

**NATIONAL REPORT**  
**LEGAL GENDER RECOGNITION IN LITHUANIA**

**JANUARY 2022**

*The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.*

*This report was prepared for the Council of Europe by Erika Leonaitė and Andre Jurgaite, in collaboration with Stéphanie Cramer Marsal and the SOGI Unit of the Council of Europe.*

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## EXECUTIVE SUMMARY

*Lithuanian legislation provides for the right to change one's gender but fails to lay out the conditions and procedure for LGR, a legislative gap which the ECtHR considered to amount to a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR) (L. v. Lithuania, 2007). In practice, since 2017, one's chosen gender identity can be legally recognised through a court order provided a psychiatric diagnosis is submitted. This pathologization approach comes with some serious concerns, including in terms of respect for the health and private life of transgender persons. Against this background, stakeholders have called for the drafting, initiated in 2017, of a Law on Recognition of Gender Identity to be completed with provisions made for an accessible administrative procedure based on self-determination. Besides, stakeholders have called for stepping up measures to combat prejudice and discrimination against transgender persons through increased awareness measures and the inclusion of gender identity under the scope of the legal framework against discrimination.*

## Key terms and abbreviations

**Legal gender recognition** in Lithuania is understood as amending one's personal identification code, entries on a person's sex/gender, name and surname in the record of birth, so that these entries reflect the gender identity of a transgender person. Change of these entries leads to the right of a transgender person to acquire corresponding personal identification documents.

ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights

ECtHR – European Court of Human Rights

ICD – International Classification of Diseases

LGR – Legal gender recognition

Seimas – Lithuanian Parliament

## Introduction

### **Background**

The present report is part of a pilot project to provide thematic analyses of the implementation of the Recommendation CM/Rec (2010)5 of Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity by Council of Europe Member States.

This pilot project was initiated by the Council of Europe at the beginning of 2021. It aims at providing support to on-going efforts to advance dialogue at the national level on issues deemed important for the advancement of the human rights of LGBTI persons. In addition to Lithuania, three other countries – Cyprus, North Macedonia and Spain, have agreed to participate in this project.

### **A thematic focus on legal gender recognition.**

This first round of thematic reports in 2021 focuses on legal gender recognition (LGR), an area where the Council of Europe noted that 'the majority of countries are still not aligned with the

Recommendation'<sup>1</sup>. Progress was however recorded, with an increasing number of States having taken some steps to advance the legal gender recognition in all fields of life. Among them is Lithuania which is now in the process of discussing a new legal framework for legal gender recognition.

The report analyses the legal or administrative measures in place that make legal gender recognition available to transgender people, the conditions placed (age limitation, time requirement among others), how effective is the procedure and to what extent recognition extends to all areas of life. The present report places the practical experience of transgender persons at the center of the analysis. It is guided by international human rights standards in the field of non-discrimination and respect for private and family life. It also provides some insight into the socio-political context of the country, its possibilities and challenges in order to better situate the circumstances of on-going reforms.

The report sheds light on the situation of legal recognition regardless of sexual orientation, gender identity or gender expression or sex characteristics. In examining multiple groups of discrimination, it includes the concerns of persons who do not identify within traditional binary norms around sexual orientation and gender identity. It reflects where applicable on the legal issues faced by transgender and intersex persons with civil registration while acknowledging the diversity of situation and views that may exist among them.

## ***Methodology***

The present report was drafted by a national expert, in liaison with an international expert. The drafting process benefited from the contribution, support and guidance from the Network of European Governmental LGBTI Focal Points and its observer NGOs.

The report draws from a wide range of information, making use of both international and national sources, including from interviews held as part of the preparation of this report. Civil society reports, international agencies surveys or publications, academic articles and research have all fed into the report. As part of the report process, a national roundtable was held in December 2021 bringing together a large spectrum of interlocutors, including government officials, members of the judiciary and civil society representatives. The information collected and views expressed, notably by transgender and intersex persons during this roundtable, is also reflected in this report.

## ***Report Structure***

The report provides an overview of the legal and practical situation of transgender and intersex people with regards to LGR. It identifies gaps but also highlights possible common ground between the government, civil society and other stakeholders to advance reforms compatible with CM/Rec (2010) 5. A short overview of the principles set out in that recommendation and trends in international law are included and examples of progressive reforms (so-called 'best practice examples') are also highlighted with a view to stimulate discussions and provide further guidance. Recommendations – both priority and long-term recommendations – were also included in this report after the roundtable.

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<sup>1</sup> CDDH Report on the implementation of 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 CDDH at its 92nd meeting (26–29 November 2019), paragraph 65, available at <https://rm.coe.int/combating-discrimination-on-grounds-of-sexual-orientation-and-gender-i/16809fb2b8>

# I. General overview of the national context

## 1. Socio-political and legal context

- Legal framework on discrimination of transgender and intersex persons

Article 29(2) of the Constitution prohibits restricting human rights or granting privileges on the grounds of sex/gender<sup>2</sup>, race, nationality, language, origin, social status, religion, belief or opinion.<sup>3</sup> Although this provision does not directly enshrine gender identity, the Constitutional Court in the ruling of 11 January 2019 held that Article 29(2) of the Constitution may not be understood as consolidating an exhaustive list of the grounds of non-discrimination; otherwise, the preconditions would be created for denying the equality of all persons before the law, courts, and other state institutions, i.e. the very essence of the constitutional principle of the equality of the rights of persons, as guaranteed under Article 29(1) of the Constitution. In this constitutional justice case, it was noted that “one of the forms of discrimination prohibited under Article 29 of the Constitution is the restriction of the rights of a person on the grounds of his/her gender identity and/or sexual orientation; such a restriction should also be regarded as degrading human dignity”.<sup>4</sup> It can be argued that this interpretation could be relevant by analogy to intersex persons as well.

However, despite the preconditions arising from the Constitution to provide legal protection against discrimination to transgender persons, gender identity is not mentioned in laws establishing an exhaustive list of grounds for prohibited discrimination. This leads to legal uncertainty or even creates legal obstacles for responding effectively to discrimination against transgender persons on the basis of their gender identity.

In this respect, it should be noted that gender identity is not enshrined in the Law on Equal Opportunities as a separate ground for prohibited discrimination.<sup>5</sup> Thus, although discrimination against a transgender person can be examined as discrimination on the grounds of gender, this possibility only covers cases where a transgender person legally falls within a binary system of genders and is treated less favourably than people of the opposite gender (for example, a transgender person who is legally a woman is treated less favourably than men).

In cases where a transgender person suffers discrimination compared to cisgender persons, the Office of the Equal Opportunities Ombudsperson has no competence to investigate a complaint. According to the data of the Office of the Equal Opportunities Ombudsperson, during 2017-2021 only one complaint was received alleging discrimination on the grounds of gender identity and, although an inquiry into possible discrimination on grounds of sex/gender was initiated, the inquiry was terminated when it became clear that the inquiry did not fall within the Ombudsperson's competence.<sup>6</sup> Sex characteristics are also not included in the list of grounds for prohibited discrimination and, although an intersex person's complaint, depending on the content, could be investigated for possible discrimination on the grounds of sex/gender or sexual orientation, less favourable treatment because of sex characteristics as such would not fall within the competence of the Equal Opportunities Ombudsperson. According to the

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<sup>2</sup> Lithuanian language has no separate words to refer to sex and gender. A single word (*lytis*) is used. Thus, in order to reflect national legal regulation more accurately, when citing legal provisions mentioning *lytis*, a term “sex/gender” is used. Similarly, when citing case-law or legal regulation containing the term “transsexualism”, this term, instead of Gender Identity Disorder or gender dysphoria, is used.

<sup>3</sup> Constitution of the Republic of Lithuania, 25 October 1992 (with later amendments), Official Gazette 33-1014.

<sup>4</sup> Constitutional Court of the Republic of Lithuania, ruling of 11 January 2019 No. KT3-N1/2019, Register of Legal Acts No. 439, <https://www.lrkt.lt/en/court-acts/search/170/ta1915/content>

<sup>5</sup> E. g., Office of the Equal Opportunities Ombudsperson of the Republic of Lithuania, decision of 21 of April 2020 No. (19)SN-34)SP-39 “On possible discrimination based on sex in the provision of insurance services”.

<sup>6</sup> Office of the Equal Opportunities Ombudsperson of the Republic of Lithuania. No. (19)SN-34)SP-39, decision of 21 of April 2020. “On possible discrimination based on sex in the provision of insurance services” („Dėl galimos diskriminacijos lyties pagrindu teikiant draudimo paslaugas tyrimo“.)

Office of the Equal Opportunities Ombudsperson, so far, no complaints have been received alleging discrimination on the grounds of sex characteristics.

Gender identity is also not included in the provisions of the Criminal Code defining the motive of hatred as an aggravating circumstance of any crime, a qualifying characteristic of crimes against human life or health, nor in definitions of specific crimes directed against persons or groups on grounds of nationality, race, sex/gender, origin, religion or other group dependency status.<sup>7</sup> According to the recommendations of the Attorney General, hate crimes and hate speech against individuals on the basis of their gender identity should be investigated as gender-based crimes.<sup>8</sup> Meanwhile, in practice hate speech directed at individuals because of their gender identity is recorded and investigated as directed against individuals because of their sexual orientation.<sup>9</sup>

In January 2021, the Equal Opportunities Ombudsperson addressed the Seimas (Lithuanian Parliament) Human Rights Committee with a proposal to supplement the Law on Equal Opportunities by including gender identity in the list of prohibited grounds for discrimination. A review of the legal framework on equal opportunities and protection against discrimination, in order to assess their compliance with the latest international human rights standards and to implement the recommendations of international organizations, is also included in the Action Plan on Promoting Non-Discrimination 2021-2023.<sup>10</sup> Until then, cases of discrimination against transgender persons remain legally invisible and unrecognized.

In other pieces of legislation where a non-exhaustive list of grounds for prohibited discrimination is established (e.g., in the Labour Code), the prohibition of discrimination on grounds of gender identity, at least in theory, should fall within the scope of the provisions prohibiting discrimination on “other grounds”.<sup>11</sup>

- Background to discussions on LGR in the country

In 2017, a draft law on the recognition of a person's gender identity was prepared by the Ministry of Justice and submitted for consultations. It immediately received stark opposition from some politicians representing “traditional values” who registered a draft amendment to the Civil Code prohibiting gender reassignment. Subsequently, the draft law never reached the Seimas.

After the 2020 parliamentary elections a center-right coalition consisting of three political parties (Homeland Union-Lithuanian Christian Democrats, Liberal Movement and Freedom Party) was formed. Regulating LGR procedure was included into the Programme of the Freedom Party,<sup>12</sup> which currently has 11 seats out of 141 in the Seimas. Liberal Movement (12 seats) is in general supportive, whereas the biggest parliamentary party, Lithuanian Conservative Homeland Union-Lithuanian Christian Democrats (50 seats), is divided, with the Christian Democrats wing strongly opposing LGR. Members of Homeland Union wing are also divided, with some members open to regulating LGR procedure while some others opposing it. In January 2021, the Minister of Justice identified introducing an administrative procedure for LGR as one of her priorities.

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<sup>7</sup> Criminal Code of the Republic of Lithuania, Official Gazette, 2000-10-25, No. 89-2741, Art. 60(1(12)), Art. 138(2(13)), Art. 129(2(13)), Art. 135(2(13)), Art. 169, Art. 170, Art. 170-1.

<sup>8</sup> Methodological recommendations for the peculiarities of conducting, organizing and directing a pre-trial investigation on hate crimes and hate speech, approved by order of the Prosecutor General, para. 31.2.

<sup>9</sup> Interview with an expert working in the field of hate crimes and hate speech, 20 September 2021.

<sup>10</sup> Minister of Social Security and Labor, Order of 10 December 2020 No. A1-1256. “Concerning approval of the Action Plan to Promote Non-Discrimination 2021-2023”.

<sup>11</sup> E. g., Article 26 of the Labor Code of the Republic of Lithuania enshrine the principles of gender equality and non-discrimination on grounds of employment, include, *inter alia*, the prohibition of discrimination against employees on grounds other than those relating to that are not related to professional characteristics of employees.

<sup>12</sup> Freedom Party's Electoral Programme for Parliamentary Elections 2020, p. 67, <https://www.laisvespartija.lt/wp-content/uploads/2020/06/Laisv%C4%97s-partijos-2020-m.-Seimo-rinkim%C5%B3-programa.pdf>



At the same time, in 2021 political, religious and social movements opposing the so-called "ideology of genderism" and the protection of the rights of LGBTI people, have mobilised. Information in public space, depicting the LGBTI community in a negative context has increased significantly. These processes were largely linked to initiatives directed towards the ratification of the Istanbul Convention and introducing gender-neutral civil partnership. Hostility to the ratification of the Istanbul Convention was largely based on claims that it would lead among others to prioritizing gender instead of sex, legalising gender reassignment and multiple gender identities, introducing legal responsibility for refusing to treat a person on the basis of an "imaginary gender". According to the Lithuanian branch of Media4change movement, throughout the 1st quarter of 2021, the LGBTI community in the media (mainly publications in Internet media portals) was more often portrayed in a negative context than in a positive one. In the month of February 2021 alone, in the heat of the discussions on the ratification of the Istanbul Convention, the negative context outweighed the positive 18 times.<sup>13</sup> Even though in March it became clear that the ratification of the Istanbul Convention finally will not be included into the Seimas Agenda for the spring session, the backlash lasted, and this question was not included into the autumn session either. It should also be noted that the President Gitanas Nausėda sided with the criticism directed both towards the Istanbul Convention and to the introduction of same-sex partnerships.

The Lithuanian Catholic Church, which has a strong influence in the country, and other religious communities strongly oppose any initiatives that they see as manifestations of "gender ideology" that threatens the concept of gender as a biological feature with corresponding social roles. For example, on 9 March 2021, leaders of five Lithuania's traditional Christian religious communities submitted a joint petition to the Seimas, urging not to ratify the Istanbul Convention and not to grant legal status of a family to same-sex couples. Concerning the Istanbul Convention, it was emphasized that it "seeks to establish an ambiguous concept of gender, which artificially separates the roles of men and women from the masculine and feminine human nature underlying them, thus creating the legal preconditions to consider sex/gender only as a social construct".<sup>14</sup> Thus, the general climate relating to initiatives towards legal protection of LGBTI rights is rather hostile.

- Data on the situation of transgender and intersex persons in Lithuania

The local transgender population is relatively small (200-300 people)<sup>15</sup>. The main NGO representing LGBTI rights has been the National Lesbian, Gay, Bisexual and Transgender (LGBT) Rights Organization LGL. Tolerant Youth Association also works in this field. At the end of 2021, the first trans rights and mutual aid association "Trans Autonomija" was created by members of the trans community.

The Eurobarometer "Discrimination in the EU 2019" included detailed data from Member States on the social acceptance of LGBTI people and perceptions on discrimination based on sexual orientation, gender identity and sex characteristics. According to this survey, transgender or intersex persons in Lithuania are perceived more negatively compared to EU average. Only 22% of respondents would be comfortable with intersex person as a highest elected politician and 21% would be comfortable with a transgender person. The EU average is 54% and 53%. The majority of respondents would be uncomfortable if their child was in love with an intersex or transgender person (70% and 71%), whereas EU average is 31% and

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<sup>13</sup> Media4Change, "The International Day against Homophobia faces worsening portrayal of LGBTI+ in the Lithuanian media", 17 May 2021, <https://www.media4change.co/lt/reactions/tarptautine-diena-pries-homofobija-pasitinka-blogejantis-lgbti-vaizdavimas-lietuvos-medijose/>

<sup>14</sup> Lithuanian Bishops' Conference. Address of Lithuanian traditional Christian communities, 9 March 2021, <https://vk.lcn.lt/naujienos/453>

<sup>15</sup> ENDSOGIDISC: Combating Discrimination and Violence on the Basis of Sexual Orientation and Gender Identity. Lithuania – National Report. Office of the Equal Opportunities Ombudsperson, 2020, p. 17.

34%. Only 26% of respondents would agree that passports should have a third option for persons who do not identify as female or male and 62% would disagree.<sup>16</sup>

According to ILGA-Europe's "Rainbow Map and Index", published in 2021, Lithuania ranks 34th among 49 European countries and 22nd among European Union countries in terms of ensuring the rights of people belonging to the LGBTI community.<sup>17</sup> The existing procedures for LGR are assessed as only achieving 20% of LGBTI persons' human rights.<sup>18</sup> Lithuania is also mentioned among the nine European countries that are experiencing significant growth of opposition towards transgender persons' rights and, correspondingly, regression in terms of the rights of transgender people, including the right to recognition of gender identity.<sup>19</sup> The fact that in 2020 a new political party – the Christian Union – was established, which advocated, *inter alia*, a ban on LGR, possibly influenced the finding of regression in the field of rights of transgender people.<sup>20</sup>

According to the EU Agency for Fundamental Rights survey on discrimination against LGBTI people (EU-LGBTI II, 2020),<sup>21</sup> Lithuania was in the first place among the EU countries according to several indicators: respondents who never or very rarely reveal that they are LGBTI (84%), respondents who feel discriminated against at work (32%) and respondents who within 12 months prior to the survey experienced discrimination in one or more of the following areas: accommodation, health or social security, learning and study institutions, shops, cafes, restaurants, bars or nightclubs (55%). The latter indicator also included situations where transgender people had to show documents that did not correspond to their gender identity.<sup>22</sup>

This research, which surveyed a total of 140,000 LGBTI people from the age of 15, also provides valuable data on the transgender and intersex community. In Lithuania, 156 transgender and 32 intersex respondents took part in the survey. The survey revealed that an absolute majority of transgender persons (86%) became aware that their feelings about gender did not match the gender assigned at birth before they reached adulthood.

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<sup>16</sup> Special Eurobarometer 493, <https://europa.eu/eurobarometer/surveys/detail/2251>

<sup>17</sup> <https://www.ilga-europe.org/rainboweurope/2021>

<sup>18</sup> <https://www.rainbow-europe.org/#8644/0/0>

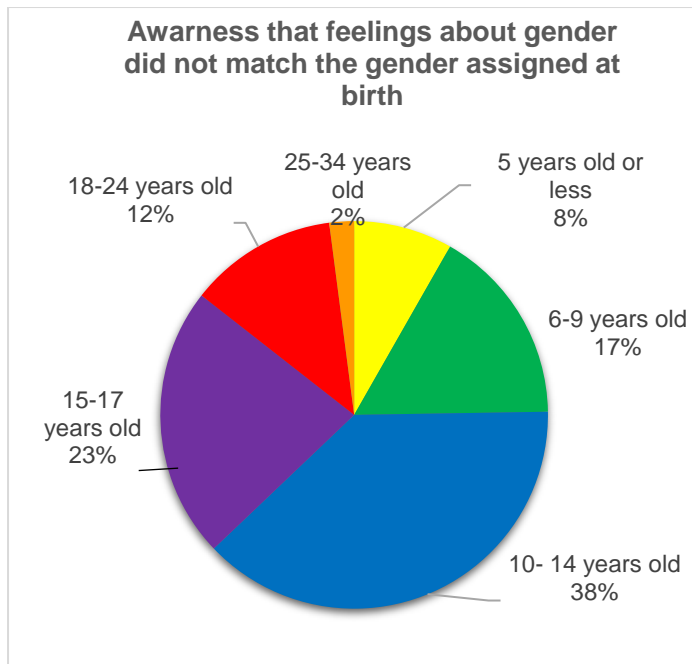
<sup>19</sup> [https://www.ilga-europe.org/sites/default/files/2021/full\\_annual\\_review.pdf](https://www.ilga-europe.org/sites/default/files/2021/full_annual_review.pdf)

<sup>20</sup> Krikščionių sąjunga siūlo sekti Vengrijos pavyzdžiu ir Lietuvoje uždrausti keisti lytį, 30 of June 2020.

<https://www.15min.lt/naujiena/aktualu/lietuva/krikscioniu-sajunga-siulo-sekti-vengrijos-pavyzdziu-ir-lietuvoje-uzdrausti-keisti-lyti-56-1340320>

<sup>21</sup> A long way to go for LGBTI equality (EU-FRA LGBTI II), European Union Agency for Fundamental Rights, 2020, p. 58, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf)

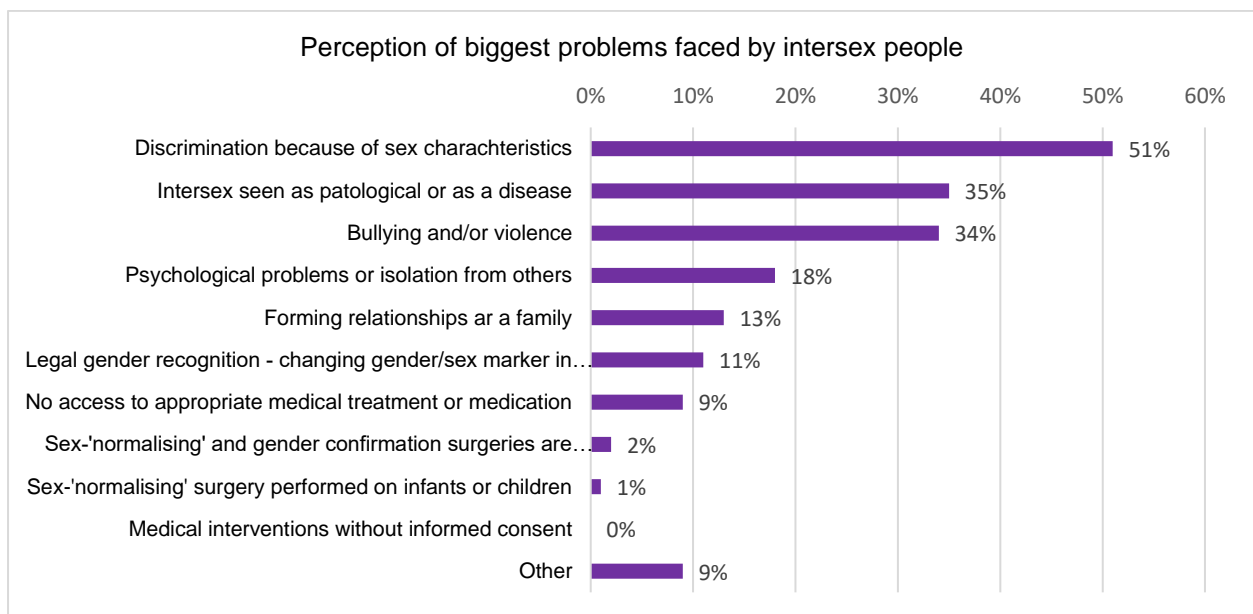
<sup>22</sup> Office of the Equal Opportunities Ombudsperson of the Republic of Lithuania. Exclusive EU survey: In Lithuania LGBTI people talk about themselves most rarely in the whole EU, press release, 20 May 2020, <https://lygybe.lt/lt/fra-lgbti-apklausa>



Source: <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>

Only 15% transgender persons reported that they had performed some kind of intervention to match their body to their gender, of which 59% had the first intervention until adulthood.<sup>23</sup>

As for intersex persons, discrimination, pathologisation and bullying or violence were indicated as major problems faced in everyday life (more than one response was available).



Source: <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>

To summarise, the existing legal regulations in Lithuania are not adequate to offer effective legal protection of transgender and intersex persons from discrimination. The fact that gender identity is not recognised as a ground for prohibited discrimination, neither in the Law of Equal Opportunities, nor in the provisions of other laws providing exhaustive lists of prohibited grounds for discrimination, contributes to making discrimination against transgender persons legally invisible. The situation with intersex persons is even less clear, especially due to lack

<sup>23</sup> <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>

of data on their community and the problems they face. Generally, in the EU context, Lithuania stands out with its high percentage of LGBTI persons experiencing discrimination. The situation is further aggravated by the vocal public opposition to initiatives related to the protection of LGBTI rights.

## ***2. Main issues/concerns raised by transgender and intersex persons***

During the roundtable discussion, members of the Lithuanian transgender community discussed as the main concern the current diagnosis requirement for accessing legal gender recognition and its impact and expressed themselves in favour of the future **LGR legislation to be based on the principle of self-determination**.

So far most of the discussion within Lithuanian State institutions has revolved around LGR procedure based on a psychiatric diagnosis, however members of the transgender community expressed various concerns about the psychiatric diagnosis requirement for accessing LGR. Transgender participants of the discussion emphasized that if the psychiatric diagnosis is a necessary prerequisite for LGR, excessive or abusive requirements for receiving the diagnosis would make both LGR and medical transition less accessible or inaccessible to many transgender persons.

Another issue is mixing transition-related medical care and the process for LGR. Members of the Lithuanian transgender community expressed concerns about the draft diagnostic and health care protocol (“Procedure for Diagnosis and Treatment of Gender Identity Disorder (Transsexualism)”) and its possible consequences on access to medical transition and LGR. Transgender participants highlighted the need for more transparency and accessibility in the diagnostic process, and the importance of moving towards an informed consent model of medical care for transgender persons in the future.

The representative of ILGA-Europe emphasized that transition-related medical care and the process for LGR “are distinct processes that need distinct mechanisms in place”, and a medical practitioner “should not be put in a position of making a decision about the State’s responsibility to protect the human rights of the individual”. Both the members of the Lithuanian transgender community and representatives of international LGBTI rights organizations emphasized the need to move away from the diagnosis requirement for LGR and towards an administrative LGR procedure based on the principle of self-determination.

## ***3. Institutional set-up for dialogue***

In accordance with Article 5 of the Republic of Lithuania Law on Legislative Framework<sup>24</sup>, as well as the Rules of Procedure of the Government of the Republic of Lithuania<sup>25</sup>, draft legal acts have to be published in the Legislative Information System and submitted for consultation with state institutions and the general public. Stakeholders are thus provided with the opportunity to receive relevant information on the draft legislation that has been prepared (or is being prepared) and, after evaluating these drafts, to submit their proposals for these projects.

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<sup>24</sup> Republic of Lithuania Law on Legislative Framework, 18 September 2012 No XI-2220, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/4125a932084d11e687e0fbad81d55a7c?jfwid=bkaxlb0f>

<sup>25</sup> approved by the Government of the Republic of Lithuania in 1994. August 11 by resolution no. Item 728 “On the Approval of the Rules of Procedure of the Government of the Republic of Lithuania”, <https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=&documentId=TAIS.274813&category=TAD>

Under Article 51 (1) of the Law on Legislative Framework, a person (both natural and legal) seeking to influence legislation may voluntarily submit a request to the Chief Official Ethics Commission to be included in the list of persons influencing legislation. A person included in the list is entitled to have the right to receive, *inter alia*, information from the institutions on draft legislation in the areas indicated in the request of the person.

Item 2 of Paragraph 1 of Article 3 of the Republic of Lithuania Law on Development of Non-Governmental Organisations<sup>26</sup> establishes the principles of participation and involvement, meaning that issues related to non-governmental organizations (NGOs) or their activities are resolved in advance with NGOs and their representatives. According to Article 10 (1) of the Legislative Framework, working groups (commissions) set up to draft legislation (or amend existing legal acts) may also include representatives of NGOs. For example, in 2017 representatives from National LGBT Rights Organisation LGL and an NGO Human Rights Monitoring Institute were included into the working group tasked with drafting a Law on Legal Gender Recognition.

## II. Analysis of the legal framework and its practical implementation

### 1. Requirements for legal gender recognition

**CM/Rec (2010) 5 principles:**

**20. 'Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements'.**

The explanatory memorandum to CM/Rec (2010) 5 lists some of the abusive prior requirements for LGR: irreversible sterilization, hormonal treatment, preliminary surgical procedures and sometimes proof of the person's ability to live for a long period of time in the new gender (so called "real-life experience").

Some of these requirements have come to the scrutiny of the ECtHR and other regional and International Human Rights bodies, in particular, the Council of Europe Commissioner for Human Rights<sup>27</sup>, the UN Committee on Social Economic and Cultural Rights<sup>28</sup>, the Committee against Torture<sup>29</sup> among others.

In general, if there is still acceptance of some form of medical condition for legal gender recognition by the ECtHR, it is expected that the ECtHR case law further evolves in light of a growing trend and demands for LGR procedures based on self-determination. In this respect, a group of United Nations and international human rights experts have combined efforts to clearly call on States to 'prevent, investigate and prosecute all forms of forced, coercive and otherwise involuntary treatments and procedures' and have reasserted the need to move away from outdated pathologization approaches<sup>30</sup>.

**Medicalisation:** Council of Europe monitoring bodies and other international bodies have condemned the existence of compulsory intrusive medical interventions for LGR. In particular, the ECtHR has established that 'any requirements of irreversible changes in the individual's metabolism would amount to a violation of the right to private life (Article 8 ECHR): this includes medical intervention, sterilization requirements<sup>31</sup>. More recently the ECtHR also established that conditioning LGR to gender affirming surgery in a case where the applicants refused such surgery breaches Article 8, providing one step towards granting

<sup>26</sup> Republic of Lithuania Law on Development of Non-Governmental Organisations, 19 December 2013, No. XII-717, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d415a500124111e48595a3375cdcc8a3?fwid=zaydj67xa>

<sup>27</sup> See the first issue paper by the Commissioner for Human Rights of the Council of Europe, *Human Rights and Gender Identity* (2009), followed by *Human Rights and Intersex People: Issue paper* (CoE, 2015), p. 9.

<sup>28</sup> See General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 22 May 2026

<sup>29</sup> CAT, 'Concluding observations on the seventh periodic report of France' (10 June 2016), UN Doc No. CAT/C/FRA/CO/7, [35(a)].

<sup>30</sup> See Inter-Agencies Declaration on the occasion of the International Day against Homophobia, Transphobia and Biphobia Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness', 17 May 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19956>

<sup>31</sup> AP, *Garçon and Nicot v. France*, 6 April 2017 (Applications nos. 79885/12, 52471/13 and 52596/13):

the refusal of domestic courts to change the sex on the birth certificates of the applicants, on the grounds that they had not established the irreversible nature of the transformation of their appearance is contrary to the Convention). The judgement build on *YY v. Turkey*, 10 March 2015 (Application no. 14793/08) in which the authorities' refusal to authorise sex reassignment surgery on the grounds that the law established permanent incapacity to procreate as a precondition for authorisation for such surgery is a violation of the Convention).

autonomy to transgender persons<sup>32</sup>. A similar stance was taken by the European Committee on Social Rights (ECSR): it declared that sex reassignment surgery and medical sterilization requirements in order to officially change the personal documents are a violation of the right to the protection of health (Art. 11§1 of the 1961 European Social Charter)<sup>33</sup>.

#### **Time requirement**

The ECtHR condemned the overly rigid application of a two-year waiting period rule before any gender confirmation surgery in view of the far-going consequences. In its judgment, the Court essentially criticized a “mechanical” application of rules and called for personal circumstances to be taken into account<sup>34</sup>.

**Divorce:** A requirement to divorce was found to violate the rights to privacy and equality under Articles 17 and 26 ICCPR in the Human Rights Committee's decision *G v. Australia*<sup>35</sup> (2017). The ECtHR has not yet come to this explicit conclusion even if in its judgement *Hämäläinen v. Finland* (2015), the Court recognized that the divorce requirement leads to 'daily situations in which' a transgender person 'faces inconveniences'. The requirement was not considered disproportionate in view of the existence of a genuine option providing legal protection for same-sex couples that was almost identical to that of marriage. It is widely commented that the Court's conclusion might be different in countries where such an option would not be available.

#### **Age restriction:**

Explicit or implicit age restrictions may obstruct the best-interest-principle for young transgender persons. The need to take into account transgender children's view has been emphasized by the Commissioner for Human Rights in its human rights comment. The Commissioner highlighted the need for government to 'empower and protect LGBTI children' and recalled that respect for children's views and the protection of the best interests of the child as laid out in the UN Convention on the Rights of the Child apply equally to LGBTI children without discrimination.<sup>36</sup> In its Resolution 2048 (2015), the Parliamentary Assembly also highlighted the importance of taking into account the best interests of the child, which it considered 'are a primary consideration in all decisions concerning [them]' in relation to legal gender recognition"<sup>37</sup>.

### **a) Existence of a right to legal gender recognition**

- Dedicated law or lack thereof, type of procedure in place (either administrative or judicial)

Article 2.27 of the Civil Code, which entered into force on 1 July 2003, states that “an unmarried adult person has the right to medically change his or her sex/gender, if it is medically possible”. Pursuant to Paragraph 2 of this Article, the conditions and procedure for gender reassignment had to be established by other laws. However, the implementing law, which was supposed to regulate LGR as well, so far has not been adopted due to strong political resistance. Therefore, although according to Article 2.18 of the Civil Code, the State compulsorily registers a “reassignment of a person's sex/gender” as one of the civil status acts, the absence of a corresponding law creates a legislative gap. Consequently, civil registry offices refuse to grant transgender applicants' requests to amend entries on sex in birth records, citing a lack of legal basis. Up until now, requests to amend applicants' name and surname to those not corresponding to their biological sex would also be denied as a chosen name would have to correspond to a person's sex/gender.<sup>38</sup> However, after the ECtHR judgment in the case of *L. v. Lithuania* (2007),<sup>39</sup> a possibility for LGR by way of judicial

<sup>32</sup> See *X. and Y. v. Romania*, 19 January 2021 (applications no 2145/16 et 20607/16): The domestic courts had presented the applicants, who did not wish to undergo sex reassignment surgery, with an impossible dilemma » « Either they had to undergo the surgery against their better judgment – and thus forego full exercise of their right to respect for their physical integrity – or they had to forego recognition of their gender identity, which also came within the scope of the right to respect for private life » (violation of Article 8 ECHR)

<sup>33</sup> ECSR, *Transgender Europe and ILGA-Europe v. the Czech Republic*, 15 May 2019 (Complaint no. 117/2015)

<sup>34</sup> *Schlumpf v. Switzerland*, 9 January 2009 (application no. 29002/06): The case in question concerned the refusal by the applicant's health insurers to pay the costs of the gender affirming operation on the ground that the applicant had not complied with the two-year waiting time as required by the case-law as a condition for payment of the costs of such an operation. In view of the personal circumstances of the applicant (67 years old), such a long waiting time would affect the applicant decision to undergo the said surgery.

<sup>35</sup> Decision adopted by the Committee at its 119th session (6-29 March 2017).

<sup>36</sup> *LGBTI children have the right to safety and equality*, Commissioner's Human Rights Comment, 2 October 2014.

<sup>37</sup> See Parliamentary Assembly Resolution 2048 (2015) on 'Discrimination against transgender people in Europe', adopted on 22 April 2015.

<sup>38</sup> Order of the Minister of Justice “On approving the rules for changing a person's name and surname”, Par. 5, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/60ffbd44cd4111e69185e773229ab2b2?ifwid=16j6tpk1hm>

<sup>39</sup> ECtHR, *L v Lithuania*, App. No. 27527/03, Judgment of 11 September 2007.

procedure occurred, albeit very limited at first. As a court decision is one of the grounds for changing or amending the civil status records (including birth records), the courts started to fill the legal gap to a certain extent on an *ad hoc* basis. In addition, on 31 December 2021, the Minister of Justice signed an order<sup>40</sup> that would allow adult, unmarried transgender persons change their legal names through an administrative procedure, upon presentation of a certificate issued by a Lithuanian healthcare institution, or by a healthcare institution of a Member State of the European Union, on the diagnosis of “transsexualism”, to the civil registry office. This new administrative procedure came into force on 1 February 2022. However, to change the gender marker and personal identification code, which indicates one’s legal gender, a court procedure will still be needed. In their decisions, currently courts usually derive the right to LGR (“sex/gender reassignment”) from Article 2.27 of the Civil Code. They also refer to the provisions of the Constitution on the protection of the dignity of the individual (Article 21), innate nature of human rights and freedoms (Art. 18), protection of private life (Article 22), as well to Article 8 (respect for private and family life) of the ECHR.

Applications asking to oblige civil registry offices to change the entries of a person’s sex/gender, name and surname in birth record are examined by courts of general jurisdiction in accordance with special procedural rules established in the Code of Civil Procedure and applicable to requests concerning restoration, amendment, change of annulment of records in civil status acts. The civil registry office which refused to amend the birth record, and, in individual cases, the Ministry of Justice, have the procedural status of interested parties (until 2020, the Ministry of Justice was involved in all cases, from 2020 only in exceptional cases). By default, the civil registry office and the Ministry of Justice ask the court to decide according to the court’s discretion. In cases where the applicant has a minor child/children, the children and their statutory representative (usually another parent) are also granted the status of interested parties.

Pursuant to the Code of Civil Procedure, applications concerning restoration, supplementation, amendment, correction or annulment of an entry in a civil status act must be examined in oral hearings.<sup>41</sup> However, during the COVID-19 pandemic (2020-2021), these cases were dealt with by written procedure.

If the application is granted, the court must send the decision by electronic means to the specific civil registry office no later than the next working day after the court decision enters into force.<sup>42</sup> The civil registry office then has a legal obligation to amend the birth record in the Population Register. There is no specific time limit for that, but, according to an interview with a Civil registry officer, it is usually done in couple of days. In the course of amending a person’s sex/gender in birth records, a new personal identification code is automatically generated and included into the birth record. Information about changes in birth records is automatically received by Social Insurance, Tax and other institutions.<sup>43</sup>

- Non-binary legal gender recognition (availability of more than two gender marker options or no mandatory recording of gender marker, freedom to choose)

In Lithuania only binary system of personal gender identification is applied. Every citizen of the Republic of Lithuania, as well as other persons mentioned in the Law on Registers, is given a personal identification code, the first number of which indicates the sex/gender of the

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<sup>40</sup> Order no. 1R-453 “On the Minister of Justice 2016 December 28 order no. 1R-333 “On the Approval of the Rules for Changing the Name and Surname of a Person”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/de5a27006a7911ecb2fe9975f8a9e52e?jfwid=-25ovv8nc0>

<sup>41</sup> Code of Civil Procedure, Official gazette, 2002, No. 36-1340, Art. 515.

<sup>42</sup> Code of Civil Procedure, Art. 516(3).

<sup>43</sup> Interview with a lawyer from the Center of Registers.

person.<sup>44</sup> The first personal identification code number of males born in the 20<sup>th</sup> century is 3, and for females it's 4; personal codes of persons born in the 21<sup>st</sup> century start with the numbers 5 (for males) and 6 (for females) respectively. The person's birth record, record in Population Register and personal identity documents contain both the personal identification number assigned to the person, and sex (male or female). No gender-neutral marker is available. According to the representatives of the Lithuanian Centre of Registers, at present the entire internal logic of the processes in the Population Register (assignment of a personal identification code, compilation of the civil status records, etc.) is based on a binary classification genders, thus the addition of the third or X gender would cause "substantial changes to the entire database, information system, applications and data provision components of the Population Register". Thus, for persons who do not identify themselves with either male or female, LGR is not available. During the national roundtable discussion, members of the Lithuanian transgender community expressed support for an LGR procedure inclusive of non-binary identities.

Representatives of the Centre of Registers stated that as long as there is "no additional data to support the extent and relevance of this need" [of introducing a gender neutral marker], "it is difficult to assess the importance of the need for major changes". However, they also suggested that an option to consider could be having the 'third/X-gender' marker only in the identity documents, in which case no significant changes would be required in the Population Register.

#### **b) Conditions placed:**

- *Medicalization, including diagnostic requirements*

Until 2017, the applicants' requests for LGR were granted only on the condition that the person had undergone a full sterilising "sex/gender reassignment" surgery abroad (such procedures were not and are not available in Lithuania).<sup>45</sup> In 2017, there was a change in the case-law when Vilnius City District Court granted the requests of two transgender men applicants, who had not undergone full gender affirmation surgery, to change their gender records.<sup>46</sup> As can be seen from the decision of 2 May 2017, this change in case-law was influenced by the ECtHR judgment in *A.P., Garçon and Nicot v. France* (not final at the time), in which the ECtHR found that the requirement to undergo sterilisation or treatment involving a very high probability of sterility in order to change the entries on birth certificates was in breach of the applicants' right to respect for private life.<sup>47</sup>

In its decision of 2 May 2017, the Vilnius City District Court stated that "the term 'gender reassignment' should not be associated solely with surgical irreversible biological gender reassignment, but should be understood more broadly, as psychological self-identification with a particular gender, which is confirmed both by the person's medical data (diagnosed transsexualism, successful application of hormone therapy, breast reduction/implants, etc.) and the person's social behaviour [...]"<sup>48</sup>

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<sup>44</sup> Law on Population Register, Register of Legal Acts, No. 2014-16874, Art 8, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.2507/asr>

<sup>45</sup> E.g., Vilnius City District Court, decision of 7 October 2016 in civil case No. e2YT-30838-294/2016.

<sup>46</sup> Vilnius City District Court, decision of 7 April 2017 in civil case No. E2YT-5329-934/2017, <https://eteismai.lt/byla/4376307578778/e2YT-5329-934/2017>

Vilnius City District Court, decision of 2 May 2017 in civil case No. E2YT-5326-987/2017, <https://eteismai.lt/byla/268886328303908/e2YT-5326-987/2017>

<sup>47</sup> ECtHR, *A.P., Garçon and Nicot v. France*, App. No. 79885/12, 52471/13 and 52596/13, Judgment of 6 April 2017.

<sup>48</sup> E.g., Vilnius Regional District Court, decision of 15 March 2021 in civil case No. e2YT-1940-424/2021; Vilnius City District Court, decision of 27 October 2020 in civil case No. e2YT-31264-433/2020; Vilnius City District Court, decision of 5 April 2019 in civil case No. e2YT-1859-819/2019.



According to current case-law, “the basic legal preconditions for the amendment of civil status records are a diagnosis of transsexualism and self-identification with the corresponding sex/gender”.<sup>49</sup> Thus, **the psychiatric diagnosis of Gender Identity Disorder (ICD-10 code F64.0), is a necessary prerequisite for the LGR.** The mandatory requirement of a psychiatric diagnosis leads to stigmatization and pathologisation of transgender persons, especially given that, pending the introduction of ICD-11, which removes gender incongruence from the list of mental disorders, being transgender is still officially considered a “personality and behavioural disorder”.

At the same time, it should be noted that a diagnostic and health care protocol (“Procedure for Diagnosis and Treatment of Gender Identity Disorder (Transsexualism)”) so far has not been approved.<sup>50</sup> This results in a lack of clarity as to how “Gender Identity Disorder” should be diagnosed, whether and what further testing is needed. During the national roundtable discussion, the representative of the Ministry of Health mentioned that the discussions on the draft with the different stakeholders are still ongoing. Currently the F64.0 diagnosis can be obtained either in public health care institutions providing specialized (secondary) mental health care services, i.e. hospitals, or in private health care institutions. Public health care institutions usually follow the requirements set out in the draft diagnostic and health care protocol: detailed anamnesis relating to gender dysphoria is gathered, possible presence of mental health disorders is evaluated, differential diagnostics is performed, full psychological evaluation, genetic and endocrine tests are conducted. Final decision concerning “Gender Identity Disorder” diagnosis is adopted by a committee of at least three physicians, including a psychiatrist and an endocrinologist.

The practices of privately practicing psychiatrists, who are usually approached by transgender persons, vary. For example, one interviewee indicated that in cases where being transgender is evident in so far as the person is already transitioning socially and medically, one consultation by a psychiatrist may be sufficient for the diagnosis. Another psychiatrist, working in a private clinic and specialising in providing consultations to transgender persons, stated that usually after the initial consultation the person is referred for a full psychological examination, followed by a consultation with a geneticist and an endocrinologist who perform respective tests. Upon receipt of all the testing results, the diagnosis of “Gender Identity Disorder” is confirmed, unless obstacles such as depression or other mental health conditions are identified. In the latter case, identified conditions are first of all treated. According to the psychiatrist, if there are no obstacles (such as other mental health conditions) it usually takes a year from the first consultation until the “Gender Identity Disorder” diagnosis is confirmed. This process integrates diagnostic processes and social transition. For some, therapy aimed at empowering the person for social transitioning might be proposed, and only then hormone replacement therapy is recommended. It should also be noted that until health care protocol is not adopted, endocrinologists working in public health care institutions refuse to prescribe hormonal preparations, even for persons with a confirmed F 64.0 diagnosis.

During the national roundtable discussion, the representative of the Ministry of Health mentioned that the draft diagnostic and health care protocol, when adopted, would affect the practice of both public and private medical practitioners, as the same requirements for diagnosis and treatment would apply to all medical professionals. Transgender participants of the discussion expressed their concern that it is important that the new protocol does not introduce excessive or abusive requirements to receiving a psychiatric diagnosis and accessing medical transition, and provides a clear procedure for assessing diagnostic criteria.

Gender-affirming surgical procedures (e.g. mastectomy or orchiectomy) are not required for LGR. Although courts routinely include medicalization-related arguments in their decisions, at the time of preparation of this report, there were no known cases examined after the change in case-law where an application would be rejected based on insufficient medical transition.

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<sup>49</sup> Ibid.

<sup>50</sup> On 6<sup>th</sup> of August 2021 a draft order of the Minister of Health on the approval of the diagnostic and health care protocol was submitted for consultation.

On the other hand, most of the applicants were undergoing hormone replacement therapy or were taking hormonal preparations on their own. However, although there is a lack of legal certainty on the matter, the standard phrase used by the courts that “the applicant has initiated irreversible medical processes towards reassignment of his/her biological sex”<sup>51</sup> is more likely a reference to strong evidence of self-identification with particular gender, rather than an expression of a necessary requirement. Interestingly, in the case examined in 2021 concerning the LGR of a minor, the court did not use the above-mentioned phrase about irreversible medical processes. Considerable flexibility of the courts concerning medical transitioning was also confirmed by an interviewed lawyer. At the same time, the situation is not entirely clear in this respect, leading to some legal uncertainty as to what is required to successfully prove self-identification with a different gender than the one expected based on the person’s sex assigned at birth.

- *Divorce – Existence of a divorce requirement or legal void*

Article 2.27(1) of the Civil Code provided for the right to “medical gender reassignment” for unmarried persons. This requirement is consistently followed in the case-law, requiring that the applicant be **unmarried or divorced**. Thus, some had to divorce in order to obtain LGR.<sup>52</sup>

Divorce requirement is closely related to Article 38(3) of the Constitution according to which marriage is concluded upon the free mutual consent of a man and a woman<sup>53</sup>. Thus, according to this Constitutional provision, same-sex marriages are not possible. The Constitutional Court has held that a different concept of marriage cannot be entrenched in the laws of the Republic of Lithuania without a corresponding amendment of the said Constitutional provision.<sup>54</sup> In current legal practice, the concept of marriage as concluded between a man and a woman is considered to cover the entire period of the marriage.

On the other hand, the Constitutional Court has clarified that, unlike the constitutional concept of marriage, the constitutional concept of family is gender neutral.<sup>55</sup> However, in the absence of an established same-sex partnership institution, families who were obliged to divorce in order for a spouse to obtain LGR, are not granted legal protection. This may raise issues of compatibility with the right to respect for family life, as guaranteed by Article 8 of the ECHR.

- *Age: Existence of an explicit age restriction for minors to change their legal gender*

The requirement of adulthood (age 18) is routinely mentioned in court decisions on LGR as one of the requirements established in Article 2.27 of the Civil Code related to the conditions established for the possibility to correct or change the records identifying the sex of a person in civil status acts. However, in 2021 an application concerning LGR of a minor person (information about age could not be obtained citing data protection) was granted.

In particular, the court held that “in the present case, the minor’s right to recognition of his gender identity is exercised through the minor’s statutory representatives, the applicant’s parents. The information from the case file, the explanations provided by the applicant’s statutory representatives at the court hearing and their position allow the unequivocal

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<sup>51</sup> E.g. Vilnius Regional District Court, decision of 15 May 2021 in civil case No. e2YT-1940-424/2021; Vilnius Regional District Court, decision of 15 March 2021 in civil case No. e2YT-1940-424/2021; Vilnius City District Court, decision of 27 October 2020 in civil case No. e2YT-31264-433/2020; Vilnius City District Court, decision of 5 April 2019 in civil case No. e2YT-1859-819/2019.

<sup>52</sup> ENDSOGIEDISC: Combating Discrimination and Violence on the Basis of Sexual Orientation and Gender Identity. Lithuania – National Report. Office of the Equal Opportunities Ombudsperson, 2020, p. 15.

<sup>53</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.21892>

<sup>54</sup> Constitutional Court of the Republic of Lithuania ruling of 11 January 2019 in the case No. KT3-N1/2019, <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta1898/content>

<sup>55</sup> Ibid.

conclusion that they both respect their child's choice, understand his problem and fully support him".<sup>56</sup>

Based on this decision it can be presumed the right to LGR for minor persons can be exercised through their statutory representatives (i.e., usually parents). However, in the mentioned case, both parents, acting as statutory representatives, respected the child's choice. This situation leaves open the question whether, if at all, it would be possible to obtain LGR for a child whose parents or one of the parents would be against LGR. Actually, during the interviews, cases were mentioned when parents used physical violence or otherwise threatened their children after learning them being transgender. During the national roundtable discussion, it was noted that even if a minor did not have a strong support system, it should be possible for minors to access LGR, and such cases should be decided on an individual basis, respecting the self-determination of the concerned person. According to the different participants of the discussion, including members of the transgender community, it is important for LGR to be accessible for minors in order to protect the "best interests of the child".

- *Time requirement – lived experience*

According to existing case-law, self-identification with a particular gender is one of the main material conditions for LGR. In its decision of 2 May 2017, the Vilnius City District Court found that psychological self-identification with a particular gender is confirmed by both medical data and the person's social behaviour – "use of a name not corresponding to the biological sex; wearing clothes of the opposite sex; changes in appearance and behaviour to those specific to the opposite sex, etc."<sup>57</sup> These criteria, related to lived experience, are indicative and are taken into account when assessing whether a person identifies with a particular sex/gender.

In court decisions, it is routinely stated that the applicant perceives and identifies himself/herself as a man/woman "for a long time" in social life. At the same time, the "long time" criterion in existing case-law is not further defined or otherwise explained. So far, there have been no cases in which an application for LGR was rejected on the grounds that a person has not identified themselves long enough with a particular gender in social life.

- *Procedural requirements/Unclear requirements and issues of legal certainty, including judicial discretion*

A case concerning the request to change entries on a person's sex/gender, name and surname in birth record can be examined by the court only after the civil registry office refuses to grant the said request.<sup>58</sup> Therefore, all applicants, before filing an application with a court, have to address the civil registry office. In case the applicant wishes to change gender, name and surname, separate requests to civil registry office have to be submitted for gender and name change. An application for LGR has to be filed to the district court operating in the area where the civil registry office, which refused to change entries in the birth record, is located.<sup>59</sup>

Prima facie, it can be argued that the procedural requirements for judicial LGR are clear. However, some uncertainties remain regarding the material requirements to be fulfilled for LGR. For example, it is not clear whether the fact that a person has been diagnosed with "Gender Identity Disorder" (F64.0) and identifies himself/herself with a particular gender would be sufficient for LGR. There is also a lack of clarity as to the conditions required in order to obtain LGR for a minor person.

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<sup>56</sup> Citation obtained from the lawyer who represented the applicant.

<sup>57</sup> Vilnius City District Court, decision of 2 May 2017 in civil case No. E2YT-5326-987/2017.

<sup>58</sup> Code of Civil Procedure, Art. 514(2).

<sup>59</sup> Code of Civil Procedure, Art. 514(1).

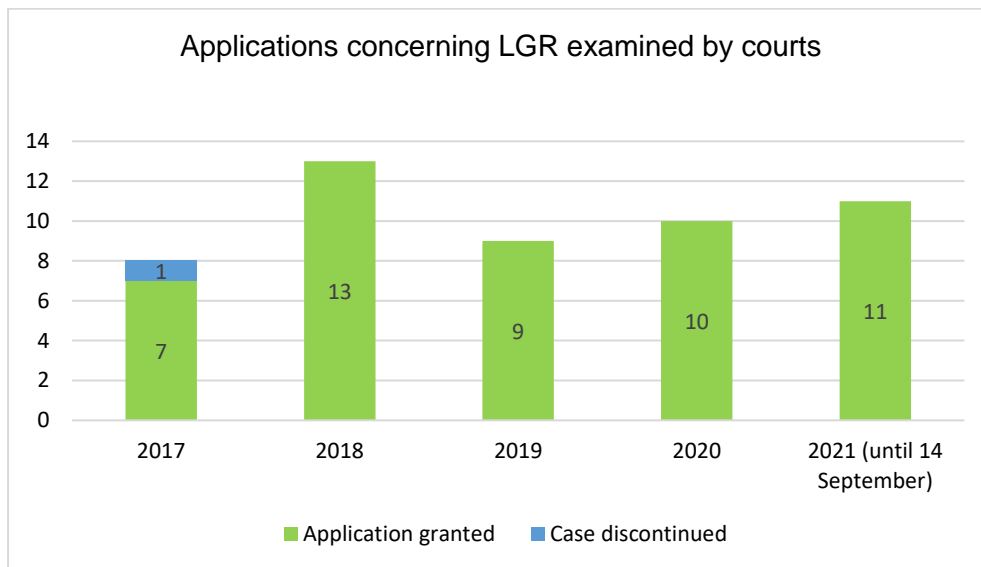
- *Waiting or reflection periods*

Waiting or reflection periods are not required.

**c) Impact:**

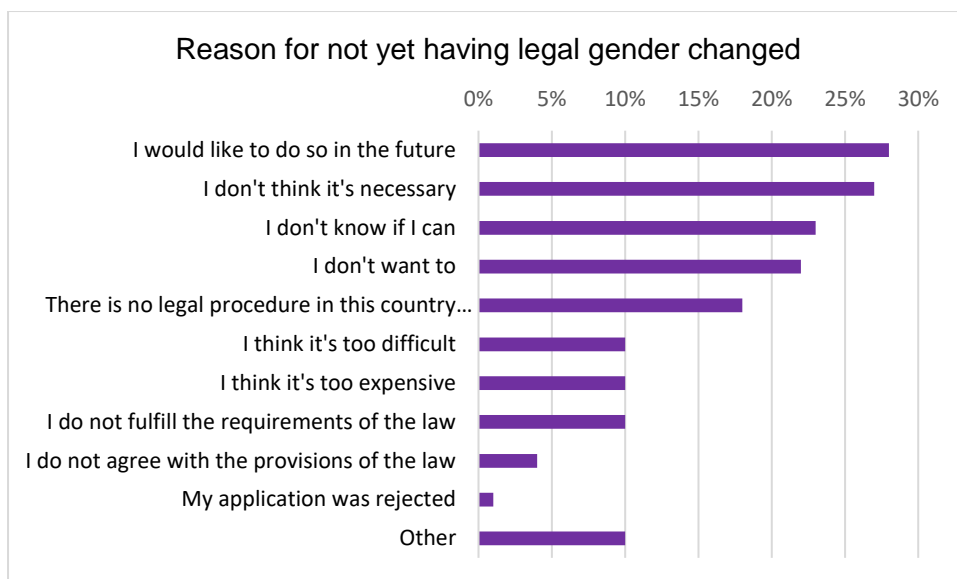
- Available data on the extent to which existing LGR procedures are used in the country

As court decisions granting applications for change or amendment of records about gender are not separated into an independent category, there is no accurate statistics on the applications examined. Thus, in the below graph, an error margin of 1-2 cases is possible.



Source: National Courts Administration, response of 17 September 2021 to freedom of information request, Ministry of Justice response of 22 September 2021 to freedom of information request.

According to the survey of Fundamental Rights Agency (EU-LGBTI II, 2020), out of 156 transgender respondents surveyed in Lithuania, only 1% (15 persons) indicated that they had their legal gender changed, 3% indicated that they were in the process and 96% stated that they did not change their legal gender. The table below provides details of the reasons given for not yet having legal gender changed (more than one answer could be chosen).



Source: <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>

The responses show that quite a lot of transgender persons do not find it necessary to have their legal gender changed or do not want to do that. These numbers partially may be related to the fact that LGR in Lithuania is strictly gendered, and there are no options for non-binary people. It should be noted that some transgender persons lack information on the requirements for legal recognition of gender identity, and other reasons such as the perceived complexity and cost of the procedure are worth mentioning. Factors that may have a chilling effect include necessity to file an application to a court, to observe strict formalities and have legal knowledge or hire a lawyer, unavoidable degree of uncertainty, which is inherent in court proceedings, etc. An interviewed private psychiatrist, specialising in consulting transgender persons, noted that out of 40 persons who approached her since 2019, the majority were from a socially vulnerable background.

- Views of the transgender and intersex persons on the effect of existing requirements (notably as expressed through the national consultation)

Taking into account that there are few psychiatrists specialising in consulting transgender persons, some transgender persons refer to negative experiences with psychiatrists and other health care specialists.<sup>60</sup>

Persons who have Lithuanian citizenship but live abroad, have to undergo judicial LGR procedure in Lithuania in order to have their official records and identity documents changed. Even though during the COVID-19 pandemic such cases were dealt with by way of written procedure, the Code of Civil Procedure requires oral hearings. Thus, before the pandemic, in-person participation of the applicant or at least their lawyer was required.

The whole procedure sometimes is perceived as complicated and requiring a lot of formalities, which is even more true in cases of minor persons.

“I had to provide copies of many documents, go to a psychiatrist to make a diagnosis, and I had to prove that I had medication for hormonal treatment for at least half a year. The diagnosis is needed not only to be able to change the documents, but also to be able to start a medical transition. Since I was fifteen at the time, the diagnosis took a while. I had to take various personality tests, talk to more than one specialist. Sometimes they asked really weird

<sup>60</sup> Kazarian, S. LGBTQ + representatives: some Lithuanian psychiatrists have turned away from them, 2021-09-13, <https://lsveikata.lt/aktualijos/lgbtq-atstovai-dalis-lietuvos-psichiatru-nuo-ju-nusisuke-14044>

things that a transgender person supposedly had to match. Let's say if you're a girl, you have to like pink. Such banalities that I did not meet. This further prolonged the process"<sup>61</sup>.

During the roundtable discussion, most of the transgender participants expressed various concerns about the psychiatric diagnosis requirement for accessing LGR. Participants stated that the diagnostic criteria and the diagnostic process for 'transsexualism', or 'Gender Identity Disorder', seem unclear and lack transparency. Some private psychiatrists require the evaluation of possible presence of mental health disorders, a full psychological evaluation, as well as genetic and endocrine tests, before issuing the diagnosis. Such requirements are also set out in the draft diagnostic and health care protocol ("Procedure for Diagnosis and Treatment of Gender Identity Disorder (Transsexualism)"). Transgender participants of the roundtable discussion questioned the purpose of genetic testing and whether finding out one has certain intersex conditions would make it more difficult to access LGR and medical transition (which could amount to discrimination based on sex characteristics, as pointed out by an ILGA-Europe representative).

Transgender participants of the discussion also expressed concerns over the fact that such a diagnostic process can make it more difficult for people with any confirmed or possible mental health conditions, such as depression, anxiety, or schizophrenia, to access LGR and medical transition. They affirmed that delaying access to LGR and/or medical transition until other mental health conditions are first treated can have an extremely damaging effect on the mental health of transgender persons. Some of the members of the transgender community added that the current procedure which requires a psychiatric diagnosis to access LGR also prevents some people from seeking professional support for any mental health issues they might have, fearing that having certain diagnoses might result in not being able to access LGR or medical transition. According to representatives of Transgender Europe (TGEU) and ILGA-Europe, there is "significant evidence" that allowing transgender persons with mental health diagnoses such as heavy depression or schizophrenia, to undergo medical and social transition "improves their health with respect to their mental health conditions", as well as their "overall wellbeing".

Another diagnosis-related requirement to access LGR – the so-called 'real life experience', whereby a person must prove that they have lived for a period of time (1-2 years) with their gender identity before receiving a psychiatric diagnosis, was called "cruel" by one of the participants, given that many transgender persons "do not have a safe environment to continue their social transition without documents that match their gender identity, or being able to access medical transition".

- Attempts to review such conditions (and possible progressive case law)

On 19 February 2021, the Ministry of Justice registered an amendment to the Order of the Minister of Justice "On the approval of the order of the amendment of the name and surname", which aims to establish an administrative procedure for persons who are diagnosed with "Gender Identity Disorder" to change their names and surnames so that they correspond to their gender. Submitting a request and a medical certificate concerning the respective diagnosis to civil registry office would suffice<sup>62</sup>. Thus, even though planned amendments would still require a diagnosis of Gender Identity Disorder, the introduction of an administrative procedure would be a positive step, enabling transgender persons to transition socially more smoothly and providing some protection against daily discrimination. Concerning the age requirement, the LGR general provisions would apply, meaning that transgender persons over the age of 16 would be able to apply for a change of their name and surname on their own.

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<sup>61</sup> Muchks J., Transgender persons face legal absurd, 2021-02-22, <https://lsveikata.lt/aktualijos/translyciai-susiduria-su-teisiniu-absurdu-13318>

<sup>62</sup> Draft order of the Minister of Justice "Regarding the change of the rules for changing the name and surname of a person", 2021-02-19 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/0b3dc26172c611eb9fc9c3970976dfa1?jfwid=-16zcv93r77>

For children under 16, a possibility to submit a request by a statutory representative would exist, unless the chosen name and surname do not correspond to the best interests of the child.

The amendment was adopted on 31 December 2021, and came into effect on 1 February 2022. However, the age requirement was changed, and the new administrative procedure for a legal name change will only be available to adults.

Lithuanian names and surnames are gendered, thus the only option to obtain a gender-neutral name is to choose a foreign name. According to the Rules for changing a person's name and surname, they have to correspond to a person's sex/gender.<sup>63</sup> This adds to transgender persons's vulnerability for daily exposure, especially in the context of COVID-19 pandemics, where persons are routinely required to present their Vaccination Certificates, containing a name, a surname, date of birth, date of issue and expiry date. These Certificates, in Lithuanian called "passport of opportunities" (*galimybių pasas*), are necessary for engaging in daily activities such as going to university, state and private institutions, shops (except small food stores), cafes, etc.

It is also planned to adopt legislation, most probably an amendment to the Civil Code, establishing basic criteria and an administrative procedure for LGR, however, there are concerns that this might eliminate the opportunity for persons under 18 to access LGR.

Concerning the case-law, there were two main developments as noted above. In 2017, the courts stopped to require full gender confirming surgery, and developed a flexible approach towards other medical interventions. In 2021, LGR for a minor person, based on an application of a statutory representative, was granted.

## 2. Effective procedure: "quick, transparent and accessible"

### CM/Rec (2010) 5 principles

**21. 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.**

**Quick:** In its jurisprudence, the ECtHR reviewed the time span between applying for and being granted recognition and found that transgender person's right to privacy was violated for the excessive duration of the proceedings. The ECtHR highlighted that 'rigid and long judicial LGR procedures leave transgender individuals vulnerable and are against the aims of the ECHR<sup>64</sup> and that protracted examination of a claim has long-term negative consequences for mental health.<sup>65</sup>

**Transparent:** In several cases, the ECtHR addressed issues of legal clarity both in terms of language and responsible authority and concluded that the lack of clarity of the legal framework on gender recognition amounted to a violation of Article 8. It did reach such a conclusion for example when noting that national courts reached very varying conclusions about the conditions and procedure for gender recognition,<sup>66</sup> or observing that any conclusion on the applicant request would be 'precariously close to speculation' hence creating a situation of legal uncertainty for the applicants. The ECtHR also noted that transparency is also lacking when 'no provision clearly specifies the body that has jurisdiction to decide on a request'<sup>67</sup>.

**Accessible:** Aspects such as costly and long court or administrative procedures may place substantial economic barriers to gender recognition in practice. In addition, some transgender persons might be unable to fulfil certain prior requirements for legal gender recognition, for instance due to their age or health<sup>68</sup>. This is in turn calls for due consideration to be given to the personal situation of the applicant.

<sup>63</sup> Order of the Minister of Justice "On approving the rules for changing a person's name and surname", Par. 5, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/60ffbd44cd4111e69185e773229ab2b2?jfwid=16j6tpk1hm>

<sup>64</sup> S.V. v. Italy, 11 October 2018, (application no. 55216/08), para 72.

<sup>65</sup> X v. the former Yugoslav Republic of Macedonia, 17 January 2019, (application no. 29683/16), para 70.

<sup>66</sup> X. and Y. v. Romania, 19 January 2021 (applications nos. 2145/16 and 20607/16), para. 162.

<sup>67</sup> X. v. the former Yugoslav Republic of Macedonia (2019), para 69.

<sup>68</sup> Schlumpf v. Switzerland, 9 January 2009 (application no. 29002/06), see also D.Ç. v. Turkey, 7 February 2017 (decision on the admissibility) (application no. 10684/13): the applicant, a transgender person whose gender reassignment has not yet been carried out, complained of the refusal of the authorities of the Ministry of Justice to bear the cost of her gender reassignment despite medical evidence which, she submitted, clearly showed that she urgently needed treatment.

### **a) Length of existing proceedings**

The assessment of the length of the procedure concerning LGR depends on whether only the length of proceedings before the public authorities is taken into account, or the total time of the procedure, including legal advice, preparation of the application, etc.

The duration of the procedure in state institutions consists of: 1) the examination of a request for the amendment of gender, name and surname in the birth record by a civil registry office and 2) the examination of the application in court.

The civil registry office usually adopts negative decisions on the same day when the request is received, but it takes up to two weeks for the Ministry of Justice to confirm the decision. Examination of applications in court usually takes 1-2 months, but can take up to three months (data of 2020-2021).<sup>69</sup> New personal identification documents are issued in around one month after the request. Thus, considering the time needed to find a legal representative, gather the necessary evidence and prepare an application to the court, the total length of the LGR proceedings usually varies between 5-7 months.

As the diagnosis of “Gender Identity Disorder” is a necessary prerequisite for LGR, the time required to obtain it should also be taken into account. Depending on the diagnostic procedure, the person's progress in social transitioning, having or not mental health problems (such as depression) and other factors, the diagnostic process can vary from one day to one year and longer. One of the interviewed psychiatrists indicated that in her practice, a diagnostic procedure involving three psychiatric consultations, a full psychological examination, a consultation by a geneticist and endocrinologist usually takes one year, provided there are no side conditions, like depression. In the latter case, other conditions should be addressed before proceeding with diagnosis. However, where a person is advanced in their social transition, the diagnostic procedure might be completed in half a year.

### **b) Costs, including costs of mandatory requirements**

Applications in extraordinary justice cases are subject to a stamp duty of € 50.<sup>70</sup>

Costs of legal representation is usually several hundred euros (EUR 300-500), but legal representation is not mandatory.

Taking into account that a diagnosis of “Gender Identity Disorder” is a necessary requirement for LGR, relevant costs should be mentioned. In cases where diagnosis is established by public health institutions, services are provided free of charge. In case of private psychiatrist, the costs depend on the diagnostic procedure. Primary consultation by a psychiatrist costs EUR 60-80, repeated – EUR 40-50. Psychological evaluation (used for differential diagnosis) – EUR 60-70. Consultations by a geneticist and endocrinologist may be obtained free of charge, based on preliminary diagnosis of “Gender Identity Disorder” by a psychiatrist and a referral by a family doctor. Private consultations of these specialists cost similarly as those of a psychiatrist. Diagnostic procedure encompassing three psychiatric consultations (primary consultation, repeated consultation after full psychological evaluation and final consultation after genetic and endocrine tests), as well as private consultations by a geneticist and endocrinologist may cost around EUR 380. In the case where a person may need additional psychiatrist visits for individual therapy or medication, the costs might be higher.

### **c) Margin of appreciation of the judge/state body/opacity**

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<sup>69</sup> National Court Administration, response of 17 September 2021 to freedom of information request.

<sup>70</sup> Code of Civil Procedure, Art. 50(1(9)).



As mentioned above, the courts to some extent exercise their discretion (margin of appreciation) in specifying the minimum substantive requirements for the LGR and in deciding whether the applicant meets these requirements in a particular case. Even though this discretion leads to some legal uncertainty (e.g. whether medical transition has to be initiated), it also opens the door to progressive development of case-law, based, *inter alia*, on the standards formulated by the ECtHR.

### **3. Adapting official documents by state and non-state actors to reflect legal gender and data protection – situation in the fields of education and employment**

**CM/Rec (2010) 5 principles:**

**19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law-enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.**

**21. (...) member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.**

The explanatory memorandum to CM/Rec (2010) 5 specifies in its paragraph 20-21 that States thus have a positive obligation to legally recognise the new identity of a transsexual person<sup>61</sup> who has undergone a complete gender reassignment. This includes the issuing of official documents *such as birth certificates, identity papers, driving licenses, passports, social insurance cards and numbers, electoral, land and tax registers*. The Court has stressed that it is of "crucial importance", that the Convention be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. There is an obligation on states to issue e.g. new birth certificates, and also non-official documents issued by non-government agencies such as diplomas, certificates of employment, insurance or banking documents should, where appropriate and upon request, be altered to conform to the new gender identity of such persons.

The principle that national legislation must render the rights under the ECHR "practical and effective, not theoretical and illusory"<sup>71</sup> has been reviewed by the ECtHR in a case where "a discrepancy between [the] legal sex and [the] apparent sex of a transsexual" appeared in a series of official documents such as social-security documents or pay-slips. The Court observed that this made many transactions of daily life difficult where proof of identity is necessary, without disclosing the discrepancy between their legal sex and their apparent sex. The Court noted that in the country in question, there were no major obstacles preventing birth certificates from being amended and concluded that refusing to amend the civil status register in this case had placed the applicant "in a daily situation which was not compatible with the respect due to her private life".<sup>72</sup>

#### **a) Situation in the field of education**

- Measures in place with regard to preventing discrimination of transgender and intersex persons and relevant case law

Even though prohibition of discrimination based on sexual orientation is included in different laws and, most relevantly, the Law on equal opportunities, there are no legislative provisions explicitly prohibiting discrimination on the grounds of gender identity or sex characteristics. Thus, discrimination based on these grounds, including in the field of education, does not fall within the competence of the Equal Opportunities Ombudsperson.

The Law on Education contains general provision, aimed at countering bullying and harassment, including in cyberspace<sup>73</sup>. General Recommendations on prevention of violence at schools state that heads of schools have to approve the procedure for the prevention of violence and bullying and the implementation of the intervention procedure.<sup>74</sup> These Recommendations also provide for preventive measures, aimed at creating a positive climate,

<sup>71</sup> Goodwin v. the United Kingdom (2002), op. cit.

<sup>72</sup> B. v. France, 25 March 1992 (application no. 13343/87)

<sup>73</sup> Law on Education, Lietuvos aidas, 1991-08-06, Nr. 153-0 (with later amendments), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1480/asr>

<sup>74</sup> Order of the Minister of Education and Science, 22 March 2017, No. V-190 "Regarding approval of recommendations on prevention of violence at schools", <https://www.e-tar.lt/portal/lt/legalAct/1da317500f9911e79800e8266c1e5d1b>

and establish an obligation of all school employees to react to violence and bullying regardless of their form and content and regardless of the characteristic of the person.

On 1 September 2017, the General Programme on Health, Sexual Education and Family Planning, adopted by the Minister of Education and Science, came into force. One of the aims of this Programme, which should be implemented in schools providing basic and secondary education, is “to help schoolchildren to acquire holistic concepts of health and sexuality”<sup>75</sup>. In this Programme, sexuality is defined as “a person's gender identity, revealed through the perception of oneself as a man or a woman, perception as a person of another gender, perception of the surrounding world; it manifests itself in biological, mental, socio-cultural and spiritual aspects of human existence”. This Programme prohibits, among other things, to discriminate against a person on the basis of their sexual orientation and/or non-acceptance of sexual orientation. Information on how this program is implemented in schools can be found on the National Education Agency website<sup>76</sup>.

To sum up, measures in place to prevent and counter different forms of discrimination, including harassment, mostly fall within the discretion of educational institutions and are not monitored nor assessed. No relevant case law in this field was identified.

In 2020, amendments to the orders of the Minister of Education, Science and Sports were adopted,<sup>77</sup> enabling transgender persons who had undergone LGR to amend entries (gender, name, surname) in diplomas and certificates of basic, secondary and higher education. A request by the applicant and provision of documents confirming the change of this data have to be submitted to the relevant institution.

- Challenges encountered by transgender and intersex persons without matching documents

Even though after 2017 there were no rejected applications concerning LGR, the absence of quick, transparent and accessible administrative procedure based on self-determination leads to situations where persons who are reluctant to undergo judicial procedures for LGR have to live without documents matching their gender identity. Obviously, this creates situations of forced “coming-outs” as transgender whenever there is a necessity to provide documents on acquired education. Non-binary people who opt not to undergo LGR procedure and whose gender expression does not correspond to the one expected based on their birth-assigned sex face similar challenges.

During the national roundtable discussion, members of the Lithuanian transgender community also shared their experiences studying in schools and higher education institutions without documents that match their gender identity. Some of them mentioned having to come out and some teachers and academic staff refusing to use their correct pronouns or chosen names. According to the participants, many teachers and academic staff do not know how to support transgender students and lack awareness of gender identity and transgender persons' issues. According to both the transgender participants of the discussion and representatives of State institutions, better training is needed for people working with transgender students in the field of education.

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<sup>75</sup> Order of the Minister of Education and Science, 25 October 2016, No. V-941 “Regarding approval of general program on health, sexual education and family planning”, [https://www.smm.lt/uploads/documents/Pedagogams/Bendroji\\_dalis.pdf](https://www.smm.lt/uploads/documents/Pedagogams/Bendroji_dalis.pdf)

<sup>76</sup> <https://duomenys.ugdome.lt/?mm/slrus>

<sup>77</sup> Order of the Minister of Education, Science and Sports, 14 July 2020, No. V-1062 “On amending the order No. V-362 of 15 May 2017 on procedure for the preparation, production, registration and issuance of the diplomas, diploma supplements and study certificates”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/181de881c60911eab2168935922ac3ab>

Order of the Minister of Education, Science and Sports, 8 May 2020, No. V-680, “On amending the order No. ĮSAK-236 of 20 February 2017 on the approval of the procedure for issuing certificates of basic and secondary education”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/5d211362916311eaa51db668f0092944>

## b) Situation in the field of employment

- Measures in place with regard to preventing discrimination of transgender and intersex persons and relevant case law

In terms of access to employment, positive developments took place in 2019-2020, as “Gender Identity Disorder” (F64.0) was removed from the list of diseases precluding taking up certain legal positions: judges<sup>78</sup>, advocates and assistants to advocates<sup>79</sup>, notaries<sup>80</sup>, bailiffs<sup>81</sup>, and prosecutors<sup>82</sup>.

According to Article 26(1) of the Labour Code, the principles of gender equality and non-discrimination of employees on other grounds, include the prohibition of discrimination based on circumstances that are not related to professional capacities of employees<sup>83</sup>. Thus, this general non-discrimination provision, prohibiting direct and indirect discrimination, harassment, sexual harassment and instruction to discriminate in any employer-employee relationship<sup>84</sup> could be interpreted as encompassing prohibition of discrimination of transgender and intersex persons as well. Article 59(2) prohibits dismissal from work on the incentive by an employer in case an employee submitted a complaint on alleged discrimination on the grounds of, *inter alia*, “other discriminatory motives”.

On the other hand, Article 26(2), specifying the content of equal treatment (equal criteria in recruitment procedures, equal work conditions, equal opportunities to engage in vocational training, equal criteria for dismissal, equal pay for work of equal value, obligation to implement measures to prevent harassment at the workplace, etc.) refers only to specific grounds, including sexual orientation, and “other grounds provided in laws”. Taking into account that gender identity is not included in any law as a prohibited ground for discrimination, existing regulation results in uncertainty. No relevant case-law in this field was identified. At the same time, the legal gap in the Law on Equal Opportunities is essence precludes from lodging successful applications concerning discrimination before Equal Opportunities Ombudsperson.

- Challenges encountered by transgender and intersex persons without matching documents (access to employment services, job interviews, etc.)

The last in-depth qualitative research on the situation of transgender persons in the Lithuanian labour market was conducted by the National LGBT+ Rights Organization LGL in 2016.<sup>85</sup> The research revealed that all interviewees (10 persons) have experienced potential instances of discrimination in the field of employment, but the majority of them believed that when faced with discrimination, transgender persons are not likely to seek help, because they do not

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<sup>78</sup> Joint order of the Minister of Health and the Minister of Justice, 24 May 2019, No. V-623/1R-176 “On amending the order No. V-196/1R-80 of 19 May 2009 approving the medical requirements and procedure for medical examination of applicants for judges and judges”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b0f783807e0811e98a8298567570d639>

<sup>79</sup> Joint order of the Minister of Health and the Minister of Justice, 31 January 2020, No. V-99/1R-32 “On amending the order No. V-556/1R-181 of 16 July 2004 approving the medical requirements and procedure for medical examination of applicant advocates, advocates and assistants to advocates”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b6135bb2474c11ea9b3585dbd527d9e8>

<sup>80</sup> Joint order of the Minister of Health and Minister of Justice, 31 January 2020, No. V-100/1R-3, “On amending the order No. V-559/240 of 26 September 2003 approving the procedure for medical examination of notaries”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c6da7182474d11ea9b3585dbd527d9e8>

<sup>81</sup> Joint order of the Minister of Health and Minister of Justice, 31 January 2020, No. V-98/1R-31 “On amending the order No. 433/233 of 28 September 2002”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/49a4f4f3474e11ea9b3585dbd527d9e8>

<sup>82</sup> Order of the Minister of Health, 31 March 2020, No. V-630 “On approving the medical requirements and procedure for medical examination of persons applying for the position of prosecutors”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/16618850735011ea38ed97835ec4df6>

<sup>83</sup> Labour Code, Register of legal Acts, 2016-09-19, No. 23709, Art. 26.

<sup>84</sup> Labour Code, Art. 26(1).

<sup>85</sup> Tomas V. Raskevičius, “#TRANS\_LT: Documenting Experiences of Transgender People in Employment”, 2016, [http://www.lgl.lt/en/files/TRANS\\_LT-Documenting-Experiences-of-Transgender-People-in-Employment-2016.pdf](http://www.lgl.lt/en/files/TRANS_LT-Documenting-Experiences-of-Transgender-People-in-Employment-2016.pdf)

expect and/or cannot receive assistance.<sup>86</sup> The respondents without matching documents (at the time full “gender confirming surgery” was required for LGR) reported major difficulties in finding a job, citing negative attitudes by the interviewing persons or even refusing to conclude a contract with a successful applicant once a mismatch of documents and gender identity was exposed.<sup>87</sup> Reported cases of indirect discrimination included requirements to wear name tags and (or) uniforms based on biological sex.<sup>88</sup> Interviewees also shared their stories about hurtful comments, remarks, gossip, refusal to address the person with their preferred pronoun and other forms of harassment, including sexual harassment.<sup>89</sup> During the national roundtable discussion similar problems were mentioned by the transgender participants, who highlighted the difficulties transgender persons face finding or keeping a job without documents that match their gender identity.

### **c) Measures in place to ensure protection of personal data on sexual orientation and gender identity**

Concerning processing of data concerning sexual orientation, provisions of the General Data Protection Regulation (Article 9), establishing higher protection, apply. Gender identity is not mentioned as a special category of data in the GDPR. According to the opinion of the national data protection Agency, the State Data Protection Inspectorate,<sup>90</sup> gender identity would fall within the scope of the special categories of personal data in Article 9(1) of the GDPR as far as sexuality and sexual orientation are concerned. It means that the question whether gender identity data falls within the scope of Article 9(1) of the GDPR, should be assessed on a case-by-case basis. In addition, information covering the various gender confirming medical procedures should be considered as health data falling within the scope of Article 9(1) of the GDPR. This would also be applicable to changes in sex/gender records inasmuch as these would be related to health data.<sup>91</sup>

According to Regulation on the Population Register<sup>92</sup>, gender, personal code, as well as personal codes of a person’s parents, children and spouses are among the categories of data which is processed in the Population Register. This data has to be provided by institutions registering civil status acts. Data concerning change of entries in civil status acts as well as data on issuing of new personal identity documents and underlying legal grounds are also stored in the Population Registry. After the change of certain records, original records are not removed. All the data is stored indefinitely.

The Center of Registries is obliged to implement appropriate technical, organizational and other measures to ensure the protection of data against accidental or unlawful destruction, alteration, damage, disclosure, misappropriation, publication, submission or other use, as well as any other unlawful processing.<sup>93</sup>

As for judicial proceedings concerning LGR, there is a possibility to ask for a non-public court hearing (when the case is heard through oral proceedings) and (or) that the court decision is not made public.<sup>94</sup> For example, out of nine court decisions concerning LGR adopted until September 14, 2020, only one decision is publicly available. In addition, in all cases a general rule applies that before making a court decision available in data bases, personal data of

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<sup>86</sup> Ibid, p. 13-14.

<sup>87</sup> Ibid, p. 16-17.

<sup>88</sup> Ibid, p. 18.

<sup>89</sup> Ibid, p. 19-20.

<sup>90</sup> State data Protection Inspectorate, Response to freedom of information request of 1 October 2021.

<sup>91</sup> Ibid.

<sup>92</sup> Government Decree of 23 December 2014 No. 1495 “On the Approval of the Regulation of the Population Register of the Republic of Lithuania”, para. 22, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/478d0920903111e48028e9b85331c55d/asr>

<sup>93</sup> Ibid.

<sup>94</sup> Code of Civil Procedure, Art. 9(1).

applicants and other private persons who participate in proceedings have to be removed, and only initials may be present.

In daily life, however, transgender persons face multiple situations where they have to reveal that they are transgender persons. Firstly, this concerns the change of documents issued by state, public and private entities (driving licence, certificates, diplomas, etc.), as in each case documents proving the change of personal identification code, e.g. document confirming the change of records in civil status acts or a court decision on LGR, have to be presented. Secondly, transgender parents usually have to disclose that they are transgender persons in order to prove maternity/paternity rights (this aspect is discussed in more detail in Subsection 4b).

## 4. Access to rights associated with the confirmed gender

### *CM/Rec (2010) 5 principles*

**22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognized in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.**

**23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.**

#### **Right to marry:**

The ECtHR established that “no justification for barring the transsexual from enjoying the right to marry under any circumstances.”<sup>95</sup> The CoE Commissioner for Human Rights recommended that States remove any restrictions which prevent transgender persons from remaining in an existing marriage after the legal recognition of their gender and drew attention to the situation of parents who might lose the custody of their child, as a result of a forced divorce.<sup>96</sup>

**Parental rights:** In a general statement, the ECtHR established the principle that gender identity of a person cannot be invoked to limit custody or visiting rights of a parent<sup>97</sup>.

#### **Employment rights, including pension rights:**

The Court of Justice of the EU (CJEU) offers some protection to transgender persons, basing its reasoning on sex ground to provide complainants with an equality-based remedy under the then Equal Treatment Directive of 1976, 76/207/EEC. In the landmark case, *P v. S and Cornwall County Council* (1996)<sup>98</sup>, the CJEU found that the dismissal of the complainant who was undergoing gender reassignment from male to female constituted unfavourable treatment.

Both the ECHR and the CJEU concluded the entitlement to a retirement pension at the age applicable to other women, regardless of whether their female gender has been legally recognised or not<sup>99</sup>. In a case related to access to pension but this time linked to a marriage requirement, the CJEU found discrimination on the grounds of sex in a situation where an unmarried transgender man had not been granted the right to the survivor's pension of his female partner since they were not married<sup>100</sup>.

### a) Right to marry

After obtaining LGR, transgender persons may conclude a marriage with a person of the opposite legal gender. Same-sex marriages or partnerships are not available in Lithuania.

<sup>95</sup> *Goodwin v. the United Kingdom* (2002), Op.cit.

<sup>96</sup> *Discrimination on grounds of sexual orientation and gender identity in Europe*, Commissioner for Human Rights, Council of Europe Publishing, 2011

<sup>97</sup> In *P.V. v. Spain* (no. 35159/09), the ECtHR reviewed restrictions imposed on the contact arrangements of a transgender person with her son. Although the ECtHR had invoked the principle of non-limitations of contacts based in gender identity in its general statement, it eventually agreed in this case with the domestic courts that the restrictions could be considered as being in the best interests of the child and decided that this did not amount to a discrimination.

<sup>98</sup> *P v. S and Cornwall County Council* (C-13/94, CJEU) decided on 30 April 1996, <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=99622&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5842289>

<sup>99</sup> *Grant v. the United Kingdom*, No. 32570/03 (2006) and *Sarah Margaret Richards v. Secretary of State for Work and Pensions* (C-423/04, CJEU) decided on 27 April 2006.

<sup>100</sup> CJEU Case *K.B. v. National Health Service Pensions Agency*, C-117/01 (2006).

## b) Parental status

According to the Rules for registration of civil status acts, “records of civil status acts are changed or supplemented when new (changed) data about a person, his or her parents or spouse become available and there is a document confirming this”<sup>101</sup>. Records of civil status acts are changed on the initiative of a person, interested party or civil registry office *ex officio*<sup>102</sup>. Thus, formally after LGR of a transgender person, entries in their children’s birth record should be changed, either on the initiative of a person or by civil registry office *ex officio*.

However, Lithuanian birth records provide entries only for data of mother and father. They are not suitable for registering single transgender or same-gender parents. As the designation as parent is gendered and only the name of the parent can be changed, it has been assumed by the courts and State institutions that is in “the best interest of a child” not to amend data in the birth records of children of transgender parents. In order to protect them from stigmatisation, intimidation and harassment, transgender parents, in the course of civil proceedings concerning LGR, usually would file a request asking the court to rule that after changing name and surname to those corresponding to gender identity, data in birth certificates/ birth records of children should not be amended. Available case example reveals that in such a situation, minor children gain the procedural status of interested third parties in the proceedings, and another parent, acting as statutory representative of children, has to provide a position on the request. Such decision-making power in the hands of another third party has been criticized by transgender rights organizations, as it can have a chilling and blackmailing effect on a transgender parent. In the decision concerning LGR, the court indicates specifically that personal data of the applicant in her children’s’ birth certificates should not be amended.<sup>103</sup>

At the same time interviews with representatives of the Ministry of Justice revealed that, in any case, legal name of a parent who exercised his/her right to LGR would not be changed in child’s birth certificate *ex officio*, and, most probably, would not be changed based on a request by such a parent either. One such request, filed 8 years ago, was recalled. Back then, a position was adopted that it was in the best interests of the child that the parental legal name in birth certificates of children was not to be amended. The draft law on legal gender recognition (2017) also contained a provision that “paternity and maternity data of children whose parents have exercised their right to LGR, shall not be altered”<sup>104</sup>. Actually, the same applies to birth certificates of adult children of persons who obtained LGR and data in marriage and divorce certificates are not amended either.

As in both the UN Convention on the Rights of the Child and the Lithuanian Law on Fundamentals of Protection of the Rights of the Child the list of the grounds of non-discrimination is non-exhaustive, the Lithuanian Children's Rights Ombudsperson is also responsible for investigating complaints about (possible) discrimination against a child or other violation of the rights and legitimate interests of a child related to the gender identity of the child or their legal representatives. During the national roundtable discussion, the representative of the Children's Rights Ombudsman Institution mentioned that until there is a clear procedure, the decision is made based on individual circumstances in accordance with the Convention on the Rights of the Child. Concerning transgender persons who become parents after LGR, the practice is even more scarce. A few years ago a transgender person, who was legally a man, gave birth to a child. He was indicated as “mother” in the child’s birth certificate. The decision was adopted relying on the provision of the Civil Code, according to which “in the child's birth certificate, a woman for whom there is no doubt that she gave birth

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<sup>101</sup> Order of the Minister of Justice of 28 December 2016 No. 1R-334 “On the approval of the rules for registration of civil status acts”, para. 126, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/65a5ecc0cd4111e69185e773229ab2b2/asr>.

<sup>102</sup> *Ibid.*, para 124

<sup>103</sup> E.g., Vilnius City District Court, decision of 9 October 2019 in civil case No. e2YT-28609-987/2019.

<sup>104</sup> Draft Law on Legal Recognition of Gender Identity, 2017-11-03, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/bc2a5010c09111e7af36e75c0ac79247>

to the child, is indicated as mother”.<sup>105</sup> Whereas the spouse, a transgender woman, was indicated as father, due to legal presumption of fraternity of a child born in wedlock.<sup>106</sup> In birth records, personal data of parents as established in the process of LGR, were indicated.<sup>107</sup>

However, other possible situations remain unregulated. For example, it is not clear what decision would be adopted if a transgender person who is legally a woman would conceive a child using frozen semen and a surrogate mother. Even though surrogacy is not lawful (and not regulated) in Lithuania, such situations may arise in practice with Lithuanian citizens residing abroad.

To conclude, there is a lack of legal provisions and legal certainty concerning entries in birth records of transgender person’s children. Under currently existing practice, the name and surname of a transgender parent are not changed in children’s birth records. In order to exercise parental rights after LGR, transgender persons have to reveal their being transgender, as in order to prove parenthood they have to provide a certificate confirming the change of civil status records. The apparent consensus by the courts and State institutions that leaving the deadname of the transgender parent in their child’s documents is “in the best interests of the child” is worrying and hopefully will be challenged in the future.

According to the current regulation, a diagnosis of “Gender Identity Disorder” (F 64.0) precludes a person from adopting a child<sup>108</sup> or even being appointed as a guardian to a child<sup>109</sup>. This exclusion of transgender parenthood was discussed during the roundtable, with the hope that this can be changed in the future.

### **c) Employment related rights, including pensions**

Currently these questions are not explicitly regulated, but according to a general rule, retirement age and old-age pension should be calculated according to the person’s legal sex/gender. On the other hand, even though currently retirement age for men and women is different (in 2021, 64 years and 2 months for men, 63 years and 4 months for women), it is gradually equalized and as from 2026 general retirement age of 65 years will be applied.<sup>110</sup>

Based on existing legal regulation and practice whereby a person who gave birth to a child is recorded as a child’s mother, social guarantees related to motherhood – maternity benefit pregnancy and birth leave are granted to transgender men despite having a male identity after LGR.

## **III. Good practices**

This section includes a selection of progressive national legislation and/or case law with regard to legal gender recognition procedure based on self-determination, quick, transparent and accessible procedures. It also provides examples of countries where discussion on age restrictions with regard to legal gender recognition and offers some pointers that could help further discussions on issues of recognition for people who do not fit into the gender binary.

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<sup>105</sup> Civil Code, Art. 3.139.3.

<sup>106</sup> Civil Code, Art. 3.140.1.

<sup>107</sup> Interviews with representatives from Ministry of Justice.

<sup>108</sup> Joint Order of the Minister of Health and the Minister of Social Security and Labour of 24 July 2001 No 404/96 “Concerning approval of the list of medical contraindications due to which persons may not be adoptive parents”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.146324/asr>.

<sup>109</sup> Order of the Minister of Health of 17 July 2001 No. 386 “Regarding the approval of the list of diseases due to which a person cannot be appointed as a guardian of a child”, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.145591/asr>

<sup>110</sup> State Social Insurance Fund Board, Information on retirement age, <https://www.sodra.lt/lt/senatves-pensijos-amziaus-lentele>

## 1. Self-determination

The below examples reflect the experiences of countries that have put in place a procedure based largely on self-determination at the national level. Limitations to genuine self-determination still exist in some of these examples and some of these limitations have been flagged (including of age which is detailed further in section 2). Discussions on the reforms needed to address these limitations continue to take place in those countries and the below reflect the compromises made at the time of legislative change, with the understanding and knowledge of the self-determination models then available.

**Belgium (2018):** Medical requirements are removed from the 2018 Belgium Recognition Law but legal gender recognition is dependent on a declaration that one has been convinced of one's gender identity for 'a considerable amount of time' upon advice and a waiting period needs to be respected (from three to six months).

**Denmark (2014):** No medical requirement, no requirement impacting transgender persons' family life, but debates are on-going on the exclusion of minors and the inclusion of a six-month waiting period before obtaining recognition used *de facto* as 'real life experience'.

**Iceland (2019):** No requirement for diagnosis or medical treatment. The 2019 Gender Autonomy Act also ensures that children under the age of 18 can change their registered gender and name in the National Registry with the consent of their parents. If parents' consent is not available, the decision is put before an expert committee.

**Ireland (2015):** Recognition of preferred gender and issuance of a corrected birth certificate, regardless of whether the applicant has undergone sex reassignment surgery. The procedure is free (see below). Provisions on gender recognition for transgender minors (currently possible between 16 and 18 years old but following a complex, intrusive and costly procedures) and the lack of non-binary gender recognition have been called into question. The issues are currently included in the on-going review of the Gender Recognition Act<sup>111</sup>.

### **Luxembourg (2018)**

No abusive requirement in the law (sterilization and medical requirement are explicitly prohibited), no mention of a diagnosis nor waiting period. The requirements stated in the law (non-cumulative requirements): to present oneself publicly as belonging to the preferred gender, to be known by the preferred gender by one's family, friends, professionals or associations; to have obtained the change of one's first name so that it corresponds to the preferred gender. The LGR is extended to minors over five years old (see below).

**Norway (2016):** No diagnosis, no medical intervention, no sterilization. No requirement that would impact civil status or parental rights and a possibility is offered to transgender minors to obtain gender recognition on the basis of self-determination (see below).

**Malta (2015):** no requirement of surgical, hormonal therapies nor psychiatric, psychological or medical treatment, no diagnosis nor 'real life experience', procedure accessible to minors (see below), LGR applies to refugees.

**Portugal (2018):** No diagnosis with gender identity disorder in order to have one's gender legally recognized. Young people aged 16 and older are able to access this procedure with some additional limitations (parental consent and a certificate made by a doctor or psychologist attesting the minor's free will and decision-making capacity).

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<sup>111</sup> <https://www.gov.ie/en/press-release/43aef0-minister-doherty-publishes-her-report-on-the-review-of-the-gender-re/>



## 2. Age limits

There have been on-going discussions in some Council of Europe member states about reconsidering age limits for gender recognition, especially as such age-limits may lead to young transgender persons facing rejection, exclusion or other problems from their environment in everyday life. The below focuses specifically on the steps taken by some States to ensure a more flexible approach on LGR for minors.

These include States like **Malta** or **Luxembourg** where the legal framework on legal gender recognition is without an age limit. Emphasis is placed on the maturity and development of the child. Court procedures for those below age 16 (Malta) and for those below age 5 (Luxembourg) follow specific procedural safeguards: In **Luxembourg**<sup>112</sup>, the law foresees that in the event of disagreement between the parents of a minor aged five years, the most diligent parent applies to the district court competent authority which rules in the interests of the child. In **Malta**<sup>113</sup>, the minor must have parental consent or consent of its legal guardian in order to initiate the request. The person exercising parental authority, or the legal guardian must file an application in the registry of the Civil Court requesting the Court to change the recorded gender and the first name of the minor with the express consent of the minor. When the application is made on behalf of a minor, the Court must: (a) ensure that the best interests of the child as expressed in the Convention on the rights of the Child are the paramount consideration; and (b) give a due weight to the views of the minor having regard to the minor's age and maturity.

Others have included minors while keeping some age barriers. Legislation in **Norway**<sup>114</sup> for example provide that legal gender recognition is available at any age but imposes certain conditions according to age groups. For minors between 6 and 16 parental or legal guardian consent is necessary. For minors under the age of 6, the application must be filled by the person who has the parental responsibility for the child. If the parents have shared custody, but the application is only filled by one of them, the legal gender may nevertheless be changed if this is in the minor's best interest.

## 3. Quick, transparent and accessible

The below provides selective examples of reforms that have addressed certain aspects of the principle of 'quick, transparent and accessible procedures' for legal gender recognition:

*Costs:*

In **Ireland**: Article 8 para.2 of the 2015 Gender Recognition Act foresees that no fee shall be charged by the Minister for considering the application for a gender recognition certificate.

In the **United Kingdom**, the government recently decided in May 2021 to cut the cost of changing one's legal gender from £140 to £5 in order to make it easier for transgender persons to afford. It reportedly based its decision on the fact that in the National LGBT Survey, 34% of transgender persons indicated that the cost of applying for a certificate was holding them back from doing so.

*Duration of the LGR procedure/Timeframe:*

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<sup>112</sup> See *Loi du 10 août 2018 relative à la modification de la mention du sexe et du ou des prénoms à l'état civil et portant modification du Code civil*, N° 797 du 12 septembre 2018, 2018, para. 99.1.

<sup>113</sup> Gender Identity, Gender Expression and Sex Characteristics Act (2015), XI of 2015, 14 April 2014, para. 7.

<sup>114</sup> Legal Gender Amendment Act 2016 (*Lovom endring av juridisk kjønn*); The Public Registry Act 2016 (*Folkeregisterloven*)

In **Malta**, the Gender Identity, Gender Expression and Sex Characteristics Act provides that the process may take no longer than 30 days from application (notary letter) to the change in the registry. No further medical pre-conditions have to be fulfilled.

In **Norway**: The Gender Recognition Act grants individuals the right to have their gender marker changed in public registers and passports through a simple procedure to the National Registry Office, with decision being subject to appeal. The whole procedure typically takes a few weeks.

In **Portugal**, the administrative procedure for legal recognition of gender provided for by law stipulates that for a change of name and gender, relevant authorities have to give a decision within eight days of receiving the application.

## Conclusion

- ***Summary of the main points of the analysis and conclusions***

Even though a judicial procedure for LGR is available in Lithuania, it is used quite rarely. Factors that may have a chilling effect include both material and procedural aspects. As obtaining a psychiatric diagnosis of “Gender Identity Disorder” is a necessary prerequisite for LGR, requiring complicated diagnostic procedures, some persons might be reluctant to initiate the process. Judicial proceedings also imply the necessity to have legal knowledge or hire a lawyer, unavoidable degree of uncertainty, which is inherent in court proceedings, etc. After the application is granted, there is a lack of clarity as to whether and which state institutions have to be notified about the change of personal records. Besides, LGR is available only for transgender persons who identify themselves with a masculine or feminine gender.

Since an administrative procedure for changing their legal name will now be available for transgender persons with a psychiatric diagnosis of “Gender Identity Disorder”, hopefully this will make legal gender recognition more accessible as well.

More broadly, the current legal regulations do not offer remedies for transgender persons against discrimination, as, despite progressive jurisprudence of the Constitutional Court, on statutory level gender identity is not recognised as a prohibited ground for discrimination. Thus, cases of discrimination against transgender persons remain legally invisible and unrecognized. During the national roundtable discussion, the different stakeholders, including State institutions and members of the transgender community, acknowledged that the courts, different ministries and other institutions have been making positive steps towards ensuring the rights of transgender persons in Lithuania but warned against the difficult political climate and possible lack of support in the Parliament. This context is seen as the main obstacle to introducing an administrative procedure for LGR and proposing the needed legislation.

The Ministry of Justice expressed support for “a systemic, all-encompassing change”. However certain decisions lack political will. Additionally, as mentioned by representatives of different institutions, the case law on LGR is dynamic and changing. **While the overarching aim would be to achieve a self-determination procedure in legislation**, it is important in **light of the current political context** that any legislation that would be introduced would not remove existing protection for transgender persons. Similarly, both the members of the transgender community and the representative of the Ministry of Health agreed that it is important to ensure that the draft diagnostic and treatment protocol for ‘Gender Identity Disorder’ does not make it more difficult to access the diagnosis currently needed for LGR, as well as medical transition procedures.

Above and beyond amending legislation, participants at the roundtable agreed that a lot more needs to be done to combat prejudice and discrimination against transgender persons in society, including the fields of education, healthcare, work, and other areas.

- ***Priority recommendations (including immediate steps recommended to follow-up on this report)***

1. Establish an administrative procedure that is based on the principle of self-determination (i.e. without a psychiatric diagnosis or other medical requirements), is 'quick, transparent and accessible', without imposing criteria for free marital status or an age limit, and that the changes made are systematically applied to all fields of life.
2. Establish an administrative procedure for transgender persons to change their names and surnames so that they correspond to their gender without a psychiatric diagnosis, marital status, or age requirement.
3. Include 'gender identity' under prohibited grounds of discrimination in the Law on Equal Opportunities and other national legislation.
4. Update the draft diagnostic and health care protocol following consultation with international health experts and the local transgender community.
5. Prepare concise information regarding legal implications and further steps to be taken after a positive court decision concerning LGR. This information should encompass at least explanations which state institutions will receive information on amended personal records automatically, what are the legal consequences of LGR in terms of social security benefits, access to health care, etc.

- ***Long-term recommendations***

1. Ensure that gender affirming surgeries, hormone replacement therapy and other medical transition procedures are based on an informed consent model and are accessible.
2. Evaluate the possibilities for legal gender recognition of nonbinary persons. Eventually introduce a gender-neutral marker, which could be used both in records of civil status acts and personal identification documents. Introduce the option to not indicate one's gender in identity documents.
3. Review the provisions precluding people with a 'Gender Identity Disorder' diagnosis from adopting children or becoming their legal guardians.
4. Enable uninterrupted realization of the rights and obligations arising from parenthood and harmonization of the data of the transgender parents in the birth certificate of the child.
5. Support transgender- and NGO-led educational and awareness raising campaigns about the situation of transgender persons and reach out to municipalities for their involvement and co-operation.
6. Policies aimed at raising awareness on transgender and intersex persons' issues among service providers should be developed, and adequate training for health, education and other specialists working with transgender persons should be provided.