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Joint Submission by the Lithuanian Gay League, the Human Rights Monitoring Institute, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association and the Transgender Europe to the Committee of Ministers of the Council of Europe in the case of *L. v. Lithuania* (Application no. 27527/03)

Dear Ms Mayer,

Please find enclosed a briefing submitted under Rule 9.2 of the Committee of Ministers for supervising execution of European Court of Human Rights judgments with a view to assisting the evaluation of the general measures proposed by the Lithuanian government in the case *L. v. Lithuania*.

Yours sincerely,

on behalf of the Lithuanian Gay League (LGL), the Human Rights Monitoring Institute (HRMI), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) and the Transgender Europe (TGEU)

Vladimir Simonko
LGL Board Chair



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This joint submission is made in accordance to Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments with a view to assisting the Committee of Ministers in its evaluation of the general measures proposed under the Lithuanian Government's communication dated April 18, 2013 ("the Government Communication")¹ for implementation of the judgment in *L. v. Lithuania*.²

LGL is the main non-governmental organization representing the human rights interests of Lithuania's LGBT citizens. HRMI is a non-governmental organization based in Lithuania. Its mission is to promote an open democratic society through the consolidation of human rights and freedoms. ILGA-Europe seeks to defend at European level the human rights of those who face discrimination on the grounds of sexual orientation, gender identity, or gender expression. It represents more than 400 member organisations from across Europe. TGEU is a European non-profit, non-governmental umbrella organization working towards the full equality and inclusion of all trans people in Europe.

The Government Communication set out general measures which the Government believed would contribute to the execution of the judgment in *L. v. Lithuania*, and improve guarantees of the transsexuals' right to respect for their private life. The purpose of this submission is:

- to demonstrate why these measures would not, of themselves, satisfy Lithuania's obligations under the judgment,
- to document the extent of hostility towards transgender persons in Lithuania, both generally and amongst politicians, because this is a factor adding significantly to the complexity of implementing the judgment, and
- to argue that supervision by the Committee of Ministers should therefore continue until all subsidiary measures have been adopted and the rights in question are fully accessible.

1. Summary of the case

L. v. Lithuania concerned the failure to introduce implementing legislation to enable a transsexual person to undergo gender-reassignment surgery and change his gender identification in official documents. Article 2.27, para 1, of the Lithuanian Civil Code (adopted in 2001) provides that an unmarried adult of full age has the right to gender reassignment if it is medically possible. Article 2.27, para 2, states that the conditions and the procedure of the gender reassignment shall be prescribed by law. However, this implementing legislation was never enacted, giving rise to a legislative gap. In the words of the Court's judgment:

¹ "Updated Information on the Execution of the ECHR Judgment in the case *L. v. Lithuania*" – 18 April 2013 – DH-DD(2013)657; <https://wcd.coe.int/ViewDoc.jsp?id=2074341&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

² Application no. 27527/03

“Lithuanian law recognizes [transsexuals’] right to change not only their gender but also their civil status... However there is a gap in the relevant legislation; there is no law regulating full gender reassignment surgery. Until such a law is enacted, no suitable medical facilities appear to be reasonably accessible or available in Lithuania”.³

The Court held that the aforementioned legislative gap had left the applicant in a situation of distressing uncertainty with regard to his private life and the recognition of his true identity. Budgetary restraints in the public-health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code but not a delay of over four years. Given the limited number of people involved, the budgetary burden would not have been unduly heavy. The State had therefore failed to strike a fair balance between the public interest and the applicant’s rights, giving rise to a violation of Article 8 of the Convention. It ordered the Lithuanian authorities to pass the required subsidiary legislation within three months of the judgment becoming final, and failing that, to pay the applicant €40,000, to finance, at least in part, the necessary surgery abroad. The Lithuanian authorities took the latter route.

Some 12 years after the adoption of the Civil Code, and 6 years after the Court’s judgment, this legislative gap has still not been addressed.

2. The proposed general measures

The general measures proposed by the Lithuanian government involve the elimination of the requirement to lay down gender reassignment conditions and procedures by law through the deletion of Article 2.27, paragraph 2, of the Civil Code.⁴ This would be replaced by:

- (i) the development of non-legal medical procedures: “the issues concerning the medical treatment are to be set in the medical norms.”⁵
- (ii) the introduction of simplified procedures for changing entries in official documents, by means of a Law on the Registration of the Civil Acts.⁶ These would require the register office to register gender reassignment “after the submission of the gender reassignment certificate issued by the health care institution which meets the requirements set by the Government or its authorities”.⁷

Both the draft amendment to the Civil Code and the draft Law on the Registration of the Civil Acts were given “initial approval” by the Parliament on 26 March 2013 and are currently pending in parliamentary committees.

The above measures would only be a first step in addressing Lithuania’s obligations under the judgment, being wholly dependent on the development of additional procedures if they are to have any effect.

³ Para. 57

⁴ No. XIP-2018(2)

⁵ The Government Communication, page 3

⁶ No. XIP-2017(2)

⁷ Article 26 of the draft Law on the Registration of the Civil Acts, as set out on page 3 of the Government Communication

On 21 August 2013 LGL and HRMI sought clarification from the Ministry of Health and the Ministry of Justice concerning their plans for the development of these additional procedures. Regarding gender reassignment treatment, their questions focused on the development of medical norms, and particularly, what kind of safeguards would be introduced to ensure that medical norms are developed and effectively applied in practice, and when it would become technically possible to complete gender reassignment treatment in Lithuania. In the case of legal gender recognition, their questions focused on the procedures for issuing the “gender reassignment certificate”, and what kind of successfully completed medical treatment would be required in order to obtain this certificate.

The Ministry of Health’s reply⁸ listed a number of items of secondary legislation which would have to be amended or adopted in order for the changes to the Civil Code and the draft Law on the Registration of the Civil Acts to become effective, as follows:

- (a) rules on the Registration of the Civil Acts;
- (b) order of issuing the “gender reassignment certificate”;
- (c) grounds of changing person’s name and surname, when the change in name and surname has to be sanctioned by an institution upon the mandate by the Government;
- (d) amendments to the rules on Provision of Personal Data to the Resident’s Register Service;
- (e) the internal regulations of the Resident’s Register Service;
- (f) the executive governmental order “On concrete amounts of budgetary fees and on rules of paying and reclaiming these fees”.

However it gave no indication as to how or when these changes would be implemented.

Concerning the question of the norms covering medical treatment, it replied that:

“[d]iagnostics and methodologies of medical treatment can be developed by universities, research institutes, trade unions of medical professionals and/or expert working groups; however **their development and approval are not compulsory** [*our emphasis*]. The Ministry of Health has not yet received any diagnostics or methodologies of medical treatment with regards to transsexual individuals.”

The Ministry of Justice’s reply⁹ provided no new information. It advised that the medical treatment of transgender individuals and the conditions for issue of the “gender reassignment certificate” would be regulated by secondary legislation, which would be developed only after the adoption of the amendments to the Civil Code and the Law on the Registration of Civil Acts. It added that issues regarding gender reassignment treatment fell within the remit of the Ministry of Health.

The responses of the two ministries gave no information regarding the actual conditions and procedures that will apply both in relation to gender reassignment treatment and to legal gender

⁸ Letter dated 10 September 2013 by the Minister of Health of the Republic of Lithuania Vytenis Povilas Andriukaitis to LGL and HRMI No. (1.1.41-142)10-7495. Translation by LGL.

⁹ Letter dated 18 September 2013 by the Superior of the Division of Representation at the European Court of Human Rights within the Ministry of Justice of the Republic of Lithuania Karolina Bubnyte to LGL and HRMI No. (8.2.6)2GR-139. Translation by LGL.

recognition. Moreover, the statement by the Ministry of Health that the development and approval of "[d]iagnostics and methodologies of medical treatment" are "not compulsory" is disturbing. It implies that the authorities do not intend to take measures to ensure that such medical norms are developed, leaving the initiative entirely to the medical profession. However there is no evidence that there is sufficient consensus within the profession for such norms to be developed voluntarily or expeditiously. Even with the current lack of implementing legislation, gender reassignment is not expressly prohibited in Lithuania. But there have been no moves by the profession to draft "diagnostics and methodologies", nor even the adoption of positions of principle in support of gender reassignment treatment by any of the medical associations. Moreover, public statements by individual doctors show that the profession is divided, with some strongly opposed, on both medical and "moral" grounds.¹⁰ If the development of "medical norms" is not made mandatory, there remains the real possibility that none will be developed, and thus that the existing barriers to obtaining gender reassignment and legal gender recognition will persist after the proposed general measures are adopted.

Further, there is no information as to how far costs for reassignment treatment would be covered by the National Health Insurance Fund. The Court's judgment recognises implicitly that for many transgender people reasonable coverage of such costs is necessary if the right to reassignment treatment, and hence also to legal gender recognition, is to be a reality. Thus, it noted that budgetary constraints in the public health service might have justified some initial delays in implementing the rights of transsexuals in the Civil Code, but that four years had since elapsed. It also commented that given the limited number of people involved, the budgetary burden associated with providing gender reassignment treatment would not be unduly heavy.¹¹ Moreover, its award of €40,000 to the applicant to enable him to undergo gender reassignment surgery abroad (in the event that the changes to the Civil Code were not enacted within three months) underlined the need to cover such costs if the rights to reassignment treatment and legal gender recognition were to be a reality for more than just the few with access to private means.¹²

The Government Communication draws attention to cases where the domestic courts have awarded compensation to transgender persons, and argues that this case law "could be considered as a general measure intended to secure rights of transsexuals".¹³ It should be noted however that the individuals concerned had to undergo gender reassignment treatment abroad at their own expense, usually in Thailand, and even after the treatment had to challenge in court the

¹⁰ For statements by individual doctors, see:

- Martynas Marcinkevičius, Director of the Vilnius Mental Health Centre (LNK, „Diagnozė: valdžia“, 10 April, 2013, available at <http://lnkgo.lt/video-perziura/5113/diagnoze-valdzia-2013-04-10>).
- Aušra Seibutytė, Alvydas Navickas and Saulius Grigonis; Vilnius University, Faculty of Medicine and Vilnius University Hospital Santariskiu klinikos. (*Peculiarities of gender identity disorder* in „Medicine: theory and practice“, 2013 - T. 19 (Nr. 1), available at: http://www.mtp.lt/files/MTP19-11_str.pdf).
- Andrius Narbekovas, doctor, professor (teology, bioethics), priest. (Bernardinai.lt, „Lyties keitimas: gydymas ar žalojimas?“, 2007, available at <http://www.bernardinai.lt/archyvas/straipsnis/69840>) and (Transsexualism: medical and ethical aspects, a lecture, available at: http://www.mruni.eu/lt/padaliniai/fakultetai/teises_fakultetas/katedros/bioteises_katedra/studijos/paskaitos/).
- Gintautas Vaitoška, doctor- psychotherapist (Vakarų ekspresas, Gintautas Vaitoška primena: Vyras skirtas moteriai, moteris – vyriui, 2013-06-28, available at: <http://www.vc.lt/naujienos/visuomene/sociumas/gintautas-vaitoska-primena-vyras-skirtas-moteriai-moteris---vyriui-1013153/>).

¹¹ Para. 59

¹² Para. 75

¹³ Page 3

refusal of the Civil Registry Office to change their status. It is difficult to see how such a process qualifies positively as a “general measure”.

3. Hostility towards transgender persons in Lithuania

The delay in implementing the judgment can be ascribed in large measure to the extent of hostility towards transgender persons in Lithuania both in society generally and within the political class. Repeated reference was made to the existence of such hostility in the judgment.¹⁴ The Government Communication itself refers to the “lack of political will” hindering “the achievement of concrete results”.¹⁵ Mr Andreas Gross, when Rapporteur for the Parliamentary Assembly’s 2010 Report on discrimination on the basis of sexual orientation and gender identity, found evidence of this during a visit to Lithuania. He was advised that “the authorities had no intention of adopting any legislation on gender reassignment of transsexuals, despite the 2008 judgment of the Court condemning Lithuania.”¹⁶

While it is the case that the Government’s two proposed legislative measures were given “initial approval” by the Parliament in March 2013, and are currently pending in the parliamentary committees, on 23 May 2013, the Lithuanian Parliament gave “initial approval” to a draft bill which would ban gender reassignment entirely. The associated Explanatory Memorandum argues that it is impossible to reassign gender surgically because it “is determined genetically from the very moment of conception” and that gender reassignment procedure “is associated with the radical impairment of a person, because physically healthy persons who are able to conceive and raise children are castrated in this manner”. It goes on to say that “help to transsexuals must be psychotherapeutic in nature and aimed at restoring the harmony of a person’s body and mind.”¹⁷ These assertions are completely contrary to the Court’s recognition of the right of transgender persons to gender reassignment and legal gender recognition.¹⁸

In stating the circumstances of the *L. v. Lithuania* case, the Court pointed to opposition by the Lithuanian Catholic Church against introducing gender reassignment legislation:

“In an article [...] about a meeting between the Prime Minister and the heads of the Lithuanian Catholic Church, the Prime Minister was quoted as saying that it was too early for Lithuania to enact a law on gender reassignment, and that there was “no need to rush” or “copy the principles that exist in one country or another”. The article stated that the Catholic Church had been among the most ardent opponents of such legislation.”¹⁹

The Lithuanian Catholic Church remains strongly opposed to any recognition of the right of transgender persons. This has included opposing signature of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence because, *inter alia*, of the inclusion of “gender identity” in the non-discrimination Article. In an official

¹⁴ See paras 23, 30, 36, 38, 50

¹⁵ Page 2

¹⁶ Doc. 12185 - 23 March 2010 - Discrimination on the basis of sexual orientation and gender identity Report - Committee on Legal Affairs and Human Rights - paragraph 24

¹⁷ No. XIIP-17

¹⁸ In addition to the current case, see *Christine Goodwin v. UK*, *Schlumpf v. Switzerland*, *van Kück v Germany*

¹⁹ Paragraph 23

statement on the Convention in 2013, the Church stated that “[t]he Convention is based on an ideological approach towards gender as a social construct, irreconcilable with the biological nature of a human being. [...] The Convention can become an easy tool in marginalizing the moral imperatives and spiritual legacy which constitute the value system of the nation. [...] the requirement to include teaching material on non-stereotyped gender roles in formal curricula possibly implies homosexuality and transsexuality [that] is contrary to [our] moral values.”²⁰

On 16 October 2013 the Lithuanian Government issued an official position opposing the above mentioned amendment to the Civil Code that seeks to explicitly prohibit gender reassignment surgery. The minutes of the governmental meeting on 23 September 2013, at which the Government’s position was deliberated upon, disclose that the representatives of the Lithuanian Catholic Church not only took part in the meeting, but also argued that the Government should support the complete prohibition of gender reassignment.²¹

The Lithuanian Catholic Church remains highly influential. Its opposition to the recognition of the rights of transgender persons underpins transphobic attitudes both in the Lithuanian political class and in society generally. Regarding the latter, the European Commission’s 2012 Eurobarometer on Discrimination showed that acceptance of transgender persons in Lithuania was amongst the lowest in the EU.²² In a recent survey by the EU Fundamental Rights Agency, 83% of transgender respondents considered that discrimination against transgender persons on account of their gender identity was very or fairly widespread, while 93% held similar views about the extent of offensive language about LGBT people by politicians.²³ They also demonstrated a low level of trust in medical staff and health care providers, with 59% concealing their transgender status from them entirely.

4. Conclusions regarding the Lithuanian government’s proposed general measures

The proposal to eliminate the requirement to lay down gender reassignment conditions and procedures by law through the deletion of Article 2.27, paragraph 2, of the Civil Code is a matter of concern, since it would leave the Lithuanian authorities with no obligation to put in place regulations enabling gender reassignment treatment. Given the hostility towards transgender persons in Lithuanian society, there would be no guarantee that such regulations and medical norms would be developed within a reasonable time, or that they would include coverage of the costs of gender reassignment treatment.

By contrast, the proposal for the introduction of simplified procedures for changing entries in official documents, by means of the draft Law on the Registration of the Civil Acts, is welcome. However, the adoption of this law would be a first step only, given both the need for subsidiary legislation, and the fact that legal gender recognition is dependent on the individual first

²⁰ <http://lvk.lcn.lt/naujienos/199> - accessed 13 November 2013

²¹ http://www.lrv.lt/Posed_medz/2013/131016/12.pdf, p. 3

²² The Eurobarometer question was: "Using a scale from 1 to 10, tell me how you would feel about having someone from each of the following categories in the highest elected political position in your country?" A score of '1' signified "totally uncomfortable", and a score of '10' signified "totally comfortable". For transgender persons, the most favourable score was 7.6, the EU average 5.7, and the least favourable, 2.8. Lithuania scored 3.7.

See: http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm#393

²³ EU LGBT survey – European Union Agency for Fundamental Rights, accessible at: <http://fra.europa.eu/DVS/DVT/lgbt.php>; n = 40.

undergoing full gender reassignment treatment. Again, in view of the level of hostility towards transgender persons, we would be concerned that the necessary subsidiary legislation might not be implemented within a reasonable timeframe.

We note that the Government acknowledges that its proposals are not a complete solution, claiming only that they “would **contribute** to the execution of the judgment in the case of L v. Lithuania” [*our emphasis*].²⁴

We therefore respectfully ask that the Committee of Ministers

- a. request from the Lithuanian authorities a detailed Action Plan, demonstrating clearly the further steps that will be taken after the proposed legislation is adopted to ensure that access to gender reassignment treatment and legal gender recognition are made fully possible.
- b. maintain supervision of the case until all the steps have been fully implemented, thus ensuring that the rights concerned are indeed ‘practical and effective’ and not ‘theoretical or illusory’.²⁵

In our opinion, this case meets the criteria for enhanced supervision, being both structural and complex. We would therefore request that, if there is not now rapid progress with implementation, consideration be given to monitoring the case under the enhanced supervision procedure.

²⁴ Government Communication – page 3.

²⁵ *Artico v. Italy*