

Implementing judgments of the European Court of Human Rights

An assessment of the impact achieved through NGO engagement with the Council of Europe’s judgment execution process in three cases on the rights of LGBTI persons

Introduction

Since 2009 the Council of Europe (CoE) has made specific provision for engagement by NGOs¹ in its process for ensuring implementation of judgments of the European Court of Human Rights (ECtHR). The purpose of this paper is to illustrate the impact that such engagement can achieve with a view to encouraging further NGO involvement. It does this by analysing developments in the implementation of three cases in the field of sexual orientation and gender identity (SOGI).

When a case succeeds before the ECtHR it is passed over to the CoE’s governing body, the Committee of Ministers (CM),² whose responsibility it is to ensure that the respondent state complies with its obligation to implement the judgment. The CM does this through a supervisory mechanism – the execution of judgments process – which allows, when needed, for the application of political pressure on the respondent state. The CM is supported in this work by the Department for the Execution of Judgments (DEJ).

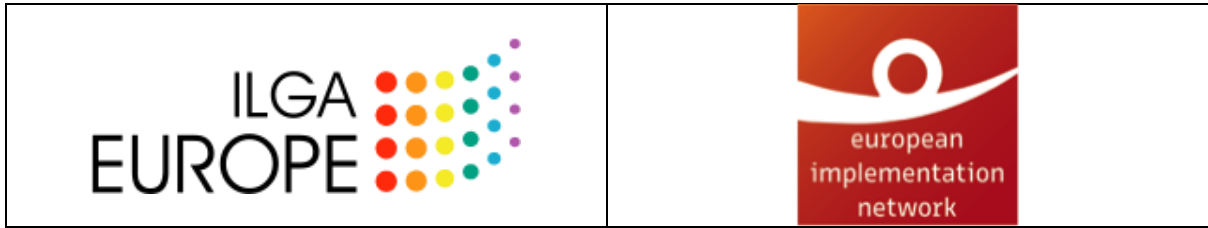
Implementation involves the respondent state undertaking two kinds of measure: individual measures, to ensure that the injured party is made whole, e.g. through financial compensation and/or specific remedies such as release from prison, reopening investigations into a crime etc; and general measures, to ensure that the state puts in place changes to its laws, policies, procedures etc to prevent the violation in question being repeated.

Supervision of implementation is conducted through a two-track system: a minority of cases – those deemed to present particularly serious structural or complex problems – are supervised by the CM itself at its quarterly Human Rights meetings through the so-called “enhanced procedure”. All other cases are supervised under the “standard procedure” by the DEJ through an informal dialogue with the respondent state. Depending on progress or lack thereof, cases can be transferred from one procedure to the other.

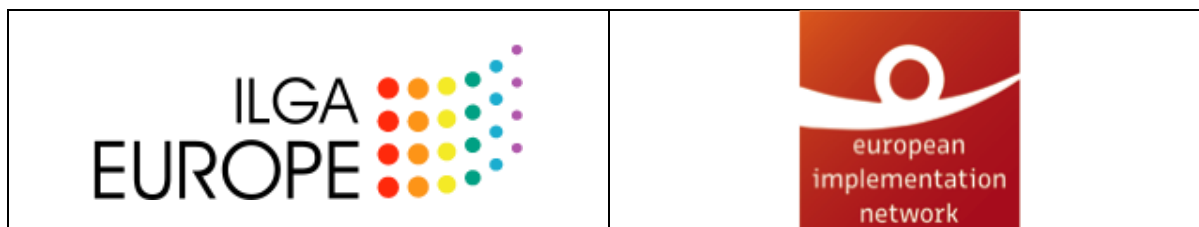
The supervisory process is, in essence, a dialogue between the CoE and the respondent state. The respondent state puts forward an Action Plan detailing its proposed measures which may then be amended in the light of any concerns raised by the CoE. This Action Plan is then updated from time

¹ Provision is also made for engagement by NHRIs, for whom many of the considerations raised in this paper will also be relevant.

² The Committee of Ministers consists of the representatives of the 47 member states.



to time to reflect progress, new developments or guidance by the CoE provided through formal Decisions of the CM for enhanced procedure cases, and informal comments by the DEJ for standard



procedure cases. When the respondent state considers it has implemented the judgment it submits an Action Report, which is, *de facto*, a request to the CM to terminate supervision.³

Under the CM's rules for the execution of judgments⁴ NGOs can input to this dialogue by making what are termed "Rule 9.2 submissions". These can be made by any NGO on any case pending execution at any time during the execution process.

Many judgments of the ECtHR are implemented by the respondent state without a need for engagement by NGOs with the judgment execution process.⁵ However, in a significant proportion a respondent state may be slow – or even resist – putting in place the measures required. There can be many reasons for this, ranging from a straightforward lack of resources or expertise through to hostility to the judgment in the political or wider social sphere. Resistance can take a number of forms, for example: proposing measures which in practice are ineffectual; failing to implement agreed measures effectively; or refusing to take necessary measures.

Measuring impact⁶

For the purposes of this paper different degrees of impact are assessed to arise at four distinct levels within the course of the judgment execution process, from the lowest level of impact (1) to the highest level (4), as follows:

1. "Recognition by the CM": The extent to which the NGO's recommendations and/or evidence are acknowledged implicitly or explicitly by the CoE, in a Decision of the CM, or by the DEJ in communications with the respondent state.
2. "Engagement": An increased willingness by the authorities to consult with NGOs making submissions to the CoE.⁷ This level also encompasses the situation in which an NGO engages other institutional (e.g. parliamentary committees or government agents) or social actors to become involved in implementation.

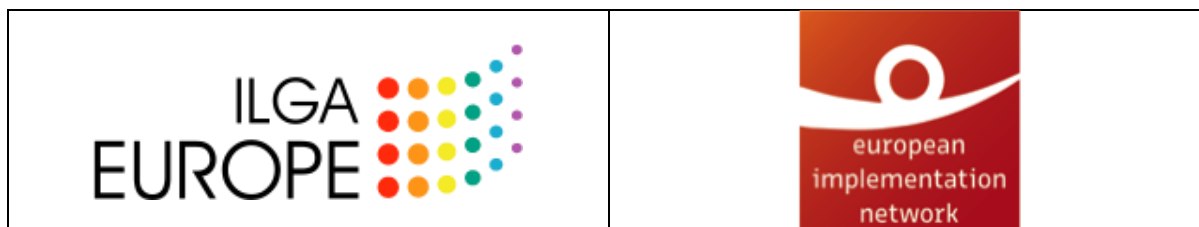
³ For a comprehensive guide to the judgment execution process, see the European Implementation Network's booklet, "Implementation of Judgments of the European Court of Human Rights - a Handbook for NGOs, injured parties and their legal advisers", available [here](#).

⁴ CM Rules for the supervision of the execution of judgments and of the terms of friendly settlements, adopted on 10 May 2006 and amended on 18 January 2017.

⁵ Recent SOGI cases implemented without a need for NGO engagement include: *A.P., Garçon & Nicot v. France* (79885/12) (requirement for trans persons to undergo sterilisation to obtain legal gender recognition in violation of Article 8); *Orlandi and others v. Italy* (26431/12) and *Oliari v. Italy* (18766/11) (legal recognition of same-sex partners); *Pajic v. Croatia* 68453/13 (discrimination in obtaining a residence permit on the ground of family reunification); *Taddeucci & McCall v. Italy* (51362/09) (discrimination in obtaining a residence permit on the ground of family reunification); *Vallianatos & Mylonas v. Greece* 29381/09 (legal recognition of same-sex partners).

⁶ For the purposes of this paper "impact" is intended to be broadly synonymous with the terms "effect", "result," and "outcome". This definition is taken from a recent report by the Open Society Justice Institute - "Strategic Litigation Impacts – Insights from Global Experience" - Open Society Justice Initiative – 2018.

⁷ It is not uncommon to find that when a resisting state notices that the CoE is taking account of an NGO's views, there can be a marked increase in willingness to cooperate.



3. “Adoption”: The extent to which an NGO persuades the respondent state to adopt its recommendations in the Action Plan. Influencing the content of the Action Plan can be achieved through dialogue with the authorities at the national level or through recommendations included in Rule 9 submissions, particularly to the extent that these recommendations are supported by the CoE. The content of the Action Plan can also be influenced by exposing to the CoE measures proposed by the authorities that are ineffectual. In cases where civil society is involved with the authorities in setting up the Action Plan, “Engagement” and “Adoption”, may take place simultaneously.
4. “Execution”: The extent to which an NGO contributes to ensuring that the Action Plan measures are implemented effectively. This is of course much the most significant level of impact. NGOs can support implementation by making available their expertise to the authorities. They can also use the judgment execution process to assure proper implementation by exposing to the CoE measures which are not being implemented effectively, or by challenging any government information which may give an unduly optimistic picture of progress.

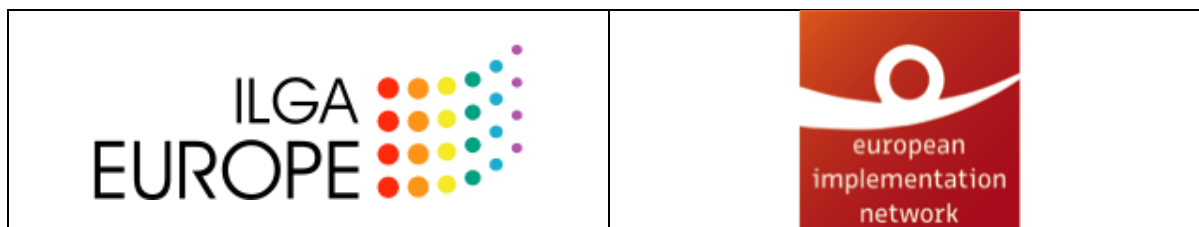
Any assessment of NGO impact will need to distinguish between those elements of implementation to which the NGO contributed and those to which it did not. It may also be necessary to take note of measures advocated by the NGO which had not been implemented by the time the case was closed.

In many cases where there is resistance NGO engagement with the judgment execution process will be just one of the means used to campaign for effective implementation. Other measures can include, for example, further legal challenges in the domestic courts or Strasbourg, pressure through other international institutions, lobbying of politicians, awareness raising, media campaigns or community mobilising. At Levels 2, 3 and 4 engagement with the CM judgment execution process may therefore be just one of the means through which impact is achieved.

The case studies and general conclusions

The judgments examined address three distinct types of violation: denial of the right to peaceful assembly (*GENDERDOC-M v. Moldova* - “the Moldovan freedom of assembly case” - see Appendix 1); failure of the authorities to conduct effective investigations into possible hate crimes (*M.C. & A.C. v. Romania* - “the Romanian hate crime case” – see Appendix 2); and the absence of effective procedures governing gender reassignment treatment (*L v. Lithuania* – “the Lithuanian trans rights case” – see Appendix 3).

All three relate to LGBTI persons. Discriminatory attitudes in the political and wider social sphere were the main cause for each of the violations, and indeed, this was recognised in the freedom of assembly and hate crime cases through the ECtHR finding violations of Article 14. These attitudes persist in the respondent states and have made implementation particularly challenging. The Moldovan freedom of assembly case has finally been closed after seven years’ supervision. The



other two remain open, the Lithuanian trans rights case after 11 ½ years,⁸ the Romanian hate crime case after three years.

In the Moldovan freedom of assembly case the CoE judgment execution process was one of a number of different sources of pressure on the authorities – including by the EU, the embassies of friendly states, and wider civil society engagement at the domestic level. The judgment execution process, and NGO involvement therein, was therefore not the sole factor in this achievement. In the other two cases the judgment execution process has been the main instrument, so that any impacts identified at levels two, three & four can reasonably be ascribed to it.

The separate appendices to this paper set out the history of the supervision of these cases, enabling detailed examination of the impact achieved so far by NGO involvement. A number of common themes emerge:

Level I – Recognition by the CM

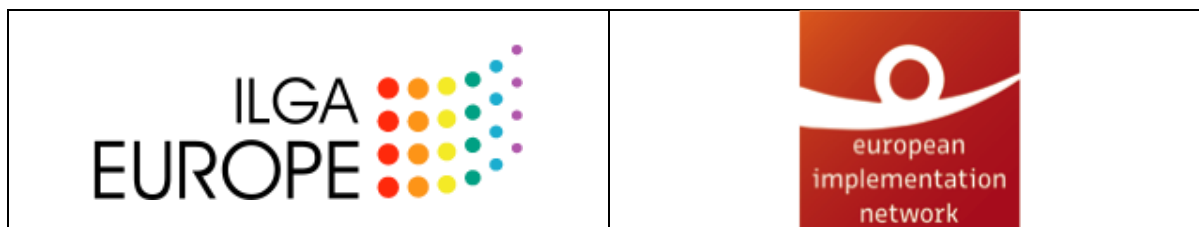
In each case the respondent state began by trying to get away with minimal action. Thus, in the Moldovan freedom of assembly case the authorities claimed that the LGBT community was able to exercise the right to assembly, in the Romanian hate crime case the authorities claimed that sufficient general measures were already in hand to (in due course) ensure proper investigation of hate crimes, while in the Lithuanian trans rights case the authorities tried to wash their hands of the problem by claiming that gender reassignment regulations were not needed and consequently that repealing the legal requirement for them would suffice.

In all three cases factual submissions by NGOs were able to demonstrate the vacuity of these claims. While it seems probable that the CoE would not have been taken in by them, the detailed evidence needed to expose them for what they were could only have come from sources within those states familiar with the facts. It is therefore reasonable to assert that in all three cases, by providing critical evidence that was not otherwise available, the NGOs significantly strengthened the arm of the CoE in rejecting the initial Action Plans.

In two of the three cases (the Romanian hate crime case and the Lithuanian trans rights case) further impact was achieved by successful advocacy for the cases to be moved from the standard to the enhanced supervision track. While it is possible that this would have happened in any event on the initiative of the CoE, the increased awareness of concerns over the implementation of these cases (including through action in the Council of Europe Parliamentary Assembly) made it much more likely.

Level 2 – Engagement

⁸ This case lay largely dormant in the judgment execution process until April 2013, so the Lithuanian authorities have been under effective pressure from the Council of Europe and civil society for a shorter time – six years.



In the Moldovan freedom of assembly case and the Lithuanian trans rights case the authorities have moved from little or no engagement with the NGOs to a much more constructive position. Thus, in the case of Moldova, relations between GENDERDOC-M and the police have become constructive in recent years, while in the Lithuanian case, civil society has participated in governmental working parties set up to work on implementation.

In the Romanian hate crime case, after initially ignoring NGO recommendations, and following rejection of the initial Action Plan, the authorities engaged to an extent that was very positive. However in late 2017 engagement ceased – apparently a victim of an increasingly homophobic environment against the background of a referendum opposing same-sex marriage, supported with intolerant speech by many leading public figures.

As noted above, the use of the judgment execution process as a spur for involving other institutional or social actors in implementation is also deemed to be impact at this level. The Lithuanian trans rights case provides a valuable example of the latter

Level 3 – Adoption

All three cases have seen the respondent state fall in line with the positions adopted by the CoE, and therefore, by extension, with those of the NGOs. Thus, in principle, the NGOs have achieved significant impact at this level.

Level 4 – Execution

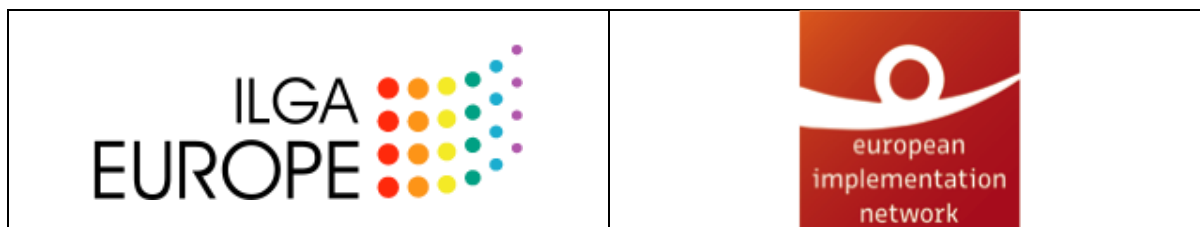
As already noted, the Moldovan freedom of assembly case is judged implemented, with Pride marches for the last two years fully protected by the police and not interrupted by counter-demonstrators.

Implementation of the other two cases is now to a greater or lesser extent impeded by a hostile political environment. Further progress should be possible on the Romanian hate crime case in the not too distant future. Its elevation to the enhanced supervision procedure will increase the pressure by the CoE on the Romanian authorities. At the same time, the main general measures required – a methodology for investigating hate crimes, systematic training across the criminal justice system, data collection systems – are not in themselves politically contentious and are unlikely to be the subject of hostile public debate.

The Lithuanian trans rights case, on the other hand, faces strong opposition both in Parliament and by the Catholic Church. With the need for legislation, progress is likely to be limited until the balance of opinion in the Lithuanian Parliament becomes supportive. Nonetheless, continuing use by NGOs of the judgment execution process probably remains the best way of keeping this debate on the political agenda.

Conclusions

Achieving full rights for LGBTI persons can take decades. It should come as no surprise that implementing judgments in this field can take a very long time.



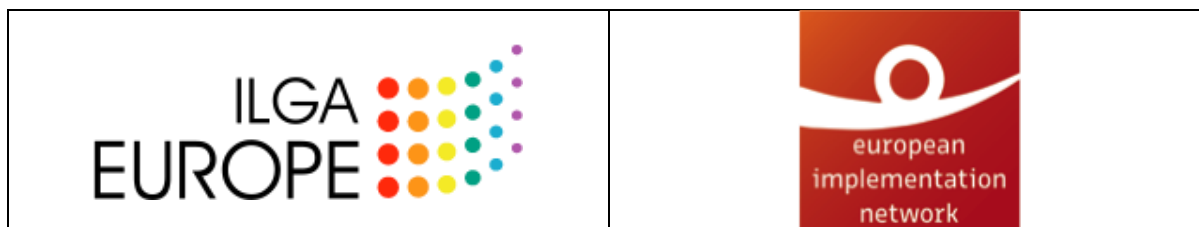
The CoE's judgment execution process is uniquely suited to addressing apparently intractable human rights challenges of this type. The process is underpinned by a rigorous methodology and attention to detail, supported by institutional memory, that together enable supervision to be carried out effectively over a long period of time; it is flexible, allowing for the measures required to be varied in the light of new information or wider developments; and crucially, it is a process without time limit, so that supervision continues year after year until implementation is achieved.

But in many cases where there is resistance to implementation, the CoE has limited opportunities for obtaining the information it needs to verify that provided by the national authorities. NGOs have a critical role to play in providing this information. The potential for impact is indeed very high, provided they stay the course until implementation is finally achieved.

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Appendix 1

GENDERDOC-M v. Moldova

Assessing the impact of NGO engagement with the judgment execution process

The *GENDERDOC-M v. Moldova* case

GENDERDOC-M is the principal organisation working for the rights of LGBTI persons in Moldova.

The case concerned:

- the violation of the applicant NGO's right to peaceful assembly arising from the ban on holding a demonstration planned for May 2005 to encourage the adoption of laws to protect sexual minorities from discrimination (violation of Article 11);
- the lack of an effective remedy on account of the post-hoc character of the judicial remedy available in the domestic legislation (violation of Article 13 in conjunction with Article 11);
- discrimination against the applicant NGO on account of
 - the difference in treatment between it and other NGOs which were allowed by the authorities to hold demonstrations in the same period of time;
 - the authorities' disapproval of demonstrations which they considered to promote homosexuality;
 - the failure of the authorities to provide clear reasons for rejecting the applicant NGO's request to hold a demonstration (violation of Article 14 in conjunction with Article 11).

The judgment became final on 12 September 2012 and following transfer to the CM judgment execution process was allocated to the enhanced supervision procedure.

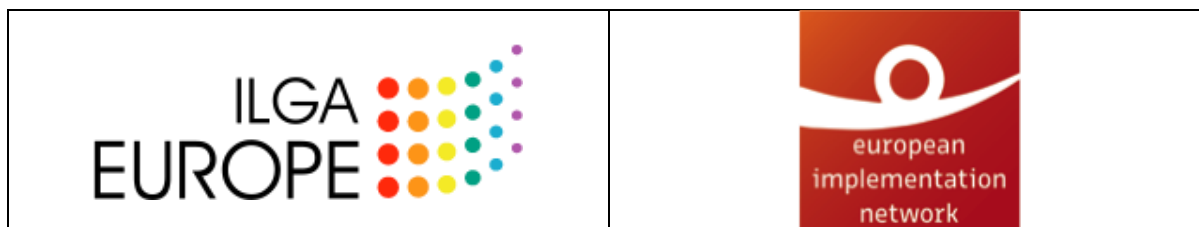
Implementation involved individual measures (ensuring that *GENDERDOC-M* could exercise the right to freedom of assembly) and general measures (addressing the article 13 violation through creating an effective process for appealing against prohibition of freedom of assembly events; and the article 14 violations through wider anti-discrimination measures).

All but one of the Rule 9.2 submissions were made jointly by *GENDERDOC-M* and ILGA-Europe, referred to jointly as the NGOs. Their submissions concentrated on individual measures to address the Article 11 violation.

All documents referenced can be found at the DEJ's [HUDOC-EXEC database](#).

Summary of results

Continual exposure over four years of the misinformation provided by the authorities as to the extent of access by the LGBTI community to the right to freedom of assembly, and of the failure of the authorities to provide adequate protection and address sufficiently illegal blocking tactics by counter-demonstrators, ensured that the case was kept under enhanced supervision until there was a track record of fully protected, unimpeded exercise of the right to freedom of assembly.



Engagement with the judgment execution process was part of a much wider campaign involving pressure from friendly states, the EU, the media and civil society. Nevertheless, it is considered that the judgment execution process made an important contribution, being the only intergovernmental body where the Moldovan authorities could be held to account rigorously and over an extended time period for their failure to guarantee freedom of assembly to the LGBTI community.

Impact was achieved at all four levels: 1 – Recognition by the CM – ensuring that the CM did not accept the erroneous information presented by the authorities; 2 – Engagement, through greatly improved cooperation with the police; 3 – Adoption, with the authorities compelled to align their actions with GENDERDOC-M’s objectives; 4 – Execution – with the LGBTI community finally able to exercise the right to freedom of assembly.

Phase 1 - From the start of supervision to the first CM Decision in September 2015

March 2014

The 1st Government Action Plan:

1. Stated that “In relation to individual measures, it must be noted that since the events examined in the judgment (2005) the applicant organisation held its assemblies and demonstrations every year.” (Paragraph 4)
2. Documented examples from 2013 which it claimed supported this position: “Among many recent relevant examples of good practices, the Government underlines 2013 events when the applicant organisation, the LGBT community and its followers freely held about five public manifestations.” (Paragraph 6)
3. Invited the CM to transfer the case to the standard supervision procedure.

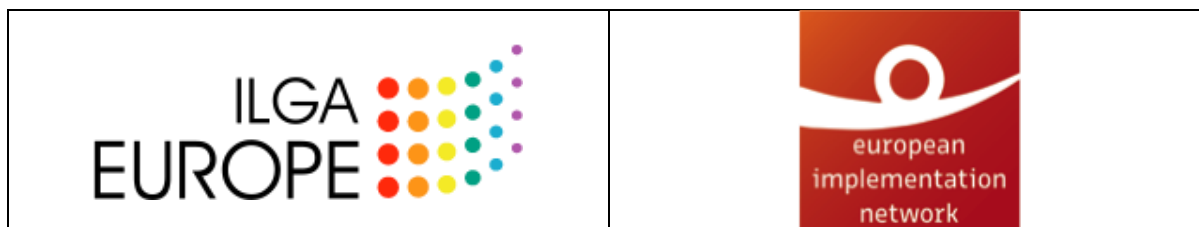
May 2014

The 1st Rule 9.2 submission by the NGOs:

Refuted 1. above, demonstrating that prior to 2013 GENDERDOC-M had been unable to hold any authorised or pre-notified freedom of assembly event. Two small unauthorised and unpublicised events had been held.

Regarding 2. above: the Action Plan cited four (and not five) examples of marches that it claimed GENDERDOC-M, the LGBT community and its followers “freely held”. The NGOs demonstrated that of these four,

- one was not specifically about LGBTI rights and was not organised by GENDERDOC-M;
- one involved just two people standing outside the Russian Embassy for 15 minutes;
- one involved eight individuals walking for 10 minutes in central Chisinau;
- one (intended as GENDERDOC-M’s main event of the year) was the subject of a legal challenge by City Hall seeking to ban it. In the absence of a court ruling by the date of the march, GENDERDOC-M had proceeded with an “unauthorised” march, which was terminated after 100m in view of the danger posed by approaching counter-demonstrators.



Regarding 3. above, the NGOs opposed transfer of the case to the standard supervision procedure.

Government Communication responding to the 1st NGO submission:

Regarding 1: The government was unable to substantiate its claim, seeking to downplay its significance by stating that “the Action Plan referred briefly to this period [i.e. the period before 2013] in order to describe the evolution of the situation so far”.

Regarding 2: The government ignored the NGO evidence, responding that “these events show the very essence of the reform undertaken by the authorities.”

July 2015

The 2nd Government Action Plan:

- a. Reiterated the (manifestly incorrect) claim “that since the event examined in the judgment (2005) the applicant organisation held freely its assemblies and demonstrations each year.”
- b. Claimed that in “May 2014 and May 2015 the applicant organisation held traditional Pride parades, being protected and cordoned by police officers....”
- c. Argued again that the case should be moved to the standard supervision procedure.

August 2015

The 2nd Rule 9.2 submission by the NGOs:

Regarding a: Rejected the claim, referring to the evidence provided in the May 2014 Rule 9.2 submission;

Regarding b: Acknowledged that progress had been made, enabling the 2014 and 2015 Pride parades to take place; but provided evidence to demonstrate that the authorities still did not comply fully with their obligations to protect the demonstrators and prosecute counter-demonstrators who acted illegally. They pointed to the need for the training of law enforcement officials with regard to their obligation to treat all members of society without discrimination.

Regarding c: Again opposed moving the case to the standard supervision procedure.

The Government Communication responding to the 2nd NGO submission:

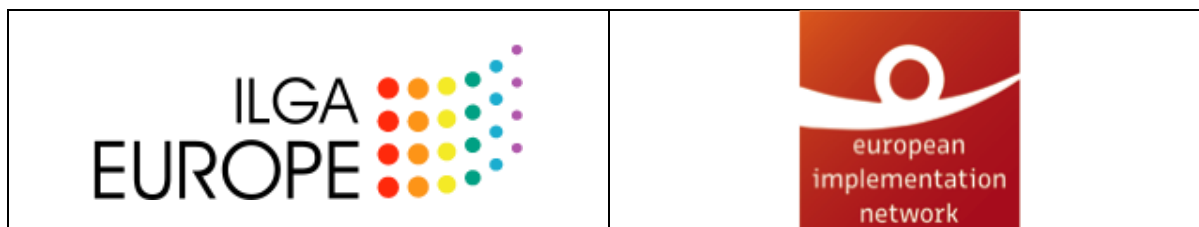
Regarding a: Did not address.

Regarding b: Argued that the issues raised by the NGOs concerning protection of demonstrators and prosecution of counter-demonstrators fell outside “the scope of execution of the present judgment”, which concerned “the local authorities’ failure to secure the applicant organisation’s right to hold its demonstration freely.”

September 2015

A representative of GENDERDOC-M took part in an informal briefing to permanent representation staff in Strasbourg (organised by OSJI) ahead of the September CM Human Rights meeting.

The 1st CM Decision adopted at the September 2015 CM Human Rights meeting *inter alia*:



- “encouraged the Moldovan authorities to continue taking all necessary measures to ensure that the applicant NGO exercises its right to peaceful assembly without undue restrictions and that adequate security protection is provided to it when necessary;
- invited further the Moldovan authorities to provide information on the number of notifications for holding similar events to the one in the present judgment, preferably submitted between 1 June 2008 and 1 June 2015, and the number of court disputes between the local authorities and the organisers in such cases, as well as their outcome;
- noted the different measures taken by the authorities aimed at providing adequate protection for demonstrators and invited the authorities to provide detailed information on these measures;
- strongly encouraged the Moldovan authorities to continue their efforts in providing security protection to demonstrators...”

The CM again ignored the Moldovan authorities’ request to transfer the case to the standard procedure.

Assessment of impact in Phase 1

Level 1 - Recognition by the CM: The CM was not convinced by the claim of the Moldovan authorities that GENDERDOC-M “held freely its assemblies and demonstrations each year”. Likewise, it was convinced neither that the authorities were providing adequate protection, nor that the question of providing protection fell outside the scope of the judgment. It ignored the request of the authorities that the case be moved to the standard procedure. It thus lent tacit support to GENDERDOC-M’s positions.

Level 3 - Adoption: Exposure of the authorities’ misleading information led to:

- prevention of the Moldovan authorities from making a premature case for closure of supervision;
- the CM challenging the Moldovan authorities directly by requesting them “to provide information on the number of notifications for holding similar events to the one in the present judgment, preferably submitted between 1 June 2008 and 1 June 2015”.

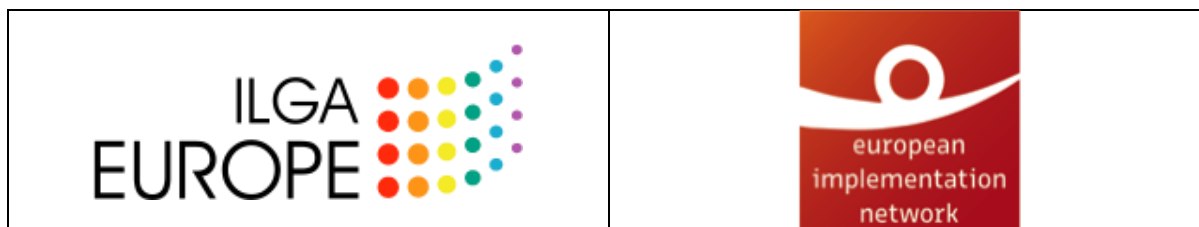
Level 4 – Execution: Exposure of the historical and current non-compliance by the Moldovan authorities maintained the pressure on them to implement the judgment and was one of several factors leading to the improved (even if still far from perfect) situation regarding the 2014 and 2015 marches.

Phase 2 - From the 1st CM Decision (September 2015) to the 3rd CM Decision (September 2018)

January 2017

The 1st Government Action Report:

1. Stated that a Pride demonstration took place in 2016 and acknowledged that, in the face of counter-demonstrators, to avoid any clashes and violence, “the police ... decided to redirect demonstrators to another itinerary than the one initially agreed on.” Further, that “the



police qualified some actions of the counter-demonstrators as hooliganism”, for which they had been fined.

2. Failed to provide the information requested by the CM “on the number of notifications for holding similar events to the one in the present judgment, preferably submitted between 1 June 2008 and 1 June 2015, and the number of court disputes between the local authorities and the organisers in such cases, as well as their outcome.”
3. Instead, provided details of “17 notifications submitted by the LGBT community and related organisations on holding pride demonstrations as well as other types of public events” between 2012 – 2016; implied that the LGBT community was able to organise a significant number of public events.
4. Concluded that the authorities had taken “all necessary measures” and requested that supervision of the judgment be closed.

In what was a tactical mistake, the NGOs failed to respond to this Action Report.

March 2017

The 2nd CM Decision adopted at the March 2017 CM Human Rights meeting noted:

- “with satisfaction that the applicant organisation has been holding events without undue restriction imposed by the authorities; encouraged the authorities to continue taking all necessary measures to ensure [this continues] and that adequate security protection is provided when necessary;”
- “with interest the statistical data provided by the authorities.”

It did not respond to the request for termination of supervision.

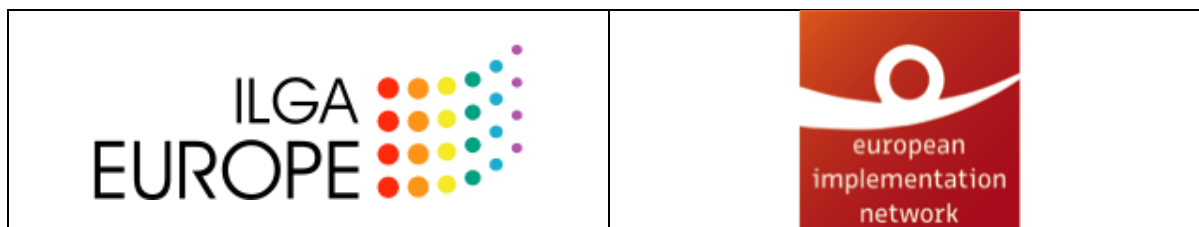
July 2017

The 3rd Rule 9.2 submission by the NGOs:

- a. acknowledged that the authorities had made significant progress regarding the authorisation and protection of Pride marches;
- b. argued that their practice in 2016 and 2017 of cutting short Pride marches rather than dispersing counter-demonstrators illegally blocking the route meant that the LGBTI community still did not have full and effective enjoyment of the right to freedom of assembly;
- c. argued that, through failing to prosecute counter-demonstrators for certain illegal, bias motivated actions, or through treating some of these actions as no more than ordinary hooliganism, the authorities were in effect tacitly accepting the behaviour of the counter-demonstrators.

October 2017

The Government Communication responding to the 3rd NGO submission:



- Regarding b: emphasised duty of police to ensure public order and safety.
- Regarding c: argued that the “constitutive elements” of a criminal offence were not present.

March 2018

The 4th Rule 9.2 submission by the NGOs provided analysis of the 17 notifications that had supposedly been “submitted by the LGBT community and related organisations on holding pride demonstrations as well as other types of public events” between 2012 – 2016.⁹ This demonstrated that of the 17 events claimed as similar, only 4 were in fact similar to the one in the *GENDERDOC-M v. Moldova* judgment, (for example, 10 of them had nothing to do with the LGBT community at all, while another involved only two persons (for which prior notification was not required)). Of the 4 similar events, in one case the notification had been rejected, while in three, the event had taken place, but with a failure by the authorities to fully uphold the right to freedom of assembly.

The authorities did not exercise their right to reply.

June 2018

The 2nd Government Action Report:

- Advised that the 2018 May Pride march was completed successfully with 500 participants marching 4 km, the deployment of 2800 police, and the removal of 40 persons blocking the route;
- Announced a range of general measures, including training, awareness raising etc that had been taken in 2018.
- Requested termination of supervision.

July 2018

The 3rd Government Action Report:

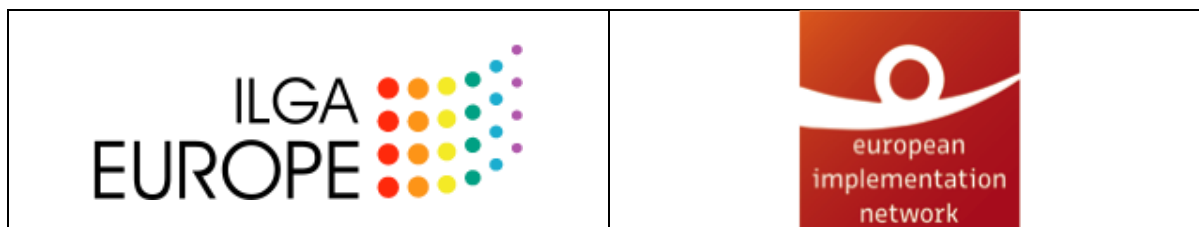
Advised *inter alia* that “the General Police Inspectorate launched a new service called “DIALOG”, which is a new and additional way of communication between the police and participants at demonstrations, and ensures transparency of the police activity and contributes to the participants’ safety.”

September 2018

The 5th Rule 9.2 submission by the NGOs:

- acknowledged that in 2018 participants in Chisinau Pride were able for the first time to complete the planned march without being at risk of attack and without being evacuated part way through the march;

⁹ See the First Government Action Report, point 3 above.



- particularly complimented the police, not least the Deputy Chief of Police, who had promised that the march would be protected according to human rights principles and fulfilled this promise;
- argued that a track record of successful freedom of assembly events on behalf of the LGBTI community needed to be established before closing supervision of the judgment.

The 3rd CM Decision adopted at the September 2018 CM Human Rights meeting *inter alia*:

- welcomed the fact that in 2017 and 2018 the applicant organisation held pride events without undue restrictions imposed by the authorities and with adequate police protection, and encouraged the authorities to continue in the same vein for similar public events in future;
- invited the authorities to continue and further strengthen their awareness-raising efforts, including as regards the general public, on the principle of prohibition of discrimination on grounds of sexual orientation and gender identity; in this context, noted also the information provided on the implementation of the anti-discrimination law and strongly encouraged the authorities to further strengthen their efforts in this respect.
- did not respond to the request for termination of supervision.

Assessment of impact in Phase 2

Level 1 – Recognition by the CM: CM ignored request for termination of supervision.

Level 2 – Engagement: Improved working relationship and cooperation with the police.

Level 4 – Execution: Continued exposure of incorrect claims with regard to the ability of the LGBTI community to exercise the right to freedom of assembly, and of the failure of the authorities to “face down” counter-demonstrators, put pressure on the authorities to properly support the 2018 Pride march.

Phase 3 - From the 3rd CM Decision (September 2018) to the 4th CM Decision (September 2019)

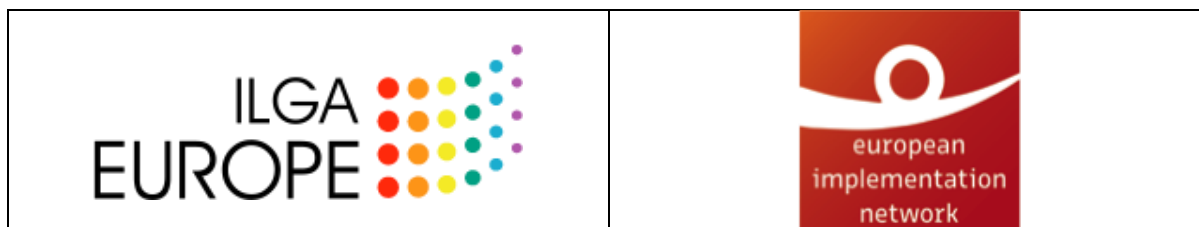
July 2019

The 4th Government Action Report:

- Advised that the 2019 Pride march had been completed successfully with the participants fully protected.
- Referred to a number of other general measures that had been taken.
- Requested termination of supervision.

The 6th Rule 9.2 submission by the NGOs:

- Welcomed as very positive the fact that for the second year running participants in the Chisinau Pride had been able to take part in an authorised freedom of assembly event and complete the planned route fully protected by the police from counter-demonstrators;



- But, noting that a political party with a long record of overt hostility to the rights of LGBTI people (including exercise of the right to freedom of assembly) was now part of the Moldovan government, urged the CM to maintain supervision of the case until any threat to the continued implementation of the judgment was removed.

A representative of GENDERDOC-M took part in an informal briefing to permanent representation staff in Strasbourg (organised by EIN) ahead of the September CM Human Rights meeting.

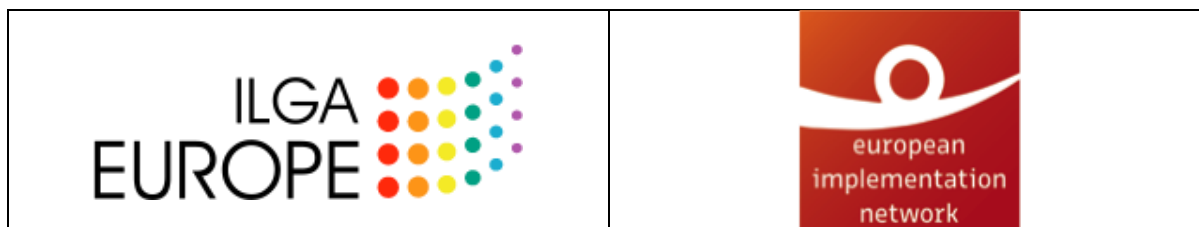
The 4th CM Decision adopted at the September 2019 CM Human Rights meeting *inter alia*:

- welcomed the fact that the applicant NGO could now hold pride events without undue restrictions imposed by the authorities and with adequate police protection;
- strongly encouraged the authorities to ensure that, prior to any deliberation in Parliament, all draft laws, including those initiated directly by parliamentarians, are systematically submitted for expert scrutiny of their compatibility with the Convention and the case-law of the Court, in line with the Committee of Ministers' Recommendation [Rec\(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;
- closed supervision of the case.

Assessment of impact in Phase 3

Level 1 – Recognition by the CM: While the concerns expressed by the NGOs at the presence in the government coalition of a party hostile to LGBTI rights did not persuade the CM to continue supervision of the case, it is reasonable to assume that the second bullet point above was acknowledgement of and support for these concerns.

Level 4 – Execution: For the time being at least it would seem that the LGBTI community in Moldova is able to exercise the right to freedom of assembly after a 14 year campaign.



Appendix 2

M.C. & A.C. v. Romania

Assessing the impact of NGO engagement with the judgment execution process

The M.C. & A.C. v. Romania case

The case concerned the failure of the authorities to conduct an effective investigation and, in this context, to take into account possible homophobic motives of an attack on the applicants by private individuals which occurred after the applicants had left a police-protected LGBTI rally in 2006 (violation of Article 3 in conjunction with Article 14).

The ECtHR found in particular that the authorities should have investigated whether homophobic motives had played a role in the attack, given the hostility against the LGBTI community in Romania. It also stressed that without a meaningful investigation into such incidents, it would be difficult for the authorities to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State's anti-discrimination policy (§ 124 of the judgment).

The judgment became final on 12 July 2016 and following transfer to the CM judgment execution process was allocated to the standard supervision procedure.

By the time of the Action Plan the alleged offences had become time-barred, so that the principal individual measure, that of reopening the criminal investigations, was no longer possible. The judgment execution process has therefore focused exclusively on general measures.

Romania's leading LGBTI organisation, ACCEPT, was amongst those supporting the applicants in the *M.C. & A.C. v. Romania* case and has since made three Rule 9.2 submissions.

All documents referred to can be found at the DEJ's [HUDOC-EXEC database](#).

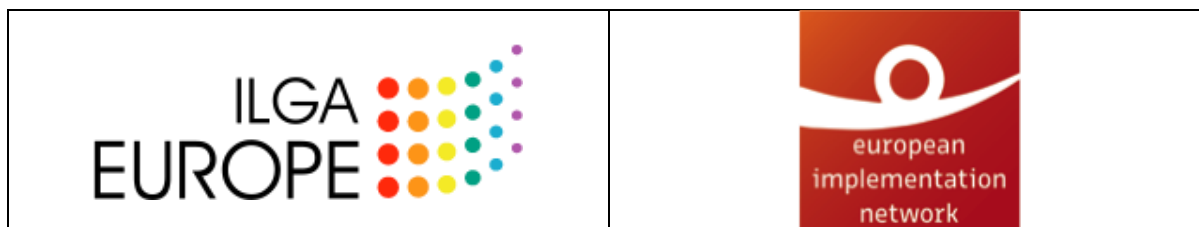
Summary of results to September 2019

NGO engagement through the execution of judgments process has achieved considerable impact.

Evidence of the inadequacy of the first Government Action Plan by ACCEPT was not contested by the Romanian authorities. It ensured its replacement and gained both support for ACCEPT's main recommendations by the DEJ and positive suggestions by the Government Agent¹⁰. These developments saw the Romanian authorities move from unconstructive to constructive engagement with ACCEPT. A revised Action Plan, which appeared to be much closer to ACCEPT's recommendations was published in August 2018.

However ACCEPT's third submission in March 2019 expressed serious concern at a lack of commitment by the authorities to implementing the measure, and detailed evidence of the resulting

¹⁰ The Government Agent represents the interests of the respondent State before the ECtHR and in many states plays a significant role coordinating implementation of its judgments.



lack of progress. It also raised a new issue: that there were serious defects in a key implementation measure, Romania's hate crime legislation. It further drew attention to an intensification of the homophobic environment in Romania in 2017/2018 as a result of a referendum opposing same-sex marriage, supported with intolerant speech by many leading public figures, to which the authorities failed to respond. ACCEPT pointed to this as a reason for the loss of commitment to implementation by the authorities. It therefore called for supervision of the case to be moved from the standard to the enhanced procedure.

The Romanian authorities did not exercise their right of reply, implicitly lending credibility to ACCEPT's position.

Responding to these developments, the case was placed on the agenda of the CM's quarterly human rights meeting in September 2019. The CM adopted a very strong Decision, calling for swift and decisive action by the authorities across all of ACCEPT's key recommendations, setting a deadline for a response to the information requested by January 2020, and intensifying their supervision of the case by moving it from the standard to the enhanced procedure.

Significant impact has been achieved at Level 1 – Recognition by the CM (gaining the support of the CoE for ACCEPT's proposals), at Level 2 – Engagement (willingness of the authorities to consult and take seriously ACCEPT's perspectives), and at Level 3 – Adoption (by exposing the vacuity of the first Action Plan, and the lack of commitment behind the second).

Achieving impact at Level 4 – Execution – remains a challenge, although the elevation of the case to the enhanced supervision procedure will improve the prospect of progress.

Phase 1: From the judgment to the responses to the first Government Action Plan up to December 2017

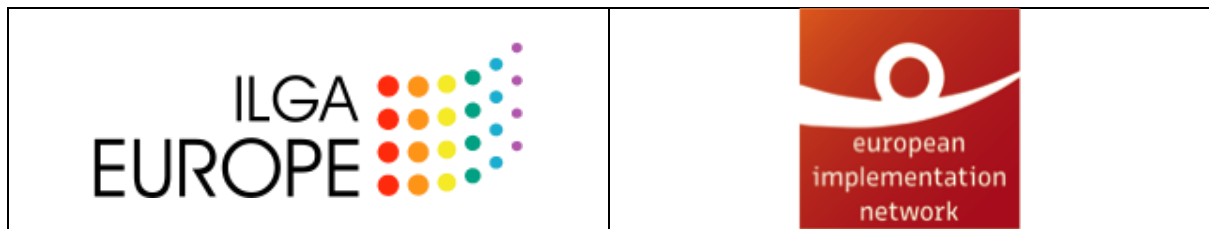
April 2016: Immediately following the judgment ACCEPT started work on developing general measures and held initial meetings with the Government Agent and the ombudsman.

October 2016: After the judgment had become final, ACCEPT organised meetings with relevant ministries and with the police proposing general measures.

December 2016: ACCEPT made a first Rule 9.2 submission, in which they emphasised amongst other things the need for:

- improved collection of data on hate crimes, including harmonisation of data collected by the police, prosecutor's offices and criminal courts, and segregation of data by ground of discrimination;
- improved initial and continuous training of the police and legal professionals on dealing with hate crimes;
- strengthening the relationship between the police and communities exposed to hate crimes.

January 2017: the Romanian authorities submitted their first Action Plan, implying no new actions, rejecting the specific proposals made by ACCEPT, and concluding that:



- The need for improved data was addressed by existing programs: “the improvement of systems, so as to be able to provide a more detailed overview of the specific ground of discrimination, including sexual orientation is at present an ongoing process”. There was no detail and no commitment to time frames, nor to harmonisation of reporting across the criminal justice system.
- Existing training programmes were also sufficient: “the requirements of an effective criminal investigation on hate crimes flowing from the Court’s standards are acknowledged ... through ample professional initial and continuous training programs.”

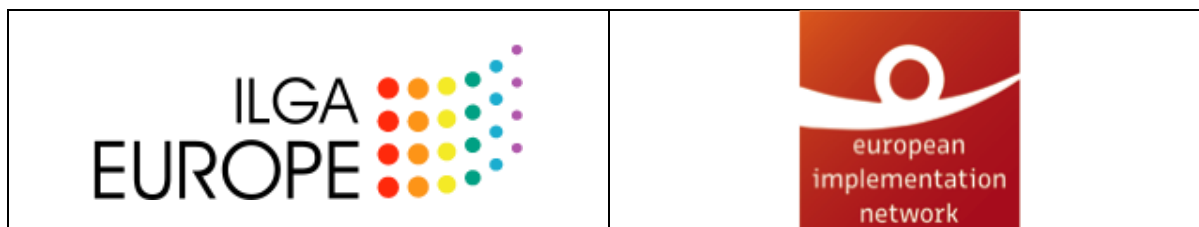
March 2017: ACCEPT made a second rule 9.2 submission responding to the Action Plan. In this they listed further unresolved cases of hate crimes against LGBTI persons, arguing that these illustrated that the mechanism for reporting and investigating hate crime cases was not effective. They further commented that:

- The training programmes for judges and prosecutors referred to in the Action Plan were inadequate for a number of reasons, including being “one-offs” which only covered a small proportion of the target groups, not mentioning hate crimes at all, or not making any reference to LGBTI people as vulnerable to hate crime; also, no information was offered on how the necessary training would be provided systematically in future years and how it would be funded.
- So far as police training was concerned, the government had offered no evidence of the coverage of hate crime in initial training, nor of concrete measures to introduce it; likewise, in-service training focused on combating discrimination in general, rather than hate crimes, and even this training had applied to only a few dozen persons out of the 54,000 employed by the police force; moreover the training had been carried out on a voluntary basis by the National Council for Combating Discrimination and civil society organisations, giving rise to concerns about sustainability.
- The Action Plan made no reference to the development of standards and procedures on the treatment of hate crime needed in practice to complement the training programs.
- So far as data was concerned, data available publicly did not reflect improvements claimed in respect of police systems, while no timetable had been provided for the improvements planned by the Ministry of Justice.

March 2017: The Romanian authorities exercised their right to reply, arguing that new legislation covering criminal proceedings addressed the lack of promptness and efficacy of police investigations. They failed to respond to any extent to ACCEPT’s concerns about training and data collection, commenting only that training for the judiciary would be developed further in a revised Action Plan.

On a positive note, the reply stated that the Government Agent had requested the police to explore the possibility that police officers document any hate motivation, when alleged by a victim; and introduce guidance on conducting hate crime.

Developments between May 2017 and the end of year:



May 2017: a meeting between ACCEPT and the authorities, mediated by the Government Agent, appeared productive, with an apparent will by the police to develop sustainable training, and by the Prosecutor’s Office to draft procedures for investigating hate crimes to be used by prosecutors and police officers.

Autumn 2017: at a further meeting with ACCEPT it was reported that the Prosecutor’s Office was starting to develop a hate crime investigation methodology and a system and criteria for recording hate crimes under investigation; however it appeared that the Ministry of Internal Affairs was not making progress with a plan for significant and sustainable hate crime training for the police.

CoE response to developments to the end of 2017

At the end 2017 the DEJ’s “status of execution” report¹¹ recorded the information which the Romanian authorities were expected to provide as follows:

- “data on the number of complaints filed (including those related to the aggravating factor of hate crime) and on the number investigated and of the cases referred to the courts, together with information on the outcome of these cases;
- the additional announced professional training of judges, prosecutors and police and updates on the planned improvements to the data collection system of the Ministry of Justice; and
- information on the progress on adopting additional general measures to ensure the effectiveness of criminal investigations into hate crimes.

Assessment of impact in Phase 1

Level 1 – Recognition by the CM: DEJ’s “status of execution” supported directly two of ACCEPT’s key recommendations, those concerning training of law enforcement officials and measures to improve effectiveness of investigations into hate crimes; and indirectly a third, the need for data on hate crimes, through requesting the provision of such information.

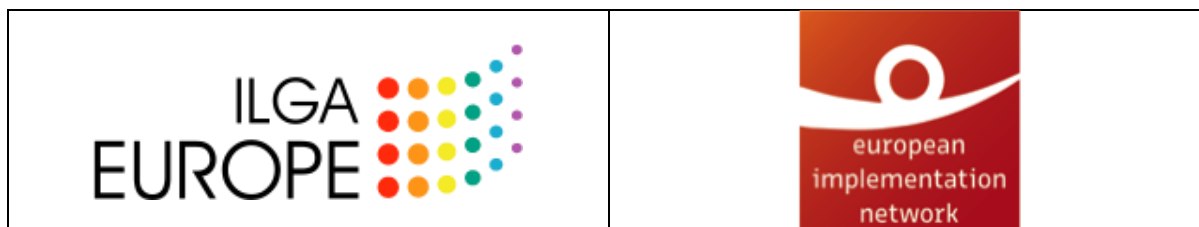
Level 2 – Engagement: After ACCEPT’s submission in March 2017 had exposed the vacuity of the Government Action Plan, two meetings with the authorities demonstrated a much greater willingness to engage with ACCEPT and to take their proposals more seriously.

Level 3: – Adoption: ACCEPT’s evidence of the inadequacy of the initial Government Action Plan, and the inability of the authorities to refute that evidence when exercising their right to reply, ensured that this Action Plan was replaced.

Phase 2: The second Government Action Plan, and responses through to the CM Decision of September 2019

August 2018: the second Government Action Plan included a number of constructive measures in line with ACCEPT’s recommendations:

¹¹ Published in the HUDOC-EXEC database of the Department for the Execution of Judgments



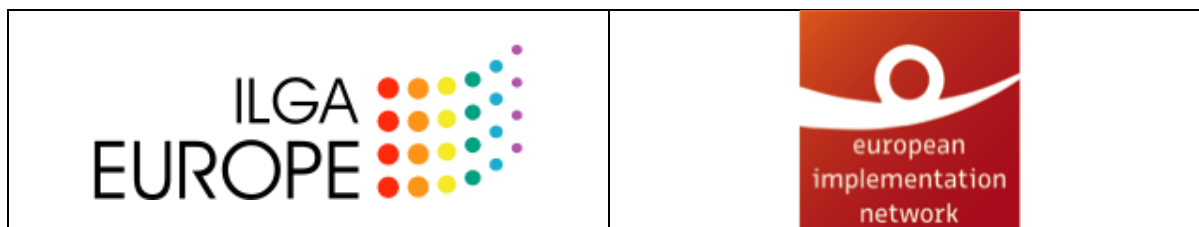
- Ministry of Justice, Prosecutor’s Office and police data bases were being amended to include the discrimination ground; longer term improvements were planned; alignment of police and prosecutors’ records was under discussion;
- Police/prosecutors were preparing a common methodology on the investigation of hate crimes;
- Police “initial training”: a new “trainer of trainers” programme on hate crimes was “currently being developed”; in the postgraduate programme, a new discipline “The prevention and combating of hate crimes through criminal law tools” was being introduced for the academic year 2018/2019;
- Police “continuous training”: for 2018/19 hate crimes would be included for all members of Romanian police.

March 2019: ACCEPT’s third Rule 9 responding to the latest Government Action Plan expressed serious concern at the lack of progress in implementing measures and at a lack of commitment by the authorities, pointing out that the inter-ministry Working Group had not met since October 2017 and that ACCEPT had not been consulted on any measure since that time. It made the following key points:

- It presented evidence that
 - Data collection on hate crimes by the Ministry of Justice, the General Prosecutor’s Office, and the Romanian Police all remained inadequate, and that there did not appear to be any real commitment to improving the situation;
 - The authorities had given up attempts to draft a common methodology for prosecutors and police in investigating hate crime;
 - There was still no systematic training for law enforcement officials and the judiciary in the field of hate crime.
- Introducing a new concern, it drew attention to recent academic research that was critical of the hate crime legislation introduced in 2006 - presented in the Action Plan as an important measure implementing the judgment. In particular, this legislation did not list the grounds of discrimination protected under the offence “incitement to hatred or discrimination” (Article 369 of the Penal Code). Moreover, the definition of the offence was so general that the distinction between a criminal offence under this article and an administrative offence¹² was unclear.
- In support of the above, ACCEPT cited a recent case involving abusive behaviour by two police officers against a trans woman that was discontinued by the prosecutor’s office because of the difficulty of distinguishing between the administrative and criminal offences.

ACCEPT also drew attention to the hostile environment created by the campaign in 2017/2018 for a referendum (launched by a petition with 3 million signatories) to amend the definition of family in the Romanian constitution to that of marriage between a man and a woman. It gave examples of

¹² Under Article 15 of the Government Ordinance No. 137/2000 regarding prevention and combating all forms of discrimination.



intolerant speech by many leading public figures, including the President of the Chamber of Deputies, Liviu Dragnea, who implied that same-sex marriage could lead to legalisation of marriage “between a man and animal”. ACCEPT pointed to the absence of any measures by the national authorities to counter such speech. Implicit in this information was the possibility that the homophobic campaign explained the reluctance of the authorities to follow up on the positive steps proposed in 2017.

Finally, ACCEPT called for supervision of the case to be moved from the standard to the enhanced procedure.

March 2019: The Romanian authorities failed to exercise their right to reply to the ACCEPT submission, lending it credibility.

Spring 2019: ACCEPT briefed the embassies of supportive states in Bucharest.

May 2019: In consultation with ACCEPT EIN arranged with a delegate to the Parliamentary Assembly to table a Written Question to the CM supporting the call for the case to be moved from the standard to the enhanced procedure.

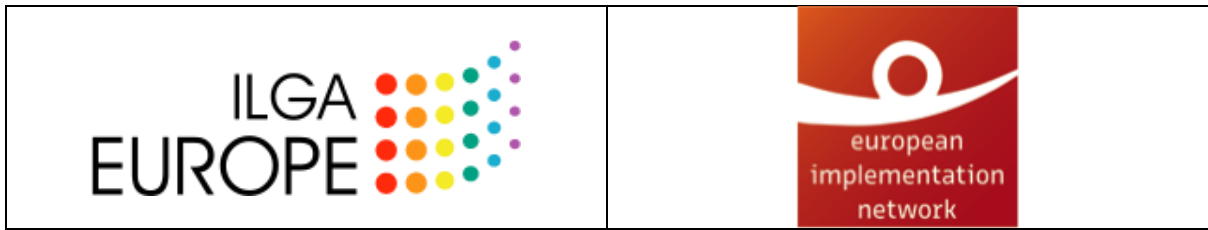
September 2019: *M.C. & A.C. v. Romania* was placed on the agenda of the quarterly CM human rights meeting. In the resulting Decision, the CM:

- considered that further intensified efforts were required;
- called for swift and decisive action for the adoption and effective implementation of “a common methodology for investigation by the police and prosecution services of hate crime and to ensure systematic initial and in-service training for the investigative and judicial authorities specifically focused on detecting and handling hate crime;”
- called for the authorities “rapidly to establish a data collection system enabling them to acquire an integrated and consistent view of the prevalence of hate crime and the investigative and judicial authorities’ response to such crime...”
- noted with concern “that deficiencies have recently been highlighted in the criminal law provisions punishing incitement to hatred or discrimination” and invited the authorities to provide information on the measures envisaged;
- encouraged the authorities to pursue and strengthen their cooperation with civil society;
- stressed the importance of rapid and decisive progress... and concerned by the persistence of negative attitudes towards LGBTI persons in Romania, decided to transfer the case to the enhanced procedure;
- requested information on the issues highlighted by the end of January 2020 at latest.

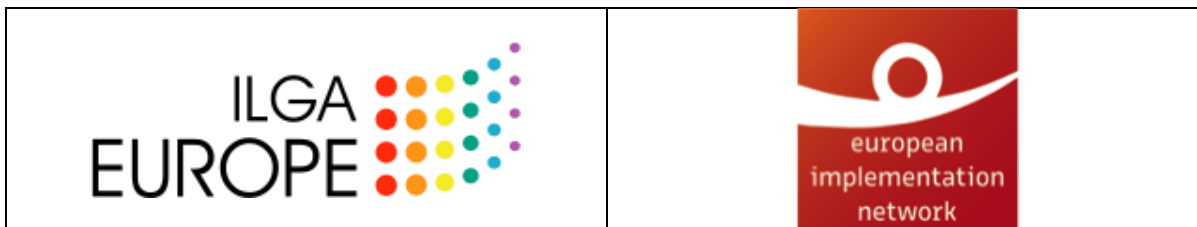
Assessment of impact in Phase 2

Level 1 – Recognition by the CM: Emphatic support by CM for all ACCEPT’s main recommendations.

Level 2 – Engagement: The CM’s encouragement to the authorities “to pursue and strengthen their cooperation with civil society” likely to support renewed engagement with the authorities and ensure that ACCEPT’s views taken seriously.



Level 3: – Adoption: ACCEPT’s evidence of the lack of progress and lack of commitment on the part of the authorities, and of unchallenged expressions of homophobia by leading political figures, combined with the failure of the authorities to challenge this evidence, have led to the elevation of the case to enhanced supervision. This means that implementation will be under the regular scrutiny of the CM, and, combined with the CM’s endorsement of ACCEPT’s main recommendations, intensifies the pressure on the authorities to implement them effectively.



Appendix 3

L v. Lithuania

Assessing the impact of NGO engagement with the judgment execution process

The *L v. Lithuania* case

Lithuania's Civil Registration Rules had long permitted a change of civil status documents, although this was possible only following gender reassignment. In 2001 a new Civil Code confirmed that unmarried adults had the right to gender reassignment. But it required subsidiary implementing legislation, which was never adopted due to opposition in the Lithuanian Parliament and by the Catholic Church. As a result of the absence of this legislation the applicant was prevented from accomplishing full gender reassignment surgery and changing his gender identification in official documents. He was thus left in a situation of distressing uncertainty with regard to his private life and the recognition of his true identity (violation of Article 8).

The judgment became final in March 2008 and following transfer to the CM judgment execution process was allocated to the standard supervision procedure.

As regards individual measures, in the absence of legislation enabling gender reassignment treatment in Lithuania, financial compensation was provided by the government enabling L. to undergo the treatment abroad.¹³

General measures involve the legislative and policy measures needed to enable transgender persons to undergo gender reassignment treatment and have yet to be implemented.

Over a five-year period from 2013 to 2018 six Rule 9.2 submissions were made, the principal authors being the Lithuanian Gay League (LGL) and the Human Rights Monitoring Institute (HRMI),¹⁴ hereafter referred to as "the NGOs".

All documents referenced can be found at the DEJ's [HUDOC-EXEC database](#).

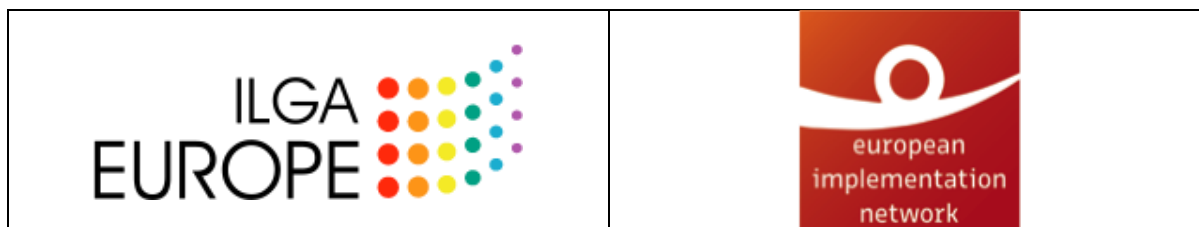
This analysis examines developments up to March 2019.

Summary

Transgender rights face strong opposition in Lithuania, particularly in Parliament, and progress is difficult. Efforts by civil society to secure the right to legal gender recognition have centred on a six-year campaign around implementation of the *L v. Lithuania* case. While NGO interventions at the CM achieved considerable impact, for four years little progress was made at the domestic level. However, with continuing pressure by the CM, in 2017/18, there was a significant change of attitude by the authorities. Inter-ministry committees were set up to develop the necessary policy and legal proposals. Civil society organisations were fully involved and their viewpoints respected. Trans people were included in the consultations.

¹³ This fall-back measure was specified in the ECtHR judgment.

¹⁴ HRMI is a Lithuanian human rights NGO which had acted as counsel for the applicant in *L v. Lithuania*.



However positive engagement by the government cannot of itself prevent hostility to trans rights in Parliament blocking implementation.¹⁵ The government continues to promote change through a series of awareness raising measures. However the most significant project, the draft law on gender reassignment prepared by an expert committee, has not been adopted by the government. Further progress with the implementation of the judgment is unlikely in the next few years unless the balance of political forces in the Lithuanian Parliament changes significantly in the October 2020 elections.

Prior to engagement by the NGOs with the judgment execution process there had been little advocacy for trans rights in Lithuania. There was also little in the way of an organised trans community in the country, with many trans people choosing to emigrate to more welcoming environments. Work to implement the *L v. Lithuania* judgment triggered the beginning of public advocacy for trans rights in that country.

So far as this paper’s assessment methodology is concerned, the main impacts achieved by the engagement with the judgment execution process were as follows:

Level 1 – Recognition by the CM: gaining the strong support of the CM for the NGOs’ position; and for the move from standard to enhanced supervision;

Level 2 – Engagement: first-ever engagement by the authorities with NGOs working in this field; wider engagement by society, particularly by trans persons, in campaigning for trans rights;

Level 3 – Adoption: support at working level in the government for the NGOs’ position.

Assessing the impact of NGO engagement with the judgment execution process

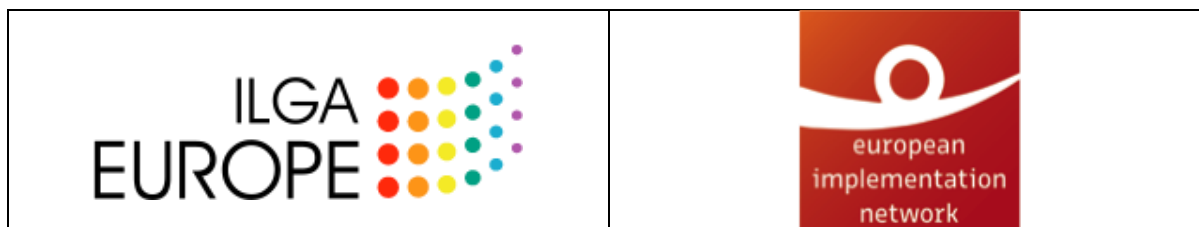
Engagement has had three distinct phases, reflecting the three different proposals made by the government: 2013/14, 2015/16, and 2017 to date.

Phase 1: The initial Government Proposals - 2013/14

The first Government Action Plan¹⁶ was submitted in April 2013, nearly 6 years after the judgment. It proposed simply to eliminate the requirement to lay down gender reassignment conditions and procedures by law through deleting this requirement from the Civil Code. It argued that this would eliminate the legal gap identified by the ECtHR, and “would not have effect as regards the medical treatment of transsexuals”. It further pointed out that medical treatment “must not necessarily be regulated by laws” and could be “left to the medical norms”. These proposals had been developed without any consultation with civil society.

¹⁵ The one major legal gain over this period, the striking down of the requirement for trans persons to be sterilised as a condition for legal gender recognition, was achieved through litigation in the domestic courts rather than through governmental or parliamentary action. Although a very important achievement, it was not one of the general measures required to implement the *L v. Lithuania* judgment.

¹⁶ The records of the Department for the Execution of Judgments refer to the document as an updated Action Plan. However, no previous Action Plan was published.



The NGOs saw this as an attempt by the Lithuanian authorities to absolve themselves of responsibility for meaningful implementation of the judgment. Their enquiries to the Ministry of Health drew the admission that development and approval of the medical treatment *could* be done by universities and medical professionals and was not “compulsory”.

In their first submission to the CM responding to the Action Plan, the NGOs expressed their concern that the authorities did not intend to ensure that the medical norms were developed, leaving any initiative entirely to the medical profession. They:

- submitted that there was no sign of any interest by the medical profession to develop these norms;
- provided evidence of public statements by individual doctors showing some strongly opposed to transgender rights on both medical and “moral” grounds;
- argued that if the development of the medical norms was not made mandatory, it was very possible that none would be developed.

Pointing to widespread hostility to transgender persons in Lithuania and to the delays in implementing the judgment, the NGOs called for the case to be moved from the standard to the enhanced supervision procedure, a call that was repeated when a representative of the NGOs presented the case at a hearing during the January 2014 session of the Parliamentary Assembly.

September 2014: the CM issued its first Decision on the case responding directly to the NGOs’ submission. It called on the Lithuanian authorities to

“enact the sub-statutory legislation on the conditions and procedures relating to gender reassignment medical treatment, which steps are required to provide the necessary legal certainty” [our emphasis].

It further decided “to follow developments closely and, therefore, to transfer the case to the enhanced supervision procedure.”

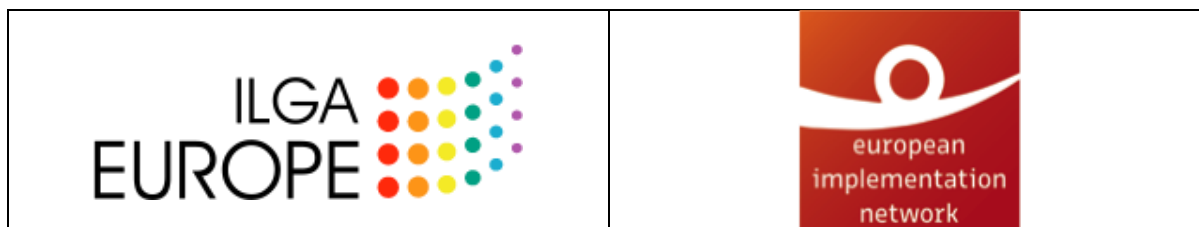
Assessment of impact in Phase 1

Level 1 – Recognition by the CM: the CM Decision adopted directly the NGO positions on gender reassignment medical treatment and the enhanced supervision procedure.

Level 3 – Adoption: influencing content of Action Plan – exposure of the vacuous nature of the government’s proposal for the procedures relating to gender reassignment medical treatment ensured this would not be accepted.

Phase 2 - The Second Government Proposals – 2015/16

January 2015: the authorities submitted a second Action Plan to the CM advising that, in view of continuing challenges in the legislature, and the decision of the CM to transfer the case to the enhanced supervision procedure, it would withdraw its first plan and set up a working group led by the Vice Minister of Health, and including professors of medicine, and officials of the health and justice ministries, to propose the next steps.



February 2015: a representative of the NGOs presented their arguments at an informal briefing of members of the CM organised by OSJI.

July 2015: the authorities submitted a third Action Plan based on the recommendations of the working group. This put forward:

- a. Plans to strengthen legal certainty in the area of the medical treatment of transsexual persons;
- b. Three alternatives for legislation amending civil status documents, one of which included sterilisation as a condition.

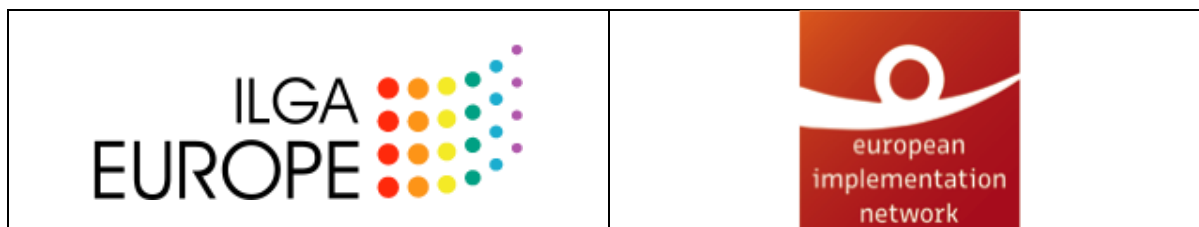
September 2015: the NGOs responded with a second Rule 9 submission in which they:

- welcomed the establishment of the working group;
- advised they had been given the opportunity to present their views to the working group, but that these had been ignored, and that no further engagement had been offered;
- noted that the working group's proposals for medical procedures fell far short of the human rights standards established by the CoE;
- advised that the version of the three proposals for amending civil status documents requiring sterilisation had been selected by the authorities; that the requirement for sterilisation failed to meet CoE standards;¹⁷ and that neither they nor members of the transgender community had been consulted on this decision.

From late 2015 through to mid-2016 there followed a series of relevant events at the national level:

- **December 2015:** LGL launched a campaign aimed at preventing the change of civil status amendment from being adopted by the Parliament and at mobilising the trans community, through lobbying MPs, an online petition (which attracted 2000 signatures), holding a public event with a photographic exhibition of trans individuals, live testimonies by members of the trans community, and a reception for policy and decision-makers. The events received considerable coverage in the media.
- **Spring 2016:** the government withdrew the draft civil status legislation, citing disagreement within the cabinet.

¹⁷ At the time of the *Goodwin* judgment in 2002 it was widely accepted that civil status documents could only be changed following gender reassignment (which usually implied sterilisation). But many trans persons seeking legal gender recognition do not wish to undergo such treatment, leaving them with an unacceptable choice between sterilisation or not being able to change their civil status documents. By 2013, when NGO engagement with the *L v. Lithuania* case started, such coerced sterilisation had been widely recognised as a gross human rights violation. This was reflected in recommendations by the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly, and the Committee of Ministers. The latter, in its Recommendation on combating discrimination on the grounds of sexual orientation or gender identity, recommended that prior requirements for legal gender recognition should not be "abusive".



- **May 2016:** the Government Agent organised an online public consultation. The majority of opinions favoured access to legal gender recognition without any requirement for prior medical treatment.
- **June 2016:** the Government Agent¹⁸ hosted a roundtable, involving ministries, Lithuanian bishops and civil society. There was no consensus on the way forward.

June 2016: The CM's second Decision expressed concern that the judgment had still not been executed, eight years into the process, and firmly urged the Lithuanian authorities to complete the process.

Assessment of impact in Phase 2

Level 2 – Engagement:

- Increased willingness by authorities to engage with civil society. Importantly, the NGOs had built good working relationships with the Government Agent to the ECtHR, who played an increasingly constructive role in supporting implementation.
- Implementation process used as means to engage civil society more widely; first significant campaigns for transgender rights at national level.

Phase 3 - The Third Government Proposals – 2017/...

The first half of 2017 saw a series of very positive developments at the domestic level:

Late 2016: LGL decided on strategic litigation in the domestic courts with two aims:

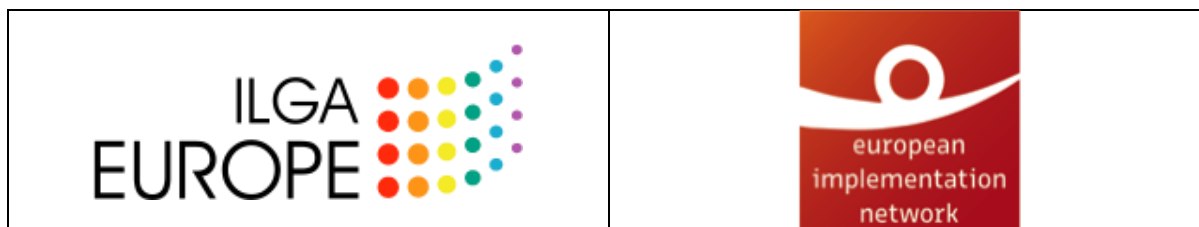
- challenging any requirement for sterilisation as a precondition for legal gender recognition;
- drawing attention to the support of the ECtHR for the right to legal gender recognition as expressed in the *L v. Lithuania* case.

The courts ruled against the sterilisation requirement. Their position was reinforced in May 2017 when the ECtHR reached a similar conclusion in its ground-breaking judgment in *A.P., Garçon and Nicot v. France*. Importantly, the government did not appeal the domestic court rulings, implicitly agreeing that sterilisation could no longer be required as a condition of legal gender recognition. A major stumbling block to progress had been eliminated. By early 2019 courts had decided in no fewer than 30 cases to authorise legal gender recognition without sterilisation, establishing a wide judicial practice.

March 2017: the government ordered the Ministry of Justice and Ministry of Health to prepare new draft legislation.

April 2017: in two meetings with ministries, NGOs presented their views. They were listened to, and their agenda was adopted. The principle was agreed that medical treatment and legal recognition

¹⁸ The Government Agent represents the interests of the respondent State before the ECtHR and in many states plays a significant role coordinating implementation of its judgments.



should be regulated separately; that, as a pragmatic first step, a partial health care protocol covering mental diagnosis and hormone replacement therapy be developed by September, so as to mitigate some of the immediate problems faced by trans people; and that a Ministry of Justice working group would be established to draft a law on gender reassignment by the end of 2017, with the NGOs to have a permanent seat.

May 2017: the Lithuanian Parliament human rights committee organised a roundtable on gender reassignment, with the NGOs among the speakers.

May 2017: the first meeting of Ministry of Justice working group. LGL contributed to drawing up the text of the draft law; the CoE's SOGI unit was to be consulted.

June 2017: first meeting of Ministry of Health working group, of which the psychiatrist and endocrinologist recommended by NGOs were members; the NGOs also made a presentation at the first meeting.

September 2017: the third CM Decision:

- “welcomed the authorities’ constructive engagement with civil society and close cooperation with the Council of Europe’s Sexual Orientation and Gender Identity Unit in drafting the new laws”
- “underlined.... that the legislation ultimately adopted must regulate the conditions and procedure for gender reassignment and enable persons in the same situation as the applicant to undergo full gender reassignment surgery”.

July 2018: the fourth Government Action Plan:

Advised that:

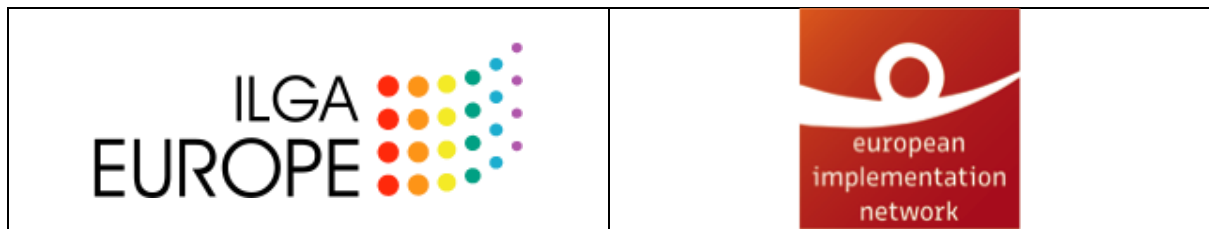
- In view of divergences of political attitudes in Parliament, a conference in Parliament was to be held on 6 September to raise awareness, involving Council of Europe, academia, NGOs and judiciary.
- Execution of *L v. Lithuania* case and securing of transgender human rights in general was to be one of the main goals of the Parliament’s ombudsman’s office.

September 2018: the fourth CM Decision continued to emphasise the need to progress and requested an updated Action Plan by January 2019

January 2019: the fifth Government Action Plan advised of various awareness-raising measures, including comprehensive research by the Equal Opportunities Ombudsperson into the situation of transgender people in Lithuania.

Assessment of impact in Phase 3

Level 1 – Recognition by the CM: CM Decisions continue to strongly support full adoption of NGO positions including, importantly, enabling “persons in the same situation as the applicant to undergo full gender reassignment surgery.”



Level 2 – Engagement: Complete involvement of civil society in developing implementation plans; Government Agent continues to play key role; the authorities now engaging extensively in awareness raising both in the political sphere and more widely.

Level 3 – Adoption: NGO proposals now adopted by government at the working level.

Level 4 – Execution: LGL’s decision to initiate the strategic litigation campaign to persuade the domestic courts to rule against sterilisation as a requirement for legal gender recognition was taken within the context of its work on implementation of the *L v. Lithuania* judgment. While not strictly falling within the ambit of this judgment, some credit for this impact can be ascribed to the impetus provided by the implementation work.

