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LITHUANIA

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to life of the unborn, the right to education under international law, and Lithuania’s efforts in promoting and defending these rights.

(a) Right to Life

Background

3. Article 19 of the Constitution of Lithuania of 1992 (the Constitution) protects the right to life, stating, “The right to life of individuals shall be protected by law.” In the body of the Constitution there is no clarification about when life begins. Article 18 of the Constitution states that “the rights and freedoms of individuals shall be innate”, that is, inherent, as opposed to acquired. Furthermore, Article 21 of the Constitution clearly states, “(1) The person shall be inviolable. (2) Human dignity shall be protected by law.”
4. The law regulating abortion in Lithuania derives from and is based on the law on abortion of the Soviet Union (USSR). Accordingly, abortion in Lithuania is available on request through the 12th week of pregnancy. Furthermore, following the USSR model, under a 1982 decree, abortion was allowed through the 28th week of pregnancy for health reasons.¹ In accordance with a 1987 order, abortion was allowed through the 28th week of pregnancy on non-medical (broadly defined) grounds:

the death of the husband during pregnancy; imprisonment of the pregnant woman or her husband; deprivation of maternity rights; the number of children exceeds five; divorce during pregnancy; pregnancy following rape; and child disability in the family, or any other reasons if with the approval of the commission.²
5. Order No. 50 of 28 January 1994 of the Ministry of Health (Order No. 50) revised the USSR abortion law, placing restrictions on abortion beyond the 12th week of pregnancy.³ Order No. 50 set additional requirements for teenagers and young girls wishing to have an abortion. Girls below 18 years of age require their parents’

¹ Abortion Legislation in Europe, IPPF, January 2009, 51

² World Abortion Policies, available at:

<http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.shtml>

³ Article 1.1. “A surgical abortion may be performed at the woman’s request up to the 12th week of pregnancy, provided there are no contraindications in the case. A more advanced pregnancy can be terminated only if it is a threat to the woman’s health and life.” Article 1.6. “A written consent from a parent, foster parent, guardian or other current caregiver is required to terminate a pregnancy surgically in a girl younger than 16 years old. For a pregnant woman between 16 and 18, such consent is desirable [but not mandatory].” Factors affecting attitudes towards medical abortion in Lithuania. Available from: https://www.researchgate.net/publication/6740374_Factors_affecting_attitudes_towards_medical_abortion_in_Lithuania

permission to get an abortion, and girls under 14 years of age require parental and court permissions.⁴

6. Over the recent years, Lithuania has made attempts to introduce a ban on abortion. In 2013, the Lithuanian Parliament voted for a bill “Law on Life in Prenatal Phase,” which banned abortion except in cases of rape, incest, and threat to the mother’s health.⁵ The draft bill was then passed to parliamentary committees for further debate. In October 2013, draft bill was rejected by the Lithuanian government.⁶

Right to life in international law

7. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) states, “Every human being has the inherent right to life.” Furthermore, Article 6(5) of the ICCPR states, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and *shall not be carried out on pregnant women.*” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*⁷ of the ICCPR explicitly state, “The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child.*”⁸ Similarly, the Secretary General report of 1955 notes that the intention of the paragraph “was inspired by humanitarian considerations and by *consideration for the interests of the unborn child.*”⁹
8. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states, “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth.*” Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches.
9. Lithuania must continue to focus on protecting the right to life of the unborn and on helping women get through pregnancy and childbirth safely, rather than ending pregnancies. Lithuania must continue to protect women, girls, and children. Considering that over the years Lithuania has expressed its intent to ban abortion, the government should renew its attempt to repeal its outdated USSR-derived law on abortion and ban abortion altogether.

(b) Right to Education

Homeschooling

Background

⁴ Article 2.7 and Par. 2, Article 2.25 of the Civil Code

⁵ Agence France-Presse, 46 voted in favour, 19 voted against and 25 abstained from voting on the draft bill. Available at: <http://www.globalpost.com/dispatch/news/afp/130528/lithuania-takes-first-step-towards-abortion-ban>

⁶ BNS, Lithuanian government is against abortion ban. Available at:

<http://www.lithuaniantribune.com/53577/lithuanian-government-is-against-abortion-ban-201353577/>

⁷ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

⁸ Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. A/3764 § 18.

⁹ Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955. A/2929, Chapter VI, §10.

10. The Law on Education affirms the option to homeschool. Under Article 47(1): “parents (Foster Parents, Guardians) have the right (...) to participate in the selection of a curriculum, the form of education and a school or other education provider for the child (if necessary – to do it on his behalf).” Similarly, in accordance with Article 46(1), “A learner has the right (...), according to his abilities and needs, to study at school or independently and attain an education level and qualification that meets State standards.”
11. Parents wishing to homeschool their children have to apply to a local school for permission. If such permission is granted, the school authorities oversee the homeschooling. In any event, home education has to follow the state curriculum. Children have to be listed with a local school, and they must be examined at the local school once or twice a year.¹⁰

International Law

12. The right of parents to choose education for their children and to educate their children in accordance with their convictions is protected under international law. Article 26(3) of the Universal Declaration of Human Rights states, “Parents have a prior right to choose the kind of education that shall be given to their children.”
13. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the right to alternative forms of education. It reads:

The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

14. Article 18(4) of the ICCPR provides that States must “undertake to have respect for the liberty of parents and [...] to ensure the religious and moral education of their children in conformity with their own convictions.”
15. Article 18(1) of the CRC states that: “Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child.” Article 14(2) requires States to “respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child.”
16. Lithuania successfully allows homeschooling in accordance with its international obligations. Lithuania should review its provisions relating to homeschooling to ensure the established administrative requirements are not burdensome and do not discourage parents from homeschooling their children.

Education on Responsible Sexual Behaviour

Background

17. In 1996, the Government adopted the Family Policy Proposal and Action Plan (FPPAP) incorporating sexuality education proposals. In 2003/2004 the program

¹⁰ HSLDA, Homeschooling in Lithuania, at: <http://www.hslda.org/hs/international/Lithuania/200701300.asp>

was being funded and run by the Swedish International Development Cooperation Agency (SIDCA). Subsequently, in 2005, the Board of General Education introduced guidelines setting up the standards and content of the education on responsible sexual behaviour in Lithuania. The guidelines suggest incorporating training in life and marriage, promoting a holistic understanding of sexuality, advocating for respect for human life from the moment of conception, promoting mature interpersonal relationships, and encouraging young people to take care of their sexual health and to resist social pressure.¹¹

18. This component starts in primary school and is taught until the end of secondary school, however not as a separate school subject. It is taught as an element of other subjects (Biology, Ethics and Physical Culture) and is mainly focused on human anatomy.¹²
19. Lithuania must ensure cooperation with parents and community and religious leaders, and must respect the religious values of the community when approaching the topic. Education on responsible sexual behaviour should focus on healthy relationships and responsible decision-making, with an emphasis on abstinence and fidelity for youth. Young people must be informed about the risks associated with premature sexual activity and multiple concurrent partners.
20. Lithuania needs to clarify what options parents have to supervise the content taught to their children and whether there is an option to opt out in case the content contradicts parent's religious or cultural values.

(c) The Family

Background

21. The people of Lithuania support the natural family unit and values. A study conducted in 2006 showed that 58% of respondents would oppose a same-sex civil partnership law, and 88% would oppose "same-sex marriage."¹³ Furthermore, 87% of the interviewees disagreed with the option to allow same-sex couples to adopt.¹⁴ Another study conducted in 2013 revealed that the support of same-sex unions decreased in favour of traditional marriage. In 2013, same-sex partnership was supported by only 7% of the respondents and "same-sex marriage" was supported by only 5%.¹⁵
22. Lithuania formally recognizes two types of relationships: a marriage between different-sex couples and a registered partnership between different-sex couples.¹⁶ Article 38(3) of the Constitution states, "Marriage shall be entered into upon the free consent of man and woman." This is also confirmed in Article 3.7 of the Civil Code of the Republic of Lithuania (the Civil Code) (Official gazette. 2000, No. 74-2262).

¹¹ A Reference Guide to Policies and Practices, Sexuality Education in Europe, available at: <http://www.sexarchive.info/BIB/SexEd/SexEd.html#3.17>

¹² Convention on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention (Lithuania), CRC/C/83/Add.14, 15 July 2005, 399

¹³ Engle Digryte, Išsilavinimas neišgydo vyrų nuo homofobijos (30 July 2009) available at <http://www.delfi.lt/news/daily/lithuania/issilavinimas-neisgydo-vyru-nuo-homofobijos.d?id=23338407>

¹⁴ Ibid.

¹⁵ BNS, Lietuviai nenori vienos lyties santuokų (31 December 2013), available at: <http://www.delfi.lt/news/daily/lithuania/lietuviai-nenori-vienos-lyties-santuoku.d?id=63641056>

¹⁶ Inga Michailoviene, National Report: Lithuania, April 2015.

23. Currently, civil partnership refers only to heterosexual couples.¹⁷ However, the recognition of same-sex partnership is pending after the introduction of a bill by 9 members from the Social Democratic Party and the Liberal Movement in 2015.¹⁸ It was suggested that the new law would come into force on 1 January 2017, despite the fact that only 15% of Lithuanians supported the bill (while over 79% voted against it).¹⁹ “Same-sex marriage” is banned in Article 3.12 of the Civil Code: “Marriage may be contracted only with a person of the opposite gender.” Only married couples are allowed to adopt in Lithuania. Article 3.210 of the Civil Code provides for allowing a single person to adopt in exceptional cases only.
24. Lithuania faces pressures from LGBTI groups²⁰ to amend their law on recognizing same-sex partnerships and “same-sex marriage”, and to relax the law on adoption. Lithuania’s laws on marriage are in accordance with the religious, cultural, and ethical convictions of its population.²¹
25. Lithuania’s recognition of the family as a union between a man and a woman is supported by international law. Article 16(1) of the Universal Declaration of Human Rights recognizes that “men and women [...] have the right to marry and found a family.” Article 23(2) of the International Covenant on Economic, Social and Cultural Rights recognizes the “right of men and women of marriageable age to marry and to found a family.” Article 17 of the American Convention on Human Rights guarantees the “right of men and women of marriageable age to marry and to raise a family.” Under international law there is no requirement that Lithuania amend its understanding of marriage as a union between a man and a woman.

(d) Recommendations

26. In view of the above, ADF International recommends the following:
 - Honour the national and international obligations to protect the right to life from conception to natural death;
 - Work to end abortion in accordance with international obligations to protect the life of the unborn;
 - At a minimum, maintain the requirements for obtaining an abortion;
 - Review the responsible sexual behaviour program to ensure that it is age-appropriate and remains in accordance with the values of the people;
 - Ensure that students and their parents have an option to opt out of education on sexual behaviour if its content violates the religious and family values of the students or their parents;
 - Continue to affirm the definition of marriage as a union between a man and woman and encourage and support stable marriages.

¹⁷ See Article 3.229 of the Civil Code

¹⁸ DEFFI, 9 MPs register bill on same-sex partnership, available at <http://en.delfi.lt/lithuania/politics/9-mps-register-bill-on-same-sex-partnership.d?id=67530578>

¹⁹ Ibid.

²⁰ E.g. Lithuanian Gay League and the Heartland Alliance for Human Needs & Human Rights.

²¹ (n 15)