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**JOINT SUBMISSION TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF  
EUROPE IN THE CASE MACATE V. LITHUANIA (APPLICATION NO. 61435/19)<sup>1</sup>**

Please find enclosed a briefing submitted under Rule 9.2 of the Rules of the Committee of Ministers for supervising the execution of the ECtHR judgements with the view of assisting in the evaluation of the general measures proposed by the Lithuanian Government in the case of Macatè v. Lithuania. This submission has been developed in response to the updated action plan for the execution of the judgement submitted to the Department for the Execution of Judgments by the Agent of the Government of the Republic of Lithuania on 9 November 2023.

**SUMMARY**

- General measures in Macatè v. Lithuania have not yet been implemented.
- The rejection of amendments to the Law on the Protection of Minors against Negative Effects of Public Information (- Minors Protection Law) has halted the process of the satisfactory execution of the judgement.

**RECOMMENDATIONS TO THE COMMITTEE OF MINISTERS:**

- Initiate the legislative process promptly to prioritise proposing a revised draft.

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<sup>1</sup> Case of Macatè v Lithuania

<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22mACATE%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-222072%22%5D%7D>

## I. INTRODUCTION

This submission is based on Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and in response to the Action Plan on the execution of the judgement in the case *Macatè v. Lithuania* (Application No. 61435/19, 22 November 2019), hereinafter the Action Plan, submitted by the Agent of the Government of the Republic of Lithuania before the European Court of Human Rights (hereinafter – the Government Agent) on 9 November 2023<sup>2</sup>.

This joint NGO submission is drafted by Human Rights Monitoring Institute (hereinafter – **HRMI**), the National LGBTI rights organisation LGL (hereinafter – **LGL**), Lithuanian Centre for Human Rights (hereinafter – **LCHR**) and **ILGA Europe**.

**National LGBTIQ rights organisation LGL** (LGL)<sup>3</sup> is a non-governmental, non-profit organisation in Lithuania which was formally established in 1995. LGL undertakes activities in the fields of LGBTIQ human rights advocacy, awareness raising and capacity building.

The **Human Rights Monitoring Institute** (HRMI)<sup>4</sup> is a non-governmental, not-for-profit public advocacy organisation in Lithuania. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working to ensure that rights are effective in practice.

The **European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)**<sup>5</sup> seeks to defend the human rights of those who face discrimination on grounds of sexual orientation, gender identity or gender expression and sex characteristics, at the European level. Its membership consists of over 600 non-governmental organisations across the Council of Europe countries and Central Asia.

**Lithuanian Centre for Human Rights (LCHR)**<sup>6</sup> is a human rights and education NGO. Since its establishment in 1994, the LHRC has mobilised the efforts of its members and experts in the implementation of legislative and educational projects in the field of human rights protection in Lithuania. The fundamental principles of the philosophy and activities of the Lithuanian Centre for Human Rights are the ideas of equality of persons and non-discrimination.

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<sup>2</sup> 1483rd meeting (December 2023) (DH) - Updated Action Plan (09/11/2023) - Communication from Lithuania concerning the case of *Macatè v. Lithuania* (Application No. 61435/19) [anglais uniquement]

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680ad3cba](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680ad3cba)

<sup>3</sup> [www.lgl.lt/en](http://www.lgl.lt/en) and [www.facebook.com/lgl.lt](https://www.facebook.com/lgl.lt)

<sup>4</sup> <https://hrmi.lt/en/>

<sup>5</sup> <https://www.ilga-europe.org/>

<sup>6</sup> <https://ztcentras.lt/>

This document is submitted with a view to discussing the recent developments in terms of the recent rejection by Seimas of the Draft Law that was envisaging to amend Article 4 of the Minors Protection Law, and the persisting negative effects that derive from the fact that the provision that was at the heart of the violation established by the ECtHR remains in force.

## II. CASE SUMMARY

This case concerns a collection of six fairy tales written by the applicant, two of which depicted marriage between persons of the same sex. After its publication in 2013, the distribution of the book was temporarily suspended, and was resumed one year later after the book was marked with a warning label stating that its contents could be harmful to children under the age of 14. The Court found that the measures imposed in respect of the book had intended to limit children's access to information depicting same-sex relationships which had not pursued any aims that could be accepted as legitimate (violation of Article 10 of the Convention).

## III. RELEVANT DEVELOPMENTS AND GENERAL MEASURES

### *Development and rejection of Amendments to the Law on the Protection of Minors against Negative Effects of Public Information*

Article 4 of the Minors Protection Law establishes which type of public information is considered to have a negative impact on the development of minors. Paragraph 2 (16) of the aforementioned Article stipulates that information which denigrates family values, promotes a different concept of marriage and family formation from that enshrined in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania has a negative impact on minors. As it was stated in the Action Plan, the Ministry of Justice of the Republic of Lithuania prepared a draft Law amending Article 4 of the Minors Protection Law to repeal Article 4 § 2 (16)<sup>7</sup>. In accordance with Resolution No. 822 dated October 25, 2023<sup>8</sup>, the Government has resolved to endorse the proposed legislation and present it to the Parliament (the Seimas) of the Republic of Lithuania. Regrettably, on November 7, 2023, the Seimas rejected the Draft Law.

The mere existence of such a legal norm contributes to the discrimination and the creation of initiatives against members of LGBTIQ society. Lithuanian psychological association (LPA) stated that this clause of the law allows for initiatives that discriminate against LGBTIQ people (in

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<sup>7</sup> Draft Law amending Article 4 of the Minors Protection Law: [Lietuvos Respublikos nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymo ... \(lrs.lt\)](#)

<sup>8</sup> The resolution No. 822 of the Government of 25 October 2023: [822 Dėl Lietuvos Respublikos nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstat... \(e-tar.lt\)](#)

particular minors) and their families. This provision of the law is already being used today, to the knowledge of the LPA, to justify homophobic activities and initiatives in schools or other educational settings, for example, initiatives by individual politicians in municipalities to adopt a declaration "On Genderism in schools", such as the active opposition of some parents to conversations about students of different sexual orientations and/or homosexuality families.<sup>9</sup>

The existing Article 4(2)(16) of the Law can be used in individual cases as a legal basis for discrimination against LGBTIQ children or young people in formal or non-formal education. From a systemic point of view, this legal provision constitutes institutional discrimination against LGBTIQ persons. The exclusion of the LGBTIQ community is based on policies that have consequences for the LGBTIQ community by negatively impacting the psychological health, including a higher risk of mood disorders, substance abuse, alcohol abuse and generalised anxiety disorder. In addition, it has been observed that in environments with less heterosexist laws, sexual minority young people have higher self-esteem.<sup>10</sup>

In its Action Plan, the Government expressed the view that there exists no conceivable theoretical or practical possibility for the continued application of the pertinent legal provision (Article 4 § 2 (16) of the Minors Protection Law) within the framework of purported discrimination based on sexual orientation. However, historical data demonstrates that its existence presents a tangible discriminatory threat. The initial version of the provision identified as information with a negative impact on minors any content that "promotes homosexual, bisexual, or polygamous relationships." After some reconsideration, this openly discriminatory provision was rephrased but retained the same intent, now stating: "which expresses contempt for family values, encourages the concept of entry into a marriage, and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania." The historical context and underlying purpose of this legal provision indicate its underlying aim to censor representatives of the LGBTIQ community.<sup>11</sup>

As a tangible example of demonstration of this discriminatory intent, LGL in 2013 prepared a social campaign inviting the public to participate in the quickly approaching Baltic Pride March for Equality, which would take place in Vilnius. The organisation submitted the video clip to the national TV broadcaster LRT. LRT offered to air the clip with an "S" rating (intended only for adults) and only after 23:00, when the highest advertising fees are charged. LGL appealed to the Office of the Inspector of Journalistic Ethics, complaining about LRT's decision to censor, in

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<sup>9</sup> On The Protection Of Minors In The Lithuanian Republic Against Adverse The Law On The Effects Of Public Information No. IX-1067 Article 4 Coordination Of The Draft Law On Amendments To The Draft Law <https://manoteises.lt/wp-content/uploads/2023/11/2023-11-06-Pozicija-del-nepilnameciu-apsaugos-istatymo.pdf>

<sup>10</sup> Ibid, 13.

<sup>11</sup> Protection of minors, or censorship of LGBT content? <https://www.lgl.lt/en/?p=20809>

essence, the video clip depicting the diversity of Lithuanian society. Experts at the Office of the Inspector of Journalistic Ethics deemed one video clip suitable for general viewing, and the other, only for broadcast with an adult rating.<sup>12</sup>

Despite explicit provisions stating that their intent is not to censor or discriminate against the LGBTIQ community, certain homophobic activists use these provisions as a vehicle to raise objections against any information pertaining to the LGBTIQ community. Notably in 2019, such activists lodged a complaint with the Government-approved broadcaster regulatory authority regarding a program featuring LGBTIQ families. Consequently, the regulatory authority is now tasked with investigating whether the program, which showcases gay fathers, aligns with relevant Lithuanian regulations. The airing of subsequent episodes of the same series, "Spalvos" ("Colours" in Lithuanian), addressing LGBTIQ topics has been deferred pending the regulatory authority's decision. Ultimately, a majority vote determined that broadcasting a program featuring an LGBTIQ family did not contravene existing regulations<sup>13</sup>.

Furthermore, in 2019, the country's main online news portals introduced pop-up windows requiring readers to confirm their legal adulthood before accessing news related to LGBTIQ rights. This practice effectively associates any information about LGBTIQ individuals with potential harm to minors<sup>14</sup>.

In December 2023, a gay couple were violently attacked in the centre of Vilnius by a group of people shouting "Lithuania does not recognise LGBTI". This vividly illustrates how a section of society interprets the existing provision on "anti-gay propaganda" and how it creates a chilling effect towards the LGBTIQ community, while at the same time encouraging such instances of hostility and violence. This corresponds to the case of September 2023, when LGBTIQ activists were harassed by an organised group of supporters of 'traditional family values', who also used very similar rhetoric. This, in turn, suggests the indirect negative effects of the provision and its contribution to the shrinking space for LGBTIQ activism in Lithuania.

Moreover, the Minors Protection Law sets forth a comprehensive list of institutions responsible for implementing its provisions. There is no specific institution designated for overseeing education policy, an omission that results in a worrisome arbitrariness in the interpretation of its provisions in the school environment. Some schools interpret the law in ways that restrict LGBTIQ community access, especially when organising activities for LGBTIQ students, such as presenting information about the only emotional support platform tailored to their needs. In 2021, LGL received a report

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<sup>12</sup> Ibid, 9.

<sup>13</sup> Public Reaction to "Gay Dads" Program Confirms Severe LGBT Acceptance Issues in Lithuania <https://www.lgl.lt/en/?p=23461>

<sup>14</sup> Ibid, 11.

from a student whose master's thesis on LGBTIQ topics in education was initially rejected. Although the student successfully appealed, this incident highlights the provision's vulnerability to arbitrary application and interpretation. The Minors Protection Law establishes certain restrictions on accessing the educational system, potentially paving the way for educators to interpret the law in a manner that adversely affects the LGBTIQ community. Leveraging educational programs emerges as a constructive strategy with dire need to address and counteract instances of bullying targeted against LGBTIQ individuals. Fostering a more comprehensive understanding of elements pertaining to diversity such as gender expression, historical and cultural contexts, and the evolution of the LGBTIQ community, coupled with positive examples from the society, could have a significant contribution to the overall education and sensitisation of students. This approach involves not only the dissemination of pertinent information but also the encouragement of developing a broader and more inclusive perspective, promoting a nuanced understanding of the world.<sup>15</sup>

On December 12, 2023, Petras Gražulis, a Member of the Seimas, reached out to the Inspector of Journalists' Ethics regarding information from the Equal Opportunities Ombudsperson concerning pregnancy. Gražulis, known for his frequent criticism of the LGBTI community, raised concerns about a message published on December 4, 2023, in the online publication Alfa.lt. The headline read, "Equal Opportunities Ombudsperson B. Sabatauskaitė and J. Juškaite are expecting a family increase," referring to a lesbian couple as a family.<sup>16</sup>

Gražulis cited Article 4(16) of the Law on the Protection of Minors against the Adverse Effects of Public Information, which prohibits the dissemination of public information that "denigrates family values, promotes a different concept of marriage and family formation from that enshrined in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania."

The Member of the Seimas is using this legal provision as a means to burden authorities with addressing what he perceives as unsubstantiated allegations. It is essential to reiterate that the Constitutional Court of the Republic of Lithuania has declared the concept of family to be gender-neutral. This situation serves as a notable illustration of how a legal provision can be selectively employed in a discriminatory manner against the LGBTI community.

In response, the Inspector of Journalists' Ethics will investigate the appeal and make a decision. However, this process places an additional burden on institutions. Members of the LGBTI community experience a profoundly negative psychological impact, as the mere existence of this

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<sup>15</sup> Experts: the situation of LGBT pupils in Lithuanian schools is getting worse  
<https://www.lgl.lt/naujienos/ekspertes-lgbt-moksleiviu-padetis-lietuvos-mokyklose-blogeja/>

<sup>16</sup> Report by Petras Gražulis, Member of the Seimas: the parliamentarian appealed to the Inspector of Journalists' Ethics regarding the dissemination of information promoting the non-traditional family of the Equal Opportunities Ombudsperson Birutė Sabatauskaitė  
[https://www.lrs.lt/sip/portal.show?p\\_r=35403&p\\_k=1&p\\_t=287067](https://www.lrs.lt/sip/portal.show?p_r=35403&p_k=1&p_t=287067)





law provides an avenue for various homophobic individuals to approach authorities and seek decisions on published information. Despite the competent authorities likely finding no breach of the law, the existence of this possibility itself has a detrimental effect.

The Action Plan lacks explicit details about upcoming general measures; it simply makes references to the impugned provision's presumed inactivity and emphasises its non-application in a discriminatory manner. Moreover, the document asserts that the courts conscientiously refrain from employing this provision as a means to discriminate against the LGBTIQ community. Selected cases with positive impact that refrained using the discriminatory law does not provide a systemic solution and meet the criteria of implementing general measures. Law provisions within legal frameworks that lack efficacy merit reconsideration. The idea that this law provision could be used to censor the LGBTIQ community is concerning. Some politicians who voted against changing the law claim they were just trying to stop what they call "LGBTIQ propaganda." But in reality, they ended up maintaining unfair, non-Convention-compliant provisions in force and regressing on the protection of human rights. The use of such language strongly implies that the specified provision in the Minors Protection Law is employed to suppress the voices of LGBTIQ representatives. However, it is imperative to underscore that effective general measures with a view to the full implementation of the case at issue require abolishing the impugned provisions within the aforementioned legislation. Efforts should be directed towards the resolution of this matter to ensure a legal framework that is inclusive and equitable for all members of society.

#### **IV. Conclusions and Recommendations for the Government regarding the execution of the ECtHR decision in *Macatė v. Lithuania***

Despite aforementioned developments in practice, the effective implementation of the *Macatė v. Lithuania* judgement is still outstanding pending the annulment of Minors Protection Law impugned Article 4 § 2 (16).

The Committee of Ministers is therefore kindly requested to ask the Lithuanian authorities to re-initiate as soon as possible the legislative process to abolish the aforementioned provision and to propose a revised draft as a top priority.

Sincerely,

Human Rights Monitoring Institute

Director

Martynas Jockus