

Mr. Robert Biedroń

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26 February 2014

**AMNESTY
INTERNATIONAL**



EUROPEAN INSTITUTIONS OFFICE

Dear General Rapporteur,

Ref: B1527

AMNESTY INTERNATIONAL'S CONCERNS ON LGBTI RIGHTS IN LITHUANIA

Thank you for your letter of 14 February 2014. Amnesty International would like to draw your attention to the human rights situation of lesbian, gay, bisexual, trans and intersex people (LGBTI) in Lithuania. Five Lithuanian legislative proposals with serious human rights implications have come to our attention. These proposals include legislation banning gender reassignment surgery, legislation prohibiting same-sex adoption, and legislation relating to public events which could be used to justify discrimination against LGBTI people.

These proposals would violate a range of human rights, including the right to freedom of expression and freedom of peaceful assembly; the right to recognition before the law; the right to family life; the right to the highest attainable standard of health and the principle of non-discrimination. Any related legislation would therefore fuel homophobia and transphobia in Lithuania.

Amnesty International is calling for an end to these worrying and discriminatory legislative proposals, and the numerous attempts by the Lithuanian authorities to curtail the rights of LGBTI people that the organisation has observed over several years.

We urge you to raise these concerns with the Lithuanian authorities during your fact-finding visit on 27 and 28 February.

Please find more details on the draft legislation in the below annex. We would be pleased to provide you with any additional information.

Thank you in advance and we look forward to your response.

Yours sincerely,

Dr. Nicolas J. Beger
Director
Amnesty International European Institutions Office

Cc: PACE Equality and Non-Discrimination Committee Secretariat
Office of the Commissioner for Human Rights
LGBT Issues Unit

NEW LEGISLATION RESTRICTING THE RIGHTS OF LGBTI PEOPLE IN LITHUANIA

In 2009, Amnesty International condemned the *Law on the Protection of Minors against the Detrimental Effect of Public Information*, in force since March 2010, which classifies information which “denigrates family values” or encourages a concept of marriage other than the union of a man and a woman as detrimental to children, and consequently bans such information from places accessible to children. Amnesty International and the UN Human Rights Committee (HRC) are concerned that this law may be applied in a ‘manner unduly restrictive of the freedom of expression guaranteed under the [International] Covenant on Civil and Political Rights and may have the effect of justifying discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals.’¹ On February 2013, Amnesty International also raised its concerns on this law in its submission to the Steering Committee for Human Rights (CDDH) of the Council of Europe on the implementation of 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.²

On 21 May 2013, the *Seimas* adopted in the first reading the amendment to the *Code of Administrative Violations*.³ This amendment would introduce administrative liability for “public denigration of constitutional moral values and of constitutional fundamentals of family life, as well as organisation of public events contravening public morality”. According to the proposal, these actions would result in an administrative fine ranging from 1000 to 3000 LTL (corresponding to approximately 300 to 900 Euro) and in case of repeated violation – from 3000 to 6200 LTL (900 to 1800 Euro). The proponent of the draft law, Member of Parliament (MP) Petras Gražulis, explicitly affirmed that the aim of this legislative proposal is to prevent events such as Baltic Pride from taking place. The Human Rights Committee of the *Seimas* recommended the rejection of the draft law. However, the *Seimas* voted against the Human Rights Committee’s recommendation on 26 November.

On 14 January, the State Administration and Local Authorities Committee considered a revised version of the abovementioned amendment. The revised version focuses on introducing administrative liability for the public defiance of constitutionally established family values in public speeches, demonstration materials, posters, slogans, audiovisual means and other kind of actions. MP Gražulis has stated that the rationale for the amendment arose from the “current weaknesses of Lithuanian legal system, when promotion of the harmonious, traditional family values often is estimated as unfounded and illegal discrimination against sexual minorities for their sexual orientation”. According to the proponent of the amendment, “the faulty practice appears when the fight against discrimination against sexual orientation is being used as a shield. As a consequence, traditional family values are being discriminated, which are appreciated by the people who value heterosexual sexual relations”.

¹ <http://www.ccprcentre.org/doc/2012/07/G1245576.pdf>

² <http://www.amnesty.org/en/library/info/IOR61/003/2013/en>

³ *Administracinių teisės pažeidimų kodekso 224 bei 259(1) straipsnių pakeitimo ir Kodekso papildymo 188(21) straipsniu ĮSTATYMO PROJEKTAS*

Even in the revised version, this law would restrict the rights to freedom of expression and freedom of peaceful assembly enshrined in Articles 9 and 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 and 11 of the European Convention of Human Rights (ECHR). The law would be discriminatory against LGBTI individuals, therefore in breach of Lithuania's obligation to prohibit discrimination as enshrined in Article 2 of ICCPR, Article 14 of ECHR and Article 21 of the EU Charter of Fundamental Rights, infringe the right to freedom to impart and receive information on LGBTI rights and other issues related to sexual orientation and gender identity.

The second legislative proposal that has come to our attention is the amendment to the Civil Code⁴. The amendment seeks to ban all transgender therapy and surgery in Lithuania. The amendment states that because Lithuanian society views "gender reassignment as very controversial", it must therefore be prohibited. Furthermore, it states that "society is not ready to accept gender reassignment practices for certain psychosocial reasons, and therefore the permission to undergo gender reassignment surgeries will lead to a number of medical and ethical issues." The bill also states that gender "is determined genetically from the very moment of conception."

This proposed legislation is not compliant with the European Court of Human Rights' (ECtHR) judgment in the case of *L. v. Lithuania*⁵ concerning gender reassignment. In 2007, the Court ordered Lithuania to regulate the procedures to undergo gender reassignment, already provided for by the Civil Code. The current civil code allows for gender reassignment but there is a lack of procedures to implement this provision. The proposed amendment is directly discriminatory against individuals on account of their gender identity. This ban would severely restrict the rights of trans people to access to health care, to the highest attainable standard of health, to recognition before the law and to private life.

The third legislative proposal that has come to our attention is the amendment to the Law on the Fundamentals of Protection of the Rights of the Child⁶. This amendment would prohibit same-sex adoption on the grounds of protecting children. An accompanying note states: "Every child has the natural right to a father and a mother." If enacted this legislation would infringe on the rights of same-sex couples to found a family. Article 2 of the ICCPR stipulates that states shall uphold all rights of the Covenant without distinction of any kind. This includes the rights to marry and to found a family.

The fourth legislative proposal⁷ is yet to be formally placed on the Seimas' agenda. The proposal if accepted, would require public event organisers to cover the expenses to ensure the "safety and order" of the public. This would again limit the freedom of peaceful assembly and is against the state's obligation to provide adequate protection to peaceful demonstrations. This legislation not only impacts

⁴ *Civilinio Kodekso 2.27 Straipsnio Pakeitimo Įstatymas*

⁵ ECtHR, *L. v. Lithuania*, judgement of 11 September 2007, application no. 27527/03, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82243>.

⁶ *Vaiko teisių apsaugos pagrindų įstatymo papildymo 7 straipsnio pakeitimo ir papildymo ĮSTATYMO PROJEKTAS*

⁷ *Susirinkimų įstatymo 11, 14 straipsnių papildymo ir pakeitimo ĮSTATYMO PROJEKTAS*

on the rights of LGBTI people to freedom of peaceful assembly and expression, but on all groups and individuals in Lithuania.

The fifth legislative proposal which has come to our attention is a [Constitutional amendment](#)⁸, which would redefine the concept of ‘family life’ as emanating from a traditional marriage by a man and a woman and/or from motherhood and fatherhood. The definitions of family proposed in the amendment – “a family is created by marriage”, “families also emanate from motherhood and fatherhood”, “the State protects and takes care of the marriage” – would pose a significant threat to the right of respect for private and family life for the families of people who are not married, and would infringe on the right of same-sex couples to found a family. This is the second time the Lithuanian Parliament seeks to amend the Constitution accordingly, though in 2011 the Constitutional Court of the Republic of Lithuania announced that defining families as strictly based on marriage is contradictory to the Constitution of the Republic.

This proposed constitutional amendment would also infringe Article 2 of the ICCPR which stipulates that states will respect and ensure all rights in the Covenant without discrimination of any kind, including the right to marry and the right to found a family. Furthermore, the ECtHR in the recent case of *Vallianatos and Others v. Greece*⁹ has explicitly stated that the legal regulations in Greece, allowing registered partnerships only for different-sex couples are discriminatory against same-sex couples.

In addition, defining families as emanating from a traditional marriage by a man and a woman and/or from motherhood and fatherhood, infringes on the right to respect for private and family life of de facto families, such as one-parent families and their children, unmarried couples with children and couples without children. The ECtHR has time and again said in its case-law that the notion of “family life” in Article 8 of the ECHR ‘is not confined solely to families based on marriage, and may encompass other de facto relationships’¹⁰, hence a number of factors may be relevant assessing the close personal ties existing between the parties. De facto family life, therefore, receives recognition under the ECHR on an equal basis with formally established ties.¹¹

⁸ Lietuvos Respublikos Konstitucijos 38 straipsnio papildymo ir Pakeitimo Įstatymas

⁹ ECtHR, *Vallianatos and Others v. Greece*, Grand Chamber judgment of 7 November 2013, application nos. 29381/09 and 32684/09, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-128294>.

¹⁰ ECtHR, *X, Y and Z v. the United Kingdom*, Grand Chamber judgment of 22 April 1997, application no. 21830/93, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58032>.

¹¹ ECtHR, *Schalk and Kopf v. Austria*, judgment of 24 June 2010, application no. 30141/04, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99605>.