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LITHUANIA: PARLIAMENT MOVES TO CRIMINALIZE HOMOSEXUALITY

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On 14 July 2009, the Lithuanian Parliament (the Seimas) adopted a “Law on the Protection of Minors against the Detrimental Effect of Public Information”, despite an earlier Presidential veto. This law bans materials that “agitate for homosexual, bisexual and polygamous relations” from schools or public places and media where they could be viewed by children. The law has been widely criticised as institutionalizing homophobia, violating the freedom of expression and the right to be free from discrimination. It enters into force on 1 March 2010.

The Seimas has not stopped with this law. Further homophobic legislative amendments have been put forward for consideration during the Autumn session which begins on 10 September 2009. These legislative proposals go even further as they would criminalise the “promotion of homosexual relations in public places”.

There is a real risk that these amendments will be adopted. At a first plenary reading on 9 July 2009, of the MPs present, 42 across all the major parties voted in favour of the amendments, eight against, whilst 16 abstained. The amendments have now passed to the committee stage. The amendments are currently being examined in the Committee for Legal Affairs and are likely to be considered by the Committee of Human Rights as well. A final vote on the amendments is expected towards the end of the Autumn Session (which runs until 23 December 2009).

The proposed amendments

Two legislative amendments are currently being considered. These are:

1. An amendment to the Penal Code (registered under number XIP-668(2))

A new Article 310 entitled “Promotion of homosexual relations in public places” would state that:

“1. A person promoting homosexual relations in public places is committing a criminal offence which is punishable with community work or a fine or imprisonment.

2. A legal person is also responsible for this criminal offence.”

2. An amendment to Administrative Code (registered under number XIP-667(2))

A new Article 214, entitled “Promotion of homosexual relations or financing of promotion in public places” would state that:

“The promotion of homosexual relations or financing of the promotion in public places is to be punished by a fine from one thousand to five thousand litas.”

Amnesty International’s concerns

Amnesty International is seriously concerned that the proposed amendment to the Penal Code would criminalize almost any public expression or portrayal of, or information about, homosexuality. The proposed Article 301 is so vague that it would permit the prosecution of individuals for activities such as campaigning on human rights issues relating to sexual orientation and gender identity rights or anyone providing sexual health information or services to lesbian, gay, bisexual or transgender people. Anyone imprisoned under this law would be considered by Amnesty International to be a prisoner of conscience.

Both amendments violate a range of human rights, including the freedom of expression and the principle of non-discrimination, and will strengthen homophobia in Lithuania.

The freedom of expression and association

Lithuania is a party to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), both of which guarantee the freedom of expression (Articles 19 and 10 respectively). Restrictions on the freedom of expression must be necessary to achieve a permitted aim and be clearly prescribed by law. The proposed amendments do not satisfy either of these criteria.

The European Court of Human Rights has stated that the regulation of homosexuality concerns “a most intimate aspect of private life” in respect of which “there must exist particularly serious reasons before interferences on the part of the public authorities can be legitimate ...”.¹ It has also stated that “pluralism, tolerance and broadmindedness” are essential features of a “democratic society”.² Restricting the promotion of homosexuality cannot, under any circumstances, be considered a legitimate aim.

The notion of “public promotion” is so vague that both amendments fail to satisfy the requirements of legal certainty. An extremely wide variety of activity would potentially fall within their scope, including, for instance, the organisation of a gay film festival or a Pride event, the provision of relationship counselling to gays and lesbians and, quite possibly even, kissing in public.

The potential prohibition of Pride events or other public manifestations by lesbian, gay and bisexual people would also violate the freedom of association. The next Baltic Pride is due to take place in Vilnius from 7-9 May 2010.

¹ *Dudgeon v United Kingdom* (1981) 4 EHRR 149, 165, paragraph 52

² *Handyside v United Kingdom* (1976) 1 EHRR 737, 754, paragraph 49

Non-discrimination

The ICCPR and ECHR, as well as several other international human rights instruments, prohibit discrimination on the basis of sexual orientation. In so far as the proposed amendments restrict the enjoyment of a wide range of rights on this basis without any objective or reasonable justification, they would clearly violate Lithuania's non-discrimination obligations.

Amnesty International is also concerned that the proposed amendments will further stigmatize lesbian, gay and bisexual people and lead to increased homophobia and discrimination in a range of areas, including employment and the access to goods and services.

The proposed legislation does not refer explicitly to gender identity. However, gender identity is closely linked to sexual orientation as a category of experience and as a reason for abuse. People are targeted if they do not appear to conform to gender "norms", if they are perceived as different by their behaviour, dress, or appearance. Although these provisions are focused on the criminalization of homosexuality, transgender people may also be targeted because their abusers infer sexual conduct from their gender non-conformity.

The rights of the child

As with the "Law on the Protection of Minors against the Detrimental Effect of Public Information", Amnesty International is concerned that the proposed amendments will violate Lithuania's obligations under the UN Convention on the Rights of the Child to act "*in the best interests of the child*" (Article 3). The prohibition of the public promotion of homosexuality will effectively prevent lesbian, gay, bisexual and transgender young people from accessing the appropriate information, support and protection to enable them to live their sexual orientation and gender identity.³

The banning of organizations and enterprises offering services to lesbian, gay and bisexual people.

Amnesty International is also concerned that the criminalization of the promotion of homosexuality would extend to legal persons, including associations and businesses. This would potentially outlaw all organizations working to promote the rights of lesbian, gay, bisexual and transgender people and even just service providers such as health clinics, dating agencies and nightclubs set up for lesbian, gay and bisexual people.

The right to promote and strive for the protection and realization of human rights is enshrined in the UN Declaration on Human Rights Defenders. These proposed amendments would undermine individuals' ability to carry out legitimate activities in the defence of rights either individually or in association.

RECOMMENDED ACTION:

³ See Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, October 9, 2002, para.43.

Please call on the Lithuanian authorities:

- To respect their obligations not to discriminate on the grounds of sexual orientation or gender identity;
- To reject the proposed amendments to the Penal and Administrative Codes;
- To repeal the "Law on the Protection of Minors against the Detrimental Effect of Public Information";
- Not to endorse any legislation that would criminalize, or otherwise prohibit, the public portrayal, expression or promotion of homosexuality, or any information relating to it;
- To ensure that all persons in Lithuania, including children, fully enjoy the right to freedom of expression – including the right to seek, receive and impart information;
- To provide adequate non-discriminatory information and support to lesbian, gay, bisexual and transgender people, including children.
- To ensure that human rights defenders working on issues of sexual orientation and gender-identity are able to carry out their work without the threat of criminal prosecution or other legal and administrative obstacles.

Write to:

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Minister of Justice
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LT-01104, Vilnius
Republic of Lithuania

Fax.: +370 5 262 5940, 262 4732

And

Arūnas Valinskas (Speaker of the Seimas)

Seimas of the Republic of Lithuania
Gedimino ave. 53,
LT-01109 Vilnius
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Fax: + 370 5 2396279

Email: Arunas.Valinskas@lrs.lt

Please send a copy of your letters to:

Mr Stasys ŠEDBARAS (Chair)

Committee on Legal Affairs
Seimas of the Republic of Lithuania
Gedimino ave. 53,
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Fax: + 370 5 2396469

Email: Stasys.Sedbaras@lrs.lt.

Mr Arminas Lydeka (Chair)

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