



## **International Covenant on Economic, Social and Cultural Rights**

### **Submission by the Lithuanian Gay League (LGL)<sup>1</sup> on the 2nd report by Lithuania on the implementation of the International Covenant on Economic, Social and Cultural Rights**

#### **Article 12 -- The right to protection of health**

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

#### ***Overview***

Two of the processes associated with the reassignment of a person's gender are a legal process, in which a person's recorded sex and first name are changed in identity and other documents ("legal gender recognition"), and a 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 completely separate and that the extent of the medical process should be determined by the needs and wishes of the individual. It can range from little or no medical intervention, through to extensive gender reassignment surgery.

In many countries, including Lithuania, 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 a situation where some individuals are faced with the choice of undergoing medical treatment (including in many countries, sterilisation) they do not need or wish, or being unable to obtain legal gender recognition.

Where transgendered persons do wish to undergo medical treatment, they face significant obstacles in obtaining such treatment in many countries. These obstacles fall into three broad categories:

- failure of health services to provide necessary treatment, and where it is provided, failure, often, to provide treatment of an acceptable quality;
- imposition of arbitrary requirements, including a diagnosis of mental disorder for accessing transgender health care;
- failure to cover expenses for medically necessary treatment.

#### ***The situation in Lithuania regarding medical treatment as a compulsory requirement for legal gender recognition***

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<sup>1</sup> LGL is a national, non-governmental, non-profit organization that advocates for the rights of the LGBT\* individuals in Lithuania. LGL fights against homophobia, biphobia and transphobia, discrimination and social exclusion and it 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 the LGBT\* issues.

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”.<sup>2</sup> However, there are no detailed rules governing changes in civil status documents, these being authorised by the courts on a case-by-case basis.<sup>3</sup>

In addition, Article 2.27.1 of the Civil Code (adopted in 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 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.

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.<sup>4</sup> 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.”<sup>5</sup> 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).<sup>6</sup> 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.<sup>7</sup> 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. However, we know of no firm data on this question. Thus, in practice, legal gender recognition of transgender persons is subject to compulsory medical treatment, implying sterilisation.

The 2nd Report by Lithuania on the implementation of the International Covenant on Economic, Social and Cultural Rights makes no reference to this question.

### ***The situation in Lithuania regarding access by transgender persons to gender reassignment treatment***

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<sup>2</sup> “Dėl teisingumo ministro 2006 m. gegužės 19 d. įsakymo Nr. 1R-160 “Dėl Civilinės metrikacijos taisyklių patvirtinimo” pakeitimo”, No. 1R-294, 22 July 2008.

<sup>3</sup> In practice, because of the impossibility of undergoing gender reassignment treatment in Lithuania (see 3.2 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.

<sup>4</sup> Decision of the Parliament Ombudsman R. Valentukevičius, No. 4D-2008/1-1644, 9 February 2009, available at <<http://www.lrski.lt/index.php?p=0&l=LT&n=62&pazyma=3466>>, visited on 15 March 2013.

<sup>5</sup> “Raginama imtis priemonių dėl lyties keitimo operacijos galimybės” [“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>> [accessed on 10 April 2013].

<sup>6</sup> “Civilinės būklės aktų ir jų registravimo įstatymo projektas”, No. XIP-2017(2), 20 July 2010,

<sup>7</sup> “Civilinio kodekso pakeitimo ir papildymo įstatymo projektas”, No. XIP-2018(2), 20 July 2010.

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*.<sup>8</sup> In its judgment, the Court summarised the absence of legislation and its consequences as follows:

“Lithuanian law recognises [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 of the European Convention on Human Rights. The European 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.<sup>9</sup> The Lithuanian authorities chose the latter course.

The judgment in *L v. Lithuania* dates from 11 September 2007, i.e. 6 ½ years ago. During this time the Lithuanian authorities have failed to implement the general measures necessary to prevent further such violations. It should be noted that nearly 14 years have elapsed since - when adopting the Civil Code – the Lithuanian authorities recognised, in principle, the right of transgender persons to undergo gender reassignment treatment - 14 years in which exercise of this right has been frustrated.

As already noted, on 20 July 2012 the Ministry registered a draft amendment to the Civil Code<sup>10</sup> 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”.<sup>11</sup>

On 26 March 2013 the Lithuanian Parliament approved the Civil Code amendment for deliberation. The Minister of Justice claimed before Parliament that this amendment would result in compliance with the execution of judgments requirements in the *L v. Lithuania* case. However, in our opinion, the Lithuanian authorities’ proposed solution 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.

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<sup>8</sup> Application no. 27527/03.

<sup>9</sup> Paragraph 75 of the judgment.

<sup>10</sup> No. XIIP-2018(2).

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 wilful 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”.<sup>12</sup> 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,<sup>13</sup> 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.<sup>14</sup>

- (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 surgical treatment) is not possible without the adoption of the subsidiary legislation referred to above.<sup>15</sup>

The 2nd Report by Lithuania on the implementation of the International Covenant on Economic, Social and Cultural Rights makes no reference to this question.

### **Concluding Observations**

The practice of requiring transgender persons to undergo medical treatment, including, it seems, as a matter of practice, sterilisation, as a condition of legal gender recognition is incompatible with Article 12 of the International Covenant on Economic, Social and Cultural Rights.

The refusal of the Lithuanian authorities to put in place subsidiary legislation effectively prevents the access of transgender persons to reassignment treatment, and is a flagrant and wilful violation of the right to health of those transgender persons needing such treatment.

The concomitant failure of the 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 requirement to provide effective access to health care for all, without discrimination.

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<sup>12</sup> Paragraph 57 of the judgment.

<sup>13</sup> See Ministry of Health Protection of the Republic of Lithuania, 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).

<sup>14</sup> Supreme Administrative Court of Lithuania, case of R.S., administrative case No. A858-1452/2010, decision of 29 November 2010.

<sup>15</sup> 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”.