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**JOINT SUBMISSION TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE IN THE CASE L. V. LITHUANIA  
(APPLICATION NO. 27527/03)**

**SUMMARY**

- **General measures in *L v Lithuania* have not yet been implemented.**
- **An initiative to establish a legal gender recognition procedure meeting Council of Europe standards has not been implemented.**
- **A name change law has been adopted, which remains discriminatory on grounds of age and marriage status which proves the difficulty of access**

**RECOMMENDATIONS to the Committee of Ministers:**

- **Keep *L v Lithuania* under enhanced supervision**
- **Schedule a debate on the case for March 2023**
- **Urge the government to take pro-active measures (a) introducing a legislative proposal to the Lithuanian parliament and (b) taking pro-active steps to overcome political blockage**

## I. Introduction

This joint submission is based on Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and in response to the updated action plan on the execution of the judgment in the case L. v. Lithuania (Application No. 27527/03, 11 September 2007) submitted by the Agent of the Government of the Republic of Lithuania to the European Court of Human Rights (hereinafter — the Government Agent) on 9 March 2022<sup>1</sup>.

This NGO submission is compiled by TGEU-Transgender Europe (hereinafter – **TGEU**), Lithuanian trans rights and mutual support association “Trans Autonomija” (hereinafter – **Trans Autonomija**), the National LGBTI rights organization LGL (hereinafter – **LGL**), Human Rights Monitoring Institute (hereinafter – **HRMI**), and **ILGA Europe**.

**TGEU**<sup>2</sup> is a non-governmental umbrella organisations with 183 member organisations in 47 countries working for the advancement of the rights and lives of trans people in Europe and Central Asia. **Trans Autonomija**<sup>3</sup> is the first trans-led

<sup>1</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a5d46d](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a5d46d)

<sup>2</sup> [www.tgeu.org](http://www.tgeu.org)

<sup>3</sup> <https://www.facebook.com/transautonomija>



association for the advancement of the human rights of transgender persons and mutual support in Lithuania, founded in December 2021. **National LGBTI rights organization LGL (LGL)**<sup>4</sup> is a non-governmental, non-profit organization in Lithuania which was formally established in 1995. LGL undertakes activities in the fields of LGBTIQ human rights advocacy, awareness raising and capacity building. The **Human Rights Monitoring Institute (HRMI)**<sup>5</sup> is a non-governmental, not-for-profit public advocacy organisation in Lithuania. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working to ensure that rights are real and effective in practice. The **European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)**<sup>6</sup> seeks to defend the human rights of those who face discrimination on grounds of sexual orientation, gender identity or gender expression and sex characteristics, at the European level. Its membership consists of over 600 nongovernmental organizations across the Council of Europe countries and Central Asia.

This document was submitted with the view of discussing the recent developments in terms of the legal status of transgender persons and its practical effects. This is also to suggest that the enhanced supervision by the Committee of Ministers should continue until the administrative LGR procedure is adopted and the rights in question are fully accessible for transgender persons in Lithuania.

## II. Case Summary

The case concerns the State's failure to fulfil its positive obligation to ensure respect for private life on account of the absence of implementing legislation to regulate the conditions and procedure for gender reassignment surgery as a precondition to legal gender recognition. As a result of the absence of such legislation, the applicant was prevented from accomplishing full gender reassignment surgery and changing his gender identification in official documents. He was thus left in a situation of distressing uncertainty with regard to his private life and the recognition of his true identity (violation of Article 8).

## III. Relevant developments and general measures

### *On the development of the national case-law and sub-statutory measures*

Since 2017, legal gender recognition has been possible through a court procedure leading to consistent results. Requirements include the provision of a mental health diagnosis of "transsexualism" gender dysphoria, identity documents, birth certificate and negative decision by the national registry on a request for LGR. No proof of sterilisation or surgical intervention is required. In 2021 eleven individuals obtained LGR through this judicial procedure. Since 2017, LGL assisted in more than 10 LGR cases. While it is positive that this judicial procedure exists, it does not satisfy the criteria of "quick, transparent and accessible" as defined by the ECtHR.<sup>7</sup> Moreover, currently available legal options do not reflect and respond to the needs of the transgender community and do not satisfy CM/Rec (2010) 5<sup>8</sup> principles.

First, married transgender individuals seeking LGR are required to divorce. This interferes with the right to privacy and family life of the transgender person as well as their spouse and (dependent) family members. The ECtHR requires from a member State for a LGR divorce-requirement to be in compliance with the Convention to offer protection for acquired rights of the trans person and their family members.<sup>9</sup> Given the lack of an alternative institution to marriage, e.g. recognition of civil partnerships in Lithuania, these families continue to lose acquired rights.

Second, minors are excluded from the procedure without offering them an alternative if they do not have a statutory permit. This constitutes age-based discrimination. According to Trans Autonomija, several testimonies by transgender minors suggest that they find themselves in an "uncertain" and "hopeless" situation causing psychological distress, as they are unable to access neither legal gender recognition nor medical transition. Some said that they felt forced to wait

<sup>4</sup> [www.lgl.lt/en](http://www.lgl.lt/en) and [www.facebook.com/lgl.lt](https://www.facebook.com/lgl.lt)

<sup>5</sup> <http://hrmi.lt/en/>

<sup>6</sup> <https://www.ilga-europe.org>

<sup>7</sup> *A.P., Garçon and Nicot v Finland*

<sup>8</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a)

<sup>9</sup> *Hämäläinen v Finland*



until they turned 18 to start their transition, while at least one person said that they were getting hormones illegally, without the knowledge of their parents. Among some of the main obstacles people mentioned the lack of information, resources and support, the refusal of psychiatrists to issue a diagnosis for minors, refusal by doctors to help with medical transition, being told that HRT for minors is illegal, etc. However, in 2021, the court granted an application concerning LGR of a minor person, through his statutory representatives. According to this testimony, even with the full parental support, the whole process was “stressful”, long and expensive.<sup>10</sup>

Third, the procedure is not based on the principle of self-determination. This undercuts standards set by the Council of Europe in PACE Resolution 2048(2015), the World Health Organisation, the European Commission, and the UN SOGI Independent Expert<sup>11</sup> requiring procedures to be “quick, transparent and accessible” and based on self-determination. Several reports by transgender individuals in Lithuania suggest that there is also a lack of methodical efficiency and clarity in terms of a diagnostic procedure.<sup>12</sup>

The current procedure perpetuates the stigmatization and pathologization of trans identities due to psychiatric diagnosis as a necessary precondition for LGR. It also fails to correspond with the 11th edition of the International Statistical Classification of Diseases and Related Health Problems (ICD-11),<sup>13</sup> replacing diagnostic categories like ICD-10’s “transsexualism” and “gender identity disorder of children” with “gender incongruence of adolescence and adulthood” and “gender incongruence of childhood”, respectively.

#### *On the legislative measures removing legal gap and its practical effects*

This is to acknowledge that Lithuania recently took several steps toward reducing the existing discrimination against transgender individuals, but the legal gap identified in *L v Lithuania* prescribing a quick, transparent and accessible legal gender recognition procedure has not been closed.

#### **New name change law**

In 2021, the Ministry of Justice introduced a general regulation on names<sup>14</sup>, which transgender individuals can use to facilitate name change procedures. It recognizes trans-specific grounds for a name change, enabling transgender persons to apply for name change via regular civil registry means without the need to resort to court proceedings. Unfortunately, it requires a F64.0 diagnosis (“transsexualism”) issued by a Lithuanian or another EU state’s healthcare institution. This requirement is without a medical value or necessity, as this is an administrative procedure.

The procedure for name change does not affect a person's gender marker or personal identification code. Having a gender marker with one gender and a name signifying another can lead to considerable problems in everyday life, as Lithuanian language is heavily gendered. Since the new name change procedure entered into effect in February 2022,

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<sup>10</sup> Source: Online interviews conducted by Trans Autonomija with applicants, in response to a call for testimonies by Trans Autonomija (in internal online spaces), for this submission.

<sup>11</sup> PACE Resolution 2048(2015) Transgender Discrimination in Europe, WHO/Europe brief – transgender health in the context of ICD-11 <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11>, the EU LGBTI Equality Strategy 2022-2025, Report on Legal Recognition of Gender Identity and Depathologization, Mandate of the UN Independent Expert on protection against violence and discrimination against violence and discrimination based on sexual orientation and gender identity - IE SOGI, 12 July, 2018 <https://www.ohchr.org/en/calls-for-input/reports/2018/report-legal-recognition-gender-identity-and-depathologization>

<sup>12</sup> See also Council of Europe, NATIONAL REPORT LEGAL GENDER RECOGNITION IN LITHUANIA, January 2022 (Annex)

<sup>13</sup> See WHO, WHO/Europe brief – transgender health in the context of ICD-11 (<https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11#402742>) contextualising WHO, 11<sup>th</sup> edition of the International Statistical Classification of Diseases and Related Health Problems, Chapter 17 “Gender Incongruence”, accessible at <http://id.who.int/icd/entity/411470068>

<sup>14</sup> On the 31 of December 2021 the Ministry of Justice adopted the amendment of the Order of the Minister of Justice "On the approval of the order of the amendment of the name and surname" <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/de5a27006a7911ecb2fe9975f8a9e52e?positionInSearchResults=8&searchModelUID=e207a152-bb76-44f4-b2f2-624d436e8a2b>



Trans Autonomija is aware of at least five transgender persons who have applied for a name change at the civil registry office. For three applicants the outcome is known. Two persons had a positive outcome – requests to change their names and surnames in the civil records were granted, however the procedure is not “quick, transparent or accessible”, according to reports Trans Autonomija received.

A denied applicant had applied for a name change at the civil registry. Their request was not granted due to the requirements regarding the medical certificate concerning the “transsexualism” (F64.0) diagnosis. As only a specific form (form 046/a) of a medical certificate is accepted as proof of the “transsexualism” diagnosis (if issued by a Lithuanian healthcare institution), a different form/type of certificate with the same diagnosis was not accepted.

This points to the lack of a uniform and transparent diagnostic procedure as an additional obstacle to legal gender recognition and/or legal name change. In August 2021 the first draft of the protocol “ORDER on the APPROVAL OF THE DESCRIPTION OF THE PROCEDURE FOR THE DIAGNOSIS AND TREATMENT OF GENDER MALFUNCTION DISORDER” was published.<sup>15</sup> It has been discussed with different stakeholders until now and should be signed by the Minister of Health. It contains details on coordinating of institutions involved in the diagnostic and treatment pathways as well as a description of the standard procedure for diagnosis and treatment of “gender dysphoria”. While TGEU has been consulted, we are dismayed that national civil society representing trans people’s interest in Lithuania have not been meaningfully involved in this process. As long as the diagnostic and health care protocol are not approved, the gap identified by the ECtHR in *L v Lithuania* continues to persist. Today, the diagnostic process varies from specialist to specialist, with some issuing a diagnosis after one or two visits, and others requiring additional tests and visits, which can prolong the whole process to take a year or longer.

One of the successful candidates noted that even though they already had the psychiatric diagnosis, they had to request a different form to be filed by the healthcare institution to access the new name change procedure. They also mentioned the lack of clear instructions on how to apply for new ID documents. It is also unclear if and how other institutions holding official information will be informed about the changes.

The updated action plan in case *L v Lithuania* indicates that the Ministry of Justice had prepared guidelines for the application of the introduced procedure to all competent authorities to ensure uniform practice. While the action plan indicates that the information should have been disseminated to the relevant authorities,<sup>16</sup> a number of individual reports suggest that the communication between the relevant institutions lacks efficiency and transparency. In any case, the involved submitting organisations are not aware of these documents to be public.

Again, access for minors remains even more restricted. Anecdotal evidence by LGL from discussions with parents of trans minors suggested that the name change procedure is not accessible for persons under 18 years of age, even with the statutory permit by their parents/legal representatives. In response to an inquiry submitted by the Human Rights Monitoring Institute, the Ministry of Justice affirmed that the new administrative procedure for a name change can be used by an adult (18 years old and over) unmarried persons.

**Overall, we assess that the name change law is an important first step but does not serve to implement the general measures from *L v Lithuania*.**

We welcome the intent for a LGR initiative, as communicated in the Government's Legislative plan for 2021-2024,<sup>17</sup> which shall execute the general measures requested in *L v Lithuania* by the introduction of an administrative procedure. Although the planned dates for the introduction of such a legislative proposal were set to the third quarter of 2021, no such legislative initiative was introduced (registered) in 2021, nor it is included in Parliament’s working program in the spring session.<sup>18</sup> Previous similar initiatives aiming to introduce an LGR procedure have failed at the level

<sup>15</sup> [https://e-seimas.lrs.lt/rs/legalact/TAP/d30acac0f6b711ebb4af84e751d2e0c9/format/ISO\\_PDF/](https://e-seimas.lrs.lt/rs/legalact/TAP/d30acac0f6b711ebb4af84e751d2e0c9/format/ISO_PDF/)

<sup>16</sup> National Action plan: “The Ministry of Justice also prepared the guidelines of the application of the introduced procedure which was distributed to all competent authorities, namely civil registration offices, in order to ensure uniform practice in this sphere.”

<sup>17</sup> [https://lrv.lt/uploads/main/documents/files/2021-2024%20m\\_%20teisekuros%20planas.pdf](https://lrv.lt/uploads/main/documents/files/2021-2024%20m_%20teisekuros%20planas.pdf) (no. 157)

<sup>18</sup> [https://www.lrs.lt/sip/portal.show?p\\_r=36986&p\\_k=1](https://www.lrs.lt/sip/portal.show?p_r=36986&p_k=1)



of the parliament. We are gravely concerned over a continuous lack of political will and ask the Committee of Ministers to call on Lithuanian lawmakers to recognise the importance of this legal project to implement its obligations arising from *L v Lithuania*. Moreover, tying the fate of LGR to other political projects, such as the passing of the same-sex partnership bill, is unacceptable.

#### **Anti-discrimination measures**

Current Lithuanian legislation does not expressly recognize legal categories of “gender identity” and (or) “gender expression”. Gender identity is not included among the protected grounds under the draft proposal of the Law on Equal Treatment.<sup>19</sup> The protected ground of sex is not sufficient, since proving discrimination on the grounds of sex in cases where discrimination is related exclusively to gender identity, is severely disadvantaged.

Both the Action Plan for Promoting Non-discrimination 2017–2019<sup>20</sup> and the Action Plan for Promoting Non-discrimination 2021-2023<sup>21</sup>, despite being key policy documents for countering discrimination, do not sufficiently address specific trans community needs nor include quantitative progress monitoring indicators. It is of concern to us that the preamble of the Action Plan acknowledges the existence of LGBTI related issues (based on FRA findings) but does not indicate any course of action to actually respond to these issues. This creates a stark contrast to other social issues covered in the Action Plan. As a minimum LGBTI issues should be treated on a equal footing and be assigned a basic mechanism including clear quantitative and qualitative indicators. Possible progress monitoring indicators could be:

- The number of consultations with civil society and trans persons;
- Allocated budgetary means for raising awareness of transgender persons rights,
- number of trainings and other measures taken to increase competences of public servants to provide higher quality trans-specific services. This could also include baseline and (regular) progress assessments of knowledge and attitude of civil servants on the issue.

#### *On the co-operation the with Council of Europe SOGI Unit*

In December 2021, a national roundtable discussion on legal gender recognition took place, organized by the Council of Europe together with the Lithuanian Ministry of Justice and a report on legal gender recognition in Lithuania has been drafted. The authors of the submission commend the State’s efforts to consult with civil society organizations and local trans community members and encourage other institutional stakeholders to apply a similar cooperative approach. The roundtable provided a rare opportunity for members of the trans community to express their concerns and needs. It was noted that the draft diagnostic and treatment protocol for ‘Gender Identity Disorder’ should not make it more difficult to access the diagnosis currently needed for legal gender recognition, as well as medical transition procedures.

However, we note with concern that after the Roundtable the dialogue did not continue. Trans civil society representatives have not been involved further in the development and adoption of the diagnostic protocol. Involvement of those concerned is essential in the development of a human rights-based protocol.

#### **IV. Conclusions and Recommendations for the Government regarding the execution of the ECtHR decision in *L. v. Lithuania***

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<sup>19</sup> 3 Draft Law on Amendment of the Law on Equal Opportunities of the Republic of Lithuania, registration No. XIII-P-3512, 30 May 2019, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/96f31cf082b411e98a8298567570d639?jfwid=zll0xxhe6>.

<sup>20</sup> The Order of Minister of Social Security and Labour, “On Approval of the Action Plan for the Promotion of non-Discrimination for 2017-2019”, No. A1-250, 15 May 2017, <https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363>

<sup>21</sup> The Order of Minister of Social Security and Labour, “On Approval of the Action Plan for the Promotion of non-Discrimination for 2017-2019”, No. A1-1256 <https://www.e-tar.lt/portal/lt/legalAct/b1c5e3b03ae511eb8d9fe110e148c770>



Despite aforementioned developments, a satisfactory execution of the *L. v. Lithuania* judgment fulfilling the requirement of a quick, transparent and accessible legal gender recognition procedure is still lacking.

The submitting organisations kindly request the Committee of Ministers to **keep the case under enhanced supervision** and **schedule a debate in March 2023**. Meanwhile the Committee of Ministers is kindly requested to ask the Lithuanian authorities to take the following measures to ensure the appropriate execution of the decision in the *L. v. Lithuania* judgment:

1. As a matter of priority, initiate the legislative process to adopt quick, transparent, and accessible administrative procedures for obtaining legal gender recognition based on self-determination (i.e. without medical, age-limit, or marital status prerequisites) offering an appropriate, clear, and concise timeline.
2. Establish a transparent process, involving international health experts and the local transgender community on the diagnostic and health care protocol to ensure gender-affirming medical interventions, hormone replacement therapy and other medical transition procedures are based on an informed consent model and are accessible in Lithuania.
3. Ensure meaningful involvement of the civil society representing transgender persons in terms of developing legislative or sub-statutory solutions concerning the status and protection of transgender persons while actively contributing to strengthening the advocacy for equality of transgender persons.

Sincerely Yours,

**TGEU-Transgender Europe**

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[\(also for the co-signatories\)](#)