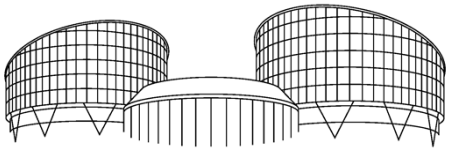

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF MACATĖ v. LITHUANIA

(Application no. 61435/19)

JUDGMENT

Art 10 • Freedom of expression • Temporary suspension of children's fairy tale book depicting same-sex relationships and its subsequent labelling as harmful to children under the age of 14 • Book neither promoting same-sex relationships at the expense of different-sex relationships nor "insulting", "degrading" or "belittling" the latter • Impugned measures not pursuing any legitimate aim for the purposes of Art 10 § 2 in so far as seeking to limit children's access to information depicting same-sex relationships as *essentially equivalent* to different-sex relationships • Equal and mutual respect for persons of different sexual orientations inherent in the whole fabric of the Convention • Restrictions on children's access to information about same-sex relationships, based solely on considerations of sexual orientation, incompatible with notions of equality, pluralism and tolerance inherent in a democratic society

STRASBOURG

23 January 2023

This judgment is final but it may be subject to editorial revision.

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In the case of Macatė v. Lithuania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President*,
Jon Fridrik Kjølbro,
Síofra O'Leary,
Georges Ravarani,
Marko Bošnjak,
Ganna Yudkivska,
Egidijus Kūris,
Branko Lubarda,
Yonko Grozev,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Tim Eicke,
Arnfinn Bårdsen,
Erik Wennerström,
Saadet Yüksel,
Ana Maria Guerra Martins,
Andreas Zünd*, judges*,

and Marialena Tsirli, *Registrar,*

Having deliberated in private on 23 March and 28 September 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The 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, the distribution of the book was temporarily suspended, and was later resumed after the book was marked with a warning label stating that its contents could be harmful to children under the age of 14. The applicant complained about the measures imposed in respect of the book, relying on Article 10 of the Convention read alone and in conjunction with Article 14.

PROCEDURE

2. The case originated in an application (no. 61435/19) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Neringa Dangvydė Macatė ("the applicant"), on 22 November 2019.

3. The applicant was initially represented by Mr V. Mizaras, a lawyer practising in Vilnius, and subsequently by Mr R. Wintemute and

Mr M. Dingilevskis, lawyers practising in London and Vilnius respectively. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 21 March 2020 the applicant died. Her mother and legal heir, Ms Jūratė Meškauskaitė, expressed the wish to pursue the proceedings on the applicant's behalf.

6. On 18 June 2020 the Government were given notice of the application.

7. The applicant's mother and the Government filed observations on the admissibility and merits of the application.

8. On 31 August 2021 the Chamber of the Second Section, composed of Jon Fridrik Kjølbro, President, Carlo Ranzoni, Aleš Pejchal, Egidijus Kūris, Branko Lubarda, Marko Bošnjak, Saadet Yüksel, judges, and Hasan Bakırcı, Deputy Section Registrar, relinquished jurisdiction in favour of the Grand Chamber (Article 30 of the Convention and Rule 72).

9. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

10. The President granted leave to submit written comments to the Háttér Society and, jointly, to Professor David Kaye, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) and ARTICLE 19 (Article 36 § 2 of the Convention and Rule 44 § 3).

11. A hearing took place in public in the Human Rights Building, Strasbourg, on 23 March 2022.

There appeared before the Court:

(a) *for the Government*

Ms	K. BUBNYTĖ-ŠIRMENĖ,	*Agent*,
Ms	N. BRUSKINA,	*Adviser*;

(b) for the applicant

Mr	R. WINTEMUTE,	*Counsel*,
Mr	M. DINGILEVSKIS,	*Adviser*.

The Court heard addresses by Ms Bubnytė-Širmenė and Mr Wintemute, as well as their replies to questions put by judges.

THE FACTS

I. PUBLICATION OF THE APPLICANT'S BOOK

12. The applicant, who was openly homosexual, was a professional writer and a specialist in children's literature.

13. In December 2012 the publishing house of the Lithuanian University of Educational Sciences (hereinafter "the University"), a public university, applied to receive funding from the Ministry of Culture for the publication of a book written by the applicant – a collection of original fairy tales aimed at children of younger school age. In the application for funding, it was stated that the fairy tales would be based on traditional fairy-tale motifs but would depict members of various marginalised groups, with the aim of teaching children to accept those who looked or lived differently. The fairy tales had been reviewed by an educator and by a children's author; the reviewers considered them to be suitable for primary school-age children and emphasised the need to foster tolerance towards stigmatised social groups. Moreover, according to the reviewers, such fairy tales were undoubtedly necessary, in view of the prevalence of bullying and violence among children in Lithuania and the lack of similar literature aimed at the youngest readers.

14. In May 2013 the University signed a contract with the Ministry of Culture, whereby the Ministry agreed to provide partial funding for the publication. The University undertook to publish the book and to distribute 140 copies to public libraries across the country.

15. In December 2013 the University's publishing house published the book *Amber Heart* (*Gintarinė širdis*), which contained six fairy tales. They depicted characters from different ethnic groups or with intellectual disabilities, and addressed issues such as stigmatisation, bullying, divorced families and emigration. Most of the fairy tales contained some depiction of loving committed relationships between men and women. In two of the six fairy tales, the main storylines concerned relationships and marriages between persons of the same sex.

16. The fairy tale "The Three Princes' Search for Wisdom" told the story of a king who sent his three sons out into the world. The two elder princes each met an enchanted maiden and ended up marrying her, whereas the youngest one arrived at a city whose inhabitants were dark-skinned and fell in love with a male tailor. The text of the fairy tale included the following:

> "The prince and the tailor stayed at the castle. No one even noticed that the tailor had slightly darker skin than other people. And it did not bother anyone that the two young men held hands and exchanged loving glances while they walked in the royal garden. So it was in this kingdom: everyone knew that the heart wants what it wants and loves whom it loves.
>
> ...
>
> As soon as everyone sat down, the marshal made an announcement.
>
> 'The king's eldest son and his wife!' ... 'The middle son of our king and his wife!' ... 'The youngest son of our king and his husband!' ...
>
> The king's third son stepped in with the young tailor ... [It] was still odd for [the guests] to see the two young men holding hands. The queen understood and smiled.
>
> 'And as for this, well, the heart wants what it wants. And when the heart speaks, we have to listen. Otherwise, there won't be any peace or joy in life.'

‘These are words of wisdom,’ the guests agreed. ‘It is a great honour to be invited by such wise sovereigns. No wonder your kingdom thrives,’ they added ...

...

After the celebration was over, the guests returned to their homes ... and [told] all their friends and neighbours that the young tailor had found the love of his life and that it happened to be a son of a king. And that was a great honour because that king was very wise ...”

17. Another fairy tale, “The Princess, the Shoemaker’s Daughter and the Twelve Brothers”, told the story of a princess who rejected numerous male suitors and cursed them by turning them into nightingales. Eventually she married her childhood friend – a shoemaker’s daughter. After their wedding, the princess learned that the twelve brothers of the shoemaker’s daughter had been among those whom she had turned into nightingales. The two young women travelled to a foreign country where love was forbidden and where the nightingales had been caged in the castle of the evil king. They disguised themselves as a gardener and a cook and found work in the king’s castle, where they eventually succeeded in reversing the spell cast on the twelve brothers. The text of the fairy tale included the following:

“The shoemaker’s daughter hugged the princess and repeated the words of the oath, ‘Do you agree now to be with me until death do us part?’

‘I will love you for a lifetime,’ said the princess with a relieved heart ...

But after the first night, the shoemaker’s daughter looked sad and pale. No wonder: as soon as the happy princess fell asleep with the shoemaker’s daughter in her arms, a nightingale flew to the window, sat in the bush, and began to sing. The shoemaker’s daughter listened to the sad melody until the morning and thought of her brothers. The following night, two nightingales flew in and again prevented the shoemaker’s daughter from going to sleep. The shoemaker’s daughter didn’t want to say anything to the princess. She just shook her head sadly.

This pattern of events lasted for eleven nights. Each night, a new nightingale joined the singers. The princess did not wait for them to arrive. Once the sun went down, the princess always fell into a deep sleep. She did not notice the shoemaker’s daughter escaping from her embrace and going to the window to listen to the song of the nightingales. But in the morning, the shoemaker’s daughter would always be sad.

...

When [the princess and the shoemaker’s daughter] met in the rose garden, they hid behind a bush and embraced. They missed each other so much ...

Suddenly, the rosebush parted and the king appeared in front of them.

‘What do I see?’ he shouted. ‘My gardener is kissing my cook! You have violated the laws of this country. It is forbidden to love here. Is it not clear that families are meant only for continuation of kin and to have somebody inherit their wealth? For this crime, you will be publicly burned at the stake to set an example for others.’ ...”

18. The University published 500 copies of the book. It delivered 140 copies to sixty-six public libraries and another 130 to bookshops; of the

latter, over eighty copies were sold. In February 2014 the University presented the book at the Vilnius Book Fair.

II. MEASURES TAKEN WITH REGARD TO THE BOOK

19. On 1 March 2014 one of the biggest national newspapers, *Lietuvos rytas*, published an article entitled "Fairy tales about non-traditional love – in children's backpacks". It contained a description of the two fairy tales from the book which dealt with same-sex relationships and an interview with the applicant which focused on those two fairy tales. The applicant spoke about her experience of working with children who had been victims of bullying and about her wish to foster respect for all people and all families. It was mentioned that she was a children's author with over fifteen years' experience and that she was openly lesbian. The article also included comments from two members of the Lithuanian Parents' Forum, an association, who expressed strong criticism of the fact that stories about same-sex relationships were being presented to children.

20. On 3 March 2014 the Registry of the Government received an email from an individual alleging that the book was "encouraging perversions", and forwarded it to the Ministry of Culture. The Ministry requested the Inspectorate of Journalist Ethics (hereinafter "the Inspectorate") to assess whether the book might be harmful to children.

21. On 20 March 2014 eight members of the *Seimas* (the Lithuanian Parliament) sent a letter to the rector of the University, in which they referred to the article in *Lietuvos rytas* (see paragraph 19 above). The letter stated that the Lithuanian Parents' Forum and other organisations representing families had expressed their concerns about the distribution of any books which "sought to instil in children the idea that marriage between persons of the same sex was a welcome phenomenon". The members of the *Seimas* stated that they were surprised by the fact that the applicant's book had been financed by the Ministry of Culture and published by the University. They asked the rector to explain whether the book complied with the University's policy regarding the education of children.

22. On 27 March 2014 the rector ordered the University's publishing house to suspend the distribution of the book. All the copies which had not yet been distributed to shops or public libraries, as well as all unsold copies in shops, were returned to storage at the University. The only copies which were not recalled were those which had already been distributed to libraries.

23. On 8 April 2014 the Inspectorate presented its conclusions to the Ministry of Culture, finding that the two fairy tales which depicted same-sex couples contained information which was harmful to minors, as provided in section 4 § 2 (16) of the Act on the Protection of Minors from Negative Effects of Public Information (hereinafter "the Minors Protection Act"). The relevant parts of the Inspectorate's conclusions read as follows:

"Please be informed that the experts under the Inspector of Journalist Ethics who assess the impact of public information on minors have evaluated the information (fairy tales) published in the book *Amber Heart* and found that the information published in the fairy tales 'The Three Princes' Search for Wisdom' [and] 'The Princess, the Shoemaker's Daughter and the Twelve Brothers' falls into the category of information having a negative impact on minors – it meets the criterion laid down in section 4 § 2 (16) of the [Minors Protection Act] (it encourages a different concept of marriage and creation of family from the one enshrined in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania).

An attitude, as formed in the two fairy tales, that same-sex couples can create a family is incompatible with the Constitution of the Republic of Lithuania, which provides that marriage is to be concluded upon the free mutual consent of a man and a woman (Article 38), and the Civil Code of the Republic of Lithuania, in accordance with which marriage may be contracted only with a person of a different sex (Article 3.12).

It should be noted that the Act defines 'encouraging' as tendentious information which urges minors to take specific actions or to acquire or change their habits, attitudes, preferences or behaviour (section 2 § 5 of the Act). The information contained in the fairy tales, not only because of its content, but also because of its form (the fairy tale reflects reality through fantastical images; its seemingly naïve content and its attractive form convey the information in a way that is comprehensible to the child), is purposeful – it is aimed, among other things, at changing attitudes and/or behaviour.

Experts point out that pre-school children and primary school pupils show a more gradual progression towards maturity. At a time marked by magical, symbolic thinking and a vivid imagination, and the introduction of the foundations of ethical-moral values, the perception and knowledge of one's own gender and the perception and understanding of gender differences, fairy tales that portray the relationship between same-sex couples as normal and self-evident are harmful to a child's fragile, nascent worldview and are overly invasive, directive and manipulative.

In the light of the arguments put forward, the experts are of the opinion that the information published in the book, which fulfils the criterion laid down in section 4 § 2 (16) of the Act, has a negative impact on persons under the age of 14 ...

The Inspector notes that, according to the experts' opinion, the dissemination of information which has a negative impact on minors, contained in the book *Amber Heart*, is not prohibited, but in order to protect the interests of minors under the age of 14, the dissemination of such information must be restricted, that is to say, if the book is distributed in a place to which minors may have access, it must be distributed in binders or packaging the design of which does not adversely affect the development of minors and on which an appropriate warning label 'Information may have a negative impact on persons under the age of 14' or 'N-14' must be clearly visible."

24. The Ministry of Culture forwarded the Inspectorate's conclusions to the University and requested it to take the measures which the Inspectorate had recommended.

25. In May 2014 the rector of the University informed the eight members of the *Seimas* (see paragraph 21 above) that the impugned fairy tales did not comply with the University's policy regarding the education of children and that the head of its publishing house had been given a disciplinary penalty.

26. In May 2014, in an article published on the website of the Lithuanian Human Rights Centre, a non-governmental organisation, the applicant

pointed out that, in addition to the two same-sex relationships, the book also depicted eight loving relationships between persons of different sex – thus, she contended that there were no grounds to claim that the book sought to promote one particular family model. The article also quoted a representative of the University, who described the two impugned fairy tales as harmful and amounting to "primitive and biased propaganda of homosexuality" and stated that the University deeply regretted publishing them. The representative of the University furthermore stated that "according to scientists, teachers and educators, children who are too young to have an interest in certain social issues, such as narcotic drugs or different sexual orientations, should not be forcibly exposed to information about them".

27. On 30 May 2014 the Inspectorate held a meeting with a group of experts, consisting of two lawyers and a children's psychiatrist. They reiterated and confirmed the conclusions previously reached by the Inspectorate (see paragraph 23 above).

28. In July 2014 the applicant lodged a complaint with the administrative courts, asking them to set aside the Inspectorate's conclusions of 8 April 2014 and the instruction given by the Ministry of Culture to the University to implement the Inspectorate's recommendations (see paragraphs 23 and 24 above). The Vilnius Regional Administrative Court refused to accept the complaint for examination. It held that the impugned documents did not contain any orders that were binding on the addressees and thus no complaints against them could be lodged with the courts. Furthermore, the contract regarding the publication of the book had been signed between the Ministry of Culture and the University (see paragraph 14 above), the applicant had not been a party to that contract, and therefore the impugned documents had not affected her rights or obligations. The applicant did not appeal against that decision.

29. In October 2014 the University contacted the sixty-six public libraries to which copies of the book had been delivered and asked them to mark each copy with a warning label stating that it contained information which could be harmful to children under the age of 14. From the information provided by the Government it appears that several libraries decided not to mark the books with the labels. The Government also submitted that the book remained available at the biggest library of Lithuania, the Martynas Mažvydas National Library, without any age-based restrictions and that it was listed in that library's catalogue as aimed at five to ten-year-old children.

30. From May to November 2014 the book was available free of charge on the website of the Lithuanian Human Rights Centre. In December 2014 a second edition, consisting of 600 copies, was published by several non–governmental organisations. This edition was distributed in bookshops and libraries without any warning labels and with a sticker depicting a rainbow flag. There is no indication that any measures were taken against the publishers or the distributors of the second edition.

31. On 25 March 2015 the rector of the University ordered the publishing house to resume the distribution of the book in accordance with the recommendations of the Inspectorate. The copies of the book which had been published but not yet distributed had to be marked with warning labels stating that the book contained information which could be harmful to children under the age of 14.

32. At the material time, the relevant legislation provided that failure to comply with the requirements for labelling or distributing published material which was harmful to minors was punishable by a warning or a fine (see paragraph 89 below).

III. DOMESTIC COURT PROCEEDINGS

A. The first set of proceedings

1. The parties' submissions

(a) The applicant

33. In October 2014 the applicant lodged a civil claim against the University in which she complained about the decision to suspend the distribution of the book (see paragraph 22 above). Following the University's decision to resume the distribution of the book and to mark it with warning labels (see paragraph 31 above), she complained about the latter measure as well.

34. The applicant submitted that the University's decisions had been motivated by its hostility towards her sexual orientation and towards the positive depiction of same-sex relationships in two of the six fairy tales, as demonstrated by various statements made by the University (see paragraphs 25 and 26 above). She also submitted that the Inspectorate's conclusions had not been legally binding on the University and that the University had taken the impugned decisions on its own initiative.

35. The applicant further contended that none of the fairy tales encouraged any kind of harmful behaviour or contradicted the concept of family as it was understood in the case-law of the Constitutional Court (see paragraph 98 below) and argued that they were suitable for children of all ages.

(b) The University

36. The University submitted that, being the publisher of the book, it had to comply with the provisions of the Minors Protection Act. It stated that the letter sent to it by several members of the *Seimas* (see paragraph 21 above) had raised reasonable doubts as to whether the contents of the book complied with the requirements of the Act, and for that reason it had temporarily suspended the book's distribution.

37. The University further stated that the Inspectorate was the authority tasked with monitoring the compliance of public information with the relevant legal requirements, and it had concluded that the book did not meet those requirements. Therefore, the University had to comply with the Inspectorate's conclusions as long as they had not been set aside by the courts.

38. Moreover, the University denied that its actions had been in any way motivated by discrimination. It submitted that the impugned measures had been taken because of the book's possible harm to children, who "may be unable to understand the phenomena discussed therein".

(c) The third parties

39. The Ministry of Culture and the Inspectorate, which were third parties in the proceedings, opposed the applicant's claim on grounds similar to those relied on by the University. The Inspectorate pointed out that the University was under an obligation to comply with the Minors Protection Act and the Rules for marking and distributing public information which may be harmful to the development of minors (see paragraphs 82, 84, 91 and 92 below), and that a failure to comply with the requirements of those instruments could lead to its being held liable under the law (see paragraph 89 below).

2. Decisions of the courts

(a) The first-instance and appellate courts

40. On 16 April 2015 the Vilnius District Court dismissed the applicant's claim. It held that the University had not undertaken an obligation towards the applicant to distribute the book in any specific manner, and in the absence of such an obligation, its decisions on how to distribute the book could not have amounted to discrimination against her. On 2 March 2016 the Vilnius Regional Court upheld that decision. It also stated that the decisions taken by the University had not been based on any discriminatory considerations but on objective grounds – namely, the University's obligation to comply with the Minors Protection Act and with the instructions issued by the Ministry of Culture and the Inspectorate.

(b) The Supreme Court

41. On 6 December 2016 the Supreme Court quashed the decisions of the lower courts and remitted the case for fresh examination. It found that those courts, when applying section 4 § 2 (16) of the Minors Protection Act, had failed to examine whether the applicant's book indeed promoted a different understanding of marriage and creation of family from that which was enshrined in the Constitution and the Civil Code, or whether it merely sought to encourage tolerance towards persons of different sexual orientations. The Supreme Court further held:

"36. ... [A]lthough the courts found that the parties did not have a publishing agreement, the courts unreasonably disregarded the established fact that [the University] had in fact distributed [the applicant's] book ...

37. Moreover, the courts which examined the case, when dealing with [the applicant's] argument that the distribution of her book had been stopped on discriminatory grounds on the basis of sexual orientation, rejected that argument on the sole ground that [the University] had the right not to distribute the book and therefore, there was no basis for a finding of discrimination. The courts did not investigate at all the circumstances of discrimination alleged by [the applicant], and unjustifiably shifted onto her the burden of proving discrimination ... [The applicant] submitted that [the University] had discriminated against her by suspending the distribution of the book on the basis of the letter ... of the Ministry of Culture of 24 April 2014 and the letter of the Inspectorate of Journalist Ethics of 8 April 2014, which stated that the information contained in the book had a negative impact on minors, that is to say, it created the notion that a family could be formed by people of the same sex.

38. In this connection, it is necessary to draw attention to the case-law of the ECtHR on the protection of the interests of minor children in the context of the dissemination of information about homosexuality ... In its case-law, the ECtHR, when analysing the necessity of restricting freedom of expression (Article 10 of the Convention) in a democratic society, focuses on the analysis of the content of the work and publication, their individual elements (such as text or illustrations) and their possible impact on minors, society and morality (not in a generalised way, but arguing those aspects in detail), the extent of the restriction imposed and its objective necessity (including consideration of the need for various possible measures, such as special labels or packaging) (see, for example, *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24; *Vejdeland and Others v. Sweden*, no. 1813/07, 9 February 2012; and *Kaos GL v. Turkey*, no. 4982/07, 22 November 2016).

39. The ECtHR has also noted on numerous occasions that discrimination based on sexual orientation is just as serious as racial or ethnic discrimination. The ECtHR has interpreted the general principles under Article 14 of the Convention (prohibition of discrimination), according to which, in order for the issue raised to trigger the application of Article 14, there must be a difference in treatment between persons in similar (comparable) situations. Such unequal/different treatment is considered discriminatory if it does not have an objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the measures taken and the aim pursued. The State has a margin of appreciation in assessing whether and to what extent differences in similar situations justify unequal treatment (see, among other authorities, *Schalk and Kopf v. Austria*, no. 30141/04, § 96, ECHR 2010; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 76, ECHR 2013 (extracts); and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008).

40. The ECtHR has repeatedly stated that differences based on sexual orientation, like those based on gender, require 'particularly compelling and weighty justification' (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 90, ECHR 1999-VI, and *L. and V. v. Austria*, nos. 39392/98 and 39829/98, § 45, ECHR 2003-I, cited in *Vallianatos and Others*, § 77). When unequal treatment is based on the grounds of gender or sexual orientation, the limits of the State's margin of appreciation are narrow. Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *E.B. v. France* [GC], no. 43546/02, §§ 93 and 96, 22 January 2008, cited in *Vallianatos and Others*, § 77).

41. In the present case, the appellate court relied on the letter of the Inspectorate of Journalist Ethics of 8 April 2014 in order to justify the negative impact of the book on minors and considered it to be binding; however, the court did not carry out an independent assessment of the [Inspectorate's] conclusion on the impact of the book on minors, nor did it investigate and assess the content of the book itself, or assess the impact of the book on minors and the proportionality of the limitation imposed on it. These circumstances are relevant in the light of Article 14 of the Convention read in conjunction with Article 10. The panel of judges notes that the Vilnius Regional Administrative Court, in its decision of 24 July 2014 ... stated that the letter of the Inspectorate of Journalist Ethics was of a recommendatory nature only and was not binding on [the University]. This letter is not binding on the court examining the case either, but it (the letter) is written evidence and must be considered together with other evidence.

42. The above-mentioned infringements of procedural law by the appellate court may have contributed to the adoption of an unlawful decision in the case (Article 346 § 2 (1) of the Code of Civil Procedure). Therefore, the decision ... of the Vilnius Regional Court of 2 March 2016 must be quashed ..."

B. The second set of proceedings

1. Proceedings before the Vilnius District Court

(a) The parties' submissions

(i) The applicant

42. During the fresh examination of the case by the Vilnius District Court, the applicant reiterated the arguments which she had presented in her initial claim (see paragraphs 33-35 above). In addition, she submitted that the book, before its publication, had been assessed by specialists in literature, psychology, educational science and other relevant fields, and they had not had any objections to its content. By contrast, the University had not demonstrated that the impugned decisions had been based on any relevant expert assessment.

43. She also submitted to the court an opinion of a clinical psychologist, who stated that the book did not include any content which had been scientifically proven to cause harm to children. According to the psychologist, greater harm could be caused by the prohibition on talking about homosexuality in children's literature and on encouraging understanding and acceptance of homosexual persons, who were still being stigmatised and discriminated against in Lithuania. The psychologist pointed out that homosexuality was not considered a mental disorder by the relevant specialist bodies, such as the American Psychiatric Association and the American Psychological Association; nor was it included in the World Health Organization's classification of diseases, which was used in Lithuania. Furthermore, there was a scientific consensus that a person did not choose his or her sexual orientation. Therefore, fairy tales depicting same-sex relationships could not be considered harmful.

44. In addition, the applicant submitted to the court an opinion of the Human Rights Monitoring Institute, a non-governmental organisation. This opinion referred to the case-law of the Court, according to which social acceptance of homosexual persons was not irreconcilable with respect for family values, and there was no evidence that the mere mention of homosexuality, or an open discussion about the social status of sexual minorities, could have a negative effect on children (references were made to, among other authorities, *Alekseyev v. Russia*, nos. 4916/07 and 2 others, 21 October 2010, and *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, 20 June 2017).

45. Moreover, the applicant argued that although the text of section 4 § 2 (16) of the Minors Protection Act appeared to be neutral, in practice it was relied on exclusively with the aim of limiting the freedom of expression of homosexual persons. Therefore, it gave rise to indirect discrimination.

46. Lastly, she submitted that she was a specialist in children's literature with extensive experience in that field, but the impugned decisions of the University had demonstrated mistrust in her competence and thus harmed her professional reputation.

(ii) The University

47. The University submitted that the impugned measures had not been based on any discriminatory considerations but on objective grounds. It stated that the positions expressed by members of the *Seimas*, the Inspectorate and the Ministry of Culture (see paragraphs 21, 23 and 24 above) had given it sufficient grounds to believe that the book contained information which could be harmful to children. Thus, it had taken the impugned measures in order to avoid violating the Minors Protection Act. The University contended that any further distribution of the book was only possible after it had been marked with warning labels, unless the court ruled that it did not contain any harmful information.

(iii) Institutions providing an expert assessment

48. The Vilnius District Court changed the procedural status of the Inspectorate from a third party to an institution providing an expert assessment and requested it to assess whether the information contained in the book complied with the provisions of the Minors Protection Act. The Inspectorate delivered its assessment to the court, in which it reiterated its previous conclusions (see paragraphs 23 and 27 above).

49. The court also requested the Office of the Ombudsperson for Children's Rights to provide an expert assessment of the book. That institution stated that it did not have the competence to assess the contents of literature or other types of public information. Nonetheless, it emphasised the importance of protecting children from being exposed to possibly harmful

information and considered that warning labels were generally a useful and necessary tool to enable parents to decide which information their children should have access to, in accordance with the child's age, mental and emotional maturity, and the family's values. It also stated that it was not familiar with any scientific research concerning the effects which exposure to information about same-sex relationships might have on children.

(b) The Vilnius District Court's decision

50. On 2 March 2018 the Vilnius District Court dismissed the applicant's claim. It found that the University had fulfilled its obligations, arising from the contract with the Ministry of Culture, to publish the book and distribute a certain number of copies to public libraries (see paragraphs 14 and 18 above), and that it had not undertaken any obligation *vis-à-vis* the applicant as to how the book should be distributed.

51. When assessing whether the measures taken with respect to the book had been justified, the court firstly observed that the Inspectorate, which was the authority charged with supervising how publishers complied with the Minors Protection Act (see paragraph 85 below), had concluded that the book did not comply with section 4 § 2 (16). It further stated:

> "The court notes that, in accordance with Article 38 § 3 of the Constitution of the Republic of Lithuania, marriage is to be concluded upon the free mutual consent of a man and a woman. In accordance with Article 3.7 § 1 of the Civil Code, marriage is a voluntary agreement between a man and a woman to create legal family relations ... These provisions mean that in the Republic of Lithuania, a family is considered to be a union freely entered into by persons of different sex, and this is the way in which the concept of family is understood by the majority of society. One has to agree with the experts who state that pre-school children and primary school pupils have a more gradual progression towards maturity. During the examination of the case, [the applicant] stated that her book *Amber Heart* was aimed at nine to ten-year-old children. The court notes that the maturity of children of this age is presumably low and that children of this age are beginning to take an interest, albeit unconsciously, in the characteristics of the opposite sex. As the child learns that people of the same sex can love each other, that '... the heart wants what it wants and loves whom it loves ...', '... the youngest son of our king and his husband ...', '... The king's third son stepped in with the young tailor ...', '... the guests ... [told] all their friends and neighbours that the young tailor had found the love of his life and that it happened to be a son of a king. And that was a great honour because that king was very wise ...', '"I will love you (the shoemaker's daughter) for a lifetime," said the princess with a relieved heart ...', '... after the first night, the shoemaker's daughter looked sad and pale. No wonder: as soon as the happy princess fell asleep with the shoemaker's daughter in her arms ...', '... she (the princess) did not notice the shoemaker's daughter escaping from her embrace ...', '"I will do anything for my beloved to regain her lost brothers!" cried the princess ...', '... When [the princess and the shoemaker's daughter] met in the rose garden, they hid behind a bush and embraced. They missed each other ...', ... it can be argued that this influences the formation of [the child's] personality (including sexuality). [The applicant] has not put forward convincing arguments as to why this type of information should not be provided to minors [only] after they reach a certain age, as in this case, the age of 14. Apparently [*matyt*], this age limit is set by professionals on the basis of

objective criteria, and we can see warnings about the age restriction in visual material such as films ('N-7', 'N-14')."

52. The Vilnius District Court emphasised that it was necessary to strike a fair balance between two competing values – the applicant's right to freedom of expression and the need to protect children from potentially harmful information. The interests of parents, who were primarily responsible for the upbringing of their children, also had to be taken into account. The court considered that the impugned decision had not had a disproportionate effect on the applicant's freedom of expression because the book had not been banned or removed from distribution. Lastly, with regard to the applicant's complaint that the University's actions had been discriminatory, the court held as follows:

"The court, having found that the restriction imposed was well-reasoned, concludes that the University did not intend to discriminate against [the applicant] and that ... it imposed the impugned restriction on the basis of an opinion of a public authority, in order to protect the interests of minors ... The court points out that the book *Amber Heart* was partly financed by the State budget and that [the University], which is bound by an agreement with the Ministry of Culture, should not be obliged to distribute the work by any means whatsoever, at its own expense, on the sole basis of the fact that [the applicant] believes that it is discriminatory, disregarding the conclusion of the competent authorities that the information contained in the book is harmful to minors under the age of 14.

...

In the light of the foregoing, the court concludes that, by ... resuming the distribution of the book *Amber Heart* with additional information on the restriction of its distribution to persons under the age of 14, in accordance with the assessment made by the Inspectorate of Journalist Ethics, the University followed the recommendation of the competent public authority, and there are no grounds to conclude that the University has a negative attitude towards [the applicant] on the basis of her sexual orientation. It should be pointed out that the dispute arose out of the book, that is to say, the information contained therein, and its potential impact on persons under the age of 14, and not out of the fact that the University (or its representative) had expressed dissatisfaction with [the applicant's] personality, which could be regarded as discrimination (section 2 § 1 of the Equal Treatment Act)."

2. Proceedings before the Vilnius Regional Court

(a) The parties' submissions

53. The applicant lodged an appeal against the above-mentioned decision, in which she presented essentially the same arguments as before (see paragraphs 33-35 and 42-46 above). In addition, she argued that the first-instance court had not properly assessed the book's contents, had relied exclusively on the Inspectorate's conclusions, and had not explained why it had considered certain sentences in the impugned fairy tales (see paragraph 51 above) to be harmful to children, rather than encouraging diversity and tolerance. She further contended that it had not followed the case-law of the European Court of Human Rights and that it had disregarded

the opinion of the psychologist which she had submitted (see paragraph 43 above).

54. In its reply, the University submitted, *inter alia*, that as long as section 4 § 2 (16) of the Minors Protection Act was in force, it had no choice but to comply with it, irrespective of any alleged conflict between that legal provision and the case-law of the Court.

(b) The Vilnius Regional Court's decision

55. On 19 February 2019 the Vilnius Regional Court dismissed the applicant's appeal. It firstly addressed her arguments concerning discrimination and held as follows:

> "45. Although [the applicant] argues that the distribution of the book was stopped on discriminatory grounds of sexual orientation, the answers of [the University's] representative to the journalist's questions [in the article published on the website of the Lithuanian Human Rights Centre] show that [the University's] perception of the problem of values was not due to the book's depiction of same-sex relationships, but rather to the inappropriate form of the presentation of cohabitation. [The University] considered the fairy tale 'The Princess, the Shoemaker's Daughter and the Twelve Brothers' to be harmful not because of the sexual orientation of the princess and the shoemaker's daughter, but because of the strong emphasis on the disclosure of sexual desire, thus promoting same-sex relationships ...
>
> 46. The panel of judges notes that throughout the period following the suspension of the distribution of the book, [the University's] representatives were extremely cooperative with [the applicant] and did not express any discriminatory attitudes towards her ... [The applicant] was offended only when [the University] offered to continue distributing the book with the label 'N-14'.
>
> ...
>
> 50. It should also be noted that the publisher of the book is the former Lithuanian University of Educational Sciences, whose activities were subject to extremely high ethical standards owing to its vision of education; therefore, suspending the distribution of the book while seeking to clarify the situation is in line with the principle of reasonableness (Article 1.5 of the Civil Code) and does not have a discriminatory context. The situation was fully in line with the principle of good administration when, after receiving a letter from the Ministry of Culture of the Republic of Lithuania, as a legal entity that had provided funding from the State budget, [instructing it] to restrict the distribution of the book ..., [the University] suspended its distribution.
>
> 51. In the absence of a discriminatory causal link between [the University's] conduct and the consequences (suspension of the distribution of the book) (Articles 6.246-6.249 of the Civil Code), [the applicant's] complaint concerning the suspension of the distribution of the book on discriminatory grounds is dismissed ..."

56. When addressing the proportionality of the impugned restrictions, the Vilnius Regional Court held that the first-instance court had properly assessed the harm which the book could cause to children. It quoted the conclusion reached by the Inspectorate that the two impugned fairy tales were harmful to minors, within the meaning of section 4 § 2 (16) of the Minors Protection Act, and the arguments on which the Inspectorate had relied when reaching

that conclusion (see paragraph 23 above). In the court's view, the opinion of the psychologist submitted by the applicant (see paragraph 43 above) could not refute the Inspectorate's findings because it was not clear what criteria the psychologist had used to assess the contents of the book. The court further stated:

> "57. During the examination of the case, [the applicant] stated that her book *Amber Heart* was aimed at nine to ten-year-old children. [She] explained in [the annotation printed at the end of the book] that fairy tales had an educational and didactic function: by interpreting the motifs of traditional fairy tales, new models were created, teaching [children] to accept differences in the appearance and lifestyles of others ...
>
> 58. The panel of judges, having familiarised themselves with the content of a collection of traditional Lithuanian folk tales, *Sigutė*, point out that, for example, in the fairy tale 'About Twelve Brothers Flying as Black Crows' they did not find any scenes of sleeping together on the first night, hugging, or any other detailed depiction of physical love. Meanwhile, in the fairy tale 'The Princess, the Shoemaker's Daughter and the Twelve Brothers' there is such a depiction: '"I will love you (the shoemaker's daughter) for a lifetime," said the princess with a relieved heart ...', '... after the first night, the shoemaker's daughter looked sad and pale. No wonder: as soon as the happy princess fell asleep with the shoemaker's daughter in her arms ...', '... she (the princess) did not notice the shoemaker's daughter escaping from her embrace ...' ...
>
> 59. ... [If] a traditional fairy tale is being interpreted, it should be borne in mind that for Catholic society the number twelve has a certain symbol of sacredness. Consequently, the fairy tale chosen for interpretation and the form in which its contents are presented should be such ... as not to necessitate the protection of other values.
>
> 60. Similarly, the fairy tale 'The Three Princes' Search for Wisdom', referred to by both the experts and the court, is not aimed at demonstrating a new model, but at assessing it, forming a certain attitude towards gender: '... the guests ... [told] all their friends and neighbours that the young tailor had found the love of his life and that it happened to be a son of a king. And that was a great honour because that king was very wise ...' ... The question then arises as to whether [the applicant] herself does not seek to discriminate against members of society who hold different values.
>
> ...
>
> 63. In the present case, the first-instance court concluded that [the applicant] had not put forward convincing arguments as to why this type of information should not be made available to minors [only] after they reached a certain age, such as, in the present case, the age of 14, and therefore decided that the marking of the copies of the book *Amber Heart* with a warning label stating that 'Information may have a negative impact on persons under the age of 14' constituted a proportionate restriction of her rights. The panel of judges agrees with this conclusion, as parents are responsible for the primary socialisation of children; therefore, before purchasing a book, they should first assess its content, about which sufficient information should be provided (Article 26 § 3 of the Constitution). In fact, the information contained in the letter of the Inspectorate of Journalist Ethics performed the function of a book review, which cannot be considered discriminatory against [the applicant]. The distribution of the book was not prohibited, the distributed copies of *Amber Heart* were not removed from libraries, [and] no attempt was made to return the books that had been sold. The decision to mark the book with a warning label is a proportionate measure aimed at protecting the interests of children, which is also a constitutional value (Articles 38 and 39 of the Constitution).

> 64. A fairy tale is a genre of literature: usually a plot-driven work of literature characterised by supernatural characters, magical objects, non-existent places, and so on ... Consequently, this genre should not be based on details that directly show the carnal aspect of life. Thus, the marking of copies of *Amber Heart* with the warning 'Information may have a negative impact on persons under the age of 14' is based not on the fact that it depicts a same-sex model of life, but on the fact that it is portrayed in a way that is too explicit for nine to ten-year-old children."

57. Lastly, the Vilnius Regional Court upheld the conclusion of the lower court that, when ordering the impugned measures, the University had complied with an instruction given by the public authority empowered to do so under the Minors Protection Act, and that it had relied on the entirety of the available evidence.

3. Proceedings before the Supreme Court

58. The applicant lodged an appeal on points of law, in which she relied on essentially the same arguments as those which she had presented before the lower courts (see paragraphs 33-35, 42-46 and 53 above). In addition, she submitted that the findings of the Vilnius Regional Court that the book depicted physical love too explicitly or that it sought to discriminate against persons holding different values had disregarded the book as a whole and were unfounded.

59. On 24 May 2019 the Supreme Court refused to accept for examination the applicant's appeal on points of law, on the grounds that it did not raise any important legal questions.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. Constitution

60. The relevant provisions of the Constitution state:

Article 25

> "Everyone shall have the right to have his own convictions and freely express them.
>
> No one shall be hindered from seeking, receiving or imparting information and ideas.
>
> The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life or morals, or to defend the constitutional order.
>
> The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation ..."

Article 29

"All persons shall be equal before the law, courts, and other State institutions and officials.

Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views."

Article 38

"The family shall be the basis of society and the State.

Family, motherhood, fatherhood and childhood shall be under the protection and care of the State.

Marriage shall be concluded upon the free mutual consent of a man and a woman.

...

The right and duty of parents shall be to bring up their children to be honest people and faithful citizens, and to support them until they reach the age of majority ..."

Article 40

"...

Schools of higher education shall be granted autonomy.

The State shall supervise the activities of establishments of teaching and education."

B. Civil Code

61. In line with Articles 3.7 and 3.12 of the Civil Code, a marriage may be concluded only between a man and a woman.

62. Chapter XV of Book 3 of the Civil Code regulates registered civil partnerships between different-sex couples. As stated in the Act on the Approval, Entry into Force and Implementation of the Civil Code, the provisions of Chapter XV of Book 3 will enter into force when a law on civil partnership is enacted, but no such law has been enacted to date. On 25 May 2021 a draft law on civil partnerships, which would be available to both same-sex and different-sex couples, was presented to the *Seimas*. However, at the first reading, it did not attain enough votes to progress to the next legislative stage. On 26 May 2022 a new draft law on civil partnerships was presented to the *Seimas* and, after a vote, progressed to the next legislative stage. At the time of the adoption of this judgment, the *Seimas* had not yet voted on whether to pass the law.

63. Lithuanian legislation does not provide for any other possibility of legal recognition of same-sex unions.

C. Science and Education Act

64. Section 7 § 3 of this Act states, *inter alia*, that a public university is a public-law entity which functions as a public institution.

65. Section 8 § 1 provides that universities have autonomy which covers their academic, administrative, economic and financial activities and which is based on the principles of self-governance and academic freedom. Under section 8 § 2 (7), universities have the right to publish educational, scientific and other literature.

D. Equal Treatment Act

66. Section 2 § 1 defines discrimination as direct or indirect discrimination, harassment or an order to discriminate against someone on the grounds of, *inter alia*, his or her sex, race, national or ethnic origin, social status, religion, belief, convictions or views, age, sexual orientation or disability.

67. Under section 4, when allegations of discrimination are examined by the courts or other authorities, once the claimant indicates the circumstances which give grounds to believe that direct or indirect discrimination has occurred, that fact is presumed and the burden shifts to the defendant to demonstrate that there has been no discrimination.

E. Act on the Protection of Minors against Negative Effects of Public Information (Minors Protection Act)

1. Legislative history

68. The Minors Protection Act was enacted on 10 September 2002 and entered into force on 18 September 2002. At that time, section 4 § 1 provided a list of categories of information which was considered to be harmful to minors' physical, intellectual or ethical development. Under section 4 § 1 (3), that included information which was of an erotic nature and, *inter alia*, encouraged sexual desire or depicted sexual intercourse. The Act did not contain any provisions related to the depiction of homosexuality or same-sex relationships, or provisions referring to the concept of family or to family values.

(a) Proposed amendment of 2006

69. In 2006 several members of the *Seimas* introduced a proposal to amend section 4 § 1 of the Minors Protection Act by expanding the list of categories of harmful information and including in it, *inter alia*, information which "is related to encouraging homosexual relations". The explanatory report stated that the proposal had been prompted by citizens' complaints about the recently increasing "promotion of relationships between persons of

non-traditional sexual orientation" in the mass media, where such relationships were often presented as "a norm of life or an example to be followed". According to the explanatory report, since the worldview of minors was not yet fully developed, encouraging non-traditional sexual orientations or providing information in which homosexual relations were portrayed in a sympathetic manner might negatively impact their physical, intellectual and moral development. Therefore, the aim of the proposed amendment was to protect minors from such negative effects and to strengthen traditional family values.

70. The proposed amendment was assessed by the Department of European Law under the Ministry of Justice, which concluded that it did not comply with the relevant European Union (EU) law. In its assessment, the Department stated that the notion of "encouraging homosexual relations" was subjective and that it would be difficult to determine which information "encouraged" such relations. Moreover, the proposed amendment referred to information which was "related to" encouraging homosexual relations, which could encompass nearly all information about persons of non-traditional sexual orientation. Thus, in the Department's view, the amendment could lead to a restriction or prohibition of any, or a large part of, information about homosexual relations, which would not be compatible with Articles 10 and 14 of the Convention and EU law on the right to freedom of expression and prohibition of discrimination on the grounds of, *inter alia*, sexual orientation.

71. The proposed amendment was eventually withdrawn.

(b) Proposed amendments of 2007-2009

72. A new proposal for amending the Minors Protection Act was introduced before the *Seimas* in 2007 and revised several times in 2008 and 2009. It initially proposed to include in section 4 § 1 information which "advocates in favour of homosexual relations". The wording was later changed to information which "advocates in favour of homosexual, bisexual or polygamous relations" and eventually to information which "promotes homosexual, bisexual or polygamous relations". It was also proposed to include under section 4 § 1 information which "distorts family relations [or] expresses contempt for family values". The explanatory report did not address those provisions. The Department of European Law found that the proposed amendment did not violate the relevant EU law.

73. On 16 June 2009 the *Seimas* adopted the amendment to the Minors Protection Act. However, on 26 June 2009 the President exercised his veto power; he refused to sign the amended Act and returned it to the *Seimas*. The President's decree stated that the criteria for determining which information was considered to be harmful to minors had been formulated in an unclear and abstract manner, as a result of which nearly all public information might be found to have a negative effect on the psychological, physical, intellectual or moral development of minors. Such abstract and unclear criteria gave

unjustifiably wide discretion to the authorities in charge of supervising the authors and publishers of public information and made it especially difficult for the authors and publishers to comply with the provisions of the Act. The President considered that this created preconditions for violating the right to freedom of expression, protected by the Constitution.

(c) Adopted amendment of 14 July 2009

74. On 14 July 2009 the *Seimas* voted to overrule the President's veto and adopted the amendment to the Minors Protection Act. Section 4 § 1 (14) of the amended Act referred to information which "promotes homosexual, bisexual or polygamous relations" and section 4 § 1 (15) referred to information which "distorts family relations [or] expresses contempt for family values". The amended Act was set to enter into force on 1 March 2010.

75. On 22 July 2009 the Government submitted a proposal to amend section 4 § 1 (14), so that it would refer to information which "deliberately advocates in favour of sexual relations". In the explanatory report it was stated that the aim of the proposal was to address the negative international reaction to the adopted wording of section 4 § 1 (14). The proposal was assessed by the Department of Law of the *Seimas* Registry, which expressed doubts as to whether the notion of "deliberately advocating" was sufficiently clear and whether it might create problems for the practical implementation of the law. It appears that the *Seimas* did not debate or vote on the proposal.

(d) Proposed amendment and parliamentary debate leading to the adoption of the current version of section 4 § 2 (16) of the Minors Protection Act

76. On 19 October 2009 the President submitted to the *Seimas* a proposal to amend several provisions of the Minors Protection Act which had been adopted on 14 July 2009. In the proposal, the list of categories of information which was considered harmful to minors was provided in section 4 § 2. That list did not contain any provisions explicitly mentioning homosexuality. Section 4 § 2 (13) referred to information which "encourages sexual coercion and exploitation of minors or sexual relations among children", whereas section 4 § 2 (14) referred to information which "expresses contempt for family values". According to the explanatory report, the proposed amendment had been prompted by, among other factors, doubts concerning the compliance of some of the provisions of the Minors Protection Act with the fundamental principles enshrined in the Constitution, such as equality of treatment, prohibition of discrimination, and protection of the right to freedom of expression, as well as the lack of legal certainty, which made it necessary to clarify some of the criteria. The explanatory report also stated that early or coercive sexual relations were harmful to minors, irrespective of whether such relations were heterosexual or not; therefore, the provision which referred to "promoting homosexual, bisexual or polygamous relations" should be changed and instead refer to "encouraging sexual coercion and

exploitation of minors or sexual relations among children". It was also necessary to clarify the provision which referred to the protection of the family, by removing the vague notion of "family relations" and focusing on contempt for family values.

77. The proposed amendment was subsequently revised several times. As regards the proposed section 4 § 2 (14), which referred to information which "expresses contempt for family values", there were proposals to change its wording to, for example, information which "expresses contempt for family values, [or] encourages a concept of family which does not correspond to the concept of family enshrined in the laws of the Republic of Lithuania, and different relations between the sexes".

78. In the final proposal, section 4 § 2 (14) referred to information which "encourages sexual coercion and exploitation of minors or sexual relations among minors" and section 4 § 2 (16) referred to information which "expresses contempt for family values, [or] encourages a different concept of marriage and creation of family from the one enshrined in the Constitution and the Civil Code".

79. The *Seimas* held a debate on the proposal on 17 December 2009. Seven members spoke about the proposed text of section 4 § 2 (16). According to the official record of the debate, their comments were as follows:

> V.S.: "... The debate regarding this proposed amendment revealed a much more global problem. We all understood that various protests here and elsewhere, supposedly because of unclear or undefined criteria, had been caused by one criterion in the draft – non-traditional sexual relations. Thus, this discussion essentially reflects the conflict of values and ideologies which is going on in Europe, efforts to change the European tradition ... The present proposal ... aims to create such legal regulation which would neither violate fundamental human rights and freedoms, nor punish our traditions and recognised values ..."

> B.V.: "Dear colleagues, I wish to commend [the Parliamentary Committee on Education, Science and Culture] for removing that scandalous provision on homosexual, bisexual and polygamous relations, for which, truth be told, some ambassadors threatened that Lithuania might even be expelled from the EU. And indeed, enough with the shame ... There are some things which still perplex me, particularly with regard to the concept of marriage and creation of family. I believe that this introduces partial censorship. I appeal to the Christian Democrats. You should love each creation of God, regardless of whether he is perfect in your eyes or not. And leave individuals' personal lives to them, do not force your values onto them ..."

> P.G.: "I believe that this law, as we all know, reflects certain moral attitudes of our Parliament, an attitude towards the family and education of children ... Rotten Europe is fighting to the death so that children would not be protected from negative sexual education; the same rotten Europe which talks about, and which should promote, fundamental human values seeks to exploit youth and children, so that perverts may freely promote their lifestyle and recruit more followers ... When you talk to our high-level officials, when you hear ... that [they are influenced by] the heads and ambassadors of EU countries, that this law of ours caused a huge resonance even in the European Parliament, and when you see in the news that the UK Prime Minister, Gordon Brown,

says that he will do everything to legalise homosexual marriage in the whole of Europe... and our youth grows up hearing all that! I believe that, when looking at this draft, we have to concede that our Parliament gave in to pressure from the politicians of rotten Europe. [The *Seimas* is] afraid to call things by their real names, to put into law what is one of the biggest threats today – namely, homosexualism and bisexualism. That has been struck out from the text in an attempt to somehow appease those who, undoubtedly, influence our politicians. I was hoping that the *Seimas* would be more resistant and would adopt a determined law, without paying attention to all those attacks from the politicians of rotten Europe ..."

G.S.: "... When debating anew the proposed amendment to [the Minors Protection Act], we have three main options. The first option is to reject the new proposal, and then the previous amendment, which had been adopted by a significant majority in the *Seimas*, would enter into force. If we choose this option, there would be no risk of another veto from the President, ... and there would be no risk of any sanctions from the EU, because under the law, the *Seimas* would be obliged to amend the Act only if the EU Court of Justice adopted a decision to that effect. And if someone applies to the European Court of Human Rights in Strasbourg, complaining that he is not allowed to promote homosexualism among minors and calling it discrimination, the chances of winning such a case against Lithuania would be minimal ...

The second option is to adopt this proposal with various editorial amendments, but to leave in it the sentence about the restriction of information which encourages homosexual, bisexual and polygamous relations. Those who are against this option claim that this is not possible – they claim that the President would veto it and that the *Seimas* would be unable to overcome the veto ... Allegedly, we would not be understood in Europe because various organisations ... would again start screaming about discrimination and homophobia, and that would harm Lithuania's image. I think that those organisations which have declared that Lithuania seeks to discriminate against the rights of homosexual children should be given a public evaluation, even if in the past they used to be serious and respectable. Moreover, we have the full range of possibilities to properly explain the position of Lithuania to the EU and even help other EU countries better position themselves when defending their youth from the propaganda of homosexualism, defending the real rights of children and their parents, and not the purported rights of homosexual persons, accepting their behaviour without any limitations, even when this behaviour is presented to minors as a norm.

I would remind you that here I am talking about ethical norms, about the most appropriate behaviour and values which should be instilled in children. Neither the Act nor the formulation of the provision itself [may be interpreted as degrading] any specific group, and it does not signify intolerance towards a person *ad hominem*, but only responsible intolerance towards behaviour when it is presented to minors as something to be encouraged, since minors are still developing sexually and morally.

Some proposed amendments supposedly replace this offending sentence: namely, the provision about restricting minors' access to information which presents a different concept of marriage and family from the one enshrined in the Constitution, as well as information which encourages sexual relations. This would allegedly allow us to avoid accusations of targeting homosexual persons ... Unfortunately, any member of the *Seimas* who has any knowledge of the methods used to promote gay and lesbian lifestyles and supposedly new identities should clearly see that that is manifestly insufficient for stopping direct propaganda for homosexual partnerships or direct propaganda for sexual relations. The essence itself is lost – what we do or do not call a norm in our society, and especially what we do or do not call a moral norm, to be

instilled in our children. Thus, I propose to vote in favour of the proposed amendments, but I do not think they are the right alternative.

The third option is to adopt the Act without a clear provision on restricting minors' access to information which encourages homosexual relations, but that would be completely unacceptable, not only because it would distort the clear will of the *Seimas*, but also because [such a provision] is necessary not only for Lithuania, for the sake of the safety of its growing generation, but also for the whole of Europe and for the sake of the healthy future of humankind. This could be Lithuania's input into the fight against the confusion of values and of common sense. Nearly twenty years ago we were not scared of tanks and threats, are we now scared of the network of amoral lobbyists? ..."

E.K.: "... Many among us understand the importance of stopping the stream of evil coming from the mass media and television screens because it mostly affects youth, which is the most sensitive part of our State and nation. Without a doubt, it is essential to firstly instil what is positive, and one of the key positive things is the concept of the traditional family. Article 38 of the Constitution addresses it, so we need only to implement this constitutional provision.

I understand that some young people, because of their nature, look for something special, including experiences of homosexual behaviour, but that does not mean that everybody should be told about it. Why should we support the efforts of some politicians to include in the school curriculum teaching about homosexual families? I do not understand such tendencies at all.

Let us look at the recent news. The UK Prime Minister, Gordon Brown, has stated that he seeks to transpose laws on homosexual civil partnership to the whole of Europe, including eastern Europe, including Lithuania. For fifty years the soviet socialist regime tried to force its way of life on us, but it did not do so with such insistence as the EU and the leaders of its most influential countries are doing nowadays ..."

M.A.: "... Laws are also a reflection of social values. One of the aims of the law is to enshrine the values of the society and the nation that we represent. Thus, it is not surprising that the main debates have not concerned any technical aspects of this draft ... but its aspects related to values, specifically family values. And I believe that the current draft best reflects those values. It formulates family values, and an obligation *vis-à-vis* family values, as a positive notion, without naming the transgressions which threaten that notion, but confirming the obligation that we, as a political nation, have undertaken towards the concept of family and marriage which is enshrined in the Constitution and the Civil Code.

This is not a question of restricting or violating human rights, as this Act is sometimes portrayed. The question is about the right to educate Lithuanian people, minors, children, in a way which families consider the most appropriate, it is a question of the rights of the family. If, following a distorted rhetoric of human rights, this Act is not adopted, that would amount to a violation of the right of families to educate young people in accordance with their own values ...

The Constitution contains a very clear concept of family and marriage. One man and one woman, nothing more and nothing less. Attempts to create conditions to disseminate information in society and encourage different family models create grounds for changing this concept of family in the long run, for distorting the values of our nation as enshrined in the Constitution. Therefore, we have to take a very clear and principled decision in favour of the Constitution, the family, marriage, the way it is understood by the Lithuanian nation and the way it is enshrined in our law ..."

P.S.: "... It appears that the most important thing ... the most consequential provision of this law where everyone got stuck ... the *Seimas* ... the President ... the entire European Union with the European Parliament, and the resolution of the European Parliament ... [is] the provision concerning the concept of family. And what are we debating today? We are debating a compromise option ... I believe that the Act is now worse, the new proposal is not better but worse, it is a step backwards. But it is a compromise ..."

80. The *Seimas* voted to adopt the amendment on 22 December 2009. The amended version of the Act entered into force on 28 December 2009.

2. Provisions which are currently in force

81. Under section 4 § 1, information which may be harmful to minors is defined as any public information which may negatively affect their mental or physical health or their intellectual, spiritual or ethical development.

82. Section 4 § 2 provides:

"2. The following public information is considered to be harmful to minors:

1) that which is of a violent nature [and] encourages aggression and contempt for human life;

2) that which encourages the destruction of or damage to property;

3) that which depicts from up close the body of a dead, dying or gravely injured person, except when this is necessary to identify the person;

4) that which is of an erotic nature;

5) that which causes fear or terror;

6) that which encourages gambling ...;

7) that which presents a favourable view of addiction to narcotic, toxic or psychotropic substances, tobacco or alcohol ...;

8) that which encourages self-harm or suicide ...;

9) that which presents a positive view of criminal activity or idealises criminals;

10) that which is related to presenting a model of criminal activity;

11) that which encourages behaviour demeaning human dignity;

12) that which demeans or denigrates a person or a group of people because of their nationality, race, sex, origin, disability, sexual orientation, social status, language, belief, views, or other similar grounds;

13) that which depicts staged paranormal activities, thereby creating an impression that such activities are real;

14) that which encourages sexual coercion and exploitation of minors, [or] sexual relations between minors;

15) that which encourages sexual relations;

16) that which expresses contempt for family values, [or] encourages a different concept of marriage and creation of family from the one enshrined in the Constitution and the Civil Code;

17) that which contains obscene phrases or words or indecent gestures;

18) that which advises how to create, obtain or use explosives, narcotic or psychotropic substances, or other things which are harmful to life or limb;

19) that which encourages poor nutrition or hygiene habits or physical passiveness;

20) that which shows mass hypnosis aimed at the viewers; ...”

83. Section 2 § 5 defines “encouraging” as tendentious information which urges minors to take specific actions or to acquire or change their habits, attitudes, preferences or behaviour.

84. Section 7 § 1 states that information which is harmful to minors may not be offered or distributed to them, nor may they be allowed to access it in any other way. Such information may only be distributed in places which minors cannot enter or after applying measures which would enable the persons who are responsible for the education and care of minors to limit their access to it.

85. Section 9 § 1 provides that the Inspectorate of Journalist Ethics is the institution in charge of monitoring the implementation of the Minors Protection Act.

3. Proposed amendments of 2014 and 2017

86. In 2014 a member of the *Seimas* proposed amending the Minors Protection Act by removing section 4 § 2 (16). In the explanatory report, it was noted that neither the Constitution nor the Civil Code contained a definition of “creation of family” or “family values”. The report also referred to the Constitutional Court’s ruling of 28 September 2011, in which it had held that marriage was only one of the ways of creating a family and that the Constitution protected all families (see paragraph 98 below).

87. In 2017 another member of the *Seimas* proposed amending section 4 § 2 (16) so that it would refer to information which “encourages discrimination against or punishment of a minor on the grounds of the status, activity, convictions or beliefs of his or her parents, guardians or other family members, [and that which] expresses contempt for family values”. In the explanatory report, it was stated that the prohibition on disseminating positive information about different types of marriage or different ways of creating a family from those indicated in the Constitution and the Civil Code constituted a disproportionate restriction on the right to freedom of expression and was discriminatory, contrary to the requirements of the relevant EU legal instruments.

88. To date, the *Seimas* has not debated or voted on either of the above-mentioned proposals.

F. Legal instruments regarding liability for administrative offences

89. The Code of Administrative Law Violations was in force from 1 April 1984 to 31 December 2016, and it was amended on multiple occasions. At the material time, Article 214^{19} § 1 provided that failure to comply with the requirements for labelling or distributing information which was harmful to minors was punishable by a warning or a fine of between 144 and 579 euros (EUR).

90. The Code of Administrative Offences entered into force on 1 January 2017. Article 79 § 1 provides that failure to comply with the requirements for labelling or distributing information harmful to minors is punishable by a fine of between EUR 300 and EUR 850.

G. Rules for marking and distributing public information which may be harmful to the development of minors

91. The Rules for marking and distributing public information which may be harmful to the development of minors were adopted by the government on 21 July 2010 and subsequently amended. Rule 32 provides that information included in section 4 § 2 of the Minors Protection Act (see paragraph 82 above) is classified into three categories: (1) that which may be harmful to minors under the age of seven; (2) that which may be harmful to minors under the age of 14; and (3) that which may be harmful to minors under the age of 18.

92. Rule 33 states that if printed publications belonging to the first or second category are distributed in places which minors can access, they must be put in packaging which is safe for minors and clearly marked with appropriate warning labels. Under Rule 34, printed publications belonging to the third category must be put into non-transparent packaging clearly marked with appropriate warning labels.

H. Case-law of the Constitutional Court

1. On freedom of expression

93. In a ruling of 20 April 1995, the Constitutional Court held:

> "One of the fundamental human rights is the right to have convictions and freely express them. The possibility for every human being to formulate freely his or her own opinion and views, as well as freely disseminate them, is an indispensable condition for the creation and maintenance of democracy. The laws of a democratic State thus consolidate and protect the subjective right of a human being to have and freely express his or her convictions. Such laws also consolidate freedom of information as an objective public need ... Freedom of information is not absolute or all-encompassing since, while using it, one is confronted with requirements which are necessary in a democratic society for protecting the constitutional order and human rights and freedoms. Therefore, limitations on freedom of information may be established ..."

94. In a ruling of 10 March 1998, the Constitutional Court held:

"Freedom of expression, as well as freedom of information, is not absolute. In that connection, Article 25 § 3 of the Constitution provides that the freedom to express convictions, as well as to obtain and disseminate information, may not be limited in any way other than as established by law, when it is necessary for safeguarding the health, honour and dignity, private life or morals of a person, or for protecting the constitutional order.

Thus, it is established in the aforementioned constitutional provision that any limitation on freedom of expression and information must always be conceived as a measure of an exceptional nature. The exceptional nature of the limitation means that the constitutionally established possible grounds for limitation cannot be interpreted by expanding them. The necessity criterion as consolidated therein presupposes that in every instance the nature and extent of the limitation must be in conformity with the objective sought (requirement to strike a balance)."

95. In a ruling of 13 June 2000, the Constitutional Court held:

"... Convictions are a broad and diverse constitutional notion, including political and economic convictions, religious feelings, cultural disposition, [and] ethical and aesthetic views.

The freedom to have convictions means that an individual is free to form his or her own convictions and to choose worldview values; he or she is protected from any coercion and it is not permitted to exert control over his or her convictions. The duty of State institutions is to ensure and protect this freedom of individuals. The content of convictions is a private matter of the individual.

The right to free expression of convictions is inseparable from the freedom to have them. The freedom of expression of convictions is an opportunity to express one's thoughts, views and convictions orally, in writing, in symbols and by other ways and means of dissemination of information in an unhampered manner ...

The freedom of convictions and their expression establishes ideological, cultural and political pluralism. No views or ideology may be declared mandatory and thrust on an individual, that is, a person who freely forms and expresses his or her own views and who is a member of an open, democratic and civil society. This is an innate human freedom. The State must be neutral in matters of convictions and it does not have any right to establish a mandatory system of views."

2. On the prohibition of discrimination

96. In a ruling of 24 January 1996, the Constitutional Court made the following statement, confirmed in many subsequent rulings:

"Article 29 [of the Constitution] enshrines the principle of equality of all persons before the law, the courts and other State institutions and officials. This principle must be observed when enacting and applying laws, as well as when administering justice. This principle gives rise to an obligation to apply a uniform legal assessment to similar facts and prohibits the assessment of essentially the same facts in an arbitrarily different manner.

Article 29 § 2 of the Constitution provides that a person may not have his or her rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions. However, persons themselves may be different, and in some cases, when passing laws, this has to

be taken into consideration. For example, if a law directed at the good of society or at the aspiration of humanism takes into consideration the differences in the social status of persons, in itself that does not mean that the principle of equality of persons is violated. Besides, quite frequently laws are imposed only on certain categories of persons, or they are valid only in specific situations, into which persons of one or another category fall. The variety of social life determines the manner and contents of legal regulation. However, diverse interpretation of innate human rights and their diverse application to different categories of persons is not permissible."

97. In a ruling of 20 November 1996, the Constitutional Court made the following statement, confirmed in many subsequent rulings:

"... [T]he constitutional principle of equality of all persons before the law ... will be violated if a certain group of persons to which a legal norm is applied is treated differently from other addressees of the same legal norm, even though [between these groups] there are no differences of such a character and extent that may objectively justify a different treatment."

3. On the constitutional concept of family

98. In a ruling of 28 September 2011, the Constitutional Court assessed the State Family Policy Concept, approved by the *Seimas*, which defined family as arising exclusively from marriage. The Constitutional Court held:

"15.1. ... [T]he constitutional concept of family may not be derived solely from the institution of marriage, which is enshrined in Article 38 § 3 of the Constitution. The fact that the institutions of marriage and family are enshrined in the same Article 38 of the Constitution indicates an inseparable and unquestionable relationship between marriage and family. Marriage is one of the grounds of the constitutional institution of family for the creation of family relations. It is a historically established family model which undoubtedly has an exceptional value in the life of society and which ensures the viability of the Nation and the State, as well as their historical survival.

However, this does not mean that under, *inter alia*, the provisions of Article 38 § 1, the Constitution does not protect and defend families other than those founded on the basis of marriage, including the relationship of a man and a woman living together without entering into a marriage, which is based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, shared upbringing of children and similar bonds, as well as on the voluntary determination to take on certain rights and responsibilities, which form the basis for the constitutional institutions of motherhood, fatherhood and childhood.

Thus, the constitutional concept of family is based on mutual responsibility between family members, understanding, emotional affection, assistance and similar relations, as well as on the voluntary determination to take on certain rights and responsibilities, that is to say, the content of relationships, whereas the form of expression of such relationships has no essential significance for the constitutional concept of family."

99. In a ruling of 11 January 2019, the Constitutional Court found that the provisions of the Act on the Legal Status of Aliens which refused the right to family reunification to a foreign national who had married a Lithuanian national of the same sex in a country in which such marriage was permitted were contrary to the Constitution. It held:

"31.2. ...

... Article 29 § 2 of the Constitution may not be understood as consolidating an exhaustive list of the grounds of non-discrimination; otherwise, the preconditions would be created for denying the equality of all persons before the law, courts and other State institutions, in other words, the very essence of the constitutional principle of the equality of the rights of persons, as guaranteed under Article 29 § 1 of the Constitution.

It must be noted that one of the forms of discrimination prohibited under Article 29 of the Constitution is the restriction of the rights of a person on the grounds of his or her gender identity and/or sexual orientation; such a restriction should also be regarded as degrading human dignity.

31.3. As mentioned above, only a State which respects the dignity of every human being can be considered to be truly democratic. It must be emphasised that, as previously noted by the Constitutional Court, the Constitution is an anti-majoritarian instrument, which protects the individual ...

In view of this fact, it must be noted that, in a democratic State under the rule of law, the attitudes or stereotypes prevailing during a certain period of time among the majority of the members of society may not, on the basis of constitutionally important objectives, such as ensuring public order (public policy), serve as constitutionally justifiable grounds for discriminating against persons solely on the basis of their gender identity and/or sexual orientation, *inter alia*, [or] for limiting the right, secured under Article 22 §§ 1 and 4 of the Constitution, to the protection of private and family life, including the protection of relationships with other family members.

...

32.5. It must be noted that, unlike the constitutional concept of marriage, the constitutional concept of the family, among other things, is neutral in terms of gender. Under Article 38 §§ 1 and 2 of the Constitution, interpreted in conjunction with the principle of the equality of persons and the prohibition of discrimination, as established in Article 29 of the Constitution, the Constitution protects and defends all families that meet the constitutional concept of the family, which is based on the contents of permanent or long-lasting relationships between family members, that is, reciprocal understanding and responsibility, emotional affection, help and similar bonds, as well as on the voluntary determination to take on certain rights and duties."

I. The 2014 annual report of the Office of the Equal Opportunities Ombudsperson

100. In its annual report of 2014, the Office of the Equal Opportunities Ombudsperson addressed a complaint which had been lodged by a member of the *Seimas* against the Inspectorate of Journalist Ethics concerning its conclusions in respect of the applicant's book (see paragraphs 23 and 27 above).

101. The Office of the Equal Opportunities Ombudsperson stated that there might be a conflict between certain provisions of the Equal Treatment Act and the Minors Protection Act, but that it was the role of the legislature to resolve it. It also stated that the Inspectorate ought to have explained in more detail why it had considered the fairy tales to be harmful and what it had meant by calling them "manipulative", "invasive" and "directive". In

view of the fact that society was diverse and included many different people, some of the categorical formulations used by the Inspectorate, such as "self–evident" or "normal", could be seen by some part of society as offensive, unclear or unacceptable.

102. Nonetheless, the Office of the Equal Opportunities Ombudsperson stated that it did not have the competence to assess the contents of literature or review decisions taken by the Inspectorate and discontinued the examination of the complaint.

J. Decisions of the Inspectorate of Journalist Ethics concerning section 4 § 2 (16) of the Minors Protection Act

103. In July 2013 the Lithuanian Gay League, a non–governmental organisation, lodged a complaint with the Inspectorate against Lithuanian National Radio and Television, the national broadcaster. The complaint concerned the broadcaster's decision to restrict the distribution of two promotional videos about the Baltic Pride March: the broadcaster had decided that one of the videos could only be shown from 9 p.m. and that it had to be marked with a sign indicating that it could be harmful to children under the age of 14, and the other video could only be shown from 11 p.m. and had to be marked with a sign indicating that it was only suitable for adults. The broadcaster had based that decision on the grounds that the videos might violate section 4 § 2 (16) of the Minors Protection Act. In September 2013 the Inspectorate dismissed the complaint, finding that the broadcaster had not had any obligation to broadcast the videos in question and thus, by refusing to broadcast them in the way desired by the organisers of the Pride March, it had not breached any laws.

104. In June 2019 the Inspectorate examined several complaints lodged against the Institute of Christian Culture, an association. The complaints alleged that the association had distributed leaflets and online information which had incited hatred on the grounds of sexual orientation. The Institute of Christian Culture argued that it had sought to express its opposition to the planned Baltic Pride March, which, in its view, amounted to information that was harmful to children, as provided in section 4 § 2 (16) of the Minors Protection Act. The Inspectorate allowed the complaints against the association. Referring to the case-law of the Constitutional Court (see paragraphs 98 and 99 above) and the Court's judgment in *Bayev and Others* (cited above), the Inspectorate stated that the Pride March did not violate the provisions of the Constitution or the Minors Protection Act. The event was aimed at encouraging a discussion, promoting tolerance and educating the public, and the hypothetical harm to children which the Institute of Christian Culture had alleged did not constitute sufficient grounds for restricting the freedom of expression of a certain group of people.

II. INTERNATIONAL MATERIAL

A. Council of Europe

1. Parliamentary Assembly of the Council of Europe (PACE)

105. The relevant parts of Resolution 1948 (2013) on tackling discrimination on the grounds of sexual orientation and gender identity, adopted by the PACE on 27 June 2013, state as follows:

> "2. ... [T]he Assembly regrets that prejudice, hostility and discrimination on the grounds of sexual orientation and gender identity remain a serious problem, affecting the lives of tens of millions of Europeans. They manifest themselves in hate speech, bullying and violence, often affecting young people. They also manifest themselves through the repeated infringement of the right of peaceful assembly for LGBT persons.
>
> 3. The Assembly acknowledges that societal changes require time and occur unevenly within the same country, let alone in different countries. However, the Assembly also believes that politicians, through their example and discourse, as well as laws through their binding nature, are powerful driving forces to promote change in society and ensure that the respect for human rights is not only a legal obligation but also a shared value.
>
> ...
>
> 5. Furthermore, the Assembly expresses deep concern at the introduction, at local, regional and national level, of legislation or draft legislation on the prohibition of so-called homosexual propaganda, in a number of Council of Europe member States. These acts and bills, which are at variance with freedom of expression and the prohibition of discrimination on account of sexual orientation and gender identity, risk legitimising the prejudice and hostility which is present in society and fuelling a climate of hatred against LGBT people ..."

106. The relevant parts of Resolution 2417 (2022) on combating rising hate against LGBTI people in Europe, adopted by the PACE on 25 January 2022, state as follows:

> "1. Over the past few decades, significant progress has been achieved towards making equal rights a reality for LGBTI people throughout Europe ...
>
> 2. Recent years, however, have also seen a marked increase in hate speech, violence, and hate crime against LGBTI people, communities, and organisations across many member States of the Council of Europe ...
>
> ...
>
> 4. The rising hatred we are witnessing today is not simply an expression of individual prejudice, but the result of sustained and often well-organised attacks on the human rights of LGBTI people throughout the European continent. Individual expressions of homophobia, biphobia, transphobia and intersexphobia occur in a broader context in which highly conservative movements seek to stifle the identities and realities of all those who challenge the cis- and heteronormative social constructs which perpetuate gender inequalities and gender-based violence in our societies, and which affect women as well as LGBTI people.

5. The Assembly condemns the highly prejudicial anti-gender, gender-critical and anti-trans narratives which reduce the fight for the equality of LGBTI people to what these movements deliberately mis-characterise as 'gender ideology' or 'LGBTI ideology'. Such narratives deny the very existence of LGBTI people, dehumanise them, and often falsely portray their rights as being in conflict with women's and children's rights, or societal and family values in general. All of these are deeply damaging to LGBTI people, while also harming women's and children's rights and social cohesion.

...

12. The Assembly calls on member States to refrain from enacting legislation or adopting constitutional amendments that are contrary to the rights of LGBTI people, and to repeal any such provisions already in force. It urges in particular:

...

12.3 all member States having in place so called 'anti-LGBTI-propaganda' laws, that is, any legislation that prevents persons and especially minors from having access to complete and objective information about the different forms of sexual orientation, gender identity, gender expression or sex characteristics that exist in society, to repeal this legislation with immediate effect;

...

16. The Assembly further calls on all member States to:

...

16.4 ensure that children are provided with objective, non-stigmatising information on sexual orientation, gender identity and sex characteristics;

...

18. Finally, the Assembly emphasises that hatred against LGBTI people cannot be effectively combated if it is treated purely as an individual phenomenon. Paradigm shifts in social and cultural understandings of gender equality, harmful masculinities and the rights and freedoms of LGBTI people are still needed in many societies in order to achieve genuine equality for LGBTI people. The Assembly therefore urges member States to carry out extensive public awareness-raising campaigns so as to counter misleading or false narratives, increase understanding of the situation and rights of LGBTI people, and actively promote their equality ..."

2. European Commission for Democracy through Law (Venice Commission)

107. On 14-15 June 2013, at its 95th plenary session, the Venice Commission adopted an Opinion on the issue of the prohibition of so-called 'Propaganda of Homosexuality' in the light of recent legislation in some Council of Europe member States. The relevant parts of the Opinion have been quoted at length in *Bayev and Others* (cited above, § 36).

108. On 10-11 December 2021, at its 129th plenary session, the Venice Commission adopted an Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children. The Opinion concerned legislative amendments enacted by the Hungarian Parliament, which sought to prohibit or limit access

to content that "propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality" for individuals under the age of 18. The Venice Commission stated, in so far as relevant (references omitted):

> "39. ... The Venice Commission ... stresses that while no obligation for States to provide information about sexuality and gender, for instance in schools and public media, can be derived from [the European Convention on Human Rights], where such information is provided ... then this must be provided 'in an objective, critical and pluralistic manner', 'respecting the parents' religious and philosophical convictions' which implies more specifically that it 'must be non-discriminatory towards individuals and the promotion of constitutional values may not lead to disregarding and disrespecting the diversity of religious opinions and sexual identities.' ...
>
> 40. The Committee of Ministers of the Council of Europe stresses that the right to seek and receive information includes 'information on subjects dealing with sexual orientation and gender identity' and that, 'taking into account the rights of parents regarding the education of their children,' this right should be effectively enjoyed without discrimination. More specifically regarding the children's particular need for information, although not mentioning any right of children to receive information regarding their sexual orientation or gender identity, the Convention on the Rights of the Child requires states to ensure children's 'access to information and materials from a diversity of national and international sources,' subject to the 'appropriate direction or guidance' of parents and to 'the evolving capacities of the child.'
>
> 41. As the Council of Europe's Steering Committee for Human Rights has observed, the authorities 'have a positive obligation to take effective measures to protect and ensure the respect of lesbian, gay, bisexual and transgender persons who wish to ... express themselves, even if their views are unpopular or not shared by the majority of the population.'
>
> ...
>
> 58. ... The Hungarian authorities claim that the protection of minors against transgender or homosexual portrayal or propagation is justified, given their lack of maturity, state of dependence and, in some cases, mental disability.
>
> 59. The Hungarian authorities fail however to explain for which reasons the exposure of minors to the dissemination of mere information or ideas, advocating a more positive attitude towards gender and sexual diversity is considered to be detrimental to their well-being and not in line with the best interests of children. The Venice Commission recalls the position of the European Court of Human Rights in the case of *Alekseyev*: 'There is no scientific evidence or sociological data at the Court's disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children or "vulnerable adults." Children do not need to be protected from the mere exposure to diversity.' The Commission also recalls the *Bayev* judgement, where the ECtHR concluded that the Russian legislation in question did 'not serve to advance the legitimate aim of the protection of morals, and that such measures are likely to be counterproductive in achieving the declared legitimate aims of the protection of health and the protection of rights of others.'
>
> 60. The European Court of Human Rights ruled in 2017, that the so-called 'gay propaganda' law passed in Russia in 2013 violates article 10 [of the Convention], safeguarding the freedom of expression. It found in particular that by adopting this law

the authorities had reinforced stigma and prejudice and encouraged homophobia, which was incompatible with the values of a democratic society.

61. The Venice Commission also concludes that the blanket nature of the prohibitions of 'propaganda and portrayal of divergence from self-identity corresponding to sex at birth, sex change or homosexuality' in Act LXXIX cannot be deemed to be justified as necessary in a democratic society for the protection of the rights of minors."

3. European Commission against Racism and Intolerance (ECRI)

109. In its fifth report on Lithuania, published on 7 June 2016, ECRI stated, in so far as relevant (references omitted):

"90. Current legislation limits some types of public activities of LGBT persons. Article 4, section 2 (16) of the 2002 Law on the Protection of Minors against the Detrimental Effect of Public Information (amended in 2011, from here on 'Law on the Protection of Minors') bans 'public defiance of family values', which includes public information which 'expresses contempt for family values, (or) encourages the concept of entry into a marriage and creation of a family other than that stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania', which defines marriage as between a man and a woman.

91. This law has been applied on several occasions recently. In May 2014, following complaints from the Lithuanian Parents' Forum and a group of conservative MPs to the Ministry of Culture and the Lithuanian University of Educational Sciences (LEU), the children's book Gintarinė širdis (Amber Heart) by author Neringa Dangvydė, which had been published six months previously by the LEU, was withdrawn from bookshops. The book contains fairy tales featuring members of socially vulnerable groups, such as same-sex couples, Roma, and disabled people, and aims at promoting tolerance and respect for diversity among children. Following the complaints, the LEU explained the withdrawal of the book by suddenly describing it as 'harmful, primitive and biased homosexual propaganda'. Furthermore, the Office of the Inspector of Journalist Ethics concluded that two fairy tales that promote tolerance for same-sex couples are harmful to minors. The Inspectorate's experts deemed the stories in violation of the Law on the Protection of Minors because they encourage '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 experts also considered the stories to be 'harmful, invasive, direct and manipulative'.

92. In September 2014, fearing a potential violation of the Protection of Minors Act, Lithuanian TV stations refused to broadcast a TV spot promoting tolerance towards LGBT people which had been prepared by an NGO for the campaign Change It. Subsequently, this decision was confirmed by the Inspector of Journalists Ethics on the grounds that the TV spot seemed to portray a same-sex family model in a positive light, which the Inspectorate considered to have a negative impact on minors and to be in violation of the law.

93. ECRI recommends that the Lithuanian authorities modify the Law on the Protection of Minors against the Detrimental Effect of Public Information to ensure that it does not prevent awareness-raising about LGBT issues and activities to promote tolerance. ECRI also recommends that the restrictions concerning the children's book Gintarinė širdis are urgently reviewed with a view of fully utilising its positive impact for promoting tolerance and diversity."

B. European Union

1. EU Charter of Fundamental Rights

110. The relevant provisions of the EU Charter of Fundamental Rights read as follows:

Article 11
Freedom of expression and information

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ..."

Article 21
Non-discrimination

"1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited ..."

2. Infringement procedure before the Court of Justice of the European Union

111. In July 2021 the European Commission launched an infringement procedure against Hungary (INFR(2021)2130) concerning legislative amendments enacted by the Hungarian Parliament which sought to prohibit or limit access to content that portrayed "divergence from self-identity corresponding to sex at birth, sex change or homosexuality" for individuals under the age of 18. In line with those rules, the Hungarian Consumer Protection Authority had obliged the publisher of a book of fairy tales containing LGBTI characters to mark it with a disclaimer that the book depicted forms of "behaviour deviating from traditional gender roles". In July 2022 the Commission decided to take the next step of the infringement procedure and refer Hungary to the Court of Justice of the European Union. It stated that while the protection of children was an absolute priority for the EU and its Member States, the Hungarian law contained provisions which were not justified on the basis of promoting this fundamental interest or were disproportionate to achieve the stated objective. The Commission considered that the rules in question were contrary to a series of relevant EU directives, and furthermore that they violated human dignity, freedom of expression and information, the right to respect for private life and the right to non-discrimination, all of which were enshrined in the EU Charter of Fundamental Rights. The Commission considered that the gravity of those violations was such that the contested provisions also violated the common values laid down in Article 2 of the Treaty on European Union.

3. Resolutions of the European Parliament

112. The European Parliament resolution of 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information states, in so far as relevant:

> "*The European Parliament,*
>
> ...
>
> C. whereas on 14 July 2009 the Lithuanian Parliament approved amendments to the Law on the Protection of Minors against the Detrimental Effects of Public Information that will come into force on 1 March 2010, under which it will be prohibited 'to directly disseminate to minors' public information whereby 'homosexual, bisexual or polygamous relations are promoted', because it has 'a detrimental effect on the development of minors',
>
> D. whereas the wording of the law, with particular reference to Article 4 thereof, is vague and legally unclear and might lead to controversial interpretations,
>
> E. whereas, following the overruling of the [President] of the Republic of Lithuania['s] veto, the law is now under review by the Lithuanian national authorities,
>
> F. whereas it is unclear what kind of materials would fall within the scope of this law and whether its scope extends to books, art, press, publicity, music and public representations such as theatre, exhibitions or demonstrations,
>
> G. whereas the Swedish Presidency of the EU has discussed the amended law with the Lithuanian authorities, while the new President of the Republic of Lithuania has declared that she will act to ensure that the law is in conformity with EU and international requirements,
>
> ...
>
> 2. Reaffirms the importance of the EU fighting against all forms of discrimination, and in particular discrimination based on sexual orientation;
>
> 3. Reaffirms the principle set out in the preamble of the UN Declaration of the Rights of the Child of 20 November 1959 that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection';
>
> 4. Welcomes the statements made by the new President of the Republic of Lithuania and the creation of a working group in Lithuania charged with evaluating possible changes to the law, and invites the President of the Republic of Lithuania and authorities to ensure that its national laws are compatible with human rights and fundamental freedoms as enshrined in international and European law; ..."

113. The European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones, states, in so far as relevant (references omitted):

> "*The European Parliament,*
>
> ...
>
> O. whereas discrimination and violence against LGBTI people has taken multiple forms, with recent examples including homophobic statements in the campaign for a referendum on narrowing down the definition of family in Romania, attacks on LGBTI social centres in several Member States such as Hungary and Slovenia, homophobic

statements and hate speech targeting LGBTI people, as recently observed in Estonia, Spain, the United Kingdom, Hungary and Poland, in particular in the context of elections, and legal instruments which might be applied to restrict media, culture, education and access to other forms of content in a manner that unduly restricts freedom of expression regarding LGBTI issues, such as in Lithuania and Latvia;

...

Q. whereas according to the FRA LGBT Survey, 32% of respondents felt discriminated against in areas outside of employment, such as education; whereas the risk of suicide among LGBTI children is higher than it is for non-LGBTI children; whereas inclusive education is key to creating school environments that are safe and in which all children can thrive, including those that belong to minorities, such as LGBTI children and children from LGBTI families; whereas the primary victims of attacks against LGBTI rights are children and young people living in rural areas and smaller urban centres, who are particularly vulnerable to violence and often face rejection and uncertainty, and therefore require special support and assistance from state and local government institutions or NGOs;

...

1. Recalls that LGBTI rights are fundamental rights, and that the EU institutions and the Member States therefore have a duty to uphold and protect them in accordance with the Treaties and the Charter, as well as international law;

...

4. Regrets the fact that LGBTI people experience bullying and harassment that begins at school and urges the Commission and the Member States to take concrete actions to end discrimination against LGBTI people, which can lead to their being bullied, abused or isolated, in particular in educational settings; firmly denounces the fact that schools in some Member States are prevented by public authorities from fulfilling their role of promoting fundamental rights and protecting LGBTI people and recalls that schools should not only be safe places, but also places that reinforce and protect the fundamental rights of all children; stresses the importance of health and sexuality education, in particular for girls and young LGBTI people, who are particularly impacted by inequitable gender norms; stresses that such education must include teaching young people about relationships based on gender equality, consent and mutual respect as a way of preventing and combating gender stereotypes, LGBTI-phobia and gender-based violence;

...

25. Condemns misuse of the laws on information available to minors, especially in the field of education and the media, in order to censor LGBTI-related content and materials, in particular Article 4(2)(16) of the Law on the Protection of Minors against the Detrimental Effects of Public Information in Lithuania and Article 10.1 of the Education Law in Latvia; calls on the Member States to amend such legislation so as to comply fully with fundamental rights as enshrined in EU and international law; calls on the Commission to take all the necessary steps to ensure such compliance; ...”

114. The European Parliament resolution of 8 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the

legal changes adopted by the Hungarian Parliament, states, in so far as relevant (references omitted):

> "*The European Parliament,*
>
> ...
>
> D. whereas Parliament has previously condemned the misuse of laws on the information made available to minors, especially in the field of education and the media, in order to censor LGBTI-related content and materials, in particular in Lithuania and Latvia;
>
> ...
>
> 1. Condemns in the strongest possible terms the Law adopted by the Hungarian Parliament, which constitutes a clear breach of the EU's values, principles and law; ...
>
> ...
>
> 15. Condemns the decision of a consumer protection authority in Budapest to order book publishers to print disclaimers on children's books which feature rainbow families, as containing 'behaviour inconsistent with traditional gender roles';
>
> ...
>
> 17. States its unwavering commitment to defending children's rights in the EU and abroad; takes the position that the promotion of tolerance, acceptance and diversity, rather than the promotion of LGBTIQ phobia and hatred, should serve as guiding principles for ensuring respect for the best interests of the child; considers in that regard that the conflation of sexual orientation and gender identity with paedophilia or attacks on children's rights displays a clear attempt to instrumentalise human rights language in order to enact discriminatory policies; considers this to be contrary to international human rights principles and norms;
>
> ...
>
> 27. Recalls that LGBTIQ rights are human rights; reiterates its call on encouraging Member States, particularly Hungary, to ensure that existing legislation on education and information available to minors fully complies with the fundamental rights enshrined in EU and international law and to ensure access to comprehensive sexuality and relationship education that is scientifically accurate, evidence-based, age-appropriate and non-judgmental; recalls that published information should reflect the diversity of sexual orientations, gender identities, expressions and sex characteristics, so as to counter misinformation based on stereotypes or biases; ..."

4. Surveys by the EU Fundamental Rights Agency and the Eurobarometer

115. On 23 September 2019 the European Commission published the results of the Eurobarometer survey "Discrimination in the EU in 2019". 27,438 respondents from the EU, including 1,003 respondents from Lithuania, took part in the survey, which was conducted in May 2019. 40% of the Lithuanian respondents did not agree that gay, lesbian and bisexual people should have the same rights as heterosexual people (the EU average was 20%); 59% disagreed with the statement that there was nothing wrong in a sexual relationship between two persons of the same sex (the EU average

was 24%); 63% would not support same-sex marriages being legalised throughout Europe (the EU average was 26%); 71% would feel uncomfortable with two men showing affection (for example, kissing or holding hands) in public (the EU average was 34%) and 65% would feel uncomfortable with two women displaying such behaviour (the EU average was 29%); 56% would feel uncomfortable having a gay, lesbian or bisexual person in the highest elected political position in their country (the EU average was 18%); 37% would feel uncomfortable working with a gay, lesbian or bisexual person (the EU average was 12%); 70% would feel uncomfortable if their child was in a romantic relationship with a person of the same sex (the EU average was 27%); and 35% disagreed with the statement that school lessons and material should include information about diversity in terms of sexual orientation (the EU average was 24%).

116. On 14 May 2020 the EU Fundamental Rights Agency published a report entitled "A long way to go for LGBTI equality". It presented the results of a survey which had been carried out between May and July 2019 and included 139,799 respondents, who described themselves as LGBTI, from the EU member States and two candidate countries, North Macedonia and Serbia. 84% of the Lithuanian respondents stated that they were never or rarely open about being LGBTI – the highest number among all the countries surveyed (the EU average was 53%). 14% agreed that their national government "definitely" or "probably" combated prejudice and intolerance against LGBTI people effectively (the EU average was 33%).

117. The results of similar surveys dating from 2012 and 2015 have been summarised in *Beizaras and Levickas v. Lithuania* (no. 41288/15, §§ 63-64, 14 January 2020).

C. United Nations

1. International Covenant on Civil and Political Rights (ICCPR)

118. The relevant provisions of the ICCPR read as follows:

Article 19

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(*a*) For respect of the rights or reputations of others;

(*b*) For the protection of national security or of public order (*ordre public*), or of public health or morals."

Article 26

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

2. Convention on the Rights of the Child

119. Article 17 of the UN Convention on the Rights of the Child reads, in its relevant part:

"States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

...

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18."

3. UN Human Rights Committee

120. On 31 October 2012, at its 106th session, the UN Human Rights Committee adopted its Views on Communication No. 1932/2010, lodged by Ms Irina Fedotova against the Russian Federation, who had complained that she had been given a fine for the administrative offence of "public actions aimed at propaganda of homosexuality (sexual act between men or lesbianism) among minors" (CCPR/C/106/D/1932/2010). The Committee held, in so far as relevant:

"2.1 The author is an openly lesbian woman and an activist in the field of lesbian, gay, bisexual and transgender (LGBT) rights in the Russian Federation ...

2.2 On 30 March 2009, the author displayed posters that declared 'Homosexuality is normal' and 'I am proud of my homosexuality' near a secondary school building in Ryazan. According to her, the purpose of this action was to promote tolerance towards gay and lesbian individuals in the Russian Federation.

...

10.5 ...[T]he Committee recalls, as stated in its General Comment No. 34, that '"the concept of morals derives from many social, philosophical and religious traditions;

consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition". Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination'. In the present case, the Committee observes that section 3.10 of the Ryazan Region Law establishes administrative liability for 'public actions aimed at propaganda of homosexuality (sexual act between men or lesbianism)' – as opposed to propaganda of heterosexuality or sexuality generally – among minors. With reference to its earlier jurisprudence, the Committee recalls that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation.

10.6 ... While noting that the State party invokes the aim to protect the morals, health, rights and legitimate interests of minors, the Committee considers that the State party has not shown that a restriction on the right to freedom of expression in relation to 'propaganda of homosexuality' – as opposed to propaganda of heterosexuality or sexuality generally – among minors is based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors justifying such a distinction has been advanced.

10.7 Furthermore, the Committee is of the view that, by displaying posters that declared 'Homosexuality is normal' and 'I am proud of my homosexuality' near a secondary school building, the author has not made any public actions aimed at involving minors in any particular sexual activity or at advocating for any particular sexual orientation. Instead, she was giving expression to her sexual identity and seeking understanding for it.

10.8 ... While the Committee recognizes the role of the State party's authorities in protecting the welfare of minors, it observes that the State party failed to demonstrate why on the facts of the present communication it was necessary, for one of the legitimate purposes of article 19, paragraph 3, of the Covenant to restrict the author's right to freedom of expression on the basis of section 3.10 of the Ryazan Region Law, for expressing her sexual identity and seeking understanding for it, even if indeed, as argued by the State party, she intended to engage children in the discussion of issues related to homosexuality. Accordingly, the Committee concludes that the author's conviction of an administrative offence for 'propaganda of homosexuality among minors' on the basis of the ambiguous and discriminatory section 3.10 of the Ryazan Region Law, amounted to a violation of her rights under article 19, paragraph 2, read in conjunction with article 26 of the Covenant."

121. On 20 July 2018, at its 3517th meeting, the UN Human Rights Committee adopted its Concluding Observations on the fourth periodic report of Lithuania (CCPR/C/LTU/CO/4), the relevant parts of which stated (emphasis in the original):

"9. The Committee is concerned at the persistence of stereotypical attitudes, prejudice, hostility and discrimination against lesbian, gay, bisexual, transgender and intersex persons. Recalling its previous recommendation ... the Committee remains concerned that certain legal instruments, such as the Law on the Protection of Minors against the Detrimental Effect of Public Information, may be applied, including by the Office of the Inspector of Journalist Ethics, to restrict media and other content in a manner that unduly restricts freedom of expression regarding lesbian, gay, bisexual, transgender and intersex issues and contributes to discrimination ...

10. The State party should intensify its efforts to eliminate discrimination, in law and in practice, against persons on the basis of their sexual orientation or gender

identity, ensure that legislation is not interpreted and applied in a discriminatory manner against lesbian, gay, bisexual, transgender and intersex persons and refrain from adopting any legislation that would impede the full enjoyment of their Covenant rights ..."

4. UN Independent Expert on sexual orientation and gender identity

122. The report entitled "Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law", issued by the UN Independent Expert on sexual orientation and gender identity in 2019, reads as follows, in so far as relevant (references omitted):

> "In recent years, laws have been enacted or proposed in several States that seek to prohibit or restrict public discussion of sexual orientation and gender identity, the work of human rights defenders and civil society organizations working on the human rights of LGBT people and events related to these issues, often under the guise of 'protecting minors'. They are frequently vaguely worded and arbitrarily restrict the rights to freedom of expression, peaceful assembly and association, as well as the right to information, enshrined in international law. They often also criminalize the legitimate work of human rights defenders and contribute to a broader climate of shrinking civil society space and the ongoing persecution of members of the LGBT community, including young persons who identify or are perceived as LGBT.
>
> United Nations treaty bodies and special procedures have systematically rejected such restrictions as not meeting the aforementioned strict safeguards in international human rights law, finding that such restrictions were, *inter alia*, not based on any credible evidence, were not necessary, were not proportionate, were discriminatory, and amounted to violations of rights enshrined in international law. For example, special procedures have expressed concerns about restrictions introduced ... through specific so-called 'anti-propaganda' laws and related developments in Kyrgyzstan, the Republic of Moldova, the Russian Federation and Ukraine. In the case of *Fedotova v. Russia*, the Human Rights Committee decided that a conviction for so-called 'propaganda of homosexuality among minors' amounted to a violation of the right to freedom of expression and equal protection of the law ...
>
> The Committee on the Rights of the Child has highlighted how, far from protecting minors, such legislation in fact 'encourages stigmatization of and discrimination against LGBTI persons, including children, and children of LGBTI families' and 'leads to the targeting and ongoing persecution of the country's LGBTI community, including abuse and violence, in particular against underage LGBTI rights activists'."

III. COMPARATIVE LAW AND PRACTICE

A. Council of Europe member States

123. A comparative-law report prepared by the Court's Research Division for the purpose of the present proceedings examined the national legal frameworks governing the provision of information to minors, in particular children of younger age, about intimate relationships, including those between persons of the same sex, in the following States: Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iceland,

Italy, Latvia, Liechtenstein, Luxembourg, Malta, the Republic of Moldova, North Macedonia, Norway, Poland, Romania, San Marino, Serbia, the Slovak Republic, Slovenia, Spain, Switzerland, Ukraine and the United Kingdom.[1]

124. According to the available data, four States have no laws, regulations or policies on how minors should be informed about intimate relationships (Bosnia and Herzegovina, Liechtenstein, the Republic of Moldova and Romania).

125. In those States which have relevant laws, regulations or policies, the provision of information on intimate relationships generally takes place within the system of education, at primary and secondary school level. Such information is part of education on sex, family, health or related subjects. The age from which these subjects are taught varies from State to State, from four to 11 years old. While the content of such courses is usually described in a general manner, the policies stress that teaching must be appropriate to the children's age and level of development.

126. The legal instruments of six States contain specific provisions on the inclusion in the relevant courses of information on different types of relationships and sexual orientation (Germany, Luxembourg, Malta, Spain, Switzerland and the United Kingdom). In ten other States, the legal instruments relating to education include the requirement to ensure respect for diversity, tolerance and prohibition of discrimination on the grounds of, *inter alia*, gender or sexual orientation (Albania, Croatia, the Czech Republic, Estonia, Greece, Iceland, North Macedonia, Norway, Serbia and Slovenia).

127. In two States the relevant legal instruments focus on relationships between men and women, there being no references to other types of relationships (Latvia and Poland), whereas one State prohibits the circulation of information discrediting the institution of the family (Azerbaijan). Only one State has in its law explicit provisions which consider information relating to same-sex relationships harmful to minors and ban its dissemination to them (Hungary).[2]

128. Among the eight States which provided information about the labelling of books or audio-visual media (Denmark, Finland, Georgia, Germany, Greece, San Marino, the Slovak Republic and Switzerland), none reported that a publication or a broadcast could be labelled as being harmful to certain age groups because it contained a non-sexual depiction of same-sex relationships.

129. In Switzerland, the Federal Supreme Court considered the special protection of children and young people, enshrined in Article 11 of the Federal Constitution, in a case concerning an advertising campaign by the health authorities on the prevention of HIV and other sexually transmissible

[1] The research report initially also included information concerning the national legal framework of the Russian Federation, which ceased to be a member of the Council of Europe on 16 March 2022 and a High Contracting Party to the Convention on 16 September 2022.

diseases, which contained non-pornographic images of different-sex and same-sex couples. In its decision of 15 June 2018 (2C_601/2016), the Federal Supreme Court found that the images were not of a type from which young people should be protected. It held as follows:

> "[W]hat is included in the 'right to special protection' of children and young people cannot be elucidated in an abstract and unchanging way; on the contrary, current social conditions must be taken into account. This also applies to the design of an official information campaign. The influences to which children and young people are commonly subjected and the perceptions with which they are inevitably confronted on a daily basis must be taken into account."

B. Other States

1. United States of America

130. In a judgment of 20 September 2000, adopted in the case of *Sund v. City of Wichita Falls* (121 F. Supp. 2d 530), the US District Court for the District of Northern Texas examined a resolution adopted by the city council, which allowed any group of at least 300 adult library card holders to submit a petition demanding that the city's public library remove a certain book from the children's section and place it in the adults' section. The resolution in question had been adopted in the wake of public opposition to two books, aimed at pre-school and primary school children, portraying families with parents of the same sex, and it had been applied in respect of those books, resulting in their removal from the children's section. The court ruled that the resolution was unconstitutional, finding that it amounted to "impermissible content-based and viewpoint-based discrimination". It held that there was "no interest, let alone a compelling one, in restricting access to non-obscene, fully-protected library books solely on the basis of the majority's disagreement with their perceived message".

131. In a judgment of 31 January 2008, adopted in the case of *Parker v. Hurley* (514 F. 3d 87 (2008)), the US Court of Appeals for the First Circuit examined a request lodged by several parents that they be given prior notice by the school and the opportunity to request an exemption for their young children from exposure to books they found religiously repugnant, until the children reached seventh grade. The parents' claim had been dismissed by a district court and the Court of Appeals upheld that decision. It observed that one set of parents objected to their child being presented in kindergarten and first grade with two books that portrayed diverse families, including families in which both parents were of the same gender. The court noted that those books did not endorse gay marriage or homosexuality, or even addressed these topics explicitly, but merely described how other children might come from families that look different from one's own. It held that the right to freely exercise one's religion did not include a "right to be free from any reference in public elementary schools to the existence of families in which the parents

are of different gender combinations". The other set of parents objected to a second-grade teacher's reading to their son's class a book that depicted and celebrated a gay marriage. The court acknowledged that the book in question affirmatively endorsed homosexuality and gay marriage and that the reading had been precisely intended to influence the listening children toward tolerance of gay marriage. However, the court found no evidence of "systemic indoctrination" and held that "requiring a student to read a particular book is generally not coercive of free exercise rights".

2. Canada

132. In a judgment of 20 December 2002, adopted in the case of *Chamberlain v. Surrey School District No. 36* (2002 SCC 86, [2002] 4 SCR 710), the Supreme Court of Canada examined the refusal by a school board to approve three books for use in family life education classes taught to five to six-year-old children. The books depicted families in which both parents were of the same sex, and the decision of the board stated that they would engender controversy in view of some parents' religious objections to the morality of same-sex relationships. The court set the board's decision aside. It observed, *inter alia*, that children attending public schools came from many different types of families, and held as follows:

> "Inevitably, some parents will view the cultural and family practices of certain other family types as morally questionable. Yet if the school is to function in an atmosphere of tolerance and respect, ... the view that a certain lawful way of living is morally questionable cannot become the basis of school policy. Parents need not abandon their own commitments, or their view that the practices of others are undesirable. But where the school curriculum requires that a broad array of family models be taught in the classroom, a secular school system cannot exclude certain lawful family models simply on the ground that one group of parents finds them morally questionable."

THE LAW

I. PRELIMINARY ISSUE

133. The Court notes that the applicant died after the present application had been lodged. Her mother, who is her legal heir, expressed the wish to continue the proceedings in the applicant's stead. The Government did not submit any objections.

134. In a number of cases in which an applicant has died in the course of the proceedings, the Court has taken account of the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings, or the existence of a legitimate interest claimed by a person wishing to pursue the application (see *Mraović v. Croatia* (striking out) [GC], no. 30373/13, § 23, 9 April 2021, and the cases cited therein).

135. In the circumstances of the present case, and in view of the absence of any objections from the Government, the Court considers it justified to permit the applicant's mother to pursue the application.

II. THE GOVERNMENT'S OBJECTION BASED ON THE LACK OF SIGNIFICANT DISADVANTAGE

A. The parties' observations

1. The Government

136. The Government submitted that the applicant had not suffered a significant disadvantage and that the application should therefore be rejected under Article 35 § 3 (b) of the Convention. They contended that the impugned measures had not precluded the applicant from disseminating her ideas or participating in public debate. In particular, the book had not been banned from distribution, and the warning labels were only advisory – children's parents, guardians or teachers could simply disregard them. Moreover, a second edition had been published and distributed without any restrictions (see paragraph 30 above). Therefore, the Government argued that the applicant had not suffered any significant adverse consequences.

137. In addition, they submitted that respect for human rights did not compel the Court to examine the case. They contended that the case did not concern any discrimination on the grounds of sexual orientation, as could be seen from the reasoning of the Vilnius Regional Court (see paragraph 56 above). Moreover, in accordance with the Constitutional Court's ruling of 11 January 2019 (see paragraph 99 above), the depiction of same-sex family relationships was in line with the constitutional concept of the family and it could not be restricted under section 4 § 2 (16) of the Minors Protection Act.

2. The applicant

138. The applicant disagreed with the Government's argument that there was no need for the Court to examine the case. In particular, she submitted that in May 2019, that is, after the adoption of the Constitutional Court's ruling of 11 January 2019, the Supreme Court had refused to examine her appeal on points of law, which meant that it had considered the lower courts' interpretation of section 4 § 2 (16) of the Minors Protection Act to be correct. She also pointed out that the Constitutional Court's interpretation of the concept of the family had been questioned at the highest political level – specifically, the President of Lithuania, in an interview given in September 2021, had stated that he understood family as created exclusively through marriage between a man and a woman.

B. The Court's assessment

139. The Court considers that the objection based on Article 35 § 3 (b) of the Convention cannot be upheld. The present application is now before the Grand Chamber because it was indeed considered to raise serious questions affecting the interpretation of the Convention, and jurisdiction was therefore relinquished by the Chamber under Article 30 of the Convention. The Court is thus of the view that the conditions set forth in Article 35 § 3 (b) are not met, since respect for human rights, as defined in the Convention and the Protocols thereto, requires an examination of the application on the merits (see *Grzęda v. Poland* [GC], no. 43572/18, § 332, 15 March 2022).

140. Accordingly, the Government's objection under Article 35 § 3 (b) of the Convention must be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

141. The applicant complained that the temporary suspension of the distribution of her book and its subsequent marking with warning labels had been motivated by the fact that the book contained positive depictions of same-sex relationships and had therefore been unjustified. She relied on Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

142. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

143. The applicant submitted that the book had been an expression of her personal and professional experience – she was openly homosexual, a professional children's author who had won literary prizes for her work, and she had experience of volunteering at a helpline for young people. She had written the fairy tales with the aim of encouraging children of a young age – nine to ten years – to be more tolerant towards various minority groups, including people of different ethnic origins, physical abilities and sexual orientations. The book aimed to do that by depicting characters belonging to those minorities in a respectful and positive manner.

144. She submitted that the relationships between same-sex couples in the book were described in the same way in which relationships between different-sex couples were usually depicted in fairy tales, without any content of a coercive, violent or pornographic nature.

145. She pointed out that, before agreeing to publish the book, the University had examined the fairy tales and had not had any objections to their content. However, following the interventions by members of the *Seimas* and the Ministry of Culture (see paragraphs 20 and 21 above), the University had decided to suspend the distribution of the book and recalled all the unsold copies from bookshops.

146. In the applicant's view, various facts demonstrated that the University had suspended the distribution of the book because of its positive depiction of same-sex relationships and because she herself was homosexual. In particular, the University had made that decision without informing her and without obtaining any expert assessment of the book. Moreover, various statements made by the representatives of the University showed that it considered the portrayal of same-sex relationships in the book to be contrary to its values and to amount to "primitive and biased propaganda of homosexuality" (see paragraphs 25 and 26 above).

147. The applicant also submitted that the Inspectorate's conclusion of 8 April 2014 had been drafted without consulting any experts and without giving her the opportunity to comment on the Inspectorate's views. On the basis of that conclusion, the book had been marked with a label warning that it was harmful to children, again without her being consulted.

148. The applicant argued that the marking of the book with warning labels was just as serious and restrictive as the one-year-long suspension of distribution, because the labels had the effect of restricting the distribution of the book among its intended audience – nine to ten-year-old children. The labels presented the book as harmful to children under the age of 14 and made it unattractive to them and their parents. In addition, the marking of the book

with labels was a direct attack on the applicant's honour and dignity, as she was homosexual herself. Furthermore, the labels had turned the book into a tool for perpetuating discrimination, by stating that the depiction of certain minority groups was harmful to children.

149. The applicant did not dispute the fact that the impugned measures had had a basis in the law – namely, section 4 § 2 (16) of the Minors Protection Act. However, she argued that that provision in itself contributed to unjust and discriminatory treatment and to the limitation of the freedom of expression of LGBTI persons and same-sex couples in Lithuania. Although its text did not contain any explicit references to sexual orientation, a teleological, historical and systemic analysis demonstrated that it was aimed at limiting information about LGBTI persons and same-sex relationships. In that regard, the applicant pointed to the history of its adoption (see paragraphs 74-80 above) and to the provisions of the Constitution and the Civil Code to which section 4 § 2 (16) explicitly referred (see paragraphs 60 and 61 above). In particular, the reference to a "different concept of marriage from the one enshrined in the Constitution and the Civil Code" made it clear that the purpose of section 4 § 2 (16) was to prohibit or restrict information about LGBTI persons and same-sex relationships. The applicant also submitted that that legal provision had been criticised by the UN Human Rights Committee (see paragraph 121 above) and ECRI (see paragraph 109 above), and that the Office of the Equal Opportunities Ombudsperson of Lithuania had drawn attention to the fact that section 4 § 2 (16) of the Minors Protection Act might be in conflict with domestic anti-discrimination legislation (see paragraphs 100-102 above).

150. In addition, the applicant submitted that section 4 § 2 (16) had only ever been applied to limit information about LGBTI persons and same-sex relationships and that it was being used by various State and non-State actors to restrict discussions about LGBTI-related issues in Lithuania. For example, in 2019 a television programme about gay couples raising children had been the subject of complaints which had relied on section 4 § 2 (16). In the applicant's view, this demonstrated that that legal provision could be easily manipulated by anyone seeking to limit the discussion of LGBTI topics. Moreover, it enabled those who sought to "protect traditional family values" to present in a negative light any kind of information which differed from the traditional concept of marriage and family. In such circumstances, when same-sex relationships were perceived by law as "abnormal", any constructive discussion about them was restricted and non-traditional forms of family could only be portrayed in a negative light.

151. The applicant further contended that the interference with her right to freedom of expression had neither pursued a legitimate aim nor been necessary in a democratic society because the book did not have any negative effects on children of any age. In accordance with the Court's case-law, restrictions on information about homosexual persons or same-sex

relationships were unacceptable under Article 10 of the Convention. Such information could not be considered to have a negative effect on children or to be incompatible with the prevailing concept of family; on the contrary, the information in question was important to the proper functioning of democracy and to the promotion of the values of equality, diversity and pluralism. In line with the Court's findings in *Bayev and Others v. Russia* (nos. 67667/09 and 2 others, §§ 67, 78 and 81-83, 20 June 2017), information about homosexual persons could not be restricted on the basis of false prejudices about them, even if a certain part of Lithuanian society would find such information shocking.

152. The applicant pointed out that laws which restricted the dissemination of information relating to LGBTI persons and same-sex relationships were in force only in a small minority of Council of Europe member States – Lithuania, Latvia and Hungary, as well as in one former member State – the Russian Federation (see the footnote in paragraph 123 above).

153. Furthermore, she argued that the book did not have any content that was inappropriate for children. She contested the allegation that it depicted sexual desire too explicitly, and submitted that the excerpts of the two fairy tales quoted by the domestic courts did not contain any nudity, eroticism or sexual abuse (see paragraphs 51 and 56 above). Words like "love" and "embrace" merely showed that the characters cared about and loved one another. Well-known traditional fairy tales, such as "Beauty and the Beast" or "Snow White", also portrayed couples who were in love and included scenes of them kissing. However, to the applicant's knowledge, no fairy tales depicting different-sex couples had ever been deemed inappropriate for children by Lithuanian authorities. She also contended that the courts had misinterpreted the fairy tale "The Princess, the Shoemaker's Daughter and the Twelve Brothers". The fact that after the night the shoemaker's daughter looked "sad and pale" had been interpreted as referring to sexual relations, while in the fairy tale it was clear that the shoemaker's daughter was sad and pale because she missed her brothers, who had been turned into nightingales (see paragraph 17 above).

154. The applicant also submitted that the Minors Protection Act contained other provisions aimed at limiting information of a sexual nature (see paragraph 82 above). Thus, if the domestic authorities and courts had really considered that the book was sexually explicit, they should have relied on those other provisions, but they had not done so. In the applicant's view, the domestic authorities had made up an allegedly non-discriminatory reason for the impugned measures, which was both a transparent attempt to change the original reason for the restrictions and a misrepresentation of the content of the two stories.

(b) The Government

155. The Government submitted that it was important to determine the scope of the present case. In their view, the case concerned one narrow question: the age from which children should be advised to read the applicant's book – from nine to ten years, as she had wished, or from 14 years, as recommended by the authorities. They argued that a decision on this matter should be left to the margin of appreciation of the State and that that margin should be considered wide.

156. They also submitted that the book had been published without any obstacles or restrictions. Moreover, it had never been completely removed from distribution – after its distribution was suspended, it had remained available in public libraries (see paragraph 22 above), for some time it had been freely available online, and a second edition had been published soon afterwards (see paragraph 29 above). As to the warning labels, the Government contended that they were of a purely informative nature. Thus, parents, guardians, teachers and libraries could disregard them and encourage children below the age of 14 to read the book. Indeed, some libraries had chosen not to put the labels on the book (see paragraph 30 above).

157. They further submitted that the measure of suspension of the distribution had not been required or recommended by any authorities but that it had been taken by the University on its own initiative (see paragraph 22 above). Moreover, the fact that the second edition of the book, which had been published by a different publisher, had not been marked with any labels (see paragraph 30 above) also demonstrated that those measures had been taken on the University's initiative.

158. At the hearing, the Government specified that after the Inspectorate had issued its recommendation (see paragraph 23 above), the University had had the choice to mark the books either with a label "Information may have a negative impact on persons under the age of 14" or with an indicator "N- 14".

159. Moreover, the Government argued that the present case should not become an *in abstracto* assessment of the compatibility of section 4 § 2 (16) of the Minors Protection Act with the Convention. In their view, even admitting that at the time the domestic court proceedings had commenced, the provision could have been considered "discriminatory", that had been remedied by the Constitutional Court, which in a ruling of 11 January 2019 had held that the constitutional concept of family was neutral in terms of gender (see paragraph 99 above). They contended that section 4 § 2 (16) of the Minors Protection Act had to be interpreted in accordance with the case-law of the Constitutional Court. As a result, following the adoption of that ruling, the depiction of same-sex relationships could not be considered contrary to the constitutional concept of family and could not be restricted under section 4 § 2 (16).

160. The Government also acknowledged that some of the arguments provided by the Inspectorate and by the lower courts displayed certain "discriminatory attitudes" towards same-sex families. However, they argued that those "regretful flaws" had been rectified by the higher courts. Firstly, the Supreme Court, when remitting the case for a fresh examination, had made extensive references to the principles established in the Court's case-law under Articles 10 and 14 of the Convention and had emphasised that differences based solely on considerations of sexual orientation were unacceptable (see paragraph 41 above). Secondly, the Vilnius Regional Court, which had been the final domestic court to examine the merits of the case, had carried out a necessity and proportionality assessment and had found the impugned measures to be justified in the best interests of children. The latter court had not based its decision on section 4 § 2 (16) of the Minors Protection Act and had not invoked the concept of family, since by that time the Constitutional Court had already established that the constitutional concept of family was neutral in terms of gender.

161. The Government contended that the Vilnius Regional Court had held the impugned measures to be justified not because the book contained a positive depiction of same-sex relationships but because of the form in which those relationships were presented – namely, there were too many details of carnal love to be suitable for nine and ten-year-old children (see paragraph 56 above). They submitted that traditional fairy tales did not contain any elements of sexual desire, whereas the fairy tale "The Princess, the Shoemaker's Daughter and the Twelve Brothers" departed from that tradition and contained a passage about the two young women sleeping in each other's embrace the night after their wedding. The Government submitted that the words "first night" were normally understood as the first night after the wedding, when couples had sexual relations.

162. The Government also contended that the fairy tales could be seen as implying that true love could only be experienced between persons of the same sex, whereas different-sex couples had only two purposes – to have children and to inherit wealth (they referred to the words uttered by one of the characters in the story, the king – see paragraph 17 above). In the Government's view, while it was important to protect same-sex couples, that could not lead to "insulting", "degrading" or "belittling" heterosexual persons and families or to "promoting families of the same sex". The Vilnius Regional Court had drawn attention to the latter point when finding that the applicant herself had possibly sought to discriminate against people who held different values (see paragraph 60 of the decision of the Vilnius Regional Court, cited in paragraph 56 above).

163. The Government provided the Court with an opinion of a child and adolescent psychiatrist-psychotherapist, which they had commissioned for these proceedings and which had been delivered in February 2022, according to which the fairy tale "The Princess, the Shoemaker's Daughter and the

Twelve Brothers" did not meet the developmental needs of children under the age of 14 because, *inter alia*, it "described same-sex relationships too emotionally", which was not typical of traditional fairy tales, and it "underestimated and belittled the emotional ties of heterosexual families". As to the fairy tale "The Three Princes' Search for Wisdom", the expert found that it contained "an unequal presentation of heterosexual and homosexual relationships", which could interfere with a child's sense of justice and equality.

164. The Government also pointed to various domestic legal and social developments which, in their view, demonstrated that Lithuanian society was becoming more tolerant towards same-sex relationships. The national school curriculum included teaching about different sexual orientations and the importance of respecting everyone regardless of their sexual orientation, but such education began at the age of 12 or 13 years, thus slightly later than wished by the applicant. Moreover, a television programme about gay couples raising children had been broadcast in 2019 without any restrictions – the Government submitted that that programme had not had any sexual content, in contrast to the applicant's book. In addition, following the Court's judgment in *Beizaras and Levickas v. Lithuania* (no. 41288/15, 14 January 2020), there had been an important shift in the practice of the domestic authorities, which were now taking all necessary measures to investigate allegations of hate speech on the grounds of sexual orientation. Furthermore, in 2021 the administrative courts had protected the right of the organisers of a Pride March to hold that event.

165. Lastly, they submitted that section 4 § 2 (16) of the Minors Protection Act had not been applied to restrict information about LGBTI-related issues since 2014, and that in 2017 the Inspectorate had issued guidelines which prohibited any discrimination on the grounds of, *inter alia*, sexual orientation when marking information with labels or age indicators.

2. Submissions of third-party interveners

(a) European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), ARTICLE 19 and Professor David Kaye

166. In their joint intervention, ILGA-Europe, ARTICLE 19 and Professor David Kaye (former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) submitted that labels and warnings marking a book as "harmful" could restrict access to such a book by limiting its availability in bookshops and libraries and also by deterring potential buyers from buying it where it was available. The interveners referred to a 2016 study by PEN America, a non-governmental organisation, concerning book challenges and bans in the United States, which had found that many librarians, teachers, and school administrators admitted that they declined to order certain books out of fear that someone

might find their content objectionable. This concerned in particular books that were written by or were about people of colour, LGBTI persons or disabled individuals, since those were the ones that had been challenged more frequently. The interveners submitted that marking a book with a warning label would reinforce such fears.

167. They submitted that marking books with labels could be justified where such labels were neutral – for instance, to indicate the literary genre of the book, or where the need for labels was demonstrated with appropriate evidence – for example, where the book contained explicit depictions of violence. By contrast, a label expressing a warning concerning members of groups protected against discrimination under international law should be suspect on its face, given the illegitimacy of discriminatory restrictions on expression.

168. The interveners further submitted that labelling expression as harmful to children because of its LGBTI content had a discriminatory purpose, which could not be considered legitimate under Article 10 § 2 of the Convention. They also emphasised the right of children to access information in formats that were appropriate to their age and capacities, as well as to engage with various perspectives in order to form their own views and beliefs; in that connection, they referred to documents adopted by the UN Committee on the Rights of the Child and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

169. Lastly, the interveners submitted that by adding labels and warnings to LGBTI-related content, governments contributed to the continued stigmatisation and social exclusion of the LGBTI community. They referred to the comments made in 2014 by the Commissioner for Human Rights of the Council of Europe, following a survey carried out by the EU Fundamental Rights Agency, that LGBTI children were often victims of bullying and violence at school, at home and online. Moreover, according to a report by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the abuse of LGBTI pupils and children of LGBTI parents in educational settings was exacerbated by the negative portrayals and/or invisibility of sexual and gender diversity in educational materials.

(b) Háttér Society

170. Háttér Society, an LGBTQI rights association established in Hungary, submitted that the measures examined in the present case fitted into a wider phenomenon in the Contracting States, illustrated by the introduction of laws sanctioning, censoring or even outlawing speech concerning sexual orientation and gender identity with the purported aim of protecting children. It argued that such restrictions not only impacted freedom of expression through the inevitable chilling effect which they triggered, but that they also stigmatised LGBTQI persons regardless of their age, limited the right of

parents to ensure the upbringing of their children according to their convictions, and restricted the rights of children to receive comprehensive and age-appropriate information on sexuality, sexual and reproductive health.

171. The intervener submitted that, despite the Court's judgment in *Bayev and Others* (cited above), laws concerning "propaganda of homosexuality" had been discussed in several other Contracting States, namely Latvia, Moldova, Ukraine and Poland. Moreover, in 2021 the Hungarian Parliament had enacted a law on combating paedophilia and protecting children containing a prohibition on making available to minors under the age of eighteen any content that "promotes or represents deviation from self–identity in line with the birth sex, gender reassignment, and homosexuality" in commercial advertising and mass media. In accordance with that law, a children's book depicting LGBTQI characters had been marked by the Hungarian authorities with a warning label stating that it contained "patterns of behaviour deviating from traditional gender roles".

172. According to the intervener, various international documents and surveys showed that LGBTQI children, as well as children coming from LGBTQI families, were often stigmatised, bullied and subjected to discrimination and violence. It contended that legal rules which required labelling any content on LGBTQI-related topics as harmful to children impeded their access to vital information, made them more vulnerable to bullying and violence, and forced them to hide their sexual orientation or gender identity. It also emphasised States' obligation, stemming from various international documents, to provide children with comprehensive sexual education, which was essential for their sexual and reproductive health, and vital for preventing the stigmatisation of LGBTQI youth.

173. Lastly, the intervener submitted that legislation and measures which restricted expression on LGBTQI-related topics not only created a considerable chilling effect on such expression, but also created an environment in which the social exclusion of and discrimination against LGBTQI individuals was seen as behaviour supported by the government. Such measures were indicative of a blatant wish to harm sexual and gender minorities, which was clearly incompatible with the spirit and values underpinning the Convention. It argued that the best way of confronting such measures would be for the Court to expressly confirm that the Contracting States had a positive obligation to refrain from wilfully harming individuals on the basis of their sexual orientation and gender identity.

3. The Court's assessment

(a) Whether the impugned measures can be attributed to the respondent State

174. At the outset, the Court notes that the impugned measures – the temporary suspension of the distribution of the book and its subsequent marking with warning labels – were taken by the Lithuanian University of

Educational Sciences, which was a public-law entity (see paragraphs 13 and 64 above), albeit enjoying a significant degree of autonomy under domestic law (see paragraphs 60 and 65 above).

175. In addition, in the domestic proceedings, the University stated that it had taken the impugned measures in order to comply with the requirements of the Minors Protection Act (see paragraphs 36, 47 and 54 above). The Court observes that soon after the book was published the University received a letter from several members of the *Seimas*, who expressed their concerns about its contents (see paragraph 21 above). Moreover, the Inspectorate, which is the authority tasked with supervising the implementation of the Minors Protection Act (see paragraph 85 above), found that the book contained information which was harmful to minors, within the meaning of section 4 § 2 (16) of the Act, and recommended marking it with warning labels (see paragraph 23 above). While it appears that, under domestic law, the Inspectorate's conclusion was not considered legally binding on the University (see paragraph 41 above), the Government acknowledged that, after that conclusion had been issued, the only choice that the University had had was whether to mark the book with a warning label or with an indicator "N-14" (see paragraph 158 above). The Court also observes that domestic law provides for administrative liability for anyone who publishes or distributes information considered harmful to children, without complying with the labelling requirements (see paragraphs 89 and 90 above; see also the Inspectorate's submissions to that effect made in the domestic proceedings in paragraph 39 above). It lastly notes that the impugned measures were examined and endorsed by the domestic courts.

176. In these circumstances, the Court is satisfied that the measures against the applicant's book were taken by a public-law entity, and, moreover, that they resulted directly from the domestic legislation (see paragraphs 82 and 89-92 above), as well as from interventions by several other public authorities (see, *mutatis mutandis*, *Novoseletskiy v. Ukraine*, no. 47148/99, §§ 80-82, ECHR 2005-II (extracts), and *Gawlik v. Liechtenstein*, no. 23922/19, § 48, 16 February 2021, and the cases cited therein). The fact that the domestic authorities did not take any measures against another publisher which published and distributed the second edition of the book without warning labels (see paragraph 30 above) does not suffice to refute the conclusion that such labels were required by law.

177. Accordingly, the Court finds that those measures were attributable to the respondent State.

(b) Existence of an interference

178. The Court must now ascertain whether the impugned measures amounted to an interference, in the form of a "formality, condition, restriction or penalty", with the exercise by the applicant of her freedom of expression. In order to answer this question, the scope of the measures must be

determined by putting them in the context of the facts of the case and of the relevant legislation (see *Wille v. Liechtenstein* [GC], no. 28396/95, § 43, ECHR 1999–VII).

179. The Government argued that the measures taken in respect of the book had been rather limited in nature and scope (see paragraphs 156 and 157 above). In this connection, the Court reiterates its consistent position that the fact that a sanction was minimal does not preclude the relevant measure from being considered an "interference" within the meaning of Article 10 of the Convention (see *Godlevskiy v. Russia*, no. 14888/03, § 36, 23 October 2008, and *Kula v. Turkey*, no. 20233/06, § 39, 19 June 2018). In the present case, the Court is of the view that the impugned measures amounted to an interference with the applicant's freedom of expression, for the following reasons.

180. Firstly, it observes that the distribution of the book was suspended for one year, during which time it was recalled from bookshops (see paragraphs 22 and 31 above). Despite the fact that the book remained available in public libraries and, for some time, online, the Court considers that recalling it from bookshops in which it had previously been on sale certainly reduced its availability to readers.

181. Secondly, when assessing the effect of the warning labels, the Court takes note of the fact that the applicant had intended the book to be read by nine to ten-year-old children (see paragraph 143 above). Indeed, the book was written in a language and style which would appeal to children, and it is reasonable to assume that, by the age of 14, teenagers are in general far less interested in reading fairy tales. Moreover, the warning labels reflected the conclusion reached by the Inspectorate that some of its contents might be harmful to children, as provided in the relevant law (see paragraph 23 above). In the Court's view, although the labels were advisory, parents and guardians could be expected to trust the assessment of the book's contents by the relevant public authority. Having in mind that similar labels are used to mark, among other things, information which is violent, sexually explicit or promotes drug use or self-harm (see paragraph 82 above), the Court considers that the warning labels were likely to dissuade a significant number of parents and guardians from allowing children under the age of 14 to read the book, especially in the light of the persistence of stereotypical attitudes, prejudice, hostility and discrimination against the LGBTI community in Lithuania (see the relevant international reports and surveys in paragraphs 115-117 and 121 above; see also the third-party submissions in paragraph 166 above). Therefore, the Court considers that the marking of the book as being harmful to the age group for which it was intended affected the applicant's ability to freely impart her ideas.

182. Thirdly, the Court is of the view that the restrictions imposed on a children's book depicting various minorities, in particular its labelling as harmful to minors under the age of 14, affected the applicant's reputation as

an established children's author and were liable to discourage her and other authors from publishing similar literature, thereby creating a chilling effect (see, *mutatis mutandis*, *Godlevskiy*, cited above, § 36).

183. In the light of the foregoing, the Court concludes that the year-long suspension of the book's distribution, followed by the decision to resume its distribution with warning labels required by the legislation, constituted an interference with the applicant's freedom of expression.

(c) Lawfulness of the interference

184. There was no dispute between the parties that the interference had had a basis in domestic law, namely section 4 § 2 (16) of the Minors Protection Act.

185. That provision refers to information "which expresses contempt for family values, [or] encourages a different concept of marriage and creation of family from the one enshrined in the Constitution and the Civil Code" (see paragraph 82 above). The Court observes that some of those terms appear rather vague. In particular, the definition of "encouraging" provided in that same Act (see paragraph 83 above) does not make it sufficiently clear whether a mere mention of homosexuality or same-sex relationships would be enough to trigger the application of section 4 § 2 (16) (see also the applicant's argument in paragraph 150 above that the law is such that only a negative portrayal of same-sex marriage would be compatible with it).

186. Nevertheless, the Court is of the view that the issue of the quality of the law is secondary to the question of the justification for the impugned measures in the applicant's case (see, *mutatis mutandis*, *Bayev and Others*, cited above, §§ 63-64, and *Sekmadienis Ltd. v. Lithuania*, no. 69317/14, § 68, 30 January 2018). Therefore, and in the absence of any arguments made by the parties as to the accessibility or foreseeability of the law, it accepts that those measures had a legal basis within the meaning of Article 10 § 2 of the Convention.

(d) Legitimate aim

187. The parties disagreed as to the aim pursued by the impugned measures. While the applicant argued that those measures had been aimed at preventing children from being exposed to a positive depiction of same-sex relationships (see paragraphs 146, 149-151 and 154 above), the Government contested that argument and submitted that the aim of the restrictions had been unrelated to the sexual orientation of the characters of the two fairy tales (see paragraphs 161 and 162 above).

188. Accordingly, the Court will first of all determine the aim of the interference, and then will assess whether that aim may be considered "legitimate" within the meaning of Article 10 § 2 of the Convention.

(i) The aim of the interference

189. The Government contended that the aim pursued by the impugned measures had been twofold: firstly, to protect children from content which was too sexually explicit (see paragraph 161 above), and secondly, to protect them from content which "promoted" same-sex relationships, by presenting those relationships as superior to different-sex relationships and by "insulting", "degrading" or "belittling" the latter (see paragraph 162 above). According to the Government, those two aims could be discerned in the reasoning of the Vilnius Regional Court, which had rectified certain "regretful flaws" on the part of the lower court and the Inspectorate (see paragraphs 159-162 above). The Court will address each of the aims advanced by the Government in turn.

190. As regards, firstly, the allegedly sexually explicit nature of one of the two fairy tales, the Government referred to the findings of the Vilnius Regional Court, which had held that the passage about the princess and the shoemaker's daughter sleeping in each other's arms on the night after their wedding depicted carnal love too openly for children (see paragraph 56 above). However, the Court is unable to see how the passage in question (see paragraph 17 above) could be regarded as sexually explicit.

191. It further notes that the Minors Protection Act contains several provisions that refer to information which is of an erotic nature or which encourages sexual relations (section 4 §§ 2 (4) and (15) – see paragraph 82 above). However, those provisions were not invoked by any of the parties or participants in the case at any stage of the domestic proceedings; reference was made only to section 4 § 2 (16) (see paragraphs 23, 48 and 54 above). Moreover, the Supreme Court, which remitted the case for a fresh examination, and the Vilnius District Court, which examined the case as the first-instance court after the remittal, likewise referred to section 4 § 2 (16) and not to any provision concerning sexually explicit content (see paragraphs 41 and 51 above).

192. The allegedly sexually explicit nature of one of the fairy tales was mentioned for the first time by the Vilnius Regional Court when examining the case on appeal. However, that court did not change the legal basis of the impugned measures, nor did it indicate on which statutory provision, if not section 4 § 2 (16), those measures could have been based. Furthermore, the Vilnius Regional Court quoted the conclusions of the Inspectorate, which had examined the two fairy tales solely from the viewpoint of section 4 § 2 (16), and it did not reverse or criticise the reasoning of the lower court, which had also found those fairy tales to be incompatible with section 4 § 2 (16) (see paragraph 56 above).

193. In such circumstances, the Court cannot subscribe to the Government's argument that the aim of the impugned measures was to protect children from information which was sexually explicit.

194. As regards the second aim advanced by the Government, namely protecting children from information seen as presenting same-sex relationships as superior to different-sex relationships, the Court considers that in reaching that conclusion the Vilnius Regional Court (see paragraph 56 above) did not provide adequate reasons to justify why it saw the fairy tales as "encouraging" or "promoting" some types of relationships at the expense of others, rather than as seeking to foster acceptance of different types of families. Neither the additional arguments put forward by the Government during the present proceedings, nor the expert opinion which they submitted shortly before the public hearing (see paragraphs 162 and 163 above) are any more convincing in this regard. Indeed, as stated by the applicant on several occasions, and as accepted – at least implicitly – by the University and the Ministry of Culture at the time of its publication, the book sought to encourage tolerance and acceptance of various marginalised social groups (see paragraphs 13, 19 and 26 above). It contained characters of diverse ethnicities, with different levels of physical and mental ability and living in various social and material circumstances, who were all depicted as caring and deserving of love (see paragraph 15 above). Therefore, the Court considers that the Government's allegation that the applicant was seeking to "insult", "degrade" or "belittle" different-sex relationships finds no support in the text of the book.

195. The Court further observes that the legislative history of section 4 § 2 (16) shows that, despite the absence of explicit references to sexual orientation in that provision, the underlying legislative intent was to restrict information about same-sex relationships. After an unsuccessful attempt, in 2006, to include in the Minors Protection Act a provision which would declare as harmful to children information "related to encouraging homosexual relations" (see paragraph 69 above), several further proposals were made between 2007 and 2009 to restrict information which "advocate[d] in favour of" or "promote[d]" homosexual, bisexual or polygamous relations (see paragraph 72 above). The latter wording was eventually adopted by the *Seimas*, and after the President vetoed the amendment, the *Seimas* voted to overrule the veto (see paragraphs 73 and 74 above). Thus, on 14 July 2009 the provision that categorised as harmful to minors information which "promote[d] homosexual, bisexual or polygamous relations" became law.

196. Various documents available to the Court reveal that the aforementioned amendment to the Minors Protection Act caused a considerable negative reaction on the international stage (see paragraphs 79 and 112 above), which prompted the domestic authorities to amend the Act again, before the provision in question could enter into force (see paragraph 74 above). Nonetheless, it is clear from the preparatory documents and the parliamentary debate that the main reason for removing the explicit reference to homosexual or bisexual relations was the wish to avoid international criticism, and that the principal concern of many members of

the *Seimas* was to find a way to include in the Minors Protection Act a provision which would have, in substance, the same effect but which would be formulated in a less obviously offensive way (see paragraphs 76-79 above). The final text of the amended Act, adopted on 22 December 2009, no longer contained any explicit references to homosexuality. However, the previously existing provision on the protection of family values was supplemented by a reference to "encourag[ing] a different concept of marriage and creation of family from the one enshrined in the Constitution and the Civil Code". The Court considers it clear that the text of section 4 § 2 (16) was intended to refer, in substance, to same-sex relationships and marriages, since both the Constitution and the Civil Code provide for marriage only between a man and a woman (see paragraphs 60 and 61 above) and Lithuanian legislation does not provide for any possibility of legal recognition of same-sex unions (see paragraphs 62 and 63 above).

197. Moreover, the Court notes that every single instance in which section 4 § 2 (16) has been applied or relied on has concerned information about LGBTI-related issues, such as social advertisements or television broadcasts seeking to foster social acceptance of sexual minorities, information about gay pride events or those events themselves (see paragraphs 103, 104, 109 and 150 above) and the applicant's book of fairy tales depicting same-sex relationships.

198. Accordingly, taking account of its legislative history (see the passages from the parliamentary debate reproduced at paragraph 79 above) and the instances of its application, the Court has no doubt that the intended aim of section 4 § 2 (16) was to restrict children's access to content which presented same-sex relationships as being essentially equivalent to different-sex relationships.

199. While the Government acknowledged that section 4 § 2 (16), at the time of its enactment and for some time afterwards, might have been seen as discriminatory, they argued that that had been rectified by the Constitutional Court's ruling of 11 January 2019 and that the application of that provision in the applicant's case by the Vilnius Regional Court reflected the changed interpretation of the law (see paragraphs 159 and 160 above). However, though it does not doubt the importance of the Constitutional Court's ruling for the protection of LGBTI persons and their families in Lithuania, the Court sees no grounds on which to find that that ruling had any bearing on the applicant's case. In particular, there is nothing in the decision of the Vilnius Regional Court, taken shortly after 11 January 2019, to indicate that it took the Constitutional Court's ruling into consideration when assessing the measures taken on the basis of section 4 § 2 (16) in respect of the applicant's book. It did not quash the decision of the first-instance court, on the grounds that it had been based on an interpretation of the law which was no longer correct, or on any other grounds. On the contrary, the Vilnius Regional Court explicitly stated that the first-instance court had properly assessed the harm

which the book could have on children and upheld its decision (see paragraph 56 above). Thus, there are no grounds to find that the Vilnius Regional Court considered that treating information about same-sex relationships as harmful to children was no longer permissible under Lithuanian constitutional law.

200. For the aforementioned reasons, the Court finds that the aim of the measures taken against the applicant's book was to bar children from information depicting same-sex relationships as being essentially equivalent to different-sex relationships (see paragraph 198 above).

(ii) Whether the aforementioned aim is legitimate

201. The Court will now examine whether the aim sought by the interference with the applicant's freedom of expression could be considered "legitimate" under Article 10 § 2 of the Convention.

202. It has already held that a legislative ban on "promotion of homosexuality or non-traditional sexual relations" among minors does not serve to advance the legitimate aims of protection of morals, health or the rights of others, and that by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society (see *Bayev and Others*, cited above, §§ 61 and 83-84) – a conclusion which the Grand Chamber fully endorses.

203. That being said, it observes that the present case is the first one in which the Court has been invited to assess restrictions imposed on literature about same-sex relationships which is aimed directly at children and written in a style and language easily accessible to them. In these circumstances, the Court considers that the legitimacy of the aim pursued by such restrictions warrants a more extensive analysis.

(α) Relevant general principles

204. The Court has confirmed on many occasions that, where children are involved, their best interests must be taken into account. There is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, directly or indirectly, their best interests are a primary consideration (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, §§ 134-35, ECHR 2010; *X v. Latvia* [GC], no. 27853/09, §§ 95–96, ECHR 2013; *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 208, 24 January 2017; and *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 287, 8 April 2021).

205. The Court has also acknowledged, in a variety of contexts, that children, in view of their age, are impressionable and more easily influenced than persons of an older age (see *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V; *Kurtulmuş v. Turkey* (dec.), no. 65500/01, ECHR 2006–II;

Kuliś and Różycki v. Poland, no. 27209/03, § 39, 6 October 2009; and *Vejdeland and Others v. Sweden*, no. 1813/07, § 56, 9 February 2012; see also *Handyside v. the United Kingdom*, 7 December 1976, § 52, Series A no. 24).

206. On several occasions, the Court has examined information aimed at children within the context of the right to education under Article 2 of Protocol No. 1 to the Convention. It has acknowledged that the setting and planning of the curriculum falls in principle within the competence of the Contracting States, since this mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era. On the other hand, the Court has also emphasised that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care to ensure that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner (see *Folgerø and Others v. Norway* [GC], no. 15472/02, § 84 (g) and (h), ECHR 2007–III, and the cases cited therein).

207. Thus, for example, the Court has found that mandatory sex education, including at primary school, which was aimed at giving children correct, precise, objective and scientific knowledge on the subject, presented in a manner appropriate to their age, was compatible with Article 2 of Protocol No. 1, as well as with Articles 8 and 9 of the Convention (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 54, Series A no. 23; *Jiménez Alonso and Jiménez Merino v. Spain* (dec.), no. 51188/99, ECHR 2000–VI; *Dojan and Others v. Germany* (dec.), nos. 319/08 and 4 others, 13 September 2011; and *A.R. and L.R. v. Switzerland* (dec.), no. 22338/15, §§ 42-45, 19 December 2017).

208. In other cases, the Court has accepted that domestic authorities were justified in limiting children's access to publications which had been found to contain "an encouragement to indulge in precocious activities harmful for them or even to commit certain criminal offences" (see *Handyside*, cited above, §§ 52-58) or which made serious and prejudicial allegations against sexual minorities, amounting to hate speech (see *Vejdeland and Others*, cited above, § 54). It has also accepted that various limitations on advertising aimed at children could be justified, in view of the vulnerability of children as consumers (see *Sigma Radio Television Ltd v. Cyprus*, nos. 32181/04 and 35122/05, §§ 14-16 and 200-01, 21 July 2011).

209. It must, however, be emphasised that the Court has consistently declined to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority (see, among many other authorities, *Bayev and Others*, cited above, § 68). It has repeatedly held that, just like differences based on sex, differences based on sexual orientation require "particularly convincing and weighty reasons" by way of justification. Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *Salgueiro da Silva*

Mouta v. Portugal, no. 33290/96, § 36, ECHR 1999-IX; *E.B. v. France* [GC], no. 43546/02, § 96, 22 January 2008; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 77, ECHR 2013 (extracts); and *Bayev and Others*, cited above, § 68).

(β) The Court's approach in the present case

210. With respect to the best interests of the child, the Court has already held, on several occasions, that there was no scientific evidence or sociological data at its disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children (see *Alekseyev v. Russia*, nos. 4916/07 and 2 others, § 86, 21 October 2010). It has also held that, to the extent that minors who witnessed demonstrations in favour of LGBTI rights were exposed to the ideas of diversity, equality and tolerance, the adoption of these views could only be conducive to social cohesion (see *Bayev and Others*, cited above, § 82).

211. In a similar vein, various international bodies, such as the PACE, the Venice Commission, ECRI, the European Parliament and the UN Independent Expert on sexual orientation and gender identity, have criticised laws which seek to restrict children's access to information about different sexual orientations, on the grounds that there is no scientific evidence that such information, when presented in an objective and age-appropriate way, may cause any harm to children. On the contrary, the bodies in question have emphasised that it is the lack of such information and the continuing stigmatisation of LGBTI persons in society which is harmful to children (see the relevant international material in paragraphs 105-122 above). The third parties in this case have also submitted that legal rules which label LGBTI-related content as harmful to children contribute to the discrimination, bullying and violence experienced by children who identify as LGBTI or who come from same-sex families (see paragraphs 169 and 172 above).

212. Moreover, the Court observes that the laws of a significant number of Council of Europe member States either explicitly include teaching about same-sex relationships in the school curriculum, or contain provisions on ensuring respect for diversity and prohibition of discrimination on the grounds of sexual orientation in teaching (see paragraph 126 above; according to the Government's observations, similar guidelines exist in Lithuania as well – see paragraph 164 above). While there appears to be no uniformity as to the age at which different member States consider it appropriate to provide children with information about intimate relationships, either same-sex or different-sex, or as to the manner in which such information should be provided to them, it is nonetheless clear that legal provisions which explicitly restrict minors' access to information about homosexuality or same-sex relationships are present in only one member State (see paragraph 127 above; see also the third-party observations in

paragraph 171 above, which indicate that similar laws have been discussed in a number of other member States). The Court notes that the laws of that State have prompted the European Commission to launch the contentious phase of the infringement procedure (see paragraph 111 above).

213. The Court also takes note of the decisions taken by courts in Switzerland, the United States and Canada, in several different contexts concerning children's access to information about same-sex relationships, which held that the national authorities could not disregard social realities and the existence of different types of relationships in societies in which children lived; and that the mere fact that some people might find certain types of families or relationships objectionable or immoral could not justify preventing children from learning about them (see paragraphs 129-132 above).

214. The Government in the present case argued, relying on the reasoning of the Vilnius Regional Court, that protecting same-sex couples should not lead to "insulting", "degrading" or "belittling" heterosexual persons and families or to "promoting families of the same sex" (see paragraph 162 above). In this connection, the Court notes that it has repeatedly held that pluralism, tolerance and broadmindedness are hallmarks of a democratic society (see *Dudgeon v. the United Kingdom*, 22 October 1981, § 53, Series A no. 45, and *Bédat v. Switzerland* [GC], no. 56925/08, § 75, 29 March 2016). In the light of the Government's arguments above, the Court makes clear that equal and mutual respect for persons of different sexual orientations is inherent in the whole fabric of the Convention. It follows that insulting, degrading or belittling persons on account of their sexual orientation, or promoting one type of family at the expense of another is never acceptable under the Convention. However, the Court is unable to discern any such aim or effect in the facts of this case. It finds on the contrary that to depict, as the applicant did in her writings, committed relationships between persons of the same sex as being essentially equivalent to those between persons of different sex rather advocates respect for and acceptance of all members of a given society in this fundamental aspect of their lives. Therefore, the Court cannot subscribe to the Government's argument.

215. Moreover, the Court is firmly of the view that measures which restrict children's access to information about same-sex relationships solely on the basis of sexual orientation have wider social implications. Such measures, whether they are directly enshrined in the law or adopted in case-by-case decisions, demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions, however limited in their scope and effects, are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society (see *Bayev and Others*, cited above, § 83).

216. In the light of the foregoing, the Court finds that where restrictions on children's access to information about same-sex relationships are based solely on considerations of sexual orientation – that is to say, where there is no basis in any other respect to consider such information to be inappropriate or harmful to children's growth and development – they do not pursue any aims that can be accepted as legitimate for the purposes of Article 10 § 2 of the Convention and are therefore incompatible with Article 10.

(e) Conclusion

217. The Court has found that the measures taken against the applicant's book sought to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships, labelling such information as harmful, and concludes that those measures did not pursue a legitimate aim under Article 10 § 2 of the Convention.

218. There has accordingly been a violation of Article 10 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 10

219. The applicant complained that she had suffered discrimination in the exercise of her right to freedom of expression because the restrictions on her book had been motivated by prejudice against sexual minorities. She relied on Article 14 of the Convention taken in conjunction with Article 10.

Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

220. In finding that there had been a violation of Article 10 of the Convention in the present case, the Court held that the aim of the restrictions imposed on the applicant's book had been to limit access by children to information which depicted same-sex relationships as being essentially equivalent to different-sex relationships (see paragraph 200 above) and that laws such as the one applied in the present case reinforced stigma and prejudice and encouraged homophobia (see paragraphs 202 and 215 above).

221. In the circumstances of the present case, given that the impugned measures were principally directed at the LGBTI content of the expression rather than the author of the expression herself, the Court is of the view that that central issue has been sufficiently taken into account in the above assessment which has led to the finding of a violation of Article 10 of the Convention. Moreover, the Court observes that in the present case it was only at the oral hearing that the applicant's representative developed the argument that Article 14 of the Convention, taken in conjunction with Article 10,

applied to discrimination directed at the content of a message rather than at any personal characteristic of the author. It thus leaves the question of the admissibility and/or merits of such a complaint under Article 14 to be examined in a suitable future case and finds that there is no cause in the present case for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see, for a similar approach, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 136, 25 October 2012; *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 212, 14 December 2017; *Berkman v. Russia*, no. 46712/15, § 66, 1 December 2020; and *M.A. v. Denmark* [GC], no. 6697/18, § 197, 9 July 2021).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

222. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

223. The applicant's heir claimed 15,000 euros (EUR) in respect of non-pecuniary damage for the distress suffered as a result of the impugned measures.

224. The Government did not comment on this claim.

225. The Court observes that compensation for damage can be awarded only in so far as the damage is the result of a violation it has found. In the present case, the Court has found a violation of Article 10 of the Convention and decided that it was not necessary to also examine the case from the standpoint of Article 14 of the Convention taken in conjunction with Article 10. This being so, and ruling on an equitable basis, it awards the applicant's heir EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

1. The parties' submissions

226. The applicant's heir claimed EUR 3,870.70 in respect of the costs and expenses incurred before the domestic courts, consisting of the University's legal fees which the courts had ordered the applicant to cover. She provided copies of bank transfers showing that the Lithuanian Human Rights Centre had paid that amount to the University on behalf of the applicant.

227. The applicant's heir also claimed EUR 5,000 in respect of the costs and expenses incurred before the Court. She provided a copy of an agreement

with her representative under which she had undertaken to pay him that amount if the Court were to find a violation of the Convention in the present case.

228. The Government did not comment on these claims.

2. The Court's assessment

229. The Court observes that the sum of EUR 3,870.70 was paid to the University not by the applicant herself but by a non-governmental organisation. The applicant's heir did not provide any documents showing that she or the applicant was under a legal obligation to reimburse those amounts to the organisation (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 371-72, 28 November 2017). In such circumstances, the Court sees no grounds to grant this part of the claim.

230. By contrast, the Court considers that the amount of EUR 5,000 for the representation before the Court is properly substantiated and reasonable as to quantum. Therefore, it grants this part of the claim.

FOR THESE REASONS, THE COURT

1. *Holds*, unanimously, that the applicant's heir has standing to continue the present proceedings in her stead;

2. *Declares*, unanimously, the complaint concerning Article 10 of the Convention admissible;

3. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

4. *Holds*, by twelve votes to five, that there is no need to examine separately the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 10;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant's heir, within three months, the following amounts:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant's heir, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicant's heir's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg on 23 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Robert Spano President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Yudkivska, Lubarda, Guerra Martins and Zünd, joint by Judge Kūris, is annexed to this judgment.

M.T.
R.S.

JOINT PARTLY DISSENTING OPINION OF JUDGES YUDKIVSKA, LUBARDA, GUERRA MARTINS AND ZÜND JOINED BY JUDGE KŪRIS

1. We fully agree with the finding that the measures taken against the late applicant's book did not pursue any legitimate aim and that there has therefore been a violation of Article 10 of the Convention.

2. However, we are unable to join the majority in concluding that there is no need to examine separately the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 10. We firmly believe that discrimination is a fundamental aspect of this case and that it should have therefore been addressed.

3. As part of its reasoning relating to the discrimination complaint, the majority states that "the impugned measures were principally directed at the LGBTI content of the expression rather than the author of the expression herself" (see paragraph 221 of the judgment). We do not question this characterisation of the facts. Indeed, considering the aim pursued by those measures and particularly their legal basis, which are analysed in great detail in paragraphs 189-200 of the judgment – to which analysis we fully subscribe – we have no reason to doubt that the Lithuanian authorities would have applied the same restrictions to a similar book written by a heterosexual author. Even if the subjective impact of such restrictions on someone who is homosexual is greater than on someone who is heterosexual, the crucial issue in this case is the content of the measures.

4. That being so, we believe that this case provided the Court with an invaluable opportunity – which has sadly been missed – to address one of the ways in which homophobic prejudice is often manifested nowadays and to clarify the approach to be taken in cases where discriminatory measures are taken against specific content, rather than its author.

5. In this opinion, we will firstly take a look at the approach which the Court has taken to date in cases concerning discrimination on the grounds of sexual orientation. We will then present our arguments in favour of revisiting that approach in cases which concern content-based restrictions. Lastly, we will outline how we would have liked to see the proposed approach applied in the present case.

A. The Court's approach in discrimination cases to date

6. In cases in which the applicants allege that they have been personally discriminated against on the grounds of their sexual orientation, the Court typically begins its analysis by examining whether the individual applicant has been treated differently from persons in the same or a relevantly similar situation because of this characteristic (see, for example, *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, §§ 28-36, ECHR 1999-IX; *Karner*

v. Austria, no. 40016/98, §§ 34-42, ECHR 2003-IX; and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, §§ 78-92, ECHR 2013 (extracts), all concerning Article 14 of the Convention read in conjunction with Article 8).

7. However, the Court has taken a slightly different approach in cases which concerned restrictions on publications or assemblies aimed at promoting the rights of sexual minorities. In such cases, the focus has been less on the sexual orientation of the applicants (the authors of the publications or the organisers of the assemblies) and more on the purpose which they sought to pursue by exercising their rights to freedom of expression, association and assembly. Thus, the Court has examined whether the impugned restrictions were based on hostility to the pro-LGBTI message of the publications or assemblies in question rather than to the sexual orientation of the applicants (see *Bączkowski and Others v. Poland*, no. 1543/06, § 100, 3 May 2007; *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, §§ 90-91, 20 June 2017; *Zhdanov and Others v. Russia*, nos. 12200/08 and 2 others, §§ 180-81, 16 July 2019; and *Berkman v. Russia*, no. 46712/15, §§ 55-57, 1 December 2020). To the best of our knowledge, there has been only one case in which the Court has explicitly stated that the prohibition on holding gay pride marches amounted to discrimination against the participants in those events on the grounds of *their sexual orientation* (see *Alekseyev v. Russia*, nos. 4916/07 and 2 others, § 109, 21 October 2010 (emphasis added)).

8. We would like to draw particular attention to the Court's judgment in *Berkman* (cited above), which concerned the failure by the domestic authorities to protect the participants in Coming Out Day from violent counter-demonstrators, and the applicant's arrest during that event. In that case, the applicant did not allege that she had been discriminated against on the grounds of her sexual orientation, but on the grounds of her support for LGBTI people (see *Berkman*, cited above, § 1), and her actual sexual orientation was not mentioned anywhere in the Court's judgment. The Court held that the applicant had "publicly positioned herself with the target group of the sexual prejudice" (ibid., § 55) and found that the domestic authorities had failed to comply with their positive obligations under Article 11 of the Convention, taken alone and in conjunction with Article 14 (ibid., § 58).

9. Moreover, in a number of cases the Court has accepted that associations which sought to promote the rights of sexual minorities could be victims of discrimination in their own right (see *Genderdoc-M v. Moldova*, no. 9106/06, § 54, 12 June 2012; *Identoba and Others v. Georgia*, no. 73235/12, § 48, 12 May 2015; *Association ACCEPT and Others v. Romania*, no. 19237/16, § 146, 1 June 2021; and *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, §§ 83-84, 16 December 2021). Needless to say, associations do not themselves have any sexual orientation, and the Court did not examine whether all or most of the members of the

applicant associations identified as belonging to sexual minorities, or whether the impugned restrictions had been applied because of the sexual orientation of the members. Instead, the fact that the associations had been subjected to restrictions of their rights on the grounds of the pro-LGBTI message which they wished to convey appeared to be sufficient for the Court to consider them to be victims of discrimination and to find violations of Article 14 of the Convention taken in conjunction with Article 10 or 11.

B. The need to revisit the Court's approach in cases concerning discrimination aimed at content

10. In the light of the evolution of European anti-discrimination law, both in general[1] and regarding the protection of sexual minorities in particular,[2] in our view there is a need for the Court to clarify and update the approach to be taken in cases which concern restrictions on expression aimed at promoting the rights of sexual minorities where the individual's own sexual orientation is not as such the basis for the restriction, that is to say, the ground on which the individual is treated less favourably is not a protected *personal* characteristic.

11. The time has come to develop the Court's case-law by bringing pro-LGBTI views *as such* within the ambit of protection against discrimination. The Court should explicitly recognise that measures which seek to restrict the dissemination of pro-LGBTI information or ideas amount to discrimination against the authors or publishers, without it needing to be shown that the sexual orientation of the complainants was also a factor. This approach, which dissociates the finding of discrimination from the personal characteristics of the applicant, would be fully in keeping with the spirit of the Convention and its underlying values, such as the pluralism, tolerance and broadmindedness which are hallmarks of a democratic society, genuine recognition of, and respect for, diversity, and respect for all *de facto* family ties. We also believe that this approach finds support in the Court's case-law, as presented in paragraphs 7-9 above.

12. It would be artificial to suggest that restricting the expression of pro-LGBTI views is based on something other than prejudice against the LGBTI community as a group. The discriminatory intent and purpose of such measures cannot be concealed, and their inevitable effect is to further the

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[1] Mark DE VOS (2020), "The European Court of Justice and the march towards equality in European Union anti-discrimination law", *International Journal of Discrimination and the Law*, vol. 20 (I), pp. 62 et seq.

[2] Robert WINTEMUTE, "Sexisme et LGBT-phobie dans le cadre de la jurisprudence de la CourEDH et de la CJEU", in Daniel Borrillo & Félicien Lemaire (eds), *Les discriminations fondées sur le sexe, l'orientation sexuelle et l'identité de genre*, Paris, L'Harmattan, 2020, pp. 165 et seq., and Paul JOHNSON, "LGBT Rights at the Council of Europe and the European Court of Human Rights", in Jill Marshall (ed.), *Personal Identity and the European Court of Human Rights*, London, Routledge, 2022, pp. 99 et seq.

stigmatisation and social exclusion of sexual minorities (the third-party interveners also presented arguments to that effect, which are summarised in paragraphs 169, 172 and 173 of the judgment). Opposition to the dissemination of information or ideas which seek to promote the rights of sexual minorities reflects a predisposed bias on the part of the heterosexual majority against the homosexual minority, which the Court has consistently rejected (see, among many other authorities, *Bayev and Others*, cited above, § 68, and the cases cited therein; a similar position has also been expressed by the Parliamentary Assembly of the Council of Europe and by the European Parliament – see paragraphs 105, 106 and 113 of the judgment).

13. Nor can it be overlooked that one of the ways in which homophobic prejudice is often manifested nowadays is by adopting measures aimed at restricting attempts to advocate for the rights of sexual minorities or to change social attitudes towards them – some examples of such measures can be seen in paragraphs 111 and 113 of the judgment. Therefore, affirming that discrimination on the grounds of sexual orientation does not need to be linked to the author's personal characteristics would enable the Court to recognise the reality of such discrimination and to adequately address it in its various forms.

14. We wish that the Grand Chamber had seized the opportunity to clarify and confirm that, when examining restrictions against any type of expression which is aimed at promoting the rights of sexual minorities, the key question is whether the main reason for such restrictions was the content of the expression. In line with that approach, were it established that a publication or other type of expression was restricted primarily or in reality because of its pro-LGBTI content, that would be sufficient to establish discrimination on grounds of sexual orientation, including where the individual was not, or did not identify as, part of a sexual minority. If the facts of a case were such as to indicate that the individual's actual or perceived sexual orientation also accounted for the restriction of the enjoyment of his or her freedom of expression, that would make the discrimination on grounds of sexual orientation all the more flagrant.

15. It should be noted that the present case was not the first one in which the Court was asked to examine measures restricting the dissemination of pro-LGBTI views. In *Lee v. the United Kingdom* ((dec.), no. 18860/19, 7 December 2021), the Court was faced with the refusal of a bakery to provide the applicant with a cake containing a message in support of gay marriage, on account of the owners' strong religious beliefs, and the United Kingdom Supreme Court found no discrimination on the grounds of sexual orientation. Notably, the domestic court rejected the proposition that, because the reason for less favourable treatment "ha[d] something to do with the sexual orientation of some people", the less favourable treatment was "on grounds of" sexual orientation. However, Mr Lee's application before the Court was declared inadmissible for failure to exhaust domestic remedies, the Court

finding that he had not invoked his Convention rights expressly at any point in the domestic proceedings. As a result, the Court did not engage with the merits of his complaints under Articles 8, 9 and 10, both alone and in conjunction with Article 14 of the Convention.

16. The cases of *Lee* and *Macatė*, as well as the developments in certain other member States (see paragraphs 111, 113, 127 and 171 of the judgment), may be an indication that more cases concerning measures which seek to restrict the dissemination of pro-LGBTI content will reach the Court in the foreseeable future. It is our hope that, when examining the next such case, the Court will take a bolder direction and duly acknowledge such measures as the discrimination that they are.

C. Applying the proposed approach in the present case

17. In the present judgment, it was found that measures which restrict children's access to information about same-sex relationships solely on the basis of sexual orientation "demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions, however limited in their scope and effects, are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society" (see paragraph 215 of the judgment).

18. Indeed, in its findings under Article 10 of the Convention, the Grand Chamber rebuked in strong and unambiguous terms any measures which seek to restrict the dissemination among children of content on the sole grounds that it presents LGBTI individuals or their families in a positive or neutral light – in other words, in a manner comparable to that in which heterosexual persons or different-sex families are usually presented in similar literature.

19. However, we fail to understand how, after concluding that the impugned measures sought to limit children's access to the fairy tales for the sole reason that they presented same-sex couples as being essentially equivalent to different-sex couples, the Grand Chamber could then hold that it was not necessary to examine the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 10. The above reasoning of the Grand Chamber clearly demonstrates, in our view, that discriminatory attitudes against the LGBTI community as a group constituted a fundamental aspect of the present case, which should accordingly have been addressed (see *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 144, ECHR 2010, and the cases cited therein).

20. The judgment appears to suggest that the decision not to examine the discrimination complaint resulted, at least in part, from the belated submission of relevant arguments by the applicant's representative: it was only at the oral hearing, and not in the written pleadings, that the applicant's

representative developed the argument that Article 14 of the Convention, taken in conjunction with Article 10, applied to discrimination directed at the content of a message rather than at any personal characteristic of the author (see paragraph 221 of the judgment). However, we do not consider that that was a sufficient reason for disregarding those arguments. Firstly, since the interpretation of both provisions is within the competence of the Court, there was no need for express argument by the parties on this point, and secondly and more importantly, we consider that such an examination by the Court would have been justified in view of the importance of the issues raised in the present case. We would also note that in the previous cases concerning content-based discrimination in which violations of Article 14 of the Convention were found (see the references in paragraphs 7-9 above) the Court did not seem to require the applicants to expressly argue the question of applicability of that provision, and we do not see why the present case should be treated differently.

21. Had the Grand Chamber chosen to revisit its approach in the manner which we outlined in paragraphs 10-14 above, it should have found a violation of Article 14 of the Convention taken in conjunction with Article 10. Indeed, the Government did not seek to advance any grounds on which restricting children's access to pro-LGBTI content could be justified (in contrast to, for example, *Bayev and Others*, cited above, where the respondent Government argued that restrictions on information about homosexuality were justified by the considerations of public morality, protection of health, and protection of the rights of children – arguments which the Court emphatically dismissed). Therefore, having found that the measures imposed on the applicant's book were based on its pro-LGBTI content, and in the absence of any possible justification presented by the Government, it should have been concluded that in the exercise of her right to freedom of expression the applicant suffered discrimination on the grounds of sexual orientation.

22. For all the aforementioned reasons, we respectfully disagree with the finding of the majority regarding the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 10. We believe that that complaint should have been examined and that a violation of those provisions should have been found.