

# Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Lithuania

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# Executive summary

## Implementation of Employment Directive 2000/78/EC

- [1]. The Law on Equal Treatment, which is the most important legal act implementing Directive 2000/78/EC (Employment Framework Directive) in the national legislation failed to transpose the requirements of the directives in a significant number of crucial areas:
- The definition of discrimination has not been adequately transposed in the Law on Equal Treatment, which has resulted in narrowing of the scope of equal treatment—persons are not protected from assumed or associated discrimination on the ground of sexual orientation.
  - The prohibition of victimisation outlined in the Law on Equal Treatment does not correspond to the requirements set by the Employment Framework Directive, which arguably prohibit not only discrimination against employees who directly file a complaint, but other employees as well.
  - The criteria defining which associations (having a legitimate interest) could engage in judicial or administrative procedures are not specified in national legislation. Thus, legal representation of victims of discrimination by associations before the courts is scarcely possible.
  - Individuals cannot formally take advantage in the courts of the shift of the burden of proof in cases of discrimination on the ground of sexual orientation.
- [2]. Special judicial, administrative or conciliation procedures for cases of discrimination are not embodied in the Code of Civil Procedure, or in other procedural laws. Thus, in civil or administrative cases, victims of discrimination must rely on general procedures, which can be very difficult to apply in discrimination cases.
- [3]. An institution for promotion of equality of persons, not only regardless of racial or ethnic origin, but also regardless of other characteristics, including sexual orientation, was established in 2005 by the Law on Equal Treatment, which gave competence to the Ombudsperson to investigate complaints by natural and legal persons on grounds of discrimination. However, the decisions of the Office of the Equal Opportunities Ombudsperson do not constitute an effective remedy for the victims of discrimination on the ground of sexual orientation, and do not offer compensation to the victims.
- [4]. Generally, sanctions in discrimination cases in Lithuania are not effective, proportionate and dissuasive.

- [5]. The latest draft amendment of the Law on Equal Treatment significantly improves the implementation of the Employment Equality Directive. However, it proposes the inclusion of a new article in the Law on Equal Treatment, which would expand the list of exceptions to the scope of equal treatment, and could in practice be disadvantageous to sexual minorities.

## Freedom of movement

- [6]. Neither marriage nor partnership between same-sex citizens of EU Member States can be legally recognised in Lithuania. Thus LGBT partners (either EU citizens or third country nationals) cannot benefit from the freedom of movement and residence of their partner or spouse in Lithuania, even if they are married or in a registered partnership.
- [7]. In practice, there have been no cases in Lithuania where LGBT persons sought to obtain a residence permit or to benefit from freedom of movement in any form on the ground of the presence of their LGBT partner or spouse in Lithuania.

## Asylum and subsidiary protection

- [8]. Theoretically, persecution of LGBT persons due to their sexual orientation would be examined as persecution of LGBT persons as possible members of a particular social group.
- [9]. The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees came into force in the Republic of Lithuania in 1997, but the first asylum application on the ground of persecution due to sexual orientation was not received until the end of 2007.
- [10]. The first case of an asylum application due to sexual orientation clearly showed the drawbacks of reception conditions for asylum seekers. The asylum seeker in the case was beaten and received further threats from other asylum seekers. Feeling insecure, the homosexual asylum seeker concerned left the Republic of Lithuania.
- [11]. There is no practice of recognition of LGBT persons as family members of asylum seekers in the Republic of Lithuania. It is not clear whether LGBT persons who have concluded partnership agreements with asylum seekers would be accepted as family members.

## Family reunification

- [12]. The official position of the competent governmental institution is that neither marriage nor partnership between persons of the same sex can be legally recognised in Lithuania.
- [13]. National law does not allow for reunification with an unmarried partner. Taking into account lack of practice, it is not clear if an LGBT person who was granted refugee status in the Republic of Lithuania could exercise his or her right to reunify with the partner bound to him or her by a registered partnership.

## Freedom of assembly

- [14]. Until very recently the LGBT community and organisations were ‘invisible’ in public life in Lithuania. However, 2007 was a turning point in this respect.
- [15]. The first attempt to organise a public LGBT event took place in May 2007. However, the administration of the Vilnius city municipality refused to issue permission, stating that, due to ‘objective information’ received from the police, there was a great possibility of violent protests and demonstrations, and that law enforcement institutions were not able to ensure public order and safety for this event. The legality of the municipality’s decision was not challenged in court. However, there are indications that the real motivation for not allowing the event to take place was the fact that the event publicly addressed the issue of sexual orientation.
- [16]. The second attempt to organise the same public LGBT event took place in October 2007, but again authorisation was denied. The LGBT organisation submitted a complaint regarding this decision to the court. The court of first instance as well as the court of second instance rejected this complaint.
- [17]. However, the interpretation of certain provisions of the Law on Assemblies by the municipality, and approval of this by both courts raised serious concerns as to whether public LGBT events which raise the issue of sexual orientation can be successfully held in the future.
- [18]. This more recent case highlighted certain problematic aspects of the regulation of the right to assembly. It seems that certain provisions of the Law on Assemblies are not sufficiently precise, and can be interpreted differently by national courts.
- [19]. Although the case was lost at national level, the interpretation of the law by the courts of first and second instance raises reasonable doubts as to whether their decisions were in accordance with international human rights standards. The LGBT organisation involved is planning to challenge the decision of the national courts at international level, and submit an application to the European Court of Human Rights.

## Hate speech and criminal law

- [20]. According to official statistics, no investigations regarding incitement of hatred in regard to sexual orientation were started in the period 2004-2006. In 2007, however, the number of pre-trial investigations increased significantly. This rise in the number of criminal investigations on the basis of incitement to hatred can be explained by the following reasons:
- The year 2007 was a turning point for the LGBT community, when the first attempts to appear openly in public life were made. This attracted significant media attention. As a consequence, most of the criminal investigations that were started were in regard to incitement to hatred in comments in articles on the internet.
  - Civil society organisations became much more active in informing the General Prosecution Service about cases of incitement to hatred on the internet.
- [21]. Although the Department of Special Investigations of the General Prosecution Service has become more active in this field, the quality of investigations should be improved.
- [22]. Homophobic motivation is not considered as an aggravating circumstance by the Criminal Code of the Republic of Lithuania. Therefore the legal system does not take it into account.

## Transgender issues

- [23]. The present legal situation of transgender persons is very problematic. Due to a legal vacuum in national legislation, persons cannot change their sex by medical means in Lithuania.
- [24]. National legislation permits changes to documents in cases of gender reassignment (including change of name and sex in identity documents). However, even when a person applies to the competent institutions willing to change his or her documents due to gender reassignment, the gender-sensitive personal code remains legally unchangeable.
- [25]. As the national legislation which provides protection against discrimination does not have any specific provisions as regards transgender persons, it is difficult to estimate how the issue of discrimination against a transgender person would be considered in practice. As yet, there have been no cases of discrimination against transgender persons brought before national courts or to the Office of the Equal Opportunities Ombudsperson.

- [26]. As the issue of gender reassignment provokes controversial debates in society and among politicians, it is not clear whether the necessary changes in the legislation will be made in the immediate future.

## Miscellaneous

- [27]. Recent public opinion surveys indicate that LGBT persons form one of the most vulnerable groups. Half of the survey respondents believe that homosexuals should not work in the police, 69 per cent think that homosexuals should not work at schools, and almost half of the respondents believe that homosexuality is a disease that can be cured. The attempt in 2007 to challenge these stereotypes and raise awareness through social advertising was not supported by officials of the major city municipalities. The banning of this social advertisement campaign was not challenged in court: however it can be clearly considered as a limitation of freedom of expression.

## Good practices

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

## A. Implementation of Employment Directive 2000/78/EC

- [29]. Initially, an explanation of the general legal framework in Lithuania on anti-discrimination and equal treatment in regard to constitutional provisions on grounds of sexual orientation must be given.<sup>1</sup>
- [30]. Article 25 of the *Lietuvos Respublikos Konstitucija* [Constitution of the Republic of Lithuania], on freedom of expression, has a clause limiting freedom of expression in cases of discriminatory actions. It states that: ‘Freedom to express convictions or impart information shall be incompatible with criminal actions such as the instigation of national, racial, religious or social hatred, violence or discrimination or the dissemination of slander or misinformation.’<sup>2</sup>
- [31]. Article 26 of the Constitution proclaims freedom of thought, conscience and religion: ‘Freedom of thought, conscience and religion shall not be restricted. Each human being shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious practices, to practice and teach his belief. No one may compel another person or be compelled to choose or profess any religion or belief.’<sup>3</sup>
- [32]. A general equality clause is included in Article 29 of the Constitution, stating that: ‘All persons shall be equal before the law, the court, and other State institutions and officials. The rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.’ The ground of sexual orientation is not explicitly mentioned in the Constitution. However, according to the *Lietuvos Respublikos Konstitucinis Teismas* [Constitutional Court of the Republic of Lithuania],<sup>4</sup> the list of non-discrimination grounds in Article 29 of the Constitution cannot be considered as exhaustive, and sexual orientation is presumably included.<sup>5</sup>

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<sup>1</sup> The Constitution was adopted by referendum on 25 October .10.1992 and entered into force on 2 November 02.11.1992.

<sup>2</sup> Lietuvos Respublikos Konstitucija. Official publication *Valstybės Žinios*, 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm> (14.02.2008)

<sup>3</sup> Lietuvos Respublikos Konstitucija. Official publication *Valstybės Žinios*, 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm> (14.02.2008)

<sup>4</sup> Conclusion of the *Lietuvos Respublikos Konstitucinis Teismas* [Constitutional Court of the Republic of Lithuania] of 24.01.1995, on the compliance of Articles 4, 5, 9, 14 as well as Article 2 of Protocol No 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms with the Constitution of the Republic of Lithuania. Available in English at: <http://www.lrkt.lt/dokumentai/1995/i5a0124a.htm> (2008.02.14).

<sup>5</sup> Although the ground of sexual orientation has not been explicitly mentioned in the above-cited conclusion of the Constitutional Court.

- [33]. According to the jurisprudence of the Constitutional Court of the Republic of Lithuania, these constitutional provisions are directly applicable and each individual may defend his or her rights on the basis of the Constitution.<sup>6</sup> Any person whose constitutional rights or freedoms are violated has the right to appeal to a court. However, as cases where persons base their claim solely on constitutional provisions are non-existent in practice, these provisions should be implemented through the national legislation.
- [34]. The general principle of equality of persons embodied in the Constitution is repeated in a number of laws, for example *Darbo Kodeksas* [Labour Code], *Civilinis kodeksas* [Civil Code] of the Republic of Lithuania. However, the ground of sexual orientation is explicitly mentioned in only a few national legal enactments. Equality of labour law subjects, regardless of *inter alia* their sexual orientation, is embodied in Article 2 of the Labour Code of the Republic of Lithuania<sup>7</sup>. Additionally, Article 129 of the Labour Code states that *sexual orientation*, among other grounds, cannot be considered as a legitimate reason to terminate an employment contract.<sup>8</sup>
- [35]. Article 169 of the *Baudžiamasis Kodeksas* [Criminal Code] of the Republic of Lithuania prohibits severe discriminatory behaviour on the basis of sexual orientation, among other grounds: ‘A person who has committed acts aimed at a certain group or members thereof on account of their ethnic background, race, sex, *sexual orientation*, origin or religion with a view to interfering with their right to participate as equals of other persons in political, economic, social, cultural or employment activity or to restrict the human rights or freedoms of such a group or its members, shall be punished with (a) community service work (b) a fine (c) detention or (d) imprisonment for up to 3 years.’<sup>9</sup>
- [36]. Additionally, Article 170 of the Criminal Code also prohibits incitement against certain groups of residents: ‘A person who, by making public statements orally, in writing or by using the public media, ridicules, expresses contempt of, urges hatred towards or encourages discrimination against a group of residents or against a specific person, on account of his or her sex, *sexual orientation*, race, nationality,

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<sup>6</sup> ‘The Constitution shall be an integral and directly applicable act. Everyone may defend his rights by invoking the Constitution.’ (Article 6 of the Constitution).

<sup>7</sup> Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=311264](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264) (14.02.2008).

<sup>8</sup> Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=311264](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264) (14.02.2008).

<sup>9</sup> Lithuania/Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas. Official publication *Valstybės Žinios*, 2000, Nr. 89-2741. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=314141](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141) (14.02.2008).

language, ethnicity, social status, faith, religion or beliefs, shall be punished with (a) a fine, (b) detention or (c) imprisonment for up to 3 years'.<sup>10</sup>

[37]. The *Visuomenės informavimo pakeitimo įstatymas* [Law on the Provision of Information to the Public] prohibits the publishing of information which 'instigates war or hatred, sneer, scorn, instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, *sexual orientation*, race, nationality, language, origins, social status, religion, beliefs or standpoints' (Article 19).<sup>11</sup> The *Bausmių vykdymo Kodeksas* [Code of the Enforcement of Punishments] of the Republic of Lithuania states that all convicted persons are equal before the law, *inter alia* regardless of their sexual orientation.<sup>12</sup>

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

## A.1. The implementation of Employment Directive 2000/78/EC

[39]. The Employment Equality Directive 2000/78/EC was introduced into national legislation together with the Racial Equality Directive 2000/43/EC on 18.11.2003. No discussions regarding the quality of the transposition or the substance of the Law on Equal Treatment, which implements the directives, took place in the Parliament.<sup>13</sup>

### A.1.1. The Law on Equal Treatment

[40]. Article 1 of this law states that 'this Law is designated to ensure the application of the legal acts of the European Union, indicated in the Annex of this Law' (namely Directives 2000/43/EC and 2000/78/EC). The Law on Equal Treatment, passed on 18.11.2003, came into force on 01.01.2005. The purpose of the law is to ensure the

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<sup>10</sup> Lithuania/Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas. Official publication *Valstybės Žinios*, 2000, Nr. 89-2741. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=314141](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141) (14.02.2008).

<sup>11</sup> Lithuania/Lietuvos Respublikos Visuomenės informavimo pakeitimo įstatymas. Official publication *Valstybės Žinios*, 2006, Nr. 82-3254. Text in English available at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=286382](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=286382) (14.02.2008)

<sup>12</sup> Lithuania / Bausmių vykdymo kodekso patvirtinimo įstatymas. Bausmių vykdymo Kodeksas. Official publication *Valstybės Žinios* 2002 Nr. 73-3084. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=278500](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=278500) (14.02.2008).

<sup>13</sup> Stenograph of the Parliament sitting of 18.11.2003. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=221498](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=221498) (14.02.2008).

implementation of human rights as laid down in the Constitution of the Republic of Lithuania, and to prohibit any direct or indirect discrimination based upon age, *sexual orientation*, disability, racial or ethnic origin, religion or beliefs. Article 1 of the law provides the definition of equal treatment as ‘implementation of the human rights which are laid down in international documents on human and citizens’ rights and in the laws of the Republic of Lithuania, regardless of the age, *sexual orientation*, disability, racial or ethnic origin, religion, beliefs and other grounds established in the international agreements or laws of the Republic of Lithuania’.<sup>14</sup>

- [41]. However, the Law on Equal Treatment failed to transpose the requirements of the directives in a significant number of crucial areas. Thus it is important to examine in detail those particular requirements of the Employment Framework Directive which were not correctly transposed.

#### A.1.1.1. The scope

- [42]. The definition of discrimination in the Law on Equal Treatment has not been precisely transposed, compared to the text provided in the directive. This resulted in narrowing the material scope of the national law on protection from discrimination. More precisely, paragraph 3 of Article 2 of the Law on Equal Treatment defines direct discrimination as follows: ‘Direct discrimination shall be taken to occur when on the basis of a person’s age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, one person is treated less favourably than another is, has been or would be treated in a comparable situation, except for the following cases provided for by the laws [...]’.<sup>15</sup> The wording suggests that there is no protection from discrimination in cases of assumed characteristics. There are no other definitions of discrimination in other laws. In addition, persons are not protected from discrimination based on their association with persons of a particular sexual orientation.

- [43]. On the other hand, although the Employment Framework Directive prohibits discrimination only in the field of employment and occupation, in the Law on Equal Treatment protection against discrimination on all grounds (including sexual orientation) is extended to the scope covered by the Race Directive, with the exception of social advantages and social protection. Thus people are protected against discrimination on the ground of sexual orientation in the fields of access to goods and services and education. Additionally, the Law on Equal Treatment obliges state and local governmental institutions or agencies, within the scope of their competence, (1) to ensure that in all the legal acts drafted and passed by them, equal

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<sup>14</sup> Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in English at: <http://www.lygybe.lt/ci.admin/Editor/assets/Law%20on%20Equal%20Treatment.doc> (14.02.2008)

<sup>15</sup> Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. Available in English at: <http://www.lygybe.lt/ci.admin/Editor/assets/Law%20on%20Equal%20Treatment.doc> (14.02.2008)

rights and treatment, regardless of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, are laid down, (2) to draft and implement programmes and measures designed to ensure equal treatment, regardless of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs, (3) in the manner prescribed by the laws, to provide assistance to the programmes of religious communities, associations and centres, other non-governmental organisations, public agencies and charity and sponsorship foundations which assist in the implementation of equal treatment of persons, without regard to their age, sexual orientation, disability, racial or ethnic origin, religion or beliefs.<sup>16</sup>

- [44]. Additionally, the provision of the Employment Framework Directive regarding membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations, is not reproduced in the Law on Equal Treatment.

#### A.1.1.2. Victimisation

- [45]. Article 7 of the Law on Equal Treatment provides a list of actions violating the right to equal treatment: ‘The acts of an employer shall be deemed as violating equal treatment, if due to a person’s age, sexual orientation, disability, racial or ethnic origin, religion or beliefs he/she: [...] persecutes the employee or public servant, *who has filed a complaint* regarding discrimination, fails to take measures to protect the employee or public servant from hostile behaviour or negative consequences’ (Paragraph 5 of Article 7).

- [46]. This prohibition of victimisation may not correspond to the requirements set by the Employment Framework Directive which appear to prohibit not only discrimination against employees who directly file a complaint, but other employees as well (for instance, witnesses involved in such discrimination cases).

#### A.1.1.3. The implementation of Article 9.2 of Employment Directive 2000/78/EC and the legal standing of associations

- [47]. The requirements of the Employment Framework Directive regarding the engagement of associations in judicial proceedings on behalf or in support of the victim have not been properly transposed in Lithuania. The criteria identifying those associations (having a legitimate interest) could engage in judicial or administrative procedures on behalf or in support of the victim are not set in national legislation.

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<sup>16</sup> Lithuania/Lietuvos Respublikos Lygių galimybių įstatymas. Official publication *Valstybės žinios*, 2003, No.114-5115. 9. (Article 3). Available in English at: <http://www.lygybe.lt/ci.admin/Editor/assets/Law%20on%20Equal%20Treatment.doc> (14.02.2008).

Associations or NGOs can initiate administrative procedures at the *Lygių galimybių kontrolieriaus tarnyba* [Office of the Equal Opportunities Ombudsperson]. In practice administrative procedures at the Office of the Equal Opportunities Ombudsperson were initiated by the main LGBT rights organisation in Lithuania *Lietuvos gėjų lyga* [Lithuanian Gay League]. There are also a couple of human rights NGOs, capable and willing to address issues of sexual orientation discrimination at the Office of Equal Opportunities Ombudsperson. However, the representation before the courts by NGOs under current legislation is barely possible.

- [48]. Under current legislation, legal representation by associations or NGOs in civil courts is impossible. According to Paragraph 1 of Article 56 of the *Civilinio proceso Kodeksas* [Code of Civil Procedure] of the Republic of Lithuania, legal representation of persons is exercised almost exclusively by attorneys, with only a few exceptions granted to trade unions representing their members, and to persons with a degree in law in cases involving legal representation of their relative or spouse.<sup>17</sup> According to Paragraph 2 of Article 56 of the Code, other persons of law could represent a party in a legal dispute, but only as a subsidiary to attorneys or attorneys' assistants acting as primary legal representatives.
- [49]. According to Article 49 of the Code of Civil Procedure of the Republic of Lithuania, in certain cases prescribed by law the possibility exists for 'other subjects' to pursue a class action on behalf of a group of persons.<sup>18</sup> However, the detailed procedure in such cases is not clear, because as yet no class-action case has been brought to court by NGOs.
- [50]. However, it is theoretically possible for NGOs and associations to engage in administrative procedure on behalf of the victim in administrative courts. According to Article 49 Paragraph 3 of the Law on Lithuanian Administrative Procedure,<sup>19</sup> mandatory legal representation is 'usually, but not necessarily' exercised by an attorney, which leaves an opening for possible representation by associations. However, this opportunity has never been used in practice, and it is hard to predict whether it would be accepted by the courts.

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<sup>17</sup> Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=284330](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=284330) (14.02.2008)

<sup>18</sup> Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=284330](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=284330) (14.02.2008)

<sup>19</sup> Lithuania/Lietuvos Respublikos Administracinių bylų teisenos įstatymas. Official publication, *Valstybės Žinios*, 1999, Nr. 13-308. Available in Lithuanian at:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=312242](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312242) (14.02.2008).

#### A.1.1.4. Shifting the burden of proof

- [51]. The *Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas* [Law on Equal Opportunities of Women and Men of the Republic of Lithuania],<sup>20</sup> which also sets the procedure for investigation of complaints to the Office of the Equal Opportunities Ombudsperson, describes the concept of shifting the burden of proof in cases of gender discrimination. Formally, individuals do not have this procedural guarantee in courts or other institutions in cases of discrimination on sexual orientation. Article 178 of the Code of Civil Procedure provides the general rule that the burden of proof falls upon the applicant.<sup>21</sup> Thus, in this respect, the Employment Framework Directive is not implemented in Lithuania. Despite this lacuna in the implementation of the provisions relating to the burden of proof in the directive, the Equal Opportunities Ombudsperson applies the shift of the burden of proof when investigating complaints, since it is not bound to apply the Code of Civil Procedure. However, in the current situation, it would be very problematic to pursue the shift of the burden of proof in sexual orientation discrimination cases in the courts.
- [52]. It must be mentioned, that the government initiated an amendment to Article 178 of the Code of Civil Procedure to include provision for the shift of the burden of proof in discrimination cases. However it did not manage to convince the members of the Parliament to approve it,<sup>22</sup> and the draft amendment is still under consideration in the competent committees of the Parliament.

## A.2. The complaint procedures available to victims of discrimination on the ground of sexual orientation

- [53]. According to national legislation, persons who have experienced discrimination on the ground of sexual orientation have several procedural ways to protect their rights.
- [54]. Firstly, the Constitution of the Republic of Lithuania guarantees the right of every person to appeal to a court or other competent institution for the protection of rights under the Constitution which have been violated. The general principle of equality of persons is embodied in a number of laws (e.g. Civil Code of the Republic of

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<sup>20</sup> Lithuania/Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas. Official publication, *Valstybės Žinios*, 1998, Nr. 112-3100. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=312549](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312549) (14.02.2008).

<sup>21</sup> Lithuania/Lietuvos Respublikos Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinio proceso Kodeksas. Official publication *Valstybės Žinios*, 2002, Nr. 36-13640. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=284330](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=284330) (14.02.2008).

<sup>22</sup> Stenograph of the Parliament sitting of 27.06.2007. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=300811](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=300811) (14.02.2008).

Lithuania, Labour Code). However, the Code of Civil Procedure and other procedural laws do not comprise special judicial, administrative or conciliation procedures for cases of discrimination. Thus, in civil or administrative cases, victims of discrimination must rely on general procedures, which can be very difficult to apply in discrimination cases.

- [55]. Additionally, according to Paragraph 2 of Article 6.250 of the Civil Code of the Republic of Lithuania,<sup>23</sup> non-pecuniary damages can be claimed only in cases prescribed by law. The Law on Equal Treatment does not explicitly mention this right for persons who suffered discrimination on the ground of sexual orientation. The Law on Equal Opportunities for Women and Men<sup>24</sup> mentions the right to claim non-pecuniary damages, but only in gender discrimination cases. No other laws explicitly mention this right. Bearing in mind that the requirement for the shift of the burden of proof, as well as the involvement of associations in procedures in the civil or administrative courts are not properly transposed into national law, to pursue a claim against discrimination in the courts is difficult in practice. Thus, so far, no cases of discrimination have been successfully brought to court in Lithuania.<sup>25</sup>
- [56]. Another possibility is to start a criminal process under the previously mentioned provisions of the Criminal Code of the Republic of Lithuania, including the provision which prohibits discrimination (Article 169). However, in this case, only severe discriminatory acts can be brought before the court, and so far these provisions have rarely been used in practice.
- [57]. Thirdly, in the case of a labour dispute, a person could take advantage of procedures established by the Labour Code.<sup>26</sup> However, it must be mentioned that the Labour Code does not directly make provision for any sanctions for workplace discrimination; these sanctions are provided for in the *Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas* [Administrative Violations Code].<sup>27</sup> A person can address the *Darbo ginčų komisija* [Employment Disputes Commission] or courts directly.

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<sup>23</sup> Lithuania/Lietuvos Respublikos Civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis Kodeksas. Official publication, *Valstybės Žinios*, 2000, Nr. 74-2262. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=299402](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=299402) (14.02.2008).

<sup>24</sup> Lithuania/Lietuvos Respublikos moterų ir vyrų lygių galimybių įstatymas. Official publication, *Valstybės Žinios*, 1998, Nr. 112-3100. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=312549](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312549) (14.02.2008).

<sup>25</sup> The only case with a discrimination aspect was brought to the court in 2007 (and is explained in detail under Section E. Freedom of Assembly of this report). However, it was not focused on the application of the Law on Equal Treatment.

<sup>26</sup> Lithuania/Darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Darbo Kodeksas. Official publication *Valstybės Žinios*, 2002 Nr. 64-2569. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=311264](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311264) (14.02.2008).

<sup>27</sup> Lithuania/Lietuvos Respublikos Administracinių teisės pažeidimų kodeksas. Official publication, *Valstybės Žinios*, 1985, Nr. 1-1. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=314423](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314423) (14.02.2008).

- [58]. According to the Labour Code, the *Darbo ginčų komisija* [Employment Disputes Commission] can award compensation to an individual in a 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 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.
- [59]. Additionally, it is possible to address the *Valstybinė darbo inspekcija* [State Labour Inspectorate], which controls compliance with laws regulating labour relations and inspects for compliance with the provisions of the Labour Code, including those related to employment contracts, payment for work, organisation of work and rest periods, as well as the enforcement of relevant resolutions of the government of the Republic of Lithuania and orders of the *Socialinės apsaugos ir darbo ministerija* [Ministry of Social Security and Labour]. Theoretically, the State Labour Inspectorate could impose administrative sanctions on employers who discriminate against employees, and thus violate the provisions of the Employment Code. Sanctions are imposed by a general provision in the Administrative Violations Code.<sup>28</sup> In practice, however, State Labour Inspectorate officials do not address issues of workplace discrimination.
- [60]. Finally, the most widely used possibility in practice is to address the Equal Opportunities Ombudsperson. The Office of the Equal Opportunities Ombudsperson was created by the Law on Equal Treatment, which expanded the mandate of the previous institution (the Ombudsman of Equal Opportunities for Men and Women), and can thus be considered as a national equality body in terms of Article 13 of Race Directive 2000/43/EC. The procedure at the Office of the Equal Opportunities Ombudsperson is quite simple and reasonably inexpensive. Each natural or legal person has a right to file a complaint with the Equal Opportunities Ombudsperson about the violation of rights to equal treatment.
- [61]. Complaints should be made in writing: the complainant or her or his representative may send the complaint to the Equal Opportunities Ombudsperson by post, fax, email or bring it in person to the office. If a complaint has been received by word of mouth or by telephone, or if the Equal Opportunities Ombudsperson has found indications of violation of equal rights in the mass media or other sources of information, the investigation may be started on the initiative of Ombudsperson. The Ombudsperson may also decide to investigate anonymous complaints. The time-limit for filing complaints is three months after the commission of the acts against which the complaint is being filed. Complaints filed after the expiry of this time-limit are

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<sup>28</sup> Article 41. Violation of Employment Laws and Normative Acts Regulating Health and Safety at Work. 'A violation of employment laws and normative acts regulating health and safety at work is punishable by a fine for employers or their authorised representatives to the amount of 500 to 5,000 Litas.'

not investigated unless the Equal Opportunities Ombudsperson decides otherwise. The decisions of the Equal Opportunities Ombudsperson when applying administrative sanctions are of binding character and can be sued by a court.

### A.3. The establishment of bodies for promotion of equal treatment

[62]. In 2005, the Law on Equal Treatment established an institution for the promotion of equality of persons, regardless not only of racial or ethnic origin, but also of other characteristics, including sexual orientation. The law thus expanded the mandate of the previous institution (the Ombudsman of Equal Opportunities for Men and Women). The Office of the Equal Opportunities Ombudsperson supervises the implementation of the Law on Equal Treatment in the manner prescribed by the Law on Equal Opportunities for Women and Men. The Ombudsperson is financed from the state budget. In accordance with the Law on Equal Opportunities for Men and Women, the Equal Opportunities Ombudsperson provides independent and objective consultations to victims of discrimination on all grounds specified in EC Treaty Article 13, reports on the implementation of this law to the Parliament, and submits recommendations to state government and administration institutions of the Republic of Lithuania on the revision of legal acts and priorities in the policy of implementation of equal rights. In practice, the Ombudsperson also conducts surveys concerning discrimination, promotes equal treatment of persons, and exercises many educational activities, although these functions are not outlined in the law.

[63]. Finally and most importantly, it has the power to investigate complaints regarding direct and indirect discrimination, harassment and sexual harassment.<sup>29</sup> The Equal Opportunities Ombudsperson may take the following decisions:

- to refer relevant material to investigatory bodies if indications of an offence have been established;
- to address an appropriate person or institution with a recommendation to discontinue actions violating equal opportunities, or to repeal a legal act related to such violations;
- to hear cases of administrative offences and impose administrative sanctions for violations of the Law on Equal treatment and the Law on Equal Opportunities. In accordance with Article 41(6) of the Administrative Violations Code, in such cases it can issue a fine of from 100 to 2,000 Litass (from 29 to 580 euros approximately). Where the same violation is committed repeatedly, a fine of from 2,000 to 4,000 Litass can be imposed on the same subject.

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<sup>29</sup> Paragraph 1, Article 12 of the Law on Equal Opportunities for Women and Men.

- to admonish those who have committed a violation;
- to halt advertisement activities temporarily, if there is sufficient data to indicate that an advertisement campaign may incite hatred towards or encourage discrimination against a group of residents or against a specific person, on account of his or her sex, sexual orientation, race, nationality, ethnicity, age, disability, faith, religion or beliefs;
- to issue binding decisions to stop discriminatory advertisement campaigns.

[64]. On one hand this is a positive aspect of transposition, since the institution is designed to promote equality of persons in respect of all grounds covered by both directives (as well as gender). However, although the Ombudsperson was given competence to investigate complaints on discrimination, the decisions of the Equal Opportunities Ombudsperson do not include compensation for damage to the victim of sexual orientation discrimination. The Ombudsperson has the right to impose administrative sanctions (in accordance with the Administrative Violations Code), however these can hardly be considered to be of effective, proportionate and dissuasive character (especially for large companies or institutions).

[65]. In 2005 as well as in 2006, the Office of the Equal Opportunities Ombudsperson received two complaints regarding discrimination on the ground of sexual orientation.<sup>30</sup> In 2007, the Office of the Ombudsperson started one investigation on its own initiative. The complaints were in most cases presented by the major LGBT organization in Lithuania *Lietuvos gėju lyga* [Lithuanian Gay League].

## A.4. Sanctions and remedies

[66]. Generally, sanctions in Lithuania in discrimination cases cannot be considered to be effective, proportionate and dissuasive. There are sanctions embodied in the Criminal Code which are imposed in cases of severe discriminatory acts. There are also sanctions in the Administrative Violations Code for breach of the laws on equal opportunities (these sanctions are issued by the Equal Opportunities Ombudsperson). However, there are no rules on sanctions applicable to infringements of national law, implementing Directives 2000/78 and 2000/43.

[67]. According to the Law on Equal Opportunities, only persons whose rights have been violated on the ground of gender have a right to demand compensation before the court, as set by the Civil Code.

[68]. Decisions of the Office of the Equal Opportunities Ombudsperson do not have any compensatory effect for a victim. In accordance with the Administrative Violations Code, it can impose administrative sanctions (issue a warning or a fine), but rarely

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<sup>30</sup> Annual reports of the Equal Opportunities Ombudsperson can be found on the official website at: [www.lygybe.lt](http://www.lygybe.lt)

does so in practice. In practice the Ombudsperson rarely exercises the issuance of fines as an administrative sanction. In 2005 out of all cases on all grounds of discrimination decisions to issue a fine formed 4%, in 2006 – 2%, while in 2007 no decisions to issue a fine were taken.

- [69]. In 2005 Ombudsperson investigated two complaints on the ground of sexual orientation. In one case the Ombudsperson issued a warning to stop discriminatory action, in the second case. In 2006 two complaints were received and again a warning to stop discriminatory actions was issued in one case. In 2007 the number of complaints increased dramatically, due to public events of LGBT organizations, which were banned by the municipality of Vilnius. However most of the complaints were inquiries and encouragements to act. In 2007 no binding decisions were taken because either the material was referred to investigative bodies (when indications of an offence had been established) the complaint was dismissed (when violations mentioned in it had not been corroborated), or investigation was discontinued when objective information concerning the violation, which has been committed, was lacking.

## A.5. Recent developments regarding implementation of Employment Directive 2000/78/EC

- [70]. The government is aware of improper implementation of the Employment Framework Directive 2000/78/EC, and has made efforts to change the current situation. An amendment of the Law on Equal Treatment was proposed to the Parliament on two occasions in 2007, however the Parliament has not yet approved it.<sup>31</sup>
- [71]. The latest draft amendment of the Law on Equal Treatment eliminates a significant proportion of the weaknesses in the current state of implementation of the Directive.<sup>32</sup> However it also raises serious concerns for leading LGBT organisations. The draft amendment proposes the inclusion of a new article in the Law on Equal Treatment, which would expand the list of exceptions to the scope of equal treatment, and which could in practice be disadvantageous to sexual minorities. Although the draft has a general provision on genuine occupational requirements, it

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<sup>31</sup> Voting was postponed to the 2008 spring session of the Parliament. Members of the Lithuanian Conservative Party (Homeland Union) expressed rather homophobic remarks during this latest sitting, and suggested that ways must be found 'to adapt the EU law to the Christian traditions of Lithuania'. Stenograph of the Parliament sitting of 18.12.2007. The text in Lithuanian can be found at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=311454](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311454)

<sup>32</sup> Lithuania/Lygių galimybių įstatymo pakeitimo įstatymo projektas XP-23824(2). Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=310375&p\\_query=&p\\_tr2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=310375&p_query=&p_tr2) (14.02.2008).

also takes advantage of the provisions of Paragraph 2 of Article 4 of the Employment Framework Directive.

[72]. Article 3 of the draft law proposes that the Law on Equal Treatment would not apply to:

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

[73]. It must be mentioned that the Catholic Church played a significant role in the introduction of these provisions in the draft law.<sup>33</sup> Bearing in mind the negative attitude of the Church to sexual minorities in Lithuania, which has been publicly expressed many times,<sup>34</sup> it can be expected that these broad provisions would be used to discriminate not only on the grounds of religion or belief alone.

[74]. Moreover, this could eliminate LGBT people from significant areas of public life. Some members of the Parliament, notorious for opposing homosexuality and protecting 'traditional values', identified the connection between these provisions and the issue of sexual orientation, and stated that it could be used as a 'self-defence

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<sup>33</sup> The Minister of Social Affairs and Labour publicly admitted that the inclusion of these provisions was discussed with the Lithuanian Bishop's Conference, and that the draft law and these particular provisions were approved by Lithuanian Bishop's Conference. Stenograph of the Parliament sitting of 18.09.2007. The text in Lithuanian can be found at:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=304466](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466)

<sup>34</sup> See <http://www.delfi.lt/archive/article.php?id=13210101> ;  
<http://www.lrytas.lt/?id=11795035311178205586&view=4>

tool for the elimination of ‘non-traditional’ sexual orientation from schools and the education system in general.<sup>35</sup>

- [75]. There are serious doubts that the provisions of Article 13 of the draft law correspond to the purpose of the Employment Framework Directive. First, the provisions are broader in scope when compared to the wording provided in the Directive. Secondly, it is not clear which organisations, institutions, schools or legal persons could take advantage of them.<sup>36</sup> Wide interpretation of these neither detailed nor precise provisions could in practice be disadvantageous to sexual minorities. Thirdly, there are no clear and evident facts that such national practice, as outlined in Article 13 of the draft law existed prior to the implementation of the Directive, as is required by Article 4 of the Directive.

## B. Freedom of movement

- [76]. The legal status of foreigners in the Republic of Lithuania is regulated by *Užsieniečių teisinės padėties įstatymas* [Law on the Legal Status of Aliens].<sup>37</sup> According to this law, ‘family members of a citizen of an EU Member State’ means that citizen’s spouse or the person with whom a registered partnership has been contracted, his or her direct descendants who are under the age of 21 or are dependants, including direct descendants of the spouse or person with whom the registered partnership has been contracted, who are under the age of 21 or those who are dependants, the dependent direct relatives in the ascending line of a citizen of an EU Member State, of the spouse or of the person with whom that person has contracted a registered partnership.
- [77]. The definition of marriage in national law is provided in the Civil Code of the Republic of Lithuania. Article 3.7 of the Code defines marriage as a formalised agreement between a man and a woman only. Thus marriage of same-sex couples is not recognised by national law.
- [78]. In practice, partnerships in Lithuania do not exist and are not recognised, due to a legal vacuum which has been left open since 2001. The regulation of partnerships is partially governed by the Civil Code of the Republic of Lithuania. According to the Civil Code, detailed regulation of partnerships should be outlined in a subsidiary law on partnerships. The Civil Code came into force on 01.07 2001, and a law on partnerships has not yet been passed.

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<sup>35</sup> Stenograph of the Parliament sitting of 18.09.2007. Available in Lithuanian at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=304466](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=304466) (14.02.2008)

<sup>36</sup> It is not clear how many members of the religious community should be the founders of a particular organisation, school or institution.

<sup>37</sup> Lithuania/The Law on the Legal Status of Aliens adopted on 29.04.2004 No. IX-2206 (last amended on 28.11.2006).

- [79]. However, the situation in regard to partnerships is also disadvantageous to same-sex couples. According to the Article 3.229 of the Civil Code, only a union between a man and a woman can be recognised as a partnership, and then only if it was duly registered and made with the intention of marriage in the future. Thus partnerships between same-sex persons can not be recognised in the current state of Lithuanian law.
- [80]. This view is supported by the *Migracijos departamentas prie Vidaus reikalų ministerijos* [Migration Department of the Ministry of the Interior] (hereinafter: the Migration Department), the main governmental institution which grants residence permits to foreigners in Lithuania. The official position of the Migration Department is that neither marriage nor partnership between same-sex citizens of EU Member States can be legally recognised in Lithuania.<sup>38</sup> The same applies to same-sex marriages and unions between EU citizens and third-country nationals.
- [81]. Thus, according to the interpretation of the administration, LGBT partners (either EU citizens, or third country nationals) can not benefit from the freedom of movement and residence of their partner or spouse in Lithuania.
- [82]. According to the data of the Migration Department, there have not been any cases in practice where LGBT persons sought to obtain a residence permit in Lithuania or benefit from freedom of movement in any form, due to the presence of their LGBT partner or spouse in Lithuania.

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<sup>38</sup> Migracijos Departamentas prie Lietuvos Respublikos Vyriausybės, 11.01.2008 d. raštas Lietuvos žmogaus teisių centrui 'Dėl informacijos pateikimo' Nr. (15/7-7) 10K – 1684.

## C. Asylum and subsidiary protection

- [83]. Procedures for granting asylum in the Republic of Lithuania are outlined in the Law on the Legal Status of Aliens.<sup>39</sup> This law determines that refugee status shall be granted to an asylum applicant who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear is unwilling, to avail herself or himself of the protection of that country (Article 86).
- [84]. According to the national law, subsidiary protection may be granted to an asylum applicant who is outside his or her country of origin, and is unable to return to it owing to a well-founded fear that: 1) she or he will be tortured, subjected to cruel, inhuman or degrading treatment or punishment; 2) there is a threat that his or her human rights and fundamental freedoms will be violated; 3) her or his life, health, safety or freedom is under threat as a result of endemic violence which spread in an armed conflict or which has placed her or him at serious risk of systematic violation of his human rights (Article 87).
- [85]. These provisions are considered to be in compliance with the provisions of the 1951 Convention Relating to the Status of Refugees (hereinafter: the Convention), the 1967 Protocol Relating to the Status of Refugees (hereinafter: the Protocol) and the 2004 Qualification Directive.<sup>40</sup> The Convention and the Protocol came into force in the Republic of Lithuania in 1997, but the first asylum application on the ground of persecution due to sexual orientation was not received until the end of 2007.
- [86]. As there was only one asylum application received, and it has not yet been examined, it is difficult to comment on the possible practice of the Migration Department under the Ministry of Internal Affairs (hereinafter: the Migration Department), which is responsible for taking decisions on the granting or refusal to grant refugee status or subsidiary protection. Article 10(1)(d) of the 2004 Qualification Directive was literally transposed into national laws on 04.05.2007.<sup>41</sup> Therefore, in principle, the persecution of LGBT persons due to their sexual orientation would be examined as persecution of LGBT persons as possible members of a particular social group.
- [87]. Since 1997, when the Convention and the Protocol came into force in the Republic of Lithuania, the first, and as yet only, asylum application on the ground of persecution due to sexual orientation was received at the end of 2007. This first case of

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<sup>39</sup> Lithuania/The Law on the Legal Status of Aliens adopted on 29.04.2004 No. IX-2206 (last amended on 28.11.2006).

<sup>40</sup> Council Directive 2004/83/EC of 29.04.2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection, and the content of the protection granted.

<sup>41</sup> Amendments of the Order concerning examination of asylum applications, issuing and execution of the decisions, No. 1V-169 (04.05.2007).

application for asylum due to sexual orientation clearly highlighted the need to improve the reception conditions for asylum seekers.

- [88]. Upon receiving the above-mentioned asylum application, the Migration Department issued their decision to provide the asylum seeker with temporary territorial asylum, and to accommodate him in the Foreigners' Registration Centre until the final decision on asylum was made. While accommodated in the Foreigners' Registration Centre, the asylum seeker was beaten and received further threats from other asylum seekers. After the incident, the beaten asylum seeker called the police, but the police did not react with due attention. Feeling insecure, the homosexual asylum seeker then left the Foreigners' Registration Centre.
- [89]. Initially, the *Lietuvos gėjų lyga* [Lithuanian Gay League (LGL)] accommodated the beaten asylum seeker in an hotel for two nights. Later, the person himself and the Lithuanian Gay League approached the Lithuanian Red Cross asking for assistance with accommodation. The Lithuanian Red Cross reached an agreement with another non-governmental organisation, Vilnius Caritas, and proposed accommodation in the Vilnius Caritas common lodging-house. However, the asylum seeker did not go to the common lodging-house, and a couple of days later information was received that the asylum seeker had left the Republic of Lithuania and gone to Luxembourg, where he had complained about reception conditions for asylum seekers in the Republic of Lithuania.
- [90]. According to Article 79 of the Law on the Legal Status of Aliens, an asylum seeker may be accommodated in the Foreigners' Registration Centre, or in his or her own place of residence. However, in both cases an asylum seeker can face certain problems. First, there is no separate building for vulnerable groups of asylum seekers, such as single women or homosexuals, and it is complicated for the police and administrative officers of the Foreigners' Registration Centre to ensure security in the common building. Secondly, the alternative of accommodation in his or her own place of residence is only permitted if the asylum seeker has entered the Republic of Lithuania legally, and in such cases the state does not provide him or her with any kind of financial support.

### C.1. The acceptance of LGBT partners as family members in the context of asylum and/or subsidiary protection in the national legal system

- [91]. According to the Law on the Legal Status of Aliens, the definition of the family members of an asylum seeker covers the spouse of the asylum seeker or a person who has concluded a partnership agreement with her or him, in so far as the family already existed in the country of origin, and during the examination of the asylum

application the family members are present in Lithuania (Article 2). First, unmarried LGBT partners would not be accepted as family members of an asylum seeker. Secondly, as there is no practice of recognition of LGBT persons as family members of asylum seekers in the Republic of Lithuania, it is not clear whether LGBT persons who have concluded partnership agreements with asylum seekers would be accepted as family members.

[92]. However, the official position of the Migration Department of the government of the Republic of Lithuania is that neither marriage nor partnership between same sex persons can be legally recognised in Lithuania.<sup>42</sup>

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<sup>42</sup> Migracijos Departamentas prie Lietuvos Respublikos Vyriausybės, 11.01.2008 d. raštas Lietuvos žmogaus teisių centrui 'Dėl informacijos pateikimo' Nr. (15/7-7) 10K – 1684.

## D. Family reunification

- [93]. According to the Law on the Legal Status of Aliens, persons are given the right to family reunification if they are granted refugee status and receive a permanent residence permit. However, persons who are granted subsidiary protection and receive temporary residence permits only do not have this right.
- [94]. Family members who can enter and reside are defined in the law. This right is recognised to the spouse or the person who has concluded a partnership agreement, the children of the couple or of one of them (including adopted children) below 18 years of age, on condition that they are unmarried and dependent, as well as relatives in the direct ascending line who have been dependent for at least one year and are unable to make use of the support of other family members residing in a foreign country (Article 2).
- [95]. Accordingly, national law does not allow reunification with an unmarried partner. Taking into account the absence of any practice in this area, it is not clear if an LGBT person who has received refugee status in the Republic of Lithuania could exercise his or her right to reunify with the partner bound to him or her in a registered partnership.
- [96]. However, the official position of the Migration Department of the government of the Republic of Lithuania is that neither marriage nor partnership between same-sex persons can be legally recognised in Lithuania.<sup>43</sup>

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<sup>43</sup> Migracijos Departamentas prie Lietuvos Respublikos Vyriausybės, 11.01.2008 d. raštas Lietuvos žmogaus teisių centrui 'Dėl informacijos pateikimo' Nr. (15/7-7) 10K – 1684.

## E. Freedom of assembly

- [97]. Until very recently, the LGBT community and its organisations were ‘invisible’ in the public life of Lithuania. However, the year 2007 was a turning point in this respect.
- [98]. *Lietuvos gėjų lyga* [Lithuanian Gay League (LGL)], the leading LGBT rights protection organisation in Lithuania, made a couple of attempts to organise a public event for the first time, and was confronted with opposition from some sections of society,<sup>44</sup> and most importantly from politicians. Freedom of assembly was one of the most pressing points at issue for the human rights of the LGBT community in 2007.
- [99]. Freedom of assembly is a constitutional provision, embodied in Article 36 of the Constitution of the Republic of Lithuania. It states, that: ‘Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings. This right may not be limited otherwise than by law and only when it is necessary to protect the security of the State or society, public order, people’s health or morals, or the rights and freedoms of other persons’.<sup>45</sup>
- [100]. In practice, there were only a few public demonstrations against homosexuals, with less than 30 participants. In 2007 at least two public meetings were lead by *Piliečių sąjauka „Už dorą tautą“* [Citizens movement „For the honest nation“], some politicians, right wing extremists and priests took part in it. The participants of the meeting were holding poster with slogans opposing homosexuality, avoiding open incitement of hatred. None of such meetings were interrupted by the police.
- [101]. This constitutional right is detailed in the *Lietuvos Respublikos susirinkimų įstatymas* [Law of Assemblies].<sup>46</sup> This law provides rules on the procedures for the organisation of public meetings, provides a list of prohibited meetings, and sets the rights and duties of the organisers of meetings and of state officials and law enforcement institutions. Article 22 of this law states that state officials and the police must ensure organisational possibilities for the implementation of legitimate meetings, as well as protection of the rights and safety of the participants of such meetings.<sup>47</sup> The *Lietuvos Respublikos Konstitucinis Teismas* [Constitutional Court of

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<sup>44</sup> L. Dainoras (2007) ‘Gėjai išprovokavo emocijas audras’ in *Kauno diena*. Available in Lithuanian at: <http://www.kaunodiena.lt/lt/?id=6&aid=47329> (14.02.2008).

<sup>45</sup> Lithuania/Lietuvos Respublikos Konstitucija. Official publication *Valstybės Žinios*, 1992, No. 33-1014. Text in English can be found at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm> (14.02.2008).

<sup>46</sup> Lithuania/Lietuvos Respublikos susirinkimų įstatymas. Official publication *Valstybės Žinios*, 1993, Nr. 69-139. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=210632](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=210632) (14.02.2008).

<sup>47</sup> Lithuania/Lietuvos Respublikos susirinkimų įstatymas. Official publication *Valstybės Žinios*, 1993, Nr. 69-139. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=210632](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=210632) (14.02.2008).

the Republic of Lithuania] in one of its rulings<sup>48</sup> stressed the importance of this provision, identified important jurisprudence of the European Court of Human Rights, and stated that ‘the right to freely arrange peaceful assemblies includes not only the negative duty of the State not to interfere with the arrangement of a peaceful assembly but also its positive duty to ensure proper protection for the participants of such an assembly’.<sup>49</sup>

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

- [102]. The first attempt to organise a public LGBT event took place in May 2007 during the ‘For diversity. Against Discrimination’ campaign national event in Lithuania. A group of NGOs was involved in the preparation for the visit of the European anti-discrimination truck to Lithuania, which was organised by the local public relations company, *Baltijos viešųjų ryšių grupė* [BVRG]. The Lithuanian Gay League (LGL) planned to organise a public event—the unfurling of a 30 metre long rainbow flag—on the same day (25.05.2007).<sup>50</sup> The announcement of this initiative by the LGL received significant attention from the media.<sup>51</sup>
- [103]. BVRG hired a private company, *Pirmoji kava*, to organise the visit of the Anti-discrimination Truck and accompanying events. *Pirmoji kava* applied to the administration of Vilnius city municipality to obtain permission, as is required by the Law on Assemblies. However, the administration of Vilnius city municipality refused to issue permission, stating that, due to ‘objective information’ received from the police, there was a strong possibility of violent protests and demonstrations, and that the law enforcement institutions were not able to ensure public safety and order for this event. This resulted in the cancellation of the EU anti-discrimination campaign truck visit to Lithuania.
- [104]. The reaction of the European Commission to the decision of Vilnius city municipality was modest. The Commission expressed its regrets that the event was

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<sup>48</sup> Lithuania/Lietuvos Respublikos Konstitucinio teismo nutarimas Dėl Lietuvos Respublikos Susirinkimų įstatymo 6 straipsnio 2 dalies atitikimo Lietuvos Respublikos Konstitucijai. (07.01.2000). Official publication *Valstybės Žinios*, 2000 Nr. 3-78. Available in English at: <http://www.lrkt.lt/dokumentai/2000/r000107.htm> (14.02.2008).

<sup>49</sup> Lithuania/Lietuvos Respublikos Konstitucinio teismo nutarimas Dėl Lietuvos Respublikos Susirinkimų įstatymo 6 straipsnio 2 dalies atitikimo Lietuvos Respublikos Konstitucijai. (07.01.2000). Official publication *Valstybės Žinios*, 2000 Nr. 3-78. Available in English at: <http://www.lrkt.lt/dokumentai/2000/r000107.htm> (14.02.2008).

<sup>50</sup> This initiative, called ‘Rainbow days 2007’, was financially supported by the Office of the Equal Opportunities Ombudsperson through the national anti-discrimination programme.

<sup>51</sup> N/A (2007), ‘Sostinėje kunkuliuoja aistros dėl gėjų’, in *Lietuvos rytas*. Available in Lithuanian at: [http://www.lrytas.lt/?data=20070519&id=nuo19\\_so070519&view=2](http://www.lrytas.lt/?data=20070519&id=nuo19_so070519&view=2) (14.02.2008).

not welcomed in Vilnius.<sup>52</sup> As neither BVRG nor the private company which applied for the permission were willing to start legal proceedings against Vilnius city municipality, the legality of the municipality's decision was not challenged in court.

- [105]. However, there are clear indications that the real motivation not to allow the event to take place was the fact that the event publicly addressed the issue of sexual orientation (among other grounds of discrimination). Even before the decision not to issue permission was taken, the mayor of Vilnius (a member of the Order and Justice (Liberal Democrats) party) publicly stated that, 'as we give priority to the traditional family and are seeking to promote family values, we oppose the public demonstration of homosexual ideas in Vilnius city'.<sup>53</sup>
- [106]. Additionally, the presidium of the Order and Justice (Liberal Democrats) party drafted a resolution advising municipality council members belonging to the party not to support events which might escalate discord among Vilnius city residents of different convictions. The leader of the Order and Justice party publicly admitted that the resolution was drafted particularly for this LGL event and any other similar events in the future.<sup>54</sup>
- [107]. Although the refusal to issue permission for the event was not challenged in court, the Equal Opportunities Ombudsperson started investigation of whether there was a breach of the Law on Equal Treatment. Although the Ombudsperson publicly stated<sup>55</sup> that the decision of the municipality contained legal errors (it was based on a non-existent clause of the Law on Assemblies),<sup>56</sup> without mentioning the reasoning and substance of it, the investigation of this case was finally discontinued without any public statement.
- [108]. As the decision of the municipality was not challenged in court, it is difficult to say whether it was legally well-founded. However, bearing in mind the jurisprudence of the European Court of Human Rights, refusal to allow a public event only on the basis that opposing events could cause a threat to public order can presumably be considered as not sufficiently legally founded.

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<sup>52</sup> Official Statement of the European Commission, available at: <http://truck07.stop-discrimination.info/866.0.html> (14.02.2008).

<sup>53</sup> E. Utyra (2007) 'Viešumo siekiantiems gėjams – skaudūs smūgiai' in *Delfi*, available in Lithuanian at: <http://www.delfi.lt/archive/article.php?id=13210101> (14.02.2008).

<sup>54</sup> N/A (2007) 'Sostinėje kunkuliuoja aistros dėl gėjų' in: *Lietuvos rytas*, available in Lithuanian at: [http://www.lrytas.lt/?data=20070519&id=nuo19\\_so070519&view=2](http://www.lrytas.lt/?data=20070519&id=nuo19_so070519&view=2) (14.02.2008).

<sup>55</sup> Lygių galimybių kontrolieriaus tarnyba, available in Lithuanian at: <http://www.lygybe.lt/news.php?strid=1071&id=37924> (14.02.2008)

<sup>56</sup> E. Utyra (2007) 'Lygių galimybių kontrolieriai tiria atwsakymą gėjams' in *Delfi*, available at: <http://www.delfi.lt/archive/article.php?id=13315947> (14.02.2008).

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

- [109]. The second attempt to organise the same public LGBT event took place in October 2007.<sup>57</sup> This time, LGL applied to the administration of Vilnius city municipality asking for permission, but authorisation was not granted. The municipality based their refusal on a few arguments. First, construction works were taking place in the town hall (which appeared to be true). Secondly, the municipality stated that public security could not be ensured, due to construction works in the town hall, and due to the fact that during the first attempt to organise such an event in May, ‘objective data’ was available that indicated that violent demonstrations could oppose the similar event in October.
- [110]. LGL submitted a complaint regarding this decision to the court. The court of first instance and the court of second instance both rejected the complaint. Court of Cassation procedures for this type of case are not foreseen in the law. Thus the case at court was decided in favour of the municipality.
- [111]. Part of the arguments (regarding construction works) of the municipality can be considered as sufficiently legally founded. However, the interpretation of certain provisions of the Law on Assemblies by the municipality and its approval by both courts gave rise to serious concerns as to whether public LGBT events which raise issues of sexual orientation can be successfully held in the future.
- [112]. LGL is planning to challenge the decision of the national courts at international level and submit an application to the European Court of Human Rights.

## E.3. Problematic aspects of regulation of the right to assembly

- [113]. This most recent case illustrates certain problematic aspects of the regulation of the right to assembly. It seems that certain provisions of the Law on Assemblies are not sufficiently precise and can be interpreted by national courts differently. First, it is not clear whether national legislation does not allow certain assemblies which can cause threats to public safety purely due to their character and opposition to them by some part of the society (for instance, pride events), in spite of the fact that their objective is legitimate and intention is peaceful.
- [114]. Secondly, the Law on Assemblies provides a list of ‘public places’, namely streets, squares, parks, public gardens of towns and settlements, as well as other public

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<sup>57</sup> During the ILGA-Europe international conference in Vilnius, 25-28.10.2007. The event—the spreading of a 30 metre long rainbow flag—was planned to take place on 25.10.2007.

places and publicly used buildings.<sup>58</sup> The municipality, in refusing to permit the organisation of the event in the town hall, had an obligation to suggest an alternative place. It suggested that such types of events (LGBT events) can take place in publicly used buildings only (which was approved as a legitimate alternative by the courts).

- [115]. Thirdly, clearer procedural requirements must be set in the Law on Assemblies in regard to the relationship between the responsibilities of the municipality and the police.<sup>59</sup> Because according to the law, those applying for the permission to organise an event are obliged to provide their request to the head of the executive body of the municipality, where among other issues (such as the purpose of the event, the time and the date, etc.) a request to the police regarding assurance of the public order during event must be mentioned.<sup>60</sup> The request is later examined by the executive body of the municipality in a joint meeting with a representative of the police. Thus, according to the law, the organisers of an assembly are not obliged to apply to the police directly. This uncertainty resulted in an ambiguous reasoning of the court in LGL case, where court stated, that municipality is not obliged to ensure public safety of the event, because it falls under competence of the police.
- [116]. Although the case was lost at national level, the interpretation of the law by the courts of first and second instance raises reasonable doubts as to whether their decision was in accordance with international human rights standards and whether all the arguments and motives of the municipality were taken into account.
- [117]. This can be supported by later public statements made by the municipality administration officials about ‘traditional family values’, which clearly indicate that, at the very least, goodwill in decision making and cooperation in this case was clearly lacking. This can also be illustrated by the following action taken by the municipality.
- [118]. On 14.11.2007, the Council of the Municipality of Vilnius made an amendment to *Tvarkymo ir švaros taisyklės* [Rules on Disposal and Cleanness]<sup>61</sup> including a provision stating that the municipality can refuse to issue approval to events (including those which fall under the scope of the Law on Assemblies) which could evoke negative reaction in society, or when objective information is received that such events could cause breaches of law. According to this amendment, such events can take place only in buildings or publicly used buildings. Unofficial information indicates that this particular provision was created to avoid public LGBT events in

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<sup>58</sup> Article 6 of the Law on Assemblies.

<sup>59</sup> The ruling of the Constitutional Court mentioned above is not clear on all these issues.

<sup>60</sup> Lithuania/Lietuvos Respublikos susirinkimų įstatymas. *Valstybės Žinios*, 1993, Nr. 69-139. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=210632](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=210632) (14.02.2008).

<sup>61</sup> Vilniaus savivaldybės Tarybos sprendimas dėl Tarybos 2005-01-19 Sprendimo Nr. 1-655 ‘Dėl Tvarkymo ir švaros taisyklių’ ir dėl Tarybos 2006-07-26 Sprendimo Nr.1-1299 ‘Dėl Tarybos 2005-01-19 sprendimo Nr. 1-655 ‘Dėl Tvarkymo ir švaros taisyklių tvirtinimo’ pakeitimo ir papildymo. b2007 m. lapkričio 14 d. Nr. 1-263.

open spaces in Vilnius in the future.<sup>62</sup> It seems that the municipality took advantage of the interpretation of the Law on Assemblies which was given by the national courts in the LGL case.

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<sup>62</sup> N/A, 'Gėjams užtrenktos Vilniaus durys' in *INFO.LT*, available in Lithuanian at: <http://www.info.lt/index.php?page=naujienos&view=naujiena&id=119683> (14.02.2008)  
ELTA (2007) 'Gėjų renginiam – užkardos Vilniuje', in *Delfi*, available in Lithuanian at: <http://www.delfi.lt/news/daily/lithuania/article.php?id=15051813> (14.02.2008).

## F. Criminal law

- [119]. The general constitutional principle on limiting freedom of expression in case of discriminatory actions<sup>63</sup> is detailed in a small number of national laws.
- [120]. Article 170 of the Criminal Code prohibits incitement against certain groups of residents: ‘A person who, by making public statements orally, in writing or by using the public media, ridicules, expresses contempt of, urges hatred towards or encourages discrimination against a group of residents or against a specific person, on account of his or her sex, *sexual orientation*, race, nationality, language, ethnicity, social status, faith, religion or beliefs, shall be punished with (a) a fine, (b) detention or (c) imprisonment for up to 3 years.’<sup>64</sup>
- [121]. The *Visuomenės informavimo pakeitimo įstatymas* [Law on the Provision of Information to the Public] prohibits the publishing of information, which instigates war or hatred, sneer, scorn, instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, *sexual orientation*, race, nationality, language, origins, social status, religion, beliefs or standpoints (Article 19).<sup>65</sup>

### F.1. Hate speech

- [122]. The above-mentioned legal provisions were rarely used in practice before 2007. Official as well as unofficial statistical data on hate speech acts regarding sexual orientation of persons before 2003 are not available, thus only acts and criminal investigations initiated from 01.05.2003 can be taken into account.<sup>66</sup>
- [123]. According to official statistics,<sup>67</sup> no investigations regarding the incitement of hatred in regard to sexual orientation (Article 170 of the Criminal Code) were started in the

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<sup>63</sup> Lithuania/Lietuvos Respublikos Konstitucija. Official publication *Valstybės Žinios*, 1992, No. 33-1014. Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm> (14.02.2008).

<sup>64</sup> Lithuania/Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. Baudžiamasis Kodeksas. Official publication *Valstybės Žinios*, 2000, Nr. 89-2741. Available in Lithuanian at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=314141](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141) (14.02.2008).

<sup>65</sup> Lithuania/Lietuvos Respublikos Visuomenės informavimo pakeitimo įstatymas. Official publication *Valstybės Žinios*, 2006, Nr. 82-3254. Available in English at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=286382](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=286382) (14.02.2008).

<sup>66</sup> Lietuvos generalinė prokuratūra, raštas ‘Dėl informacijos pateikimo’ Nr. 12.2-197 (10.3) LŽTC į 2008-01-02 paklausimą; Lietuvos Respublikos Generalinės prokuratūros Specialiųjų Tyrimų skyriaus veiklos 2007 metais ataskaita, 2008 01 29 Nr. 12.14-2, available in Lithuanian at: <http://www.prokuraturos.lt/nbspnbspnusikalimaižmoniškumui/tabid/221/Default.aspx> (14.02.2008).

<sup>67</sup> Nusikalstamų veikų asmens lygiateisiškumui ir sąžinės laisvei ikiteisminio tyrimo apibendrinimas, Nr. 2007 06 26, Nr. 12.14-64, Lietuvos Respublikos generalinė prokuratūra [The overview of

period 2004-2006. In 2007, however, the number of pre-trial investigations increased dramatically—15 pre-trial investigations were started on the basis of incitement to hatred against a group of persons on grounds of their sexual orientation.<sup>68</sup>

- [124]. The dramatic rise in the number of criminal investigations on the basis of incitement of hatred against a group of persons on grounds of their sexual orientation can be explained by the following reasons. First, the year 2007 was a turning point for the LGBT community, when the first attempts to appear in public life (organise public events, social advertising) were made. This attracted significant media attention. As a consequence, most of the criminal investigations were in regard to incitement of hatred in comments in articles on internet news portals.
- [125]. Secondly, civil society organisations became much more active in informing *Žurnalistų ir leidėjų etikos komisija* [Ethics Commission of Journalists and Publishers] (the journalists' ethics body) and the *Lietuvos Respublikos Generalinė Prokuratūra* [General Prosecution Service] about cases of incitement of hatred on the internet.<sup>69</sup>
- [126]. Although *Specialiųjų tyrimų skyrius* [Department of Special Investigations] of the General Prosecution Service has become more active in the field, the quality of investigations should, however, be improved. Out of 15 investigations which were started in 2007 in regard to hate speech against persons in regard to their sexual orientation, only one was brought before the court and the perpetrator was sentenced.<sup>70</sup> However, this can be partially explained by the character of the alleged crimes—almost all of them were committed on the internet.

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investigations on crimes against equality of persons]. Available in Lithuanian at: <http://www.prokuraturos.lt/nbspnbspNusikaltimaižmoniškumui/tabid/221/Default.aspx> (14.02.2008);

Informatikos ir ryšių departamentas prie Vidaus Reikalų Ministerijos, Duomenys apie padarytas nusikalstamas veikas Lietuvos Respublikoje per 2006 sausio – gruodžio mėn [IT and Communications Department under the Ministry of Interior of the Republic of Lithuania, data on crimes, committed during the period of January – December, 2006]. Available in Lithuanian at: <http://www.nplc.lt/stat/atas/ird/1g/2006/1g200612.htm> (14.02.2008).

<sup>68</sup> Lietuvos generalinė prokuratūra, raštas „Dėl informacijos pateikimo“ Nr. 12.2-197 (10.3) LŽTC į 2008-01-02 paklausimą [Official letter of the General Prosecution Service to the Lithuanian Centre for Human Rights, No. 12.2-197 (10.3)].

<sup>69</sup> Lietuvos Respublikos Generalinės prokuratūros Specialiųjų Tyrimų skyriaus veiklos 2007 metais ataskaita, 2008 01 29 Nr. 12.14-2 [General Prosecution Service, Department of Special Investigations, Annual Report 2007]. Available in Lithuanian at: <http://www.prokuraturos.lt/nbspnbspNusikaltimaižmoniškumui/tabid/221/Default.aspx> (14.02.2008).

<sup>70</sup> Lietuvos Respublikos Generalinės prokuratūros Specialiųjų Tyrimų skyriaus veiklos 2007 metais ataskaita, 2008 01 29 Nr. 12.14-2 [General Prosecution Service, Department of Special Investigations, Annual Report 2007]. Available in Lithuanian at: <http://www.prokuraturos.lt/nbspnbspNusikaltimaižmoniškumui/tabid/221/Default.aspx> (14.02.2008).

## F.2. Hate crimes and homophobic motivation

- [127]. The statistics on hate crimes concerning individuals, groups of persons, or their property are rather poor, due to the fact that motivation (homophobic or any other) was included into pre-trial statistical cards used by the police only in July, 2006.<sup>71</sup> Thus comprehensive data on motivation is not yet existent in official statistical information, and the extent of homophobic violence cannot be assessed.
- [128]. Homophobic motivation is not considered as an aggravating circumstance by the Criminal Code of the Republic of Lithuania.<sup>72</sup> Thus the legal system does not take it into account.
- [129]. At least one case of violence against a person on grounds of his sexual orientation<sup>73</sup> was publicised by the media.<sup>74</sup> No unofficial statistics are available in this respect.

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<sup>71</sup> Nusikalstamumo prevencijos Lietuvoje centras, Ikteisminio tyrimo statistinės kortelės [Centre for Crime Prevention in Lithuania, Statistical cards, used by the police]. Available in Lithuanian at: <http://www.nplc.lt/stat/kort/kort.htm> (14.02.2008).

<sup>72</sup> Article 60 of the Criminal Code of the Republic of Lithuania.

<sup>73</sup> The case is explained in more detail under Section C. Asylum and subsidiary protection of this report.

<sup>74</sup> N/A (2008) 'Spaudos apžvalga: čečėnai pabėgėlių centre muša politinio prieglobsčio norintį gėjų', in *ZEBRA*, available in Lithuanian at: <http://www.zebra.lt/naujienos/politika/108444> (14.02.2008).

## G. Transgender issues

- [130]. On 11.09.2007 Lithuania lost a case in the European Court of Human Rights,<sup>75</sup> in regard to violation of the right to private life of a transgender person: this it led to controversial debates in society and among politicians. The present legal situation of transgender persons is very difficult due to the following reasons.
- [131]. First, due to a legal vacuum in national legislation, persons can not change their sex by medical means in Lithuania. Article 2.27 of the Civil Code, which determines the right to the change of the designation of sex, states that ‘the conditions and the procedure for the change of designation of sex shall be prescribed by law’. Since 01.07.2001, when the Civil Code came into force, no such subsidiary law has been adopted.
- [132]. Secondly, national legislation permits the changing of documents in cases of gender reassignment (including change of name and sex in the documents). However, according to the *Lietuvos Respublikos gyventojų registro įstatymas* [Law on Population Registers], the gender-sensitive personal code, which is given to every person when he or she is born, and is included in personal documents, is unique and legally cannot be changed.<sup>76</sup> Thus even when a person applies to the competent institutions willing to change his or her documents due to gender reassignment, the gender-sensitive personal code remains legally unchangeable.
- [133]. As the national legislation which provides protection against discrimination does not have any specific provisions regarding transgender persons, it is difficult to estimate how the issue of discrimination against transgender persons would be considered by competent institutions. There have as yet been no cases of discrimination against transgender persons brought to the courts or the Office of the Equal Opportunities Ombudsperson.
- [134]. Although the European Court of Human Rights obliged the government of Lithuania to pass a law that would regulate the conditions and procedures for gender reassignment within six months, this decision was not accepted by significant number of politicians. Some politicians argue that Lithuania should not obey the decision of the Court and simply pay compensation to the person concerned.<sup>77</sup> Thus it is not clear whether the necessary changes in the legislation (change of the Law on Population Registers and the passing of a law on gender reassignment of transsexuals) will be made in the immediate future.

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<sup>75</sup> European Court of Human Rights, *L. v. Lithuania*, Application no. 27527/03, judgment of 11.09.2007.

<sup>76</sup> Lithuania/Lietuvos Respublikos gyventojų registro įstatymas, Official publication *Valstybės Žinios*, 1992, Nr. 5-78. Available in English at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=313595](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=313595)

<sup>77</sup> E. Digrytė (2007) ‘Politikai nusiteikę sumokėti kompensaciją ir paminėti lyties keitimą,’ in *DELFI*, available in Lithuanian at: <http://www.delfi.lt/archive/print.php?id=14366811> (14.02.2008)

## H. Miscellaneous

- [135]. Recent public opinion surveys indicate that LGBT people form one of the most vulnerable groups in Lithuania.<sup>78</sup> Half of the respondents believe that homosexuals should not work in the police, 69 per cent think that homosexuals should not work at schools, almost half of the respondents believe that homosexuality is a disease that can be cured.
- [136]. The attempt to challenge these stereotypes and raise awareness by social advertising in 2007 was not supported by officials.

### H.1. Freedom of expression

- [137]. 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 planned that the statements 'A lesbian can work at school', 'A gay can work as a police officer', and 'Homosexuals can be open and safe at work' would be displayed on trolleybuses in the cities of Vilnius and Kaunas.
- [138]. The initiative failed, because of opposition from the municipalities of both cities. No legal arguments were made in order to justify this opposition. The mayor of Vilnius publicly stated that such slogans are demonstrations of homosexual ideas, which cannot be approved.<sup>79</sup>
- [139]. Although this initiative was funded partly by the government of the Republic of Lithuania (through the EQUAL project), no official statements were issued by the Ministry of Social Affairs and Labour in regard to this ban. Although the banning of the advertisement campaign was not challenged in court, it can, however, clearly be considered as a limitation of freedom of expression.

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<sup>78</sup> 'Homophobia and the attitude of Lithuanian society towards homosexuality'. The research and results of the survey, conducted in 2007, can be found in Lithuanian at: [www.atviri.lt](http://www.atviri.lt)

<sup>79</sup> E. Utyra 'Viešumo siekiantiems gėjams – skaudūs smūgiai', in *Delfi*, available in Lithuanian at: <http://www.delfi.lt/archive/article.php?id=13210101> (14.02.2008).

# I. Good practices

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

# Annex 1 – Case law

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

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

DISCLAIMER: This study has been commissioned as background material for a comparative report on homophobia and discrimination on grounds of sexual orientation by the European Union Agency for Fundamental Rights. The views expressed here do not necessarily reflect the views or the official position of the FRA. The study is made publicly available for information purposes only and does not constitute legal advice or legal opinion.

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

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

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

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

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 4

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

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

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

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

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

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

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

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

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

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

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

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Chapter E, Freedom of assembly, case 1

Case title	Civilinė byla Nr. 15317-101/2007 (Court of first instance). Civilinė byla Nr. 2S-1104-52/2007 (Appellate court).
Decision date	October 24, 2007 (Court of first instance). December 21, 2007 (Court of appeal). According to the national law cassation is not allowed in this particular category of cases.
Reference details (type and title of court/body; in original language and English [official translation, if available])	First instance: Vilniaus miesto 1 apylinkės teismo 2007 m. spalio 24 d. nutartis civilinėje byloje Nr. 15317-101/2007 [Vilnius city 1 <sup>st</sup> . Regional Court, Decision of October 24, 2007, Case No. 15317-101/2007]. Appellate court: Vilniaus apygardos teismo 2007 m. gruodžio 21 d. nutartis civilinėje byloje Nr. 2S-1104-52/2007 [Vilnius District Court, Decision of December 21, 2007, Case No. 2S-1104-52/2007].
Key facts of the case (max. 500 chars)	LGBT organisation <i>Lietuvos gėjų lyga</i> [Lithuanian Gay League] (LGL) applied to the Vilnius city municipality asking for permission to organise a public event – a spreading of a wide rainbow flag in the town hall. The municipality refused to allow it, stating, that public security could not be ensured because (1) construction works that were taking place in the town hall and (2) due to the fact that during the first attempt to organise such an event in May, ‘objective data’ was available that indicated that violent demonstrations could oppose the similar event. LGL submitted a complaint regarding this decision to the court. The court of first instance and the court of second instance both rejected the complaint.
Main reasoning/argumentation (max. 500 chars)	Courts of both instances approved the decision of municipality, stating that: <ol style="list-style-type: none"> <li>1) LGL could not ensure public security at the time and the place of the event, because construction works were taking place in the town hall;</li> <li>2) According to the courts, the Law on Assemblies provides a list of ‘public places’, namely streets, squares, parks, public gardens of towns and settlements, as well as other public places and publicly used buildings. By refusing to allow the event to take place, the municipality suggested to arrange it in a building instead. According to the courts, ‘publicly used buildings’ is an appropriate alternative to any other public place.</li> <li>3) The municipality was reasonably concerned about public safety, because during the first attempt to organise such an event in May, ‘objective data’ was available that indicated that violent demonstrations could occur in a similar event.</li> </ol>

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

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Chapter F, Hate speech, case 1

Case title	According to report of the General Prosecutor there are two cases in this respect, but this information was not confirmed by the Administration of Courts of Republic of Lithuania.
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

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Chapter F, Hate crimes, case 1

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

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Chapter G, Applicability of legislation on trans gender issues, case 1

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

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Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1

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

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Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1

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

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## Annex 2 – Statistics

### Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007
Total complaints of discrimination on the ground of sexual orientation ( <b>equality body</b> , tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	0	0	0	0	0	2	2	18
Total finding of Discrimination confirmed (by <b>equality body</b> , tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)						1	1	1
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)						1- warning	1- warning	0
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								

### Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	No data							

Number of LGBT partners who claimed their right to residence but were denied this right	0	0	0	0	0	0	0	0
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**Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	0	0	0	0	0	0	0	0
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	0	0	0	0	0	0	0	0

**Chapter C, Asylum and subsidiary protection, protection of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	0	0	0	0	0	0	0	0
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	0	0	0	0	0	0	0	0

**Chapter D, LGBT partners benefiting family reunification**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	0	0	0	0	0	0	0	0
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	0	0	0	0	0	0	0	0

**Chapter E, LGBT people enjoyment of freedom of assembly**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	0	0	0	0	0	0	0	0
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	0	0	0	0

#### Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	No data	No data	No data	0	0	0	0	15
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)								1
Range of sanctions issued for homophobic hate speech								
Number of non-criminal court cases initiated for homophobic statements	No data							
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	No data							

#### Chapter F, Homophobic motivation of crimes as aggravating factor

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	0	0	0	0	0	0	0	0

#### Chapter G, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007
Number of name changes effected due to change of gender	0	0	0	0	0	0	0	0

Number of persons who changed their gender/sex in your country under the applicable legislation								
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Chapter I, Statistics relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation  
 [presentation according to the templates above]