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Introduction

The lack of respect, protection and fulfilment of the human rights of lesbian, gay, bisexual and transgender (LGBT) people is still an area for concern in Latvia and Lithuania. Amnesty International is concerned that in these countries, human rights including the rights to freedom of expression and assembly are not fully guaranteed.

With this document, Amnesty International reminds Latvia and Lithuania of the commitments they willingly entered into when joining the European Union (EU) -- the 'union of values' -- to respect and protect human rights. Such commitments not only include individual human rights such as to peaceful freedom of association, assembly and expression, but also include the obligation to extend such rights to all individuals. The Lithuanian authorities are not at liberty to pick and choose to whom they grant these rights and they should instead exercise their leadership to promote respect for diversity, not foster a climate of intolerance.

LGBT rights are human rights – and a European commitment

The failure to respect the human rights of LGBT people by Latvia and Lithuania comes as international and regional institutions have condemned homophobia and highlighted the obligations to respect and protect the human rights of LGBT people.

European states are obliged to respect the rights to freedom of expression, peaceful assembly and association which are recognized in numerous human rights treaties including the International Covenant on Civil and Political Rights¹ (ICPPR) and the European Convention for Human Rights and Fundamental Freedoms² (ECHR), to which Lithuania and Latvia are both parties. In a regional context, the EU and the Organisation for Security and Co-operation in Europe (OSCE) have also recognised these rights, respectively in Article 12(1) of the EU Charter of Fundamental Rights³, and in Article 9(2) of the Document of the Copenhagen Meeting of the Human

¹ **International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49.**

² Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11. Rome, 4 November 1950.

³ Charter of Fundamental Rights of the European Union (2000/C 364/01),

Dimension of the Conference on Security and Co-operation in Europe⁴.

Although the rights to freedom of expression, peaceful assembly and association are not absolute rights, any interference with these rights has to be prescribed by law, and be necessary and proportionate to meet a legitimate aim under international law. According to international human rights law, freedom of expression, peaceful assembly and association should not be restricted or prohibited simply on the grounds that something might shock, offend or disturb. Therefore, a peaceful assembly may not be restricted merely on the grounds that it might offend an individual or group. Moreover, states have an obligation to protect the right to peaceful assembly even if a peaceful gathering may attract violent counter-demonstrations. Banning LGBT marches on security grounds based on the fact that there will be substantial amounts of counter-demonstrators is therefore contrary to international law.

Non-discrimination is a general principle of EU law, and is expressly mentioned in a number of distinct contexts in EU treaties. The Amsterdam Treaty provided a new legal basis for this principle. Article 13 of the Treaty establishing the European Communities⁵ (TEC) reformed by the Amsterdam Treaty⁶, allows EU action against discrimination on grounds of racial and ethnic origin, religion, disability, age and sexual orientation.

The EU Charter of Fundamental Rights (the Charter), was a further step forward in the protection of the principle of non-discrimination. Article 21(1) of the Charter provides the right to non-discrimination and set out a non-exclusive list of non-discrimination grounds. According to Article 21(1) of the Charter: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

On the basis of Article 13 TEC, two directives on equal treatment have been adopted: the Race Equality Directive (2000/43/EC) of 29 June 2000 and the Employment equality directive (2000/78/EC) of 27 November 2000. The latter, which requires member states to take specific measures to ensure non-discrimination of individuals in the limited area of employment and occupation, covers several grounds of

⁴ Art. 9.2 of the Document of the Copenhagen Meeting of the Human Dimension of the CSCE, 29 July 1990 states that "everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards."

⁵ Treaty establishing the European Communities, Rome, 25 March 1957.

⁶ The Treaty of Amsterdam came into force on 1 May 1999.

discrimination, including grounds of religion or belief, disability, age or sexual orientation. Additionally, the EU Directive 2006/54/EC states, referring to the European Court of Justice, that “the Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex.”⁷

The European Parliament has repeatedly voiced deep concern at recent developments in Europe resulting in discrimination on the basis of sexual orientation or gender identity or expression and hindering LGBT people’s right to freedom of assembly. On 26 April 2007, it issued a resolution condemning homophobia in the EU⁸ and urging the member states to strengthen the protection of human rights of LGBT people. On 10 May 2007, 26 Members of the European Parliament (MEPs) co-signed an open letter sent to the mayors of capitals and major cities in Central and Eastern Europe, remarking that LGBT pride and equality marches “are peaceful demonstrations that invoke the core principles of a Europe that is tolerant and appreciative of its diversity”, and calling upon the authorities of Central and Eastern Europe to do all in their powers to support the organizers of those marches, to protect against those that would wish harm upon participants, and to refrain from erecting administrative barriers against organizers.

The Council of Europe Commissioner on Human Rights, Thomas Hammarberg, has on several occasions made statements in defence of the human rights of LGBT people. In May 2006, he expressed the Council of Europe’s commitment to freedom of assembly in a public statement with specific reference to LGBT marches in Council of Europe member states. The Commissioner stated “the rights to freedom of expression and peaceful assembly are fundamental rights in a democratic society and belong to all people, not just the majority. A demonstration may annoy or give offence to persons opposed to the ideas or claims expressed, but this cannot be a reason to ban a peaceful gathering...[...]... Violent incidents against those who are different or perceived to be different are taking place with alarming frequency, and all too often with impunity. This is unacceptable and has to be stopped. Authorities at all levels must strongly respond to such individual acts of violence and actively promote tolerance and respect in their communities”.

At the European Ombudsman Meeting in Vienna in June 2006, the Commissioner stated that “organizations defending the rights of sexual minorities have become more

⁷ Paragraph 3, EU Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

⁸ European Parliament Resolution Condemning "Homophobia", P6_TA-PROV(2007)0167, 26 April 2007.

active and, for instance, planned Gay Pride marches. However, they have been denied permission to demonstrate by local authorities in some cities. This is unfortunate; homosexuals have of course the same right as everyone else to exercise freedom of assembly and expression.” The Commissioner has also remarked that “people are discriminated because of their sexual orientation and too few others stand up against homophobia”⁹.

In recent years, Amnesty International has expressed several concerns over the human rights situation for LGBT people in a number of European countries, including Russia, Moldova, Croatia and Poland. For example, in Croatia in July 2007, participants in a Lesbian, Gay, Bisexual and Transgender (LGBT) Pride march, the Zagreb Pride, were attacked physically and verbally by counter-demonstrators. Reportedly, as a result of the attacks two participants required hospitalization, while 12 others suffered minor injuries. In some cases, police authorities reportedly failed to adequately respond to homophobic attacks. In Moldova in April 2007, for the third year in a row Chişinău City Hall denied permission to the organization Gender Doc-M to hold a gay pride march. This decision was made despite a Supreme Court ruling in February that a similar refusal in April 2006 had been illegal. Meanwhile, in Russia in May 2007, Moscow mayor Yuri Luzhkov banned a gay rights march in Moscow. Gay rights activists, including several members of the European Parliament, were briefly detained when they attempted to hand over a petition to Yuri Luzhkov, urging him to respect the right to freedom of expression and protesting against his decision to ban a gay rights march from taking place in Moscow.

⁹ “No place for complacency about Human Rights”, at the European Policy Centre, Brussels, 24 October 2007

Lithuania



Counter-demonstrators 2007 © ILGA- Europe

Events in 2007

Over the past couple of years, explicit homophobic and discriminatory actions and attitudes from the Lithuanian authorities have become more visible. In 2007, several LGBT events were banned and parliament considered introducing discriminatory legislation.

On 21 May 2007, Juozas Imbrasas, mayor of Lithuania's capital city of Vilnius, refused to give permission for an EU-sponsored anti-discrimination truck tour which visited 19 EU member states. The purpose of the truck tour was to raise awareness and distribute information about the EU's "For Diversity. Against Discrimination"

campaign, as well as the European Year of Equal Opportunities for All. The Vilnius City Council also voted unanimously to ban a tolerance campaign rally in support of human rights of various groups, including the rights of LGBT people, which was due to take place on 25 May, citing "security reasons". The European Commission commented on the ban stating that "the decision by the city authorities shows how much still needs to be done to change behaviour and attitudes towards discriminated groups and to promote awareness of diversity".

The mayor of Vilnius further supported the decision by local bus drivers in Vilnius not to drive buses which had advertisements supporting LGBT rights on them. The mayor stated that "with priority for traditional family and seeking to promote the family values, we disapprove the public display of 'homosexual ideas' in the city of Vilnius." The advertisement had been paid for by the Lithuanian Gay League with money granted from the EU.

On 24 October 2007, the Vilnius City Council, refused to grant permission for the assembly of a group of LGBT rights activists at the hoisting of a 30 metre rainbow flag, a symbol of the LGBT rights movement, on the Town Hall Square. The hoisting of the flag was to be witnessed by an assembly of over 200 LGBT rights activists from around 40 different countries. The official reason why the event could not go ahead was that construction works carried out on the Town Hall Square could endanger the safety of those participating in the event. The square was however safe enough to be open to the public at all times, and no alternative venue was offered by the Vilnius City Council.

During late 2007 and early 2008, the Lithuanian parliament was also considering legislation that would ban the "propagation of homosexuality" to children. The legislative change regards an amendment to the existing Law on the Protection of Minors against the Detrimental Effect of Public Information. The law currently covers issues such as the portrayal of physical or psychological violence or vandalism; the display of a dead or cruelly mutilated body of a person and information that arouses fear or horror, encourages self-mutilation or suicide. The proposed amendment would put information about homosexuality on par with these issues. The authors of the proposed amendment have written in an explanatory note that "the propagation of a non-traditional sexual orientation and exposure to information containing positive coverage of homosexual relations may therefore cause negative consequences for the physical, mental and, first and foremost, moral development of minors."

This legislative proposal is similar to the UK's section 28 of the Local Government Act 1988, which the UN Committee on the Rights of the Child recommended be repealed

and which was removed in 2003. Section 28 stated that “a local authority shall not (a) intentionally promote homosexuality or publish material with the intention of promoting homosexuality; (b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.” Lithuania has a legal obligation to act “in the best interests of the child” (Convention on the Rights of the Child, Article 3), which includes respecting the child's right to be free from discrimination, including that based on sexual orientation or gender identity, as well as obligations regarding freedom of expression under Article 13¹⁰.

¹⁰ The Convention on the Rights of the Child in Article 13 states,

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

This has been interpreted in *General comment No. 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child*, CRC/GC/2003/4, 1 July 2003, with States parties urged to “provide adolescents with access to sexual and reproductive information ... regardless of their marital status and whether their parents or guardians consent” (para.28) and “to develop ... measures aimed at changing cultural views about adolescents’ need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality” (para.30(a)).

The UN Committee on the Rights of the Child expressed concern that “*homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation.*” (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.)

Latvia



Counter-demonstrators 2007 © Alexander Bartush

In 2005, 2006 and 2007, LGBT organizations in Latvia have attempted to organize public events to mark the LGBT movement's strife for its full enjoyment of its human rights. In all three years, the events have been marred by counter-protests, physical and verbal attacks. In 2006, a Gay Pride march was also banned by the authorities. 2007 saw a small improvement in the situation of LGBT people in Latvia, but the road to full enjoyment of human rights for LGBT people in Latvia is still long.

Riga Pride 2006

On 19 July 2006, City Council of Riga, the capital of Latvia, announced it would not permit the "Riga Pride 2006" march to take place. Riga City Council said its decision was based on information it had allegedly received concerning several threats of violence against participants if the march was allowed to go ahead, and that the

police could not guarantee security and order during the march. The nature of the threats the authorities had received were not disclosed. On 21 July, the Riga Administrative Court confirmed Riga City Council's decision not to permit the march to go ahead.

On 22 July, those attending a church service in Riga, held in support of Riga Pride 2006, were attacked by a large group of people who threw, among other things, eggs and human excrement at them as they left the church. Despite prior requests by those organizing the church service, no law enforcement officials were present to protect the worshippers.

Following a press conference organized by the Riga Pride 2006 organizers on the same day at a hotel in central Riga, the majority of those attending were prevented from exiting the hotel by a group of up to 100 anti-LGBT protesters. The protesters attacked anyone trying to leave the hotel with amongst other things water, flour, eggs and human excrement. Those prevented from leaving the hotel included Riga Pride 2006 organizers, journalists, an MEP and members of national parliaments (MPs) from around Europe. The organizers of the march had requested police protection for the press conference several days before the event, yet no significant police presence materialised until two hours after the attacks started. On 15 January 2008, one person was sentenced to 100 hours of community service for throwing human excrement at a participant in the press conference. He was sentenced for hooliganism under Article 231(1) of the Latvian Criminal Law.

There were, however, subsequent positive developments which saw the ban on the march declared unlawful, and one person prosecuted following events at the press conference.

The organisers of the 2006 Riga Pride march appealed against the decision of the Administrative District Court to ban the event, and on 12 April 2007 the Administrative Regional Court declared that the Riga City Council's refusal to grant permission for the 2006 Riga Pride march was unlawful. Although this decision was appealed by the Riga City Council at the Supreme Court Administrative Department, on 15 November 2007 this court upheld the original decision of the Administrative Regional Court.

On 15 January 2008, one person was sentenced to 100 hours of community service for throwing human excrement at a participant in the July 2006 press conference. He was convicted of hooliganism under Article 231(1) of the Latvian Criminal Law.

Riga Pride 2007



Counter-demonstrators 2007 © Alexander Bartush

On 3 June 2007, a Pride march was held in Riga to celebrate the rights of LGBT people. While participants in similar events in 2005 and 2006 had been subject to physical attacks and did not receive adequate police protection, the march in 2007 was adequately protected and no major attacks were carried out.

Over 400 people, including Latvian LGBT group Mozaika and dozens of Latvian activists, an Amnesty International delegation of approximately 70 people, several MEPs and a Swedish government minister, marched in a park in central Riga. The park was closed off and guarded by hundreds of Latvian law enforcement officials, making it virtually impossible for counter-demonstrators to carry out attacks on participants in the Pride parade.

There was a noticeable presence of a large number of counter-demonstrators at the march. Counter-demonstrators engaged in loud verbal abuse and making obscene

gestures towards the Pride march participants. Two home-made explosives were thrown into the park where they exploded. The police detained the man who had thrown in one of the explosives and he has been charged with hooliganism under Article 231(2) of the Latvian Criminal Law.

While Amnesty International commended the Latvian authorities for providing adequate protection for the march in the park, the organization reminds Latvia that more work is needed in order to ensure that LGBT people can exercise their right to freedom of assembly by marching publicly on the streets of Riga rather than in a closed off park.

International Scrutiny in 2007

Council of Europe's Commissioner for Human Rights' Memorandum to the Latvian government

On 16 May 2007, the Council of Europe's Commissioner for Human Rights issued a Memorandum to the Latvian government on his human rights concerns in the country¹¹. The Commissioner stated that discrimination against LGBT people was apparently becoming usual in Latvia, which was an unacceptable development in any democratic country¹². The Commissioner stated that the homophobic attitudes of some politicians were intolerable, and on the issue of the banned LGBT events, the Commissioner stated that peaceful demonstrations geared to defending the rights of LGBT people should be authorised and that all incitement to hatred and violence must be severely punished. The Commissioner further strongly urged the Latvian authorities to honour their international commitments regarding freedom of expression and assembly, actively combat all forms of intolerance, guarantee the security and safety of LGBT people and ensure the conditions for developing associations representing them.

Concluding Observations by the UN Committee Against Torture

¹¹ Memorandum to the Latvian Government. Assessment of the progress made in implementing the 2003 recommendations of the Council of Europe Commissioner for Human Rights. CommDH(2007)9, 16 May 2007.

¹² Paragraph 87, Memorandum to the Latvian Government. Assessment of the progress made in implementing the 2003 recommendations of the Council of Europe Commissioner for Human Rights. CommDH(2007)9, 16 May 2007.

On 22 November 2007, the UN Committee Against Torture issued its Concluding Observations on Latvia¹³. The Committee expressed its concern at reports of acts of violence and discrimination against LGBT people¹⁴. The Committee recommended that Latvia intensify its efforts to combat discrimination against and ill-treatment of LGBT people.

¹³ Concluding Observations by the UN Committee Against Torture on Latvia, CAT/C/LVA/CO/2, 22 November 2007.

¹⁴ Paragraph 19, Concluding Observations by the UN Committee Against Torture on Latvia, CAT/C/LVA/CO/2, 22 November 2007.

Recommendations

Recommendations to the Latvian and Lithuanian authorities

Amnesty International recommends that:

- The authorities should under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and should ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights.
- Law enforcement agencies should act under all circumstances with due diligence to protect LGBT people against violence from the wider community. The authorities should also make clear that such violence is a criminal offence and will be prosecuted as such.
- Applications for permission to hold LGBT events in public places are not subject to discrimination or adverse bias when considered by the relevant authorities.
- Specific directives and training should be given to law enforcement officials on their duty to protect the human rights of all individuals, regardless of their sexual orientation or gender identity or expression, and on how to identify and investigate homophobic and transphobic crimes.

Recommendations to the Lithuanian authorities

Amnesty International recommends that:

- The Law on the Protection of Minors against Detrimental Effects of Public Information is not amended to include provisions that explicitly ban information about homosexuality aimed at minors.

Recommendations to the European Union institutions

Amnesty International recommends that:

- The European Commission must ensure that EU funded projects are carried out in accordance with their objectives and effectively contribute to fight intolerance and prejudice.
- The EU Commission, the Slovenian EU Presidency, and the upcoming French EU Presidency stress that the right to freedom of assembly includes the right to organise Gay Pride marches and similar events in all EU member states;
- The EU Commission must press EU Member States to adhere to their commitments to combat all forms of discrimination, including on the grounds of sexual orientation. This includes the EU Commission monitoring the implementation of the Employment Directive in law and practice.
- The EU Commission, the Slovenian Presidency, and the upcoming French presidency upgrade the EU anti-discrimination legal framework to ensure that the level of protection against discrimination is the same for all grounds and cover all areas of life.
- The EU takes concrete steps to follow-up the recommendations of the European Parliament on the increase of racist and homophobic violence in Europe and on homophobia in Europe and the study of the EU Fundamental Rights Agency into discrimination of LGBT people in accessing goods and services in the EU.
- The European Parliament continues its work for human rights for LGBT people, including condemning bans on LGBT marches.

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Charter of Fundamental Rights of the European Union (2000/C 364/01).

Art. 9.2 of the Document of the Copenhagen Meeting of the Human Dimension of the CSCE, 29 July 1990 states that "everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards."

Treaty establishing the European Communities, Rome, 25 March 1957.

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