

1102720 [2011] RRTA 714 (18 August 2011)

DECISION RECORD

RRT CASE NUMBER: 1102720

DIAC REFERENCE(S): CLF2010/174879

COUNTRY OF REFERENCE: Lithuania

TRIBUNAL MEMBER: John Cipolla

DATE: 18 August 2011

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Lithuania, arrived in Australia and applied to the Department of Immigration and Citizenship for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicants] December 2010. The delegate decided to refuse to grant the visas [in] February 2011 and notified the applicants of the decisions.
3. The delegate refused the visas on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] March 2011 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decisions are RRT-reviewable decisions under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 (the Regulations) for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include ??.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Regulations.

Definition of 'refugee'

10. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
12. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
15. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
16. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

17. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The primary visa applicant (hereinafter referred to as the applicant) submitted a typed statement in support of his claims for protection. Those claims have been replicated in full below.

My wife and I arrived in Australia to ask for a refugee status.

We were forced to run from Lithuania, because we were persecuted for reason of our different sexual and moral orientation. We were terrorized and condemned, because our sexual orientation contradicted the basic moral values of Lithuanian society. After Lithuania joined Euro Union, some people started to believe that Lithuania became a democratic country. This is not true. Even today homosexuals and those whose sex live style contradict traditional values, et out by Lithuanian government and the church are still being terrorized. Plus, police not only do nothing to protect these individuals from persecution (though by the law they must do it), but sometimes they are initiators of persecution.

Why did we leave Lithuania? First of all I would like to say something about my views, witch relate to relationships between men and women. For me the issue is very complex and I need to clarify something before I proceed with the reason of our persecution. I believe that our world is experiencing a very difficult time today (crisis, wars, criminality, drugs, terrorizm), because a family stoped playng any role in stabilization of human relationships. People aftr coming back from work, instead of relaxing and having a rest, very often wasting the rest of energy by having arguents and unbearable tension. Very rarely family have harmony and full understanding

between each other today. And I think you will agree with the fact that never, in the entire human history there were not so many divorces in the world. I have heard that Lithuania is "proudly" occupy the first place in Europe by numbers of divorces. Just imagine what is hiding behind such statistic? Screaming, stresses, children's crying, depression, diseases, suicides. You will agree that ill and depressed person cannot productively work. Most think that families brake up because family values do not work any more or because people resign from religion. But Lithuania is regarded as a very religious country. For the time being Lithuania government take responsibility for many issues, for example, people's moral orientation. At the moment the Parliament disputes a question of rights of children and factors, which may adversely affect their future. One of inadmissible factors, according to Lithuanian politicians - sexual orientation of their parents (by the way the draft law caused a big disgruntle in the world as the law itself is regarded as human rights violation of Lithuania people). Hence the question is - if there are so many religious people in Lithuania as well as people whose way of life is consistent with the authorities' course - why there are so many families are braking up?

I always believed that men and women are born to be free. Even when countries tried to take their freedom away or make it limited, the humans always will do everything to be free. I am not talking only about rights to freely express our political opinions or attend political or religious meetings, but also about the right to chose freely our sexual orientation and relationships, according to our personalities, desires, life styles and so on. Almost in every family a man has to lie to his wife and vise versa. Why? Because every human being, genetically, has a wish to make love with different people. Relationship with new persons give special filings in sexual live. Anything new in sex produce big quantity of adrenalin. That reduces the stress, unrest, depression and positively influence on human's health and, thus, prevent many deceases. To change sexual partner from time to time is the same natural demand as drink some water or go to toilet. And for me it does not matter who your partner is - women or man. But, for some reasons, sometimes, such natural and normal things bring about very aggressive reaction. In societies where people are forced to comply with traditional moral and sexual values - people are deemed to suffer, because they are deemed to live in atmosphere of permanent lies, concealing their relationships, manically afraid that sooner or later their partners will find out the truth and everything will be destroyed. People are suffocating in cramps of moral values, but they must live like that, because the government, church, society do not give them any other alternative.

Me and my wife believed, that love and sex are different things. We used to live happily. We loved and still love each other. We used to have universal and interesting life. We believed that me and my wife have the right to fulfill natural, given by nature, demands. I am a bisexual. For me relationship with a man as much important as with a women. My wife knew, that once in two weeks, I would not come back at home. Also I know that my wife has been interested in man as well as in women since she was 16. You will ask - why did you decide to create a family? Firstly, I believe that a child must have mother and father (not 2 mothers or 2 fathers). Secondly, everyone, children in particular, must have a choice. Children, who have same gender "parents" do not have a choice or their choice is limited or influenced. As a rule, when they grow up, they will live the same live style as their parents. I am not saying that it is wrong. I want to say that children must have a mother and a father. When children grow, they will make they own choice.

Me and my wife never hid our sexual orientation, values and principles. For most people it was a shock. Some looked at us with understanding. And a few families, factually became our followers. We even created something like a "club". We met

each other often, we discussed a lot of issues related to sexuality, the huge role of the sex in keeping a family together and so on. For some reason, everyone listened to me, and I was regarded as a leader of this "club". My idealism, believes in free society, our "club", our happy life - everything evaporated almost half a year ago.

In the evening, I was attacked by several people near my house. They beat me cruelly as animals, swearing at me and insulting me. I was half unconscious when I came home. My wife provided first aid to me. Later she called the ambulance. She was asked about my condition, and after my wife explained what happened to me, they said they think there was no risk to my life and therefore we can go to hospital by yourself. Next day, when I felt better my wife and I went to police station. I explained what happened, and added that a month ago I already applied to police (because someone rang me and threatened with physical violence). That time police denied to do anything, because they did not consider the phone threats as crime. We explained that a week before the attack, the front door of our apartment unit was set on fire. As to the attack, my wife said that there were two witnesses (they saw those people and at least they could recognize one of them). I recognized one of them too. I did not know his name, but I saw him few times, so I could recognize him. Police promised to find those who made it. But they did nothing. Moreover, I tend to believe that police deliberately did not take any actions to find and punish these persons. For example, what prevented the police to interview witnesses mentioned in our statement? After this incident me and my wife rang few times to the police asking about investigation. Finally we got the answer that there was no any investigation, because no proves of crime were provided (for example there was no certificate from hospital confirming my injuries).

A week later, when we got the answer that police would not investigate our case, my wife was attacked. She was on her way home and in staircase she was attacked. My wife saw two people. We believe that attack was not accidental. Firstly, from time to time we still got threatening phone calls. Secondly, when they were beating her they were insulting her (calling her dirty lesbian). In the evening we went to hospital (main reason was to obtain a record of the attack). In hospital she was observed, but denied hospitalization, because in their opinion "a bleeding nose and upper lip and light brain concussion are not injuries which require stationary treatment". Instead, we were offered to get psychologist help and we agreed with it. We hoped that a physiologist would not only confirm the very fact of the attack, and that I had a depression and so on, but also will help to trigger a criminal investigation. We hoped that it will help to find the persecutors, that they will be punished and we will live peacefully again. We decided to apply to police again. Police promised to sort it out. But again there were no any action from the police. They even did not ask neighbors (some of them saw two unknown men before my wife's attack). There is no word to explain our fillings. And who knows what is worse - feeling of complete insecurity or the possibility of another attack?

Anyway what happen next was even more awful. Everything started from the call of a woman, who introduced herself as a psychologist. She said she was asked to speak with us. We agreed to meet next day at 12 pm. She started asking various questions mostly to my wife (about childhood, stresses, injuries, illness, our close relatives psychological variation and so on). Later we talk about our persecution. We told what happened with us and what we think why it happened. In that way we started to speak about our "not traditional sexual orientation". I tried to explain the point of my view (my explanation was quite similar to what is written in the beginning of this statement). She listened me and often wrote something into her book. After she told us that she would contact us and that she should go already. We have never seen her again. But we met others less likely people.

After a few days we got another call. This time it was a man. He told that he was a "social worker " and asked if we could meet. This man happened to be a psychologist too. He told us that he is working with "problematic" families that have children and the reason he contacted us was `many complains' (he said "signals") from some people.

He said that such complains indicate that we live amoral, anti-social life and that we are definitely in need of professional help. He said that situation needs to be sorted out because we have a child from our relationship. I already had experience which show that many people in Lithuania hate homosexuals. It is known that there is an atmosphere of hatred towards homosexuals in Lithuania and that the authorities do not even try to conceal their negative attitude regarding people of different sex orientation, and by doing that, they in fact become accomplices of persecutors. When we understood the true reasons of that man's visit, my wife told him to go away and not to come back. He replied that we are in need of serious treatment and that he would make certain recommendation about the ways the treatment can be conducted. He added that such family like us should be deprived of the right to raise the child and he will take care of it as well.

One of my wife's friend told her that she may apply to a Lithuanian Human Rights organisation called Ombudsman. I said, if she believed that it would help, she can write that letter by herself, because I was already unable to think at that time. My wife wrote the letter, made copies and sent the original and the copy of that letter, to Ombudsman's Office and to the Children Ombudsmen. As a 'reply' we got a phone call from the police. My wife and I were asked to come to the local police office. We were very relieved, because we hoped that our signal worked and that the police was asked to sort our matter out. However, everything happened to be quite different. We were told, that they got some information, that we had debauches (wild parties) in our apartment on regular basis, and that by law they had to end such anti-social activity. We were told that this conversation is the last warning and that if we continue to brake the law we will be subjected to very cruel measures in accordance with the law. We never ever had any debauches or "wild parties" in our apartment. More of that we did not have any guests, because we had an infant, we also lived in very difficult and frightening atmosphere.

Given what the police said to us, we came to the conclusion that someone or some people hate us, our way of life, our convictions so much that decided to fabricate a case against us. Why? To frighten us to stop spreading such 'ideas'. Who? Those who have government's support and, may be, responsible for implementation of state's policies related to moral values and etc.

The understanding that the police will continue to receive such 'complains' (about the immoral behavior, parties, etc.) and that we can not do anything to prove that we did nothing wrong - resulted in horror and depression. The situation became even worse because I was involved in a road accident. I was knocked by a car on the pedestrian crossing. The impact was not very strong, however, when I was falling down I hurt my back on the road sign. After that I was suffering from headaches and nausea. Sometimes I had to vomit. During next three weeks I lost more than 10 kilograms. I stopped going to work. Seeing what had happened to me - my wife asked me to leave Lithuania. However, nothing mattered for me at that time any more. Depression was growing and I was not interested in anything. The only thing that I was very interested in, however, was a desire to end my own life and by doing that to punish those who were guilty in our persecution. I made the plan and I was thinking about the details during the next few weeks. Before that I wrote a letter - one to my wife, another to newspapers. In that letter I said about beatings, about the fact that the

police left us unprotected, about such barbaric attitude, about the social authorities, about threats relating to our child. I wrote that the only way to prove that I was innocent and to attract public awareness (probably even awareness of global public) to our persecution is suicide.

I was waiting for the right time. When my wife took our child out, I drank some vodka (to be more courageous) and then I consume whole packet of sleeping pills. I was still conscious when my wife returned. She said later on that she left her valet and returned home to get it. When she came back, she saw me lying on the floor in a semi-unconscious state, she also saw empty packet of tablets, half bottle of something and letters. She poured some water in my mouth, put her fingers in my mouth. I started vomiting. She said I nearly drowned in my own vomit, but she turn me up side down and then lowered my head. Then she gave me some coal tablets and called the ambulance. The ambulance arrived in about 30 minutes. By the time I regained consciousness. The doctor examined me and asked what happened to me - my wife did not say that I tried to commit suicide, she said that I could not to sleep during the whole night and I decided to take some sleeping pills, and that I took over the limit. Doctor examined me and said that there is no need to hospitalize me and that my wife did everything correctly.

After that I and my wife talked a lot. However, even though I started taking antidepressants tablets, the depression did not go away but in point of fact it even worsened. I felt like I had a complete apathy. I did not do anything. I was lying on the sofa. To forget about those things and to avoid further harm from persecutors and authorities we decided to change our address and moved to my wife's parents' house (where we lived up until my departure). In about one month before my departure - my wife told me that soon after I tried to commit suicide, she applied for Australian visa and that the visa was granted and that I can go to Australia, where the situation is quite tolerant in relation to sexual minorities. At first I was very indifferent, but gradually the interest to leave started growing up and somehow I started looking at my life in a different angle. I understood that if I change the environment and if I went to live in absolutely different country, where human rights are observed - it is probably the way to recover. During the whole month I have been living in Australia. My moral state has been improved magically. Because, probably, of the climate, so many nice and kind people, but also because I have been living in absolute safety, in a country, where people are respected regardless of their nationality, sexual orientation or religion relieves.

Finally I want to say that my wife and the child could not travel to Australia with me because of lack of money. As soon as she managed to borrow some money she applied for a visa and came to Australia.

22. A delegate of the Department of Immigration refused the visa application in a decision dated [in] February 2011 the reasons for that decision have been replicated below.

Reasons

The applicant claims that he and his wife have separately been physically attacked and have received telephone threats due to their non-traditional lifestyles as bisexuals who are married with a child. The applicant claims that the police did not investigate the physical attack against him, and that they did not consider the phone threats a crime. The applicant claims that a week later, when he and his wife received the information that the police would not investigate the attack against him and the phone threats, his wife was attacked in the staircase on her way home. The applicant claimed that his wife's two attackers insulted her by calling her a *'dirty lesbian'* but

that when they went to the hospital his wife was denied hospitalisation because "*a bleeding nose and upper lip and light brain concussion are not injuries which require stationary treatment*" (CLF2010/174879, folio 40). The applicant said that instead they were offered psychological help which they accepted because they hoped this would confirm the fact of the attack, and that the applicant had depression, and that this would trigger a criminal investigation. The applicant and his wife applied to the police again and again there was no action from the police.

The US State Department reported in March 2011 that in Lithuania:

A unified national police force is responsible for law enforcement and operates under the authority of the Ministry of the Interior. Police officers and other government officials who exceed their official authority are subject to prosecution or punishment.³

In his statement the applicant has described reporting crimes to the police a number of times. This indicates that the protection of the police was available to the applicant, who actively sought it out. After considering the nature of the reported actions, the police then made a determination as to whether there was evidence to prove a crime had been committed, and found that there was insufficient evidence to prove a crime. This does not indicate that the applicant was unable to seek or obtain police protection, but that on these occasions the police made an assessment that no crime had been committed.

The applicant claimed that after being offered psychological help at the hospital, they were contacted by a psychologist who met with them once and who they told about their '*non-traditional sexual orientation*'. The applicant claimed they did not hear back from her but were then contacted by a male social worker who said that he contacted them because of '*many complaints*' from people indicating that they lived an '*amoral, anti-social life*' and that they were '*definitely in need of professional help*'. The applicant claimed that the social worker said that they '*are in need of serious treatment*' and that families such as theirs '*should be deprived of the right to raise the child*'.

I am prepared to accept the applicant and his wife may have been the subject of some physical attacks, that they may have reported these to the police, who may not have pursued these reports. There are a number of reasons the police may have chosen not to pursue these reports, including insufficient evidence of a crime or of the perpetrators.

The applicant claims that he is bisexual as is his wife and that '*many people in Lithuania hate homosexuals*' and that '*It is known that there is an atmosphere of hatred towards homosexuals in Lithuania*' (CLF2010/174879). Country information indicates that '*intolerance towards sexual minorities remains strong in many former communist countries in Eastern Europe*'⁴ and that Lithuania has repeatedly banned gay pride parades.⁵ Amnesty International has reported that '*Municipal authorities in Lithuania issued derogatory statements against LGBT people*'.⁶

Information from the '*World Legal Survey*' conducted by the International Lesbian and Gay Association indicates that homosexuality is not against the law for either men or women in Lithuania. Since gaining its independence on 11 March 1990, the Lithuanian Parliament abolished a Soviet-era law against homosexual activity:

In June 1993 the Lithuanian Parliament abolished Article 122.1 Penal Code. This article (a remnant of the Soviet era), punished consensual male-to-male sex between adults with a penalty of up to three years imprisonment. Article 122.2 Penal Code,

which criminalizes (with a penalty of 3 to 8 years' imprisonment) male-to-male sex involving violence, state of helplessness or dependence of one of the persons involved, and male-to-male sex with minors, with a penalty of 3 to 8 years imprisonment remains in force.

[The above confirmed by Ministry of Justice of the Republic of Lithuania, October 1997, in response to Swedish Foreign Office/RFSL survey].⁸

The age of consent for same-sex males is 18 and for same-sex females is 14.⁹ The Lithuanian Movement for Sexual Equality (LMSE) was officially registered as an organisation on 22 September 1993 and the Lithuanian Gay League is registered as an NGO with the Ministry of Justice.¹⁰ In 2005 the law on Equal Treatment came into force to prohibit discrimination based on sexual orientation:

The Law on Equal Treatment and the Equal Opportunities Ombudsperson

24. The broad provisions established in the Constitution are specified in the Law on Equal Treatment approved on 18 November 2003, entering into force on 1 January 2005. The purpose of the Law is to "ensure the implementation of human rights laid down in the Constitution" and "to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion or beliefs" (art. 1.1). The Law makes explicit reference to Lithuania's human rights obligations laid down in both international and national instruments and spells out the specific responsibilities of State and municipal institutions, educational institutions, employers and consumer service providers.¹¹

These measures indicate that homosexuality is legal in Lithuania and that there are legal provisions in place to ensure that discrimination on the basis of sexual orientation can be addressed through the law.

The applicant however claims that he is not homosexual but is bisexual and is a member of a particular social group consisting of 'bisexual people who are married with children in Lithuania'. I have no other evidence before me than the applicant's claim in this regard.

The applicant claimed that his wife contacted the Ombudsman and that the reply they got was a call from the police where they were told that they had '*debauches (wild parties)*' regularly in their apartment and that they were being warned to stop these as they were against the law. The applicant claimed that:

'Given what the police said to us, we came to the conclusion that someone or some people hate us, our way of life, our convictions so much that decided to fabricate a case against us.'

The applicant has not substantiated the claim that a case had been fabricated against him. Receiving a warning to change behaviour from police does not amount to a criminal charge. While I am prepared to accept that the applicant and his wife may have received a police warning, this does not amount to serious harm as set out in Section 91 R(2) of the *Migration Act 1958*.

I note that there was no suggestion by the applicant that the family had undergone any treatment recommended by the social worker or that there had been any action taken by the authorities to remove their child from them. The applicant has not substantiated a claim that a government social worker decided that it would be in the interests of their child to be removed from the family or had officially notified them

that this may be an outcome of their investigation. The applicant has also not substantiated a claim that this outcome may be the result of discrimination against himself and his wife due to their bisexuality.

I note that the applicant claims that he later was injured in a traffic accident and became so depressed that he attempted suicide. The applicant claimed that others had made complaints about them to the police and that the applicant and his wife felt horrified and depressed when they understood that the police could continue to receive complaints about the applicant and dependants and that they could do nothing to prove their innocence. I do not find that being the subject of complaints to the police constitutes serious harm as directed by Section 91R(2).

The applicant claimed that the police did not provide assistance when he reported to them the attack he sustained. Lack of assistance from the police could have been for a number of reasons, including insufficient evidence to prove a crime had taken place or insufficient information with which to identify the source of the threats. There is no evidence to support the assertion that the police have denied the applicant assistance or protection, or that if they had done so, that the reason is the applicant's bisexuality.

On the basis of country information and the information provided in his written application, I am not satisfied that the applicant has substantiated a claim of well founded fear of persecution based on his membership of a particular social group 'bisexual people who are married with children in Lithuania'. I find that the chance of the applicant experiencing serious harm or mistreatment that would amount to persecution to be remote. I therefore find that his fear of persecution is not well-founded.

Finding

I find that the applicant does not have a genuine fear of harm and that there is not a real chance of persecution occurring. I therefore find that the applicant's fear of persecution, as defined under the Refugees Convention, is not well founded.

Does the applicant come within Article 33(2) of the Refugees Convention, in respect of its express exception to the prohibition on refoulement?

I find that the applicant does not come within Article 33(2) of the Refugees Convention further to its application relative to s91U of the Migration Act.

TRIBUNAL HEARING

23. The Tribunal conducted a hearing [in] July 2011 and the applicant gave evidence along with his wife. Both the applicant and his wife gave evidence to the Tribunal in English without the assistance of an interpreter.
24. The Tribunal asked the applicant for his full name and date of birth. The applicant advised that his name was [name deleted: s,431(2)], and that he was born in Lithuania on [date deleted: s.431(2)].
25. The Tribunal noted that the applicant claimed to have completed high school, and the applicant advised that he did complete 12 years of schooling, finishing high school in [year deleted: s.431(2)].

26. The Tribunal noted that the applicant then attended the university in Lithuania from [years deleted: s.431(2)]. The applicant confirmed that he attended [university deleted: s.431(2)], completing a [degree].
27. The Tribunal asked the applicant whether he was publicly supported as a student by the government, or whether he paid fees as a private student. The applicant stated that in Lithuania if you are a good student you pay small fees and your fees are subsidised by the government, if you are middle of the road student you pay mid-range fees, and if you are a poor student you pay higher fees. The applicant confirmed that students were subsidised by the Lithuanian government.
28. The Tribunal asked the applicant whether he completed any further degrees after he completed his Bachelor degree, and he advised he only completed the Bachelor degree and nothing further.
29. The Tribunal asked the applicant about his employment from 2005 to 2007, when he worked as an Information Technology Specialist. The applicant stated that he worked for an IT company called [company deleted: s.431(2)], and that his role with the company was specialising in IT support, along with hardware and software installation. The applicant stated that the company was located in Vilnius in the main business district.
30. The Tribunal asked the applicant about his employment between 2007 and 2010, during which time he claimed to be self-employed as a Computer Specialist. The applicant stated that he mostly worked from home, and occasionally at customers' homes. The applicant stated that people would call him to attend to IT issues, and that he initially advertised but the business grew through word-of-mouth.
31. The Tribunal noted that the applicant spoke, wrote and read Russian, and he advised that he learnt it at school.
32. The Tribunal noted that the applicant spoke, read and wrote English, and he advised he did, it was self-taught, and that he taught himself English from the age of 16 to 17, and he learnt it from books and the internet.
33. The Tribunal asked the applicant, apart from Australia, whether he had lived in any other English speaking countries, if so, where and for how long. The applicant stated that he had not lived in any other English speaking countries.
34. The Tribunal noted that the applicant spoke, read and wrote Polish, and asked the applicant how he learnt Polish. The applicant stated that his grandmother spoke Polish and he had to learn Polish to communicate with her. The Tribunal asked the applicant whether there was any similarity between Russian and Polish, and he advised that there was not. The Tribunal asked the applicant whether he had ever lived in Poland, and he advised that he had not.
35. The Tribunal noted that the applicant travelled to Australia on a Visitor visa, and noted that the Department, when assessing a Visitor visa application, wants evidence of the incentive of an applicant to return to their home country at the end of a visit. The Tribunal asked what evidence was provided to the Department in order to obtain the Visitor visa. The applicant stated that his wife applied for the Visitor visa to Australia, that she provided information to the Department of Immigration as requested, and that it was his plan to return to Lithuania after his health recuperated in Australia.

36. The Tribunal noted that the applicant indicated in the Form C that formed a part of his Protection visa application that he attended school from [years deleted: s.431(2)], he attended university from [years deleted: s.431(2)], he then worked from 2007 to 2010 in information technology. He lived at two addresses in Lithuania the first from [birth] to September 2010 in Vilnius, Lithuania, then from October/November 2010 at second address in Vilnius, until his departure to Australia in November 2010. The Tribunal asked whether this information and summary was correct. The applicant stated that there was one minor error, namely that he resided at the second address from September 2010 until the time of his departure.
37. The Tribunal asked the applicant whether he prepared the statement supporting his claims for protection himself, and whether the information contained in the statement was true and correct. The applicant advised that he prepared the statement himself, and that all of the information in the statement was true and correct. The applicant stated that he wrote the statement when he was not in a good condition mentally, physically and psychologically. However, the applicant confirmed again that the information in it was true and correct.
38. The Tribunal asked the applicant when he and his wife met for the first time He advised that they met at a lake in 2008, in the summer at a place called Trakai, which is a lake/forest area close to Vilnius.
39. The Tribunal asked the applicant when he and his wife married, and he advised in January 2010, in a civil wedding ceremony. The Tribunal asked who attended the wedding, and the applicant advised both sets of parents attended the wedding, along with his wife's sister and brother-in-law, and his sister and brother-in-law.
40. The Tribunal asked the applicant whether he classified himself as a bisexual. The applicant stated that when he was around [age deleted: s.431(2)] years old, he went to a gay/lesbian club in Vilnius. The applicant was asked what the name of the club was, and to the best of his memory he thought it was the Shocho Club. The applicant advised that a man sitting next to him started chatting and they ended up exchanging telephone numbers. They agreed to meet some other day. The applicant stated that he met the man on another occasion and they stayed in a room together, and when the man started touching him he had no problem with his advances, and the applicant stated that he had thought about man to man sex in the past. The applicant stated that he ended up having sex with this man. The applicant stated that he and this man met each other more often, around once a week or once a fortnight, for sex. The applicant stated that during this time he was also interested in women. The applicant was asked by the Tribunal who his first sexual relationship was with, and he advised it was around the age of 18 with a woman.
41. The Tribunal asked the applicant how long he pursued a relationship with the man that he met in the gay club, and he advised for around six months, the Tribunal asked what year this was, and the applicant stated around 2004/2005.
42. The Tribunal asked the applicant whether he pursued heterosexual sex at this time, and the applicant stated that he had sex with different women, but did not disclose the fact that he was also having sex with men.
43. The Tribunal asked the applicant where he and the man that he met in the gay club would have sex, and he advised at his house, or at the applicant's house when his parents were away. The applicant advised that he had no problems having a sexual relationship with men, and that he learnt about gay sex from his encounters with this man.

44. The Tribunal asked the applicant whether this was the first gay club he had been to, and he advised that he believed that it was the first gay and lesbian club that he had been to.
45. The Tribunal asked whether there were many gay clubs in Vilnius, and the applicant stated that there were at least two that he was aware of, but he had only been to one. The Tribunal asked the applicant whether there were gay saunas or bathhouses in Lithuania, and the applicant stated that he was not aware of this, and that brothels were illegal in Lithuania.
46. The Tribunal asked the applicant whether homosexuality was a crime in Lithuania. The applicant stated that he had a document that he had sourced from the internet which indicated that public displays of homosexuality in Lithuania should be punished by way of a fine.
47. The Tribunal noted country information before it obtained from the Wikipedia website, indicated that homosexuality was decriminalised in Lithuania in 1993. The applicant stated this may have been the case but reiterated the article he had recently sourced indicated that any public displays of homosexuality were vilified in Lithuania. The applicant stated that homosexuality is tolerated in private, but if homosexuals kissed in public they would be fined.
48. The Tribunal asked the applicant whether prior to his marriage with his wife he discussed his bisexuality with his wife. The applicant stated that he and his wife did discuss bisexuality before they were married. Indeed, the applicant stated that he had some close friends that knew about his bisexuality, and they told his wife about his sexuality prior to the marriage. The applicant also stated that his wife had engaged in sexual encounters with females prior to their marriage.
49. The Tribunal asked the applicant whether his marriage was an open marriage. He advised that his marriage was an open marriage. The applicant stated that in Lithuania he had a very peaceful and understanding life, and that his wife was very understanding of his need to obtain sex outside marriage. The applicant stated that he and his wife were understanding of one another's sexual desires. The applicant stated that he only had heterosexual sex with his wife, and that the sex he had outside of marriage was with other men. The applicant advised that his wife had heterosexual sex with him, but pursued lesbian sex outside of the marriage.
50. The Tribunal asked the applicant whether he had sex outside the marriage since he had been in Australia, from November 2010. The applicant stated that he had not. The applicant stated that he had a lot on his mind, namely his unresolved immigration status. The applicant also stated that he had been ruminating about what had happened to him his family and the circumstances that finally pushed him to Australia. The applicant stated that he was not interested in sex in Australia, and had not explored any gay or bisexual clubs in Australia.
51. The Tribunal asked the applicant whether he had a second relationship. The applicant stated that he met a man at a party in Lithuania and they talked about lots of things, and were interested in one another. The applicant stated that he had a relationship with this man for in excess of 12 months, and that they had sex at each other's homes at least once every two weeks.
52. The Tribunal asked the applicant whether he had a third same-sex relationship. The applicant stated that he met his third male partner at a friend's house, at a party. The Tribunal asked the applicant how he connected that this man was gay. The applicant stated that gay men were often not like other regular men. Their body language was different, their self-care was

different, the applicant stated that he detected that this man was gay. He advised that the relationship between he and his third partner lasted about a year, maybe a bit longer. The applicant stated that they met at both his house and his partner's house, sometimes twice a week or sometimes monthly, for sex.

53. The Tribunal asked the applicant whether he had a fourth relationship, and he advised that he met a man at a birthday party when he was with his wife, he advised that he had sex with this man on a number of occasions.
54. The Tribunal asked the applicant about a fifth relationship. The applicant stated that he had a fifth relationship in around January 2010, had sex with this man on two occasions at his house.
55. The Tribunal noted that the applicant in his statement mentioned that he and his wife created something like a club, and asked the applicant about what he meant, and asked the applicant how he and his wife's sexual practices became public knowledge. The applicant stated that he and his wife [Applicant 2] met another bisexual couple at a friend's birthday. The applicant stated that he was talking with this man he met about a number of subjects important to him such as sexual freedom, and the applicant stated that this man looked at him as though he liked him. The applicant stated that he was surprised that this man had a wife.
56. The applicant stated that the two couples met one another but never engaged in group sex, however, the applicant stated that he had a relationship with this man, this was the fourth man that he met for sex on a number of occasions. The applicant stated that his wife had a sexual relationship with this man's wife for a short period. The applicant then advised that he and his wife met another couple, and that the six of these people, who had common ideas about sexual freedoms and bisexuality, talked together, socialised together, went to the cinema, went out for dinner, and talked about lots of subjects. They talked about crime, they talked about terrorism, and the applicant told these people his opinions about needing to change old beliefs and values in the world. All six of them decided that they needed to do something, so they started blogging on a website [Website 1]**Error! Hyperlink reference not valid.** under the name of "[Group A]".
57. The applicant stated that they never had a formal club operating, that it was just six like-minded people that blogged their ideas on this website. The applicant advised because of his IT experience, he moderated the website and when he set-up the website, had to provide details such as his name and email address. The applicant described the website as a Russian Facebook. He advised that there were open discussion sites, and as he was the moderator of the [Group A] website where free relationships were discussed as were family values, families with children and open relationships. In fact, the applicant stated, a lot of subjects were discussed and it was an open group for everyone on the website to join. The applicant stated, however, that a lot of the commentary that they were receiving on the website was critical, and people started to insult the group. The applicant stated that the site opened in February 2010 but it was closed down in June 2010, because of the negative feedback that they were receiving on the site.
58. The Tribunal asked the applicant whether he had problems being the moderator of this discussion forum on [Website 1].**Error! Hyperlink reference not valid.** The applicant stated that he tried to get evidence of this page to support his claims for protection, but after the page was closed down in June 2010, posts from the page were deleted. The applicant is not sure why this happened.

59. The Tribunal asked the applicant about the attack that he experienced near his house in Vilnius. The applicant stated it occurred in the evening in May 2010. The applicant stated that he was returning from the supermarket and he saw a few people on the street, a man called out to him by name, the applicant stated that he did not know him but he recognised him from the local area, as he had seen the man before. The man asked to speak to the applicant and stated, "There are too many gays in this country" He then proceeded to punch the applicant in the nose, knocking the applicant to the ground, at which time another group of men set upon the applicant and began to kick him whilst he was on the ground. The applicant stated there were another two men that attacked him. The applicant stated while this was happening, he heard somebody in a woman's voice scream out "stop this or I will call the police". The applicant stated that the men ran away, and an old man helped him up off the ground and escorted him home.
60. The Tribunal asked the applicant whether he attended a hospital to have his wounds looked at. The applicant stated that when he returned home his wife was in shock and was very stressed. She washed the applicant's face and she called an ambulance, the person that she spoke to from the ambulance asked her a lot of questions about the applicant's injuries and demeanour, they then spoke directly to the applicant. They made an assessment that the applicant was not at risk and that if the applicant wanted further attention, he could make it to the hospital himself.
61. The Tribunal asked the applicant whether he went to the police. The applicant stated that he did attend the police station the next day in [suburb deleted: s.431(2)]. The applicant stated before attending the police station, he wrote a comprehensive statement at home with regard to what happened. The applicant stated that he went with his wife to the police, and that an Inspector came and asked the applicant for his name, address and other details. The applicant stated that he had a visibly swollen nose as a result of the attack, and severe bruising on his left leg and back.
62. The Tribunal asked the applicant what the police did in response. The applicant stated that he provided them with a statement, and the applicant stated that he told the police that he had recently been receiving threatening phone calls. He advised the police that these phone calls had started occurring at the end of April 2010. The applicant also advised that at the end of April 2010, the door of his apartment was set on fire, and that he had reported this to the police at the same police station, but nothing had been followed up.
63. The Tribunal asked the applicant what was being said in the threatening phone calls, and the applicant stated that the phone calls were mainly at night, and the applicant was told by the instigator of the calls that people like him in Lithuania should disappear.
64. The Tribunal asked the applicant how many people were able to make threatening phone calls to his house. The applicant stated that he thinks that they were able to obtain his details from the [Group A] blog, as he had to provide his name and email address as moderator of that site.
65. The Tribunal asked the applicant how many times he received these threatening phone calls, and he advised on two occasions, and then he and his wife decided to disconnect the phone. The applicant stated that firstly he did not want to say anything to his wife about the threatening phone calls because she was pregnant at the time and he did not want to upset her.

66. The Tribunal asked the applicant when his wife was attacked, and he advised the day before his birthday on [date and month deleted: s.431(2)] 2010. The applicant stated that his wife left him at home with their young baby daughter, as she needed to have some respite and wanted to go to a friend's house to relax. The applicant stated that someone had waited in the staircase, and they called her name, and someone slapped her across the head and her head then hit a wall, she was knocked to the ground, then was kicked and insulted, and called a "dirty lesbian". The applicant stated that she had a bleeding nose and lips, and also had a concussion. The Tribunal asked what happened, and the applicant stated that he took his wife to the hospital. The Tribunal asked what happened at the hospital, and the applicant stated that he wanted her fully checked, he wanted them to write a report to prove the assault, he advised that a male doctor checked his wife over and advised that she needed bed rest, because she had suffered a concussion. The doctor also suggested that he and his wife make like to see a Psychologist with regard to the attacks that they had experienced.
67. The Tribunal asked the applicant about his attempted suicide and when this occurred. The applicant stated that he attempted to commit suicide [in] August 2010. The Tribunal asked the applicant why he was pushed to the brink of suicide. The applicant stated because of the beating that he received and the beating that his wife received. The applicant also stated that a social worker attended his home and threatened to remove his daughter on the pre-text that he and his wife were unfit parents and were having wild and unruly parties at home. The Tribunal asked the applicant whether this was the case, and he advised it was not, that he and his wife had a very young child and could not have parties at home. The applicant stated that he and his wife had been to the police on a number of occasions because of threatening phone calls, and because of his beating and his wife's beating. The applicant stated that his wife also contacted the Human Rights Ombudsman with regard to police inaction, and to try to affect a stop to the threats that were being made. The applicant stated that after a week of his wife making the complaints to the Human Rights Ombudsman's office, that they received a phone call from the police. They attended the same police station and spoke to the same Inspector, and were told that there were reports of the applicant and his wife engaging in wild parties in their apartments. The applicant stated that he started shouting at the Inspector that this was ridiculous, and the Inspector responded by saying that if he did not calm down that they would lock him in a cell to calm him down. The applicant stated this was the answer that they received from the Ombudsman report.
68. The Tribunal asked the applicant what he believed would happen to him if he returned to Lithuania and why. The applicant stated that the physical attacks on he and his wife, the burning of the front door of his apartment and the threatening phone calls drove him to attempt suicide. The applicant further stated nothing has changed in Lithuania, "The people are the same, the police are the same, and the government is the same."
69. The Tribunal asked the applicant if he returned to Lithuania whether he intended on pursuing a relationship with both men and women. The applicant stated that this is who he is, this is his life, this is his moral situation, to pursue relationships with men is important to him. The applicant stated that if he went back to Lithuania, he would pursue sex with men as well as women to feel personally satisfied. The applicant stated that he needed to do this in order to be satisfied.
70. The Tribunal, noting that the applicant had been in Australia since November 2010 and having adapted to life in an English speaking country and also noting that the applicant and his wife spoke, read, and wrote English asked the applicant why he could not relocate in Europe perhaps to the United Kingdom or Ireland given that he had the capacity to settle in

any European Union country. The Tribunal noting that the applicant had already been in Australia since November 2010 and had adapted to life in an English speaking country. The Tribunal noted that both the applicant and his wife spoke, read and wrote English, were both educated and asked why they could not relocate to the United Kingdom or Ireland, and that those countries had much more liberal attitudes to homosexuality and bisexuality, and also offered effective State protection. The applicant stated that his wife made arrangements for him to come to Australia as the holder of a Visitor visa in November 2010 because of his poor mental health and the depression that he was suffering as a result of his circumstances in Lithuania. He advised that his wife had done research about Australia, and had heard that it was a very liberal and accepting country where sexuality, both heterosexuality, bisexuality and homosexuality, were tolerated. The applicant stated his wife also believed that the change of environment and getting a long way away from Lithuania would help his mental health.

71. The Tribunal asked the applicant where his baby was born, and he advised in Dublin, Ireland. He advised that his wife went to Ireland in April 2010 because she was heavily pregnant and traumatised by the threatening phone calls that the applicant and she had been receiving, and because she had Lithuanian friends resident in Ireland. The applicant stated that his wife predominantly travelled there for safety reasons. The applicant stated that whilst she was in Ireland that he and his wife communicated via Skype on the computer. He advised that mistakenly one night he told his wife that the front door of their apartment had been burnt and this caused her a lot of stress, and that night her waters broke and she went into premature labour, and the baby was delivered in Ireland at seven and a half months. The applicant stated the baby was born weighing two kilograms and 600 grams, and that after the baby was born she stayed for one week in Ireland, and then returned to Lithuania.
72. The Tribunal took evidence from the applicant's wife. She advised that her name was [name deleted: s.431(2)], and that she was born in Lithuania on [date deleted: s.431(2)].
73. The Tribunal asked the witness when she first met her husband, and she advised in 2008. The Tribunal asked where, and she advised in a lake outside Vilnius in a place called Trakai. The Tribunal asked when the relationship commenced, and she advised in 2008. The Tribunal asked the witness when she was married, and she advised [on a date in] January 2010. The Tribunal asked the witness about the wedding, and she advised that she and her husband were married in a civil wedding ceremony, and both sets of parents attended along with her sister and brother-in-law, and her husband's sister and brother-in-law.
74. The Tribunal asked the witness where her child was born, and she advised in Ireland in the seventh month of pregnancy. She advised that she travelled to Ireland at this time because of the ongoing threatening phone calls that she and her husband were receiving, and because of the threats of persecution. The witness stated that she thought it was dangerous to stay in Lithuania and that as she had a friend in Ireland she could stay with for a few weeks. The Tribunal asked the witness how her child came to be born in Ireland, and she advised that her child was born prematurely on [date deleted: s.431(2)]. The Tribunal asked whether there was any reason for the premature labour, and the witness stated she was under a lot of stress leading up to the birth of her child because of the threatening phone calls, and what had been happening to her and her husband in Lithuania. She advised the day before she went into labour, she and her husband had been speaking on Skype and her husband had told her that the front door of their apartment had been burnt down. The witness stated that she was very stressed and upset as a result of this event, and that her waters broke a few hours after this video-conference, and the child was born premature.

75. The Tribunal asked the applicant whether she lived in Ireland for an extended period, and she advised only three weeks. The Tribunal asked about the medical care that she received in that country, and she advised that it was good, not too bad.
76. The Tribunal asked the witness about her husband's academic background, and she advised that he completed a [degree].
77. The Tribunal asked the witness about her husband's work history, and she advised that prior to him coming to Australia he was self-employed in the information technology industry.
78. The Tribunal asked the witness what other countries she and her husband had lived in prior to their arrival in Australia for any significant period of time, and she advised no other country besides Australia.
79. The Tribunal asked the witness how she and her husband and child had been surviving financially in Australia since their arrival in this country. She advised that her husband was working now, that he got a Work visa in around March or April 2011. She stated that prior to that the family was surviving on savings and money that her parents had provided.
80. The Tribunal asked the witness about her formal qualifications, and she advised that she had a [degree] in Lithuania. The Tribunal asked the witness whether this was like a physical education degree, and she advised it was a degree that [details deleted: s.431(2)].
81. The Tribunal asked the witness about her husband's relationships prior to the marriage. The witness advised that her husband had relationships in the past with both men and women. The witness added that she had relationships with both men and women.
82. The Tribunal asked the witness whether there were gay clubs in Vilnius, and she advised that there were and that she went to them on a couple of times, however, she met lesbian partners at parties, not at gay clubs. The Tribunal asked the witness whether there were many gay clubs in Vilnius, and she advised not too many, and that she was not interested in clubs.
83. The Tribunal asked the witness whether her marital relationship was an open one. The witness advised that she believed that honesty was very important in a relationship. She stated that she and her husband loved and trusted each other implicitly. She advised that their relationship was built on understanding. She advised that in the past she had relationships with women and that she enjoyed these relationships, and that her husband had relationships with men and he enjoyed these relationships. She advised that she and her husband were honest about this facet of their sex lives, and that in Lithuania they were monogamous towards one another in terms of a heterosexual relationship, but pursued homosexual relationships outside the marriage.
84. The Tribunal asked the witness whether she and her husband had engaged in an open relationship since they had been in Australia, and the witness stated that they had not. She advised that the sole purpose for her obtaining a Visitor visa for her husband to come to Australia was because he had been chronically depressed and had attempted suicide in Lithuania in August 2010. She advised that her husband was still very depressed when he came to Australia and that she saw the complete change of environment as a way of getting him better. She advised that her husband was still taking anti-depressant medication, and had been overseen by a medical practitioner in Australia with regard to this. She advised that the medication that her husband was on in Australia had been closely matched to the one he was

taking in Lithuania. She advised because of her husband's mental health issues, that this was a primary focus and concern, and that they did not pursue open relationships because of her husband's volatile health, and the need for her to provide support to her husband.

85. The Tribunal asked the witness when her husband was beaten. She advised that this occurred in May 2010. She advised that one evening her husband had gone to the local shops to buy some groceries. She advised that on his way back some men shouted his name and he was approached and beaten in the face, and as a result sustained a bloody nose. She advised that when her husband was on the ground he was kicked a number of times, and that an old man helped him off the ground and helped him to return home to their apartment. The witness stated that the event was really awful. The Tribunal asked the witness what she did, and she advised that she washed her husband's face, she tried to calm him down, she wanted to take him to the hospital, she called an ambulance who asked her lots of questions about her husband's physical state and determined that he did not need an ambulance, however, stated that if she was worried she should take him to the hospital for assessment. They also spoke to her husband, and determined that he was okay. The Tribunal asked the witness whether the police were involved, and she advised that her husband wrote a statement the next morning which they took to the police station, with regard to the incident, and that they kept ringing the police for information around any possible investigation of this crime. She advised that the last time her husband called, the police advised that there was no investigation because there was no evidence around the crime, other than her husband's injuries.
86. The Tribunal asked the witness when she was beaten. She advised that she was beaten [in] June 2010. The Tribunal asked the witness what happened. She advised that she was walking back from a friend's place and that a person grabbed her in the staircase of her apartment block, they called her by saying "hey lesbian", they hit her in the face around the nose and as a result she hit her head on a wall. The applicant stated that during the beating she was called "dirty lesbian". The witness stated that she was crying, and asked the perpetrators to stop beating her. The witness stated that she walked up the stairs, that she was crying, she could not speak, and that her husband became extremely distressed because of what had happened. She advised that her husband washed her face, and when she calmed down they went to the hospital so that she could be checked. They went to the hospital because they wanted her injuries documented so they could go to the police and tell the police what happened. The witness stated that upon attending the police station, the police told her that they would conduct an investigation, but they did nothing, they just accepted the statement and that was it. The applicant stated that there were witnesses to this crime and the police did not pursue the witnesses.
87. The Tribunal asked the witness whether she did anything because of the police inaction. She advised that a social worker came to her house and threatened to remove the child, accusing the witness and her husband of having wild parties and leading an immoral life. The witness stated that she called a friend about the approach of the social worker and asked where she could get help. The friend advised her to go to the Human Rights Ombudsman in Lithuania, and she wrote two letters to them. The witness stated that they did nothing, she got no formal response, however, a week later after sending the letter to the Ombudsman, they received a telephone call from the police. She advised that she and her husband were heartened by this call, that finally an investigation may be undertaken, but when they went to the police, they were told that there had been more complaints about she and her husband engaging in wild parties and living an immoral life. The witness stated that they refuted this, saying that they

did not have wild parties and were not living an immoral life, and were caring for their young baby at that point in time.

88. The Tribunal asked the witness when her husband attempted suicide. She advised [in] August 2010. She advised that her husband was very depressed at this point of time, and that he drank a large amount of vodka and took sleeping pills, and she found him unconscious. The Tribunal asked whether he was blue in colour, and the witness stated that her husband was very pale. She called an ambulance, she did not tell them that he tried to suicide because she wanted to protect the family, and was concerned that Welfare would take the child away.
89. The Tribunal asked the witness about her husband's website and blogging activities. She advised that he created a blog on a website called [Website 1]**Error! Hyperlink reference not valid.** in February 2010. She advised that this website was a site where you could blog and set-up web pages, and could post your opinions and speak to people in other countries about your views and opinions. She advised that the webpage that her husband established was called "[Group A]" The Tribunal asked the witness what the objectives of the website were, and she advised it was encouraging people to live freely and to communicate that people could have a family but they could also pursue homosexual relationships if they so desired. She advised that she and her husband talked about their open lifestyle on the webpage, and talked about the threatening phone calls and beatings that they had experienced as a result of their lifestyle. She advised that she and her husband also talked about the police inaction in relation to their ill-treatment. She advised that because of ongoing threats, her husband decided to close the webpage down in June 2010.
90. The Tribunal advised the witness and the applicant that it had to make a determination that the applicant had a well-founded fear of persecution for a Convention based reason if he was to return to Lithuania. The Tribunal advised the applicant and the witness that the Tribunal needed to find that the applicant would face that persecution now and in the reasonably foreseeable future, and that there was a real chance of that persecution occurring. The Tribunal stated that based on the evidence at hearing, both the applicant and witness had given a consistent account with regard to their claims. The Tribunal advised that it needed to make a determination that there was no effective State protection available to the applicant in Lithuania, and that an additional consideration for the Tribunal was, given the fact that Lithuania was a member of the European Union, the Tribunal needed to determine whether the applicant and the witness could relocate to another part of Europe, and live their lifestyle without fear of recrimination and with effective State protection against any potential recrimination.
91. The Tribunal asked the witness why she and her husband could not relocate to another part of Europe. The witness stated that it was her decision for her husband to come to Australia. She advised that she was very worried about her husband's depression and mental health issues. She advised that she spoke to a Psychiatrist in Lithuania about her husband's suicide attempt, and the Psychiatrist suggested that they needed to go to a country far away, to enable her husband to get better. The witness stated that she read about Australia on the internet, that Australia was a very liberal country that was tolerant towards homosexuals and bisexuals, and that she believed that it would be a good idea to get a long way away from Europe.
92. The Tribunal asked the witness why she and her husband could not relocate to Ireland, given that she had friends in Ireland, and given that her child had been born there. She advised

because it was close to Lithuania and that there were many Lithuanians living in Ireland, and they wanted to be away from Lithuania and its inhabitants.

93. The Tribunal asked the applicant about the anti-depressants that he was currently taking, and he advised that he had them on his person, and produced a packet of Celepram. He advised that he had been on these anti-depressants in Australia for the last six months and that he was feeling better on medication, and that he had been on anti-depressant medication in Lithuania prior to his departure to Australia. He advised that as a result of the medication that he was taking, he was looking at his life from a different angle. The applicant stated that his mental health was improving and that he was feeling better.
94. The Tribunal asked the applicant why he and his wife could not relocate to another part of Europe, and the applicant stated that he did not want to remain in Europe close to Lithuania, and wanted to be away from Lithuania because of what had transpired in that country.
95. The Tribunal asked the applicant whether there was anything with regard to his fears of persecution that he had not had an opportunity to discuss with the Tribunal at hearing. The applicant stated that it was important to live in a free country where he could be protected, and he did not feel this in Lithuania.
96. The Tribunal once again noted that the applicant and his wife both spoke, read and wrote English, both had professional qualifications, and asked the applicant why he and his wife could not relocate to the United Kingdom. The applicant stated that in November 2010 when he came to Australia, there were phone calls to his parents' house with regard to his activities and his website. The applicant stated that he held a grave fear of ongoing persecution if he returned to Lithuania because of his bisexuality, and the views that had been espoused on his website between February 2010 and the website being closed down in June 2010.
97. The Tribunal asked the applicant whether he wanted any additional time to respond to the issues about effective state protection available to the applicant and his family in the United Kingdom or Ireland. The applicant advised that he would like to make further submissions around these issues and it was agreed that the applicant could have a two week period to do so.
98. The applicant provided a response to the Tribunal dated [in] July 2011 the response is replicated in full below:

During the course of the hearing you said that it would be good if we provided some further information. As far as we understood you were mostly interested in our decision to come to Australia rather to travel to other countries such as UK or Ireland. You said that UK and Ireland are democratic countries, that the rights of sexual minorities are respected there and that we would be provided with effective protection there.

I am totally agree with you. I was and am of the view that any country which are signatories of the UN Convection are obliged to provide refugees with effective protection. That's why we believe there is no difference in that sense between Australia and UK.

I wish you to understand, however, that it was me who decided, in the first place, that [Applicant 1] should go to Australia rather than to a European country. **The reasons are:**

[Applicant 1] had a very acute depression which led to his attempt to commit suicide. The fact that [Applicant 1] tried to end his own life indicates how severe that depression was. I was told that medications and psychological counseling (psychotherapy) would be very effective. However, as [Applicant 1] tried to commit suicide he could be referred to a hospital (a mental clinic). I decided not to seek psychological counseling, because if [Applicant 1] was admitted in a mental clinic the fact could be regarded as another evidence of his (our) inability to raise our child (we would be regarded not only as homosexuals who had "wild parties", destroyed "moral values", are threats to a child's well-being, etc. but also as mentally ill persons).

I decided to go another way. I was aware that a number of antidepressant medications were available to treat depression. I was also aware that if I managed to look after him properly, to arouse his interest in life by talking about our child, etc. he would recover. I did my best to look after [Applicant 1], however, his health had not improved. He was indifferent to almost everything. He could be lying on the sofa for 10 hours staring at the ceiling without eating or drinking.

Then I came up with an idea to change the country, the atmosphere of hatred, the source of all our "problems". For me the main issue was not only "where to go" but rather "where he would survive".

The essence of what I am trying to say is that for [Applicant 1] it did not really matter whether the country was safe in terms of security or whether he would be provided with effective protection (Remember, he did not care about his life at all. He tried to commit suicide). I choose Australia because I sincerely believed that in Australia his mental state would improve.

First of all I heard that Australians were regarded among the kindest, most tolerant people in the world. Furthermore I found in the internet that Australians are the most tolerant in migrants, ethnic minorities and gays and lesbians (after Canadians). We heard about Sydney Gay & Lesbian Mardi Gras, which is considered to be one of the most prominent gays and lesbians parade in the world.

As you understand I had to learn a lot about combating severe depression, I was aware that the most effective way was to totally change environment (in which the depression was caused). I purposely choose Australia not only because of the above mentioned reasons but also due to a season factor. [Applicant 1] was supposed to leave Lithuania in October-November. It is known that spring effects on mental health extremely well. Spring is a time of renewal, new beginnings, a 'fresh start'. Spring has a wonderful effect on human's mental health. I believe that was the main reason why [Applicant 1]'s mental state improved so dramatically here in Australia.

Autumn, however, has a very negative effect. What would happen if [Applicant 1], as you suggested, traveled to UK or Ireland in November? Would his mental state improve there? Given the severity of his depression I would say that his mental state would even worsen.

Furthermore, even though gays and lesbians are entitled to get marry in some EU countries, the general attitude to homosexuals in many EU countries remains quite bad.

I have read the report called "**Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity**" published in 2010. This report reveals certain important trends in relation to the rights of LGBT persons across the EU. There were some worrying developments in legislation and

practices have been noted. On many issues there remains a lack of clarity and uniformity to the detriment of LGBT rights.

I would also like to refer to article called "**Homophobia damaging lives across Europe**". According to the document "Homophobia is damaging people's health and careers across Europe and the problem may be worse than reported because victims are scared to draw attention to themselves for fear of a backlash, an EU study said".

Before coming to Australia I visited a number of forums and read many "opinions" about incidents of homophobia and hate crimes against homosexuals in Europe. According, for example, to "**Ask**" (**Is Europe really that much less homophobic than America?**), *the UK and France have had rising incidents of hate crimes against homosexuals, which probably stems from the fact that these two countries have rising socio-economic problems.*

Finally I wish to mention the report "**Homophobic and transphobic violence must be stopped**" written by Thomas Hammarberg, Council of Europe Commissioner for Human Rights in July 2011. Mr. Hammarberg said that peaceful Pride demonstration in Croatia, was brutally attacked by thousands of hooligans. He said that this was not the first time a demonstration against homophobia and transphobia has suffered assaults and threats from extremists. He said in Lithuania, in 2010, the authorities had to mobilise a large police contingent to shield the Baltic Pride March from violent attackers.

Mr. Hammarberg said: "the continued need for massive police protection however is very negative. It is high time for European politicians to seriously tackle the phenomena of homophobia and transphobia, and their root causes. The first step is to recognise that the problem is serious and that systematic action is needed to promote awareness at all levels of society. Then there is an urgent need to counter all tendencies of discrimination against this group of people - also in official human rights and equality policies".

The inference I wish you to draw from the mentioned above information is this:

I am not saying that gays and lesbians are legally persecuted in EU countries. I am not saying that police in most EU countries will be unable to protect us or provide effective protection from persecutors. All I am trying to say - my husband and I suffered persecution from the hands of some Lithuanians who hated our way of life, our opinions regarding family values and so on. We feared that we could lose our child because "our way of life" apparently contradicted the "*Law on the Protection of Minors*". I believe that our child was used as an excuse to limit our rights as well as the right of LGBT people in Lithuania. The threat to deprive us of our child was the last "straw to break the camel's back". My husband deepened himself in such a severe depression which nearly cost his life. Therefore I ask you - before making any decision please take into account my husband's mental state. Namely due to his severe illness a decision to travel to Australia was born. My husband's revival did not depend on effective protection but on a degree of people's tolerance, climate, season and distance from a country we had been suffering.

According to "List of countries by suicide rate" (data from the World Health Organization) Lithuania's position is No. 1.

(http://en.wikipedia.org/wiki/List_of_countries_by_suicide_rate)

It does not surprise me. Despite of government's efforts towards implementation of "moral family values" people are very indifferent in Lithuania.

COUNTRY INFORMATION

99. In the March 2007 article "The Social Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania" commissioned by the Danish Institute for Social Research the following findings were made.

Persons

[1]. Until recently, the LGBT community and organisations were invisible in public life in Lithuania. The year 2007 was a turning point, with attempts to ban public LGBT events accumulating considerable media attention.

[2]. The Lithuanian Law on Equal Treatment from 2005 covers discrimination on the ground of sexual orientation not only on the labour market, but also in access to goods and services and education. The *Equal Opportunities Ombudsperson* also covers discrimination on grounds of sexual orientation. But still, LGBT persons do not have access to several rights, including partnerships and adoption, and it has proven difficult to obtain permission for LGBT activities in public.

[3]. Existing research on LGBT issues is limited, but the latest surveys show that although attitudes toward homosexuals have moved in a positive direction in recent years, about half the population regards homosexuality as an illness. Qualitative research indicates that most LGBT persons in Lithuania do not disclose their sexual orientation at work. However, those who are open say they often experience verbal violence and ridicule. Problems regarding access to goods and services have also been identified.

B. The Collection of Data

[4]. The material for this report has been collected from four sources:

- A legal country report carried out for this study by Edita Ziobiene, director of the *Lithuanian Centre for Human Rights*¹
- A sociological country report carried out for this study reviewing available data on the situation concerning homophobia and discrimination on grounds of sexual orientation by Dr. Arturas Tereskinas, associate professor of sociology, Vytautas Magnus University.²
- Data collected through an online questionnaire sent out to stakeholders in Lithuania.

¹ E. Ziobiene (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania* FRALEX.

² A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

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- Data collected through interviews held in Lithuania with *The Lithuanian Gay League (LGL)*, *The Ministry of Social Affairs* and *The Office of the Equal Opportunities Ombudsperson*.

[5]. The sociological researchers stated the following: 'More comprehensive research on LGBT persons in Lithuania was started only in 2006. Previously there were only very few articles on the issue. The field of gay and lesbian studies and queer studies remain under-researched. Very few scholars work in this field.'³

C. Key Findings

C.1. Attitudes Toward LGBT persons

[6]. The latest surveys on attitudes toward homosexuality in Lithuania demonstrate development toward a more accepting society, particularly in the acknowledgment of human rights for LGBT persons.⁴ Sixty-five per cent of Lithuanians agreed that homosexuals should have same opportunities in the labour market as heterosexuals, and 42 per cent agreed that the law should defend homosexuals from workplace discrimination. Prevailing attitudes, however, remain homophobic. Forty-seven per cent of the Lithuanian population thought that homosexuality is an illness and that homosexuals should be treated medically. Sixty-two per cent would not like to belong to any organization with homosexual members.

[7]. Further surveys examining acceptance and attitudes toward homosexuality were carried out on a European level in 2008 and 2006.

[8]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Lithuania was 6.1, with an EU average of 7.9. Romania was the lowest with 4.8.⁵

[9]. In the 2006 *Eurobarometer*, attitudes toward same-sex marriage were examined in every Member State. Forty-two per cent of EU citizens agreed that such marriages should be allowed throughout Europe; the figure was 17 per cent in Lithuania (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Lithuania. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; in
³ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.
⁴ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.
⁵ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.
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Lithuania the figure was 12 per cent (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).⁶

C.2. Criminal Law - Hate Crime

[10]. Article 170 of the Criminal Code prohibits incitement of hate against certain groups: 'A person who, by making public statements orally, in writing or by using the public media, ridicules, expresses contempt of, urges hatred toward or encourages discrimination against a group of residents or against a specific person, on account of his or her sex, *sexual orientation*, race, nationality, language, ethnicity, social status,

faith, religion or beliefs, shall be punished with (a) a fine, (b) detention or (c) imprisonment for up to 3 years'⁷ [emphasis added] [11]. The Law on the Provision of Information to the Public prohibits the publishing of information which instigates war, hatred or scorn; instigates discrimination, violence, harsh treatment of a group of people or a person belonging to it on the basis of gender, *sexual orientation*, race, nationality, language, origins, social status, religion, beliefs or standpoints (Article 19).⁸

[12]. Statistics on hate crime are poor, partly due to the fact that motivation (homophobic or any other) is not included in the pre-trial statistical cards used by the police.⁹ Thus, homophobia is invisible in crime statistics.

[13]. Homophobic motivation is not considered an aggravating circumstance by the Criminal Code of the Republic of Lithuania.¹⁰ Thus, the legal system does not take it into account.

[14]. At least one case of violence against persons based on sexual orientation¹¹ was publicised by the media.¹² And, following investigations by the Ombudsperson, a case has been brought to trial against websites inciting hatred of LGBT persons. There are no official statistics on the matter, however.

⁶ Eurobarometer 66 (2006), available at:

http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

⁷ Lithuania / Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo ir isigaliojimo istatymas. Baudžiamasis Kodeksas. Official Publication Valstybės Žinios, 2000, Nr. 89-2741. Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=314141 (2008.02.14)

⁸ Lithuania / Lietuvos Respublikos Visuomenės informavimo pakeitimo istatymas. Official Publication Valstybės Žinios, 2006, Nr. 82-3254. Available in English at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=286382 (2008.02.14).

⁹ Nusikalstamumo prevencijos Lietuvoje centras, Ikitiesminio tyrimo statistinės kortelės, Available in Lithuanian at <http://www.nplc.lt/stat/kort/kort.htm> (2008.02.14).

¹⁰ Article 60 of the Criminal Code of the Republic of Lithuania.

¹¹ The case is explained in more detail under section 'Asylum and subsidiary protection' of this report.

¹² N/A, 'Spaudos apžvalga: cec_nai pab_g_liu centre muša politinio prieglobscio norinti g_ju', in ZEBRA, Available in Lithuanian at <http://www.zebra.lt/naujienos/politika/108444> (2008.02.14)

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[15]. Although the legal norms of the Penal Code are in place, their practical implementation is difficult to assess. Some data can be extracted from two studies carried out in 2002 and 2006. A small survey of LGBT persons conducted by the *Lithuanian Gay League* (LGL) in 2002 demonstrated that one in four respondents (27 per cent) was a victim of at least one hate crime due to sexual orientation.¹³ Qualitative research (42 interviews with LGBT persons) carried out within the framework of the EQUAL project 'Open and Safe at Work' revealed that some LGBT persons encountered hate speech in their everyday lives. In most cases, they did not receive adequate support from judicial authorities.

C.3. Freedom of Assembly

[16]. Until recently, the LGBT community and organisations were invisible in the public sphere in Lithuania. However, 2007 was a turning point in this respect.

[17]. The first attempt to organise a public LGBT event took place in May 2007. The Vilnius municipal administration refused to issue permission, stating that due to 'objective information' received from the police, there was a great possibility of violent protests and demonstrations, and that law enforcement institutions were not able to ensure public safety and order for the event. The legality of the municipality's decision was not challenged in court.¹⁴

[18]. The second attempt to organise the same public LGBT event took place in October 2007, but again authorisation was denied. An LGBT organisation submitted a complaint regarding this decision to the court. The court of first instance as well as the court of second instance rejected the complaint.¹⁵

[19]. However, the interpretation of certain provisions of the Law on Assemblies by the municipality and approval by both courts raised concerns whether public LGBT events could be successfully held in the future. The interpretation of the law by courts of the first and second instance raised further concerns regarding whether their decision was in accordance with international human rights standards. An LGBT organisation is planning to challenge the decision of the national courts at international level and submit an application to the European Court of Human Rights.¹⁶

[20]. In May, 2007 the *Lithuanian Gay League* (LGL), while implementing the EQUAL project 'Open and Safe at Work', planned to launch an advertising campaign. Statements like 'A lesbian can work at school',

¹³Lithuanian Gay League (2002) *Sexual Orientation Discrimination in Lithuania, Latvia and Estonia*.

¹⁴E. Ziobiene (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania* FRALEX.

¹⁵E. Ziobiene (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania*, FRALEX.

¹⁶E. Ziobiene (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania* FRALEX.

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'A gay man can work as a police officer' were planned to be placed on trolleybuses in the cities of Vilnius and Kaunas. The initiative failed due to opposition by the municipalities of both cities as well as drivers and the company running the busses. No legal arguments were made in order to justify this opposition. The banning of the campaign was not challenged in court.¹⁷

C.4. Family and Other Social Issues

[21]. According to the law, LGBT persons have no right to marriage, partnership or adoption of children. Lithuanian law states that only heterosexual couples can marry. Without the right to register marriage or partnership, LGBT persons experience discrimination related to social benefits of marriage or partnership. They cannot inherit their partners' property or adopt children. They are also unable to get social benefits reserved for poor families or an insurance disbursement in case of their partners' death.¹⁸

[22]. Furthermore, LGBT partners (either EU citizens or third-country nationals) cannot benefit from freedom of movement or the residence of their partner in Lithuania, even if they are married or under a registered partnership in another Member State. There have not been

any cases of LGBT persons seeking to obtain residence in Lithuania or benefit from the freedom of movement in any form.¹⁹

[23]. There is very little discussion about same-sex marriage in Lithuania. In the 2006 representative survey 'Discrimination Against Various Social Groups in Lithuania', 67 per cent of Lithuanians were opposed to same-sex marriage (21 per cent of respondents were undecided and only 12 per cent were in favour). Similarly, 70 per cent of Lithuanian respondents were against LGBT adoption (18 per cent were undecided and 12 per cent were in favour).²⁰

[24]. The treatment of LGBT persons within families is another important issue. Research demonstrates that a large proportion of LGBT persons hide their sexual orientation from their parents and other family members. According to a 2007 online survey of 468 LGBT persons, 47 per cent reported that none of their family members knew about their sexuality.²¹

¹⁹ Field trip meeting with *Lithuanian Gay League and the Equal Opportunities Ombudsperson*, (Lithuania 13 March and 14 March 2008).

¹⁸ J. Samuolyt_ (2007) 'LGBT teisiu apsauga ir igyvendinimas' [Protection and Implementation of LGBT People's Rights], in Zdanevicius, Arnas, ed., *Nematomi pilieciai: apie homofobija ir homoseksualių žmonių diskriminacija Lietuvoje* [Invisible Citizens: About Homophobia and Discrimination Against Homosexual People in Lithuania]. Kaunas: VDU.

¹⁹ E. Ziobiene (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania* FRALEX.

²⁰ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

²¹ A. Zdanevicius ed. (2007) *Nematomi pilieciai: apie homofobija ir homoseksualių žmonių diskriminacija Lietuvoje* [Invisible Citizens: About Homophobia and Discrimination against Homosexual People in Lithuania], Kunas: VDU.

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C.5. The Labour Market

[25]. The Law on Equal Treatment, the most important legal act implementing directive 2000/78/EC (Employment Framework Directive) in national legislation, failed to transpose the requirements of the directive in a number of areas:²²

- The definition of discrimination narrows the scope of equal treatment so that assumed or associated discrimination on the ground of sexual orientation is not covered;
- The prohibition of victimization does not correspond to the requirements set by the Employment Directive prohibiting not only discrimination against employees who directly file complaints, but all other employees;
- The criteria defining which organisations could engage in judicial or administrative procedures by having a legitimate interest are not set. Thus, legal representation of discrimination victims by associations is impossible;
- Formally, individuals cannot take advantage of the shift of the burden of proof in cases of discrimination on the ground of sexual orientation in courts.

[26]. Special judicial, administrative or conciliation procedures for cases of discrimination are not embodied in the Code of Civil Procedure or other procedural laws. Thus, in civil or administrative cases victims of discrimination must rely on general procedures, which can be difficult to apply.

[27]. Though the Employment Framework Directive prohibits

discrimination only in the field of employment, protection against discrimination on all grounds (including sexual orientation) in the Law on Equal Treatment is extended to the scope covered by the Race Directive (2000/43/EC), with the exception of social advantages and social protection. Thus, persons are protected against discrimination on the ground of sexual orientation in the fields of access to goods and services and education.

[28]. The government is aware of improper implementation of the Employment framework directive 2000/78/EC and has made efforts to change the current situation. An amendment of the Law on Equal Treatment was proposed to the Parliament two times in 2007, but the Parliament has not yet approved it.²³

²² The section on The Labour Market is based on: E. Ziobiene (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania*, , FRALEX.

²³ Voting was postponed to the 2008 spring session of the Parliament. Members of the Lithuanian Conservative party (Homeland Union) expressed rather homophobic remarks during this latest sitting and suggested that ways must be found how 'to adapt the EU law to Christian traditions of Lithuania'. Stenograph of the Parliament sitting 9

[29]. The latest draft amendment of the Law on Equal Treatment eliminates a significant number of the weaknesses in the current implementation of the directive.²⁴ However, it also raises serious concerns for LGBT organisations. The draft amendment proposes the inclusion of a new article to the Law on Equal Treatment which would expand the list of exceptions to the scope of equal treatment and could be disadvantageous to sexual minorities in practice.

[30]. Any citizen can file a complaint with the *Office of Equal Opportunities Ombudsperson* about violations of equal rights. However, no known official complaints have been filed by LGBT persons about discrimination in the labour market. Most complaints regard the area of goods and services.²⁵

[31]. The situation of LGBT persons in the labour market was mapped by the project 'Open and Safe at Work'. The qualitative research shows that most LGBT persons in Lithuania avoid revealing their orientation at work because it involves two risks: Coming out might worsen their relationships with their co-workers and it may encourage them to leave their jobs because of the increased tension and discrimination. Those who are open about their sexual orientation often experience indirect discrimination, including derisive jokes and verbal violence.²⁶

C.6. Education

[32]. There is little data on education or schools in relation to LGBT persons in Lithuania. The conclusion of *LGL* is that LGBT issues are absent or presented negatively in curricula and educational material. Sexuality education is supposed to start in Lithuanian schools from the first grade. However, the information presented to pupils depends on each teacher. A new curriculum for sexuality education has been under consideration at the *Ministry of Education* for several years. According to the 2006 survey 'Discrimination Against Various Social Groups in Lithuania', 69 per cent of Lithuanians object to gays and lesbians working in schools. Thus, in order to stay in schools, LGBT persons are likely to remain closeted.²⁷

C.7. Health Service

[33]. Because of the level of homophobia and the number of closeted LGBT persons in Lithuania, it is difficult to describe their health

of December 18, 2007. The text in Lithuanian can be found at

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=311454

²⁴ Lithuania / Lygiu galimybiu istatymo pakeitimo istatymo projektas XP-23824(2). Available in Lithuanian at

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=310375&p_query=&p_tr2=\(2008.02.14\)](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=310375&p_query=&p_tr2=(2008.02.14))

²⁵ Field trip meeting with *the Equal Opportunities Ombudsperson* (Lithuania, 14 March 2008).

²⁶ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

²⁷ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

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conditions. There have been no official complaints by LGBT persons about their treatment in the healthcare system. It should also be emphasized that there has been no substantial research conducted on health services and LGBT persons in Lithuania.²⁸

[34]. A small, questionnaire-based survey of LGBT persons conducted by *LGL* in 2002 indicated that LGBT persons had experienced

mistreatment and discrimination in healthcare services. Four per cent

of 185 respondents said healthcare workers directed homophobic

statements and actions toward them. In one case, a gynaecologist

refused to treat a lesbian patient because of her 'incompetence in

lesbian issues.' However, the majority of respondents (64 per cent)

concealed their sexual orientation to avoid healthcare professionals'

mistreatment. An additional issue concerns same-sex partners not

being recognised as next of kin.²⁹

[35]. According to the statistics of the Lithuanian AIDS centre, LGBT persons (overwhelmingly gay men) comprise only a small proportion

of HIV-infected persons. In the National AIDS Prevention and

Control Programme of 2003-2008, LGBT persons were not

considered a priority.³⁰

C.8. Religion

[36]. Lithuania is predominantly Catholic. Although the Church is separated from the state, it still has a strong voice in public affairs, and

played an active role in the process of drafting the amendment to the

Law on Equal Treatment (as mentioned in section on the labour

market). High church officials often express negative attitudes and

condemnation for LGBT persons. There are no known cases of

discrimination of LGBT at the level of official Catholic Church

institutions. Most examples of homophobia can be found in the

Church officials' pronouncements on LGBT issues.³¹

C.9. Sports

[37]. There are no openly gay, lesbian, bisexual or transgender athletes. The issue of LGBT persons in sports is invisible, and there have been no

debates in this regard.³²

²⁸ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

²⁹ Lithuanian Gay League (2002) *Sexual Orientation Discrimination in Lithuania, Latvia and Estonia*.

³⁰ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of*

sexual orientation in Lithuania, Sociological Country Report.

³¹ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

³² Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

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C.10. Media

[38]. Several small-scale studies have been conducted on LGBT persons in Lithuanian mass media. They show that, while relatively visible in Lithuanian media, LGBT persons are constantly stereotyped and slandered. The Lithuanian press, TV and Internet often exacerbate homophobic and heterosexist definitions of LGBT persons. Although it cannot be classified as hate speech, much of this discourse can be classified as homophobic or injurious. LGBT persons are categorized negatively and described as moral degenerates.³³

[39]. Internet commentaries have become an area of particular concern. *The Equal Opportunities Ombudsperson* has initiated several investigations and cases due to anti-LGBT Web commentaries.³⁴

[40]. On a positive note, due to the activities of Lithuanian LGBT activists, particularly *LGL* and its projects, balanced and serious coverage of LGBT issues has increased in the last five years.³⁵

C.11. Asylum and Subsidiary Protection

[41]. There is a lack of sufficient information on LGBT asylum seekers and applications on sexual orientation grounds. The Lithuanian immigration authorities have no special guidelines dealing with LGBT asylum seekers or applications regarding persecution on grounds of sexual orientation. The 2004 Law on the Legal Status of Aliens does not include sexual orientation as grounds for a request for asylum. Theoretically, a person could submit a request for asylum due to persecution on the grounds of sexual orientation as belonging to a 'certain social group' (Article 86 of the Law).³⁶

[42]. In 2007 there has been one known case when a Ukrainian citizen applied for asylum because he had been persecuted as a gay man. In the asylum centre he was beaten and received threats from other asylum seekers. He went to *LGL* for help and left Lithuania due to safety concerns.³⁷

C.12. Family Reunification

[43]. LGBT persons do not have access to family reunification. Although marriages registered abroad should be recognised according to the Civil Code of the Republic of Lithuania (Article 1.25 [4]), the migration department of the *Ministry of Interior* considers norms of

³³ A. Tereskinas (2007) 'Not Private Enough?' *Homophobic and Injurious Speech in the Lithuanian Media*, Lithuanian Gay League.

³⁴ Field trip meeting with *the Equal Opportunities Ombudsperson* (Lithuania, 14 March 2008).

³⁵ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

³⁶ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

³⁷ Field trip meeting with *Lithuanian Gay League* (Lithuania 13 March 2008).

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the Civil Code as imperative only and would not recognise same-sex

marriages or partnership registered abroad if a case occurred. According to the data of the migration department, there were no cases of LGBT persons requesting a residence permit for their foreign spouse or partner in Lithuania.³⁸

C.13. Transgender Issues

[44]. The 2000 Civil Code of the Republic of Lithuania for the first time provided for an individual's right to change his/her sex. To realize this right fully a law on sex change was necessary. The project for *the law on sex change in the Republic of Lithuania* was prepared in 2003. However, it has not yet been considered by the Lithuanian Parliament and has not been passed.³⁹

[45]. Due to this legal vacuum, persons cannot change their sex by medical means in Lithuania. National legislation permits the change of documents in case of gender reassignment (including the change of name and sex in the identity documents). However, when a person applies to the competent institutions willing to change his/her documents due to gender reassignment, the gender sensitive personal code remains legally unchangeable.⁴⁰

[46]. The discussion about transgender persons started only recently in Lithuania following transgender persons' complaints against the state for the infringements on their rights. In 2007, a transgender person initiated a case against Lithuania in the European Court of Human Rights. The Court acknowledged that the Lithuanian state violated the right to privacy because the Lithuanian Parliament still had not passed the law on sex change.⁴¹

[47]. Transgender persons remain the least visible and discussed group among LGBT persons.

C.14. Multiple Discrimination

[48]. No research on multiple discrimination has been conducted in Lithuania. The concept of multiple discrimination itself is relatively

³⁸ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

³⁹ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

⁴⁰ E. Ziobiene (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Lithuania*, FRALEX.

⁴¹ A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

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unknown to researchers and policy activists. LGBT ethnic or religious minorities, youth, elders and disabled persons remain unexamined.⁴²

[49]. With regard to LGBT disabled persons, a disability organisation refused to rent office space to *LGL* because they did not want LGBT persons on their premises. That NGOs working with other grounds of discrimination feel that cooperation with LGBT organisations may have a negative impact on their work makes it difficult for *LGL* to work with questions of multiple discrimination.⁴³

D. Good Practice

[50]. Good practices are described in Annex 1.

⁴² A. Tereskinas (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Lithuania*, Sociological Country Report.

⁴³ Field trip meeting with LGL (Lithuania, 13 March 2008)

Information accessed from Wikipedia on 28 July 2011 at (www.en.wikipedia.org/wiki/LGBT_rights_in_the_Republic_of_Ireland) about Lesbian, Gay, Bi-sexual and Transgender rights in Ireland of which the sources have been verified indicates as follows:

Lesbian, gay, bisexual, and transgender (LGBT) persons in **Ireland** may face some legal challenges not experienced by non-LGBT citizens. Both male and female same-sex sexual activity are legal in the state. Government recognition of LGBT rights in **Ireland** has expanded greatly over the past two decades. Homosexuality was decriminalised in 1993, and most forms of discrimination based on sexual orientation is now outlawed. Ireland also forbids incitement to hatred based on sexual orientation.

(No Source added to above since this summary is covered by points and sources below)

A 2008 survey showed that 84% of Irish people support civil marriage or civil partnerships for same-sex couples, with 58% supporting full marriage rights in registry offices. The number who believe same-sex couples should only be allowed to have civil partnerships fell from 33% to 26%.

(SOURCE: 'Increased support for gay marriage – Survey' 2008, Breakingnews.ie website 31 March <http://www.breakingnews.ie/ireland/mhojojeyauid/> - Accessed 12 August 2011)

A 2011 survey conducted by the Independent revealed that: 'More than six out of every 10 voters believe same-sex marriages should be recognised by the State, according to the latest Irish Independent/Millward Brown Lansdowne survey.'

(SOURCE: Hickey, S. 2011, 'More than six in 10 now want same-sex marriage legalised' Independent, 24 February <http://www.independent.ie/national-news/elections/opinion-polls/more-than-six-in-10-now-want-samesex-marriage-legalised-2554026.html> - Accessed 12 August 2011)

Two, new, current poll information reports were located and provided:

IrishTimes.com reported 10 August 2011 that:

'An Irish Times /Behaviour Attitudes poll in September of last year showed just over two-thirds of people, or 67 per cent, believed gay couples should be allowed to marry.'

(SOURCE: Minihan, M. 2011, 'Authority wants to see gay marriage', *IrishTimes.com* website 10 August <http://www.irishtimes.com/newspaper/ireland/2011/0810/1224302180236.html> - Accessed 12 August 2011)

A 6 March 2011 RedC poll referenced by the *Sunday Times* reported 73% were in support of same sex marriage:

‘Ireland’s leading human rights watchdog, the Irish Council for Civil Liberties (ICCL) has welcomed fresh poll evidence of the positive attitudes towards same-sex marriage of the vast majority of Irish people. The RedC poll for yesterday’s (6 March 2011) *Sunday Times* found that 73% of all people surveyed agreed that same-sex couples should be allowed to marry, a figure which rose to 88% for voters aged between 18 and 24; 81% of people in that age group also considered that same-sex couples should be allowed to adopt.’

(SOURCE: ‘Same-Sex Marriage Poll Bolsters Case for Reform says ICCL’ 2011, Irish Council for Civil Liberties website, 7 March <http://www.iccl.ie/news/2011/03/07/same-sex-marriage-poll-bolsters-case-for-reform-says-iccl.html> - Accessed 12 August 2011)

In July 2010, the *Dáil* (House of ‘Representatives) and the *Seanad* passed the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, recognising civil partnerships between same-sex couples. The Bill passed all stages in the *Dáil*, without the need for a vote, and by a margin of 48 votes to 4 in the *Seanad* (Senate). The bill was supported by all parties, although individual politicians have criticised the legislation.

(SOURCE: ‘Civil partnership bill backed by Irish politicians’ 2010, *BBC*, 1 July <http://www.bbc.co.uk/news/10484404> - Accessed 12 August 2011)

Since the Civil Partnership legislation has been fully enacted and implemented from the start of 2011,^[5] gay and lesbian couples have been able to register their relationship before a registrar.^[6]

(Source: ‘Civil unions will have to wait until 2011’, *The Post.ie* website, 11 July <http://www.thepost.ie/news/ireland/civil-unions-will-have-to-wait-until-2011-50437.html> - Accessed 12 August 2011)

The bill was signed by President *Mary McAleese* on 19 July 2010.^[7] The Minister for Justice signed the commencement order for the act on 23 December 2010. The law then came into force on 1 January 2011. Due to the three month waiting period for all civil ceremonies in Ireland it had been expected that the first Civil Partnership ceremonies would take place in April.^[8] However, the legislation does provide a mechanism for exemptions to be sought through the courts, and the first partnership, which was between two men, was registered on 7 February 2011.^[9] The first publicly celebrated Irish civil partnership under the Act took place on 5 April 2011, in Dublin.^[10]

(SOURCE: ‘Partnership laws come into force’ 2011, *Irish Times*, 1 January <http://www.irishtimes.com/newspaper/breaking/2011/0101/breaking25.html> - Accessed 12 August 2011 &

(SOURCE : Ryan, F. 2009, *Civil Partnership: Your Questions Answered – A Comprehensive Analysis of the Civil Partnership Bill*, Gay + Lesbian Equality Network website <http://www.glen.ie/attachments/9113b85a-dc19-49fc-bf68-1248793f123b.PDF> - Accessed 12 August 2011)

(AND THE FOLLOWING SOURCE PROVIDES CHRONOLOGY OF GAY RIGHTS PROGRESSION 2000 – TO 2009: Source: ‘GLEN Campaign for Legal Recognition of Same-sex Relationships and Families: A Chronology of Key Events’ 2009, Gay + Lesbian Equality Network website <http://www.glen.ie/attachments/196e99a3-e278-4e3a-88b8-8260e91766e4.PDF> - Accessed 12 August 2011)

(SOURCE: 'Civil Partnership' 2011, Gay + Lesbian Equality Network website http://glen2010.glen.ie/page.aspx?contentid=672&name=civil_partnership - Accessed 12 August 2011)

Law regarding same-sex sexual activity

Same-sex sexual activity was decriminalised in 1993. This was the result of a campaign by [Senator David Norris](#) and the [Campaign for Homosexual Law Reform](#) which led to a ruling in 1988 that Irish laws prohibiting homosexual activities were in contravention of the [European Convention on Human Rights](#). The Campaign for Homosexual Law Reform was founded in the 1970s to fight for the decriminalisation of homosexuality, its founding members including Senator Norris and current and former [President of Ireland Mary McAleese](#) and [Mary Robinson](#). Prior to 1993 certain laws dating from the nineteenth century rendered homosexual acts illegal. The relevant legislation was the 1861 Offences Against the Person Act, and the 1885 [Criminal Law \(Amendment\) Act](#), both enacted by the [Parliament of the United Kingdom](#) before Irish independence, and having been repealed in England and Wales in 1967, Scotland in 1980 and Northern Ireland in 1982.

In 1983 David Norris took a case to the [Supreme Court](#) seeking to challenge the constitutionality of these laws but was unsuccessful. In its judgement (delivered by a 3–2 majority) the court referred to the "Christian and democratic nature of the Irish State" and argued that criminalisation served public health and the institution of marriage.

In 1988 Norris took a case to the [European Court of Human Rights](#) to argue that Irish law was incompatible with the European Convention on Human Rights. The court, in the case of [Norris v. Ireland](#),^[11] ruled that the criminalisation of homosexuality in the Republic violated Article 8 of the Convention, which guarantees the right to privacy in personal affairs. The [Oireachtas](#) (Irish parliament) decriminalised homosexuality five years later, when the Minister for Justice, [Maire Geoghegan-Quinn](#), in the 1992–1994 [Fianna Fáil—Labour](#) coalition government included decriminalisation with an equal age of consent (an equal age of consent was not required by the ECHR ruling) in a Bill to deal with various sexual offences. None of the parties represented in the Oireachtas opposed decriminalisation. Coincidentally, the task of signing the Bill decriminalising homosexual acts fell to the then President of Ireland, [Mary Robinson](#), an outspoken defender of gay rights who as a barrister and [Senior Counsel](#) had represented Norris in his European Court of Human Rights case.

(SOURCE: The European Court of Human Rights 1988, *Case of Norris v. Ireland*, WorldLII website 26 October <http://www.worldlii.org/eu/cases/ECHR/1988/22.html> - Accessed 12 August 2011)

(SOURCE: Council of Europe 2011, *Discrimination on grounds of sexual orientation and gender identity in Europe*, June, P. 24 http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf - Accessed 12 August 2011)

Marriage

Marriage in Ireland is currently regulated by the Civil Registration Act 2004.^[12] Section 2 restates the Common Law definition of marriage and according to section 2(2)(e) a marriage

would be invalid if both parties to a marriage are of the same sex. Therefore Ireland does not allow [same-sex marriage](#).

(SOURCE: 'Marchers urge gay marriage equality' 2011, *Independent*, 7 August <http://www.independent.ie/breaking-news/national-news/marchers-urge-gay-marriage-equality-2842066.html> - Accessed 12 August 2011)

I have not provided sources for the following two paragraphs as there is a fair amount of history involved. Please let me know if you require sources.

The Irish courts first dealt with the case of same-sex marriage in the case of [Foy v. An t-Ard Chláraitheoir & Ors.](#)^[13] In that case, Dr Foy was a male-to-female transsexual and sought a finding that she was born female but suffered from a congenital disability and claimed that the existing legal regime infringed her constitutional rights to marry a biological man. In support of her claim, she relied on case law from the ECHR. McKechnie J noted that in Ireland it is crucial that parties to a marriage be of the opposite biological sex. The judge noted that Article 12 of the ECHR is equally predicated. Accordingly, he found that there was no sustainable basis for the applicant's submission that the law which prohibited her from marrying a party of the same biological sex as herself, was a violation of her constitutional right to marry. The judge concluded that the right to marry is not absolute and has to be evaluated in the context of several other rights including the rights of society. Therefore, the state is entitled to hold the view which is espoused and evident from its laws.

The Irish Supreme Court returned Foy's case to the High Court in 2005^[14] to consider the issues in light of the Goodwin decision^[15] of the ECHR. McKechnie J was very reproachful of the government in his judgment and asserted that, because there is no express provision in the Civil Registration Act, which was enacted after the Goodwin decision, it must be questioned as to whether the State deliberately refrained from adopting any remedial measures to address the ongoing problems. He emphasised that Ireland is very much isolated within the member states of the Council of Europe with regards to these matters. The judge concluded that by reason of the absence of any provision which would enable the acquired identity of Dr Foy to be legally recognised in this jurisdiction, the state is in breach of its positive obligations under Art 8 of the Convention.

The [Labour Party](#),^[16] the [Green Party](#),^[17] [Sinn Féin](#),^[18] the [Socialist Party](#),^[19] and [Ógra Fianna Fáil](#)^[20] all support the right of marriage for same-sex couples.

The [new Fine Gael-Labour government](#) agreed to establish a Constitutional Convention to consider same-sex marriage among other things.^[21]

Civil partnership

The *Civil Partnerships Bill 2009* was presented to the Cabinet on 24 June 2009 and was published on 26 June 2009.^[22] Although most LGBT advocacy groups cautiously welcomed the Government's legislation, there have been criticisms of the proposals. One major criticism states that the legislation effectively enshrines discrimination in law insofar as separate contractual arrangements with greater privileges will continue to exist for opposite-sex marriages concurrent to lesser arrangements for those wishing to take out Civil Partnerships. In particular, the denial of the right to apply to adopt rights to couples with a Civil Partnership has been cited as particularly discriminatory.^{[23][24]}

(SOURCE: For example of criticism see: 'Marchers urge gay marriage equality' 2011, Herald.ie website 12 August <http://www.herald.ie/breaking-news/national-news/marchers-urge-gay-marriage-equality-2842066.html> - Accessed 12 August 2011)

The bill will represent the culmination of detailed work between the parties of the governing coalition. With the entering into government of the [Green Party](#) with [Fianna Fáil](#) & the [Progressive Democrats](#) in June 2007, civil partnership legislation moved up the political agenda. On 16 July 2007, Taoiseach [Bertie Ahern](#) said that "we will legislate for Civil Partnerships at the earliest possible date in the lifetime of this Government."^[25] Following a cabinet meeting on 30 October 2007, the government said it would introduce legislation by the end of March 2008 and expected the bill to pass within a year of that. As of the end of April, no legislation had been presented by the cabinet, though many speculated that this was due to the resignation of Bertie Ahern as Taoiseach over the same period.

The bill passed all stages in [Dáil Éireann](#) on 1 July 2010 with cross-party support resulting in it passing without a vote,^[26] and passed by a margin of 48 votes to 4 in the [Seanad](#) (Senate) on 9 July.^[27] It will grant gay couples several rights now only granted to married couples, but does not recognise children raised by gay couples as being their children. Irish law only allows gay people to adopt children as individuals while allowing gay couples to jointly foster. It also will grant cohabitants, both gay and straight, who have lived together for at least five years limited rights in an opt-out scheme where a former partner could apply to court on the breakdown of a relationship to make the other former partner provide financial support to him/her. The bill was signed into law by President [Mary McAleese](#) on 19 July. Gay activist [Grace Margaret Coleman](#) welcomes the introduction of the recent bill but stated on [Midlands 103](#) that 'the introduction of the bill should only be viewed as a stepping stone to full gay marriage and the struggle for proper recognition of lesbian women in Ireland is still ongoing.'^[7]

A lot of material in the above two paragraphs is covered in the following two sources. Please let me know if you require more detailed sourcing

(SOURCE: 'Civil Partnership' 2011, Gay + Lesbian Equality Network website http://glen2010.glen.ie/page.aspx?contentid=672&name=civil_partnership - Accessed 12 August 2011 & Ryan, F. 2009, Civil Partnership: Your Questions Answered – A Comprehensive Analysis of the Civil Partnership Bill, Gay + Lesbian Equality Network website <http://glen2010.glen.ie/attachments/03e8c4e1-46da-484e-8800-56ea5427fc6a.PDF> - Accessed 12 August 2011)

Discrimination protections

Discrimination on the basis of sexual orientation is outlawed by the Employment Equality Act, 1998^[28] and the Equal Status Act, 2000.^[29] These laws forbid discrimination in any of the following areas: employment, vocational training, advertising, collective agreements, the provision of goods and services, and other publicly available opportunities.

Section 37 of the Employment Equality Act, does however allow religious organisations, medical institutions or educational institutions an exemption on employment grounds. If such an organisation wants to maintain the religious ethos or prevent the religious ethos from being undermined then it is not illegal under section 37 for them to discriminate. This applies to employment only. Groups such as the Irish Congress of Trade Unions, the Irish National Teachers Organisation and the Irish Labour Party want to abolish section 37.

The Prohibition of Incitement to Hatred Act, 1989^[30] outlaws incitement to hatred based on sexual orientation.

(SOURCE: Council of Europe 2011, *Discrimination on grounds of sexual orientation and gender identity in Europe*, June, pps.. 41 -2, 52
http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf - Accessed 12 August 2011)

Gender identity

See also: *Legal aspects of transsexualism*

Sex changes are not legally recognised by Ireland. On 19 October 2007 Dr. [Lydia Foy](#) won her case in the High Court to get a new birth certificate recording her as having been born female.^[31] The Government indicated in April 2008 that the state was appealing the [Lydia Foy](#) case to the Supreme Court.^[32] The State has since dropped its appeal and has stated it will introduce legislation in the future.^[33]

(SOURCE: Council of Europe 2011, *Discrimination on grounds of sexual orientation and gender identity in Europe*, June, pps.. 109-111
http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf - Accessed 12 August 2011)

Adoption

Irish [adoption](#) law currently only allows for applications to adopt children by married couples or single applicants. It is therefore not possible for a gay couple to jointly apply to adopt, but a single gay person or one partner of a couple may apply. Even though joint-adoption by a gay couple is not possible, a same-sex couple may submit a joint application to foster children as there is a dire need for foster parents.

(SOURCE: 'Ireland' undated, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). Europe website http://www.ilga-europe.org/home/guide/country_by_country/ireland - Accessed 12 August 2011 & Council of Europe 2011, *Discrimination on grounds of sexual orientation and gender identity in Europe*, June, pps.. 97-8 http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf - Accessed 12 August 2011)

Blood donations

At present the [Irish Blood Transfusion Service](#) has placed a ban on donations from males who have ever had anal or oral sex with another male. Groups such as the Union of Students in Ireland have been campaigning for this ban to be repealed.

(SOURCE: 'MSM' 2011, Irish Blood Transfusion Service website http://www.giveblood.ie/Become_a_Donor/Keeping_Blood_Safe/Safety/MSM.html 25 July- Accessed 12 August 2011)

Summary

Main points	Notes
Same-sex sexual activity	✓ Since 1993.

legal	
Equal age of consent	✓ <i>Criminal Law (Sexual Offences) Act 1993</i>
Anti-discrimination in employment	✓ Employment Equality Acts 1998 and 2004.
Anti-discrimination in provision of services	✓ Equal Status Acts 2000 and 2004.
Anti-discrimination in all other areas	✓ <i>Prohibition of Incitement to Hatred Act 1989</i>
Recognition of same-sex couples	✓ Civil partnership since 2011.
Adoption by same-sex couples	✗ Only a single gay person or one partner of a couple may apply.
Fostering by same-sex couples	✓ A same-sex couple may submit a joint application.
Homosexuals allowed in military	✓ Employment Equality Acts 1998 and 2004.
Right to change legal gender	✗ The Irish Government has indicated that it will legislate in this area.
Access to IVF for lesbians	✓ Equal Status Acts 2000 and 2004.
MSMs allowed to donate blood	✗ The IBTS is aware that this policy is offensive, but claims that it protects the blood supply.

(SOURCE: 'Ireland' undated, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). Europe website http://www.ilga-europe.org/home/guide/country_by_country/ireland - Accessed 12 August 2011)

FINDINGS AND REASONS

100. The Tribunal has been provided with the applicant's Lithuanian passport as well as the Lithuanian passports of his wife and child. The Tribunal finds that the applicants are citizens of Lithuania outside their country. The Tribunal in making this decision has taken into account the fact that Lithuania is a member country of the European Union. It is therefore open to the Tribunal to assess the applicants' claims against any other countries of the European Union where the applicants' have a right to reside. Having had regard to independent country information, and with regard to the applicant's individual circumstances and those of his wife and child both secondary visa applicants, their subjective fear and the fact that the applicant and his wife speak, read and write English, and the fact that their child was born in Ireland, the Tribunal has also assessed the applicants' claims against Ireland.
101. The Tribunal undertook research as to whether the applicant, his wife and child all Lithuanian citizens, would have the right to enter, reside and work in Ireland; and if so, how long they could remain in Ireland as residents.
102. The Tribunal notes in this respect that the applicant and his wife and child all hold valid Lithuanian passports and that based on the country information they would have no problems entering the Republic of Ireland.

103. The Tribunal finds on the basis of its research that Ireland is part of the European Union (“member states of the EU”, undated, Europa website www.europa.eu/abc/european_countries/eumembers/index_en.htm - accessed on 26 July 2011). This website indicates that nationals of Lithuania have the right to work without a work permit in Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slavonia, Spain, Sweden, Norway, Iceland and Liechtenstein.
104. In terms of the applicant’s right to enter Ireland as a Lithuanian citizen, the European Union’s Europa website (“Travelling in Europe”, undated, Europa website www.europa.eu/travel/doc/index_en.htm - accessed 26 July 2011) suggests no passports or visas are needed for entry to Ireland by European Union citizens.
105. Reference to the Europa website also indicates that Lithuanian citizens have the right to undertake temporary employment in Ireland.
106. The Europa website also indicates that if a member of a European Union country has lived legally in another European Union country for five years continuously as an employee, a pensioner or a self-employed person, that person has automatic right to acquire permanent residence in that country. Indeed, the Europa website (www.ec.europa.eu/youreurope/citizens/residents/worker-pensioner/conditions/index_en.htm) indicates that continuity of residence is not affected by temporary absences of less than six months a year, longer absences for compulsory military service, one absence of 12 consecutive months for important reasons, such as pregnancy as childbirth, serious illness, work, vocational training or a posting to another country.
107. On the basis of the above country information the Tribunal finds that the applicant and his wife and child as citizens of Lithuania a member country of the European Union have the right to enter and to reside and to work in Ireland on a temporary and a permanent basis.
108. The Tribunal has had regard to Section 36(3) of the Migration Act. The Tribunal finds that the applicant, his wife and child are the holders of a current Lithuanian passport and can access their right to enter and reside and work in Ireland on a temporary and permanent basis.

The Applicants’ Claims

109. The applicant claims that he is a bisexual married man. His wife claims that she is a bisexual married woman. The applicant claims that he has had both heterosexual and homosexual relationships since the age of 19. The applicant’s wife claims that she has also engaged in heterosexual and homosexual relationships. The applicant and his wife hold the view that sexual relationships with both sexes are not immoral or abnormal and have direct mental and physical health benefits. The applicant’s evidence is that the marital relationship that he is currently in is an open relationship this was confirmed by his wife. The applicant advised at hearing that he and his wife are heterosexually monogamous with one another, but that outside the marriage they are free to engage in homosexual encounters.
110. The applicant claims that he and his wife met a number of like-minded people in Lithuania and that the applicant because he is an information technology expert, started blogging on a Russian webpage that he described as having a similar profile to Facebook. The applicant claims that he and his wife and some like-minded friends began blogging about their views of sexual freedoms and the problems with monogamy that the applicant believes contributes to

high separation and divorce rates. The applicant claims that as a result of the blogs, that he and his wife were targeted by conservative and reactionary groups within Vilnius, the capital of Lithuania. The applicant claims that he was attacked because of his sexuality, and that his wife was also attacked because of her sexuality. The applicant claims that he and his wife were visited by State social workers and that strong innuendos were made to the applicant that he and his wife were unfit parents. This led the applicant and his wife to be concerned about the prospective removal of their child who was born in Ireland in [month and year deleted: s.431(2)].

111. The applicant claims that as a consequence of his attack, and the attack upon his wife, that complaints were made by them to the local police force and to a Human Rights Ombudsman in Lithuania and the applicant and his wife claim that no effective State protection was offered them, and that the complaint made to the Human Rights Ombudsman was not followed up. The applicant claims that as a result of the attacks upon himself and his wife, the intervention of State social workers and threats to remove his child, and the inaction of the Lithuanian police and Human Rights Ombudsman, led him to develop a deep depression and the applicant made a suicide attempt in 2010. As a consequence the applicant's wife believed that it was in the applicant's best interest to depart Lithuania to a country a long way from Europe so that the applicant could address his mental health issues. She successfully applied for a Tourist visa for the applicant, and she and the applicant's child later joined the applicant in Australia.
112. The applicant's wife claims that she is a bisexual woman who along with her husband contributed to blogging about sexual freedoms on the internet and was also consequently targeted in Lithuania by conservative and reactionary groups and as noted was the subject of an assault that left her injured and requiring medical attention.
113. Article 1A(2) of the Refugees Convention requires that an applicant establish that they have a well-founded fear of persecution for reasons of their race, religion, nationality, membership of a particular social group or their political opinion.
114. As has been noted the applicant claims that the persecution which he fears is based on one factor alone, namely his membership of a particular social group, that group being bisexual married men.
115. The applicant's wife fears persecution on the basis of her membership of a particular social group, that group being bi-sexual married women.
116. The Tribunal conducted an extensive hearing with the applicant and his wife. The Tribunal finds that the applicant and his wife both gave credible evidence during the review hearing that was in no way embellished. The Tribunal accepts that the applicant is a bisexual married man and that his wife is a bisexual married woman.
117. The Tribunal must determine whether the applicant and his wife's claimed particular social group is an identifiable/tangible one. Applicant A's case is the leading judgment with regard to particular social group. The statements made by Gleeson CJ, Gummow, and Kirby JJ in a joint judgment in applicant S V MIMA summarise the determination of whether a group falls within the Article 1A(2) definition of "particular social group" is as follows:

"First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the

possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in Applicant A, a group that fulfils the first two propositions, but not the third, is merely a “social group” and not a “particular social group”. As this court has repeatedly emphasised, identifying accurately the “particular social group” alleged is vital for the accurate application of the applicable law to the case in hand.”

118. Based on the evidence before it the Tribunal finds that the applicant and his wife are members of a particular social group. Namely that he is a bisexual married man and that his bisexuality is the characteristic or attribute common to all members of the group, and the characteristic distinguishes the group from society at large and that his wife is a bisexual married woman and that her bisexuality is the characteristic or attribute common to all members of the group, and the characteristic distinguishes the group from society at large
119. On the basis of the evidence of the applicant and the evidence of his wife and the country information cited in this decision about the rights of homosexuals in Lithuania and in Ireland, the Tribunal finds that bisexual men and bisexual woman form a particular social group in both countries.
120. The Tribunal finds on the basis of the evidence before it that the applicant’s bisexuality and his wife’s bisexuality places them as members of a particular social group and that his bisexuality is the essential and significant motivation for their persecution feared.
121. The Tribunal found, as noted above, that the applicant and his wife were credible witnesses. The applicant and his wife provided straightforward evidence to the Tribunal which was not embellished in any way. The Tribunal is satisfied that the applicant and his wife both have a subjective fear of the risk of serious harm now and in the future for reasons of their bisexuality if they return to Lithuania.
122. The Tribunal accepts that the applicant and his wife through their blogging activities were targeted by conservative right wing groups in Lithuania for the liberal views that they espoused with regard to sexual freedoms and bisexuality. The Tribunal accepts that the applicant was set upon by a group of young men and attacked resulting in injury. The Tribunal also accepts that the applicant’s wife was attacked in the stairwell of their apartment block resulting in injury. The Tribunal accepts the applicant and his wife’s evidence that both of these matters were reported to the police and that the police follow-up with regard to the attacks was ineffective. The Tribunal further finds that representations made to the Human Rights Ombudsman in Lithuania did not lead to any constructive outcome for the applicant or his wife.
123. The applicant and his wife claim that if they return to Lithuania they will be targeted again by right wing and conservative members of Lithuanian society because of their views publicly espoused in blogs throughout 2010, and further to this that the applicant and his wife have no intention of curtailing their bisexual practices having given evidence to the Tribunal of their intention to be true to themselves and their inner feelings and satisfy their bisexual urges throughout the course of their lives.
124. The Tribunal has considered country information from Lithuania.
125. Recourse to Wikipedia at www.en.wikipedia.org/wiki/LGBT_rights_in_Lithuania indicates that:

“Both male and female same-sex sexual activity are legal in Lithuania, but neither gay marriage nor civil same-sex partnership are available. Although homosexuality was decriminalised in 1993, the historic legacy has resulted in limited rights for gays and lesbians. Protection against discrimination was legislated as part of the criteria for European Union accession and in 2010 the first gay pride parade took place in Vilnius.

Negative attitudes against gay and lesbian men and women remain entrenched. A European Union member poll conducted in 2006 showed Lithuania at 17 per cent support for gay marriage and 12 per cent for rights of adoption. A poll conducted in 2009 showed that only 16 per cent of Lithuanians would approve a gay pride march in the capitol Vilnius and 81.5 per cent of respondents considered homosexuality as a perversion, disease, or paraphilia. Another study, conducted in 2009, showed that 42 per cent of respondents would agree on a same-sex civil partnership law, 12 per cent on a same-sex marriage, and 13 per cent right to adopt.

... Vilnius City Council allowed Lithuania’s gay pride parade, Baltic Pride 2010, to take place on Saturday, 8 May 2010. A court stopped the parade from proceeding shortly before the parade was due to take place after the Attorney General acted. The Attorney General, Raimundas Petrauskas, cited security as the reason for his involvement. President Dalia Grybauskaite voiced her opposition to the court ruling through her spokesman citing the constitutional right to peaceful assembly. The decision was overturned by a higher court just one day before the parade took place. With a heavy police presence, Baltic Pride 2010 took place to much violence from opponents of gay rights.”

126. In an article “Not Private Enough” Homophobic and Injurious Speech in the Lithuanian Media by Arturas Tereskinas in 2008 concluded as a result of the depiction of lesbian gay bisexual and transgender persons in the mass media in Lithuania demonstrated that:

“The Lithuanian press and TV often exacerbate homophobic and heterosexist definitions of LGBT people. Although it cannot be classified as hate speech, it is an immensely homophobic discourse or “injurious” speech. This speech attempts to humiliate LGBT people and to assign a subordinate place to them. Name calling and violence abusive terminology (“capons” and “perverts”) fill the pages of Lithuanian tabloids. LGBT people are categorised negatively and described as morally degenerate. In many cases, the Lithuanian mass media define gay people completely by their “problem” and construct homosexuality to appear morally wrong. Some TV programs make a scandal of the issues of homosexuality, bisexuality and transgenderism. LGBT people are betrayed in sexist, sexualised and sometimes pornographic ways (frequent imagery from erotic movies, gay pride events, etc). LGBT people, and especially gay men, are still strongly associated with sexual promiscuity and deviance. The tendency to ridicule and diminish LGBT persons is still quite obvious in the Lithuanian media. They are placed in the framework of the dominant media discourses of heteronativity and heteronormalcy. The Lithuania media are very slow in validating serious news and reports and LGBT people. Serious representations of LGBT persons are infrequent. The gay events and opinions covered in the newspapers and TV and overwhelmingly trivialised. It can be argued that the media contributes to the oppressive discursive reality of LGBT people.”

127. The same article concludes that:

“The question of public participation and openness remains crucial for Lithuanian LGBT people because of their constant exclusion, silencing and marginalisation. Once and for all, the idea should be implanted in the minds of the ruling elites and

media professionals that sexual orientation is not a matter of private concern. It is an issue of human rights, first of all, LGBT people's right to have a public identity in a variety of public spaces, among them the mass media, without the fear of being stigmatised, repressed, ridiculed and victimised."

128. Reports by BBC News on 8 May 2010 with regard to the gay pride parade in Vilnius noted that:

"Police fired teargas and arrested at least 12 people as opponents of Lithuania's first gay pride parade threw stones and fireworks at marchers.

Hundreds of people took part in the march in the capitol, Vilnius.

Holding rainbow flags and dancing to music, they paraded along the road near the city's Neris River.

The event, originally allowed by the City Council, was banned by a court on security concerns, but on Friday an Appeal's Court overturned the ban.

... hundreds of police officers, some on horses, provided security and kept more than 1,000 demonstrators away from the marchers.

Protestors carried crosses and signs and shouted insults at march participants.

Marchers included many foreigners, diplomats and members of the European Parliament.

One of the organisers, Vytautas Valentinavicius, told the AFP Newsagency: "We have made a decisive step towards greater tolerance."

129. Correspondents say that homosexuality is seen as taboo by many in Lithuania, a majority Roman Catholic country.
130. Lithuania, an EU member since 2004, has repeatedly been criticised by rights groups for widespread intolerance toward sexual minorities."
131. References to the issue of effective State protection are alluded to in the Danish Human Rights study of 2009 which noted "that Statistics on hate crime are poor, partly due to the fact that motivation (homophobic or any other) is not included in the pre-trial statistical cards used by the police. Thus, homophobia is invisible in crime. Homophobic motivation is not considered an aggravating circumstance by the Criminal Code of the Republic of Lithuania. Thus, the legal system does not take it into account. At least one case of violence against persons based on sexual orientation was publicised by the media. And, following investigations by the Ombudsperson, a case has been brought to trial against websites inciting hatred of LGBT persons. There are no official statistics on the matter, however.
132. The Tribunal has considered the country information with regard to Lithuania. The Tribunal accepts that the applicant and his wife have been the subject of attacks and discriminatory practices in Lithuania. The Tribunal accepts the applicant and his wife's evidence that despite the fact that Lithuania offers protection to its citizens which would extend to members of the applicant and his wife's particular social group, namely bisexuals, that the Lithuanian State has been unable and unwilling to provide protection due to the prevalent attitudes that currently exist towards homosexuals, lesbians, bisexuals and transgender persons in Lithuania.

133. Having considered the applicant and his wife's evidence of a strong desire to be truthful to themselves and to live their lives as a bisexual man and bisexual woman, the Tribunal finds that if the applicant was to return to Lithuania that they would be forced to live discretely as a bisexual married couple, and that this discretion would arise out of a well-founded fear of persecution now and in the reasonably foreseeable future because of their membership of a particular social group, namely bisexual men and bisexual women.

CONCLUSIONS WITH RESPECT TO THE REPUBLIC OF IRELAND

134. The Tribunal has undertaken an analysis with respect to lesbian, gay, bisexual and transgender rights in the Republic of Ireland. The country information before the Tribunal indicates that both male and female same-sex relationships are legal in Ireland. The evidence indicates that they have been legal since 1993, and the country research indicates that most forms of discrimination based on sexual orientation are outlawed. The evidence before the Tribunal indicates that Ireland has ratified civil partnership legislation which gives same-sex couples the capacity to marry. The evidence before the Tribunal indicates that discrimination on the basis of sexual orientation is outlawed by the Employment Equality Act 1998 and the Equal Status Act 2000. The evidence before the Tribunal indicates that the application of these laws forbid discrimination in areas of employment, vocational training, advertising, collective agreements, the provision of goods and services, and other publicly available opportunities.
135. The overall situation in the Republic of Ireland with regard to the treatment of lesbians, gays, bisexuals and transgender persons, is substantially better than that experienced in Lithuania, having regard to the country information with reference to that country.
136. The US Department of State Report for 2010 indicates that, "Most cities and many towns celebrated gay pride with parades and festivals. The government endorsed these activities and provided sufficient protection. There were no reports of discrimination against persons with HIV/AIDS." The report also notes that, "The Irish Human Rights Commission (IHRC) was established under statute in 2000 to promote and protect those rights, liberties, and freedoms guaranteed under the Constitution, and under international agreements, treaties and conventions, to which the country is a party for all persons living or present in Ireland."
137. The Tribunal notes that the applicant's wife travelled to Ireland to escape discrimination and harassment in Lithuania, and that she had her child in Ireland in 2010 and received full medical care in this country. The Tribunal finds, on the basis of the country information before it, that the protection offered to the applicant by the Republic of Ireland meets internationally accepted standards for protection of the human rights of its citizens. Indeed, the country information with regard to the Republic of Ireland indicates that it has a far more tolerant attitude to LGBT rights than exists in Lithuania.
138. Having considered all of the evidence before it including relevant country information, and having regard to both the applicants fears of being persecuted for reasons of their membership of a particular social group, namely bisexual married men and bisexual married woman in Lithuania, the Tribunal finds that the applicant and his wife and their child do not have a well-founded fear of persecution now or in the reasonably foreseeable future if they were to relocate to the Republic of Ireland. Further, pursuant to s.36(5), the Tribunal finds the applicant and his wife and their child do not have a well-founded fear of being returned by the Irish authorities to Lithuania where they have a well-founded fear of Convention based persecution. In that regard, the Tribunal notes that the applicant and his wife's right to reside

and work in Ireland on a temporary and permanent basis is based on their Lithuanian citizenship and the laws and policies of the European Union and of the Republic of Ireland.

139. The Tribunal has also considered the fact that as the applicant and his wife are Lithuanian passport holders that relocation within Europe is not limited to the Republic of Ireland and the applicant and his wife and their child have the right to work and reside in a number of countries that are part of the European Union.

CONCLUSIONS

140. The Tribunal is not satisfied that any of the applicants is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

141. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.