, European Institutions Office, *Lithuania: parliament moves to criminalize homosexuality* (update on homophobic legislation in Lithuania), 9 September 2009, available at: <http://www.amnesty.org/en/for-media/press-releases/lithuania-parliament-moves-criminalize-homosexuality-20090909>, visited on 1 September 2012; Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 7.

⁷⁷ Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 9.

On 19 October 2010 the MP Mr. Petras Gražulis submitted a legislative proposal for amendments on Articles 224 and 259(1) of the Code of Administrative Violations and on Article 214(30) of the Civil Code. The proposal was returned to the initiator and an improved version was filed in on 22 April 2011. On 28 April 2011, the Parliament approved the proposal and appointed the key Committee of Legal Affairs. The Committee requested Government's opinion on the matter, which was negative. The Committee on Legal Affairs rejected the proposal on 15 December 2011.⁷⁸

Following a parliamentary vote against the proposal on 26 April 2012, the amendment to the Code of Administrative Violations that was aiming to introduce a new Article 214(30), entitled "Protection of Constitutional and Moral Values," was again brought to vote on 5 June 2012. In its most recent formulation the amendment stated that the public denigration of constitutional moral values and the principles of family enshrined in the Constitution and the organization of events contradicting social morality should be subjected to a fine from 1,000 to 3,000 litas (i.e. €290 to €870). If the proposed offences were committed repeatedly, the fine would be from 3,000 to 6,000 litas (i.e. €870 to €1,740). On 5 June 2012 the proposed amendment was again voted against.⁷⁹

Although this latest attempt to introduce further legislation with the potential of discriminating against the LGBT community was defeated, Amnesty International remains concerned that similar initiatives, which are discriminatory and would unlawfully restrict the rights to freedom of expression for LGBT individuals which would be in violation of Lithuania's obligations under the international human rights law, may be resumed in the near future. Should sanctions of this kind be passed, any public expression, portrayal of or information about homosexuality would be banned, including, for example, campaigning on human rights issues relating to sexual orientation and gender identity, providing sexual health information to LGBT individuals and organizing events such as gay film festivals and Pride marches.⁸⁰

Amendments to the Law on the Provision of Information to Public

Following the amendments, which entered into force on 18 October 2010, Article 39 of the Law on Provision of Information to Public stated that advertising and audio-visual communication "must not contain any manifestation or promotion of sexual orientation" and hence prohibited any reference to the issue of sexual orientation in this domain. Furthermore, the law did not include "sexual orientation" among the prohibited grounds of discrimination. It also stated that advertising and audio-visual communication should not "be offensive to religious or political beliefs". This provision was incompatible with the prohibition of discrimination based on sexual orientation and the right to freedom of expression. In June 2011, the Lithuanian Parliament amended Article 39 by deleting the ban on manifestation or promotion of sexual orientation and adding sexual orientation as one of the prohibited grounds of discrimination in the law. However, the prohibition of advertising and audio-visual

⁷⁸ Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 7-8.

⁷⁹ Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 8.

⁸⁰ Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 8.

communication that could be “offensive to religious or political beliefs” was maintained in the article.⁸¹

Amnesty International considers that the broad prohibition of advertising and audio-visual communication that is “offensive to religious or political beliefs” contained in Article 39 of the law, violates the right to freedom of expression and should be repealed.⁸²

Amendment to Article 38 of the Constitution of Lithuania

An amendment was proposed and was being examined in the Parliament, aiming at restricting the definition of family in the Constitution of Lithuania. The proposed formulation of Article 38 of the Constitution stated that “<...> family shall be created by marriage. Marriage shall be concluded upon the free mutual consent of man and woman. Family also arises from fatherhood and motherhood <...>”. Amnesty International was concerned that establishing a constitutional tie between family life and marriage might directly lead to discrimination on grounds of marital status and sexual orientation.⁸³

On 19 June 2012 the Parliament rejected the amendment on Article 38 of the Constitution of the Republic of Lithuania with 93 votes in favor, 16 – against and 13 – withholding.⁸⁴ Under the provisions of Constitution of the Republic of Lithuania (Article 148) in order to amend the Constitution no less than 2/3 of all Parliamentarians have to vote in favor (there are 141 MPs; therefore 94 votes in favor were required).

- ii. *Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

There have been several cases when the LGBT community had encountered restrictions against its freedom of expression. In general, whenever an attempt was made to exercise freedom of expression, it usually confronted certain challenges.

In May 2007 the Lithuanian Gay League (LGL), while implementing the EQUAL project ‘Open and safe at work’, planned to launch a social advertising campaign. It was foreseen that the slogans ‘A Lesbian Can Work at School’, ‘A gay Man Can Work as a Police Officer’, and ‘Homosexuals Can be Open and Safe at Work’ will be displayed on trolleybuses in the cities of Vilnius and Kaunas. The initiative failed, because of encountered opposition from the municipalities of both cities. No legal arguments were made in order to justify the resentment. The mayor of Vilnius City Municipality publicly stated that such slogans are demonstrations of homosexual ideas, which cannot be

⁸¹ Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 8.

⁸² Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 9.

⁸³ Amnesty International. Lithuania, Submission to the United Nations Human Rights Committee for the 105th session of the Human Rights Committee (9-27 July 2012), p. 9.

⁸⁴ Parliament session No. 8, morning sitting No. 452 (2012-06-19), Amendment of Article 38 of the Constitution of the Republic of Lithuania (No. XIP-3981(2)) adoption, available at: http://www3.lrs.lt/pls/inter/w5.sale.klaus.stadija?p_svarst_kl_stad_id=-12515, visited on 19 June 2012.

approved.⁸⁵ 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 Security and Labor in regard to this ban.⁸⁶

In another instance, LGBT activists were banned from displaying a rainbow flag, an international symbol of gay rights, twice in 2007.⁸⁷ The LGL claims that the same reason for banning the events was given twice, namely an ongoing construction work. However, the LGL asserts that there was no construction work actually taking place to prevent them from flying the flag. Although the LGL took the decision to ban the display of the rainbow flag to Court, the Court ruled against the LGL and accepted the false argument that on-going construction work was the reason for banning the events.⁸⁸

In 2007 the Mayor of Vilnius City Municipality refused to allow the EC anti-discrimination truck tour to visit the city. The truck was part of the European Year of Equal Opportunities for All campaign, and was traveling throughout the European cities. The Mayor claimed that it would cause a security risk and riots if. In 2008, the municipality of Vilnius again refused to grant a permission for the truck to enter the city.⁸⁹

iii. Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?

We are not aware of the instances when public authorities tried to encourage pluralism and non-discrimination in respect of issues of sexual orientation or gender identity in the media. The examples provided above suggest the opposite. The Ministry of Justice, in regard to the operation of the National Television of Lithuania (NTL), has noted that “the NTL has to collect and disseminate information about Lithuania and the world, introduce the society with the diversity of the European and world’s culture as well as with the contemporary society’s moral values and citizenship, has to cultivate the ecological culture of society. When preparing and airing the shows, the NTL has to follow the principles of objectivity, democracy, impartiality, to secure the freedom of expression, the shows have to reflect different views and convictions, persons with various views have a right to participate in the shows and express their opinions”.⁹⁰

⁸⁵ Evaldas Utyra, ‘Viešumo siekiantiems gėjams – skaudūs smūgiai’, Delfi.lt, available at: <<http://www.delfi.lt/archive/article.php?id=13210101>>, visited on 23 July, 2012.

⁸⁶ Edita Ziobiene. Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Vilnius, Lithuania, February 2010, p. 44.

⁸⁷ LGL. “Lithuania’s EU Commissioner Denies She is a Lesbian”, available at: <<http://www.lgl.lt/naujienose.php?pid=34>>, visited on 25 July, 2012

⁸⁸ LGL. “The ILGA-Europe Conference Summary”, available at: <<http://www.lgl.lt/naujienose.php?pid=12>>, visited on 25 July, 2012.

⁸⁹ LGL and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, pp. 14-15.

⁹⁰ Ministry of Culture, reply to Lithuanian Gay League, 2012-08-28, No. S2-2109, “Regrading the European Council Recommendations CM/REC(2010)5”.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

- i. Have the authorities ensured freedom of peaceful assembly for LGBT people?*

In May 2010 in the capital of Lithuania, i.e. Vilnius, the Baltic Pride March “For Equality” was held for the first time, in which local and international LGBT communities and human rights activists took part. Even though finally the event succeeded, its organization was marked by a number of challenges. First of all, the local municipality had changed time slots and places of the event for several times and was very reluctant in issuing an official approval to the event. Secondly, as it was referred above, due to the requested interim measure, it was not clear till the very final moment, whether the event will be allowed to proceed. Due to the promptly submitted appeal to the Supreme Administrative Court of Lithuania, its fast examination and adoption of the favorable Court decision, the event took place.⁹¹ It has to be noted that after the favorable ruling of the Supreme Administrative Court of Lithuania, seven MPs requested that disciplinary procedures would be initiated against the judges that adopted the favorable ruling for the Baltic Pride March.⁹²

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

- i. If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

When the public LGBT event was approved by the public authorities, the organizers of the event established good cooperative relationship with the police officers in ensuring the security in the course of the event. On 5 May 2010, during the Baltic Pride March for Equality, special measures were taken in order to secure the event, i.e. participants were taken to the gathering place by buses to avoid confrontation with those who oppose the event, fences were erected along the route of the march. When some persons tried to break through the security fence, they were restrained. In addition to this, the security officers were ready to apply special security measures, such as enabling the flow of electricity stream on the defense fence.⁹³

⁹¹ See LGL. *Besikeičiantys veidai. Pirmosios eitynės už LGBT teises Lietuvoje*, III. Eitynės „Už lygybę“: teisinės, politinės kliūtys ir laimėjimai, Vilnius 2012, pp. 88-98.

⁹² Dainius Sinkevicius. “Seimo nariai prašo nubausti gėjų eitynes įteisinusius teisėjus”, Delfi.lt, 2010-07-30, available at: < <http://www.delfi.lt/news/daily/lithuania/seimo-nariai-praso-nubausti-geju-eitynes-iteisinusius-teisejus.d?id=34993521>>, visited on 27 June, 2012.

⁹³ Laura Gabrilavičiūtė, Andrius Vaitkevičius, Žilvinas Pekarskas, “Gėjų eitynės Vilniuje prasidėjo: dalyviai saugiai atvežti autobusu, dalyvauja R.Žilinskas, A.M.Pavilionienė, neišvengta incident”, 15min.lt, 2010-05-08, available at: < <http://www.15min.lt/naujiena/aktualu/lietuva/geju-eitynes-vilniuje-pirmieji-susirinko-priesininkai-56-96721>>, visited on 27 July, 2012.

- ii. *In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*

Despite public hostility, there were no reported injured or harmed participants in the course of the Baltic Pride 2010 events.

- iii. *Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

We are not aware of the complaints that the law-enforcement officials acted disrespectfully towards the LGBT people and their supporters during the main LGBT freedom of assembly event – the Baltic Pride 2010. However, it is difficult to assess the situation in general. Due to a hostile environment, many public events did not take place, because they did not receive authorization by the public authorities. The Baltic Pride 2010 was the biggest public event that took place up until now. Whether police authorities would maintain the same manner of cooperation and respectfulness towards the LGBT community remains to be seen in the future.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

- i. *Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*

There have been several instances when the LGBT events did not receive authorization from the public authorities. In most cases, the grounds invoked were the same, i.e. protection of family values, public safety, etc.

The first attempt to organize a public LGBT event at the seaside resort city Juodkrante in February 2006 (i.e. the photography exhibition by Ugnius Gelguda "Traditional and Non-traditional Families") was not allowed to take place on the ground that some of the photos demonstrated homosexual relationships as "normal", thus infringing the Laws of the Republic of Lithuania establishing that marriage is conducted only between a man and a woman.⁹⁴

In May 2007 trolleybuses with the social advertisements encouraging tolerance towards LGBT employees in Vilnius and Kaunas did not show up in the streets. The refusal was based on an assertion that drivers will refuse to drive the trolleybuses with such social slogans or it was reported that suddenly the particular trolleybuses were out of order.⁹⁵

⁹⁴ Jurga Petronytė, „Gėjų fotografijos sukėlė skandalą“, 2006-02-24, ve.lt, available at: <<http://www.ve.lt/naujienos/kultura/kulturos-naujienos/geju-fotografijos-sukele-skandala-398264>>, visited on 25 July, 2012.

⁹⁵ "Vilniaus troleibusai kratosi homoseksualių reklamos", Delfi.lt, 2007-05-15, available at: <<http://www.delfi.lt/news/daily/lithuania/article.php?id=13202224>>, visited on 27 July, 2012.

The Mayor publicly stated that there is no place for the public demonstration of homosexual ideas in the city of Vilnius.⁹⁶

- ii. *Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

As it was mentioned above, the organizers of the Baltic Pride 2010 had to consider the change of timing and the place of the event for several times on a motion by the Vilnius City Municipality, which did not occur in the course of organizing other public events. At first it was proposed to change the place of the event to the parking lot of Vilnius Palace of Concerts and Sports, which is not used for a long time and is located in a rather remote and unvisited area. The change proposal was based on inability to secure public order and safety at the indicated street in the center of the city. All other four alternatives proposed by the organizers were declined on the same grounds – the difficulty in redirecting the traffic, inability to secure public safety and that other events have been already planned at the indicated alternative places. The initial place for the event proposed by the Municipality was later revoked due to the fact that this place was under the cultural heritage protection and is within the territory of the Vilnius old Jewish cemetery. The other proposed place later was also found to come within the territory of the old Jewish cemetery. Receiving no further information from the Municipality's authorities, the organizers applied to the Department of Cultural Heritage under the Ministry of Culture with the request to indicate the place which would be suitable to hold the event. The Department of Cultural Heritage indicated that the issue comes within the competence of the Municipality. Trying to avoid further misunderstandings, the organizers applied again to the Municipality with the request to confirm the place of the event in the new location - at the street of Upės (River street). The Municipalities authorities issued the confirmation of the event only after three months from its receipt. Under Article 10 of the Law on Meetings⁹⁷, the authorities had to examine the request and provide applicant with the answer within 3 days of its receipt and no later than 48 hours till the beginning of event.⁹⁸

- iii. *If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

There have been a few instances where, facing restrictions to the exercise of freedom of assembly, organisers of events have sought to challenge their legality through available legal means.

In 2006, when a photographic exhibition portraying traditional and non-traditional families was not allowed to take place, the organisers applied to the Equal

⁹⁶ "Sostinės savivaldybė nepritaria homoseksualų reklamai ant troleibusų", Zebra.lt, 2007-05-15, available at: <<http://zebra.15min.lt/lt/naujienos/lietuva/sostines-savivaldybe-nepitaria-homoseksualu-reklamai-ant-troleibusu-99663.html>>, visited on 25 July, 2012.

⁹⁷ See Law on Meetings, 2 December 1993 No I-317 (As last amended on 17 June 2008 No X-1609), Vilnius, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=324123>, visited on 26 July, 2012.

⁹⁸ LGL. Besikeičiantys veidai. Pirmosios eitynės už LGBT teises Lietuvoje, Vilnius, 2012, pp. 90-91.

Opportunities Ombudsperson Office, which recognised the violation of equal opportunities.⁹⁹

On 25 October 2007, when Vilnius municipality did not allow the public event “We – for all colours of life”, during which participants of the international “ILGA-Europe” annual conference were to unfold a rainbow flag at the City Hall square, organisers appealed this decision in the court. However, the decision of the court was not in favour of the organisers and upheld the defendant’s argument that the event was legitimately refused due to construction being carried out at the square.¹⁰⁰

When the EC's “For Diversity. Against Discrimination” yellow tolerance truck was refused to enter the city of Vilnius and hold planned public events (including LGBT events), according to the Lithuanian Gay League it was precluded by Law to bring a claim of discrimination to the Equal Opportunities Ombudsman because permission to bring the truck to Vilnius was requested by a private public relations company and LGL did not have a legal standing to submit a claim to the court. LGL asked the company to make a complaint, but it failed to do so.¹⁰¹

In 2010, when the Baltic Pride March was put on hold due to an interim measure imposed by the Vilnius Regional Administrative Court, which precluded carrying out the event until the Court would take decision on the merits of the case, LGL successfully appealed this decision in the Supreme Administrative Court of Lithuania.¹⁰²

Recently, in May 2012, when Lithuanian Gay League faced problems when trying to hire a bus for a public event, it applied to the Equal Opportunities Ombudsman Office for violation of the Law on Equal Treatment provisions in regard to access to services. The Ombudsman established the fact of discrimination and issued a warning to the company.¹⁰³

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

- i. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*
 - a. Has there been encouragement to public authorities to condemn such interferences?*

⁹⁹ LGL. Besikeičiantys veidai. Pirmosios eitynės už LGBT teises Lietuvoje, Vilnius, 2012, pp. 86-87.

¹⁰⁰ LGL. Besikeičiantys veidai. Pirmosios eitynės už LGBT teises Lietuvoje, Vilnius, 2012, pp. 87-88.

¹⁰¹ LGL and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, p. 14.

¹⁰² LGL. Besikeičiantys veidai. Pirmosios eitynės už LGBT teises Lietuvoje, Vilnius, 2012, pp. 91-98.

¹⁰³ BNS. “Transporto firma įspėta dėl homoseksualų diskriminavimo“, 2012-06-25, Delfi.lt, available at: <http://verslas.delfi.lt/automoto/transporto-firma-ispeta-del-homoseksualu-diskriminavimo.d?id=58991061>, visited on 1 July, 2012.

We are not aware of any instances where public authorities would have encouraged condemning interferences with the freedom of expression based on the ground of sexual orientation. As it was mentioned above, two Members of Parliament actively expressed their opposition to the Baltic Pride event in 2010 by violating the law. The General Prosecutor applied to the Parliament to deprive the parliamentarians of their legal immunity and subject them to criminal liability.¹⁰⁴ However, parliamentarians did not vote in favour for deprivation of the MPs' legal immunity.

The Ministry for Social Security and Labour has not indicated instances where public officials would have condemned interferences with the right to freedom of expression and peaceful assembly.¹⁰⁵

b. Have public authorities actually condemned such interferences?

To our knowledge, public authorities, including representatives of ministries and equality bodies have not made public statements condemning interferences with the LGBT community's right to freedom of expression and peaceful assembly. Perhaps the publicly expressed surprise of the President of Lithuania regarding the different evaluation of the situation when, before Baltic Pride 2010, the General Prosecutor stated that the state is unable to provide security for the event and police forces stated the contrary, could be regarded as the most close action of a state authority expressing its disagreement for infringement of LGBT rights.¹⁰⁶

ii. Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?

“State authorities” contain diverse institutions with different functions and power. Various state institutions and representatives acted differently when the LGBT community tried to exercise freedom of expression and peaceful assembly. For example, during the organisation of the Baltic Pride event, organisers faced difficulties confirming the place of the event and some politicians tried to prevent the event from happening by submitting complaints to the court. The General Prosecutor applied to the court for imposition of interim measures, seeking to prevent the event from happening on the chosen date. The first instance court satisfied the request for interim measures. However, the Supreme Administrative Court of Lithuania accepted the appeal, examined it faster than the time limit set by law, adopted a favourable decision for the organisers and eventually allowed the event to happen. At the same time, although the environment was very hostile and quite a big group of people gathered to oppose it,

¹⁰⁴ BNS.“Seimo pirmininkė nespėlioja, ar Seimas leis prokurorams patraukti P.Gražulį ir K.Uoką baudžiamojon atsakomybėn“, Delfi.lt, 2010-06-09, available at: < <http://www.delfi.lt/news/daily/lithuania/seimo-pirmininke-nespelioja-ar-seimas-leis-prokurorams-patraukti-pgrazuli-ir-kuoka-baudziamojon-atsakomyben.d?id=33282221>>, visited on 22 June, 2012.

¹⁰⁵ Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 “Regarding provision of information for the implementation of the CoE Recommendation CM/REC(2010)5”.

¹⁰⁶ See “Teismas stabdo leidimą organizuoti seksualinių mažumų eitynes, nors policija buvo pasiruošusi užtikrinti saugumą“, Bernardinai.lt, 2010-05-05, available at: < <http://www.bernardinai.lt/straipsnis/2010-05-05-i-degutiene-jei-eitynes-vyktu-deretu-ias-priimti-ramiai-ir-taikiai/44436/comments/6/asc>>, visited on 23 June, 2012.

police forces worked closely with the organisers of the event and were able to maintain order and deal with those whose actions were in violation of the law.

iii. Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?

In general, state officials did not express open support for or condemnation of interference with the rights of the LGBT community to freedom of expression or peaceful assembly. However, some parliamentarians are notorious for being very active in opposing all public events of the LGBT community and trying to prevent them from happening even in violation of the law.¹⁰⁷

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

i. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?

Lithuanian Law does not criminalise same-sex sexual acts and no difference in age of consent is foreseen in the Law. Under Article 151¹ para.1 of the Criminal Code the age of consent is 16 years.¹⁰⁸

ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding
(a) sexual orientation or
(b) gender identity?

In 2009 there was an attempt by a group of Members of Parliament to introduce an amendment to the Criminal Code supplementing it with an additional Article 310¹ to the Criminal Code¹⁰⁹. The amendment suggested criminalising public agitation for homosexual relationships in public places. According to the proposed draft legislation, such actions would be punished by community service, fine or arrest (the draft law did

¹⁰⁷ See BNS. "K.Uoka sumokėjo baudą už gėjų eitynes, P.Gražulis neketina mokėti", Kaunodiena.lt, 2012-05-30, available at: < <http://kauno.diena.lt/naujienos/lietuva/k-uoka-sumokejo-bauda-uz-geju-eitynes-p-grazulis-neketina-moketi-429527#axzz25sbGQXxF>>, visited on 15 June, 2012.

¹⁰⁸ Criminal Code of republic of Lithuania, No. VIII-1968, in force from 2012-07-13, available at: < http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=430120>, visited on 22 June, 2012.

¹⁰⁹ Baudžiamojo kodekso papildymo 310(1) straipsniu ISTATYMO PROJEKTAS, XIP-668(2), 2009-06-16, Available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346178&p_query=&p_tr2=, visited on 22 June, 2012.

not elaborate on sanctions, and thus the Courts would have had to apply general rules, depending on the grievance of the crime). Legal persons were also considered liable for these actions. The term “agitation” was not defined in the Criminal Code. It was not clear how it would be interpreted in practice and what public actions would be considered illegal. The ambiguity of this proposal and its contradiction with the Constitutional right to information, freedom of expression and possible breach of international commitments of the Republic of Lithuania was stressed in the conclusions submitted by the European Law Department under the Ministry of Justice.¹¹⁰ Despite of criticism, the Parliament approved the draft law for further consideration in the committees of the Parliament (by votes of 48 to 9 with 13 abstentions). Although the initiators of the amendment of the law denied any discriminatory character of the draft law, the discussions in the Parliament during the approval unambiguously indicated that the aim of the amendment was to prevent further public events raising LGBT issues.¹¹¹

iii. *If so, what steps are the authorities taking to remedy this situation?*

The contradictory amendment of the Criminal Code referred above was withdrawn on 19 October 2010.¹¹²

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

i. *What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

ii. *What steps have the authorities taken to ensure that existing records are destroyed?*

The Police Department under the Ministry of Interior in its reply to the request of information regarding the implementation of the Recommendation and its appendix has not provided information on whether any steps have been taken to ensure that police authorities comply with the requirement of the Recommendation in regard to protection of personal data. The Police Department only stated that it complies with the

¹¹⁰ EUROPOS TEISĖS DEPARTAMENTO IŠVADA Baudžiamojo kodekso papildymo 310(1) straipsniu istatymo projektui XIP-668(2), 2000-07-07, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=348021>, visited on 25 June, 2012.

¹¹¹ Edita Ziobiene. Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Vilnius, Lithuania, February 2010, pp. 46-47.

¹¹² Baudžiamojo kodekso papildymo 310(1) straipsniu ĮSTATYMO PROJEKTAS, Statusas: Projektas atsiimtas 2010-10-19, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=346178&p_query=&p_tr2=>>, visited on 25 June, 2012.

Law in its activities and protects all people without distinction as to their nationality, race, gender, language origin, social status, religion, beliefs or convictions.¹¹³

The Ministry of Justice has also not provided information on how this requirement of the Recommendation has been implemented in practice.¹¹⁴

The Law on Legal Protection of Personal Data¹¹⁵ regulates the use and protection of personal data. Article 2 para 8 of the Law establishes that “special categories of personal data” mean data concerning racial or ethnic origin of a natural person, his political opinions or religious, philosophical or other beliefs, membership in trade unions, and his health, *sexual life* and criminal convictions. Article 5 para. 2 of the Law foresee that it is prohibited to process special categories of personal data, except in the cases provided in Law.

iii. Have these steps been effective?

Is there any evidence of:

- *the continued existence of such records*
- *the continuing collection of such data?*

State authorities have not provided information that some steps would have been taken in this regard, and therefore it is difficult to assess their effectiveness.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

i. Has a review of such prior requirements been conducted?

Article 2.27 of the Civil Code foresees the requirement for gender reassignment – a full gender reassignment if medically possible. It supposes that legal recognition of gender reassignment can only take place if a full medical operation is performed. In cases where persons have obtained new identity documents through application to the courts, in all instances they had undergone a medical gender reassignment operation abroad.¹¹⁶

There are no debates on whether current conditions foreseen in paragraph 1 of Article 2.27 of the Civil Code are abusive ones, or if efforts would be put from the legislature's side to adopt the necessary implementing law that would set further conditions and order for the gender reassignment. On the contrary, there is an initiative to abolish the right to gender reassignment foreseen in Article 2.27 para. 1 of the Civil Code. Some

¹¹³ Police Department under the Ministry of Interior, 2012-04-13, No.5-S-1519, reply to inquiry of Lithuanian Gay League "Regarding Lithuanian Gay League's request to provide information for the implementation of the Council of Europe Recommendation".

¹¹⁴ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 "Regarding provision of information on the implementation of the Council of Europe Recommendation".

¹¹⁵ Asmens duomenų teisinės apsaugos įstatymas, No. I-1374, in force from 2011-05-28, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103>, visited on 27 June, 2012.

¹¹⁶ See e.g. Judgment of Vilnius City 2 Region Court judgment of 20 March 2008, civil case No.2-1450-553/2008.

Members of Parliament proposed an amendment to the Civil Code for removing the right to change the designation of sex, thus eliminating the legal vacuum as well as the right to gender reassignment.¹¹⁷ The initiators of the amendment state that “society views gender reassignment operations as controversial due to psycho-sociological reasons and is not ready to accept the performance of gender reassignment operations, and therefore allowing gender reassignment operations would raise many medical and ethical problems”.¹¹⁸

ii. *Are there still requirements which might be considered disproportionate or even abusive,*¹¹⁹

such as:

- *irreversible sterilisation,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

In the current legislation, Article 2.27 of the Civil Code foresees several conditions for a person to undergo a gender reassignment procedure: (i) he/she has to be an adult [18 years old], (ii) be unmarried (iii) and undergo gender reassignment if medically possible.

Since the implementing Law that would establish the conditions and the order of implementation of the right to gender reassignment has not been adopted, no other prior requirements are set by the Law.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

i. *Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

Under Article 2.27 para. 1 of the Civil Code¹²⁰, an unmarried person of full age has a right to gender reassignment if medically possible. Such a person's request has to be

¹¹⁷ BNS, “Du konservatoriai siūlo Civiliniame kodekse įrašyti draudimą keisti lytį”, Delfi.lt, 2011-03-08, available at: <<http://www.delfi.lt/news/daily/lithuania/du-konservatoriai-siulo-civiliniame-kodekse-irasyti-draudima-keisti-lyti.d?id=42887797#ixzz29UY3VUs9>>, visited on 1 September 2012.

¹¹⁸ Ibid.

¹¹⁹ The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms that “both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities.”

¹²⁰ Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas. No. VIII-1864, in force from 2012-09-01, available at:

provided in writing. Paragraph 2 of Article 2.27 stipulates that conditions and order are regulated by Law.

However, up until today the Law foreseen in paragraph 2 of Article 2.27 has not been adopted. Due to the lack of legal regulation, Lithuania was recognized to be in breach of the European Convention of Human Rights in the case of *L. v. Lithuania* (Application No. 27527/03, judgment of 11 September 2007).¹²¹ The judgment of the European Court of Human Rights, obliging the government of Lithuania to pass a Law that would regulate the conditions and procedures for gender reassignment within six months from the judgment coming into force, was not well received by some politicians.¹²² Eventually the government of Lithuania decided to pay the applicant the awarded compensation of 40,000 Euros, and did not pass the Law.¹²³ The legal vacuum prevails.

It has to be noted that already in February 2009 the Parliamentary Ombudsmen issued a decision recommending the Ministry of Health as well as the Human Rights Committee of the Parliament to take appropriate measures to eliminate the legal uncertainty in the field of gender reassignment.¹²⁴ The decision was taken after the investigation of a complaint submitted by P. G., who claimed that the Ministry of Health does not ensure the right to gender reassignment, although P.G. possessed the documents identifying the state of health and had a permanent residence permit.¹²⁵

In the absence of legal regulation, transgender persons are not able to perform gender reassignment procedures in Lithuania. In cases where persons perform gender reassignment operations abroad, they face difficulties in Lithuania with the issue of new identity documents. National legislation permits changing documents in the case of gender reassignment (including changing the name and sex in identity documents). However, when a person applies to the competent institutions willing to change his/her documents due to gender reassignment, the gender sensitive personal code remains legally unchangeable.¹²⁶ The first number of the personal code indicates the gender of the person. Article 8 para. 2 of the Law on Residents' Registration¹²⁷ foresees that the structure of the personal code is composed in a way that the first number of the code indicates the person's gender. Paragraph 3 of Article 8 stipulates that the personal code provided to the person shall be unique and unchangeable.

<http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=430479&p_query=&p_tr2=2>, visited on 15 August, 2012.

¹²¹ *L. v. Lithuania*, Application No. 27527/03, judgment of 11 September 2007, available at: <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82243>>, visited on 27 July, 2012.

¹²² Eglė Digrytė, "Politikai nusiteikė sumokėti kompensaciją ir pamiršti lyties keitimą", Delfi.lt, 2007-09-13, available at: <http://www.delfi.lt/archive/print.php?id=14366811>, visited on 15 June 2012. See Edita Ziobiene, p. 43.

¹²³ Eglė Digrytė, "Užuot įteisinusi lyties keitimą Lietuva pasirinko kompensaciją", Delfi.lt, 2008-08-01, available at: <http://www.delfi.lt/news/daily/lithuania/article.php?id=17580960>, visited on 15 June 2012. See Edita Ziobiene, p. 43.

¹²⁴ Decision of the Parliament Ombudsman R. Valentukevičius, No. 4D-2008/1-1644, 2009-02-09, available at: <<http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=3466>>, visited on 15 June, 2012

¹²⁵ Edita Ziobiene, p.43

¹²⁶ Danish Institute for Human Rights. The social situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania, March 2009, p. 12

¹²⁷ Lietuvos Respublikos gyventojų registro įstatymas, No. I-2237, in force from 2012-07-10, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=429785&p_query=&p_tr2=2>, visited on 25 June, 2012.

- ii. *Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

Due to the lack of legal regulation persons seeking to obtain new identity documents have to apply to the court. So far, all the cases launched in the court have been successful.¹²⁸ However, such procedure cannot be viewed as meeting the requirement of being “quick, transparent and accessible”. In order to apply to the court, a person needs to have a substantial legal knowledge about his/her rights or to hire a private attorney at law to represent him/her in the court (if a person has a low income, he/she may receive a State guaranteed legal aid). Litigation at first instance may take approximately from 6 months up to a year or more. The respondent (Government) also has a right to appeal. With the court decision transgender persons have been able to acquire new identity documents as requested, mainly a new passport with a new personal code and birth certificate. There is lack of information on whether transgender persons encounter other problems in practice when attempting to change the data in various official registers or obtaining e.g. a new driving license.

- iii. *Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*
- *diplomas,*
 - *certificates of employment, and*
 - *insurance or banking documents?*

There are no regulations set in place for obliging non-state actors to change documents, e.g. educational or work certificates. There is a lack of available information on whether transgender persons after the gender reassignment operation face difficulties with changing records such as diplomas, employment contracts, insurance or banking documents. The Ministry of Justice has stated that it has no information on whether there are procedures in place to ensure that personal documents would be issued to persons that have undergone gender reassignment procedures by non-state institutions.¹²⁹

- iv. *If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

We are not aware whether a special procedure is applied to protect personal data and the fact that a person has undergone gender reassignment from third parties. The Ministry of Justice has not provided information in this regard¹³⁰, and provisions of the

¹²⁸ See Mindaugas Jackevičius. „Transeksualams siūloni dokumentai, bet ne lyties keitimo operacijos“, Delfi.lt, 2012-07-12, available at: < <http://www.delfi.lt/news/daily/lithuania/transseksualams-siulomi-dokumentai-bet-ne-lyties-keitimo-operacijos.d?id=59099897> >, visited on 13 July, 2012.

¹²⁹ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 “Regarding provision of information on the implementation of the Council of Europe Recommendation”.

¹³⁰ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 “Regarding provision of information on the implementation of the Council of Europe Recommendation”.

Law on Legal Protection of Personal Data do not foresee special regulation in this regard.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

- i. Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

Legally, after obtaining new identity documents confirming the person's new sex, there should be no obstacles for the person to marry since his/her sex would legally be confirmed as that of the opposite sex. Therefore there would be no obstacle to meet the requirements set in Civil Code Article 3.12 explicitly allowing to conclude marriage only between opposite sex persons. However, in practice no person has sought to marry an opposite sex person after gender reassignment. There are no regulations in Law explicitly confirming the right to marry after gender reassignment. Due to the condition set out in Article 2.27 of the Civil Code reserving the right for gender reassignment only for a single person, in practice married persons who have performed gender reassignment operations abroad get a divorce upon their return to Lithuania and application to the court for new identity documents, just to avoid possible legal problems in the court.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

- i. Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

Rights of unmarried couples living together for more than a year with the intent to establish family relations are set out in the Civil Code XV Section (Living together without registered marriage) and regulate property relations between a man and a woman. Under Article 3.230 part 2 subsection 2 tenancy rights are recognised among the common property rights. No legal regulation is set out for survivor's pension benefits. Under the Civil Code Article 3.229, heterosexual couples living together have to register their partnership. However, no Law was adopted to establish the conditions and procedure for this. Under the current national law heterosexual couples have no possibility to register their civil partnership.

The Ministry of Justice notes that at present three legislative drafts are registered with the Parliament seeking to clarify the legal regulation of partnership: 12 October 2011 Draft Law on Partnership (living together without registration of marriage), No. XIP-

3687¹³¹ (covers both heterosexual and homosexual couples); 12 October 2011 Draft Law on Civil Code amendment of Articles 2.19, 3.16, 3.229, 3.230, 3.231, 3.232, 3.233, 3.234, 3.235, 6.588, 6.590, 6.744, No. XIP-3688¹³², and 21 February 2012 Draft Law on Civil Code Articles 2.18, 2.19, 3.140, 3.229, 3.230, 3.231, 3.232, 3.233, 3.234, 3.235 amendment and supplement of Articles 3.2291, 3.2341, 3.2342, No. XIP-4097.¹³³

In the meanwhile, the Human Rights Monitoring Institute is supporting a heterosexual couple's complaint at the national court challenging the impossibility to register a civil partnership.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

- i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

As it was stated above, the current national legislation recognises the right of heterosexual couples to register a partnership; however, the exercise of this right is precluded due to the lack of implementing law. The legislation does not recognise a right to civil partnership for same-sex couples.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

- i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

The Ministry of Justice states that Civil Code provisions allow concluding different types of civil contracts, therefore both heterosexual and homosexual couples [in the absence

¹³¹ Draft Law on Partnership (living together without registered marriage), No. XIP-3687, submitted by Member of Parliament Ausrine Pavilioniene on 12 October 2011, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=408151&p_query=&p_tr2=2>, visited on 22 June, 2012.

¹³² Draft Law No. 3688, available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=408152&p_query=&p_tr2=2>, visited on 22 June, 2012.

¹³³ Draft Law No. XIP-4097 available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=418672&p_query=&p_tr2=2&p_hil=&p_sess=&p_no=1>, visited on 22 June, 2012.

of the Law] may agree on mutual rights and duties, and therefore is of the view that in this area the principle of equality is ensured.¹³⁴

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*
- ii. In practice, are such decisions taken on a non-discriminatory basis?*

The provisions of the Civil Code do not establish different treatment due to a person's sexual orientation or gender identity. The Ministry of Justice notes that provisions of the Civil Code do not foresee grounds discriminating against a mother or father because of their sexual orientation or gender identity when determining the origin of the child, the living place of the child with one of the parents, establishing a communication order with the child or influencing in any matter one parent's participation in the life of the child. Article 3.156 establishes the principle of equal authority between the parents and secures equal rights and duties of the mother and father to the child. Paragraph 3 of Article 3.161 of the Civil Code provides that a child has a right to live together with the parents, be brought up and cared for in the parents' family, communicate with the parents, regardless of whether the parents live together or separately, and communicate with relatives, if this does not contradict the interest of the child.¹³⁵

The Ministry of Justice notes that provisions of the Civil Code do not discriminate against persons based on sexual orientation or gender identity when regulating questions of a child's guardianship. Under Articles 3.268 and 3.269, when choosing the guardian of the child, attention is paid to the guardian's personal qualities, state of health, ability to be a guardian, relationship with the child and the child's interests.

No additional steps except the provisions foreseen in the Civil Code regulating issues of parental responsibility for the child and guardianship of a child have been undertaken by the national authorities.

We are not aware of any instances where persons had raised issues of discrimination based on sexual orientation or gender identity due to parental responsibility to the child or award of legal guardianship.

¹³⁴ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 "Regarding provision of information on the implementation of the Council of Europe Recommendation".

¹³⁵ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 "Regarding provision of information on the implementation of the Council of Europe Recommendation".

Only in a case for custody of a child, it was reported to LGL that in 2000 a woman who had ended her marriage and was subsequently living together in a relationship with an openly gay woman lost the custody of her child to her ex-husband. The ex-husband asserted during the case that his ex-wife's sexual orientation was one reason why he should get custody of their child. Although the court did not state that the mother's sexual orientation was a motivating factor behind their decision to grant custody to the father, LGL believes that this woman lost custody of her child on account of her sexual orientation, and the court did not consider the best interests of the child in this case as it should have, but relied upon the mother's sexual orientation in making its decision.¹³⁶

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

i. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?

II. In practice, are such decisions taken on a non-discriminatory basis?

Article 3.210 para. 1 of the Civil Code stipulates that adult persons of both sexes until the age of 50, being adequately prepared for adoption, can adopt a child. Para 2 of the same Article foresees that married spouses have the right to adopt a child. Under the national law, marriage can be concluded only between a man and a woman. Therefore, same-sex couples have no right to adopt a child.

Article 3.210 para. 2 of the Civil Code foresees that in exceptional cases adoption could be allowed for unmarried single persons or one of the spouses. The Ministry of Justice states that by law single persons are not discriminated against in the exercise of the right to adoption based on sexual orientation or gender identity.¹³⁷ Under the law, all unmarried persons seeking to become adoptive parents undergo thorough evaluation during which the living conditions of the child, the abilities and skills of the potential adoptive parents and other relevant aspects that are important when making a decision whether adoption of the child would satisfy and meet the best interests of the child are evaluated.¹³⁸ However, because of the absence of any legal recognition for same-sex couples and their children, children brought up by same-sex couples could be denied protection of their interests (for instance, guardianship of the non-biological parent

¹³⁶ LGL and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva, p. 17.

¹³⁷ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 "Regarding provision of information on the implementation of the Council of Europe Recommendation".

¹³⁸ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 "Regarding provision of information on the implementation of the Council of Europe Recommendation".

over the child in the case of a severe illness of the biological parent, or the right to parental leave in cases where the biological parent cannot take leave).

No instances have been reported so far of the attempt of a homosexual single person or transgender person to adopt a child.

No additional steps as it is foreseen in the national legislation regarding the adoption of a child by a single person have been undertaken by national authorities to secure non-discrimination in this area based on sexual orientation or gender.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

- i. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*
- ii. In practice, is such access granted on a non-discriminatory basis?*

The Ministry of Justice¹³⁹ and the Ministry of Health¹⁴⁰ provided no information as to how single women's reproductive rights are regulated and ensured under the national law. None of the state authorities have indicated that additional measures have been undertaken to insure that reproductive treatment provided for single women (if any) would be provided without discrimination on the basis of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

- i. Does legislation exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*
- ii. Does it cover:*
 - *access to employment (including recruitment); promotion,*

¹³⁹ Ministry of Justice of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No.(1.13) 7R-3655 "Regarding provision of information on the implementation of the Council of Europe Recommendation".

¹⁴⁰ Ministry of Health of the Republic of Lithuania, 2012-05-15, No.(6.1-18)10-4125, reply to the Lithuanian Gay League "Regarding provision of information about the implementation of the CoE Recommendation CM/REC(2010)5".

- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

The Law on Equal Treatment¹⁴¹ prohibits discrimination in employment including in the public and private sector on the ground of sexual orientation. The Law does not include the ground of gender identity.

Article 7 of the Law on Equal Treatment establishes the duty of the employer to implement equal treatment at the workplace and in civil service and provides the following:

“When implementing equal treatment the employer, without regard to ... sexual orientation, ... must:

- 1) apply uniform selection criteria and conditions when employing, or recruiting to the civil service, except for the cases specified in paragraph 7 of Article 2 of this Law;
- 2) provide equal working and civil service conditions and opportunities for vocational training, advanced vocational training, retraining, practical work experience, as well as provide equal benefits;
- 3) apply uniform criteria for assessing the work of employees and the performance of civil servants;
- 4) apply uniform criteria for dismissal from work and from the civil service;
- 5) pay equal pay for the same work or for work of equal value;
- 6) take measures to prevent harassment or instructions to discriminate against any employee or civil servant at the workplace;
- 7) take measures to prevent sexual harassment against any employee or civil servant;
- 8) take measures to ensure that an employee or civil servant who has filed a complaint relating to discrimination or is participating in discrimination proceedings, his representative or any person who is testifying or making statements are not subjected to persecution and are protected from any adverse treatment or adverse consequence;
- 9) take appropriate measures to enable disabled persons to have access to, participate in, or advance in employment, or to undergo training, including adaptation of premises, unless such measures would impose a disproportionate burden on the employer.”

Provisions of the Labor Code Article 2 (1) (4) establish the principle of equality and prohibit discrimination based on sexual orientation, but do not include the ground of gender identity.

¹⁴¹ Law on Equal Treatment, 2008-06-17, IX-1826, available at: < http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389500>, visited on 22 June, 2012.

iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*
- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

No special measures have been adopted by the authorities to combat discrimination, harassment and victimisation in the public and private sector that would be focused primarily on the ground of sexual orientation or gender identity.

The measures foreseen in the Anti-discrimination Plan 2012-2014¹⁴², aimed at awareness raising and combat of discrimination, include a number of activities (such as trainings and seminars, dissemination of booklets on discrimination, social advertising on TV, etc.) that cover all grounds of discrimination foreseen in the Law on Equal Treatment, but do not foresee measures targeting the area of employment with a special focus on sexual orientation and/or gender identity.

Very few complaints have been brought to the Equal Opportunities Ombudsperson and national courts on the basis of discrimination in employment based on sexual orientation. In general, only about 2% of all complaints received by the institution are based on sexual orientation.¹⁴³ There is no statistical information on discrimination of transgender people in the field of employment.

iv. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?

We are not aware of laws, regulations or practices that would have been abolished as being discriminatory on the grounds of sexual orientation and gender identity in access to and career advancement within certain professions and occupations, including the armed forces.

The Ministry of Defence of the Republic of Lithuania states that the sexual orientation of a soldier cannot be used as a basis for being assigned (or not assigned) to certain tasks

¹⁴² Enhancement of Anti-discrimination in 2012-2014 Intersectional Plan of Activities (Nediskriminavimo skatinimo 2012-2014 metų tarpinstitucinis veiklos planas), adopted by the Government of the Republic of Lithuania Decree of 2 November 2012, No. 1281.

¹⁴³ Equal Opportunities Ombudsperson Office, Annual Report 2011, p. 56, available at: <<http://www.lygybe.lt/?pageid=7>>, visited on 25 October 2012.

and certain work positions or being (or not being) promoted, as it is not provided by Law.¹⁴⁴

v. *Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

The Ministry of Defence has not indicated that special measures have been adopted to protect LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment. The Ministry of Defence also has not provided information that codes of conduct or provided trainings would address the need to combat discrimination against LGBT persons and promote tolerance and respect. In fact, the Ministry of Defence notes that neither the ministry nor its relevant institutions have received complaints of discrimination based on the ground of sexual orientation. Therefore, the Ministry makes the conclusion that in practice there is no problem of discrimination based on sexual orientation within the system of institutions of defence.¹⁴⁵

The Soldiers' Code of Ethics approved by the Decree of the Minister of Defence on 9 May 2005, No. V-561, Section 13 provides that soldiers cannot restrict each other's' rights or make privileges on the basis of gender, origin, language, social status, religion, age, beliefs or convictions. The Code of Ethics does not include the ground of sexual orientation or gender identity. In 2011, after examining a complaint that the Code does not include the ground of sexual orientation, The Equal Opportunities Ombudsman did not find a violation of the Law on Equal Treatment, but recommended that this ground be included.¹⁴⁶

vi. *Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

There are no specific measures designed to combat discrimination in employment for transgender persons as the ground of gender identity is not included in the Law on Equal Treatment or provisions of the Labour Code.

The Ministry of Social Security and Labour also has not indicated any specific measures that would be adopted and implemented to address the issue of discrimination in employment for transgender persons.¹⁴⁷

¹⁴⁴ Ministry of Defence of Republic of Lithuania, reply to the Lithuanian Gay League, 2012-05-16, No. 12-01-727, "Regarding provision of information".

¹⁴⁵ Ministry of Defence of Republic of Lithuania, reply to the Lithuanian Gay League, 2012-05-16, No. 12-01-727, "Regarding provision of information".

¹⁴⁶ Equal Opportunities Ombudsperson Office, Annual Report 2011, p. 57, available at: <<http://www.lygybe.lt/?pageid=7>>, visited on 25 October 2012.

¹⁴⁷ Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for the implementation of the CoE Recommendation CM/REC(2010)5".

vii. *Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

The Ministry of Social Security and Labour has not indicated that special employment programs would be adopted and/or be focused specifically on securing employment opportunities for transgender persons.¹⁴⁸

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

i. *Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

The Ministry of Social Security and Labour has not indicated that special measures would be taken to ensure the protection of personal data in cases of gender reassignment to protect the person's gender history or former name in the context of employment.¹⁴⁹

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

i. *Have*

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

No special measures have been adopted such as equality and safety policies, codes of conduct or handbooks for educational staff to ensure that LGBT pupils and students

¹⁴⁸ Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for the implementation of the CoE Recommendation CM/REC(2010)5".

¹⁴⁹ Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for the implementation of the CoE Recommendation CM/REC(2010)5".

receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment.

The Ministry of Education and Science notes that the Ministry has prepared and the Minister of Education and Science has adopted by Decree of 7 February 2007, No. ISAK-179 a Program of Preparation for the Family and Sexual Education¹⁵⁰ (Rengimo šeimai ir lytiškumo ugdymo programa, Žin., 2007, No. 19-740). This program is designed for pupils in programs preparing for secondary comprehensive school and in secondary school. The program is applied to pupils of various needs and is integrated into separate disciplines (social science, biology, ethics, religion and others). The program seeks to develop families that would be based on mutual respect, commitment and responsibility; establish provisions of gender equality and equal treatment; provide comprehensive understanding of sexuality that comprises biological, social psychological, cultural and spiritual aspects; develop respect and tolerance of people regardless of gender, age, race, religion and beliefs, ethnicity, convictions, disability and sexual orientation; and ensure readiness for mature interpersonal relationships, marriage, self-confidence, self-respect and respect for others. The program has two inter-related purposes – educational and preventive. The educational purpose of the program is to prepare young people for life and marriage, provide them with knowledge about family, provide them with a comprehensive concept of sexuality, develop mature and moral personality, respecting human life from the moment of its inception, being able to sustain mature interpersonal relationships, foster sexual health and be able to resist external negative influence. The preventive purpose of the program is to prevent early sexual relations and related problems, sexual exploitation and harassment, and discrimination based on gender. Throughout the program, pupils obtain knowledge about sexual identity and sexual orientation. The program does not address issues of transgender persons.

The Minister of Education and Science with the Decree of 7 February 2007, No. ISAK-179, paragraph 2 obliged the Division of Children and Youth Socialization under the Department of Comprehensive Education by 1 September 2007 to prepare and submit to the Minister of Education and Science a Plan of measures for the implementation of the Program of Preparation for the Family and Sexual Education. The Ministry has not provided information on whether a plan of measures for the implementation of the program was prepared and adopted and/or whether these measures are applied in schools. According to the representative of the Ministry, sexual education is provided in schools and teachers can use the prepared methodology educational book “Children and youth’s preparation for the family programs planning” (“Vaikų ir jaunimo rengimo šeimai programų rengimas”). In the prepared educational material sexual minorities issue is analyzed from psychological, biological and social perspective.¹⁵¹

¹⁵⁰ The Program (Rengimo šeimai ir lytiškumo ugdymo programa), available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=292322&p_query=&p_tr2=>, visited on 25 June, 2012.

¹⁵¹ Mindaugas Jackevičius, “Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai”, Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

This view is not supported by the students. According to the Lithuanian President of Student's Association, homosexual issues in schools are not covered at all.¹⁵²

The LGL believes that LGBT issues are either absent or presented in a negative way within the curricula and educational material at schools. Some experts note that public schools have distanced themselves from this topic with a wall of silence and significant problem is also teachers' unwillingness to become acquainted with this issue, believing only what is provided in media.¹⁵³

The absence of sexual education and the negative effects of this gap are proved by the fact that representatives of the "Youth Help" telephone hot line confirm receiving many calls from the minors who seek emotional support for understanding and accepting their identity.¹⁵⁴

There is a lack of information and statistic data available in regard to bullying experienced by homosexuals and transgender people at schools.

- ii. *Do initial and in-service training programmes for teachers and other educational staff address the need for them to*
 - a. *treat their LGBT pupils and students with respect*
 - b. *be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

The Ministry of Education and Science has not provided information that training programs would be provided for teachers and other educational staff to address issues related to LGBT persons and to enable to detect, analyse and effectively respond to and combat discrimination on grounds of sexual education and gender identity at schools. The Ministry also notes that it has not received inquiries regarding the needs of transgender pupils or provision of other information.¹⁵⁵

- iii. *Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

The Ministry of Education and Science has not provided information that it would have encouraged or provided support for school campaigns and cultural events against

¹⁵² Mindaugas Jackevičius, "Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai", Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

¹⁵³ Comment made by Mr. Arturas Rudomanskis, See Mindaugas Jackevičius, "Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai", Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

¹⁵⁴ Mindaugas Jackevičius, "Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai", Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

¹⁵⁵ Ministry of Education and Science of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-04-20, No.SR-2046, "Regarding information".

homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

- i. Is information on*
 - a. sexual orientation*
 - b. gender identity*
- provided in school curricula and sex and health education classes?*

No specific classes on sex and health education are conducted at primary schools and during comprehensive secondary education. As it was mentioned above there is no official information on whether a teaching program on sexual education has been developed, approved and applied in accordance with the Minister of Education and Science Decree of 7 February 2007, No. ISAK-179. Therefore, it is not clear to what extent sexual education is mandatory in schools and what materials teachers choose to use when giving lessons on sexual education and addressing issues of sexual orientation.

A public survey conducted online by Apklausa.lt indicates that 85.2% of respondents from age 14 to 19 agree that sexual education is needed in schools. However, responding to the question of how satisfied they are with the sexual education provided in schools, 55.1% of respondents indicated that they are unsatisfied with the provided sexual education, 32.4% indicated that they never heard of sexual education and only 9.7% stated that they are satisfied with the provided sexual education. The survey also showed that the main sources of information from which children receive information about sexual education are the internet (30.6%), friends (24,8%), TV (18,7%) and parents (9.3%).¹⁵⁶

- ii. Is it provided in a respectful and objective manner?*

In the absence of a mandatory approved sexual education program it is not clear what is the content of sexual education classes provided in schools (if any). A research study conducted by the Vilnius Educational University in 2008 assessing the possibilities of

¹⁵⁶ Online public survey "Sexual Education at School" (Lytinis švietimas mokykloje), conducted by Apklausa.lt, available at: < <http://apklausa.lt/f/lytinis-svietimas-mokykloje-18085/answers>>, visited on 1 August, 2012.

implementing the Program for Preparation for Family and Sexual Education revealed the views and values of teachers and administration staff in schools. The study showed that 79.3% of respondents did not agree with the statement that same-sex couples' relationships can be viewed as an alternative to the traditional family and 88.5% of respondents agreed with the statement that family is based only on the marriage between a man and a woman.¹⁵⁷

There is no data available as to how LGBT children view sexual education provided in schools and whether information about non-traditional sexual orientation is provided in a respectful and objective manner.

- iii. Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

The Ministry of Education and Science has not provided information on whether LGBT pupils and students are provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

- iv. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

No information is available as to whether state authorities have adopted measures that would enable meeting the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents. There is a lack of official data available as to the number of transgender persons in Lithuania, their age, gender, etc. However, the lawsuits submitted to the national courts for changing identity documents after gender reassignment surgery show that all applicants were adults.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health

¹⁵⁷ Research Study "Rengimo šeimai ir lytiškumo ugdymo programos įgyvendinimo galimybės" (Possibilities of implementation of the Program for preparation for the family and sexual education", 2008, Vilnius, conducted by Vilnius Educational University, on the request of Ministry of Education and Science of the Republic of Lithuania, available at: <https://docs.google.com/viewer?a=v&q=cache:qdgPGqnWsDwJ:www.smm.lt/svietimo_bukle/docs/tyrimai/kiti/Tyrimo_RSLUprorgama_ataskaita.pdf+lytinis+%C5%A1vietimas+mokykloje&hl=lt&gl=lt&pid=bl&srcid=ADGEEShgGktNLhOZWI_Uwq5miHGihX4--s7O0WIVBySC7N60nADOWF97wJ_-gK0aN5cKniGm3miZHr3OlwJvJZyrfVko2s-Nwrg_33-pxjCX9xBJ9a-tFKSzh2II-Zx0m64wRlf0dxtp&sig=AHIEtbTUPpb5rpR9IQpV1hZnMWEDJa10hA>, visited on 1 August, 2012.

surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

- i. Do
 - a. *the design of national health plans,*
 - b. *health surveys,*
 - c. *suicide prevention programmes,*
 - d. *medical training programmes,*
 - e. *training courses and materials*
 - f. *the monitoring and quality assessment of health-care services*
take into account specific needs in relation to (a) sexual orientation and (b) gender identity?

No special measures have been adopted such as equality and safety policies, codes of conduct or handbooks for educational staff to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment.

The Ministry of Education and Science notes that the Ministry has prepared and adopted by Decree of 7 February 2007, No. ISAK-179 'A Program of Preparation for the Family and Sexual Education'¹⁵⁸ (Rengimo šeimai ir lytiškumo ugdymo programa, Žin., 2007, No. 19-740). The Ministry states that this program is designed for pupils studying in programs preparing for secondary comprehensive school and in secondary school. The program is applied to pupils of various needs and is integrated into separate disciplines (social science, biology, ethics, religion and others). The program seeks to develop families that would be based on mutual respect, commitment and responsibility; establish provisions of gender equality and equal treatment; provide a comprehensive understanding of sexuality that comprises biological, social, psychological, cultural and spiritual aspects; develop respect and tolerance of people regardless of gender, age, race, religion and beliefs, ethnicity, convictions, disability and sexual orientation; and ensure readiness for mature interpersonal relationships, marriage, self-confidence, self-respect and respect for others. The program has two inter-related purposes – educational and preventive. The educational purpose of the program is to prepare young people for life and marriage, provide them with knowledge about family, provide them with a comprehensive concept of sexuality, develop mature and moral personality, respecting human life from the moment of its inception, being able to sustain mature interpersonal relationships, foster sexual health and be able to resist external negative influence. The preventive purpose of the program is to prevent early sexual relations and related problems, sexual exploitation and harassment, and discrimination based on gender. Throughout the program, pupils obtain knowledge about sexual identity and sexual orientation. The program does not address issues of transgender persons.

The Minister of Education and Science with the Decree of 7 February 2007, No. ISAK-179, paragraph 2 obliged the Division of Children and Youth Socialization under the

¹⁵⁸ The Program (Rengimo šeimai ir lytiškumo ugdymo programa), available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=292322&p_query=&p_tr2=>>, visited on 25 June, 2012.

Department of Comprehensive Education by 1 September 2007 to prepare and submit to the Minister of Education and Science a Plan of measures for the implementation of the Program of Preparation for the Family and Sexual Education. The Ministry has not provided information on whether a plan of measures for the implementation of the program was prepared and adopted and/or whether these measures are applied in schools. According to representative of the Ministry, sexual education is provided in schools and teachers can use for this purpose the prepared educational book “Children and youth’s preparation for the family programs planning” (“Vaikų ir jaunimo rengimo šeimai programų rengimas”). In the prepared educational material, the issue of sexual minorities is analyzed from a psychological, biological and social perspective.¹⁵⁹

This view is not supported by students. According to the President of the Lithuanian Student Association, homosexual issues in schools are not covered at all.¹⁶⁰

LGL believes that LGBT issues are either absent or presented in a negative way within the curricula and educational material at schools. Some experts note that state schools have distanced themselves from this topic with a wall of silence, and another significant problem is teachers’ unwillingness to become acquainted with this issue, believing only what is provided in media.¹⁶¹

The absence of sexual education and the negative effects of this gap are proved by the fact that representatives of the “Youth Help” telephone hot line confirm receiving many calls from minors seeking emotional support for understanding and accepting their identity.¹⁶²

There is a lack of information and statistic data available in regard to bullying experienced by homosexual and transgender pupils in schools.

- ii. *Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

The Ministry of Health is of the view that the training programs for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with

¹⁵⁹ Mindaugas Jackevičius, “Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai”, Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

¹⁶⁰ Mindaugas Jackevičius, “Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai”, Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

¹⁶¹ Comment made by Mr. Arturas Rudomanskis, See Mindaugas Jackevičius, “Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai”, Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

¹⁶² Mindaugas Jackevičius, “Homofobija mokyklose: homoseksualumo temos dažniausiai nenutyli tik tikybos mokytojai”, Delfi.lt, 2012-12-19, available at: <http://www.delfi.lt/news/daily/education/homofobija-mokyklose-homoseksualumo-temos-dazniausiai-nenutyli-tik-tikybos-mokytojai.d?id=60229835>, visited on 19 December 2012.

full respect for sexual orientation and gender identity.¹⁶³ However, the Ministry of Health did not provide further explanation as to how the training programs provide medical staff the necessary skills and knowledge, and what aspects and topics are addressed in the training programs.

iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?

Very limited information is available as to whether education, prevention, care and treatment programs and services in the area of sexual and reproductive health are available to LGBT people and if these programs and services respect the needs of LGBT people. As it was stated above, no mandatory sexual education program has been adopted for schools and there is no information available as to the content of classes provided on sexual education. No law has yet been adopted for ensuring reproductive rights.

The Ministry of Health is of the view that programs and services in the area of sexual and reproductive health meet the needs of LGBT people; however, the Ministry did not provide more information as to how exactly these needs are met.¹⁶⁴

iv. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?

The Ministry of Health is of the view that health professionals and social workers are encouraged to create a reassuring and open environment for young LGBT persons; however, it did not specify how this is achieved.¹⁶⁵

v. Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?

Provision of information about a patient and the state of his/her health is regulated by the Law on Rights of the Patients and Compensation for the Damage to Their Health.¹⁶⁶ Article 8 (3) provides that after the patient's death, his/her testamentary and statutory heirs, spouse (partner), parents and children shall be entitled to receive information. Paragraph 4 of Article 8 foresees that when the patient is considered to be incapable of

¹⁶³ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

¹⁶⁴ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

¹⁶⁵ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

¹⁶⁶ Law on Rights of the Patients and Compensation for the Damage to Their Health, 3 October 1996 – No I-1562 (As last amended on 19 November 2009 – No XI-499), available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=384290>, visited on 25 June, 2012

reasonably assessing his/her own interests and has given no consent, confidential information may be disclosed to the patient's representative, spouse (partner), parents (adoptive parents) or children of full age to the extent necessary to protect the patient's interests.

Same-sex partners are not considered by law as members of the family; nevertheless, a person can issue a warrant for their partner to gain access to medical records and treatment.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

i. Has homosexuality been removed from the national classification of diseases?

Currently in Lithuania the International Statistical Classification of Diseases and Related Health Problems (10th edition) and supplemented edition "Systematic list of diseases" (Australian modification) (henceforth "ICD-10-AM") is in use, the application of which was confirmed by the Decree of the Minister of Health of the Republic of Lithuania on 23 February 2011, No. V-164 (State Gazette, 2011, No. 23-1108). ICD-10-AM "Mental and Behavioural Disorders F00-F99" Section V part "F66 Mental and Behavioural Disorders Associated with Sexual Development and Orientation" includes a note that "Sexual orientation by itself is not to be regarded as a disorder". This note was also included in the International Statistical Classification of Diseases and Related Health Problems that was applied in Lithuania from 1 January 1997 to 31 March 2011.¹⁶⁷

ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?

Since homosexuality is not considered to be a disease in Lithuania, all laws and other documents have been drafted in the light of this concept.¹⁶⁸

iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?

Article 11 para. 1 of the Law on Rights of Patients and Compensation for the Damage to Their Health provides that "a patient may not be involved in biomedical research without his written consent. The procedure for involving patients in such research shall be established by the Law on Ethics of Biomedical Research". Further, Article 14 para. 1 establishes that "the patient above 16 years of age shall be provided health care services

¹⁶⁷ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

¹⁶⁸ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

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”.

The Law on Mental Health Care¹⁶⁹, Article 16 provides that “No treatment shall be given to a patient without his consent, except when he is involuntarily hospitalised by reason of circumstances specified in Article 27 of this Law. In such case the psychiatrist shall inform the patient and (or) his representative of the prescribed involuntary treatment. The information must be entered in the patient’s medical record.

In the cases specified in paragraph 1 of this Article the authorisation for the patient’s involuntary treatment must be obtained in accordance with the procedure laid down in Article 28 of this Law. Until the authorisation of the court is granted, the patient may, upon the decision of two psychiatrists and one doctor-representative of the mental health facility administration, be subjected to involuntary treatment for not longer than 48 hours.

The patient may be subjected to involuntary treatment only if he has been hospitalized in a compulsory manner in an inpatient mental health facility”.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?

The Ministry of Health notes that treatment of transgender persons having gender identity disorders is assigned to the competence of a psychiatric doctor. The psychiatrist doctor should be able to diagnose and provide treatment for transgender persons.¹⁷⁰ Article 2.27 para. 2 of the Civil Code foresees that the conditions and procedure of gender reassignment are determined by law. Since no law has been adopted that would establish gender reassignment conditions and procedure, at present there is no legal basis for transgender persons to lawfully access endocrinological or surgical treatment. The Ministry of Justice, evaluating the probability of the needed adoption of law, has stated that “taking into consideration the legislative initiatives brought up to present, it is likely that the law establishing gender reassignment conditions and order will not be adopted”.¹⁷¹

¹⁶⁹ The Law on Mental Health Care, . 6 June 1995 No I-924 (As amended on 5 July 2005 No X-309), available at: < http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=262177>, visited on 1 August, 2012.

¹⁷⁰ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, “Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5

¹⁷¹ Ministry of Justice, reply to Lithuanian Gay League, 2012-08-09, No.(1.16)7R-5789, “Regarding provision of information”.

If a transgender person would like to receive transition-related medical treatment in another European state, he/she should first apply to the family doctor, after which the need would be considered by a commission of specialists and the final decision taken by the Ministry of Health.¹⁷² We are not aware of any instances where a person would have attempted to exercise such a possibility. However, the Supreme Administrative Court of Lithuania has considered this possibility to be more theoretical and declaratory, since the precondition for a patient to be sent abroad for treatment is that the treatment provided in Lithuania is unsuccessful, and so far no treatment in Lithuania is provided at all.¹⁷³

ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?

According to the Ministry of Health such practice is not applied in Lithuania.¹⁷⁴

iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?

The Ministry of Health notes that every year in Lithuania a number of children are born with no evident gender (ICD-10-AM code Q56), and according to the data provided by the Hygienic Institute, in 2008 ten and in 2010 five babies were born in Lithuania with ambiguous gender identity. In such cases, after consultations with medical doctors, parents have the right to decide on the gender of the child until the child reaches the age of 18 months. If necessary, the external sex organs are formed according to the determined sex.¹⁷⁵

No information is available on instances where a child's gender identity has been irreversibly changed by medical doctors with the intent to impose a gender identity without his or her full parents' or legal representatives' free and informed consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

¹⁷² See Ministry of Health Protection of the Republic of Lithuania, Minister's Order No. V-729 of 16 August 2010 "For sending patients for consultation, examination and (or) treatment to the States belonging to the European economic community and Switzerland order confirmation" (State Gazette, 2010, No. 99-5162).

¹⁷³ Supreme Administrative Court of Lithuania, case of R.S, administrative case No. A858-1452/2010, decision of 29 November 2010.

¹⁷⁴ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5

¹⁷⁵ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

- i. *Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

According to the Ministry of Health, treatment of a person with gender identity disorders begins with the provision of psychotherapy.¹⁷⁶ If a person is covered by mandatory health insurance, services provided at the mental health centers are covered from the Mandatory Health Insurance Fund (Privalomas sveikatos draudimo fondas-PSDF) resources. Health care services and recommendations for further treatment must be provided by a psychiatric doctor. The Ministry of Health notes the absence of adopted methodology for the diagnosis of transsexualism [F64.00] and its treatment.¹⁷⁷ The Ministry of Health states that in order to receive a higher level of medical services (e.g. consultations of a psychiatrist) that are covered by the Mandatory Health Insurance Fund (Privalomas sveikatos draudimo fondas- PSDF) from the state budget, written confirmation must be received by the treating doctor.

The Ministry of Health notes that the grounds for covering the costs of other medical services related to gender reassignment (e.g. hormonal or surgical treatment) could appear only with the adoption of a law regulating the conditions and procedure for gender reassignment.¹⁷⁸

- ii. *If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

As it was stated above, due to the gap in law, no needed medical services are provided for transgender persons.

In the absence of state provided medical treatment, under the developing case-law, persons who have performed gender reassignment surgery abroad are eligible for claiming moral damages for being forced to perform such surgeries abroad in the absence of a law establishing the needed conditions and procedures for gender reassignment.

In the case of R.S., administrative case No. A858-1452/2010, the Supreme Administrative Court of Lithuania by the decision of 29 November 2010, upheld the award of moral damages of 30,000 Lt (8696 EUR), but refused to award pecuniary damages for reimbursement of incurred costs for a gender reassignment operation performed abroad, noting that “in the examined case the costs sustained by the applicant for gender reassignment operation and treatment cannot unambiguously be treated as pecuniary damages because there is no evidence submitted in the case that specifically the surgical gender reassignment operation is the medical treatment option that had to be applied in treating the illness of the applicant. From the evidence submitted in the case, no conclusion can be made that this specific medical treatment

¹⁷⁶ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-01-26, No. (10.6-33)10-798, “Regarding provision of health care services for persons with gender identity disorders”.

¹⁷⁷ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-01-26, No. (10.6-33)10-798, “Regarding provision of health care services for persons with gender identity disorders”.

¹⁷⁸ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, “Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

was necessary, the applicant failed to prove this circumstance". . Although the ruling of the Supreme Administrative Court could be considered as progressive in some aspects, it nevertheless could be considered to contradict the case-law of the European Court of Human Rights, especially the judgment in case of *Van Kück v. Germany* (judgment of 12 June 2003, Application no. 35968/97), where the Court ruled that the applicant does not need to prove the general effectiveness of gender reassignment surgery, as it is generally accepted as valid treatment for trans persons. Further, the Court held that it not the role of judges, but only of medical experts to decide on the appropriateness of gender reassignment treatment.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

- i. *Does legislation prohibit discrimination in such areas as:*
- *the sale or rent of housing;*
 - *the provision of loans for purchase of housing;*
 - *the recognition of the rights of a tenant's partner;*
 - *evictions*
- on the grounds of (a) sexual orientation and (b) gender identity?*

Discrimination in the area of housing is indirectly prohibited under the provisions of the Law on Equal Treatment. Article 8 of the Law establishes implementation of equal treatment in the field of consumer protection and provides that:

“When implementing equal treatment, a seller or producer of goods or a service provider, without regard to gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, must:

1) provide consumers with equal access to the same products, goods and services, including housing, as well as apply equal conditions of payment and guarantees for the same products, goods and services or for products, goods and services of equal value;

2) when providing consumers with information about products, goods and services or advertising them, ensure that such information does not convey humiliation, contempt or restriction of rights or extension of privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion and that it does not form public opinion that these qualities make a person superior or inferior to another.”

As it was state above, the Law does not include the ground of gender identity.

- ii. Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

The Ministry of Social Security and Labour has not provided information on whether certain provisions are in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to sexual orientation and gender identity.¹⁷⁹

We are not aware of instances where access to shelter or other emergency accommodation would have been denied on the basis of sexual orientation and gender identity.

- iii. Is information available to landlords and tenants aimed at preventing such discrimination?*

The Ministry of Security and Labour has not provided information on whether steps have been taken to ensure that information about discrimination is provided to landlords and tenants.¹⁸⁰

- iv. Are adequate and effective legal or other remedies available to victims of such discrimination?*

A person subjected to discrimination in the area of housing under provisions of the Law on Equal Treatment may submit a complaint to the Equal Opportunities Ombudsperson or submit a claim to the court.

In 2005, the Equal Opportunities Ombudsperson examined Lithuanian Gay League's complaint of discrimination based on sexual orientation for having been denied the possibility to rent the premises owned by another NGO due to the specific activities of the Lithuanian Gay League.¹⁸¹ After examination of the complaint, the Equal Opportunities Ombudsperson decided to warn the chair of the defendant NGO about indirect discrimination.

However, no remedies are available for discrimination in property rights. The absence of regulations governing the treatment of common property of cohabiting same-sex partners deprives one partner of her/his rights if property which was acquired during cohabitation was registered only in the name of the other partner. In this case death of one partner or separation of the couple leaves the other partner without any rights regarding jointly acquired property, real estate in particular. For different-sex partners in a similar situation, an automatic right of each partner is recognised under the

¹⁷⁹ Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for the implementation of the CoE Recommendation CM/REC(2010)5".

¹⁸⁰ Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for the implementation of the CoE Recommendation CM/REC(2010)5".

¹⁸¹ Equal Opportunities Ombudsperson, Annual Report 2006, pp. 36-39, available at: <<http://www.lygybe.lt/?pageid=7>>, visited on 26 June, 2012.

provisions of the Civil Code to half of the property unless otherwise stipulated by written agreement between them.

- v. *Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

We are not aware of any instances, and the Ministry of Social Security and Labour has not provided information on whether any awareness raising campaigns have been conducted among housing agencies in order to raise their knowledge on anti-discrimination provisions.¹⁸²

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

- i. *Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?*

We are not aware of and the Ministry of Social Security and Labour has not provided information on whether any social programs, including support programs, have been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security. In general, there is very little information and data available on the extent of homelessness and groups most vulnerable to this issue.

- ii. *Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

We are not aware of and the Ministry of Social Security and Labour has not provided information on whether any relevant agencies have been provided with training and awareness-raising programs to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

¹⁸² Ministry of Social Security and Labour of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-28, No. (25.11-34) SD-3632 "Regarding provision of information for the implementation of the CoE Recommendation CM/REC(2010)5".

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

i. What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?

We are not aware of any measures taken to prevent the risk of exclusion from participation in sports on grounds of sexual orientation and gender identity.

The Department of Physical Education and Sports under the Government of the Republic of Lithuania has informed that it has examined the request of information of Lithuanian Gay League and states that the Department has no information that provisions of the Recommendation would be violated in the area of physical education and sports.¹⁸³

ii. By encouraging, for example:

- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
- *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

No information is available that the Department of Physical Education and Sports or any other state institutions would have encouraged drawing up and disseminating codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs; partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs; or support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.

iii. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?

No information is available on instances where discriminatory insults would have occurred during or in connection with sports events. There is also a lack of information on whether such instances have occurred, and on measures by state authorities taken to prevent, counteract and punish such acts.

iv. In particular:

¹⁸³ Department of Physical Education and Sports under the Government of Lithuania, reply to Lithuanian Gay League, 2012-05-25, No. S-568, "Regarding the provision of information on the implementation of the CoE Recommendation".

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter and ECRI's General Policy Recommendation No.12 been implemented in respect of (a) sexual orientation and (b) gender identity?*

Article 170 of the Criminal Code¹⁸⁴ prohibits incitement against any national, racial, ethnic, religious or other group of persons. Under Article 170 para. 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 the ground of sexual orientation can be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years. Article 170 para. 3 provides that a person who publicly incites violence or physical violent treatment of a group of persons or a person belonging thereto on the ground of sexual orientation can be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years. Therefore, it may be stated that any homophobic chanting in public or in connection with sports events would fall under the provisions of Article 170 of the Criminal Code. However, whether transphobic chanting would be also covered by Article 170 of the Criminal Code is doubtful as the provision does not include the ground of gender identity.

No information is available as to whether relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter or ECRI's General Policy Recommendation No.12 have been implemented in respect of (a) sexual orientation and gender identity.¹⁸⁵

v. *Have specific appropriate measures been taken to:*

- *put an end to the exclusion of transgender persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognize their preferred gender?*

No information is provided by the Department of Physical Education and Sports as to whether specific appropriate measures been taken to put an end to the exclusion of transgender persons from sports activity or competitions; remove the obstacles encountered by them in participating in sport (dressing room access); and recognize their preferred gender.¹⁸⁶

¹⁸⁴ Law on the approval and entry into force the Criminal Code. Criminal Code, 26 September 2000, No VIII-1968 (As last amended on 11 February 2010 – No XI-677), available at: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=366707>, visited on 15 June 2012.

¹⁸⁵ Department of Physical Education and Sports under the Government of Lithuania, reply to Lithuanian Gay League, 2012-05-25, No. S-568, "Regarding the provision of information on the implementation of the CoE Recommendation".

¹⁸⁶ Department of Physical Education and Sports under the Government of Lithuania, reply to Lithuanian Gay League, 2012-05-25, No. S-568, "Regarding the provision of information on the implementation of the CoE Recommendation".

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

- i. Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*
- *developing awareness-raising activities*
 - *condemning homophobic and transphobic behaviour during and in connection with sports events?*

No information is available to ascertain whether steps have been taken to encourage dialogue with and support for sports associations and fan clubs in developing awareness-raising activities, condemning homophobic and transphobic behaviour during and in connection with sports events.¹⁸⁷

A Sports Fan Club (SMK) group has been established within LGL. It gathers together LGBT people and friends who enjoy sports as their leisure. The group meets every Sunday for basketball and other sports.¹⁸⁸ There are no openly gay, lesbian, bisexual or transgender athletes. The issue of LGBT persons in sports is invisible, and there has been no debate in this regard.¹⁸⁹

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

- i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*

National law does not explicitly recognise that a fear of persecution based on sexual orientation and gender identity can be recognized as a valid ground for granting refugee status and asylum.

The Migration Department has provided that provision of refuge and asylum are regulated by the Law on Legal Status of Aliens (State Gazette 2004, No. 73-2539,

¹⁸⁷ Department of Physical Education and Sports under the Government of Lithuania, reply to Lithuanian Gay League, 2012-05-25, No. S-568, "Regarding the provision of information on the implementation of the CoE Recommendation".

¹⁸⁸ LGL and Heartland Alliance. Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Lithuania: A Shadow Report. Submitted for consideration at the 105th Session of the Human Rights Committee, July 2012, Geneva.

¹⁸⁹ Danish Institute for Human Rights. The social situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania, March 2009, p. 10.

henceforth "Law") and Procedure for examination of foreigners' requests for asylum, adoption of decision and its implementation adopted by the Minister of Interior of the Republic of Lithuania, Decree No. 1V-361 (State Gazette 2004, No. 168-6196; 2007, No. 53-2069, further – Procedure).

The Law establishes that asylum in the Republic of Lithuania means granting the status of refugee, subsidiary protection or temporary protection to an alien on the grounds and following the procedure established by this Law (Article 2 para. 23). According to Article 65, an alien has the right to apply for and be granted asylum in the Republic of Lithuania in accordance with the procedure established by the Law.

Under Article 86 para. 1 it is provided 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, citizenship, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a citizenship and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, unless there are no reasons for which status of refugee could not be granted.

Article 87 para 1 establishes that subsidiary protection may be granted to an asylum applicant who is outside his country of origin and is unable to return to it owing to well-founded fear that he will be tortured, subjected to cruel, inhuman or degrading treatment or punishment; there is a threat that his human rights and fundamental freedoms will be violated; his life, health, safety or freedom is under threat as a result of indiscriminate violence which emerged during an armed conflict or which creates conditions for systematic human rights violations.

Article 66.1 of the Procedure established that persecution or the threat of persecution that have to be recognised as a basis for granting status of asylum in the Republic of Lithuania, may be related to the asylum seeker's race, religion, nationality, belonging to a certain social group or to political opinion. A social group is understood as a group whose members have the same features by birth or share a common history that cannot be changed, or have the same qualities and convictions that are so essential to the identity of a person and conscience that they cannot be forced to be deprived of them; such a group has an individual identity in a certain country since neighbouring countries view it as distinct; taking into consideration the circumstances in the country of origin, a group formed based on common sexual orientation may belong to a certain social group. The Migration Department notes that sexual orientation is not considered as an action that would be considered a crime in accordance with the laws of the state. Some aspects in relation to the person's gender may be examined, although in itself it does not constitute a ground for the reason of persecution.

The Migration Department under the Ministry of Interior, after examination of request for asylum, and after conduct of thorough investigation and establishment that the asylum seeker meets the criteria provided in Article 86 para. 1 and Article 87 para. 1, after considering data established under Article 66 of the Procedure also having established that there are no reasons for not granting refugee status or subsidiary protection (Article 88 of the Law), may take a decision to grant refugee status or

subsidiary protection due to well-grounded fear or other real threats in relation to sexual orientation or gender identity, due to which there is a danger to the asylum seeker's life and freedom in the country of origin. Such a person is granted a Republic of Lithuania permanent residence permit in the European Community (after granting refugee status) or a temporary residence permit to live in the Republic of Lithuania (after granting subsidiary protection).

We are not aware of any instances where asylum would have been granted for a person on the basis of sexual orientation or gender identity.

ii. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?

No information is available suggesting whether staff responsible for processing asylum requests are provided with training that addresses specific problems encountered by LGBT refugees or asylum seekers. The Migration Department has only stated that state officials who examine requests for asylum receive trainings on various topics in cooperation with non-governmental and international organisations (UN High Commissioner for Refugees Office, Lithuanian Red Cross Association, and International Migration Organisation).¹⁹⁰

iii. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?

We are not aware of official data indicating how many (if any) requests for asylum have been turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

i. What procedures are in place to ensure compliance with this obligation?

Article 6.6. of the Procedure for examination of foreigners' requests for asylum, adoption of decision and its implementation¹⁹¹ (henceforth "Procedure") provides that when examining whether asylum can be provided to the asylum seeker, it has to be evaluated and established whether returning to the state of origin will subject the person to torture, inhuman and degrading treatment or punishment, capital punishment, and whether there will be threats to life, danger that human rights and fundamental freedoms can be violated or danger to life, health, safety or freedom due to widespread

¹⁹⁰ The Migration Department under the Ministry of Interior, reply to Lithuanian Gay League, 2012-05-03, No.(15/2-7)10K-12472, "Regarding provision of information for the implementation of the CoE Recommendation".

¹⁹¹ The Procedure was adopted by the Minister of Interior of the Republic of Lithuania, Decree No. 1V-361.

violence because of war or whether the person would be placed in a situation that provides conditions for widespread violation of human rights.

If, during the examination of the request for asylum, it is established that the asylum seeker does not meet the asylum criteria established in the Law on the Legal Status of Aliens Article 86 para 1 or in Article 87 para. 1 and he/she may not be granted asylum or subsidiary protection, the question of the legal status of the said asylum seeker in the Republic of Lithuania is further investigated. If it is established that the asylum seeker may not legally remain in the territory of the Republic of Lithuania, in compliance with Article 130 para.1 and 2 of the Law, it is further evaluated whether the person can be returned from the Republic of Lithuania. Among other things, it is evaluated whether, if an alien is returned to his/her state of origin, he or she will be subjected to harassment due to belonging to a particular social group. If it is established that the alien may not be returned from Lithuania, he/she is issued a temporary residence permit in the Republic of Lithuania in compliance with Article 40 para.1(8) of the Law.¹⁹²

ii. Are there documented cases where asylum seekers have been returned to such a country?

There is no official data available as to whether asylum seekers have been returned to a country of origin and put in danger or subjected to conditions in breach of human rights standards.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

i. What measures have been taken to comply with this requirement?

ii. In particular, have the staffs of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?

The Migration Department has not indicated whether any measures have been taken to ensure protection of transgender persons from harassment from staff or other asylum seekers, or whether regulations on placing asylum seekers take into account the gender identity aspect.

¹⁹² The Migration Department under the Ministry of Interior, reply to Lithuanian Gay League, 2012-05-03, No.(15/2-7)10K-12472, "Regarding provision of information for the implementation of the CoE Recommendation".

The Migration Department under the Ministry of Interior has stated that to date no specific trainings have been conducted regarding LGBT asylum seekers.¹⁹³ No information was provided on whether specific trainings addressing issues of LGBT rights would be conducted for the staff of administrative detention centres, police and medical staff.

In general, there is a lack of sufficient information on LGBT asylum seekers and application on the ground of sexual orientation. The Lithuanian immigration authorities have no special guidelines for dealing with LGBT asylum seekers or applications regarding persecution on grounds of sexual orientation. The 2004 Law on the Legal Status of Aliens does not include sexual orientation as grounds for a request for asylum. Theoretically, a person could submit a request for asylum due to persecution on the grounds of sexual orientation as belonging to a 'certain social group' (Article 86 of the Law). In 2007 there has been one known case when a Ukrainian citizen applied for asylum because he had been persecuted as a gay man. In the asylum centre he was beaten and received threats from other asylum seekers. He went to LGL for help and left Lithuania due to safety concerns.¹⁹⁴

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

i. Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?

There is no national human rights institution in Lithuania that meets the UN Paris principles.

The Equal Opportunities Ombudsperson Office is an independent institution that deals exclusively with issues of discrimination and investigation of complaints. As it was noted above, the Law on Equal Treatment includes prohibition of discrimination on the ground of sexual orientation, but does not include the ground of gender identity. Therefore, the Equal Opportunities Ombudsperson has the competence to investigate complaints in accordance with the procedure laid down by the Law of the Republic of Lithuania on Equal Opportunities for Women and Men on the ground of sexual orientation, but has no clear competence to investigate the gender identity ground.

ii. In practice do they

¹⁹³ The Migration Department under the Ministry of Interior, reply to Lithuanian Gay League, 2012-05-03, No.(15/2-7)10K-12472, "Regarding provision of information for the implementation of the CoE Recommendation".

¹⁹⁴ Danish Institute for Human Rights. The social situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania, March 2009, p. 11.

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public*
- *examine individual complaints*
- *participate in court proceedings*
- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*
in relation to (a) sexual orientation or (b) gender identity?

Under Article 12 para. 2 of the Law on Equal Opportunities for Women and Men¹⁹⁵, in addition to investigation of complaints, the Equal Opportunities Ombudsperson also has the competence to “conduct independent investigations into cases of discrimination and independent surveys on the state of discrimination, publish independent reports, put forward conclusions and recommendations on any discrimination-related issues with regard to the implementation of this Law, as well as proposals to state and municipal institutions and agencies of the Republic of Lithuania concerning the improvement of legal acts and priorities in the policy on the implementation of equal rights”.

The Equal Opportunities Ombudsperson Office provides its recommendations on legislation and policies to the legislator each year through its annual activity reports. Nearly all awareness raising campaigns have been conducted within the framework of EC projects. The Equal Opportunities Ombudsperson under the Law has no competence to initiate or represent the victims of discrimination at court proceedings.

Although the Equal Opportunities Ombudsperson has established good relations with LGBT organisations, it has not made public statements in support of LGBT people when politicians have made homophobic statements in public or when LGBT people's rights to freedom of expression or peaceful assembly have been compromised by state authorities.

¹⁹⁵ Law on Equal Opportunities of Women and Men, 1 December 1998 – No VIII-947 (as last amended on 13 March 2012 – No XI-1926), available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=421709, visited on 22 June, 2012.

Appendixes

- **Recommendation CM/Rec(2010)5**

**Recommendation CM/Rec(2010)5
of the Committee of Ministers to member states
on measures to combat discrimination on grounds of sexual orientation or gender
identity**

*(Adopted by the Committee of Ministers on 31 March 2010
at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification,

that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

- ***Appendix to Recommendation CM/Rec(2010)5***

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures

should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

About Lithuanian Gay League

Lithuanian Gay League (LGL) is a national non-profit and non-governmental organization uniting homosexual, bisexual, and transgender persons. LGL is a member of the International Lesbian and Gay Association (ILGA) since 1994 and is a coordinator for sexual orientation ground in national Diversity and Equality Forum. LGL was officially registered in Lithuania in 1995 and is one of the longest-existing NGO's in the country.

LGL advocacy activities are dedicated mainly to fighting with homophobia and discrimination based on sexual orientation and gender identity. Through education, support, and representation of LGBT community LGL promotes inclusive social environment for gay men, lesbian women, bisexual and transgender (LGBT) persons.

LGL activity fields include:

- Human rights and equal opportunities
- Employment
- Social inclusion
- Family rights
- Empowerment of LGL members and encouragement of society to participate in its activities
- Competence and capacity building

Organization has implemented a number of projects, including the conduct of the first survey in the three Baltic countries on discrimination on the grounds of sexual orientation; a project entitled “Challenges to Family Law and Policy in Europe”, followed by publications, seminars throughout the country, and the photo exhibition “Living Together”; EC initiative EQUAL project on workplace diversity was the biggest and most ambitious project undertaken by the organization. More information on the previous projects could be found at: <http://www.lgl.lt/projektaie.php>.

LGL publications are available at:

http://www.atviri.lt/index.php/asociacija_lgl/leidiniai/1367

LGL regularly updates information in Lithuanian and English at: www.atviri.lt