Lithuania Releases Protocol on Trans-specific Healthcare

article, health and depathologisation

On 4 August 2022, Lithuania released the long-pending *Order on the Approval of the Description of Procedures for the Diagnosis and Treatment of Gender Identity Disorder (Transexualism)*. The protocol lays down, for the first time, the guidelines or steps to be followed by medical professionals when providing trans specific healthcare and regulates the provision of healthcare services. While it is a significant step forward for Lithuania, the protocol has several key limitations – such as requirement of a psychiatric diagnosis, lack of an informed consent model, and no access to surgical healthcare – which can negatively impact trans peoples' access to healthcare.

In 2001, the Lithuanian Civil Code was adopted, and Article 2.27 recognised an unmarried adult's right to gender reassignment surgery. The conditions and procedure for surgery were to be decided by a law. This law was never passed and in *L v. Lithuania* (2007), the Court directed Lithuania to adopt a law to regulate the conditions and procedures for gender reassignment. However, this too was not done and in June 2022, almost 15 years after the ECtHR's decision, the Committee of Ministers of the Council of Europe again urged Lithuania to adopt such a law and to finalise the diagnostic and health care protocol for access to medical services for transgender persons.

The Order in brief

The new order exclusively regulates access to a mental health diagnosis and hormonal treatment, and does not regulate access to or the provision of surgical services. Lithuania has adopted some of the suggestions of trans rights groups following its participation in the Council of Europe review process on legal gender recognition in 2021, but as the document is only a diagnostic protocol, it still leaves a lot of power in the hands of doctors.

The Order provides for a diagnosis of gender identity 'disorder' by a psychiatrist. After the diagnosis, the psychiatrist must also refer the individual to a Consilium of doctors who will draw up a holistic healthcare plan. A diagnosis of 'transsexualism' from a member state of the European Union or from the United Kingdom (within one year from 31 January 2020) can be submitted to the family doctor or psychiatrist asking for a referral to the Consilium. Further, the diagnosis and treatment services under the Order will be covered by the Compulsory Health Insurance Fund.

However, the Order also includes a number of concerning provisions:

a. It follows ICD-10-AM (Australian modification) and not ICD-11 which depathologised trans healthcare. As a result, the Order refers to *gender identity disorder* and requires a diagnosis by a psychiatrist. Even though parts of the protocol refer to an individual's desire to live as a gender other than one assigned at birth and express their gender as well as their desire for hormonal care, the use of disorder and diagnosis does not comply with the applicable international human rights and recognised medical standards.
b. Due to this language and approach, the Order does not follow an informed model for transgender healthcare but requires a diagnosis by a psychiatrist who has all the power to determine the need for a referral. For example, the Order includes a provision for differential diagnosis i.e., it requires the psychiatrist to determine whether a person has *gender identity disorder* or whether their desire to transition is due to some other *mental or behavioural disorder.* TGEU considers that rather than requiring doctors to rule out differential diagnosis before recommending trans specific healthcare, it would be more in line with

internationally recognised principles of self-determination and informed consent to provide support for other mental health issues while simultaneously respecting a person's desire to seek trans specific healthcare.

c. The process for accessing trans specific healthcare in the Order is long. In addition to the psychiatric diagnosis, it requires a person to have had a strong and unchanging desire to be treated with hormonal medication, lasting for at least 2 years. It is not clear from the Order whether the 2 years will be counted only after the psychiatrist gives a diagnosis of *gender identity disorder*. Such a long timeline in addition to an already long process to access trans specific healthcare is an oppressive requirement, especially as trans specific healthcare is often life-saving and difficulty in accessing it can lead to self-medication.
d. Finally, the Order is extremely limited in scope. The whole process laid out is restricted to the provision of hormonal medication and does not provide any means by which a person can access surgical care.

Therefore, while the Order is a much-needed step in the process of making transgender healthcare accessible, as a whole, it still perpetuates a diagnostic approach to providing healthcare to transgender persons. TGEU will also be closely tracking how the protocol is implemented and seeking clarification on pending questions around implementation.

TGEU urges the Lithuanian government to improve on this Order by depathologising trans specific healthcare. According to the survey by the EU Agency for Fundamental Rights, 79% of transgender respondents in Lithuania were not open about their identity to healthcare providers. A mandatory psychiatric diagnosis unnecessarily binds mental health resources. Therefore, it is essential that the healthcare protocol is reworked, moving away from a diagnostic model to an informed consent model.

Further, this Order is not a substitute for a law on gender reassignment in Lithuania. Lithuania should provide for and regulate quality and accessible surgical trans specific healthcare under the public healthcare system.

Finally, TGEU urges Lithuania to pass a law recognising the right to legal gender recognition free from any medical or diagnostic requirements and de-link the process for legal gender recognition from any medical or diagnostic conditions.