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CONSTITUTIONAL COURTS AND SAME-SEX FAMILY RIGHTS: THE CASE OF LITHUANIA WITHIN THE EASTERN AND CENTRAL EUROPEAN CONTEXT

Dovilė Pūraitė-Andrikiėnė

**Associate Professor; PhD.
Faculty of Law Vilnius University, Lithuania**

Contact information:

Address: Saulėtekio al. 9, I rūmai, LT -10222 Vilnius, Lithuania
E-mail address: dovile.puraite-andrikiene@tf.vu.lt

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ABSTRACT

In recent decades, Europe has witnessed considerable advancement in the legal recognition of same-sex couples' family relationships; nevertheless, Lithuania remains among the most conservative member states of the EU in addressing this matter. This article aims to analyse the jurisprudence of the Lithuanian Constitutional Court related to same-sex couples' family rights and assess its role in shaping the legal recognition of same-sex couples in Lithuania. It does so within a broader comparative framework, examining similar decisions of constitutional courts across Eastern and Central Europe. To reach this, the following tasks are undertaken and dealt with: 1) to contextualise the issue within the legal and social environment of Eastern and Central Europe, focusing on constitutional jurisprudence of these countries; 2) to discuss the attitude of Lithuanian society towards the legal recognition of same-sex family relations and examine national legal provisions relevant to this issue; 3) to analyse the cases examined by the Lithuanian Constitutional Court and the constitutional doctrine relevant to the recognition of same-sex family relationships.

KEY WORDS

Constitutional Court, legal recognition of same-sex couples, Eastern and Central Europe.

INTRODUCTION

Legal recognition of same-sex couples' family relationships has expanded significantly across Europe in recent decades. This shift has been driven both by evolving public attitudes and by legal and policy developments at national and regional levels, including decisions adopted by European courts and other institutions.¹ Academic literature highlights a broader trend toward equality and convergence, with courts and legislators increasingly aligning around shared models and standards of protection in this area.²

No country in the European Union (EU) had allowed same-sex marriage before 2001, but as of today, 16 out of the 27 EU member states have introduced marriage equality. Several others offer alternative forms of registered partnership. Thus, shifting opinions toward this issue can without a doubt be regarded as one of the big attitudinal transformations in the 21st century.³ However, some EU countries — Bulgaria, Poland, Romania, and Slovakia — still provide no form of legal recognition for same-sex couples. This reflects that Eastern and Central European countries are more cautious about these issues. Until April 2025, Lithuania was also classified as one of the countries that do not legally recognize same-sex unions in any form, neither through marriage nor civil partnerships.⁴

According to constitutional and international law scholars, the absence of any legal recognition for same-sex family relationships in Lithuania was inconsistent not only with the Lithuanian Constitution but also with the European Convention on Human Rights.⁵ Despite several legislative initiatives in the Parliament aimed at regulating co-habitation for both heterosexual and same-sex couples, none have succeeded to date—the issue remains politically and societally contentious.

It should be noted that in a number of Eastern and Central European countries, it is the constitutional courts that have contributed significantly to the recognition of same-sex family relationships. Such decisions by states and their courts are complex and often meet with strong opposition from significant parts of society. Religious and moral attitudes, beliefs, and fears clash, questions are raised about the limits of human rights, the relationship between rights born in modern times and long-standing traditions, and potential threats to society and its members are mentioned.⁶

In Lithuania, the Constitutional Court has also addressed several cases related to the family rights of same-sex couples, contributing to the development of a constitutional doctrine that affirms the gender-neutral nature of the family concept. While this doctrine has not yet led to full legal recognition, it has opened the door to future reforms and provided legal grounding for the possibility of registered partnerships.

This article aims to analyse the jurisprudence of the Lithuanian Constitutional Court (hereinafter – the Constitutional Court) related to same-sex couples' family rights and assess its role in shaping the legal recognition of same-sex couples in Lithuania.

¹ Agnė Limantė, "Stiprėjantis tos pačios lyties asmenų šeimininkų santykų teisinis pripažinimas Europoje," *Teisės problemos* 1(97) (2019): 21.

² Angioletta Sperti, *Constitutional Courts, Gay Rights and Sexual Orientation Equality* (Hart Publishing, 2019), 256.

³ Tarik Abou-Chadi, Rayan Finnigan, "Rights for Same-Sex Couples and Public Attitudes Toward Gays and Lesbians in Europe," *Comparative Political Studies* 52(6) (2018): 868–895.

⁴ However, in April 2025, the Lithuanian constitutional court ruled that the absence of legal regulation for partnership institutions, including those applicable to same-sex couples, contradicts the Constitution. Following this ruling, same-sex couples in Lithuania have the legal right to register civil partnerships through the courts, even in the absence of specific legislation. For more on this ruling, see part 3 of this paper.

⁵ Dainius Žalimas, "Tos pačios lyties asmenų santuokos įteisinimas Lietuvoje mažai tikėtinas," *LRT.lt* (2023) // Žalimas: tos pačios lyties asmenų santuokos įteisinimas Lietuvoje mažai tikėtinas - LRT

⁶ Agnė Limantė, *supra* note 1, 22.

It does so within a broader comparative framework, examining similar constitutional court decisions across Eastern and Central Europe. To achieve this goal, the following tasks are raised and addressed: 1) to contextualise the issue within the legal and social environment of Eastern and Central Europe, focusing on constitutional jurisprudence of these countries; 2) to discuss the attitude of Lithuanian society towards the legal recognition of same-sex family relations and examine national legal provisions relevant to this issue; 3) to analyse the cases examined by the Lithuanian Constitutional Court and the constitutional doctrine relevant to the recognition of same-sex family relationships.

Although some scholars have explored issues related to same-sex couples' family rights in Lithuania,⁷ there is a lack of comprehensive research focusing specifically on the Constitutional Court's jurisprudence in this area, particularly in comparison with other courts in the region. This article seeks to fill that gap.

To explore both theoretical and practical dimensions of the issue, the paper employs a range of legal research methodologies. Content analysis is used to examine relevant normative texts and jurisprudence, identifying key legal terms and linking them to doctrinal sources. Systematic and logical analysis underpins the interpretation of core legal issues. Comparative analysis is employed to draw parallels between the rulings of the Lithuanian Constitutional Court and those of other constitutional courts in the region. Additionally, linguistic and teleological analysis is used to uncover the deeper meaning and legislative intent behind key legal provisions.

1. CONSTITUTIONAL JURISPRUDENCE ON SAME-SEX COUPLES' FAMILY RIGHTS IN EASTERN AND CENTRAL EUROPE

While Western Europe is widely regarded as one of the most progressive regions globally in terms of LGBTQ+ rights and protection, the situation in Eastern and Central Europe (CEE) remains more complex and uneven. Statistical data from 2023 revealed that 69% of EU citizens agreed that LGBTQ+ people should enjoy the same rights as heterosexual individuals. However, stark regional disparities exist: while support was highest in Sweden (94%) and the Netherlands (95%), it was significantly lower in Romania (27%) and Bulgaria (21%).⁸

The CEE region is also far from homogeneous in its approach to the legal recognition of same-sex relationships. Legal frameworks across these countries vary significantly, from full recognition of same-sex marriage to the complete absence of any legal recognition for same-sex partnerships. While some countries (such as Slovenia and Estonia) have legalized same-sex marriage, others (e.g., Croatia, the Czech Republic, Hungary, Latvia, and Montenegro) offer registered partnerships or cohabitation agreements; conversely, countries including Bulgaria, Poland, Romania, and Slovakia provide no legal recognition of same-sex unions.⁹

The divergence becomes even more pronounced concerning adoption and fostering rights, with only a few countries allowing limited forms of adoption by same-sex couples. In terms of adoption rights, Estonia (since 2016) and Slovenia (since 2011)

⁷ Agnė Limantė, *supra* note 1; Artūras Tereškinas, Anita Kārklīga, Anita Rodiņa, "Between Injustice and Legal Change: The Situation of LGBTQ+ People in Latvia and Lithuania": 387–409; in: Agnė Limantė and Dovilė Pūraitė-Andrikienė (eds.), *Legal Protection of Vulnerable Groups in Lithuania, Latvia, Estonia and Poland: Trends and Perspectives* (Cham: Springer, 2022).

⁸ European Commission, *Discrimination in the European Union*, (2023) // Discrimination in the European Union - December 2023 - Eurobarometer survey.

⁹ ILGA, *Europe Rainbow Europe Map and Index*, (2025) // 2025-rainbow-index.pdf

permit stepchild adoption in registered partnerships, where one partner can adopt the biological or adopted child of the other.¹⁰ Moreover, in some cases, as will be demonstrated by recent constitutional jurisprudence, certain countries have begun allowing same-sex couples to act as foster parents.

Academic papers highlight that there is a clear link between legislation and attitudes; in countries where legislation is in place and, for example, where same-sex marriage is legal, surveys overwhelmingly show a higher acceptance of LGBTQ+ people.¹¹ Legislation is a powerful influence in shaping social attitudes.¹²

The debate around same-sex family rights in CEE is deeply entwined with societal values, traditional norms, religious beliefs, and political ideologies. Legal reforms in this area are often met with significant resistance. The discourse is shaped by tensions between modern human rights paradigms and long-standing cultural or moral frameworks.¹³ In such contexts, constitutional courts often become the key arbiters, mediating between evolving human rights standards and societal conservatism.

Many of the challenges along the way to the legal protection of LGBTQ+ persons' rights in the constitutional courts of these states were similar. The constitutional jurisprudence of these states regarding the protection of different vulnerable groups reveals that stereotypes prevailing in a society may not serve as a constitutional justification for denying fundamental rights to a person or a group of persons in a democratic state governed by the rule of law.¹⁴ The jurisprudence of the constitutional courts of the region on the protection of same-sex couples' family rights, discussed below, is a perfect example of this tendency. In recent years, constitutional courts in countries such as the Czech Republic, Croatia, Latvia, and Slovenia have been called upon to interpret national constitutions in light of contemporary human rights standards and shifting societal norms. Their decisions have contributed to the advancement of LGBTQ+ rights, particularly in the domain of family rights.

In 2016, the Czech Constitutional Court recognized the country's ban on gay people adopting children (though only for individuals) as unconstitutional.¹⁵ The Czech Republic's Parliament introduced registered partnerships in 2006, passing a law that granted some limited rights to same-sex partners – including the right to inheritance and health care. However, registered partnerships were limited in the rights they grant compared to civil unions operated elsewhere, and the law also did not allow same-sex registered partners to adopt children, either as a couple or as individuals.¹⁶ In this decision, the Court found that banning individuals in registered partnerships from adopting constituted discrimination, as this right was granted to single individuals regardless of their sexual orientation. The Court concluded that the regime was a violation of equality, human dignity, and the right to private life. However, the Court's ruling kept a

¹⁰ *Ibid.*

¹¹ Kath Wilson, "Attitudes Toward LGBT People and Their Rights in Europe," *Oxford Research Encyclopedia of Politics* (2020) // Attitudes Toward LGBT People and Their Rights in Europe | Oxford Research Encyclopedia of Politics

¹² It is interesting to note that there are scientific studies that look at the effects of same-sex marriage, registered partnerships, and marriage bans on public attitudes toward gays and lesbians. According to some researchers, marriage has a positive effect, bans and registered partnerships have a negative effect. For more on this see: Tarik Abou-Chadi, Rayan Finnigan, *supra* note 3.

¹³ Agnè Limanté, *supra* note, 24.

¹⁴ Dovilė Pūraitė-Andrikiene, "The Role of Constitutional Justice Institutions in the Protection of Vulnerable Groups": 55-77; in: Agnè Limanté and Dovilė Pūraitė-Andrikiene (eds.), *Legal Protection of Vulnerable Groups in Lithuania, Latvia, Estonia and Poland: Trends and Perspectives* (Cham: Springer, 2022).

¹⁵ *The Constitutional Court of the Czech Republic*, Decision of 28 June 2016, case No. Pl. US 7/15.

¹⁶ LGL, *Czech court strikes down ban on gay people adopting children*, (2016) // Czech court strikes down ban on gay people adopting children - LGL.

ban on same-sex partners adopting children together – meaning that while individuals can adopt within partnerships, partners cannot gain joint parenting rights. This was reaffirmed by the Court in a 2021 ruling, which stated that only married couple – defined as unions between a man and a woman – could jointly adopt.¹⁷

A similar trajectory can be observed in Croatia. A few years later, the Croatian Constitutional Court decided on a similar case. In 2020, this Court published a ruling recognising equal rights of same-sex couples to be foster carers¹⁸. In 2018, the Croatian Parliament passed a new foster care law, which excluded same-sex couples as possible foster parents. However, the Court clarified that the family status of the potential foster parent was not decisive, “but rather the willingness and ability of the foster parent and the person who lives with him/her to provide the beneficiary the fostered child ... with all that is in his/her best interest.” Explaining its decision, the President of the Court stated that the Court found that the Foster Care Law “produced general discriminatory effects” on same-sex couples.¹⁹ It is important to note that this decision of the Court was taken in light of the principle of the best interests of children.

In the same year, the Latvian Constitutional Court announced judgment on the right of a same-sex couple to parental leave.²⁰ The Court had received an appeal from a mother whose female partner was unable to receive the ten-day leave which, according to the Labor Act, is to be granted to the child’s father. The applicant argued that this was contrary to the best interests of the child since it did not allow the person to provide physical and emotional support to his or her partner and her child. According to the applicant, Article 110 of the Latvian Constitution was infringed upon, which stipulates that the legislator has an obligation to provide protection for all families. The Court acknowledged that the provision of the Labor Act, insofar as it did not provide protection and support for the mother’s partner due to the birth of the child, did not comply with Section 110 of the Constitution. According to the Court judgment, this legal regulation was deemed null and void as of 2022. The exception was made for the family who started this constitutional case, and regarding them, it was deemed to be invalid from the time of the infringement of their fundamental rights. The Court stressed that, in the case of legal relations concerning a child, his or her interests and rights are a priority. As far as possible, the country should ensure that children grow up in a family environment where the best interests of a child are taken into account.

The most transformative recent decision in the region came from the Slovenian Constitutional Court in 2022.²¹ The Court recognized that the ban on same-sex couples marrying and adopting children is unconstitutional and ordered the Parliament to amend the law within six months. The Court ruled that discrimination against same-sex couples “cannot be justified with the traditional meaning of marriage as a union between a man and a woman, nor with special protection of the family.” After this decision, the Slovenian Parliament, at the end of 2022, passed an amendment allowing same-sex couples to marry and adopt and made it the first country in the region to do so.²² In this

¹⁷ *The Constitutional Court of the Czech Republic*, Decision of 25 August 2021, case No. Pl. ÚS 6/20.

¹⁸ *The Constitutional Court of the Republic of Croatia*, Decision of 7 February 2020, case No. U-II-7019/2021.

¹⁹ BalkanInsight, *Croatia’s Top Court Rules Same-sex Couples Can Foster*, (2020) // <https://balkaninsight.com/2020/02/07/croatias-top-court-rules-same-sex-couples-can-foster/>

²⁰ *The Constitutional Court of the Republic of Latvia*, Judgment of 12 November 2020, case No. 20193301.

²¹ *The Constitutional Court of the Republic of Slovenia*, Decision of 9 July 2022, case No. U-I-486/20.

²² EuroNews. *Slovenia’s top court strikes out bans on same-sex couples marrying and adopting children*, (2022) // <https://www.euronews.com/2022/07/09/slovenias-top-court-strikes-out-bans-on-same-sex-couples-marrying-and-adopting-children>

decision, the principle of the best interests of the child was mentioned several times in the court's argumentation.²³

Thus, all the recent cases of constitutional courts in CEE related to the principle of non-discrimination of LGBTQ+ persons' family rights concerned the ability of same-sex couples to adopt and foster children, and in one case, the right to marriage. The constitutional courts in the region have, to a greater or lesser extent, upheld these rights in the light of the best interests of the child. Thus, in deciding this type of cases, the constitutional courts have contributed not only to the protection of the rights of LGBTQ+ persons but also to the protection of the rights of the child.

Nevertheless, the trajectory has not been uniformly progressive. In 2021, the Hungarian Constitutional Court upheld the Parliament's decision to hold a referendum on four controversial questions related to child protection and LGBTQ+ issues.²⁴ These questions addressed the promotion of sex reassignment, sexual education, and exposure to LGBTQ+ content for minors. The decision was widely criticized as being part of a broader legislative agenda aimed at curtailing LGBTQ+ rights under the guise of protecting children.²⁵

Thus, recent cases heard by the region's constitutional courts have shown that these courts have had the difficult task of interpreting and protecting the constitutional family rights of same-sex couples' in the context of changing social circumstances and contemporary challenges, such as the evolving concept of the family. There is a view in the academic literature that constitutional courts face a similar issue when dealing with this type of case, whether recognition of same-sex couples family rights is the consequence of a judicial activism breaking with traditions and established definitions of the institution of marriage or whether equal marriage is a constitutional inevitability – a development that stems, almost automatically from the principles of equality, dignity and privacy and their application in former cases about the rights of LGBTQ+ persons.²⁶

2. PUBLIC ATTITUDES TOWARDS THE LEGAL RECOGNITION OF SAME-SEX FAMILIES IN LITHUANIA AND AN OVERVIEW OF NATIONAL LEGISLATION

Until April 2025, Lithuania remained one of the few EU countries that neither allowed same-sex marriage nor legally recognized same-sex civil partnerships²⁷ and the only Baltic state²⁸ without any form of legal recognition for same-sex unions, placing it among the most conservative countries in the region regarding LGBTQ+ rights.

²³ The country's Constitutional Court has previously ruled in favour of family rights for same-sex couples. In the decision of 2 July 2009, the Court held that Article 22 of the Registration of Same Sex Partnerships Act violated the right to non-discrimination under Article 14 of the Constitution on the ground of sexual orientation. The applicants challenged Article 22, which sets out the inheritance regulations for same sex partnerships, on the basis that it regulated inheritance for same sex partners differently, and less favourably, than the Inheritance Act regulated inheritance for opposite sex partners (*The Constitutional Court of the Republic of Slovenia*, Decision of 2 July 2009, case No. U-I-425/06-10).

²⁴ *The Constitutional Court of Hungary*, Decision of 7 December 2022, case No. IV/03330/2021.

²⁵ See for example: Hungary today, *Constitutional Court Decided: There Will Be Referendum on "Child Protection"*, (2022) // Constitutional Court Decided: There Will Be Referendum on "Child Protection" - Hungary Today.

²⁶ Angioletta Sperti, *supra* note 2, 255.

²⁷ This was the situation before the Constitutional Court ruling of 17 April 2025.

²⁸ Estonia legalized same-sex marriage starting January 1, 2024, after the Estonian Parliament (Riigikogu) passed the law on this issue on June 20, 2023. This made Estonia the first Baltic country and the first former Soviet republic to legalize same-sex marriage. In Latvia, registered partnerships for same-sex couples became legal on July 1, 2024, after the Latvian Parliament (Saeima) adopted the partnership law on November 9, 2023.

This legal vacuum is largely shaped by prevailing societal attitudes. Researchers emphasize that public opinion in Lithuania remains predominantly negative toward LGBTQ+ individuals.²⁹ The 2023 Eurobarometer on Discrimination reported that only 29% of Lithuanians agreed that LGBTQ+ individuals should have the same rights as heterosexual people, compared to the EU average of 69%.³⁰ According to the ILGA-Europe Rainbow Index, only 23% of LGBTQ+ rights are protected in Lithuania across key areas such as non-discrimination, family rights, hate speech, gender recognition, and asylum.³¹

This resistance is, in part, historically rooted. During the Soviet era, LGBTQ+ issues were taboo and largely absent from public discourse; after regaining independence in 1990, Lithuania began to align with democratic norms, but progress on LGBTQ+ rights was slow.³² Notably, a Soviet-era law criminalizing consensual same-sex relations between men was only repealed in 1993, making Lithuania the last Baltic country to do so. Over the past three decades, societal attitudes and legal protections have gradually evolved. For example, the Law on Equal Treatment³³ prohibits discrimination based on sexual orientation in employment, education, and access to goods and services. The Labour Code³⁴ and other legal acts also include similar provisions, and Article 170(3) of the Criminal Code³⁵ criminalizes hate speech and violence against LGBTQ+ people.

However, these regulations do not ensure substantive equality, particularly in the area of family rights, where Lithuania scores 0% on the ILGA-Europe Index.³⁶ Despite some signs of changing attitudes, public opinion remains largely conservative regarding this issue. The 2023 Eurobarometer survey showed that 39% of Lithuanians supported the legalization of same-sex marriage, an increase from 24% in 2015.³⁷ A GLOBSEC survey from the same year found that 22% supported same-sex marriage, 60% opposed it, and 18% were undecided.³⁸ Support is notably higher among younger and urban populations, suggesting a generational divide. Nevertheless, Lithuania remains among the least supportive EU countries on this issue, highlighting the strong influence of traditional and religious values. These societal attitudes continue to affect political action.

Article 38 of the Lithuanian Constitution³⁹ defines marriage as a union between a man and a woman, and Article 3.12 of the Civil Code⁴⁰ explicitly prohibits same-sex marriage. Thus, any attempt to legalize same-sex marriage would require constitutional amendments—an issue not currently under serious consideration. Although Lithuania formally recognizes and registers partnerships, until April 2025, this possibility remained legally unavailable due to the absence of implementing legislation. While the

²⁹ Artūras Tereškinas, Anita Karklina, Anita Rodina, *supra* note 7, 391.

³⁰ European Commission, *supra* note 8.

³¹ ILGA, *supra* note 9.

³² Artūras Tereškinas, Anita Karklina, Anita Rodina, *supra* note 7, 392.

³³ *Republic of Lithuania Law on Equal Treatment*, Valstybės žinios (No. 114-5115, 2003) // IX-1826 Republic of Lithuania Law on Equal Treatment

³⁴ *Republic of Lithuania Labour Code* (TAR, 2016, No. 23709) // XII-2603 Republic of Lithuania Law on the Approval, Entry into Force and Implementation of the Labour Code

³⁵ *Republic of Lithuania Criminal Code*, Valstybės žinios (No. 89-2741, 2000) // TAIS_366707.pdf

³⁶ ILGA, *supra* note 9.

³⁷ European Commission, *supra* note 8.

³⁸ GLOBSEC, *Acceptance of LGBTI+ people's rights*, (2023) // Acceptance of LGBTI+ people's rights (2023) | LGBTQ+ Surveys | Equaldex

³⁹ *The Constitution of the Republic of Lithuania*, Official Gazette (No. 33-1014, 1992) // The Constitution - Constitutional Court of The Republic of Lithuania

⁴⁰ *Civil Code of the Republic of Lithuania*, Valstybės žinios (No. 74-2262, 2000) // Civil Code of the Republic of Lithuania

Civil Code allows for partnerships, until April 2025 the Article 3.229 restricted this possibility to heterosexual couples.⁴¹

Nevertheless, public opinion regarding same-sex civil unions is somewhat more favorable: a survey of 2022 found that 49.6% of Lithuanians view civil unions positively, while 29.9% oppose them, and the rest remain neutral.⁴² This suggests that Lithuanian society is not uniformly opposed to legal recognition of same-sex relationships, but legislative progress remains stalled. Several attempts have been made in the Seimas (Parliament) to regulate cohabiting relationships, including same-sex unions, yet all have failed.

For example, in 2011 a draft law on partnership (cohabitation without marriage registration) was proposed.⁴³ However, the Committee on Law and Order of the Seimas of the Republic of Lithuania has made a preliminary assessment that the provisions of the draft are potentially in conflict with the Constitution⁴⁴.

In 2017, Parliament rejected a proposal that would have legalized cohabitation agreements for both heterosexual and same-sex couples.⁴⁵ In 2021, a gender-neutral partnership bill was introduced, proposing legal recognition of stable cohabiting relationships, including same-sex ones. It aimed to address practical issues such as property rights and included provisions about mutual responsibility and emotional commitment.⁴⁶ The bill was widely supported by LGBTQ+ advocates, human rights NGOs, and over 100 mental health professionals, who argued that it would improve the psychological well-being and safety of LGBTQ+ individuals.⁴⁷ Despite this, the Parliament rejected the bill at the submission stage, returning it to the initiators for revision. Whereas the national ordinary law of Lithuania does not provide for the legal regulation of civil partnership, in this respect it ensures a lower standard for the protection of individual rights compared to supranational law.⁴⁸

Researchers especially underscored the discriminatory nature of the Law on the Protection of Minors Against the Detrimental Effects of Public Information.⁴⁹ The Law defined "detrimental" content as anything that "expresses contempt for family values" or "encourages the concept of entering into a marriage and creating a family other than stipulated in the Constitution and the Civil Code".⁵⁰ In practice, this Law has been used to censor positive representations of LGBTQ+ people and restrict freedom of expression

⁴¹ The situation has changed following the Constitutional Court's ruling of 17 April 2025, which is discussed further in the next part of this article.

⁴² Poll: Half of the population supports same-sex civil unions (MadeinVilnius, 2022) // Survey: half of the population supports same-sex civil unions - MadeinVilnius.lt

⁴³ Draft Law on Partnership (cohabitation without registration of marriage) of the Republic of Lithuania (2011) // <https://cutt.ly/eWoieRO>

⁴⁴ *Opinion of the Committee on Law and Order on the draft Law on Partnership (Cohabitation without Marriage Registration)*, (2011), XIP-3687 // <https://cutt.ly/DWoiddR>

⁴⁵ Draft Law on Amendments to Articles 2.18, 2.19, 3.3, 3.16, 3.140, 3.141, 3.143, 3.146, 3.147, 3.150, 3.155 of the Civil Code, Chapter XV of Part VI of the Third Book of the Civil Code, and to Articles 5.13, 6.588, 6.590, and 6.744 of the Civil Code, XIIIP-781, 2017 // <https://cutt.ly/0WoiGJG>

⁴⁶ Draft Law on Partnership, XIP-537, 21 May 2021 // <https://cutt.ly/1Woi8hU>

⁴⁷ Liutauras Labanauskas, *Lyčiai neutralios partnerystės įteisinimo galimybių analizė ir kokybinis tyrimas apie LGBTQIA+*, (2021) // Lyciai-neutralios-partnerystes-iteisinimo-galimybiu-analize-ir-kokybinis-tyrimas-apie-LGBTQIA-asmenu-poreikius-1.pdf

⁴⁸ For more on this see: Ingrida Danieliénė, "Who is Entitled to the Right to Respect for Family Life Under the European Union Law?" *Teisė* 110 (2019): 24-45.

⁴⁹ Artūras Tereškinas, Anita Karklina, Anita Rodina, *supra* note 7, 393.

⁵⁰ *Law on the Protection of Minors Against the Detrimental Effects of Public Information*, Valstybės žinios (No. 91-3890, 2002) // IX-1067 Law on the Protection of Minors against the Detrimental Effect of Public Information

on LGBTQ+ topics in the public sphere. Foreign researchers have likened the Law to a Russian-style anti-gay propaganda law.⁵¹

Thus, the lack of legal recognition for same-sex couples is not only a legal issue but also a reflection of deeply ingrained cultural and societal attitudes. Qualitative research studies showed that current Lithuanian laws do not meet the needs of LGBTQ+ couples, and cultural misconceptions remain the main obstacle to reform.⁵²

Therefore, the disagreement in the public and political circles on the legal recognition of same-sex couples' family relationships, as well as in other countries of the region, led to the involvement of the Constitutional Court in the resolution of these issues. The Lithuanian Constitutional Court has dealt with several cases raising these or related issues and has formulated a constitutional doctrine on the concept of the family, which is also relevant to the issues discussed in this article.

3. DEVELOPMENT OF THE JURISPRUDENCE OF THE LITHUANIAN CONSTITUTIONAL COURT RELATED TO SAME-SEX FAMILY RELATIONS

Constitutional judicial review serves as a fundamental mechanism for ensuring the supremacy and effectiveness of the Constitution. Since its establishment in 1993, the Lithuanian Constitutional Court has consistently fulfilled this mandate. Over more than three decades, the Court's jurisprudence has played a pivotal role in Lithuania's legal transformation, aligning the national legal order with the standards of the European Union and international law.⁵³ In doing so, the Court has significantly contributed to the consolidation of democracy, the rule of law, and constitutional stability within the country.⁵⁴

Beyond its structural contributions to the legal and political system, the Court has been instrumental in upholding human rights as a core measure of democratic progress. While formal constitutional structures are necessary, the true measure of a democracy lies in the extent to which it safeguards fundamental rights in practice. In this respect, the Constitutional Court's case law has had a direct and lasting impact on the lives of Lithuanian citizens.⁵⁵ Through the annulment of legal provisions found to be incompatible with constitutional human rights norms, and through the development of an official constitutional doctrine on constitutional rights and freedoms, the Court has become a key actor in shaping Lithuania's human rights landscape. Importantly, the Constitutional Court interprets the rights enshrined in the Constitution in light of evolving international human rights standards and the prevailing global understanding of democratic values. This approach ensures that Lithuania's constitutional order remains not only legally sound but also responsive to broader developments within the international legal community.

As societal norms and values evolve, so too must the jurisprudence of constitutional courts. New legal and ethical challenges inevitably arise, requiring judicial institutions to adapt and respond. The Lithuanian Constitutional Court has demonstrated its

⁵¹ Martijn Mos, "Routing or Rerouting Europe? The Civilizational Mission of Anti-Gender Politics in Eastern Europe," *Problems of Post-Communism* 70(2) (2022): 143–152.

⁵² Liutauras Labanauskas, *supra* note 47.

⁵³ Dovilė Pūraitė-Andrikienė, "Towards an effective constitution in Lithuania: the role of the constitutional court," *Review of Central and East European law: Special issue: Thirty Years of the Constitution of Lithuania* Vol. 48, iss. 2, (2023): 134–165.

⁵⁴ *Ibid.*

⁵⁵ For more on this see: Dovilė Pūraitė-Andrikienė, *Žmogaus teisių apsauga ir gynimas Lietuvos Respublikos Konstituciniame Teisme* (Vilnius: Lietuvos socialinių mokslų centro Teisės institutas, 2023).

capacity to engage with these dynamic realities. The constitutional doctrine on human rights, therefore, cannot be regarded as static; rather, it represents a living constitutional tradition—one that evolves in tandem with societal change and the ongoing transformation of the state.

The Court's jurisprudence concerning the rights of same-sex couples in the area of family life exemplifies this broader trend. In navigating cases at the intersection of shifting societal norms and constitutional principles, the Court has confronted contemporary debates surrounding the legal recognition of diverse family structures. To date, the Constitutional Court has adjudicated four significant cases that engage directly with the issues discussed in this article, each reflecting the complex and evolving nature of constitutional justice in a modern democratic society.

The first ruling in which the Constitutional Court indirectly contributed to the family rights of same-sex couples was adopted in 2011. The Court adopted a ruling on the State Family Policy Concept.⁵⁶ The Court investigated the compliance with the Constitution of the Seimas (Parliament) Resolution "On the Approval of the State Family Policy Concept". Under the Concept, the understanding of family was directly linked to the conclusion of a marriage. In this ruling, the Court noted that having consolidated in the Concept this notion of a family under which only a man and a woman who are (were) married as well as their children (adopted children) were regarded as a family, the Parliament created preconditions for legal regulation that would not protect other family relations.

In this ruling, the Constitutional Court for the first time held that the constitutional concept of family may not be derived solely from the institution of marriage. The constitutional concept of family is based on mutual responsibility between family members, understanding, emotional affection, assistance, and similar bonds, as well as on a voluntary determination to take on certain rights and duties. It is therefore the content of the relations that is important, whereas the form in which these relations are expressed carries no essential significance for the constitutional concept of family. The Court also stated that, stemming from Article 38(1) of the Constitution, the duty of the state to establish, by means of laws and other legal acts, a legal regulation of a nature that would ensure the protection of the family as a constitutional value implies the obligation of the state to regulate, by means of a law and other legal acts, family relations in such a way that no preconditions would be created for discrimination against members in family relations. Therefore, having narrowed the content of the family, the Seimas did not observe the concept of the family as a constitutional value stemming from the Constitution. While the ruling did not directly mention same-sex family rights, recognising a broader concept of the family than that defined by marriage was a step towards recognising different family models.

Another step towards the protection of same-sex couples rights in the area of family life was taken in 2019. In this case, the Constitutional Court was asked to consider certain provisions of the Law on the Legal Status of Aliens, which restricted the right of residence to married or registered same-sex partners (national law explicitly forbids same-sex marriage and does not provide the possibility for a registered partnership).⁵⁷ The Court ruled that in a democratic state under the rule of law, the attitudes or stereotypes prevailing at a particular time among the majority of the members of

⁵⁶ *The Constitutional Court of the Republic of Lithuania. Ruling of 28 September 2011, Valstybės žinios* (No. 118-5564, 2011).

⁵⁷ *The Constitutional Court of the Republic of Lithuania. Ruling of 11 January 2019* (TAR, 2019, No. 439).

society may not serve as constitutionally justifiable grounds for discriminating against persons based solely on their gender identity and/or sexual orientation, or, for instance, limiting the right to the protection of private and family life or the protection of relationships with other family members. The Court noted that under the Constitution the legislature must adopt such a legal regulation related to the free movement of persons within the European Union and migration that would provide for the right to reunification for a family founded by two same-sex persons in another state through a legally concluded marriage or registered partnership. This ruling laid the foundation for the recognition of the rights of same-sex couples in the field of migration and explicitly added the grounds of sexual orientation as an integral part of the constitutional equality clause. It is also worth mentioning that it was in this ruling that the Constitutional Court stated for the first time that the constitutional concept of the family is gender neutral. The arguments of the Constitutional Court ruling are based on a very systematic analysis of the case law of the ECtHR and the CJEU and its principles: the decision mentions probably all the essential cases handled by these courts in the area in question.⁵⁸

In another landmark ruling delivered at the end of 2024, the Constitutional Court examined the constitutionality of provisions within the Law on the Protection of Minors Against the Detrimental Effect of Public Information.⁵⁹ As mentioned earlier, the contested provisions classified information presenting family models other than those based on marriage between a man and a woman as harmful to minors, thereby significantly restricting their dissemination. The case emerged against the backdrop of the European Court of Human Rights' ruling in *Macaté v. Lithuania* (2023), where the ECtHR held that prohibiting children's literature depicting same-sex relationships constituted a violation of Article 10 of the European Convention on Human Rights (freedom of expression).⁶⁰ Following the *Macaté* judgment, the amendments to the Law were proposed; however, the proposed changes were rejected by the Seimas. Subsequently, the Government petitioned the Constitutional Court to assess the compatibility of the provisions of this Law with the Constitution.

The Constitutional Court found that the impugned legal provisions violated Articles 25 (freedom of expression), 38 (protection of the family), and the overarching constitutional principle of the rule of law. The Court's reasoning rested on several key findings: 1) the provisions lacked legal clarity and precision, creating ambiguity regarding what types of information were restricted; 2) the restrictions disproportionately limited access to information about real and diverse family structures; 3) such limitations impeded the full and tolerant development of minors; 4) the law unjustifiably narrowed the constitutional concept of family and disregarded core constitutional values, including human dignity, equality, and pluralism.

Significantly, the Court reaffirmed its previous jurisprudence distinguishing between the constitutional concepts of marriage and family, asserting that while marriage is constitutionally defined as a union between a man and a woman (Article 38(3)), the

⁵⁸ Commenting on the aforementioned 2011 and 2019 Constitutional Court rulings, legal scholars note that, through the development of the constitutional principle of non-discrimination, national constitutional jurisprudence has moved towards a broader understanding of family, recognizing family models beyond traditional marriage-based relationships. In this respect, the official doctrine of the Constitutional Court aims to align with international human rights standards, while ordinary law falls short of the effective implementation of these principle. See: Ingrida Danėlienė. "The Role of Equality and Non-Discrimination in Shaping Constitutional Gender Dynamics and Safeguarding Family Life," *Baltic Journal of Law & Politics* 18(6) (2025): 30.

⁵⁹ *The Constitutional Court of the Republic of Lithuania. Ruling of 18 December 2024* (TAR, 2024, No. 22435).

⁶⁰ *European Court of Human Rights*, The decision of the Grand Chamber of 23 January 2023, application No. 61435/19.

concept of family is broader and must be understood as inclusive and substantive rather than formalistic. The Court emphasized that the protection of minors must be achieved in a manner that aligns with constitutional rights and values, including access to truthful and diverse information.

Commentators both within Lithuania and internationally have recognized the progressive nature of the ruling. The decision was praised for reinforcing a child's right to receive information and for affirming that children are rights-bearing subjects whose best interests must be a primary consideration in legal and policy decisions. Furthermore, the Court's gender-neutral interpretation of the family was lauded as a step forward in aligning national constitutional norms with contemporary understandings of family diversity.⁶¹

Nonetheless, the ruling has not escaped critique. While the Court clearly invalidated provisions that effectively censored information about same-sex families, according to some commentators, it stopped short of explicitly characterizing such restrictions as discriminatory on the grounds of sexual orientation. Critics argue that this omission reflects a cautious judicial approach that avoids directly confronting the structural and normative biases that underpinned the legislation.⁶² In this regard, the ruling departs from the approach taken by other constitutional courts in the region, whose decisions on comparable issues have placed greater emphasis on the principle of non-discrimination.

Reactions to the decision were mixed across Lithuanian society. Conservative actors lamented the ruling as a departure from traditional values, whereas liberal politicians and civil society groups viewed it as a necessary corrective to discriminatory legal norms.⁶³ The ruling's legal consequence is that the unconstitutional provisions may no longer be applied, and any future legislative amendments must comply with constitutional standards. However, this ruling did not address the broader issue of legal recognition for same-sex families.

The Constitutional Court ruling that has so far contributed the most to the recognition of same-sex family relationships was adopted on 17 April 2025.⁶⁴ The ruling was delivered in a case initiated by the Government, challenging the constitutionality of certain provisions of the Civil Code regarding legal recognition of partnerships. The Government's request relied on evolving constitutional interpretation, asserting that constitutional protection should extend to all forms of family life grounded in emotional, stable, and cohabiting relationships, regardless of marital status or gender composition. This approach aligns with both previous jurisprudence of the Constitutional Court (notably its 2011, 2019 and 2024 rulings) and European Court of Human Rights case law, which recognizes that family life may exist outside marriage and in same-sex partnerships.

In a significant and long-awaited ruling, the Constitutional Court declared that two legal provisions—the second sentence of Article 28 of the Law on the Approval,

⁶¹ Sarthak Gupta, *Lithuania's Constitutional Court Rules Seeing Same-Sex Relationships Won't Turn Kids Gay* (EJIL: Talk, 2025) // Lithuania's Constitutional Court Rules Seeing Same-Sex Relationships Won't Turn Kids Gay – EJIL: Talk!

⁶² *Ibid.*

⁶³ KT: *Nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas prieštarauja Konstitucijai*, Verslo žinios (2025) // <https://www.vz.lt/ziniasklaida/2024/12/18/kt-nepilnameciu-apsaugos-nuo-neigiamo-viesosios-informacijos-poveikio-istatymas-priestarauja-konstitucijai>

⁶⁴ *The Constitutional Court of the Republic of Lithuania. Ruling of 17 April 2025* (2025, No. KT21-N5/2025 case no. 12/2024).

Entry into Force and Implementation of the Civil Code and Article 3.229 of the Civil Code—are incompatible with the Constitution.

The Court found that Article 28, which allowed for the indefinite postponement of the implementation of partnership regulation due to the lack of a special law, contravenes the principles of legal certainty, the rule of law, and responsible governance. The legislature's failure to adopt the necessary legal framework for over two decades (since 2001) amounted to a breach of its constitutional duty to ensure that legal norms are applied in a coherent and timely manner. Furthermore, Article 3.229 of the Civil Code, which defines registered partnership as a union between a man and a woman, was declared unconstitutional to the extent that it excludes same-sex couples from legal recognition. The Court emphasized that long-term relationships between individuals of the same sex, when based on emotional closeness, mutual respect, support, and commitment, may constitute a family under the Constitution. Thus, denying legal recognition to such families violates the fundamental constitutional principles of human dignity, private and family life, equality, and non-discrimination.

The implications of this ruling are far-reaching. Most notably, upon the entry into force of this ruling, Chapter XV of the Civil Code, which regulates partnerships, becomes effective without the need for a separate implementing law. This means that the legal concept of partnership now has binding force. However, in the absence of a specific procedure for registering partnerships, individuals will need to apply to the courts to assert and implement their partnership-related rights. Importantly, the Court underlined that judicial filling of legislative gaps does not relieve the legislature of its constitutional duty. The Seimas remains obligated to enact clear, comprehensive, and adequate legal regulation within a reasonable time frame.⁶⁵ Therefore, while courts may temporarily address certain issues on a case-by-case basis, sustainable and predictable protection of partnership rights requires legislative action. It should be noted that following this ruling, in August, the Vilnius City District Court recognized same-sex partnerships for the first time.⁶⁶

Additionally, the decision reinforces the legal foundation for equal treatment of same-sex couples across multiple areas of law, and affirms that the state must respect and protect diverse forms of family life. It also aligns Lithuanian law more closely with evolving European human rights standards, potentially influencing future legal and political developments related to LGBTQ+ rights and family law.

Differently from the ruling of 2024, which was criticized on the grounds that it lacks a focus on discrimination regarding LGBTQ+ persons, this ruling did not avoid the discrimination aspect. The Constitutional Court held that any legal framework for recognizing and protecting unmarried couples, such as registered partnerships, must not

⁶⁵ It should be noted that in its 2025 ruling, the Constitutional Court also established certain guidelines for what such legal regulations should be. It stated that, in accordance with the Constitution, *inter alia* Article 38(1) and (2) thereof, when regulating these relations, the legislator has the discretion to choose the specific form of legal recognition and protection for unmarried couples (such as the possibility of registering a partnership), it is important that the protection provided by law is adequate, covering both property and other aspects of family life that are inseparable from the couple's life together. In this context, it should be noted that the legal recognition and protection of unmarried couples would not be ensured by merely providing for the possibility of concluding mutual agreements on cohabitation, as these do not provide unmarried couples with adequate legal recognition and do not ensure sufficient protection of their private and family life, for example, they cannot be used to agree on such important aspects of the couple's life together as taxes, social security, inheritance, migration, etc. Although the legislator has a certain degree of discretion in determining the form and content of legal recognition and protection for such couples, it cannot fail to provide legal protection for such families.

⁶⁶ LRT, *Teismas pirmą kartą pripažino tos pačios lyties poros partnerystę*, (2025) // Teismas pirmą kartą pripažino tos pačios lyties poros partnerystę - LRT

discriminate based on sexual orientation. Restricting such recognition to different-sex couples would violate Article 29 of the Constitution, which guarantees equality and non-discrimination. Laws rooted in prejudice against same-sex couples are incompatible with the Constitution's principles, including its understanding of family, human dignity, equality, pluralism, and tolerance. The Court emphasized that failure to ensure legal recognition and protection for long-term, family-like relationships, regardless of the partners' sex, undermines constitutional equality guarantees.

Thus, this case represents a pivotal moment in the evolution of Lithuanian human rights law. It is a test of the constitutional system's ability to adapt to social realities, while upholding the fundamental values of dignity, equality, and legal protection for all. The constitutional doctrine articulated in this and previous rulings of the Constitutional Court clearly establishes that the constitutional concept of family extends beyond formal marriage. It includes couples who, outside of marriage, have formed a stable and enduring relationship that embodies the substantive qualities of family life, such as mutual responsibility, emotional connection, shared support, and a voluntary commitment to assume corresponding rights and duties. This substantive understanding reflects a shift from a purely formalistic approach to one grounded in the lived realities of interpersonal relationships. In this context, the Constitutional Court's recognition of the gender-neutral nature of the family concept is of particular significance. It affirms that the constitutional protection of family life is not limited to heterosexual unions but also encompasses families formed by two individuals of the same sex. Consequently, the Lithuanian Parliament can no longer invoke the argument that legal recognition of same-sex relationships is incompatible with the Constitution. On the contrary, such recognition aligns with the constitutional framework as interpreted by the Court.

Furthermore, it can be argued that by legally regulating same-sex partnerships, the legislature would be fulfilling its constitutional obligations. Doing so would eliminate the long-standing legal vacuum in this area, enhance legal clarity and social certainty, reduce the risk of protracted litigation at both national and international levels, and contribute to the development of a more open, just, and inclusive society. It would also strengthen the effective protection of minority rights and reinforce the democratic values of pluralism and tolerance.⁶⁷

Through its evolving jurisprudence, the Constitutional Court has gradually advanced the protection of same-sex couples' rights within the realm of family life. The Court has aligned itself with a broader regional trend, whereby constitutional courts have consistently held that prevailing societal stereotypes cannot serve as legitimate grounds to restrict fundamental rights in a democratic state governed by the rule of law. Over the past decade, the Lithuanian Constitutional Court has fundamentally reshaped the constitutional understanding of family, from a narrow, marriage-based definition to a substantive and gender-neutral concept. This transformation highlights the Court's responsiveness to evolving societal values and its integration of European human rights standards.

While the constitutional foundation for family diversity has been firmly established, the realization of these principles in practice now requires proactive legislative engagement. A clear, accessible, and non-discriminatory legal framework for partnership is essential to fully implement the constitutional values of human dignity, equality, and the right to family life.

⁶⁷ Dainius Žalimas, *supra* note 5.

CONCLUSIONS

The constitutional courts of Eastern and Central European countries have increasingly played a crucial role in advancing the family rights of same-sex couples, often acting as mediators between traditional societal values and evolving human rights standards. While there remains significant variation in legal frameworks and societal acceptance across the region, recent jurisprudence from these countries demonstrates a gradual but notable trend toward greater protection of same-sex couples' rights, particularly in matters of adoption, fostering, and marriage. These decisions consistently emphasize the principles of non-discrimination, equality, human dignity, and the best interests of the child, underlining that societal stereotypes cannot serve as constitutional grounds to deny fundamental rights. Overall, the experiences of these constitutional courts reveal both the potential and the challenges of using constitutional review as a tool to promote same-sex family rights in complex and often resistant socio-political environments.

Until 2025, Lithuania remained among the most conservative EU countries regarding same-sex family rights, offering no legal recognition for same-sex unions, mostly due to prevailing traditional societal attitudes. Despite gradual shifts in public opinion, especially among younger populations, legal reforms have repeatedly stalled. Discriminatory laws and political resistance have further entrenched inequality, prompting constitutional litigation. As a result, the Lithuanian Constitutional Court has emerged as a crucial actor in interpreting the concept of family and addressing gaps in the protection of same-sex couples' family rights.

Through its evolving jurisprudence, the Lithuanian Constitutional Court has gradually advanced the protection of same-sex couples' rights within the realm of family life. The Court has aligned itself with a broader regional trend, whereby constitutional courts have consistently held that prevailing societal stereotypes cannot serve as legitimate grounds to restrict fundamental rights in a democratic state governed by the rule of law. Over the past decade, the Constitutional Court has fundamentally reshaped the constitutional understanding of family, from a narrow, marriage-based definition to a substantive and gender-neutral concept. This transformation highlights the Court's responsiveness to evolving societal values and its integration of European human rights standards. Nevertheless, while the constitutional foundation for family diversity has been firmly established, the realization of these principles in practice now requires proactive legislative engagement. A clear, accessible, and non-discriminatory legal framework for partnership is essential to fully implement the constitutional values of human dignity, equality, and the right to family life.

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