

**SITUATION OF  
TRANSGENDER  
PERSONS IN  
LITHUANIA:  
NATIONAL  
REVIEW**

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During the process of preparing this publication it was intended to avoid any inaccuracies. However, corrections of and additions to the methodology and the contents of this National Review could be proposed in the future. You are welcome to share your comments and suggestions using this e-mail [lygybe@lygybe.lt](mailto:lygybe@lygybe.lt).

Even though this publication contains legal information regarding the ensuring of equal opportunities in the Republic of Lithuania, it is recommended to consult legal experts every time before taking any legal action in any specific situations.

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# INTRODUCTION

In 2018 Lithuania celebrated the Centennial of the Restored State of Lithuania. The 70th Anniversary of the Universal Declaration of Human Rights was another significant commemoration. On the national level, the 20th Anniversary of the adoption of the Law on Equal Opportunities of Women and Men was yet another symbolical event. It is stated in the preamble of the Lithuanian Constitution that the Nation is striving for an open, just, and harmonious civil society and a State under the rule of law<sup>1</sup>. According to Article 29 of the Lithuanian Constitution, everyone is equal before the law and state institutions. Therefore, it is unacceptable that there are social groups in Lithuania, namely the transgender persons, who still cannot enjoy equality, which is declared in the Constitution. Transgender persons face discrimination not only because of social hostility against this group, but also because of existing legal gaps.

When Lithuania regained its independence in 1990, the country committed itself to the renewal of the national legal system, in order to become a respected state among other progressive democratic members of the international community that foster human rights and freedoms. Thus in 2000 the new Civil Code was adopted in Lithuania. In Article 2.27 thereof it was proclaimed for the first time in the history of the country that a person shall have the right to change his or her gender<sup>2</sup>. In the explanatory memorandum to the draft of the new Civil Code it was stated that the aim of the new Civil Code was to adapt the Lithuanian civil law to significantly changed economic, social and political circumstances, also to increase the protection of individual rights and freedoms and to harmonise the private law of Lithuania with the sources of international law<sup>3</sup>.

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**1. Constitution of the Republic of Lithuania, 1992**, <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

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**2. Civil Code of the Republic of Lithuania, No. VIII-1864, 18 July 2000**, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495?jfwid=12mhdvjgcp>.

**3. Explanatory Memorandum to the Draft Law on the Civil Code of the Republic of Lithuania, No. P-2612, 6 June 2000**, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.102377?jfwid=-1dn5zhfatq>.

And yet the provision of Paragraph 2 of Article 2.27 of the Lithuanian Civil Code (the conditions and the procedure for the change of designation of sex shall be prescribed by law) has not been implemented until now, and this legal gap negatively impacts the situation of transgender persons in Lithuania. This particular lack of regulation, which clearly violates legal expectations of a whole social group, is the reason why Lithuania lost a case before the European Court of Human Rights (ECTHR) in 2007. In its landmark decision in the case of *L. v Lithuania*, the European Court of Human Rights concluded that there was a violation of Article 8 of the Convention (i.e. respect for private life), and, most importantly, that the respondent State, in order to satisfy the applicant's claim for pecuniary damage, should pass the required subsidiary legislation to Article 2.27 of its Civil Code on gender reassignment within three months of the present judgment becoming final, or, alternatively, should those legislative measures prove impossible to adopt within three months of the present judgment becoming final, the respondent State should to pay the appli-

cant EUR 40,000 (forty thousand euros) in respect of pecuniary damage<sup>4</sup>. Lithuania chose the latter option and paid the compensation. However, the obligation to pass the necessary legislation on gender recognition is still valid. Up until the present day every transgender person has had to face the same unresolved systemic legal issue, which not only makes the gender recognition in Lithuania significantly more complicated, but also causes other issues in all other fields of life of transgender persons. The violation of human rights, which was found by the European Court of Human Rights, has not yet been addressed. As a result, the Council of Ministers of the Council of Europe decided in 2014 to transfer the case *L. v Lithuania* to the enhanced supervision procedure<sup>5</sup>.

This situation, i.e. the presence of the aforementioned legal gap, is not compatible with the constitutional strive for an open, just, and harmonious civil society and a State under the rule of law. It is to be seen as a direct discrimination towards transgender persons, in violation of their fundamental rights and freedoms.

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4. *L. v Lithuania* (App. No. 27527/03, ECTHR), 11 September 2007, <http://hudoc.echr.coe.int/eng?i=001-82243>.

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5. 1208DH meeting of the Ministers' Deputies, CM/Del/OJ/DH(2014)/1208/10, 26 September 2014, [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016805c4e58](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c4e58).



It should also be noted that for the purpose of this National Review the definition of a *transgender person* is interpreted in the broadest possible way and comprises not only the narrow aspect of gender reassignment process, but also the most general understanding of gender identity (when a person identifies themselves as transgender), regardless of whether that person has taken any steps towards any kind of changes in their gender expression.

It must also be reminded that Lithuania often receives various recommendations from international organisations (e.g. United Nations, Council of Europe, etc.) regarding the rights of lesbian, gay, bisexual and transgender (LGBT) persons<sup>6</sup>. It is extremely important to implement those recommendations properly not only in order to achieve a nominal result (i.e. to improve the international image of Lithuania), but, first and foremost, in order to achieve an actual result, i.e. to ensure the equality and compliance with fundamental rights and freedoms of LGBT people.

The National Review also contains an analysis on how the situation of transgender persons in Lithuania would be impacted as a result of the newly released edition of the International Classification of Diseases (ICD-11)<sup>7</sup> in which gender incongruence is not considered a disorder anymore (i.e. the term ‘transsexualism’, used in ICD-10, has been completely replaced and it is not anymore listed under mental health conditions). It is essential, when improving the Lithuanian legal system in terms of ensuring the rights and freedoms of transgender persons, to take into consideration the fact that ICD-11 will be presented at the World Health Assembly in May 2019 for adoption by Member States, and will come into effect on 1 January 2022. Therefore, Member States (including Lithuania) should plan how to use the new version, prepare translations, and train health professionals all over the country, as it is suggested by the World Health Organisation.

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6. For the purposes of this National Review the abbreviation “LGBT” is used to refer to gay, lesbian, bisexual and transgender persons. However, the abbreviation “LGBTI”, which includes intersex persons, might also be used if such an abbreviation is contained in the original source quoted in this publication.

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7. World Health Organization, “WHO Releases New International Classification of Diseases (ICD 11)”, *who.int*, 18 June 2018, [https://www.who.int/news-room/detail/18-06-2018-who-releases-new-international-classification-of-diseases-\(icd-11\)](https://www.who.int/news-room/detail/18-06-2018-who-releases-new-international-classification-of-diseases-(icd-11)).

## PURPOSE AND WAYS OF APPLICATION OF THIS NATIONAL REVIEW ARE AS FOLLOWS:

- This review provides a general picture of the situation of transgender persons in Lithuania, from the legal and social points of view, which is important for awareness raising purposes and preparation of action plans for the improvement of the situation;
- It contains specific recommendations and suggestions regarding changes and improvement of legislation and public policies, with the aim to implement recommendations of international organisations presented to Lithuania more effectively, and especially to ensure the final implementation of the judgment of the European Court of Human Rights in the case *L. v Lithuania*;
- It can be used as a helpful tool by the legislative institutions of Lithuania, as the most problematic fields of regulation in terms of rights of transgender persons are identified in this review, and also specific recommendations are provided in order to develop the Lithuanian legal system in a way which would enable full recognition and protection of transgender persons in all areas of life (i.e. not only in areas directly addressed by international organisations);
- This National Review will be useful in raising awareness of Lithuanian public authorities and any other stakeholders in the field of transgender issues, and also in promoting a more accepting attitude by the general society towards this social group.





# PREPARATION OF THE REVIEW

## Structure of the review

This review is structurally divided into three main parts: (a) analysis of the position of international organisations towards Lithuania regarding the rights of transgender persons, and also the analysis of the Lithuanian national policy in this respect, (b) analysis of the attitude of the Lithuanian society towards transgender persons, and (c) evaluation of the situation of transgender persons in Lithuania in specific fields (such as legal gender recognition, protection of personal data, criminal law, employment and occupation, healthcare, family and private life) from the social and legal points of view.

The analysis of legal acts and practices is complemented with examples from lives of transgender persons who shared their experiences for the purpose of this National Review, as well as contributions and insights from experts who had been interviewed during the qualitative research phase.

The National Review also contains examples of progressive legal developments in other countries of the European Union (e.g. Ireland, Portugal, Malta) which promote the equality of transgender persons. Such examples may be useful to inspire positive changes in Lithuania too<sup>8</sup>.

## Quantitative research and its methodology

Attitude of the Lithuanian society towards transgender persons is reflected in the results of the quantitative research. The research (i.e. representative survey of Lithuanian residents) was carried out on 9-18 November 2018. During this period 1000 Lithuanian residents (older than 18 years of age) were selected and questioned (using the method of multistage probability sampling). The research took place in 24 towns (cities) and 33 villages. The results of the research were analysed in this review.

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8. For further reference, see: TGEU, **Trans Rights Europe Map & Index 2018**, <https://tgeu.org/trans-rights-map-2018>.

## Qualitative research and its methodology

In order to evaluate social and legal situation of transgender persons in Lithuania, as well as to identify practical challenges faced by transgender persons as a result of legal gaps, a qualitative research was carried out. It consisted of 11 interviews: 5 interviews with transgender persons and 6 interviews with experts.

### Interviewees

5 transgender persons, who had already completed legal gender recognition before the national courts, participated in the interviews. The 6 interviewed experts were from the following fields: 2 healthcare experts (psychiatry and endocrinology), 2 public officials (from the Ministry of Health and the Ministry of Justice), 1 legal expert and 1 civil society expert who works extensively with transgender persons. Experts were chosen considering their experience in transgender issues (i.e. giving priority to those experts who were involved in legal gender recognition processes), as well as upon recommendations of already interviewed experts (i.e. snow-balling effect).

Transgender persons in Lithuania make a specific and vulnerable group, which is very scarce, many of them have not yet disclosed their gender identity. Thus, the principle of confidentiality was of extreme significance during interviews and data collection for the purpose of this review. Informants were therefore anonymised by attributing a random denominating letter to them and by using a random grammatical gender when referring to them in this review. Any other identifiers, such as specific circumstances of their respective situation, that might disclose their identity, were also removed. Data about the interviewed experts were anonymised for the same purpose.



# STATE POLICY TOWARDS TRANSGENDER PERSONS

In this section of the publication, Lithuanian public institutions and other concerned parties are shortly reminded about specific recommendations received by Lithuania from international organisations regarding the situation of transgender persons in Lithuania. Thus, for example, the recommendations of other member states of the United Nations, received during the Universal Periodic Review and addressed to Lithuania, have been recalled (e.g. recommendation No. 100.75, by Argentina: to adopt measures that guarantee respect for the rights of lesbian, gay, bisexual, transgender and intersex persons, by investigating and punishing acts of violence and discrimination as well as reviewing

all legislation that may affect their rights)<sup>9</sup>, as well as the position of the Council of Europe on the same topic, expressed in the Recommendation No. CM/Rec2010(5) (Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way)<sup>10</sup> and Resolution No. 2048(2015) (abolish sterilisation and other compulsory medical treatment, as well as a mental health diagnosis, as a necessary legal requirement to recognise a person's gender identity in laws regulating the procedure for changing a name and

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9. UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review. Lithuania", 19th Session, No. A/HRC/19/15, 19 December 2011, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/34/9&Lang=E>.

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10. "Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity", adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a).

registered gender)<sup>11</sup>, has been briefly reiterated. From the point of view of the European Union, a general principle of non-discrimination, contained in the Charter on Fundamental Rights, has been re-cited<sup>12</sup>, and the call of the European Parliament to ensure that LGBTI rights are given priority in the work programme of the Commission for 2019-2024, as well as the call to adopt another strategic document to foster equality for LGBTI persons, contained in the recent Resolution, have been emphasised<sup>13</sup>.

Therefore in the analysis of the Lithuanian national policy towards transgender persons it has been indicated that the topics of sexual orientation and (or) gender identity are still invisible and marginalised in Lithuania, and LGBT persons still make a minority which suffers from invisibility, stereotypes and discrimination, due to the domination of heteronormativity in the institutional system and interpersonal relations, including, for example, working environment<sup>14</sup>.

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**11. “Resolution No. 2048(2015) of the Parliamentary Assembly of the Council of Europe on Discrimination against Transgender People in Europe”, 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>.

**12. Charter of Fundamental Rights of the European Union, No. C 326/391, 2012**, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

**13. European Parliament Resolution of 14 February 2019 on the Future of the LGBTI List of Actions (2019-2024), No. 2019/2573(RSP)**, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0129+0+DOC+XML+V0//EN>.

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**14. Arnoldas Zdanevičius, *Nematomi piliečiai. Apie homoseksualių žmonių teises ir homofobiją Lietuvoje* (Engl. “Invisible Citizens: On Human Rights of Gay Persons and Homophobia in Lithuania”), Vytautas Magnus University: 2007, p. 50-52.**

In order to demonstrate that transgender persons are not an issue, but just a part of natural human diversity, this topic should be given a priority when developing national policies, as it is called upon by the European Union and other international organisations. Therefore, for example, the Action Plan on Promoting Non-Discrimination, adopted by the Ministry of Social Security and Labour of Lithuania<sup>15</sup>, was a positive, yet insufficient step. This Action Plan is only applicable in a very narrow field on the ministerial level and it does not contain any measures regarding transgender persons specifically, nor any measures directed at the improvement of national policies and legislation. A completely new, interdisciplinary and interinstitutional national strategic document is needed, in which specific legislative and policy-making measures for the promotion of equality of transgender persons would be prescribed. It should be noted that transgender issues, as well as, more generally, issues of LGBT persons, other minorities or even human rights, are not reflected in

the current Lithuanian strategic documents, such as, for example, the National Strategy “Lithuania 2030”<sup>16</sup>. As a result, transgender persons still remain an invisible, socially excluded group which is not covered by the national policies.




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**15. Action Plan on the Promotion of Non-discrimination, adopted by the Ministry of Social Security and Labour of Lithuania, 15 May 2017, No. A1-250,**

<https://www.e-tar.lt/portal/lt/legalAct/fa5d2b103a3f11e7b66ae890e1368363/AcAiaxviWU>.

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**16. Lithuanian National Strategy “Lithuania 2030”, adopted by the Lithuanian Parliament, 15 May 2012, No. XI-2015,**  
[www.lietuva2030.lt](http://www.lietuva2030.lt).

# ATTITUDE OF LITHUANIAN SOCIETY TOWARDS TRANSGENDER PERSONS

A survey among Lithuanian residents was carried out on 9-18 November 2018, in order to determine prevailing public attitudes towards transgender persons in the Lithuanian society.\* The results of the survey indicate that there is a widespread ignorance in Lithuanian society when it comes to transgender issues. Around 55% of Lithuanians do not know or are not sure about what a “transgender person” is (see the chart below).

**Do you know what “transgender person” means?**



*Figure 1. Knowledge level of the Lithuanian society regarding transgender persons (Survey 2018, N=1000)*

The most common source of information about transgender persons, as indicated by the respondents, was public media (43.5% of the respondents indicated this source).

In the context of other social groups, transgender persons are in the middle range and are neither highly favoured nor disfavoured. Lithuanian society has a more negative image about persons with mental disability, former prisoners and Roma people than about transgender persons. However, the opinion of respondents about Russian speaking, black people and Muslims is more positive than about transgender persons.

Majority of the respondents (67.6%) could not evaluate whether, in their opinion, Lithuanian laws provide for sufficient legal protection of transgender persons against discrimination.

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\*The representative survey was initiated by the Office of the Equal Opportunities Ombudsperson. The survey was conducted by the Market and Opinion Research Centre "Vilmorus Ltd."



Overall, taking into account all the aspects, it is clear that majority of Lithuanians do not have enough knowledge about transgender persons. Respondents are not negative towards transgender persons, they do not have a clear opinion, and in the future shifts of public opinion about transgender persons in the Lithuanian society will depend a lot on how this topic will be reflected in the public discourse.

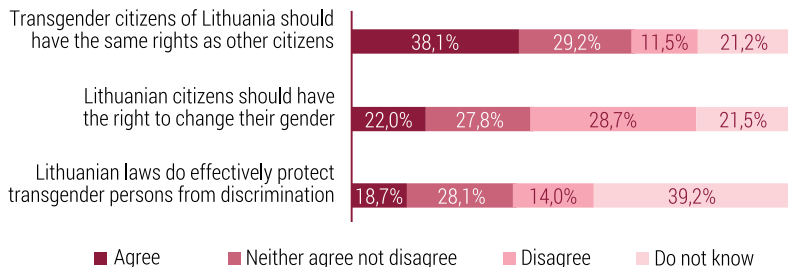


Figure 2.  
Opinion of the Lithuanian society on the rights of transgender persons (Survey 2018, N=1000)



# SITUATION OF TRANSGENDER PERSONS IN SPECIFIC FIELDS

## LEGAL RECOGNITION

Legal recognition of transgender persons is the first and necessary step into the new stage of their lives. When their civil status is changed in the civil registry and they receive new personal identification documents with all gender indicators updated, so as to reflect their true gender identity, it allows them to continue their daily lives, even though there is still a lot to accomplish (in terms of legislation and legal practices, as well as social attitudes) in order to ensure their dignity and equality in all areas, such as employment, education, family life, healthcare, etc.

According to Article 12 of the Law on the Implementation of the Civil Code of Lithuania<sup>17</sup>, the provision of Article 2.27 of the Civil Code, which allows gender reassign-

ment, should have entered into force on 1 July 2003. However, as required by the Article 50 (e) of the same Law, there had to be an additional law adopted, establishing conditions and procedures of gender reassignment. This specific law has not been adopted yet, even though the deadline to do so was 1 January 2003. Thus, legal expectations of transgender persons in Lithuania were clearly violated and that was the reason why Lithuania lost the case of *L. v Lithuania* in the European Court of Human Rights in 2007.

Even though there is still no simple administrative procedure for legal gender recognition and transgender persons have to apply to national courts for that purpose, however, there have been significant advances in the jurisprudence of the domestic courts recently. Since 2017 transgender persons are not required to undergo any medical procedures for the purpose of legal gender recognition and obtaining new personal documents. There were numerous cases in the Lithuanian courts over the period between 2017 and 2018 in which

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17. **Law on the Implementation of the Civil Code of the Republic of Lithuania, No. VIII-1864, 18 July 2018**, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.107687>; **Civil Code of the Republic of Lithuania, No. VIII-1864, 18 July 2010**, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495?jfwid=10rcyphane>.





the change of gender was legally recognised regardless of whether the applicants had undergone any medical procedures or not<sup>18</sup>.

It should be noted that the latest developments of the national jurisprudence of the Lithuanian courts are well in line with the case law of the European Court of Human Rights, namely the landmark decisions in the cases of *A. P., Garçon and Nicot v France* (violation of the Convention because requirements of sterilisation and irreversible changes of gender expression were mandatory)<sup>19</sup> and *S.V. v Italy* (violation of the Convention because surgery was required for the legal recognition of gender reassignment)<sup>20</sup>.

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18. Vilnius City District Court, Case No. e2YT-5329-934/2017, 7 April 2017; Vilnius City District Court, Case No. e2YT-5326-987/2017, 2 May 2017.

19. *A.P., Garçon and Nicot v France* (Apps. Nos. 79885/12, 52471/13 and 52596/13, ECtHR), 6 April 2017, <http://hudoc.echr.coe.int/eng?i=001-172913>.

20. *S.V. v Italy* (App. No. 55216/08, ECtHR), 11 October 2018, <http://hudoc.echr.coe.int/eng?i=001-186668>.

Of great importance are also two decisions of the Lithuanian Constitutional Court which may impact the situation of transgender persons. In 2011 the Constitutional Court concluded that according to the Lithuanian Constitution all families are legally recognised and protected, not only those which are formed on the basis of marriage, and that contents of family relations takes precedence over their form<sup>21</sup>. In 2019 the Constitutional Court concluded that the Constitution also prohibits discrimination on the ground of gender identity and sexual orientation, and therefore the Lithuanian state institutions had no right to refuse a residence permit to a foreigner who married a Lithuanian citizen, solely on the ground that it was a same-sex marriage<sup>22</sup>.

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21. Lithuanian Constitutional Court, Case No. 21/2008, 28 September 2011, <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta159/content>.

22. Lithuanian Constitutional Court, Case No. 16/2016, 11 January 2019, <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1898/content>.

The fact that the Lithuanian case law regarding transgender persons is becoming more progressive does not mitigate the issues related to the lack of administrative procedure for legal gender recognition in Lithuania. First of all, court decisions are individual and not applicable to other individuals, i.e. every transgender person must apply to courts individually. This, naturally, leads to a lack of legal certainty about the outcomes of every such application. Secondly, judicial procedure is relatively costly, considering that transgender persons are usually financially burdened (especially due to medical and transitional expenses). Eventually, it is incompatible with the basic dignity of transgender persons that they have to *prove* their identity in the courts, whereas other citizens do not experience such discrimination and are availed of administrative procedures when their personal data change.

Currently there is a Draft Law on the Recognition of Gender Identity prepared by the Ministry of Justice<sup>23</sup>. This draft law is intended to establish an administrative procedure for legal gender recognition based on mental diagnosis. There are additional requirements for minors between 14 and 18 years of age, with 14 years being the lowest age limit for legal gender recognition. This draft law should be adopted as soon as possible, because it would allow to improve the situation of transgender persons in Lithuania significantly. The adoption of this draft law would also allow to implement the judgement of the European Court of Human Rights in the case of *L. v Lithuania*. In the future, however, it is suggested to improve the proposed legislation and remove the requirements for a person to be not married (which may be considered as a disproportionate limitation of the right to private and family life) and to obtain a mental diagnosis of the so-called “transsexualism” (considering that the condition of gender incongruence is not regarded as a disorder in accordance with the newly proposed edition of ICD-11).

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**23. Draft Law on the Recognition of Gender Identity, No. 17-12650, 3 November 2017**, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/bc2a5010c09111e7af36e75c0ac79247>.

## CRIMINAL LAW

Criminal responsibility for acts against equal rights is defined in Articles 169 and 170 of the Criminal Code<sup>24</sup>. By means of those two articles, discrimination and instigation to discriminate on the ground of, *inter alia*, gender and sexual orientation are criminally punishable. Article 60 provides that punishment is more severe if an act was committed in order to express hatred. However, the Criminal Code does not include the grounds of gender identity and (or) gender expression. The list of protected grounds in the Criminal Code should be expanded.

From the annual reports of the Prosecutor's Office of Lithuania<sup>25</sup> it is clear that neither criminal incidents against transgender persons nor even hate crimes in general were addressed over the period between 2011 and 2018. Likewise, topic of acts against

LGBT people and against equal rights was also omitted. Only in the annual report from 2010 a whole section was dedicated to the topic of hate crimes, and in that section the Prosecutor's Office indicated that criminal acts against equality should be given priority, because investigation and prevention thereof is important not only for the society and protection of human rights, but also for the international reputation of Lithuania. However, in subsequent annual reports this topic received no attention.

Based on media reports<sup>26</sup>, Lithuanian law enforcement institutions lack capacity and (or) willingness to qualify specific criminal offences as hate crimes. This trend is also illustrated by the fact that Lithuania reports an extremely low number of hate crimes and hate-motivated incidents to the

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24. **Criminal Code of the Republic of Lithuania, No. VIII-1968, 26 September 2000**, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c?jfwid=10rcyphdva>.

25. **For annual reports of the Prosecutor's Office of the Republic of Lithuania, please see:**

<https://www.prokuraturos.lt/lt/administracine-informacija/planavimo-dokumentai-ataskaitos/ataskaitos/138>.

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26. **Beizaras and Levickas v. Lithuania, App. No. 41288/15, communicated on 16 June 2017**,

<http://hudoc.echr.coe.int/ng?i=001-175326>.

Organization for Security and Cooperation in Europe (OSCE), compared to other countries, such as, for example, the United Kingdom (20 in Lithuania against more than 95,000 in the UK in 2017)<sup>27</sup>. A useful practical guide on prosecuting and reporting of hate crimes<sup>28</sup>, published by OSCE, should be utilised by the national law enforcement institutions.

Based on various studies<sup>29</sup>, transgender persons are highly vulnerable to hate crimes. Therefore, it is important that Lithuania transposes and implements the legal acts of the EU on the protection of victims' rights, such as the EU Victims' Rights Directive No. 2012/29/EU. This directive covers

the grounds of gender identity and gender expression, and it also prescribes the application of special protection for vulnerable victims. In 2017 Lithuania formally transposed the Directive, and the General Prosecutor's Office adopted recommendations for further implementation of this Directive during the investigation of criminal cases. Even though cases of discrimination are mentioned in the recommendations, however, these recommendations contain nothing about the evaluation of special needs of transgender persons and application of special protection measures in respect to them. These recommendations should be more specific.

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**27. For OSCE statistics about reported hate crimes and hate-motivated incidents in Lithuania, see:** <http://hatecrime.osce.org/lithuania>; **for statistics from other reporting states, see:** <http://hatecrime.osce.org/#participating-states>.

**28. OSCE, *Prosecuting Hate Crimes: A Practical Guide*, 2014,** <https://www.osce.org/odihr/prosecutorsguide>.

**29. Council of Europe, *Safe at School: Education Sector Responses to Violence Based on Sexual Orientation, Gender Identity / Expression or Sex Characteristics in Europe*, 2018,** <https://rm.coe.int/prems-125718-gbr-2575-safe-at-school-a4-web/16809024f5>, **p. 10, 23.**



## DATA PROTECTION

During the interviews, transgender persons identified numerous privacy problems in public and private spheres. However, from the interviews with experts it follows that the legislation in the area of data protection is sufficient. The challenges mainly arise due to flawed implementation of legal acts. The newly applicable General Data Protection Regulation (GDPR)<sup>30</sup> clearly prohibits processing of personal data concerning health or sexual life, with strictly formulated exceptions. This Regulation is complemented in Lithuania with the Law on Legal Protection of Personal Data<sup>31</sup>.

According to transgender persons, they often have to reveal their gender identity to third parties (i.e. persons other than the medical staff)

in order to receive the necessary healthcare services, especially when their changed identity documents and personal data entries do not match with those stored in the healthcare institution, or when they have to explain their situation at the reception in the presence of other visitors.

Another field where privacy violations are common is education. It is often quite challenging to prove one's qualifications when diplomas and other education certificates do not match the changed personal documents. The review revealed a widespread practice when educational institutions, before issuing a new diploma upon request of a transgender person, demand to provide evidence that the old diploma was either stolen

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**30. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),**

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>.

**31. Law on Legal Protection of Personal Data, No. I-1374, 11 June 1996,**

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.29193/asr>.

or lost, and for that purpose to make a public announcement (e.g. in a local newspaper). However, the requirement for such an announcement is completely incompatible with the privacy of transgender persons. The procedures of issuing new diplomas and other educational certificates are regulated by specific legal acts adopted by the Lithuanian Ministry of Education, Science and Sport. The Ministry should update its legal acts and prescribe that diplomas and educational certificates shall be issued upon request not only in case of theft or loss, but also in case of change of personal data.

## HEALTHCARE

Currently transgender persons do not have a proper access to healthcare in Lithuania. The issues are numerous and severe. First of all, there is no domestic legislation which would regulate the procedure of provision of healthcare services to transgender persons. A representative of the Ministry of Health, interviewed during the research, indicated that currently there is an initial draft healthcare protocol for diagnostics and treatment of the so-called “transsexualism”, but the legislative process has been stalled for many years due to the “lack of political will” in the national Parliament.

Interviewed transgender persons also indicated that they often face challenges when receiving general healthcare, which is not necessarily related to gender reassignment. For example, services of gynaecology and urology are unavailable due to the change of legal gender (i.e. transwoman, who is legally female, cannot officially schedule an appointment with an urologist). Private healthcare institutions also do not address these challenges to a sufficient extent, because their services are highly expensive, and the only difference from state-owned institutions is shorter queues and lower waiting times. However, lack of ethics and professional medical qualifications in dealing with transgender persons is the same in both public and private healthcare institutions. Even when transgender persons apply to psychologists or psychiatrists, they complain about being treated as “sick” and “abnormal” persons who have to be somehow “corrected”, and that mental health professionals lack necessary training to be able to help them effectively.

Transgender persons need access to all kinds of healthcare services and professionals. One of the most significant examples is the field of endocrinology, since many transgender persons are willing to undergo hormone replacement therapy, which significantly alters

their physical appearance. While professional endocrinologists are mostly unavailable to transgender persons in Lithuania, they often risk their health and take medication on their own, without proper medical supervision, which may lead to serious consequences to their reproductive abilities and other health issues.

The immediate and urgent legal solution would be to adopt a legal act concerning the provision of healthcare services to transgender persons (i.e. healthcare protocol), without associating such provision of services with the diagnosis and treatment of the so-called “transsexualism”. Transgender persons do not need to be regarded as “sick”, they do not need to alter their identity. Healthcare services should be directed at helping transgender persons to maintain their health and their gender identity, not to “correct” or “cure” it, which is even more evident from the fact that gender incongruence is not anymore considered as a disorder by the World Health Organisation (in accordance with ICD-11)<sup>32</sup>.

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**32. World Health Organisation, *International Classification of Diseases 11th Revision***, <https://icd.who.int/en>.

## EMPLOYMENT AND SOCIAL AFFAIRS

An employer’s obligation to implement the principles of equal treatment and non-discrimination is established in Article 26 of the Lithuanian Labour Code. It is also clear from the preliminary ruling of the European Court of Justice in the case *P v S and Cornwall County Council* that gender reassignment may not be a legitimate ground to terminate an employment contract or for any discrimination in the field of employment and occupation<sup>33</sup>. However, the National LGBT Organisation LGL has indicated that transgender persons still face many challenges and discrimination in the Lithuanian labour market<sup>34</sup>.

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**33. Case C-13/94, *P v S and Cornwall County Council***, CJEU, 30 April 1996, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61994CJ0013>.

**34. Tomas Vytautas Raskevičius, “#TRANS\_LT: Documenting Experiences of Transgender People in Employment”**, LGL, 2016, [https://www.lgl.lt/en/files/TRANS\\_LT-Documenting-Experiences-of-Transgender-People-in-Employment-2016.pdf](https://www.lgl.lt/en/files/TRANS_LT-Documenting-Experiences-of-Transgender-People-in-Employment-2016.pdf).

Some interviewed transgender persons indicated that issues arise when an employed transgender person has to undergo a regular health check. Inability to officially visit a gynaecologist or urologist may cause additional challenges at the workplace. On the other hand, even if a transgender person is successfully employed, they experience social exclusion, because they tend to avoid a lot of common team-building activities with their colleagues at work (e.g. going together to a water park or a swimming pool).

However, there are certain professions and fields of occupation, which are legally not available to transgender persons in Lithuania. A transgender person cannot officially become a judge, a prosecutor, an attorney, a notary, a bailiff, a statutory officer, etc., because legal acts in which health requirements are set for these professions clearly indicate that a medical diagnosis under the code F.64.0 (“transsexualism”) precludes a person from taking that position. Currently there is a draft amendment prepared according to which the F64.0 diagnosis would be removed from the list of medical contraindications for the po-

sition of a judge<sup>35</sup>. However, such an amendment has not yet been adopted.

## MARRIAGE AND FAMILY LIFE

It is provided in Article 3.12 of the Lithuanian Civil Code that marriage may be entered into only by two persons of different genders. Thus, the integrity of marriage of transgender persons is under risk in Lithuania, in cases when both spouses are of the same gender after the gender reassignment. The challenge is even greater considering that Lithuania still has no law on civil partnerships which would recognise same-sex unions. Such an interference into the sphere of family and private life, when a transgender person has to terminate their marriage (for the purpose of legal recognition of the gender reassignment) and has

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35. Draft Amendment of the Order of the Minister of Health and the Minister of Justice on Health Requirements for Judges and Applicants for the Position of a Judge, No. 19-2055, 22 February 2019, <https://e-seimas.lrs.lt/portal/legalAct/lt/AP/738e9900366611e98893d5af47354b00?fwid=2vcavnp2s>.



no option of a civil partnership, might potentially be considered a violation of human rights, following the reasoning of the European Court of Human Rights in the case *Hämäläinen v Finland*<sup>36</sup>.

Another major issue that transgender persons have to deal with after their personal documents are changed, comes from the field of reproductive health. Even though formally in Lithuania neither surgery nor sterilisation is required for the legal recognition of transgender persons, the fact that health-care services (especially those related to hormone therapy) are not officially provided put their fertility at great risk. Moreover, the Law on Assisted Insemination<sup>37</sup>, which is currently in force in Lithuania, is not applicable to transgender per-

sons. And a more general law concerning reproductive health has not been passed in Lithuania until now, even though its draft was registered several years ago<sup>38</sup>. Issues concerning transgender persons are not reflected in the proposed draft law.

In terms of adoption of children, it should be noted that current legal regulation does not allow transgender persons to adopt. Diagnosis F64.0 (transsexualism) is currently a medical contraindication for adoption<sup>39</sup>. Such a situation should be deemed incompatible with the basic human rights of transgender persons.




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**36. *Hämäläinen v Finland* (App. No. 37359/09, ECtHR), 16 July 2014,**  
<http://hudoc.echr.coe.int/ng?i=001-145768>.

**37. Law on Assisted Insemination, No. XII-2608, 14 September 2016,**  
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f31c44c27bd711e6a0f68fd135e6f40c/asr>.

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**38. Draft Law on Reproductive Health, No. XIIP-1591, 13 March 2014,**  
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/769d2a52aab911e3840c893be7eb3526?positionInSearchResults=0&searchModelUUID=5ae4ba22-c8da-4d97-8b48-eabe5ab43362>.

**39. Order of the Minister of Health and the Minister of Social Security and Labor on Medical Contraindications for Adoption, No. 404/96, 24 July 2001,**  
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.146324/xinUDbprBV>.

## CONCLUSIONS AND RECOMMENDATIONS

International organisations (e.g. United Nations, Council of Europe, and European Union) encourage Lithuania to further develop its national legal system in a way, which would ensure recognition and protection of transgender persons. The judgement of the European Court of Human Rights in the case *L. v Lithuania*, which requires a specific law concerning the procedure of legal gender recognition to be adopted in Lithuania, has not been implemented yet. Currently there is no administrative procedure for legal gender recognition in Lithuania, and, therefore, application to the national courts is the only option. A significant progress in the Lithuanian case law has been made, and the requirements of medical intervention, irreversible changes in gender expression or sterilisation are not applied for the purpose of legal gender recognition. However, a psychiatric diagnosis is still required.

### RECOMMENDATIONS:

- To establish a quick, transparent and accessible gender re-assignment procedure in the national legal system;
- To speed up legislative initiatives concerning the rights of transgender persons;
- To adopt the Law on Legal Recognition of Gender Identity, establishing an administrative procedure for the legal gender recognition.

In its Resolution on the Future of the LGBTI List of Actions (2019-2024), the European Parliament urged to adopt an EU-level strategic document to foster equality for LGBTI persons. There is currently no such corresponding strategic document on the national level in Lithuania, which could serve as a guiding tool for developing national policies and directing legislative initiatives in order to ensure the equality of transgender persons.

#### **RECOMMENDATIONS:**

- To prepare and adopt a national interinstitutional and interdisciplinary strategic document, containing an action plan for fostering the equality of transgender persons in all areas of life, in coordination with corresponding international documents and guidelines.

The Lithuanian society is highly unaware about transgender issues. The results of the opinion poll carried out within the framework of this National Review have indicated that more than a half of the respondents do not know what a “transgender person” is. Overall, the social attitudes towards transgender persons are relatively neutral, with ignorance and lack of awareness being the main challenges. Further developments of public opinion will mainly depend on how the topics related to transgender issues will be presented in the public discourse.

#### **RECOMMENDATIONS:**

- Within the framework of their competences, especially while contributing to the preparation and implementation of a national interinstitutional strategic document for the equality of transgender persons, to plan specific awareness raising measures in order to increase public visibility and acceptance of transgender persons.

In the field of criminal law there have been positive shifts in legislation towards strengthening response to hate crimes. However, the grounds of gender identity and gender expression are still not covered by the Criminal Code. Annual reports of Lithuanian law enforcement institutions do not attribute any significance not only to transgender issues specifically, but even to hate crimes in general. Lithuanian law enforcement institutions are reluctant in recognising hate indicators behind alleged hate crimes and are not willing to qualify specific criminal offences as hate-motivated acts. Thus the number of hate crimes and hate-motivated incidents reported by Lithuania to OSCE annually, compared to other countries, is very low.

## RECOMMENDATIONS:

- To the legislative institutions of Lithuania: to include gender identity and gender expression as protected grounds into respective articles of the Lithuanian Criminal Code which concern hate-motivated offences;
- To the Criminal Division of the Supreme Court of Lithuania: to prepare a review of the national case law concerning hate-motivated acts and acts against equal rights, in order to ensure the uniformity of the case law and proper application of the existing legal provisions;
- To the Prosecutor's Office: to include a section dedicated to hate-motivated acts and acts against equal rights in its annual reports, with a special emphasis on LGBT cases;
- To the law enforcement institutions: to collect detailed and structured statistical data on hate-motivated incidents and acts, including registered cases, opened and terminated investigations, court trials and their outcomes, while ensuring the collection of separate data concerning LGBT (and specifically transgender) topics, and to report such data to OSCE, following the practical guides and recommendations of this organisation.

In the field of personal data protection the legal regulation is sufficient, especially after the beginning of application of the GDPR. However, the implementation of legal requirements in practice is flawed. Interviewed transgender persons indicated that they often have to reveal their gender identity to third unrelated parties when receiving healthcare services. They also stumble upon obstacles when attempting to obtain diplomas and other educational certificates with changed personal data, which is caused by gaps in secondary legislation adopted by the Lithuanian Ministry of Education, Science and Sport. There are also numerous complaints by transgender persons about lack of ethics, confidentiality and quality of services (sometimes even lack of access to services) both in public and private institutions.

## RECOMMENDATIONS:

- To the Lithuanian Ministry of Health: to ensure the protection of privacy of transgender persons by developing electronic systems for the provision of healthcare services and to increase the standards of data protection;
- To the healthcare providers: to improve their internal regulations in terms of data protection and confidentiality when providing healthcare services;
- To the Ministry of Education, Science and Sport: to improve respective secondary legislation on issuing diplomas and other educational certificates, by prescribing that change of personal data is another ground for issuing new documents;
- To the State Inspectorate of Data Protection: to prepare additional guidelines for public and private institutions (especially healthcare institutions) in order to facilitate the protection of privacy of transgender persons during all stages of provision of services, as well as during all periods of data storage.

In the field of healthcare, transgender persons face grave challenges, first of all due to the lack of access to healthcare services. Currently there is no legislation in Lithuania concerning the provision of healthcare services to transgender persons, including, *inter alia*, services of gynaecologists, urologists, endocrinologists and other healthcare providers. Lack of professional skills and ethics in all medical fields (both in public and private healthcare institutions), when dealing with transgender persons, is a common practice. The World Health Organisation does not consider gender incongruence a disorder in accordance with ICD-11. Even though ICD-10 is currently applicable in Lithuania (with the so-called “transsexualism” being a medical diagnosis under the code F64.0), there is no legislation concerning the provision of healthcare services to transgender persons in Lithuania. This situation is arguably caused by the lack of political will in the national Parliament and other legislative institutions. Such a situation, when transgender persons are denied healthcare services, despite the fact that they pay taxes and are insured, is incompatible with the national Constitution and with the universal obligation to respect human dignity.

## RECOMMENDATIONS:

- To develop the national healthcare system and ensure the access of transgender persons to healthcare services in conformity with the principle of respect of human dignity and without discrimination;
- To prepare and adopt without a delay a protocol concerning the provision of healthcare services to transgender persons, without a reference to the medical diagnosis of the so-called “transsexualism”, with a clear emphasis that the purpose of the provision of healthcare services to transgender persons is not to “correct” or “cure” their gender identity, but to ensure proper maintenance of their health without prejudice and discrimination.

In the field of employment and occupation transgender persons face numerous cases of discrimination, especially due to their gender expression. The discrimination often continues even after legal gender recognition. The general principle of non-discrimination is in force and the current legal acts are sufficient. However, when it comes to specific professions, such as judges, prosecutors, attorneys, notaries, bailiffs etc., transgender persons are officially not allowed to participate, because the diagnosis of the so-called “transsexualism” (ICD-10 code F64.0) is an exclusion criteria according to the Lithuanian legal acts.

## RECOMMENDATIONS:

- To the legislative institutions: to amend legal acts which set health requirements for specific professions (such as judges, prosecutors, attorneys, notaries, bailiffs etc.) and remove the diagnosis of “transsexualism” (F64.0) from the list of exclusion criteria;
- To the State Labour Inspectorate, to the Ministry of Social Security and Labour and other competent institutions: to provide measures and adopt programmes for the promotion of social responsibility of employers, to carry out educational activities and support awareness raising campaigns aimed at expressing support for and increase of social acceptance of transgender persons.

In the field of private and family life there are several major challenges. First of all, Lithuania does not recognise same-sex marriages or civil unions. Therefore, sometimes transgender persons have to face a dilemma, as they may need to sacrifice their marriage for the purpose of the legal gender recognition in Lithuania. The current Draft Law on the Recognition of Gender Identity also provides that absence of marriage is a necessary pre-condition for the legal gender recognition. In terms of reproductive health it should be noted that the current Law on Assisted Insemination does not contain any clauses applicable to transgender persons. A more general law concerning reproductive health has not yet been adopted in Lithuania, and its draft proposal does not contain any provisions regarding transgender persons. Eventually, transgender persons cannot adopt children in Lithuania, because the diagnosis of the so-called “transsexualism” (code F64.0) is a medical contraindication for adoption.

## RECOMMENDATIONS:

- To adopt a law on civil partnerships which would also recognise same-sex registered unions, in order to ensure the integrity of families which include transgender persons;
- To adopt laws concerning reproductive health, which would ensure the protection of reproductive health of transgender persons without discrimination;
- To remove the diagnosis of the so-called “transsexualism” (code F64.0) from the list of medical contraindications for adoption of children.





The National Review analyses the situation of transgender persons from legal and sociological perspectives. Even though the right to gender reassignment is established in the Civil Code of the Republic of Lithuania, a separate law, which is required for the effective implementation of this human right, has not yet been adopted. For this reason, Lithuania lost the case *L. v Lithuania* before the European Court of Human Rights in 2007. Since 2017 transgender persons are allowed to change personal identification documents by applying to the national courts.

### **THE NATIONAL REVIEW COVERS THE FOLLOWING TOPICS:**

- standards and recommendations of international organizations in the field of transgender human rights;
- analysis of the results of the representative opinion survey about transgender persons;
- overview and analysis of practical challenges, which are faced by transgender persons in multiple daily situations (change of personal documents, provision of healthcare services, protection of personal data, employment, etc.);
- best practices from other countries.

In order to improve the situation of transgender persons in Lithuania, corresponding recommendations are presented to legislators and policy makers.

The National Review is one of the outputs of the preventive and educational activities by the Office of the Equal Opportunities Ombudsperson, aimed at tackling discriminatory practices against various social groups.

