

# Universal Periodic Review

## Lithuania

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Joint Stakeholders' submission of 23 March 2016

### “We Are People, Not Propaganda”: Situation of LGBT\* People in Lithuania

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## KEY WORDS

LGBT\*, sexual orientation, gender identity, censorship, freedom of expression, homophobic and/or transphobic legislative initiatives, hate speech, hate crimes, legal remedy, legal gender recognition, gender reassignment treatment.

## EXECUTIVE SUMMARY

1. This submission, developed by the civil society organizations National LGBT\* Rights Organization LGL, Sexual Rights Initiative and ILGA-Europe, outlines the main challenges in ensuring the fundamental rights and freedoms for LGBT\* people in Lithuania. In the period between 2012 and 2016 the Lithuanian authorities did not seek to comprehensively address the instances of social, legal and institutional discrimination on the grounds of sexual orientation and/or gender identity. On the contrary, certain aspects clearly indicate that the respect for the human rights of LGBT\* people in Lithuania is deteriorating. First of all, the *Law on the Protection of Minors against the Detrimental Effect of Public Information* has been applied on three different occasions with the view of censoring LGBT\* related public information. The Lithuanian authorities claim that this discriminatory interference with the right to freedom of expression is necessary to protect the “emotional, spiritual, psychological development and health of the minors”, thus creating a chilling effect on talking publicly about LGBT\* issues in Lithuanian society. Secondly, in the period between 2012 and 2016 the Lithuanian Parliament has considered seven openly homophobic and/or transphobic legislative initiatives, effectively seeking to limit the rights and freedoms of LGBT\* people. The vivid public debate around these legislative proposals has negatively impacted the social climate for LGBT\* people in Lithuania, because it seemed as if fundamental rights and freedoms of LGBT\* people could be simply revoked on a whim of political opportunism or discriminatory animus. Thirdly, the Lithuanian authorities have systematically failed in investigating reported instances of hate speech and hate crimes on grounds of sexual orientation and/or gender identity. In some cases the law enforcement officials simply refused to start pre-trial investigations, thus leaving the members of the local LGBT\* community without any possibility of legal redress. Finally, Lithuania remains one of a few European jurisdictions without any procedures of legal gender recognition and gender reassignment treatment. As gender identity is not covered by Lithuanian anti-discrimination and hate crime legislation, trans people remain disproportionately affected by instances of discrimination, harassment and violence.

### A. Progress and gaps in the implementation of recommendation from 1st cycle of UPR

2. Within the first UPR cycle in 2011, the Lithuanian Government received 119 recommendations in total, while 15 of these recommendations directly focused on LGBT\* issues.<sup>1</sup> The Lithuanian Government supported 10 of these recommendations, while the remaining 5 were postponed for further deliberations on the national level. Lithuania

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<sup>1</sup> UN Human Rights Council, “Report of the Working Group on the Universal periodic Review. Lithuania”, 19<sup>th</sup> Session, No. A/HRC/19/15, 19 December 2011, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/174/85/PDF/G1117485.pdf?OpenElement>.

supported the suggestions of refraining from legislative initiatives which may criminalize homosexual relations (Rec. Nos. 88.4 and 88.5), ensuring the right to freedom of expression and the right to freedom of assembly for the local LGBT\* community (Rec. Nos. 88.4, 88.26, 88.33 and 88.34) and combating hate crimes on grounds of sexual orientation and gender identity (Rec. No. 88.31). Alongside the implementation of targeted awareness raising campaigns (Rec. No. 88.23), the Lithuanian Government has also committed itself to exploring further measures with the view of counteracting LGBT\* related discrimination (Rec. Nos. 88.24, 88.25 and 88.27). The recommendations, which, according to the Lithuanian Government, required further deliberation at the national level, referred to the discriminatory application of the *Law on the Protection of Minors against the Detrimental Effect of Public Information*<sup>2</sup> with the view of censoring LGBT\* related public information (Rec. Nos. 90.10 and 90.11), the necessity of legally acknowledging family diversity (Rec. No. 90.12) and the elimination of discriminatory application of any legal provisions on grounds of sexual orientation and/or gender identity (Rec. Nos. 90.12 and 90.15).

3. On 14 May 2012 the Ministry of Justice formulated its position on the recommendations that required further deliberation at the national level.<sup>3</sup> According to the Ministry of Justice, “Lithuania has already implemented the Recommendations Nos. 90.10 and 90.11 to review the *Law on the Protection of Minors against the Detrimental Effect of Public Information* [...]. There are no provisions within this law allowing discriminating against individuals on grounds of their sexual orientation.” Regarding Recommendation No. 90.12, the Ministry of Justice indicated that “Lithuania cannot provide the final response [...] regarding the acknowledgement of family diversity, because there is an ongoing discussion in the political and legal spheres regarding the concept of family [...]. It is not foreseen to equalize the rights of different-sex and same-sex couples.” Finally, the Ministry of Justice claimed that “Lithuania has already implemented the Recommendations Nos. 90.13 and 90.15 regarding the protection of the rights of sexual minorities and abolition of legal provisions discriminating against people on grounds of their sexual orientation and gender identity.”
4. On 29 February 2012 the Lithuanian Government mandated the Ministry of Justice, the Ministry of Social Security and Labor, the Ministry of Interior and the Ministry of Education and Science to execute those UPR recommendations which enjoyed the support of the Lithuanian Government. In the period between 2013 and 2016 once a year the Ministry of Justice organized meetings of coordination with the view of discussing the general issues pertaining to the process of implementing the UPR recommendations. These meetings took place on 19 April 2013, 12 June 2014, 8 June 2015 and 25 February 2016. The association LGL was invited to participate in all of the above outlined meetings and used the opportunity to draw the Ministry of Justice’s attention to the lack of commitment by the public authorities in implementing the UPR recommendations pertaining to human rights of LGBT\* persons. Approximately 17 stakeholders (i.e. various NGOs and public institutions) were invited to participate in these meetings, thus rendering it extremely difficult to comprehensively address any substantive issues pertaining to effective implementation of the UPR

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<sup>2</sup> “Article 4.2. The following public information shall be attributed to information which has a detrimental effect on minors: [...] 16) which expresses contempt for family values, encourages the concept of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania”, Law on the Protection of Minors Against the Detrimental Effect of Public Information of the Republic of Lithuania, No. IX-1067, 21 October 2011, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=410974](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=410974).

<sup>3</sup> LR Teisingumo Ministerija, „Dėl Ministro pirmininko pavadimo vykdymo“, No. (1.13.)7R-3615, 14 May 2012.

recommendations in a two-hour meeting organized once a year. In 2013 the Ministry of Justice encouraged other public institutions to organize separate meetings with the relevant stakeholders with the view of ensuring effective implementation of the UPR recommendations. In the period between 2013 and 2016 no additional meetings were organized with the view of discussing the LGBT\* related UPR recommendations. Therefore the process of implementing the UPR recommendations on the national level could be described as highly formalistic, i.e. seeking to showcase the process of coordination, but not delivering any concrete measures, strategies or solutions.

## B. Background

5. The general prohibition of discrimination on the ground of sexual orientation in the Lithuanian legal system is established by the *Law on Equal Opportunities*,<sup>4</sup> which transposes the Employment Equality Framework Directive 2000/78/EC. The scope of the national equality legislation is much wider than mandated by the EU Directive, i.e. discrimination on the ground of sexual orientation is prohibited not only in the sphere of employment and occupation but also in the spheres of provision of goods and services, education and in the course of actions by all public authorities. The prohibition of discrimination on the ground of sexual orientation is also established in the *Labor Code*<sup>5</sup> (Article 2.1.4 and Article 129.3.4), the *Law on the Protection of Minors against the Detrimental Effect of Public Information*<sup>6</sup> (Article 4.2.12) and the *Law on Provision of Information to the Public*<sup>7</sup> (Article 19.1.3). Article 170 of the *Criminal Code*<sup>8</sup> prohibits incitement to hatred based on sexual orientation (i.e. prohibition of hate speech), while Article 60.12.1 qualifies acts committed in order to express hatred on the ground of sexual orientation as an aggravating circumstance within the framework of criminal proceedings (i.e. prohibition of hate crimes).
6. Despite the fact that Lithuanian legislation, in theory, provides for quite extensive legal guarantees against discrimination on the ground of sexual orientation, its implementation in practice is, at best, described as ineffective. Instances of discrimination on the ground of sexual orientation remain highly underreported. The Office of the Equal Opportunities Ombudsperson, i.e. the public body responsible for the implementation of the Law on Equal Opportunities, received four complaints regarding alleged instances of discrimination on the ground of sexual orientation in 2009, three in 2010, four in 2011, two in 2012, none in 2013 and four in 2014.<sup>9</sup> Taking into account the widespread phenomenon of discrimination on the ground of sexual orientation indicated by international surveys and opinion polls (see

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<sup>4</sup> Law on Equal Opportunities of the Republic of Lithuania, No. IX-1826, 18 November 2003, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=454179](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179).

<sup>5</sup> Labor Code of the Republic of Lithuania, No. IX-926, 4 June 2002, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=494159](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=494159).

<sup>6</sup> *Supra* 2.

<sup>7</sup> Law on the Provision of Information to the Public of the Republic of Lithuania, No. I-1418, 6 November 2012, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458157](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458157).

<sup>8</sup> Criminal Code of the Republic of Lithuania, No. VIII-1968, 11 February 2010, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=366707](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=366707).

<sup>9</sup> The Annual Report of the Office of the Equal Opportunities Ombudsperson, Vilnius, 2014, viewed on 15 November 2015, <http://www.lygybe.lt/download/482/lygi%C5%B3%20galimybi%C5%B3%20kontrolieriaus%20tarnybos%202014%20m.%20ataskaita.pdf>, p. 94.

paragraph 7), it can be concluded that the national equality body is not perceived as an effective remedy with the view of addressing experienced injustices.

7. Despite the fact that there are no national surveys on the situation of LGBT\* people in Lithuania, various international surveys and opinion polls indicate that Lithuania remains one of the most socially hostile societies against LGBT\* people in the European Union (EU). According to the LGBT\* Survey by the EU Agency for Fundamental Rights (FRA), 61 % of the Lithuanian respondents experienced discrimination or harassment in the last twelve months on grounds of their actual or perceived sexual orientation.<sup>10</sup> In addition to this, 27 % of the Lithuanian respondents felt discriminated against in the last twelve months when looking for a job and/or at work.<sup>11</sup> These negative patterns correlate with attitudes of members of the general public. According to the *Special Eurobarometer 437* survey, 44 % of the Lithuanian respondents would feel totally uncomfortable working with an LGB person, while this number increases to 49 % regarding a trans colleague.<sup>12</sup> Furthermore, 79 % of the Lithuanian respondents would feel totally uncomfortable if their children were in a love relationship with a person of the same sex and 82 % would feel totally uncomfortable if their children dated a trans person.<sup>13</sup> It can be concluded that the social acceptance of LGBT\* persons in Lithuania remains to be very low, thus subjecting them to instances of discrimination, harassment and violence.

#### **C. Right to freedom of expression [Art. 19 UDHR, Art.19. ICCPR, Art. 10 European Convention on Human Rights (ECHR) Yogyakarta Principle 19]**

##### ***Discriminatory application of the Law on the Protection of Minors against the Detrimental Effect of Public Information***

8. Article 4.2.16 of the *Law on the Protection of Minors against the Detriment Effect of Public Information* stipulates that “public information shall be attributed to information which has a detrimental effect on minors [...] which expresses contempt for family values, encourages the concept of entry into a marriage and creation of a family other than stipulated in the *Constitution of the Republic of Lithuania* and the *Civil Code of the Republic of Lithuania*”.<sup>14</sup> Concerns regarding the potentially discriminatory application of this legal provision with the view of disproportionately limiting the right to freedom of expression of LGBT\* persons were raised not only in the first UPR cycle in 2011 (i.e. Rec. Nos. 90.10 and 90.11) but also in the course of reviewing the third periodic report under the ICCPR in 2012.<sup>15</sup> In the period

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<sup>10</sup> EU Agency for Fundamental Rights, *European Union lesbian, gay, bisexual and transgender survey. Results at a glance*, Vienna, 2013, [http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance\\_en.pdf](http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf), p. 15.

<sup>11</sup> *Ibid.*, p. 16.

<sup>12</sup> European Commission, ‘Discrimination in the EU in 2015. Report’, *Special Eurobarometer 437*, Brussels, 2015, <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/68004>, p. 54, 63.

<sup>13</sup> *Ibid.*, p. 56, 65.

<sup>14</sup> *Supra* 2.

<sup>15</sup> “The Committee is concerned that certain legal instruments such as the Law on the Protection of Minors against the Detrimental Effect of Public Information (art. 7) may be applied in a manner unduly restrictive of the freedom of expression guaranteed under the Covenant and may have the effect of justifying discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals.”, Concluding Observations Adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, No. CCPR/C/LTU/CO/3,

between 2013 and 2014 the provision in question was applied on three different occasions with the view of interfering with the right to freedom of expression of LGBT\* persons.

9. In May, 2013 the association LGL approached the national broadcaster LRT with an inquiry about the possibility of broadcasting promotional videos for the *Baltic Pride* 2013<sup>16</sup> on national television. On 4 July 2013 the national broadcaster indicated that the videos can be broadcasted only during the restricted timeframes (i.e. after 11 PM for video (A) and after 9 PM for video (B)) and marked with corresponding age indexes (i.e. “S” as an “adult content” for video (A) and “N-14” as not suitable for minors under 14 years of age for video (B)). According to the national broadcaster, these limitations were necessary, because “[t]he clips potentially encourage the concept of entry into a marriage and creation of a family other than stipulated in the *Constitution* and the *Civil Code*.”<sup>17</sup> The association LGL appealed this decision before the Office of the Inspector of Journalist Ethics, i.e. the public body responsible for the supervision of the implementation of the *Law on the Protection of Minors*. On 23 September 2013 the Inspector of Journalist Ethics issued a **legally binding decision**, indicating that the national broadcaster reasonably refused to broadcast the video clips during the daytime to comply with the objective of the protection of minors.<sup>18</sup>
10. Upon receiving a complaint from the Ministry of Culture, on 8 April 2014 the Inspector of Journalist Ethics issued a **recommendation** No. G-190/S-244, indicating that two fairy tales about same-sex relationships within the fairy tale book “Amber Heart”<sup>19</sup> “portray same-sex relationships as normal and self-evident and thus are detrimental to the fragile worldview of a child, [...] therefore causing detrimental effect upon minors under 14 years of age”.<sup>20</sup> Based on this recommendation, the publisher of the book (i.e. the Lithuanian University of Educational Sciences) terminated the dissemination of the book. The author appealed the decision by the Inspector of Journalist Ethics before the national courts. On 24 July 2014 the Vilnius Regional Administrative Court dismissed the author’s complaint as unfounded. According to the court recommendation No. G-190/S-244 “does not cause any rights or obligations either to the author, or to the publisher. [...] Therefore the documents complained about cannot be the object of litigation before the administrative court.”<sup>21</sup> As a result, the author made a legal claim against the publishing house directly. On 16 April 2015 the Vilnius City District Court did not establish any facts of discrimination by the publisher and dismissed the legal claim by the author.<sup>22</sup> On 2 March 2016 the Vilnius Country Court upheld the decision.<sup>23</sup>

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspsglUbPkaTnjMnkIeQtzmKzv5EKMNU37hgBO8vvh0j7r1QmQmxCuAyR6T7pH1HBEDXPILz%2bRR9b7%2fmjliSSoHwDRvShCgWi9AbtGEwhx%2bn>, p. 2.

<sup>16</sup> The videos in question can be seen here: (A) [https://www.youtube.com/watch?v=8rDP\\_t2QcmI](https://www.youtube.com/watch?v=8rDP_t2QcmI) and (B) <https://www.youtube.com/watch?v=wCaGtQEYY0w>.

<sup>17</sup> Viešojj įstaiga Lietuvos nacionalinis radijas ir televizija, „Dėl LGL socialinės reklamos transliavimo LRT televizijos eteryje“, No. 4RA-673-(TV1), 4 July 2013.

<sup>18</sup> Žurnalistų etikos inspektorius sprendimas “Dėl Lietuvos gėjų lygos socialinių reklamų (klipų) skleidimo”, No. SPR-93, 23 September 2013.

<sup>19</sup> The audio recordings of the two fairy-tales in question about same-sex relationships in Lithuanian language can be listened to here: <http://manoteises.lt/enciklopedija/pasaku-rinkinys-gintarine-sirdis>.

<sup>20</sup> The Office of the Inspector of Journalist Ethics, Decision No. G-190/S-244, 8 April 2014.

<sup>21</sup> The Vilnius Regional Administrative Court, Case No. I-9157-142/2014, 24 July 2014, <http://eteismai.lt/byla/180577795820795/I-9157-142/2014>.

<sup>22</sup> The Vilnius City District Court, Case No. e2-3003-432/2015, 16 April 2015.

<sup>23</sup> The Vilnius Country Court, Case No. e2A-310-262/2016, 2 March 2016.



11. Upon a request by the association LGL, on 24 September 2014 the Inspector of Journalist Ethics issued a **recommendation** No. (SK-123)S-542<sup>24</sup> with the view of assessing a social video, produced by the applicant.<sup>25</sup> The expert group within the Office concluded that “by showing same-sex couples engaging in various activities together, [...] the idea is being imposed that the family can be created by two persons of the same gender. [...] Therefore the information in the video clip has detrimental effect on the emotional, spiritual, psychological development and health of the minors.”<sup>26</sup> Multiple commercial television channels have refused to broadcast the video based on the recommendation. The association LGL has appealed recommendation No. (SK-123)S-542 before the national courts. On 24 October 2014 the Vilnius Regional Administrative Court<sup>27</sup> and on 15 December 2014 the Lithuanian Supreme Administrative Court<sup>28</sup> refused to accept the applicant’s complaint, because allegedly no legal rights and obligations emanate from a recommendation in question. It can be concluded that the association LGL did not have any effective legal remedy with the view of challenging the imposed limitation on its right to freedom of expression within the framework of the national legal system.
12. On 12 January 2016, within the framework of providing information on follow-up to the concluding observations on the third periodic report of Lithuania under the ICCPR, the Lithuanian Government stated explicitly that “according to the Law, it is not the depiction of gender diversity that has detrimental effect on minors [...], but rather encouraging of family relationships between people of the same sex.”<sup>29</sup> Furthermore, the Lithuanian Government claimed that the interference with the right to freedom of expression of LGBT\* people and LGBT\* organizations meets the requirements of *lawfulness* (i.e. prescribed by law), *necessity* (i.e. necessary in democratic society) and *proportionality* (i.e. proportionate to the aim sought).<sup>30</sup> However, the Lithuanian Government fails in elaborating why it deems it necessary to limit public information about a socially vulnerable group and what exact values of a democratic society are being protected. Also, the legal provision in question (i.e. Article 4.2.16) has never been applied with the view of limiting any other, i.e. non-LGBT\* related, public information, thus indicating that it was designed specifically for this purpose. Finally, the application of the law with the view of censoring LGBT\* related public information has caused a chilling effect among the online media outlets, as they have started branding news items pertaining to LGBT\* issues as suitable only for adults. It can be concluded that the limited positive information about LGBT\* issues in the public sphere further reinforces a socially hostile atmosphere for LGBT\* people in Lithuania.

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<sup>24</sup> The Office of the Inspector of Journalist Ethics, „Dėl išvados pateikimo“, No. (SK-123)S-542, 24 September 2014.

<sup>25</sup> The video can be seen here: [https://www.youtube.com/watch?v=jmiakuCrJ\\_c](https://www.youtube.com/watch?v=jmiakuCrJ_c).

<sup>26</sup> *Supra* 24.

<sup>27</sup> Vilnius Regional Administrative Court, Administrative Case No. I-10326-643/2014, 24 October 2014.

<sup>28</sup> Lithuanian Supreme Administrative Court, Administrative Case No. AS<sup>602</sup>-1262/2014, 15 December 2015.

<sup>29</sup> UN Human Rights Committee, “Concluding Observations on the Third Periodic Report of Lithuania. Addendum. Information Received from Lithuania on Follow-Up to the Concluding Observations”, No. CCPR/C/LTU/CO/3/Add.2, date received: 12 January 2016,

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLTU%2fCO%2f3%2fAdd.2&Lang=e](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLTU%2fCO%2f3%2fAdd.2&Lang=e), para. [20].

<sup>30</sup> *Ibid.*, para. [26].

**D. Right to equality and non-discrimination [Art. 2 UDHR, Art. 26 ICCPR, Art. 14 ECHR, Art. 1 of the Protocol No. 12, CEDAW/C/GC/28, Yogyakarta Principle 2]; Right to education [Art. 26 UDHR, Art. 13 ICESCR, Art. 10 CEDAW Convention, Yogyakarta Principle 16]; Right to freedom of peaceful assembly and of association [Art. 20 UDHR, Art. 22 ICCPR, Art. 11 ECHR, Yogyakarta Principle 20]**

### ***Homophobic and Transphobic Legislative Initiatives***

13. Despite the challenging human rights situation for LGBT\* persons in Lithuania, legislators and policy makers have not taken any further steps with the view of expanding legal protection for LGBT\* people. On the contrary, in the period between 2012 and 2016 the Lithuanian Parliament considered in total seven openly homophobic and/or transphobic legislative initiatives with the view of further limiting the fundamental rights and freedoms of LGBT\* people. Despite the fact that none of these legislative initiatives have been adopted by the Lithuanian Parliament yet, they are still in different stages of the legislative process, i.e. none of them has been definitively rejected. This situation imposes a constant threat for LGBT\* people, because the consideration of these initiatives on the highest political level legitimizes the notion that the human rights of LGBT\* people could be effectively limited. In other words, many local politicians push for a homophobic and/or transphobic agenda with the view of further reinforcing the socially hostile atmosphere for LGBT\* people in Lithuania.
14. What follows is a list of the homophobic and/or transphobic legislative initiatives pending before the Lithuanian Parliament as of 13 March 2016:
- (a) **The amendment to the Civil Code No. XIIP-17**<sup>31</sup> seeks to place a total ban on gender reassignment surgeries. The bill was included on the Parliament's agenda on 23 May 2013 and has not been considered since then.<sup>32</sup>
- (b) **The amendment to the Criminal Code No. XIIP-687**<sup>33</sup> seeks to establish that the criticism of homosexuality and attempts to change someone's sexual orientation would not qualify as discrimination or harassment on the ground of sexual orientation. The bill was included on the Parliament's agenda on 12 September 2013.<sup>34</sup> It passed the first hearing on 19 June 2014.<sup>35</sup> The Parliamentary Committee on Education, Science and Culture temporarily postponed the adoption of the bill on 16 December 2014 by returning the bill to the initiators for "further improvements".
- (c) **The amendment to the Law on Public Meetings No. XIIP-940**<sup>36</sup>, proposes that the organizers of the public assemblies cover all expenses in relation to ensuring safety and public order in the course of an event. This legislative motion was introduced as a retaliatory

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<sup>31</sup> Civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas, No. XIIP-17, 21 November 2011, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437749&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437749&p_tr2=2).

<sup>32</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-16029](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-16029).

<sup>33</sup> Baudžiamojo kodekso 170 straipsnio papildymo įstatymo projektas, No. XIIP-687, 11 June 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=450517&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450517&p_tr2=2).

<sup>34</sup> Seimo rytinio posėdžio protokolas, No. SPP-76, 12 September 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=455777&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=455777&p_tr2=2).

<sup>35</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-18431](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-18431).

<sup>36</sup> Susirinkimų įstatymo 11, 14 straipsnių papildymo ir pakeitimo įstatymo projektas, No. XIIP-940, 3 September 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=455236&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=455236&p_tr2=2).



measure for the successfully executed *Baltic Pride* 2013 March for Equality. The Parliament has not yet voted on the inclusion of this bill to its agenda.

(d) **The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-473**<sup>37</sup> (together with **the amendment to the Civil Code No. XIIP-472**<sup>38</sup>) stipulates that “every child has the natural right to a father and a mother, emanating from sex differences and mutual compatibility between motherhood and fatherhood”. The bill was included on the Parliament’s agenda on 21 May 2013.<sup>39</sup>

(e) **The amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. XIIP-1469(2)**<sup>40</sup> seeks to establish that “it is forbidden for same-sex couples to adopt citizens of the Republic of Lithuania.” The bill was included on the Parliament’s agenda on 15 September 2015.<sup>41</sup>

(f) **The amendment to the Article 38 of the Constitution No. XIIP-1217**<sup>42</sup> seeks to redefine the constitutionally protected concept of “family life” as emanating from a traditional marriage between a man and a woman, and stipulates that family arises from motherhood and fatherhood. The bill was included on the Parliament’s agenda on 10 December 2013.<sup>43</sup>

(g) **The amendment to the Code of Administrative Violations No. XIIP-4490(3)**<sup>44</sup> introduces administrative liability for any public defiance of the constitutionally established “family values”. By carrying out public speeches, demonstrating posters, slogans and audiovisual materials, as well as organizing public events such as gay prides and other kind of actions, one would thus act against the law. The bill was included on the Parliament’s agenda on 21 January 2014.<sup>45</sup> The Parliament postponed the final adoption phase on 13 March 2014,<sup>46</sup> and once again on 12 November 2015.<sup>47</sup>

## **E. Right to life, liberty and security of the person [Art. 3 UDHR, Art. 6 & 9 ICCPR, Art. 1-4 & 6 General Recommendation #19 CEDAW Convention, Yogyakarta Principles 4 & 5]**

### ***Failure to counteract hate speech and hate crimes on the ground of sexual orientation and/or gender identity***

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<sup>37</sup> Vaiko teisių apsaugos pagrindų įstatymo papildymo 7 straipsnio pakeitimo ir papildymo įstatymo projektas, No. XIIP-473, 18 April 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=446661&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446661&p_tr2=2).

<sup>38</sup> Civilinio kodekso 3.3 straipsnio pakeitimo įstatymo projektas, No. XIIP-472, 18 April 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=446664&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=446664&p_tr2=2).

<sup>39</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-15995](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-15995).

<sup>40</sup> Vaiko teisių apsaugos pagrindų įstatymo Nr. I-1234 26 straipsnio pakeitimo įstatymo projektas, No. XIIP-1469(2), 27 January 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464939](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464939).

<sup>41</sup> Voting results: [http://www.lrs.lt/sip/portal.show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-21015](http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-21015).

<sup>42</sup> Konstitucijos 38 straipsnio papildymo ir pakeitimo įstatymo projektas, No. XIIP-1217, 15 November 2013, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=459884&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=459884&p_tr2=2).

<sup>43</sup> Seimo vakarinio posėdžio protokolas, No. SPP-111, 10 December 2010, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=461791&p\\_query=XIIP-1217&p\\_tr2=1](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=461791&p_query=XIIP-1217&p_tr2=1).

<sup>44</sup> Administracinių teisės pažeidimų kodekso 224 ir 259(1) straipsnių pakeitimo ir Kodekso papildymo 188(21) straipsniu įstatymų projektas, No. XIIP-4490(3), 15 January 2014, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=464145&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=464145&p_tr2=2).

<sup>45</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-17616](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-17616).

<sup>46</sup> Voting results: [http://www3.lrs.lt/pls/inter/w5\\_sale.bals?p\\_bals\\_id=-17656](http://www3.lrs.lt/pls/inter/w5_sale.bals?p_bals_id=-17656).

<sup>47</sup> Voting results: [http://www.lrs.lt/sip/portal.show?p\\_r=15275&p\\_k=1&p\\_a=sale\\_bals&p\\_bals\\_id=-21395](http://www.lrs.lt/sip/portal.show?p_r=15275&p_k=1&p_a=sale_bals&p_bals_id=-21395).

15. Law enforcement officials in Lithuania seek to downplay the phenomenon of hate speech on the ground of sexual orientation by refusing to investigate submitted complaints. In the period between 2013 and 2015 the association LGL submitted twenty four complaints based on two hundred and six instances of alleged hate speech online to law enforcement structures. Based on these complaints, twenty eight pre-trial investigations were initiated in 2013, thirteen in 2014 and eight in 2015. Interestingly enough, all of these pre-trial investigations were either halted or terminated, thus not leading to the actual identification and/or punishment of alleged perpetrators. The national authorities also do not collect disaggregated data on hate speech on the ground of sexual orientation. As a result it is not possible to identify in how many instances homophobic hate speech has been punished through criminal sanctions.<sup>48</sup> It can be concluded that the Lithuanian authorities systematically fail to provide effective remedies for the alleged victims of homophobic hate speech, because the current system of legal redress seems to be not effective in practice.
16. The aggravating circumstance established under the Article 60.12.1 of the *Criminal Code* has been never applied in practice with the view of qualifying a particular criminal offence as a hate crime on the ground of sexual orientation. According to quantitative research by the Center for Research and Prejudice of the University of Warsaw (2015), 27.9 % of the Lithuanian LGBT\* respondents have experienced hate crimes or harassment on grounds of their actual or perceived sexual orientation in the course of the past five years.<sup>49</sup> However, as many as 80 % did not report it to the national authorities.<sup>50</sup> The most often quoted reasons for not reporting hate-related incidents to the competent authorities are: "did not think they would do anything", "did not think they could do anything" and "fear of a homophobic and/or transphobic reaction from the police".<sup>51</sup> Therefore, the protection from hate crimes on the ground of sexual orientation offered by the Lithuanian legal system is theoretical and illusory rather than practical and effective.
17. In order to illustrate the systematic failure by national authorities in investigating hate speech and hate crimes on grounds of sexual orientation and/or gender identity, we would like to draw attention to one exemplary case. On 7 December 2014 two gay men posted a public picture on a personal Facebook profile.<sup>52</sup> The picture depicted a kiss between the men in question. The picture received more than 2,400 "likes" and more than 800 comments. The majority of online comments were inciting hatred and violence against LGBT\* people in general, while a number of comments were directly threatening the two gay men in question. Some examples of the posted comments include "Faggots should be burnt" (Lith. "Sudegint pidarastus"), "You both should be thrown into gas chambers" (Lith. "I duju

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<sup>48</sup> The data about criminal offences, punishable under the separate articles of the Criminal Code, is provided by the Information Technology and Communications Department under the Ministry of Interior of the Republic of Lithuania. However, the data under the Article 170 (i.e. prohibition of hate speech) does not specify, under which ground the offence was committed. For example, for the statistical data under the Article 170 in 2015, please see the data line No. 7:

[http://www.ird.lt/statistines-ataskaitos/wp-content/themes/ird/reports/html\\_file.php?metai=2015&menuo=12&ff=1G&fnr=6&rt=1&oldYear=2015](http://www.ird.lt/statistines-ataskaitos/wp-content/themes/ird/reports/html_file.php?metai=2015&menuo=12&ff=1G&fnr=6&rt=1&oldYear=2015).

<sup>49</sup> The Center for Research and Prejudice of the University of Warsaw, *Hate No More. Quantitative Study Report*, Warsaw, 2015, p. 50.

<sup>50</sup> *Ibid.*, p. 57.

<sup>51</sup> *Ibid.*, p. 72.

<sup>52</sup> The picture in question and the corresponding comments can be seen here:

<https://www.facebook.com/photo.php?fbid=825439160832543&set=a.278499395526525.70713.100000994007045&type=3&theater>.

kameras abu"), "You are fucking gays, you should be exterminated" (Lith. "Gėjai jūs supisti, jus naikinti nx.") and "Kill them!" (Lith. "zudyt!").

18. On 12 December 2014 the association LGL lodged a complaint on behalf of the two gay men in question to the Prosecutor General regarding 31 comments on their social media profile. The complaint was lodged under the Article 170 of the *Criminal Code* (i.e. prohibition of hate speech). It was indicated that comments in question ridicule gay people and incite discrimination, hatred and violence against them.
19. On 30 December 2014 the Klaipėda District Prosecutor's Office issued a decision not to start a pre-trial investigation regarding the complaint in question.<sup>53</sup> The association LGL appealed against this decision before the Klaipėda District pre-trial investigation judge. On 23 January 2015 the District Court of Klaipėda City dismissed the appeal. The Court stated that "the individual by posting a picture of two kissing men in a public sphere should have and must have foreseen that eccentric behavior really does not contribute to social cohesion among individuals with different views in the society and promotion of tolerance."<sup>54</sup>
20. The decision by the first instance court was upheld by the second instance court. On 18 February 2015 the Klaipėda Regional Court indicated that "[t]he owner of the social network profile by exercising the freedom to express his convictions and to promote tolerance had to take into account that freedom is inseparable from obligation to respect the views and traditions of other individuals. [...] Therefore this action can be interpreted as an attempt to intentionally tease or shock individuals with different views or encourage posting of negative comments".<sup>55</sup>
21. On 13 August 2015 the two gay men in question submitted a complaint to the European Court of Human Rights (ECtHR), alleging that the failure by national authorities to investigate the above described instances of hate speech has violated their rights to private life and the right to an effective legal remedy taken in conjunction with the general prohibition of discrimination.

**F. The Right to Privacy [Art. 8 ECHR, Art. 16 ICCPR, Art. 1, 2, 3 & 15 CEDAW Convention, Yogyakarta Principles 3 & 6]; Right to health [Art. 25 UDHR, Art. 12(1) ICESCR, #14 & # 20 CESCR's General Comment, General Recommendation #19 & #24 CEDAW Convention, Yogyakarta Principles 17 & 18]**

***Failure to establish legal gender recognition and medical gender reassignment procedures***

22. Lithuania has no *de facto* or *de jure* procedures of legal gender recognition and medical gender reassignment. Despite the fact that the Article 2.27 of the *Civil Code* establishes that "[a]n unmarried natural person of full age enjoys the right to the change of designation of sex in cases when it is feasible from the medical point of view", the enabling legislation has never been adopted.<sup>56</sup> In 2007 the European Court of Human Rights (ECtHR) delivered a

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<sup>53</sup> Klaipėdos apygardos prokuratūros Klaipėdos apdylinės prokuratūra, „Nutarimas atsisakyti pradėti ikiteisminį tyrimą“, 30 December 2014.

<sup>54</sup> District Court of Klaipėda City, Case No. 25.8.30-963/2015, 23 January 2015, p. 2.

<sup>55</sup> Klaipėda Regional Court, Case No. 1S-72-417/2015, 18 February 2015, p. 2-3.

<sup>56</sup> Civil Code of the Republic of Lithuania, No. VIII-1864, 21 June 2011, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=404614](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=404614).

judgment in the case *L. v. Lithuania*, indicating that the existing legal vacuum constitutes a violation of the right to private life.<sup>57</sup> Based on observations by civil society organizations<sup>58</sup>, the Committee of Ministers of the Council of Europe applied the enhanced supervision procedure in September, 2014 with the view of implementing the judgment.<sup>59</sup> Despite the fact that fifteen years have passed since the introduction of the right to gender reassignment in the *Civil Code*, eight years since the adoption of the ECtHR judgment, and one-and-a-half (1.5) years since the application of the enhanced supervision procedure, the Lithuanian authorities still have not adopted any legal measures with the view of facilitating gender reassignment procedures.

23. As transgender people are not able to receive necessary medical services within the framework of the Lithuanian health care system, they are forced to seek these services abroad. After undergoing gender reassignment treatment abroad, transgender people have to apply before national courts for new identity documents. Lithuanian courts have developed a consistent jurisprudence in mandating that new identity documents be issued. However, Lithuanian courts do not award transgender applicants compensation for pecuniary damages, covering the costs incurred for obtaining gender reassignment treatment abroad.<sup>60</sup> It can be concluded that not only are transgender individuals forced outside the country to undergo the treatment they seek but they also have to go through a litigation procedure in order to obtain corresponding identity documents upon their return.
24. With the view of implementing the *L. v. Lithuania* judgment, Lithuanian authorities are aiming at modifying Article 2.27 of the *Civil Code* rather than adopting a comprehensive Law on Gender Reassignment. The most current attempt is the Ministry of Justice's proposal No. 15-12302.<sup>61</sup> The proposal seeks to eliminate the requirement of adopting a separate law on gender reassignment from the *Civil Code*, and to create a legal basis for changing identity documents after the completion of gender reassignment treatment (i.e. no need to apply before the national courts). However, the current proposal is highly problematic due to the following reasons. First of all, it seeks to rename Article 2.27 of the *Civil Code* by changing its name from the "Right to Change of Sex" (Lith. "Teisė pakeisti lytį") into the "Right to Registration of Gender Reassignment" (Lith. "Teisė į lyties pakeitimo registraciją"). It can be perceived as a regressive attempt to replace a substantive human right with a procedural right to access an administrative service. Secondly, despite the fact that the proposal seeks

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<sup>57</sup> *L v. Lithuania* (App no 27527/03, ECtHR), 11 September 2007, [http://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%20v%20lithuania%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-82243%22\]}](http://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%20v%20lithuania%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-82243%22]}).

<sup>58</sup> For the extensive communication among the civil society organizations, the Lithuanian Government and the Committee of Ministers with the view of monitoring the process of implementing the *L. v. Lithuania* judgement, please see: [http://www.coe.int/t/dghl/monitoring/execution/Themes/Add\\_info/LIT-L\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/LIT-L_en.asp).

<sup>59</sup> 1208DH meeting of the Ministers' Deputies, CM/Del/OJ/DH(2014)/1208/10, 26 September 2014, <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH%282014%291208/10&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

<sup>60</sup> It has to be noted that on one occasion the Supreme Court of Lithuania in the case No. 3K-3-257/2012 on 30 May 2012 awarded a transgender applicant with pecuniary damages with the view of reimbursing the costs related to the gender reassignment treatment. However, this judgment is classified; therefore it is not accessible to the general public and cannot be used as a precedent in further litigation attempts.

<sup>61</sup> It has to be noted that as of 13 March 2016 the proposal has not yet been approved by the Government and therefore not transferred for further consideration in the Lithuanian Parliament, see: Lietuvos Respublikos civilinio kodekso 2.27 straipsnio pakeitimo įstatymo projektas, No. 15-12302, 9 November 2015, [http://www.lrs.lt/pls/proj/dokpaieska.showdoc\\_l?p\\_id=1092926&p\\_org=8&p\\_fix=y&p\\_gov=n](http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=1092926&p_org=8&p_fix=y&p_gov=n).

to introduce simplified procedures for changing entries in the official documents (i.e. legal gender recognition) upon the completion of gender reassignment treatment, the proposal fails to address the issue that medical gender reassignment services are currently unavailable within the framework of the Lithuanian health care system. While gender reassignment treatment would be a mandatory requirement for obtaining legal gender recognition, the proposal does not address the issue of providing medical services for transgender people in any way. To put it in other words, the Lithuanian Government seeks to impose conditions which are impossible to fulfil in the current situation.

25. The absence of procedures to enable legal gender recognition and medical gender reassignment have very direct negative consequences on the daily lives of transgender people in Lithuania. First of all, the negative phenomenon of unsupervised hormone treatment is commonly widespread among the members of the local transgender community. Transgender people are smuggling hormonal medication from foreign countries (e.g. Belarus) and using it without any medical supervision, thus causing catastrophic health hazards (e.g. high risk of venous thrombosis while using estrogen). Secondly, transgender people, who are undergoing gender reassignment treatment abroad, do not have the possibility of changing their identity documents before undergoing a complete gender reassignment treatment procedure, including surgery, because the “outcomes” of the procedure still have to be validated by the Lithuanian courts. Thirdly, trans people who already live according to their preferred gender, but do not want to go through gender reassignment treatment, are exposed to constant discrimination, harassment and violence. Every time they are requested to display their identity documents, they are immediately outed as a trans person, because Lithuanian authorities do not provide for the opportunity of changing one’s identity documents prior to the complete gender reassignment treatment, which is not available in the Lithuanian health care system. Finally, the Lithuanian legal system does not recognize the legal category of “gender identity”, thus rendering discrimination against transgender people technically not punishable by law.<sup>62</sup> It can be concluded that trans people, due to the absence of any legal protections, remain the most vulnerable group within LGBT\* people as a whole.

#### **G. Recommendations for action**

26. The association LGL, Sexual Rights Initiative and ILGA-Europe would like to propose the following recommendations to the Lithuanian Government with the view of improving the human rights situation of LGBT\* persons:
  - (a) Ensure that Article 4.2.16 of the *Law on the Protection of Minors* is not applied with the view of censoring LGBT\* related public information; that any limitations on freedom of expression for the local LGBT\* community meet the strict requirements of *lawfulness, necessity* and *proportionality* and are applied without any discriminatory animus; and that any limitations on the right to freedom of expression for the local LGBT\* community can be challenged through an effective legal remedy on the national level;
  - (b) Reject the adoption of seven currently pending openly homophobic and/or transphobic legislative initiatives based on scientific information and constructive public debate; and

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<sup>62</sup> This fact is confirmed by the Lithuanian Government in providing information on follow-up to the concluding observations on the third periodic report of Lithuania under the ICCPR, *supra* 33, para. [13].

introduce appropriate safeguards with the view of preventing introduction, consideration and adoption of similar legislative initiatives in the future;

(c) Ensure effective investigation of hate speech and hate crimes on grounds of sexual orientation and/or gender identity; raise public awareness about the negative phenomena of hate speech and hate crimes; and encourage members of the local LGBT\* community to report instances of experienced hate speech and hate crimes to the competent authorities;

(d) Adopt comprehensive national legislation on legal gender recognition; ensure that transgender people can receive appropriate medical services within the Lithuanian health care system; introduce the legal category of “gender identity” into the Lithuanian legal system with the view of protecting transgender people from discrimination, harassment and violence; and consider the possibility of issuing new identity documents for transgender people without a mandatory requirement for gender reassignment surgery;

(e) Adopt the comprehensive *Interinstitutional Action Plan on Non-Discrimination of LGBT\* People* with the view of implementing the above outlined recommendations.



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<sup>63</sup> The advocacy work of the National LGBT\* Rights Organization LGL on the UN level is supported by the German foundation “Erinnerung. Verantwortung and Zukunft”, which supports activities that tackle contemporary discrimination on the grounds of sexual orientation and/or gender identity. For more information, please consult <http://www.stiftung-evz.de/eng>. This submission represent an expression of opinion by the Foundation EVZ. The authors bear responsibility for the content.