

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion: Summary of cases transmitted to Governments and replies received, A/HRC/14/23/Add.1, 1 June 2010: Lithuania

Urgent appeal

1400. On 16 July 2009, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the adoption of the Law on the Protection of Minors against the Detrimental Effect of Public Information.

1401. According to information received, on 14 July 2009, the Seimas (Lithuanian Parliament) voted to adopt the "Law on the Protection of Minors against the Detrimental Effect of Public Information". The legislation had initially been passed by the Seimas on 16 June only to be vetoed by former President Valdas Adamkus one week later. The Presidential veto was overturned by a majority vote of 87 representatives. The law takes effect after the new President Ms. Dalia Grybauskaite signs it into law, which she is reportedly required to do within three days.

1402. The "Law on the Protection of Minors against the Detrimental Effect of Public Information" seeks to ban public dissemination of information considered harmful to the mental health or the intellectual and moral development of minors. It would also ban all materials that "agitate for homosexual, bisexual and polygamous relations" from schools or other public places where they can be seen by youth.

1403. The Law classifies public information about homosexuality and bisexuality in the same category as other prohibited material, such as that which portrays physical or psychological violence and graphic depictions of dead bodies.

1404. In December 2008, a joint statement on human rights and sexual orientation and gender identity, was presented by 66 States, including Lithuania, at the United Nations General Assembly. The statement called upon other States to promote and protect the human rights of all persons, regardless of their sexual orientation or gender identity and to remove obstacles that prevent human rights defenders from carrying out their work on issues of human rights and sexual orientation and gender identity.

1405. Concern was expressed that the aforementioned legislation may result in limiting the right of freedom of expression in Lithuania. Further concern was expressed that the law could be applied to limit the legitimate work of human rights defenders, particularly those working to defend the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people in the country.

Response from the Government

1406. In a letter dated 11 September 2009, the Government responded to the communication sent on 16 July 2009. The Government transmitted the response of the Ministry of Culture of Lithuania as follows.

1407. Accuracy of the facts. The Law on the Protection of Minors against the Detrimental Effect of Public Information was signed by the President Ms. Dalia Grybauskaitė and published on 21 July 2009 (Official Journal, 2009, No. 86-3637) and takes effect only on 1 March 2010, not immediately after the President had signed it.

1408. The Law does not classify all public information about homosexuality and bisexuality as harmful information, but Article 4, provision 14 states that, "Public information having a detrimental effect on the mental health, physical, intellectual, or moral development of minors shall be considered the information (...) whereby homosexual, bisexual or polygamous relations are promoted". It is necessary to mention that the Law does not restrict or limit accumulation and/or dissemination of information about homosexual, bisexual or polygamous relationship. The Law only limits direct and public information propaganda for minors of homosexual, bisexual or polygamous relationship. Furthermore, Article 5 of the Law stipulates that any public information may be non-assigned to the category of information having a detrimental effect on the mental health, physical, intellectual or moral development of minors where it conforms to the criteria set out in sub-paragraphs 1-19 of paragraph 1 of Article 4 of this Law, whereas it conforms one of these criteria: 1) its content is composed only of information about events, political, social, religious beliefs or outlook; 2) the information is significant from a scientific or artistic point of view or it is necessary for research and education; 3) there is a public interest to make it available to the public; 4) its scope and effect are minor. Therefore, there is no presumption to allege that all information about homosexual, bisexual or polygamous relationship is forbidden.

1409. Currently, the Ministry of Culture had presented and registered new draft of the Law on the Protection of Minors against the Detrimental Effect of Public Information Article 4 provision 14, whereas norm "whereby homosexual, bisexual or polygamous relations are promoted" should be changed into "whereby sexual relations are promoted deliberately" (Project registered in Lithuanian Parliament on 27 July 2009, project No. XIP-953). This Project will be considered in the next session of the Seimas beginning in September 2009.

1410. Freedom of expression of LGBT people. There is no special legal regulation for freedom of expression of LGBT people whereas the Constitution of Lithuania states the respect of human rights (including freedom of expression) of all groups of people, not excepting LGBT people. Article 25 of the Constitution states that "the human being shall have the right to have his own convictions and freely express them". As well as Article 29 of the Constitution states that "All persons shall be equal before the law, the court and other State institutions and officials. The rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views". Therefore it fully complies with the International Covenant on Civil and Political Rights and other international treaties, as mentioned above.

1411. Compatibility of the Law with international human rights norms and standards. Children's rights and their welfare are covered in a number of pieces of legislation. A World Fit for Children Declaration adopted by the United Nations General Assembly in 2002 encourages states to create a world in which all girls and boys can enjoy childhood, in which they are loved, respected and cherished, where their safety is paramount and

where they can develop in health, peace and dignity. Article 17 of the United Nations Convention on the Rights of the Child stipulates that "States Parties shall (...) encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being". In its Concluding Observations of 26 January 2001 regarding the initial report of Lithuania on the implementation of the UN Convention on the Rights of the Child in Lithuania, the United Nations Committee on the Rights of the Child encouraged Lithuania "to further enforce appropriate guidelines and legislation for the protection of the child from information and material injurious to his or her development, in particular violence and pornography".

1412. While legislating the Law on the Protection of Minors against the detrimental effect of Public information Lithuanian Parliament is pursuing the goal of balance between the freedom of expression, freedom of thought or freedom of association as stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Charter of Fundamental Rights of the European Union, the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders and public interest to protect minors from public information which may have a negative impact on minors' health, physical, intellectual and/or moral development, that is trying to protect the morality of minors. This duty for the State to protect minors derives also from EU Directive 89/552/EC, which stated that "Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence" (Art 22). It is necessary to remark that the European Human Rights Court in case *Handyside v. United Kingdom* in 1976 December 7th decision noted that there is no unanimous concept of morality, therefore every member state has a right to evaluation freedom when taking measures to protect persons' morality. Moreover, international legal acts regulating freedom of expression stipulate some possibilities to take restrictions to freedom of expression or freedom of association. And one of the versatile restrictions to freedom to expression and freedom of association is made with the purpose to protect persons' morality. Therefore the Law sets few restrictions, which are taken to protect minors as a special group and are justified as essential and proportional. Once again, the Law does not discriminate against or prohibit any kind of relationship or lifestyle, which is a freedom and right to a private life of every individual. On the contrary, the Law provides for the criteria which prohibit any kind of sexual propaganda targeted at minors since it has a negative impact on their development. Moreover, freedom of association as it is set in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders may be enjoyed as it complies with the Article 5 of the Law ("Nonassignment of Public Information to the Category of Information Having a Detrimental Effect on the Development of Minors").

1413. It is noteworthy that the Lithuanian Human Rights Association had made a public statement (20 July 2009), stating and both regretting that criticism of the Law is ungrounded. The Association had reviewed and evaluated legal liabilities of Lithuania in the area of human rights and made a statement that none of the Law norms contravene with the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 9 – Freedom of thought, conscience and religion, Article 10 – Freedom of expression, Article 14 – Prohibition of discrimination).

Observations

1414. The Special Rapporteur wishes to thank the Government for the detailed response transmitted.