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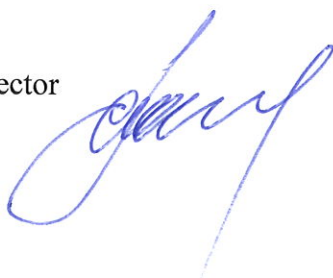
**JOINT SUBMISSION BY THE NATIONAL LGBT* RIGHTS ORGANIZATION LGL AND THE
HUMAN RIGHTS MONITORING INSTITUTE (HRMI) TO THE COMMITTEE OF MINISTERS
OF THE COUNCIL OF EUROPE IN THE CASE *L. V. LITHUANIA* (APPLICATION NO. 27527/03)**

Dear Ms Mayer,

Please find enclosed a briefing submitted under the Rule 9.2 of the Rules of the Committee of Ministers for supervising execution of the ECtHR judgments with the view of assisting the evaluation of the general measures proposed by the Lithuanian Government in the case *L. v. Lithuania*. This submission has been developed in response to the updated action plan on the execution of the judgment submitted to the Department for the Execution of Judgments by the Agent of the Government of the Republic of Lithuania on 15 June 2017.

Yours sincerely,

Vladimir Simonko
LGL Executive Director



Natalija Bitiukova
HRMI Deputy Director



JOINT SUBMISSION BY THE NATIONAL LGBT* RIGHTS ORGANIZATION LGL AND THE HUMAN RIGHTS MONITORING INSTITUTE (HRMI) TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE IN THE CASE *L. V. LITHUANIA* (APPLICATION NO. 27527/03)

This joint submission is made in accordance to the 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* submitted by the Agent of the Government of the Republic of Lithuania to the European Court of Human Rights (hereinafter – the Government Agent) on 15 June 2017.¹ The National LGBT* Rights Organization LGL is the main non-governmental organization representing the human rights interests of the Lithuanian transgender community. The Human Rights Monitoring Institute (HRMI) is a non-governmental organization promoting an open democratic society through the consolidation of human rights and freedoms in Lithuania. Both organizations have been monitoring the implementation of the judgment in the case *L v. Lithuania* at the national level and assisting the Committee of Ministers in this process since 2013.

Both civil society organizations would like to acknowledge that in the period of March-June, 2017 the Lithuanian authorities, namely – the Ministry of Justice, the Ministry of Health and the Office of the Equal Opportunities Ombudsperson, have been taking concrete steps with the view of eliminating the continuing systematic violation of the right to respect of private life under the Convention for transgender individuals in Lithuania. Furthermore, in two ground-breaking decisions of 7 April 2017 (case no. e2YT-5329-934/2017) and of 2 May 2017 (case no. e2YT-5326-987/2017) the Vilnius City District Court addressed the legal gap on gender reassignment by granting legal gender recognition for two transgender men without the requirement for the irreversible gender reassignment surgery. Taken into account that the above mentioned judgments by the first instance domestic court were not appealed by the competent national authorities, it can be concluded that the State institutions have expressed their implicit agreement with the material conditions for legal gender recognition established by the domestic jurisprudence (see Part I).

Nevertheless, the satisfactory execution of the *L. v. Lithuania* judgment requires the establishment of the corresponding administrative procedure for legal gender recognition, which would enable transgender individuals to change their identity documents in a quick, accessible and transparent manner without the necessity of applying before the national courts. The civil society organizations welcome the Government's efforts to establish such procedure and invite the Lithuanian authorities to strictly follow the legal standards established by the domestic courts throughout the legislative process. The purpose of the current submission is to:

- discuss developments of the domestic case law on granting legal gender recognition without the requirement for the irreversible gender reassignment surgery and its implications to the legislative process;
- draw the Committee of Minister's attention to the current legislative process and explain the proposed short-term and long-term strategies with the view of establishing gender reassignment procedure in Lithuania;
- argue that the enhanced supervision by the Committee of Ministers should continue until the separate *Law on Recognition of Gender Identity* have been adopted and the rights in question are fully accessible for transgender individuals in Lithuania.

I. Development of Domestic Case Law

As rightfully pointed out by the Government Agent², the decisions of 7 April 2017 and 2 May 2017 by the Vilnius City District Court has changed the course of the domestic jurisprudence of granting legal gender recognition. The cases nos. e2YT-5329-934/2017 and e2YT-5326-987/2017 were initiated by the National LGBT* Rights Organization LGL in December, 2016³ and concerned two transgender individuals, who

¹“Updated Action Plan on the execution of the Judgment in Case *L. v. Lithuania*” – 15 June 2017 – DH-DD(2017)708, <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680728884>.

² *Ibid.*, p. 1.

³ “Two Transgender Men Seek Legal Recognition before Lithuanian Courts”, *lgl.lt*, 3 January 2017, <http://www.lgl.lt/en/?p=15509>.

have not undergone irreversible gender reassignment surgeries due to the fact that this medical procedure is currently not available in Lithuania. Both applicants have obtained mental diagnosis (ICD-10 diagnosis code F64.0), started hormone replacement therapy, performed mastectomy (i.e. breast reduction surgery) and purposefully constructed their social identity as male individuals in the public sphere. Both applicants requested the civil registry to change their personal identification documents, but were refused due to the absence of the relevant legal basis. The applicants turned to the court, which by respective judgments granted both of them with the right to change their gender marker and personal identification number in their identity documents. In the decision of 2 May 2017 the Vilnius City District Court stated the following:

“Taken into account that legislator has not adopted the law on gender reassignment and has not legally defined the concepts of “gender reassignment” or “medical gender reassignment”, the Court addresses this legal gap through *ad hoc* statement that “gender reassignment” should not be exclusively associated with surgical irreversible reassignment of biological sex, but rather should be interpreted more broadly and perceived as individual psychological identification with particular gender, encompassing both individual medical records (mental diagnosis, hormone replacement therapy, breast augmentation/reduction, etc.) and individual social behavior (introduction by different name and surname, which do not correspond with biological sex; clothing associated with opposite sex; change in appearance and behavior, associated with opposite sex; etc.). The Court arrives to this conclusion by referring to the fundamental human rights [...], including the right for a legal person to decide on gender reassignment [...]; also referring to the constitutional right to dignity [...] and to the constitutional right to private life [...]. The Court also arrives to this conclusion by referring to the decision by the ECtHR of 6 April 2017 in the case *A.P., Garçon and Nicot v. France* [...]. Despite the fact that this judgment is not final and it still can be reviewed by the ECtHR’s Grand Chamber within three months, this judgment states the preliminary conclusion by the ECtHR that requirement for a person, who wants to change the records of one’s gender in a birth certificate, to undergo irreversible physical changes (including sterilization and gender reassignment surgery) violates the Article 8 of the Convention, ensuring respect for private life for each individual.”

The judgments in question were not appealed against by the interested parties – the Ministry of Justice, the State enterprise “Centre of Registers” (i.e. for the purposes of changing personal identification number) and the civil registry (i.e. for the purposes of changing gender marker) – and thus became final. It can be concluded that by not appealing against the judgments, the State institutions implicitly agreed with the material conditions for legal gender recognition, which do not include a requirement for irreversible gender reassignment surgery. **The National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) commend the established position by the Lithuanian authorities that legal gender recognition could be granted without the requirement for the irreversible gender reassignment surgery.** It has to be noted that this position is compatible with both the ECtHR’s jurisprudence⁴ and the Resolution 2048(2015)⁵ by the Parliamentary Assembly of the Council of Europe.

While these two judgments by the domestic courts potentially contribute to the successful execution of the *L. v. Lithuania* judgment, it is important to ensure that the established judicial standards are closely followed throughout the legislative and policy process. As a result, two major concerns arise regarding the effective interpretation and application of the judicial standards established by the above mentioned judgments.

• **Material Conditions for Legal Gender Recognition**

In the course of deliberating on the topic of granting legal gender recognition without the requirement for the irreversible gender reassignment surgery in the cases nos. e2YT-5329-934/2017 and e2YT-5326-987/2017 the Vilnius City District Court has assessed the totality of individual circumstances concerning each applicant. The domestic court in the above mentioned judgments has granted legal gender recognition based on the fact that both applicants have (1) obtained mental diagnosis (ICD-10 diagnosis code F64.0), (2) started hormone replacement therapy, (2) performed mastectomy (i.e. breast reduction surgery) and (4) purposefully constructed their social identity as male individuals in the public sphere. However, **in neither**

⁴ *AP, Garçon, and Nicot v France* (app. nos. 79885/12, 52471/13 and 52596/13), ECtHR, 6 April 2017.

⁵ Assembly debate on 22 April 2015 (15th Sitting) (see Doc. 13742, report of the Committee on Equality and Non-Discrimination, rapporteur: Ms Deborah Schembri). Text adopted by the Assembly on 22 April 2015 (15th Sitting), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21736&lang=en>.

of the above mentioned judgments the court has established that all four conditions are mandatory for obtaining legal gender recognition. The only conclusion which can be unequivocally deduced from the *ratio decidendi* is that the gender reassignment surgery is not a pre-condition for a legal gender recognition, whereas the legal weight of all other individual circumstances of the applicants is not yet firmly determined.

Transferability of judicial standards into the laws is another matter that has to be approached with a particular caution as the judicial process is substantially different in its nature from the administrative procedure. For example, while the court is fully capable of assessing whether an individual is purposefully constructing one's social identity as belonging to the opposite sex in the public sphere, this assessment would be very difficult or virtually impossible to perform within the framework of the administrative procedure. As a result, the National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) are of the position that the introduced administrative procedure for legal gender recognition in Lithuania should be absolutely free from any subjective interpretations of individual circumstances and should be based solely on the objective criteria.

At the given moment (i.e. based solely on the two above mentioned judgments by the domestic court) **it is not possible to identify the minimum threshold (i.e. necessary material conditions) for a transgender person to successfully qualify for legal gender recognition.** In order to further clarify the position by the national courts on legal gender recognition and to contribute to the position of legal certainty, the National LGBT* Rights Organization LGL is currently preparing 8 more cases on legal gender recognition, which will be submitted before the national courts in the period of the upcoming 6 months (i.e. by the end of 2017).

• *Litigation Costs*

Article 442.7 of the Code of Civil Procedure of the Republic of Lithuania stipulates that cases “concerning the registration of a civil status acts or the restoration, amendment, appending, correction, or annulment of a record” are being heard by a court by means of special procedure.⁶ The status of special procedure implies that “[t]he litigation expenses of the parties to the proceeding shall not be subject to reimbursement” (Article 443.6). In essence it means that **transgender individuals, who are seeking for obtaining legal gender recognition, are not entitled to the monetary compensation for litigation expenses** which were incurred in the course of submitting a request before the national courts. This legal interpretation was confirmed by the judgments in the cases nos. e2YT-5329-934/2017 and e2YT-5326-987/2017, as the Vilnius City District Court dismissed the applicants' claims for the reimbursement of litigation expenses due to the fact that the cases were heard by means of special procedure. This aspect represents a serious barrier for some transgender persons in obtaining legal gender recognition before the national courts, as not all transgender individuals are in the position of covering litigation expenses themselves.⁷ In order to address this structural problem, the National LGBT* Rights Organization LGL is continuously seeking for funding with the view of covering the litigation expenses for transgender individuals, who are not able to fund their litigation expenses. The fact that litigation expenses by transgender individuals are not subject to reimbursement is particularly concerning, as first and foremost transgender individuals are forced to apply before the national courts because the State has failed to legislate on introducing the administrative procedure for legal gender recognition for nearly two decades since the introduction of the new edition of the Civil Code. To put it in other words, transgender individuals would not have to apply before the national courts, if the State had followed its obligations under the Civil Code and the European Convention on Human Rights without any undue delays. With the view of addressing this structural problem, **the National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) are inviting the Lithuanian Government to introduce the administrative procedure for legal gender recognition and to adopt the separate *Law on Recognition of Gender Identity* without any further delays.**

II. Legislative Amendments

⁶ Lietuvos Respublikos civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas, *Civilinio proceso kodeksas*, No. IX-743, 6 April 2002, <https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454/GRELeMJBIn>.

⁷ Currently the minimum litigation expenses in a single case on legal gender recognition amount to EUR 400, including a lawyer's fee, an official translation (if supporting documents are obtained abroad) and a stamp duty.

The National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) acknowledge the efforts by the Government Agent Ms Bubnytė in initiating the legislative process for introducing a quick, accessible and transparent procedure for gender reassignment in Lithuania. Furthermore, the Government Agent has purposefully sought to include and to consult the civil society organizations representing the interests of the local transgender community in all legislative processes at the national level and has encouraged other institutional stakeholders to apply the corresponding approach. **The National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) commend the inclusive and consultative approach by the Lithuanian Government in consulting the civil society organizations in developing the legislative solutions with the view of introducing gender reassignment procedure in Lithuania.**

On 26 April 2017 the Minister of Health Mr Veryga met in-person with the representatives of the National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) in order to discuss the role of the Ministry of Health in the course of introducing gender reassignment procedure in Lithuania.⁸ It is very important that a transgender person was able to participate in the meeting and to share his personal experiences within the framework of the Lithuanian health care system with the Minister directly.

On 28 April 2017 the Ministry of Health and the Ministry of Justice organized the working meeting in order to discuss the implementation of the resolution by the Government of the Republic of Lithuania, whereby the corresponding ministries had been instructed to prepare necessary legal acts by 1 September 2017 for introducing gender reassignment procedure in Lithuania.⁹ The National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) were invited to participate in the working meeting on an equal footing. In the course of the meeting, the representatives of the organization LGL proposed to apply both the **short-term** and **long-term strategies** with the view of addressing the situation of non-existent procedure for gender reassignment in Lithuania. The working meeting has embraced the proposal unanimously.

The **short-term strategy** implies the adoption of a health care protocol by the Minister of Health, enabling the provision of the primary health care services for transgender individuals, namely – psychologic counselling, psychiatric assessment and hormone replacement therapy. Upon receiving these services within the framework of the Lithuanian healthcare system, transgender individuals would be able to apply before the national courts with the aim of obtaining legal gender recognition. Based on the changed course of the domestic jurisprudence in the cases nos. e2YT-5329-934/2017 and e2YT-5326-987/2017, the legal gender recognition should be granted without the requirement for the irreversible gender reassignment surgery. Based on the short-term strategy model, the right to recognition of gender identity could be realized within the period from 12 to 18 months.

On 30 May 2017 the representatives of the National LGBT* Rights Organization LGL and a trans person were directly participating in a meeting of a working group in the Ministry of Health, tasked with drafting the above mentioned healthcare protocol. On 14 July 2017 the National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) were presented with the first draft of the health care protocol. After the first revision, the civil society organizations have no further comments to the draft. The developed draft healthcare protocol is fully compatible with the interests of transgender individuals within the framework of the short-term strategy for introducing gender reassignment procedure in Lithuania. It is foreseen that upon consultations with the relevant stakeholders, the healthcare protocol in question should come into force by 1 September 2017.

The **long-term strategy** implies the adoption of the separate *Law on Recognition of Gender Identity*, which would create an administrative procedure for obtaining legal gender recognition in Lithuania. After the adoption of the separate *Law on Recognition of Gender Identity*, the initial health care protocol adopted by the Minister of Health would have to be revised to lay down the remaining parts of the medical gender reassignment procedure, i.e. gender reassignment surgery. Nevertheless, the established administrative

⁸ "Lithuanian Minister of Health Discusses Gender Reassignment Legislation with LGL", *lgl.lt*, 27 April 2017, <http://www.lgl.lt/en/?p=16822>.

⁹ "Lithuanian Ministries under Obligation to Prepare Draft Bill on Gender Reassignment", *lgl.lt*, 23 March 2017, <http://www.lgl.lt/en/?p=16331>.

procedure for legal gender recognition should strictly follow the judicial standards by the domestic courts, i.e. no requirement for the irreversible gender reassignment surgery. Based on the long-term strategy model, the right to recognition of gender identity could be realized within the period of 6 months.

On 17 May 2017 the Minister of Justice established a working group, tasked to prepare the necessary legal acts with the view of implementing one's right to recognition of gender identity. The National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) were granted with the permanent seats in the working group.¹⁰ Up to the present date the working group had four meetings on 24 May 2017, 14 July 2017, 19 July 2017 and 21 July 2017. The working group has unanimously arrived to the conclusion that the administrative procedure for legal gender recognition should be established by adopting the separate *Law on Recognition of Gender Identity* and the material conditions for obtaining legal gender recognition should strictly follow the judicial standards set out by the domestic courts (i.e. no requirement for the irreversible gender reassignment surgery). The working group should prepare the final draft of the law in question and the corresponding amendments to other legal acts by 1 September 2017.

III. Questions to the Government Regarding the Implementation of the *L. v. Lithuania* judgment

The National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) commended the current efforts by the Lithuanian Government with the aim of introducing gender reassignment procedure in Lithuania and to satisfy its obligations under the *L. v. Lithuania* judgment. However, the civil society organizations would like to emphasize that the process of implementing the *L. v. Lithuania* judgment will be fully completed only by adopting the separate *Law on Recognition of Gender Identity*. We therefore respectfully ask that the Committee of Ministers to:

- a. invite the Lithuanian authorities to take all necessary steps to enact the health care protocol, enabling the provision of the primary health care services for transgender individuals, by 1 September 2017;
- b. invite the Lithuanian authorities to take all necessary steps with the view of ensuring that the prepared draft *Law on Recognition of Gender Identity* is successfully adopted by the Lithuanian Parliament without any undue delays or substantive modifications reducing the legal protection of transgender individuals;
- c. monitor whether the proposed legislative and policy solutions for executing the *L. v. Lithuania* judgments closely follow the judicial standards by the ECtHR and the domestic courts (i.e. no requirement for the irreversible gender reassignment surgery);
- d. maintain enhanced supervision of the *L. v. Lithuania* case until all the necessary legislative and policy steps have been fully implemented.

Finally, within the framework of the current submission to the Committee of Ministers, the National LGBT* Rights Organization LGL and the Human Rights Monitoring Institute (HRMI) would like to note that human rights of transgender persons should not be considered as a "question of sensitive nature".¹¹ The civil society organizations are extremely hopeful in witnessing positive improvements regarding the status of transgender persons in the Lithuanian society. We hope that the spirit of cooperation and inclusion will continue to guide the remaining process of executing the *L. v. Lithuania* judgment at the national level. The process has been long and daunting, but the light is already visible at the end of the tunnel.

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¹⁰ "LGL Takes Part in a Working Group on Legal Gender Recognition", *lgl.lt*, 29 May 2017, <http://www.lgl.lt/en/?p=17397>.

¹¹ "Updated Action Plan on the execution of the Judgment in Case *L. v. Lithuania*" – 15 June 2017 – DH-DD(2017)708, <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680728884>, p. 4.

¹² The advocacy activities of the National LGBT* Rights Organization LGL at the Council of Europe level is supported by the foundation "Erinnerung, Verantwortung und Zukunft", which supports activities that tackle contemporary discrimination on the grounds of sexual orientation and (or) gender identity. For more information, please consult <http://www.stiftung-evz.de/eng>. This submission does not represent an expression of opinion by the Foundation EVZ. The authors bear responsibility for the content.