

LITHUANIA

Follow Up Report

Human Rights Monitoring Institute (HRMI)

Lithuanian Gay League (LGL)

September 2013

CCPR/C/LTU/CO/3

July 2012 (adoption of the Concluding Observations)

July 2013 (Deadline for the follow-up Report)

Current status: Follow-up report from the State Party has not yet been submitted

Recommendation 8	Grade	Overview
Take all necessary measures to ensure that its legislation is not interpreted and applied in a discriminatory manner against persons on the basis of their sexual orientation or gender identity	C	LGL: The Law on Public Meetings and the Law on the Protection of Minors against the Detrimental Effect of Public Information were applied in a discriminatory manner to the Baltic Pride 2013 March for Equality and the broadcasting of associated promotional videos. Currently five homophobic and transphobic legislative initiatives are pending before the national Parliament. These legislative initiatives encompass the total ban on gender reassignment , prohibition of same-sex adoption , introduction of administrative liability for the “denigration of constitutional moral values” , qualification of “criticisms of homosexuality” as not constituting hate speech and the request for the organizers of the public assemblies to cover all the expenses in relation to ensuring safety and public order for events themselves.
Implement broad awareness-raising campaigns, as well as trainings for law enforcement officials, to counter negative sentiments against LGBT individuals.	C	LGL: Lithuania has undertaken no awareness-raising campaigns with the view of promoting social inclusions of the local LGBT community or countering negative statements against LGBT individuals. Trainings provided to law enforcement officials are of a general nature and do not address specific issues of sexual orientation and/or gender identity. No independent institution or department has been established to receive and investigate hate crimes.
Consider adopting a targeted national action plan on the issue.	B2	LGL: Consultation on plans for an inter-institutional working group on LGBT issues, introduced in the course of a meeting with the Minister of Social Security are ongoing between the Ministry of Social Security and Labour, the Ministry of Justice and the Ministry of Foreign Affairs. However, various Ministries are reluctant in taking direct responsibility with regards to the establishment of this working group.
Guarantee all human rights of such individuals, including the right to freedom of expression and the right to freedom of assembly	B2	LGL: No concrete actions were taken by the State with the view of ensuring the right to freedom of expression and the right to freedom of assembly for the local LGBT community, but it has proved possible to defend the exercise of these rights before the national courts. No positive actions were taken by the State with regards to ensuring the right to family life for the same-sex couples. The proposed measures with the view of eliminating the legal vacuum on gender reassignment procedure fall short behind in establishing quick, transparent and accessible procedure of gender reassignment in the Republic of Lithuania.
Recommendation 9	Grade	Overview
Ensure effective investigation into allegations of its complicity in human rights violations as a result of counter-terrorism measures.	C	HRMI: No action has been taken by the State to investigate the allegations of its complicity in the CIA secret detention and extraordinary rendition programme. To date, no criminal charges were brought, no official was held accountable, and no redress was provided to the victims.

Grade A: Implementation satisfactory:

A1: Response fully satisfactory

A2: Response largely satisfactory

Grade B: Implementation partially satisfactory:

B1: Implementation partially satisfactory: progress made, but need for additional information

B2: Implementation partially satisfactory: progress made, but additional action required

Grade C: Response not satisfactory

C: No action taken by the State Party to implement the recommendation

Paragraph 8 INFORMATION FROM THE LITHUANIAN GAY LEAGUE (LGL)

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. The Committee is furthermore concerned at various legislative proposals, including amendments to the Code of Administrative Offences, the Constitution, and the Civil Code which, were they to be adopted, would impact negatively on the enjoyment of fundamental rights by LGBT individuals. The Committee is also concerned at the increasing negative attitudes against, and stigmatization of, such persons in society, which has manifested itself in instances of violence and discrimination, and at reports of reluctance on the part of police officers and prosecutors to pursue allegations of human rights violations against persons on the basis of their sexual orientation or gender identity (arts. 2, 19 and 26).

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
The State party should take all necessary measures to ensure that its legislation is not interpreted and applied in a discriminatory manner against persons on the basis of their sexual orientation or gender identity.	C	The State has taken no action whatsoever. On the contrary, high State officials have ignorantly denied any instances of discrimination on the grounds of sexual orientation and gender identity. For example, on 28 June 2013 the President of the Republic of Lithuania, while presenting the Lithuanian EU Presidency priorities to the European Parliament, publicly denied that the Baltic Pride 2013 March for Equality was prohibited on discriminatory grounds and stated that the only issue was the location of the event, which would be effectively tackled through the judicial process. On 10 July 2013 the Lithuanian Minister of Justice in the course of his speech in the European Parliament stated that Europe is misguided about the actual situation of LGBT people in Lithuania.	(1) to ensure the possibility of addressing the discriminatory interpretation and application of the national laws through the judicial process; (2) to prevent consideration and adoption of the homophobic and transphobic legislative initiatives already at the inception stage; (3) to acknowledge the actual situation with regards to discrimination on the grounds of sexual orientation and gender identity at the political and institutional levels	Despite the claims by the State authorities that the discriminatory interpretation and application of the national laws against the local LGBT community is effectively prevented by the constitutional principle of equality before the law (Article 29 of the Constitution) and the corresponding provisions in the Law on Equal Treatment, the Criminal Code and the Labour Code, explicitly prohibiting discrimination on grounds of sexual orientation (N.B. the legal concept of gender identity as a prohibited ground of discrimination does not exist in the Lithuanian legal system), certain legislation is applied in an overtly discriminatory manner against LGBT people. On 26 June 2013 the Vilnius City Municipality Administration <i>de facto</i> banned the Baltic Pride 2013 March for Equality by refusing to agree upon time, location and form of the planned event. The ban was founded on the provision in the Law on Public Meetings (Article 4(3)) that public assemblies shall take place no closer than 25 meters to state institutions and no closer than 75 meters to court buildings. However, this limitation was never applied to any other marches or assemblies, taking place on the central avenue in the downtown of Vilnius (i.e. Gediminas Avenue). In the period between December, 2012 and May, 2013 more than 70 public events by various social and political groups took place on a virtually identical rule and the legal limitation according to the Article 4(3) of the Law on Public Meetings was never applied. On 23 July 2013 the Supreme Administrative Court of Lithuania ruled that the application of this particular legal limitation (i.e.

Article 4(3) of the Law on Public Meetings) on the exercise of the right to freedom of peaceful assembly in the case of Baltic Pride 2013 March for Equality was disproportionate and thus not necessary in a democratic society. However, the Court has explicitly refused to elaborate on the organizer's claim with regards to discriminatory application of the law by stating that "the actions by the Municipality had a clear legal basis".

On 7 July 2013 the Lithuanian Radio and Television (i.e. the national broadcaster LRT) [censored](#) the Baltic Pride 2013 promotional video clips by agreeing to broadcast them only during the night hours and only while branded as an adult content. The Deputy Director General of the LRT has officially stated that this limitation is based on the Article 4(2)(16) of the Law on the

Protection of Minors against the Detrimental Effect of Public Information, which establishes that public information “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” is qualified as information generating detrimental effect to minors. It is the first time that this controversial Law has been applied in an unduly restrictive manner towards the LGBT community. The national LGBT association LGL has appealed against this decision as a disproportionate and discriminatory limitation of the right to freedom of expression before the Inspector of Journalist Ethics and the decision is expected to be delivered in October 2013. In addition to this, several commercial news web-sites have established the practice of branding any LGBT-related articles as an adult content, thus sending a clear message that any (i.e. both positive and negative) depiction of LGBT issues qualifies as detrimental information to minors.

At the moment there are four homophobic and transphobic bills pending on the Parliament’s agenda (i.e. have already passed the first hearing successfully), while one additional bill will be introduced to the first hearing in the Parliament’s autumn session. [All of these bills](#) have been submitted in the period between November 2012 and September 2013. A draft amendment to the Civil Code No. [XIIP-17](#) (passed the first hearing on 23 May 2013) places a total ban on gender reassignment surgeries in Lithuania. The explanatory note on the controversial proposal states that Lithuanian society ‘views gender reassignment as very controversial; society is not ready to accept gender reassignment practices due to certain psychosocial reasons, and therefore the permission to undergo gender reassignment surgeries will lead to a number of medical and ethical issues’. Moreover, it ignorantly states that it is impossible to reassign gender surgically because it ‘is determined genetically from the very moment of conception’ and that gender reassignment procedure ‘is associated with the radical impairment of a person, because physically healthy persons who are able to conceive and raise children are castrated in this manner’. The draft amendment to the Code of Administrative Violations No. [XIP-4490\(2\)](#) (passed the first hearing on 21 May 2013) introduces administrative liability for “public denigration of constitutional moral values and of constitutional fundamentals of the family life, as well as organization of public events contravening public morality”. The draft amendment to the Law on the Fundamentals of Protection of the Rights of the Child No. [XIP-473](#) (passed the first hearing on 21 May 2013) 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 proponent of the amendment MP Jonas Rimantas Dagys has clearly indicated that this legislative initiative is aiming at preventing any further public discussion on the issue of same-sex adoption. The draft amendment to the Criminal Code No. [XIIP-687](#) (passed the first hearing on 12 September 2013) seeks to establish that the criticism of homosexuality and attempts to change one’s sexual orientation would not be qualified as discrimination or harassment on grounds of sexual orientation. It seeks to amend the Criminal Code by inserting a provision that “the criticism of sexual behaviour or sexual practices, convictions or believes, or persuasion to change this behaviours, practices, convictions or believes cannot *per se* be qualified as harassment, denigration, incitement to hatred, discrimination or incitement to discrimination”. This amendment was already considered in the Parliament’s spring session, but the final decision on whether to place this legislative motion on the Parliament’s agenda was postponed, speculatively, due to the upcoming beginning of the Lithuanian EU Presidency. On 3 September 2013 MP Petras Gražulis registered an amendment to the Law on Public Meetings No. [XIIP-940](#) (voting on the first hearing is not scheduled yet), requesting that the organizers of the public assemblies have to cover all the expenses in relation to ensuring safety and public order in the course of an event themselves. This legislative motion was introduced as a response to the information, provided by the Police Department, that protection of the public order and safety of the participants in the course of the Baltic Pride 2013 March for Equality cost LT 182’000 (i.e. EUR 53’000).

The State party should implement broad awareness-raising campaigns, as well as trainings for law enforcement officials, to counter negative sentiments against LGBT individuals.	C	According to the documentation report on monitoring implementation of the Council of Europe Recommendation CM/Rec(2010)5 to the member states on measures to combat discrimination on grounds of sexual orientation or gender identity (published by LGL in January, 2013), Lithuania has undertaken no awareness-raising campaigns with the view of promoting social inclusions of the local LGBT community or countering negative statements against LGBT individuals. According to the information by the Police Department, trainings provided to the law	(1) any State-sponsored awareness raising campaign on the social inclusion of the local LGBT community and/or on countering negative statements against LGBT individuals; (2) development and application of sensitization measures and trainings for the law enforcement officials, especially in the context of hate crimes and hate motivated incidents;	The results of the EU LGBT Survey , published by the EU Fundamental Rights Agency (FRA) on 17 May 2013, indicate that 61% of the Lithuanian LGBT* community suffer from discrimination or harassment. According to the survey, it is the highest ratio of hostility towards the local LGBT* community among 28 EU Member States. In addition to this, 27% of Lithuanian respondents felt discriminated against in the last 12 months when looking for a job and/or at work because of being LGBT*. The result is one of the highest in the EU – it is more worrisome only in Cyprus (30%). In this category Lithuania significantly exceeds the EU average of 20%. According to the survey, LGBT* individuals suffer from discrimination in other areas of life as well, i.e. provision of goods and services, education, healthcare and social security. In Lithuania 42% of respondents felt discriminated against in the last 12 months in areas other than employment because of being LGBT*. In response to a question, whether they had heard
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		enforcement officials are of a more general nature and do not address the specific issues of sexual orientation and/or gender identity. The same lack of specialised trainings is noticeable in the trainings for staff in detention facilities. No independent institution or department has been established for receiving and investigating hate crimes or hate motivated incidents, <i>inter alia</i> , on the grounds of sexual orientation and/or gender identity.	(3) acknowledgement of the actual situation with regards to the negative sentiments against LGBT individuals in the Lithuanian society.	negative comments or seen negative conduct because a schoolmate was perceived to be LGBT during their schooling before the age of 18, 88% of Lithuanian respondents answered positively. In addition to this, 81% of Lithuanian respondents confirmed that they had “always” or “often” hidden or disguised being LGBT during their schooling before the age of 18 – the highest percentage among the EU Member States. Only 1% of Lithuanian LGBT* individuals believe that same-sex couples holding hands in public is “very widespread”, while 69% believe that it is applicable to different-sex couples. The Lithuanian Prime Minister downplayed the findings of this survey by stating that the “Lithuanian authorities should take account of the attitudes of the majority of the Lithuanian people and should not pay much attention to the criticism by various European institutions”.
It should consider adopting a targeted national action plan on the issue.	B2	On 30 May 2013 in the course of a meeting with the Minister of Social Security and Labour the representatives of the national LGBT association LGL were informed of the plans to establish an inter-institutional working group among various Ministries with regards to the LGBT issues. On 23 July 2013 in the course of a meeting with the Vice Minister of Justice the representatives of the national LGBT association LGL was informed that various Ministries are reluctant to take direct responsibility with regards to the establishment of this working groups, while the consultations among the Ministry of Social Security and Labour, the Ministry of Justice and the Ministry of Foreign Affairs are still ongoing. As for 11 September 2013 the LGL has not received any further information with regards to the establishment of the inter-institutional working group on LGBT issues.	(1) to establish the inter-institutional working group on LGBT issues; (2) to include the representatives of the civil society organizations in the working process of the established inter-institutional working group; (3) to ensure that the proposed establishment of the inter-institutional working group generates factual results with regards to improving the social and legal situation of LGBT individuals in Lithuania.	The national LGBT association LGL has sent multiple letters to the President of the Republic of Lithuania with the view of initiating a meeting with regards to the situation of the LGBT people in the country. The association has received no answer whatsoever. On 11 September 2013 the national LGBT association LGL submitted the official letters to the Ministry of Social Security and Labour, the Ministry of Justice and the Ministry of Foreign Affairs with the request to take appropriate measures in establishing the inter-institutional working group on LGBT issues.
The Committee, finally, recalls the obligation of the State party to guarantee all human rights of such individuals, including	B2	While no concrete actions were implemented by the State with the view of ensuring the right to freedom of expression and the right to freedom of assembly for the local LGBT community, it has proved possible to defend the	(1) to ensure the possibility of addressing the discriminatory interpretation and application of national laws through the judicial process; (2) to prevent the unduly	The organizers of the Baltic Pride 2013 March for Equality had to defend their constitutional right to freedom of peaceful assembly before the national courts. First the Vilnius City Municipality agreed to facilitate the Baltic Pride March for Equality on 27 July 2013. However, they unilaterally relocated the March from the central avenue in downtown of Vilnius to a rather isolated and inaccessible area on the

<p>the right to freedom of expression and the right to freedom of assembly.</p>		<p>exercise of these rights before the national courts.</p> <p>No positive actions were taken by the State with regards to ensuring the right to family life for same-sex couples.</p> <p>The proposed measures with the view of eliminating the legal vacuum on gender reassignment procedure fall short behind in establishing quick, transparent and accessible procedure of gender reassignment in the Republic of Lithuania.</p>	<p>restrictive application of the Law on the Protection of Minors against the Detrimental Effect of Public Information with regards to the right of freedom of expression for the local LGBT community;</p> <p>(3) to establish a framework for legal recognition of same-sex relationships and mutual obligations and rights between the cohabiting partners;</p> <p>(4) to involve the representatives of the civil society organizations in the process of eliminating the legal and medical vacuum on gender reassignment procedures.</p>	<p>riverbank. The national LGBT association LGL challenged this decision before the national courts. On 20 June 2013 the Supreme Administrative Court of the Republic of Lithuania ruled that the unilateral relocation of the planned assembly by the municipal authorities was illegal and obliged the Municipality to restart the negotiations with the organizers of the event. On 26 June 2013 the Vilnius City Municipality Administration refused to agree upon time, location and form of the Baltic Pride 2013 March for Equality, thus effectively banning the event. The national LGBT association LGL once again challenged this decision before the national courts. On 23 July 2013 the Supreme Administrative Court of Lithuania obliged the Vilnius City Municipality to facilitate the Baltic Pride 2013 March for Equality on the Gediminas Avenue, the location initially preferred by the organizers. The Court clearly indicated that the interference with the right to freedom of peaceful assembly of the local LGBT community was not proportionate and thus necessary in the democratic society. The Baltic Pride 2013 March for Equality took place on Gediminas Avenue on 27 July 2013.</p> <p>On 7 July 2013 the Lithuanian Radio and Television (the national broadcaster) censored the Baltic Pride 2013 promotional video clips by</p>
<p>agreeing to broadcast them only during the night hours and only while branded as an adult content. The Deputy Director General of the LRT has officially stated that this limitation is based on the Article 4(2)(16) of the Law on the Protection of Minors against the Detrimental Effect of Public Information, establishing that public information “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” is qualified as information generating detrimental effect on minors. In addition to this, several commercial news web-sites have established the practice of branding any LGBT-related articles as an adult content, thus sending a clear message that any (i.e. both positive and negative) depiction of LGBT issues qualifies as detrimental information to the minors.</p> <p>On 26 March 2013 the Lithuanian Minister of Justice suggested deleting from the Civil Code the requirement to envisage gender reassignment procedure by the law. The Parliament approved the relevant amendment for deliberation accordingly. Under the amendment, the Civil Code should contain the provision that „an unmarried adult person has the right to change one’s sex medically“, but should no longer stipulate that conditions and procedures of gender reassignment should be regulated by a separate law. According to the Minister, these measures would implement the judgment of the European Court of Human Rights (ECtHR) in <i>L. v. Lithuania</i>, which put Lithuania under the obligation of adopting the Law on Gender Reassignment and pay compensation for the applicant. It is believed that the Lithuanian Parliament is lacking the political will for the law. Furthermore, on 18 April 2013 these measures were submitted to the Committee of Ministers of the Council of Europe as the Action Plan in implementing the <i>L. v. Lithuania</i> judgment. The national LGBT association LGL considers that the proposed legal solution is contrary to the requirement in the above indicated judgment to adopt general measures with the view of preventing violations similar to those found by the Court. The removal of the requirement to envisage gender reassignment conditions and procedures by the law from the Civil Code would not only violate the principle of legal certainty, but would also place transsexual individuals in the legal limbo, thus fully blocking the possibilities of establishing a quick, transparent and accessible gender reassignment procedure in Lithuania. While the Government in its action plan claims that the gender reassignment procedure could be in principle regulated by the development of “medical norms” (i.e. no need for the specific Law), on 12 September 2013 the Ministry of Health in its response to the inquiry by the LGL on the substantial implementation of the <i>L. v. Lithuania</i> judgment stated that “The methodologies of diagnostics and medical treatment can be developed by the universities, research institutions, trade unions of medical professionals and/or expert working groups; however the development and the approval of these methodologies is not compulsory. The Ministry of Health is not aware of the development of the methodology of diagnostics and medical treatment with regards to transsexuals.” To put it in other words, the Ministry quite openly claims that there are no "medical norms" with regards to the gender reassignment procedure and there are not going to be any in a foreseeable future, because it is not "compulsory".</p>				

Paragraph 9: INFORMATION FROM THE HUMAN RIGHTS MONITORING INSTITUTE (HRMI)

The Committee, while noting the information contained in the State party's parliamentary inquiry into alleged incidents of rendition and secret detention of terrorism suspects, and further noting that the pretrial investigation was terminated by the Office of the Prosecutor-General, remains concerned that not all information and evidence has been collected and assessed in the course of the investigations.

Recommendation from the HR Committee	Grade	Action taken by the State	Additional measures needed	Other comments
<p>The State party should ensure an effective investigation into allegations of its complicity in human rights violations as a result of counter-terrorism measures. The Committee urges the State party to continue the investigations on the matter and to bring perpetrators to justice.</p>	C	None	<ol style="list-style-type: none"> <li data-bbox="969 365 1267 687">1. An independent, thorough and diligent criminal investigation into the new allegations regarding transportation, secret detention and ill-treatment of Mustafa al-Hawsawi that would include seeking the alleged victim's testimony. <li data-bbox="969 708 1267 1222">2. Full disclosure of the documents related with the CIA rendition operation in Lithuania, including but not limited to partnership and other agreements concluded between CIA and Lithuanian authorities and documents relating to construction, equipment and operation of the two secret detention sites identified by the parliamentary inquiry in 2009. 	<p>In June 2013, Human Rights Monitoring Institute and Human Rights Watch addressed the Lithuanian authorities urging to continue investigations into the State's role in CIA rendition. No actions have been taken in this regard.</p> <p>In 2013, the application of Abu Zubaydah (App. no. 46454/11), one of the alleged CIA rendition victims, was communicated to the Government of Lithuania by the European Court of Human Rights. In its response to the complaint, the Government submitted that "[t]he Prosecutor General's Office have made a serious attempt to find out what happened in relation of allegations raised, and, if parliamentary investigation was not able to eliminate all doubts in regard to transportation of detainees and existence of secret CIA prisons, this was done within the course of the pre-trial investigation conducted by the Prosecutor General's Office" (para. 53). The Government's response indicates that it has no intention to fulfil its obligation to conduct a thorough, independent and impartial investigation into the treatment of persons prohibited under Article 7 of ICCPR.</p> <p>In September 2013, Human Rights Monitoring Institute and REDRESS submitted to the Prosecutor General's Office a joint request to open pre-trial investigation concerning suspicion of criminal offences committed in Lithuania against Mustafa al-Hawsawi, alleged CIA rendition victim who is currently facing capital charges before Military Commission in Cuba, Guantanamo. The Prosecutor General's decision is pending.</p> <p>In 14 days, the prosecutor took a decision refusing to open an investigation into the Al Hawsawi case (dated 27 September 2013). In a one-page reasoning the prosecutor argued that "the request to open a pre-trial investigation was based not on the information obtained from al-Hawsawi or known "directly" to HRMI and/or REDRESS, but on the assumptions made after "the analysis of the available data". He also indicated that the pre-trial investigation of 2010-2011 found that none of the persons were held in the Lithuanian "black-sites".</p> <p>The prosecutor's decision is not compatible with the positive obligation of Lithuanian authorities to conduct an effective and thorough investigation into the allegations regarding Lithuania's complicity in the CIA Rendition</p>

				program. The organizations intend to appeal against the prosecutor's decision.
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