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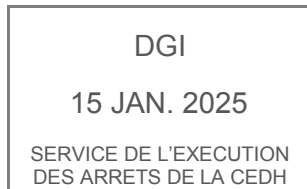
Communication from Lithuania concerning the case of L. v. Lithuania (Application No. 27527/03)

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Réunion : 1521^e réunion (mars 2025) (DH)

Référence du point : Plan d'action (15/01/2025)

Communication de la Lituanie concernant l'affaire L. c. Lituanie (requête n° 27527/03) (**anglais uniquement**)



LIETUVOS RESPUBLIKOS TEISINGUMO MINISTERIJA
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Department for the Execution of Judgments of the ECHR
DGI Directorate General of Human Rights and Rule of Law
Council of Europe

Vilnius, 15 January 2025

Cc:
Permanent Representation of Lithuania
to the Council of Europe

BY E-MAIL TRANSMISSION ONLY

**ACTION PLAN REGARDING THE EXECUTION OF THE JUDGMENT OF THE EUROPEAN COURT OF
HUMAN RIGHTS IN CASE L. V. LITHUANIA (NO. 27527/03)**

The Agent of the Government of the Republic of Lithuania to the European Court of Human Rights (hereinafter – the Government Agent) hereby provides an updated information regarding the execution of the judgment of the European Court of Human Rights (hereafter – the Court) in the case *L. v. Lithuania* (no. 27527/03, 11 September 2007).

Description of case

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. 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).

Regarding individual measures

The applicant received awarded compensation in due time. The applicant has undergone gender reassignment in Belarus. Subsequently, in August 2011 entries in the applicant's official documents were changed.

At its 1222nd meeting (March 2015) (DH) the Committee noted that the applicant's individual situation had been resolved and decided to close the examination of the individual measures.



Regarding general measures

In the course of the execution of the present case the Governmental institutions, namely the Ministries of Justice and Health, together with the representatives of the NGOs agreed that the issues of the legal recognition of gender identity and the medical treatment of transgender persons should be regulated separately. Subsequently there were short-term and long-term aims set. At the longer perspective the necessary statutory legislation would be adopted with a view to remove existing legal gap aiming to ensure effective access to the legal recognition of transgenders. In short terms it was decided to take legislative measures in order to facilitate the enjoyment of the transgenders' rights, including ensuring access to medical services which are not related to the gender reassignment surgery.

The short term aims were gradually implemented covering various spheres of the private life of the transgenders, including the removal of the imposed restrictions due to the diagnosis of transsexualism (ICD-10 code F64.0) to engage in various professional activities, also there were necessary legal acts adopted enabling changes of the entries in diplomas and certificates of education in accordance with the acquired gender, the most important developments are related to the provision of access to administrative procedure for the change of the name and surname and to the establishment of the legal basis for receiving necessary medical services (the latter aspects are in detail presented below).

Due to lack of political support the previous Government was not able to achieve tangible results in removing the existing legal gap. In October 2024 there were Parliamentary elections held in Lithuania and a new Government was formed in December. By the resolution of the Parliament of 12 December 2024 no. XV-54¹ the programme of the new cabinet was approved, whereby *inter alia* the following relevant aspects have been foreseen: a support for initiatives in the field of equality and diversity, more effective protection of human rights and due attention to the fight against hate crimes directed against LGBT persons. It could be observed that it is the very beginning of the new political cycle, the formation of the political team of the Ministry of Justice has not been finalized, yet, the plan for the implementation measures of the Government's programme is still under preparation. Accordingly, it is premature to indicate what concrete actions will be taken in the legislative process aimed at removing existing legal gap that preconditioned the violation of the Convention in the case at issue.

In addition, it could be noted that the ruling of the Constitutional Court in one of the pending cases initiated by the Government (case No. 12/2024 related to the legal regulation of partnership²) could be also relevant for the execution of the present case. The Government requested the Constitutional Court to verify whether Article 28 of the Law on the Approval, Entry

¹ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d4b57910b89711efbb3fe9794b4a33e2>

² The resolution of 29 May 2024 of the Government
https://lrkt.lt/~prasymai/12_2024.htm

into Force and Implementation of the Civil Code of the Republic of Lithuania, according to which the norms of Chapter XV of Part VI of Book Three of the Civil Code of the Republic of Lithuania on cohabitation without registration of marriage enter into force from the moment of entry into force of the law regulating the procedure for registration of partnership (i.e. in a similar way as the right of gender reassignment is subjected to the regulation of conditions and procedure by law), insofar as the legislator has regulated the constitutional right of a person to legal recognition and protection of family relations in such a way that this right of a person and the possibility of effectively exercising it completely depend on the implementation condition, according to which only the procedure for implementing this right must be provided, does contradict the provision of the first part of Article 6 of the Constitution (the Constitution is an act of direct application), the second and third parts of Article 21 (oblige by law to protect human dignity and prohibit its degradation), the first and fourth parts of Article 22 (protect the inviolability of a person's private life), Article 29 (establishes the principle of equality of all persons), the first and second parts of Article 38 (according to which the state protects families), the first part of Article 135 of the Constitution (according to which the Republic of Lithuania must be guided by the generally recognized principles and norms of international law), and the third part of Article 138 (defines the place of international treaties ratified by the Seimas of the Republic of Lithuania in the national legal system, the constitutional principles of the rule of law and legitimate expectations).

Substatutory measures relevant for the removal of existing legal gap

In order to ensure the sustainable approach to the possibility of the transgender persons' ability to amend the entries in the official documents under the administrative procedure as an intermediate step before the adoption of the statutory amendments on 31 December 2021 the Ministry of Justice adopted the amendment of the Order of the Minister of Justice "On approval of the rules for the change of name and surname"³. The said amendments, which entered into force on 2 February 2022, ensure a possibility to persons who are diagnosed with transsexualism to request for the amendment of their name and surname under the administrative procedure upon provision of the medical certificate (it could be issued by any EU medical institution, not necessarily the Lithuanian one) concerning the respective diagnosis, if they are willing to have names to be in conformity with the opposite sex. Accordingly, the diagnosis of transsexualism is now among other legal grounds for the change of name and surname at the same time allowing unique exception from the strict Lithuanian language rules requiring the form of name and surname to correspond to a sex, thereby allowing transgender persons to acquire names of the opposite sex in line with their gender identity. This exception was subsequently also enshrined in a higher legal act, namely the Resolution of the Government "On approval of the order for

³ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/de5a27006a7911ecb2fe9975f8a9e52e>

writing name and surname in identity and other documents”, reaffirming the commitment of the Lithuanian authorities to the Convention and their aspiration to take all possible steps progressively to ensure that the private life of transgender persons is respected.

Further it must be noted that this new possibility was not designed in an isolated manner, but is accessible through the general administrative procedure available for the change of names and surnames (the amendment at issue did not make any changes in the procedure, as in any case of the change of names and surnames, the changes are recorded by the offices of the civil registration and end up in the Population Registry which is interconnected with other registries) which is very transparent, clear, quick and accessible as it is in very detailed manner described by the competent authorities on the respective websites of the public institutions because this procedure can be completed through e-services. As concerns the length of this new administrative procedure, the overall process of the examination of the application must be completed within 2 months (the application must be examined by the civil registry office within 20 working days, when permission from the Ministry of Justice is required, the Ministry's decision must be made within 20 working days).

In order to ensure the uniformity in practice the Ministry of Justice prepared the guidelines of the application of the introduced procedure which was distributed to all competent authorities, namely civil registration offices. All the more, the domestic NGOs were provided with the possibility to submit questions concerning the application of this new mechanism and were provided guidelines in reply.

It must be specified that the described above measure is of utmost importance, as it enables transgender persons to obtain new name and surname upon their own choice, in accordance with simple administrative order, in conformity with their gender identity, which should facilitate their private life, enabling transgender persons to transition socially more smoothly and providing some protection against daily discrimination. Under this new mechanism 66 applications have already been granted (23 in 2022, 12 in 2023 and 31 in 2024), one procedure was terminated as the applicant withdrew the request (because opted for the full legal gender identity recognition through the judicial proceedings), three request were rejected (as the chosen name contradicted the rules of the Lithuanian language (those which are not related to the correspondence to the sex, but to the spelling of a name; the request of the minor was not granted; in one case the person did not agree to change the surname at the same time).

Legal regulation of medical treatment of transgender persons

The transgender persons in Lithuania had access to the state-funded psychiatric and psychological assistance, however there was no diagnostic and health care protocol for the treatment of transsexualism until recently. By the order of the Minister of Health of 4 August

2022 the “Procedure for Diagnosis and Treatment of Gender Identity Disorder (Transsexualism)”⁴ was approved. Within the process of drafting of this document the practitioners and international experts from the TGEU were consulted, the diagnostic and health care protocol was also discussed with domestic NGOs. To this end it must be stressed that within the course of consultations with the NGOs the main concerns were taken into account, namely the concern who will provide medical assistance and who will be competent to diagnose transsexualism. In order to ensure more flexible access to necessary medical services the draft order was amended stipulating that psychiatric consultations would be provided at the primary level instead of the second one (higher level, less institutions, referral from the family doctor or other specialist is required). Moreover, the order was amended providing that the psychiatrist would diagnose transsexualism instead of the consilium of various specialists. In order to address concerns about the lack of competence of medical practitioners the amended order foresees that the treatment plan would be prepared by the specialist of the highest competence working at the tertiary care institutions, which subsequently would be implemented at the primary level.

The mentioned diagnostic and health care protocol contributes to the ensurance of the uniform and transparent diagnostic procedure and of the coordinated treatment of transgender persons also more flexible access to the necessary medical services in the context of psychiatric, psychological assistance and hormone therapy. Until the adoption of the statutory amendments stipulating the conditions for the gender reassignment, there is no access to full gender reassignment surgery yet. In this regard it should be reiterated that according to the domestic case-law the transgender persons have arguable claim to seek for the compensation of damages incurred during their medical treatment as an award for unlawful acts from the State because of the existing legal gap.

In 2024 the Ministry of Health allocated funding for training of healthcare professionals to raise awareness of the health-related needs of LGBTI people and in order to reduce discrimination in the provision of healthcare services. The continuation of such trainings was discussed within the course of the meeting with members of the LGBTQ+ community held in October 2024.

Relevant domestic case-law and its latest developments

It should be reiterated that the domestic courts since spring 2017 have developed well established case-law according to which changes in the official documents are possible even in the absence of irreversible gender reassignment surgery, taking into account the case-law of the Strasbourg Court, in particular case *A.P., Garçon and Nicot v. France* (nos. 79885/12 52471/13 52596/13, 6 April 2017). The domestic courts noted that the legislator had not adopted the relevant legislation to remove the existing legal gap and therefore, in line with evolving

⁴ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9b016a73149411edb36fa1cf41a91fd9>

international standards, interpreted the notion of gender reassignment more broadly, underlining that it should not be related to irreversible surgical change but mainly to an individual's psychological self-identification with a particular gender, as evidenced by both medical data and the individual's social behaviour. According to the existing case-law, self-identification with a particular gender is one of the main material conditions for the legal recognition. Approximately 100 persons have already availed themselves of this judicial remedy and have been granted gender identity legal recognition.

The most recent development of the domestic case-law in this sphere is related to the granting of requests submitted on behalf of the minors applying the same line of reasoning, despite the fact that according to the valid provisions of the Civil Code a possibility of gender reassignment is foreseen only to adults. In the first such ruling the Kaunas District Court decision of 13 April 2021 noted that in the case at issue, the minor's right to recognition of the gender identity was exercised through the minor's statutory representatives, the applicant's parents. Adopting the favourable decision, the domestic court, *inter alia*, referred to the principle of the best interests of a child also took into account that the applicant was diagnosed with a gender identity disorder and was subjected to hormone therapy that has already led to some irreversible changes, the court also had regard to the self-identification in the social sphere with the opposite gender than that was indicated in the official documents, therefore it was concluded that the entries in the civil status records had to correspond to the actual situation. The application was granted in full and this ruling came into force as it was not appealed by the State authorities. Subsequently, in several other cases favourable decisions were adopted in respect of minors.

According to the domestic case-law with regard to non-contractual State's liability the failure to properly execute the Court's judgment in L. case ensuring the access to the necessary medical treatment and providing for the procedure for the legal recognition of gender reassignment is considered as unlawful act of the State. The inconveniences experienced by the transgender persons are acknowledged as a reasonable ground for the compensation award.

Situation of trans people in Lithuania

In September 2024 the Office of the Equal Opportunities Ombudsperson published the National Review of the Situation of Transgender People in Lithuania⁵ consisting of a study on public attitudes towards transgender people, an overview of the legal framework, and a qualitative study. It is already the second review (the first one was published in 2019) presenting experiences of transgender persons living in Lithuania across various spheres of life and submitting recommendations to state institutions based on the collected material.

⁵ Summary of the National Review 2024 is available at:
https://lygybe.lt/wp-content/uploads/2024/09/the-situation-of-transgender-people-in-lithuania-2024_summary.pdf

Concluding remarks

In conclusion the Lithuanian authorities would like to reassure their commitment to execute the Court's judgment in the present case and are perfectly aware that this requires adoption of a clear legislative framework regulating the conditions and procedures for gender reassignment, however at the moment there is no possibility to submit a concrete timetable set for the completion of the necessary legislative process, because a new Cabinet is still in the progress of preparation of the plan for implementation of its programme for forthcoming 4 years.

The Committee of Ministers will be informed of any further developments in the legislative process and other general measures.

Respectfully,

A handwritten signature in black ink, consisting of a stylized capital 'R' followed by a horizontal line extending to the right.

Ričard Dzikovič
Agent of the Government of the Republic of Lithuania

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