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ECTHR / LITHUANIA : A children's book of fairy tales and same-sex marriages

A children's book of fairy tales and same-sex marriages

Labelling a book of fairy tales as harmful to children solely because of LGBTI content breached the Convention

Registrar of the European Court (23.01.2023) – The case of [Macatè v. Lithuania](#) (application no. 61435/19) concerned a children's book of fairy tales containing storylines about same-sex marriage. Distribution of the book had been suspended

soon after its publication in 2013. It had been resumed one year later after the book had been labelled as possibly harmful to children under the age of 14. This was the first case in which the European Court of Human Rights had assessed restrictions on literature about same-sex relationships written specifically for children.

In today's **Grand Chamber** judgment¹ in the case the European Court held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The Court found that the measures against the applicant's book had intended to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships.

In particular it could not see how, according to the national courts and the Government, certain passages – a princess and a shoemaker's daughter sleeping in one another's arms after their wedding – had been sexually explicit. Nor was it convinced by the Government's argument that the book had promoted same-sex families over others. To the contrary, the fairy tales had advocated respect for and acceptance of *all* members of society in a fundamental aspect of their lives, namely a committed relationship.

As a result, it concluded that restricting children's access to such information had not pursued any aims that it could accept as legitimate.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, Neringa Dangvydė Macatė, was a Lithuanian national who was born in 1975 and lived in Vilnius. She died

in March 2020 and her mother continued the proceedings in her place.

The applicant was an openly lesbian children's author. In December 2013 the Lithuanian University of Educational Sciences published one of her books, *Amber Heart (Gintarinė širdis)*, which contained fairy tales aimed at nine-ten-year olds, with partial funding from the Ministry of Culture. Adapted from traditional fairy tales, the book included characters from different ethnic groups or with intellectual disabilities and addressed issues such as stigmatisation, bullying, divorced families and emigration. Two of the six fairy tales in the book had story lines about relationships and marriages between persons of the same sex.

Soon after publication, the Ministry of Culture was forwarded a complaint alleging that the book was "encouraging perversions". The Ministry asked the Inspectorate of Journalistic Ethics to assess whether the book might be harmful to children.

Around the same time, eight members of the Lithuanian Parliament sent a letter to the University, relaying to it concerns expressed by associations representing families about literature which "sought to instil in children the idea that marriage between persons of the same sex was a welcome phenomenon".

The Inspectorate concluded that the two fairy tales which depicted same-sex couples did not comply with section 4 § 2 (16) of the Act on the Protection of Minors from Negative Effects of Public Information ("the Minors Protection Act"). That provision states that any information which "expresses contempt for family values" or "encourages a different concept of marriage and creation of family than the one enshrined in the Constitution or the Civil Code" is considered as having a negative effect on minors. The Inspectorate recommended that the book be labelled with a warning that it might be harmful

to children under 14 years of age.

The University's publishing house suspended distribution of the book in March 2014. A year later distribution was resumed, with the book bearing a warning label, in line with the Inspectorate's recommendation.

The applicant lodged civil proceedings against the University, arguing that depiction of same-sex relationships could not be considered harmful for children of any age, but in 2019 the courts ultimately endorsed the measures taken against the book and dismissed her claim.

In particular, in February 2019 the Vilnius Regional Court – in a second round of proceedings after the Supreme Court had remitted the case for fresh examination – upheld an assessment at first instance of the harm the book could cause children. The regional court also found that certain passages were too sexually explicit and that the way in which the fairy tales depicted a new family model raised the question of whether the applicant herself had sought to discriminate against those who held values different from her own.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 November 2019.

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights taken alone and in conjunction with Article 14 (prohibition of discrimination), the applicant complained about the temporary suspension of the distribution of her book and its subsequent labelling as harmful to children, alleging that those measures had been taken solely because the book contained a positive depiction of same-sex relationships. She also argued that section 4 § 2 (16) of the Minors Protection Act, although seemingly neutral, had in reality aimed at limiting the dissemination of any positive information about LGBTI persons, on the pretext of protecting

children.

She also complained, under Article 14 (prohibition of discrimination) in conjunction with Article 10, that the reason behind the restrictions on her book had been prejudice against sexual minorities.

On 18 June 2020 the Lithuanian Government were given [notice2](#) of the application, with questions from the Court.

The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 31 August 2021.

ILGA-Europe (the International Lesbian, Gay, Bisexual, Trans and Intersex Association), ARTICLE 19 and Professor David Kaye, acting jointly, and Haftér Society were granted leave to intervene in the written proceedings as third parties.

A Grand Chamber hearing on the case took place on 23 March 2022 in the Human Rights Building, Strasbourg.

Judgment was given by the Grand Chamber of 17 judges (...).

Decision of the Court

Article 10

Firstly, the Court found that the temporary suspension of the distribution of the book and its subsequent labelling with a warning could be attributed to the State. In particular, the measures had been taken by the University, a public body, had directly resulted from the domestic legislation and had been examined and endorsed by the national courts.

It considered that those measures had interfered with the applicant's freedom of expression. The books had been recalled from bookshops, thus reducing availability to readers. It was also likely that the warning labels had decreased readership: a significant number of parents with children from the book's intended age group would have been dissuaded from letting

their children read it, especially given the prejudice against the LGBTI community in Lithuania; and children over the age of 14 were in general far less interested in reading fairy tales. Furthermore, the labels had to have impacted the applicant's reputation as an established children's author and discouraged her and others from publishing similar literature.

The Court then went on to find that the measures had had a basis in domestic law, namely section 4 § 2 (16) of the Minors Protection Act.

The applicant and the Government disagreed as to what had been the aim of the restrictions. The Court rejected the Government's argument that they had sought to protect children from sexually explicit information. It could not see how certain passages – a princess and a shoemaker's daughter sleeping in one another's arms after their wedding – depicted carnal love. Nor did it find convincing the Government's submission that the fairy tales had been seeking to “insult”, “degrade” or “belittle” different-sex relationships and “promote families of the same sex”. The Court could not see any such aim in the applicant's writings which, to the contrary, advocated respect for and acceptance of *all* members of a given society in a fundamental aspect of their lives, namely a committed relationship.

Furthermore, the Court found that the legislative history of section 4 § 2 (16), and the examples of its application, revealed an underlying intent to restrict children's access to information about same- sex relationships. In particular, the text of section 4 § 2 (16) had clearly meant to refer to same- sex relationships and marriages, since both the Constitution and the Civil Code only provided for marriage between a man and a woman and Lithuanian legislation did not permit legal recognition of same-sex unions.

Having established that the aim pursued by the measures had been to restrict children's access to content depicting same-

sex relationships as being essentially equivalent to different-sex relationships, the Court then examined whether such an aim could be regarded as legitimate under the Convention.

The Court had already held in its case-law that there was no scientific evidence – as confirmed by various international bodies – to suggest that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children. The Court also took note of the fact that the laws of a significant number of Council of Europe member States – including Lithuania – either explicitly included education on same-sex relationships in school curricula, or contained provisions on ensuring respect for diversity and prohibition of discrimination on the grounds of sexual orientation in teaching.

Lastly, it held that restricting children's access to information about same-sex relationships – where such information could not be considered inappropriate or harmful to them on any other basis than sexual orientation – demonstrated that the authorities had a preference for some types of relationships and families over others and that they saw different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to continuing stigmatisation. Therefore, such restrictions, however limited in their scope and effects, were incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.

The Court therefore concluded that the measures against the applicant's book had not pursued any aims that it could accept as legitimate for the purposes of Article 10.

Other articles

The Court held, by 12 votes to 5, that there was no need to examine separately the applicant's complaint under Article 14

of the Convention taken in conjunction with Article 10.

Article 41 (just satisfaction)

The Court held that Lithuania was to pay the applicant's mother 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

Separate opinions

Judges Yudkivska, Lubarda, Guerra Martins and Zuñd, joined by Judge Kuñis, expressed a joint partly dissenting opinion which is annexed to the judgment.

The judgment is available in English and French.

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