

LITHUANIA

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in <input checked="" type="checkbox"/> progress	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?
Fully satisfactory ☐ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

The Law of the Republic of Lithuania on Equal Treatment ensures equal treatment on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

Article 29 of the Constitution of the Republic of Lithuania prohibits discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views. The practice of the Constitutional Court of the Republic of Lithuania shows that this list of grounds of discrimination should be realized as parallel to the open list of grounds of discrimination given in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (conclusion of the Constitutional Court of the Republic of Lithuania of 24 January 1995). Articles 1 and 13 of the Law on Equal Treatment of the Republic of Lithuania also prohibit discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. According to Article 12 of the Law on Equal Treatment of the Republic of Lithuania, a person who considers himself wronged by failure to apply equal treatment to him/her shall have the right to appeal to the Equal Opportunities Ombudsman or to address the national courts directly. Moreover, the courts of the Republic of Lithuania take the Recommendation into consideration. For example, the Supreme Administrative Court of Lithuania has referred to the Recommendation as a source important for interpretation of Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (case No. AS822-339/2010; published in the bulletin "Administrative law", 2010. No. 19).

According to Article 14 of the Law on Equal Opportunities, the Equal Opportunities Ombudsman shall supervise the implementation of the Law on Equal Treatment in the manner prescribed by the Law on Equal Opportunities of Women and Men. According to Article 12 of the latter Law, the Equal Opportunities Ombudsperson shall investigate the complaints related to direct and indirect discrimination, harassment and sexual harassment and shall provide objective and unbiased consultations related therewith. The Equal Opportunities Ombudsperson shall submit conclusions about the implementation of this Law and recommendations to state and municipal institutions and agencies of the Republic of Lithuania on improvement of legal acts and the priorities in the policy of the implementation of equal rights. Moreover, the Equal Opportunities Ombudsperson shall exchange any available information with the European Union agencies performing equivalent functions.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

Seeking to implement the policy of equal opportunities, non-discrimination and tolerance in Lithuania, the Government of the Republic of Lithuania approved the Interinstitutional Action Plan to Promote Non-discrimination for 2012–2014 (hereinafter referred to as the Plan) by Resolution No. 1281 on 2nd November 2011. Following this Plan Ministry of Social Security and Labour is going to carry out such a review in 2014.

Are there measures in place to redress any such discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Gender identity is not settled as a separate ground for non-discrimination in Constitution, but the list of grounds is not exhaustive.

According to Article 30 of the Constitution of the Republic of Lithuania the person whose constitutional rights or freedoms are violated shall have the right to apply to court. According to Article 1.138 of the Civil Code of the Republic of Lithuania, the rights shall be protected by the court acting within its competence and according to the procedure established by laws. The ways of protecting civil rights are the following:

- 1) acknowledgement of rights;
- 2) restoration of the situation that existed before the right was violated;
- 3) prevention of unlawful actions or prohibition to perform actions that pose reasonable threat of the occurrence of damage (preventive action);
- 4) ad judgement to perform an obligation in kind;
- 5) interruption or modification of a legal relationship;
- 6) recovery of pecuniary or non-pecuniary damage from the person who infringes the law and, in cases established by the law or contract, recovery of a penalty (fine, interest);
- 7) declaration as voidable of unlawful acts of the state or those of the institutions of local governments or the officials thereof in the cases established in paragraph 4 Article 1.3 of this Code;
- 8) other ways provided by laws. The grounds for civil liability and the duty to redress any damage caused are also established by the Civil Code of the Republic of Lithuania.

Moreover, according to the Law on Equal Treatment of the Republic of Lithuania, a person who has suffered discrimination on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion shall have the right to address the Equal Opportunities Ombudsman who may take adequate measures to provide redress. In the course of the investigation or upon completion of the investigation, the Equal Opportunities Ombudsperson may take a decision:

- 1) to refer the investigation material to a pre-trial investigation institution or the prosecutor if features of a criminal act have been established;
- 2) to address an appropriate person or institution with a recommendation to discontinue the actions violating equal rights and to amend or repeal a legal act related thereto;
- 3) to hear cases of administrative offences and impose administrative sanctions;
- 4) to dismiss the complaint if the violations indicated in it have not been corroborated;
- 5) to terminate the investigation if the complainant withdraws his complaint or when there is a lack of objective evidence about the committed violation or when the complainant and offender conciliate or when acts that violate equal rights cease to be performed or when a legal act that violates equal rights is amended or repealed;

6) to admonish for committing a violation;
 7) to suspend the investigation if the person, whose complaint or actions, in reference to which a complaint has been made, are under investigation, is ill or away;
 8) temporarily, until taking the final decision, to ban an advertisement if there is sufficient evidence that the displayed or intended to be displayed advertisement can be recognised as inciting ethnic, racial, religious hatred or hatred on the basis of sex, sexual orientation, disability, beliefs or age and would do serious harm to the public interests, would humiliate human honour and dignity and would pose threat to the principles of public morals;
 9) to impose an obligation on operators of advertising activity to terminate an unauthorised advertisement and to establish the terms and conditions for the discharge of this obligation.

According to the Law on Equal Opportunities, the persons who have suffered discrimination on mentioned grounds may also claim compensation for pecuniary and non pecuniary damage from the persons guilty thereof following the procedure prescribed by law. Liability for discrimination and duty to redress the damage caused also may arise pursuant to other relevant laws, such as regulating the employment relationships, etc.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

There were several legislative initiatives aiming at elimination of the legislative lacuna (as Article 2.27 of the Civil Code of the Republic of Lithuania establishes that the procedure and conditions for the change of the designation of one's sex shall be prescribed by law, and no such law has been adopted yet). Those initiatives are currently registered at and pending before the Parliament.

It must be nevertheless noted that the national courts, having regard to the above explained legislative lacuna do award compensations for the damage sustained in this respect.

It might be noted that Article 2.18 of the Civil Code provides that upon reassignment of gender a person's civil status records shall be modified. In order to simplify the said procedure a draft of relevant legislative amendments has been prepared and is currently pending before the Parliament.

Also, it should be noted, that the Ministry of Social Security and Labour coordinated the implementation of the National Antidiscrimination Programme for 2009–2011, approved by Resolution No. 317 on 15th April 2009. Seeking to implement successfully the policy of equal opportunities, non-discrimination and tolerance further, the Government of the Republic of Lithuania approved the Interinstitutional Action Plan to Promote Non-discrimination for 2012–2014.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania collects and analyses data on every type of crime, including hate crimes. Hate crimes are described and defined in the Criminal Code of the Republic of Lithuania. In 2009 the Criminal Code was supplemented with a new aggravating circumstance: "actions committed with the aim to express hatred to a group of persons or to a person belonging to it based on age, gender, sexual orientation, disability, race, nationality, language, origin, social status, faith, beliefs or attitudes", and tightened criminal liability for hate crimes, i.e. for criminal acts committed based on the belonging of the aggrieved person to a specific social group.

According to Article 169 of the Criminal Code of the Republic of Lithuania, a person who carries out the actions aimed at hindering, on grounds of sex, *sexual orientation*, race, nationality, language, descent, social status, religion, convictions or views, a group of persons or a person belonging thereto to participate on a par with other persons in political, economic, social, cultural, labour or other activities or at restricting the rights and freedoms of such a group of persons or of the person belonging thereto, shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

According to Article 170 of the Criminal Code of the Republic of Lithuania, a person who, by making public statements orally, in writing or in the media, ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of persons or a person belonging thereto on grounds of sex, *sexual orientation*, race, nationality, language, descent, social status, religion, convictions or views, shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years.

According to Article 170¹ of the Criminal Code of the Republic of Lithuania, a person who organised a group of accomplices or an organised group, or organization aiming to discriminate a group of people on grounds of sex, *sexual orientation*, race, nationality, language, descent, social status, religion, convictions or views, or abetted against, or took part in such a group or organization, or financed or materially supported such a group or organization, shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to one year.

Prosecutor General's Office organizes relevant trainings for prosecutors.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Any person whose constitutional rights or freedoms are violated shall have the right to apply to the Office of Equal Opportunities Ombudsperson or court. Gender identity is not settled as a separate ground for non-discrimination in Constitution, but the list of grounds is not exhaustive. As concerns the general duty to redress for the damage caused, please see the measure indicated in the response to Question 2 above.

As concerns the sanctions for infringements, please see the response to Question 4 above. In addition it might be noted that administrative liability also arises for certain actions. According to Article 41 (6) of the Code of Administrative Offences of the Republic of Lithuania the violation of equal rights and equal opportunities, which are regulated by Law on Equal Opportunities of the Republic of Lithuania, brings a penalty for officials, employers or their authorized persons from one hundred thousand to two thousand Lithuanian Litas. The same actions committed by a person who has been given an administrative penalty for the first part of Article 41 (6) of the Code of Administrative Offences of the Republic of Lithuania shall be punished by a penalty from two thousand to four thousand Lithuanian Litas. It may also be noted that in addition to what is established by the Civil Code in this regard, the Law on Equal Treatment places the burden of proof on the respondent, and not the victim.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Absence of the political will to pass relevant laws.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Recommendation is translated into Lithuanian language and disseminated by Lithuanian Gay League.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

It must be noted that a general principle of an effective, prompt and impartial investigation of any criminal act or incident is established in the Code of Criminal Procedure and other relevant Lithuanian laws.

The Republic of Lithuania Code of Criminal Procedure provides that the justice in criminal proceedings is carried out under the principle that all persons are equal before the law and the courts, regardless of origin, social or property status, national origin, race, sex, education, language, religious or political beliefs, type and nature of activities, residence and other circumstances. Granting privileges to anyone or making any restrictions based on some circumstances, personal character, social and property status is forbidden.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Article 60 of the Criminal Code of the Republic of Lithuania, if the act has been committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, gender, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views, it shall be considered as an aggravating circumstance.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

To ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support trainings according to the Interinstitutional Action Plan to Promote Non-discrimination for 2012–2014, the trainings are held by the Lithuanian police on communication with the victims including discrimination on all grounds, also are held by Judges and prosecutors.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?
- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

No specific measures.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gender identity is not settled as a separate ground for non-discrimination in Constitution, but the list of grounds is not exhaustive.

The Law of the Republic of Lithuania on Equal Treatment ensures equal treatment on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

Articles 170 and 170¹ of the Criminal Code of the Republic of Lithuania criminalise an incitement against any national, racial, ethnic, religious or other group of persons (including lesbian, gay, bisexual or transgender persons) as well as creation and activities of the groups and organisations aiming at discriminating a group of persons or inciting against it.

As concerns the administrative liability, please see the response to Question 5 above.

Moreover, in accordance with Article 2.24 of the Civil Code of the Republic of Lithuania, a person shall have the right to demand refutation in judicial proceedings of the publicised data, which abase his honour and dignity and which are erroneous as well as redress of the property and non-pecuniary damage incurred by the public announcement of the said data. Where erroneous data were publicised by a mass medium (press, television, radio etc.) the person about whom the data was publicised shall have the right to file a refutation and demand the given mass medium to publish the said refutation free of charge or make it public in some other way.

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

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16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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17. Have measures been taken to ensure that non-governmental organisations defending the of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 3 of The Law on Fundamentals of Legislation (adopted on 18 September 2012 and not yet in force) states that one of the principles of the process of legislation that must be followed is the principle of openness and transparency, meaning that the process of legislation must be public, and possibilities for the society and interest groups to express their suggestions and participate in the process must be ensured.

According to Article 34 of the Rules on Legislation of the Republic of Lithuania, when drafting laws, it is necessary to consult the community (which also include non-governmental organisations defending human rights of lesbian, gay, bisexual and transgender persons). Consultations with the community have to be organized in order to ascertain the public opinion on the problem and its possible solutions, to estimate the positive and negative consequences of legal regulation, and empower the community and society in general to make influence on the content of the government's decisions.

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

There are no specific limitations or exceptions regarding freedom of peaceful assembly and freedom of expression in Lithuania. Lithuanian legislation guarantees the right to have and freely express once convictions to all persons. The freedoms may not be limited in any other way except by law, when that is necessary to protect human health, honour and dignity, private life and morality or to safeguard the constitutional order.

According to Article 7 of the Law on Assemblies of the Republic of Lithuania, a place of a meeting (itinerary of procession), time and any other procedure of organising the meeting are considered and discussed in officials meeting, where the head of an executive body of the municipal council or a representative authorised by him, the meeting organizers and a representative of the police (police have to maintain public order during the meeting) participate. The head of an executive body of the municipal council or a representative authorised by him may offer a different place for the meeting if, for example, there are better conditions to maintain public order over there.

As a positive example the decision of the Supreme Administrative Court of Lithuania 7 May 2010 may be mentioned, whereby the higher court overruled the decision of the Vilnius Regional Administrative Court which had adopted interim measures to suspend the validity of the

certificate allowing for the Baltic Pride march. The Supreme Administrative Court of Lithuania stated that according to the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights the state has positive obligations to ensure efficient use of the right to peaceful assemblies to everyone, including those having unpopular views or belonging to minorities. The Supreme Administrative Court of Lithuania stated that there was no strong evidence that the state was not properly prepared to implement the positive obligations to ensure the protection of the participants of the march.

19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Law on Assemblies of the Republic of Lithuania police officers are required to enable organization of legitimate gatherings and protection of the rights and freedoms of the organizers and participants of such gatherings as well as other persons, and protection of state and public safety, public order and health of people through organizational and other means provided for by laws.

IV. Right to respect for private and family life

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is no need of any repeal, amendments or application in a different manner of the national criminal law provisions; please also see the response to Question 4 above.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

The Law on the Legal Protection of Personal Data aims to protect human right to private life while using his / her personal data. Article 5 of the Law on the Legal Protection of Personal Data provides for a general rule that it is prohibited to use sensitive personal data, which is the data related to an individual's racial or ethnic origin, political views, religion, philosophical or other beliefs, trade union membership, health, sex life, as well as information about person's criminal records. Exceptions to this rule are possible only if:

(a) the data subject has given his consent;

(b) the data is necessary for work or public service purposes in cases prescribed by law;

- (c) there is a need to protect the data subject or another person and the data subject is unable to give consent because of a physical disability or incapacity;
- (d) personal data of a person is used only in activity of foundation, association or any other non-profit body in political, philosophical, religious or trade-union purposes, if the processed data is only related to the members of the body or to persons who are regularly involved in its activities on the organization's objectives (this data shall not be disclosed to a third party without the data subject's consent);
- (e) a data subject himself / herself presented his personal data in public;
- (f) it is necessary to prevent criminal or other illegal activities in cases prescribed by law;
- (g) it is necessary for examining a case in court;
- (h) the laws obliges the subject to collect such data.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As it has been mentioned above (see the response to Question 3), according to the Civil Code, upon reassignment of gender a person's civil status records shall be modified. In order to simplify the said procedure a draft of relevant legislative amendments has been prepared and is currently pending before the Parliament.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Article 3.13 of the Civil Code of the Republic of Lithuania, marriage shall be contracted by a man and a woman of their own free will. Therefore, marriage is an act of two people of opposite sexes; but only the current sex is important and there is no difference if the sex of birth was different.

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

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please provide examples:

First, there are no operative legal provisions on partnership, neither for opposite-sex couples nor for same-sex couples. However, three different draft laws on partnership were presented to the Parliament in 2011 and 2012, but all of them still await their reading and hearing at the Parliament. The draft Law on Partnership (cohabitation) (*including same-sex couples' partnerships*) (No. XIP-3687) was presented to the Parliament by one of the members of the Parliament on 12 October 2011. That draft law regulates partnerships (as mentioned, also same-sex couples' partnerships), regulates partners' duties and rights, their property issues, and assures partners' children rights. The draft law still awaits its reading and hearing at the Parliament. Nevertheless, the Civil Code of the Republic of Lithuania allows making different types of civil contracts for couples (irrespective of the sex), so every couple has a possibility to define their duties and rights, and this opportunity is fully guaranteed to same-sex and opposite-sex couples equally.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Article 3.210 of the Civil Code of the Republic of Lithuania, the right to adopt a child may be exercised by married couples. As it was mentioned, only opposite-sex couples may make the contract of marriage. In exceptional cases, one of the spouses or an unmarried person (irrespective of his / her sexual orientation or gender identity) may be allowed to adopt a child. The adopter must be an adult woman or man under the age of 50 duly prepared for adopting a child. In exceptional cases the court may grant leave to older persons to adopt a child. Persons who wish to adopt a child (except a parent's spouse or the relatives) must be listed in the list of prospective adopters managed by the State institution for adoption.

As concerns the decisions regarding parental responsibility Article 3.159 of the Civil Code of the Republic of Lithuania states that parents shall be jointly and severally responsible for the care and education of their children and that parental authority may not be used contrary to the interests of the child. Also, according to Article 3.156 the Civil Code of the Republic of Lithuania the father and the mother shall have equal rights and duties in respect of their children. In addition, according to Article 3.170 the Civil Code of the Republic of Lithuania, the father or the mother who lives separately from the child shall have a right to have contact with the child and be involved in the child's education. A child whose parents are separated shall have a right to have constant and direct contact with both the parents irrespective of their residence. The father or the mother with whom the child resides may not interfere with the other parent's contacts with the child or involvement in the child's education. Where the parents cannot agree as to the involvement of the separated father or mother in the education of and association with the child, the procedure of the separated parent's association with the child and involvement in the child's education shall be determined by the court. Therefore, there are no premises to discriminate parents on the grounds their sexual orientation or gender identity.

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The duty of the employer to implement equal opportunities at work is also provided for under the Law on Equal Opportunities:

The employer, without taking into account an individual's age, sexual orientation, disability, race or ethnic dependency, religion or convictions, upon recruiting an individual or recruiting him/her to the public service, must apply the same selection criteria, except for cases provided for by law, must create the same work or public service conditions as well as provide the same possibilities for upgrading the qualification, seeking more complex vocational training or re-qualification, or acquiring practical work experience, must also provide the same privileges; must apply the same criteria for the assessment of work and official activities performed by public servants; must apply the same assessment criteria with regard to dismissal from work and from the public service; for the same work and the work of the same value, must pay the same work pay, and must comply with other obligations provided for in the Law.

VI. Education

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Anti-discrimination training or support and teaching aids

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

ii) Information, protection and support for pupils and students

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) Objective information on sexual orientation and gender identity in school curricula ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iv) School equality and safety policies and action plans

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 4 of the Law on Equal Treatment obligates the institutions of education, science and higher education to enforce equal opportunities. The institutions of education, science and higher education must provide persons with equal opportunities regardless their age, sexual orientation, disability, race, ethnicity, religion or beliefs, when: 1) admitting persons to schools of general education, vocational schools, colleges, schools of higher education as well as qualification advancement, re-qualification and other courses; 2) granting student allowances and student loans; 3) drawing up, preparing, approving and selecting teaching programmes; 4) assessing knowledge.

Educational, science and higher education institutions as well as the bodies implementing adult education programmes must ensure, within their remit, that teaching programmes and textbooks do not contain provisions discriminating or promoting discrimination on grounds of age, sexual orientation, disability, race, ethnicity, religion or beliefs.

Minister of Education and Science in February 7th, 2007 approved „Preparing for Family Roles and Gender Education Programme“. The main themes of this Programme are as follows: family as social phenomenon, roles in the family, gender aspects, cultural societal trends, sexual health, prevention of risky behaviour etc. It is necessary to mention that all General Education Schools in Lithuania are adapting this general Programme and implementing it in accordance with their needs, goals and conditions.

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Prohibition of patient's discrimination on various grounds (including sexual orientation) is embedded in Lithuanian legislation. The Law on the Rights of Patients and Compensation for the Damage to their Health of the Republic of Lithuania prohibits restriction of the patient's rights on the grounds of gender, age, race, citizenship, nationality, language, origin, social status, religion, belief, views, sexual orientation, genetic qualities, disability or on other grounds, except for the cases specified by laws, without prejudice to the general principles of human rights. According to the Law, patient shall have the right to high quality health care services.

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

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

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VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Relevant national legislation provides for the general principle of non-discrimination, therefore any individual case would be assessed by competent authorities, including courts, should a person who is being evicted or who has been denied housing raise the question of any discriminatory grounds thereof.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Relevant national legislation provides for the general principle of non-discrimination.

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Paragraph 66 (1) of The description of the procedure for examination of foreigners' asylum application on examination, enactment of decisions on asylum and their implementation approved by the order of the Minister of Interior of 15 November 2004 No. 1V-361 (Official Gazette 2004, No. 168-6196; 2007, No.53-2069) (hereinafter – Description) states that persecution acts could be inter alia acts of physical or mental violence, including acts of sexual violence. It also provides, inter alia, that a particular social group could be formed on the basis of a particular sexual orientation. For the purpose of this provision, sexual orientation does not

cover actions, which would be considered crimes under the laws of the Member States. However, the aforementioned provision states that "gender related aspects" may be considered while examining the case.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The above mentioned paragraph 66(1) of the Description states that sexual orientation cannot be considered as acts that, in accordance with the laws of the Member States, would be regarded as crime: gender-related aspects may be considered, even though they do not in itself form a presumption of applying the grounds of persecution. Therefore, in each case possible threats stipulated by person's sexual orientation are acknowledged and duly evaluated while deciding on the possibility of return.

In Lithuania, there were only few cases where asylum claims were based on persecution on account of sexual orientation. Due to scarce case count we are unable to provide any substantial and generalized information on good practices.

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

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40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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