

# Algeria: Mass convictions for homosexuality

*Arbitrary arrests; police raid alleged 'gay wedding'.*

HRW (15.10.2020) – <https://bit.ly/3dMEFpl> – An Algerian court on September 3, 2020 sentenced 2 men to prison terms and 42 others to suspended terms after mass arrests at what the police alleged was a “gay wedding,” Human Rights Watch said today. The authorities should void the charges and release them immediately.

On July 24, 2020, police raided a private residence and arrested the 44 – 9 women and 35 men, most of them university students – in el-Kharoub, a district in Constantine Province, northeastern Algeria, after neighbors complained. An Algerian lawyer involved in the case told Human Rights Watch that the court used police reports describing the decorations, flowers, and sweets indicative of a wedding celebration, and the men’s supposedly gay appearance, as evidence of guilt.

“Algerian authorities’ attack on personal freedoms is nothing new, but arresting dozens of students based on their perceived sexual orientation is a flagrant infringement on their basic rights,” said Rasha Younes, lesbian, gay, bisexual, and transgender (LGBT) rights researcher at Human Rights Watch. “They should immediately release from prison the two men who would be free today were it not for Algeria’s regressive anti-homosexuality laws.”

The court convicted the 44 of “same-sex relations,” “public indecency,” and “subjecting others to harm by breaking Covid-19-related quarantine measures.” Two men were sentenced to three years in prison and a fine, and the others to a one-year suspended sentence.

These convictions contradict the right to privacy under international human rights law. This right is also reflected in Algeria’s constitution, which provides for the protection of a person’s “honor” and private life, including the privacy of their home, communication, and correspondence. The convictions of the 44 for “same-sex relations” indicate that Algerian authorities are discriminating against them based on their perceived sexual orientation and gender expression, Human Rights Watch said. The appeal of their convictions has not yet been scheduled.

In Algeria, same-sex relations are punishable under article 338 of the penal code by up to two years in prison. Additionally, article 333 increases the penalty for public indecency to six months to three years in prison and a fine if it involves “acts against nature with a member of the same sex,” whether between men or women.

Arrests for “moral” offenses that involve consensual adult activities in private settings violate international human rights law, including the right to privacy, nondiscrimination, and bodily autonomy protected under the International Covenant on Civil and Political Rights (ICCPR), to which Algeria is a state party. Algeria has ratified the African Charter on Human and People’s Rights (ACHPR), which affirms the rights to nondiscrimination, and has joined the African Court on Human and Peoples’ Rights. However, Algerian law does not extend

antidiscrimination protections to discrimination based on sexual orientation or gender identity.

Additionally, Algeria has a law that prohibits the registration of organizations in Algeria whose aims are deemed inconsistent with "public morals," and that imposes criminal penalties for members of unregistered organizations. This law poses risks to those who want to form or become active in LGBT groups, as well as to human rights organizations that otherwise might support such activities. According to a 2019 analysis by the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), laws regulating nongovernmental organizations in Algeria make it virtually impossible for organizations working on issues of sexual orientation and gender identity to legally register.

In light of the Covid-19 pandemic and the risk of outbreaks in detention sites, Human Rights Watch recommended that governments refrain from custodial arrests for minor offenses that do not involve the infliction or threat of infliction of serious bodily injury or sexual assault or a known likelihood of physical harm. Officials should also release anyone held pretrial, unless they pose a specific and known risk of harm to others that cannot be managed through measures other than detention.

Since March, Algerian authorities have imposed a ban on all social gatherings to slow the spread of Covid-19. Breaking quarantine and social distancing measures to attend a social gathering does not justify arbitrary arrests and prolonged pretrial detention, Human Rights Watch said.

“While people in Algeria continue to demand their basic rights to protest, the authorities are dedicating their time and resources to crack down on students and stockpile discriminatory charges against them,” Younes said. “Instead of policing its citizens’ private lives, the Algerian government should carry out reforms, including decriminalizing same-sex conduct.”

*Photo: An Algerian demonstrator holds the Algerian national flag as he stage a protest against the government in Algiers, Algeria, Friday, Nov.29, 2019. © 2019 AP Photo/Toufik Doudou*

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## **LITHUANIA: ILGA-Europe welcome a landmark ECHR judgment on online hate speech**

*The European Court of Human Rights found Lithuania’s failure to investigate online hateful comments against a gay couple to violate their rights to private and family life, as well as being discriminatory on the ground of sexual orientation.*

By Daniele Paletta

ILGA-Europe (15.01.2020) – <https://bit.ly/2RJew03> – The landmark case of *Beizaras and Levickas v. Lithuania* originated after one of the applicants posted a photograph of him kissing his male partner on his Facebook page, which led to hundreds of online hate comments. Some were about LGBT people in

general, while others personally threatened the couple. The applicants alleged that they had been discriminated on the ground of sexual orientation, on account of the public authorities' refusal to launch a pre-trial investigation into hateful comments left on the first applicant's Facebook page. They also argued that the Lithuanian authorities' refusal to launch a pre-trial investigation had left them without the possibility of legal redress.

In a unanimous judgment, the Court found violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, taken in conjunction with Article 8 (right to respect for private and family life), and Article 13 (right to an effective remedy).

The Court reiterated the authorities' positive obligation under Article 8 to effectively investigate whether the comments regarding the applicants' sexual orientation constituted incitement to hatred and violence. The Court considered that the failure to discharge such obligation was due to the "discriminatory state of mind" of the authorities. Accordingly, the Court held that it constituted violation of Article 14, taken in conjunction with Article 8 of the Convention.

The Court found that the statistics provided inter alia by the third-party interveners and ECRI's report demonstrated a clear lack of willingness by the Lithuanian authorities to prosecute perpetrators. The applicants had been denied an effective domestic remedy in breach of Article 13 of the Convention.

Importantly the Court reaffirmed the right of individuals to openly identify themselves as gay, lesbian or any other sexual minority and the growing general tendency to view relationships between same-sex couples as falling within the concept of “family life”.

The Court’s judgment was informed by a third party intervention submitted jointly by the AIRE Centre (Advice on individual rights in Europe), ILGA-Europe, the International Commission of Jurists (ICJ) and the Human Rights Monitoring Institute (HRMI).

“Today’s judgment is ever more important in establishing State’s positive obligations in tackling hate speech against LGBTI people in Lithuania and across Council of Europe member States amidst the rise in hate in a number of countries,” said Arpi Avetisyan, Senior Litigation Officer, ILGA-Europe.

“The Court was clear that such ‘undisguised calls on attack’ on the persons’ physical and mental integrity require protection by the criminal law and public authorities must apply the law without discrimination. We hope this judgment will be implemented duly and promptly ensuring equality and safety for the LGBTI community in Lithuania.”

Robert Wintemute, Professor of Human Rights Law at King’s College London (UK) and co-representative of the applicants, said: “I am very pleased that the European Court of Human Rights has sent such a strong message to national authorities across Europe that they must take anti-LGBTI hate speech seriously, and investigate complaints, even about a single

hateful comment on Facebook, let alone one that LGBTI persons should be killed.”

Tomas Vytautas Raskevičius, Member of the Vilnius City Council (Lithuania) and co-representative of the applicants, said: “The European Court of Human Rights has concluded today that the Lithuanian authorities systematically fail in effectively responding to homophobic hate speech online. I am positive that this judgment will become a powerful entry point to start conversation with Lithuanian police, prosecutors and judges about the measures that we must take in order to encourage reporting and effectively tackle anti-LGBT crimes.”

According to Vladimir Simonko, Executive Director of Lithuanian Gay League (LGL), this case raises questions of considerable public importance about the nature and scope of the positive obligation of Member States under the European Convention of Human Rights (ECHR) to protect individuals from homophobic hate speech and incitement to violence.

“It is appalling that the Lithuanian Government were challenging the very fact that a civil-society organisation might also have a legitimate interest in the outcome of the applicants’ case, and thus questioning the fundamental role of non-governmental organisations in performing a “public watchdog” function in a pluralist, democratic society,” said Simonko.

According to Livio Zilli, Senior Legal Adviser & UN Representative with the International Commission of Jurists (ICJ): “Among other things, the ICJ welcomes the Court’s

finding in its judgment today that, as a result of their discriminatory attitudes towards the applicants' sexual orientation, the authorities had denied them an effective domestic remedy in connection with their complaints about a breach of the right to private life under the Convention."