



**United Nation's Committee on the Elimination of All Forms of Discrimination against Women
58th Session (30 June – 18 July 2014)**

**Submission¹ by the Lithuanian Gay League (LGL)² on the 5th Periodic Report by Lithuania on the
implementation of Convention on the Elimination of All Forms of Discrimination against Women
(CEDAW)**

Article 12 (the right to health)

**(i) Medical treatment as compulsory requirement for legal gender recognition
(ii) Access by transgender persons to gender reassignment treatment**

1. Introduction

Two recommendations³, adopted by the CEDAW Committee in 2010, affirmed that “discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as [...] sexual orientation and gender identity.” This leads to an obligation for state parties to CEDAW to address discrimination against transgender women and to report the progress achieved to the Committee.

The 5th periodic report of Lithuania, submitted under the Article 18 of the Convention, does not even passingly mention both legal and social challenges faced by transgender women in the Lithuanian society due to institutionalized transphobia and prevailing transphobic attitudes.

The Lithuanian legal system does not acknowledge the ground of 'gender identity' as prohibited ground of discrimination, thus denying transgender individuals even the minimal legal safeguards, available to the members of the local LBT community, i.e. prohibition of discrimination under the scope of the Law on Equal Opportunities⁴ and prevention of hate speech and hate crimes⁵.

¹ This submission has been possible due to the financial support from the EEA GRANTS NGO PROGRAMME in Lithuania.

² LGL is a national non-governmental organization that advocates for the rights of LGBT* individuals in Lithuania. LGL fights against homophobia and transphobia, discrimination and social exclusion and is inclusive of all sexual orientations, gender identities, and expressions within its advocacy work. LGL has been registered with the national authorities in 1995, thus rendering it one of the most mature NGOs in the country. In addition to this, LGL is the sole organization in Lithuania that works exclusively on LGBT* issues. Tel.: +370-5-261-0314. E-mail: office@gay.lt. Website: www.lgl.lt/en.

³ UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 27 on Older Women and Protection of their Human Rights*, 16 December 2010, CEDAW/C/GC/27; and *General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, 16 December 2010, CEDAW/C/GC/287.

⁴ The *Law on Equal Opportunities* (2003) prohibits discrimination, *inter alia*, on the grounds of sexual orientation in the fields of employment and occupation, provision of goods and services, education and actions by public and municipal authorities. The Law does not cover the ground of gender identity. For further reference, see: *Lietuvos Respublikos Lygių galimybių įstatymas*, No. IX-1826, 18 November 2013, <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=454179>

⁵ For further reference on the provision in the Criminal Code on hate speech and hate crimes on grounds of, *inter alia*, sexual orientation please see: Lithuanian Gay League (LGL), *Monitoring Implementation of the Council of Europe Recommendation Cm/Rec(2010)5 to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity. Documentation Report. Lithuania*, Vilnius, 2013, p. 18-21, <<http://www.lgl.lt/en/files/EN-ataskaita-Sveicaru-internet.pdf>>.

According to the LGBT survey⁶ conducted by the European Union Agency for Fundamental Rights (2012), in the last 12 months as many as 55% of transgender individuals in Lithuania felt personally discriminated against or harassed because of being perceived as transgender. The same survey also indicates that 60% of transgender respondents in Lithuania were physically/sexually attacked or threatened with violence in the last five years. The human rights situation regarding transgender individuals in Lithuania can be described as critical. We would like to draw the Committee's attention to the particularly grave violation of the fundamental human right of transgender individuals — the right to health — caused by the State party's inaction.

Two of the processes associated with the reassignment of a person's gender are the legal process, in which a person's recorded sex and first name are changed in identity and other documents ("legal gender recognition"), and the medical process, in which the individual's physical characteristics may be brought in line with their preferred gender ("gender reassignment treatment"). Human rights principles require that the two processes should be separate and that the extent of the medical process should be determined by the needs and wishes of the individual. In many countries these two processes are mixed together, with legal gender recognition being made conditional on a medical diagnosis and medical treatment. While medical treatment is often desired by transgender persons, this is by no means always the case, resulting in situations where some individuals are faced with the choice of undergoing medical treatment (including sterilization) they do not need or wish, or being unable to obtain legal gender recognition. Where transgender persons do wish to undergo medical treatment, they face significant obstacles in obtaining such treatment. These obstacles may fall into three broad categories: (a) failure of health services to provide necessary treatment, and where it is provided, failure, often, to provide treatment of an acceptable quality; (b) imposition of arbitrary requirements, including a diagnosis of mental disorder for accessing transgender health care; (c) failure to cover expenses for medically necessary treatment.

In Lithuania not only legal gender recognition is being made completely conditional on medical treatment, but also prevailing legal uncertainty effectively prevents the access of transgender persons to gender reassignment treatment altogether. In essence it means that the Lithuanian authorities impose 'impossible to fulfill' requirements upon transgender individuals, thus rendering their rights to privacy, bodily integrity and health completely theoretical and illusory.

2. Medical treatment as compulsory requirement for legal gender recognition

2.1. The situation in Lithuania regarding medical treatment as a compulsory requirement for legal gender recognition

Rule 109.8 of the Civil Registration Rules, approved by an order of Ministry of Justice on 22 July 2008, permits a change in civil status documents following "gender assignment (for hermaphrodites) and gender reassignment".⁷ However, there are no detailed rules governing changes in civil status documents, these being authorized by the courts on a case-by-case basis.⁸

In addition, Article 2.27.1 of the Civil Code (which came into force on 18 July 2000) provides that "an unmarried adult has the right to change one's sex in a medical way, if this is medically possible." Article 2.27.2 provides for detailed subsidiary legislation setting out the conditions and procedure

⁶ For the disaggregated survey results please visit <<http://fra.europa.eu/DVS/DVT/lgbt.php>>.

⁷ "Dėl teisingumo ministro 2006 m. gegužės 19 d. įsakymo Nr. 1R-160 "Dėl Civilinės metrikacijos taisyklių patvirtinimo" pakeitimo", No. 1R-294, 22 July 2008.

⁸ In practice, because of the impossibility of undergoing gender reassignment treatment in Lithuania (see 3.1. below), legal gender recognition through the process described here is only possible for transgender persons who are able to obtain the medical treatment abroad, at their own expense.

for such gender reassignment. However, when the government put forward its draft Law on Gender Reassignment in 2003, it met with such opposition that it was never enacted. The consequences of the absence of this legislation are discussed further in section 3.1. (i) below.

In February 2009 the Parliamentary Ombudsman issued a decision recommending that the Ministry of Health as well as the Human Rights Committee of the Parliament take appropriate measures to eliminate the legal uncertainty in the field of gender reassignment.⁹ However, the Minister of Health declared to news agencies that “he will not introduce and he would not initiate to introduce to the agenda of the Parliament the issue of the new law of gender reassignment, since being Minister of Health and personally he is against gender reassignment”¹⁰ In consequence, no such measures have yet been implemented.

On 20 July 2012 the Ministry of Justice proposed a law on Civil Registry, which would simplify the procedure of legal gender recognition by obliging registry offices to change identity documents upon the submission of medical proof of gender reassignment surgery (Article 26).¹¹ However, this law is accompanied by a proposal to remove the above-mentioned requirement in the Civil Code (Article 2.27.2) to set out the conditions and procedure for gender reassignment in a separate law.¹² This package was accepted for judicial deliberation on 26 March 2013.

In the absence of a law on gender reassignment, the concept of “gender reassignment” remains undefined, leaving individual courts to determine its meaning on a case-by-case basis. It is our understanding that generally it includes hormone treatment and gender reassignment surgery where this is medically possible, and that such treatment would usually be expected to render the transgender person infertile.

Thus, in practice, legal gender recognition of transgender persons is subject to compulsory medical treatment, implying sterilization. The 5th Periodic Report by Lithuania on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) makes no reference to this question.

2.2. The obligations of State parties¹³

Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires the State parties to take appropriate measures designed to “eliminate discrimination against women in the field of health care in order to ensure [. . .] access to health care services.”

Forced sterilization is a blatant breach of the right to bodily integrity and of reproductive rights. UN Treaty Bodies and Special Procedures have repeatedly affirmed that the right to health comprised the right of individuals to retain control and sovereignty over their bodies. For example, the ESCR Committee stated that “[t]he right to health contains both freedoms and entitlements, including the right to control one’s health and body, [...] the right to be free from interference, such as the right to

⁹ Decision of the Parliament Ombudsman R. Valentukevičius, No. 4D-2008/1-1644, 2009-02-09, available at: <<http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=3466>>.

¹⁰ “Raginama imtis priemonių dėl lyties keitimo operacijos galimybių” [“Encouragement to adopt measures in relation to gender reassignment possibility”], *blasas.lt*, 13 February 2009, <<http://www.balsas.lt/naujiena/238264/raginama-imitis-priemoniu-del-lyties-keitimo-operacijos-galimybes>>.

¹¹ “Civilinės būklės aktų ir jų registravimo įstatymo projektas”, No. XIP-2017(2), 20 July 2010.

¹² “Civilinio kodekso pakeitimo ir papildymo įstatymo projektas”, No. XIP-2018(2), 20 July 2010.

¹³ The authors of this submission are indebted to the International Centre for the Legal Protection of Human Rights (INTERIGHTS) for permission to use their research material in the preparation of this Appendix.

be free from torture, non-consensual medical treatment and experimentation”.¹⁴ The right to health also protects an individual’s “sexual and reproductive health”.¹⁵

The prohibition of forced sterilization is firmly entrenched in international law. The UN High Commissioner for Human Rights affirmed that the right to health included the “right to be free from [...] forced sterilization.”¹⁶ The CEDAW Committee similarly stated that “[c]ompulsory sterilization...adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”¹⁷ In addition to interfering with the right to health, forced sterilization may amount to inhuman and degrading treatment.¹⁸ Sterilizations performed on various groups including women,¹⁹ persons with disabilities,²⁰ and intersex people²¹ have been condemned on a number of occasions. The International Federation of Gynaecology and Obstetrics (FIGO) and the World Health Organization (WHO) have also condemned the practice of forced sterilization,²² as well as the World Medical Association (WMA) and IFHHRO – International Federation of Health and Human Rights Organizations, the latter with specific reference to transgender persons.²³

¹⁴ ESCR Committee, General Comment No 14, E/C.12/2000/4 (2000) at para 8. See also Report of the Special Rapporteur on Economic, Social and Cultural Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, E/CN.4/2003/58 (13 February 2003) at para 24.

¹⁵ Report of the Special Rapporteur on the right to health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/66/254 (3 August 2011), at para 6 accessible at <[http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenDocument)>; also see Article 16§1(e) of the CEDAW, which provides that states must protect the individuals’ right to “decide freely and responsibly on the number and spacing of their children”. Similarly, the ESCR Committee stated that reproductive health entailed the freedom to “decide if and when to reproduce”, ESCR Committee, General Comment No 14, E/C.12/2000/4, (2000) footnote 12.

¹⁶ Office of the United Nations High Commissioner for Human Rights and World Health Organisation, *The Right to Health*, Fact Sheet No. 31 (2008) Geneva, available at <<http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>>.

¹⁷ UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against women*, 1993, A/47/38 (1993) at 22. See also *General Recommendation No. 24 on Women and health*, 1999, A/54/38 at 22: “acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.” Human Rights Committee in its Concluding Observations on Slovakia, U.N. Doc. CCPR/C/SVK/CO/3 (2011) at para 13: “While welcoming the investigation into the forced sterilization of Roma women and the adoption of Act No. 576/2004 Coll. on health care and services, which introduces the notion of informed consent, the Committee is concerned at the narrow focus of the investigation and the lack of information on concrete measures to eliminate forced sterilization, which, allegedly, continues to take place (arts. 7 and 26).”

¹⁸ Committee against Torture (“CAT”), Concluding Observations on Czech Republic, CAT/C/CR/32/2 (2004), at para 5(k) regarding the forced sterilization of Roma women. See also CAT, Concluding Observations on Slovakia, CAT/C/SVK/CO/2 (2009) at para 14 as well as the Concluding Observations on Peru, CAT/C/PER/CO/4 (2006) at para 23; European Court of Human Rights, *V.C. v. Slovakia*, Application No 18968/07, Judgment of 8 November 2011 (Violation of article 3, sterilization without valid consent of a woman of Roma origin). See also *María Mamérita Mestanza Chávez v. Peru*, Inter-American Commission on Human Rights, Case 12.191, Report 71/03, Friendly Settlement Agreement (2003) available at <<https://www.cidh.oas.org/annualrep/2003eng/Peru.12191.htm>>.

¹⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *A.S. v. Hungary*, Communication No. 4/2004, CEDAW/C/36/D/4/2004, (29 August 2006) available at <<http://www.unhcr.org/refworld/docid/4fdb288e2.html>>.

²⁰ UN Committee on the Rights of the Child, Concluding Observations on Australia, CRC/C/15/Add268 (2005) at para 46(e). See also, ESC, General Comment No. 5, U.N. Doc E/1995/22 (1995) at para 31 (infringe article 10 (2) of the ICESCR, “Special protection should be accorded to mothers during a reasonable period before and after childbirth.”) and CERD, Sessional/Annual Report of Committee, UN Doc A/59/18(SUPP) (2004) at para 389.

²¹ Committee against Torture (“CAT”), Concluding Observations on Germany, CAT/C/DEU/CO/5 (2011) at para 20.

²² WHO, *Declaration on the Promotion of Patients’ Rights in Europe*, EUR/ICP/HLE (1994) (informed consent is a prerequisite to medical intervention); FIGO new guidelines on “Female Contraceptive Sterilization”, at para 2 and 6 (2011) available at <http://www.stoptortureinhealthcare.org/sites/default/files/figo-sterilization-guidelines_0.pdf>.

²³ World Medical Association and International Federation of Health and Human Rights Organisations, “Global Bodies call for end to Forced Sterilisation” (Media Release, 5 September 2011) available at <http://www.wma.net/en/40news/20archives/2011/2011_17/index.html>.

Requiring transgender individuals to undergo unwanted and unnecessary medical treatment, including possibly sterilization, as a prior condition for legal gender recognition is in direct conflict with the above. Lithuania both prejudices the attainment of complete physical, mental and social well-being of transgender women and indeed acts in a manner, which directly puts their health at unnecessarily risk.

3. Access by transgender persons to gender reassignment treatment

3.1. The situation in Lithuania regarding access by transgender persons to gender reassignment treatment

For those Lithuanian transgender persons who need gender reassignment treatment, access is effectively prevented by three separate factors: an absence of legislation regulating gender reassignment procedures; an absence of medical facilities in Lithuania; and a failure by the state to contribute to the cost of reassignment treatment.

- (i) The absence of legislation regulating comprehensive gender reassignment procedures was the subject of a judgment by the European Court of Human Rights in *L v. Lithuania*.²⁴ In its judgment, the Court summarized the absence of legislation and its consequences as follows:

“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”.

The Court concluded that the applicant’s inability to complete gender reassignment treatment in Lithuania as a consequence of the lack of the subsidiary legislation violated his right to private life under Article 8:

“The Court finds that the circumstances of the case reveal a limited legislative gap in gender reassignment surgery, which leaves the applicant in a situation of distressing uncertainty *vis-à-vis* his private life and the recognition of his true identity. Whilst budgetary restraints in the public health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code, over four years have elapsed since the relevant provisions came into force and the necessary legislation, although drafted, has yet to be adopted. Given the few individuals involved (some 50 people, according to unofficial estimates), the budgetary burden on the State would not be expected to be unduly heavy. Consequently, the Court considers that a fair balance has not been struck between the public interest and the rights of the applicant.

In the light of the above considerations, the Court concludes that there has been a violation of Article 8 of the Convention.” [59-60]

The Court found that the applicant’s claim for pecuniary damage would be satisfied by the enactment of the subsidiary legislation at issue within three months of the judgment becoming final, but ruled that should that prove impossible, and in view of the uncertainty about the medical expertise available in Lithuania, the Court would award the applicant €40,000, to finance the final stages of his surgery abroad. [75] The Lithuanian authorities chose the latter course.

²⁴ *L. v. Lithuania*, Application No. 27527/03, ECtHR, 11 September 2007.

The judgment in *L v. Lithuania* dates 11 September 2007, i.e. 7 years ago. During this time the Lithuanian authorities have failed to implement the general measures necessary to prevent further violations of this kind. It should be noted that nearly 14 years have elapsed since – when adopting the Civil Code – the Lithuanian authorities recognized, in principle, the right of transgender persons to undergo gender reassignment treatment – 14 years in which the exercise of this right has been frustrated.

As already noted in section 2.1., on 20 July 2012 the Ministry of Justice registered a draft amendment to the Civil Code²⁵ which, far from implementing the subsidiary legislation, seeks to delete the requirement for such legislation.

In August 2012, in response to an enquiry by the Lithuanian Gay League, the Ministry of Justice stated its view that “taking into consideration the legislative initiatives brought up to present, it is likely that the law establishing gender reassignment conditions and procedure will not be adopted”.

On 26 March 2013 the Lithuanian Parliament approved the Civil Code amendment for deliberation. The Minister of Justice claimed before the Parliament that this amendment would result in compliance with the execution of judgment requirements in the *L v. Lithuania* case. However, in our opinion, the Lithuanian authorities’ proposed solution, far from complying with the judgment of the Court, would entrench the substance of the violation in that case, by removing the possibility of any legally defined mechanism for establishing procedures to make gender reassignment treatment accessible.

It can only be concluded that the Lithuanian authorities remain unwilling to make gender reassignment treatment accessible to transgender persons. As such, their policy constitutes a flagrant and willful violation of the right to health of a highly vulnerable minority, motivated, it must be assumed, by a discriminatory animus.

- (ii) Regarding the absence of medical facilities for gender reassignment treatment in Lithuania, the European Court of Human Rights commented in *L v. Lithuania* that until the subsidiary legislation discussed above is enacted, “no suitable medical facilities appear to be reasonably accessible or available in Lithuania”. [57] We support this assessment. Since no law has been adopted that would establish gender reassignment conditions and procedures, there is no legal basis for transgender persons to lawfully access endocrinological or surgical treatment.

Under a Ministry of Health procedure,²⁶ it is possible for individuals to apply to their family doctor to receive treatment abroad. However, a precondition for receiving treatment abroad is that treatment provided in Lithuania is unsuccessful. In the case of transgender persons, this possibility remains theoretical, since there is no provision of reassignment treatment in Lithuania.²⁷

- (iii) So far as recovery of costs is concerned, the Ministry of Health has confirmed to the Lithuanian Gay League that, while access to psychiatric care for transgender persons may be covered, the coverage of costs of other medical services related to gender reassignment (e.g. hormonal or

²⁵ No. XIP-2018 (2).

²⁶ See Ministry of Health, Minister’s Order No. V-729 of 16 August 2010 “For sending patients for consultation, examination and (or) treatment to the States belonging to the European economic community and Switzerland order confirmation” (State Gazette, 2010, No. 99-5162).

²⁷ Supreme Administrative Court of Lithuania, case of R.S, administrative case No. A858-1452/2010, decision of 29 November 2010.

surgical treatment) is not possible without the adoption of the subsidiary legislation referred to above.²⁸

The 5th Periodic Report by Lithuania on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) makes no reference to these questions.

3.2. The obligations of State parties

Eliminating discrimination against transgender women in the field of health care and ensuring access to health care services under the Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) could be considered as requiring the State parties:

- to apply the definition of "health" that is set out in the Constitution of the World Health Organization: "Health is a state of **complete physical, mental and social well-being** and not merely the absence of disease or infirmity."²⁹
- to attain the **highest possible standard of health**;
- to ensure that the **health care system is accessible to everyone and not to impede disadvantaged groups' exercise of their right to health**;
- to interpret the right to health as requiring that the costs of health care are borne, at least in part, by the community as a whole and to ensure that the **costs of health care do not represent an excessively heavy burden for the individual**.

The mere fact that the Lithuanian authorities do not offer the possibility of gender reassignment treatment for transgender individuals jeopardizes the quality of the care provided in this sphere and institutionalizes discrimination against transgender people when attempting to access health care.

4. Conclusions

The practice of requiring transgender persons to undergo medical treatment, including, it seems, as a matter of practice, sterilization, as a condition of legal gender recognition is incompatible with Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Accordingly, we respectfully request that the Committee returns a finding of non-conformity with Article 12 of the CEDAW regarding violation of the right to health for transgender women by the State party.

The refusal of Lithuanian authorities to put in place subsidiary legislation, as required by the European Court of Human Rights in the *L v. Lithuania* judgment, effectively prevents the access of transgender persons to reassignment treatment, and is a flagrant and willful violation of the right to health of those transgender persons needing such treatment.

The concomitant failure of Lithuanian authorities to provide adequate medical facilities for gender reassignment treatment (or the alternative of such treatment abroad), and to ensure that medical insurance covers, or contributes to the coverage of important elements of such medically necessary treatment, on a non-discriminatory basis, are further evidence that Lithuania does not meet the requirements to provide effective access to health care for all, without discrimination.

Accordingly, we respectfully request that the Committee returns a finding of non-conformity with Article 12 of the CEDAW with regard to effective access to health care for transgender women.

²⁸ Ministry of Health of the Republic of Lithuania, reply to Lithuanian Gay League, 2012-05-15, No. (6.1-18)10-4125, "Regarding provision of information on the implementation of the CoE Recommendation CM/REC(2010)5.

²⁹ Conclusions 2005, Statement of Interpretation on Article 11§5.