



UPDATES ON THE IMPLEMENTATION OF THE SO-CALLED 'CHILD PROTECTION' ACT IN HUNGARY

by Háttér Society, July, 2023

I. Introduction

About Háttér Society

Háttér Society, founded in 1995, is the oldest and largest LGBTQI organization in Hungary. It works for a society in which no one is discriminated against because of their sexual orientation or gender identity, where all members of the LGBTQI community are free to live according to their identity, and receive the help they need to resolve the problems they might face. To achieve these goals Háttér operates various support services including a legal aid service; monitors and documents human rights violations against LGBTQI people; offers training for professionals among them legal practitioners; and advocates for the adoption of laws and policies respecting the human rights of LGBTQI people. During the past two decades we have provided legal advice to thousands and legal representation to hundreds of LGBTQI people who became victims of violence, harassment or discrimination.

Context

The Hungarian Government had been advocating for a conservative and restrictive notion of families for over a decade, however, in 2020 their anti-LGBTQI agenda changed gear and rapidly started to repeal rights and benefits that had been available for decades. The legal rampage began with banning legal gender recognition in May 2020¹ and continued in the Fall with the LGBTQI-exclusionary reform of the adoption process, from which only a minister – not a childcare professional – can grant exemption.² The Ninth Amendment to the [Fundamental Law](#) passed in November 2020 contained two provisions that had particular relevance for the LGBTQI community. First, a new sentence was added to Article L declaring that “(t)he mother is a woman, the father is a man”. Second, Article XVI (1) was complemented with the following provision: “Hungary protects children’s right to their identity in line with their birth sex, and their right to education according to our country’s constitutional identity and system of values based on Christian culture”.³ These

¹ For an overview of the cases on Section 33 see: <https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>.

² For an assessment of the recent changes in the adoption process see: <https://hatter.hu/kiadvanyaink/orokbefogadas-jelentes-2022>.

³ For a detailed analysis of the Ninth Amendment’s – that time potential – impact on sexual and gender minorities see Polgári, Eszter; Dombos, Tamás: *A New Chapter in the Hungarian Government’s Crusade Against LGBTQI People*, *VerfBlog*, 2020/11/18, <https://verfassungsblog.de/a-new-chapter-in-the-hungarian-governments-crusade-against-lgbtqi-people/>, DOI: [10.17176/20201118-190446-0](https://doi.org/10.17176/20201118-190446-0).

amendments, as predicted, paved the way for a neatly tailored large-scale attack on sexual and gender minorities: they led to the adoption of the so-called ‘child protection’ law in June 2021, which continues to give basis for fear-mongering against the LGBTQI community, and justifies the suppression of speech on and display of non-mainstream sexual orientations and gender identities. In response to the wide criticism, in particular from the European Union, the government on July 21, 2021 announced that it would hold a ‘child protection’ referendum to confirm the so-called ‘child protection’ law. The referendum took place on April 3, 2022 together with the parliamentary elections.

Two years after the adoption of the law, its far-reaching and devastating impact is apparent and tangible. Háttér’s [report](#) published in January 2023 presented a comprehensive overview of both the state-controlled and voluntary implementation of the impugned provisions; in addition to the implementation of the so-called ‘child protection’ law, it took account of the attempts to censor LGBTQI content prior to the adoption of the law, which has impacted the way the law itself is implemented.⁴ The present report provides an update on the recent actions taken by the Hungarian authorities in the field of media and retail trade of books.

II. Relevant provisions of the so-called ‘child protection’ law

Outlawed content:

Anti-LGBTQI provisions of the so-called ‘child protection’ law include amendments to five Acts of Parliament:

1. Act XXXI of 1997 on the protection of children and guardianship administration (hereinafter: Act on Child Protection);
2. Act CCXI of 2011 on the protection of families (hereinafter: Family Protection Act);
3. Act XLVIII of 2008 on the basic conditions of and certain restrictions on economic advertising activities (hereinafter: Advertisement Act);
4. Act CLXXXV of 2010 on media services and mass communication (hereinafter: Media Act); and
5. Act CXC of 2011 on national public education (hereinafter: National Public Education Act).

These amendments introduced similar provisions to all these acts restricting access of minors to

content that is pornographic or that depicts sexuality as having a purpose in itself or that depicts or propagates divergence from self-identity corresponding to sex at birth, sex change or homosexuality.

The National Public Education Act only bans propagation, but not depiction.

⁴ The report is available at: <https://hatter.hu/kiadvanyaink/Report-on-Act-LXXIX-of-2021-and-its-implementation>. For the previous assessments on the law prepared by Háttér Society see: <https://en.hatter.hu/publications/childprotectionlaw-report-2021> and <https://en.hatter.hu/publications/childprotectionlaw-report-2022>

Government Decree 473/2021. (VIII. 6.):

On August 6, 2021, lower level regulation implementing the so-called ‘child protection’ law was published in the Official Gazette. According to Section 20/A of Government Decree 210/2009. (IX. 29.) on commercial activities as amended by Government Decree 473/2021. (VIII. 6.) products targeting children depicting or propagating divergence from self-identity corresponding to sex at birth, sex change and homosexuality cannot be placed in a shopping window and can only be sold in special packaging separate from other products. Products depicting or propagating divergence from self-identity corresponding to sex at birth, sex change and homosexuality (not limited to those targeting children) cannot be sold within 200 meters of schools, children or youth institutions, and churches.

Potential sanctions in the field of media and commercial activities

→ Media:

In case of violations of the Media Act, the Media Council may apply sanctions.⁵ In case of the first breach, the sanction is lenient, yet, in case of severe violations, sanctions may be harsher. According to Section 187, the Media Council can suspend the right to provide media services for a time period ranging from 15 minutes to seven days; it may terminate the service contract with the service provider or order that the service provider be deleted from the media registry (as a result of which its media services will not be available for the public). A fine between HUF 3 million (EUR 7,500) and HUF 200 million (EUR 500,000) depending on the type of media service provider may be imposed. It may also impose a fine (up to HUF 2 million – or EUR 5,000) on persons fulfilling a management role at the service provider.

→ Advertisement and commercial activities:

According to Section 24-26 of the Advertisement Act, in case an advertisement violates the rules on advertising, sanctions in Act CLV of 1997 on consumer protection (hereinafter: Consumer Protection Act) shall be applied. Under Section 47 of the Consumer Protection Act, if consumers’ rights are violated, the consumer protection authority may apply several sanctions, including immediate removal of online content, confiscation of goods, or closing down of shops/establishments of service and imposing a fine. The fine is determined by the annual net revenue of the company (service provider), and may be up to HUF 500 million (EUR 1.25 million) in case of companies with a net revenue above HUF 100 million and up to HUF 5 million (EUR 12,500) in case of companies with a net revenue below HUF 100 million (EUR 250,000).

Under Section 26 (1) of Government Decree 210/2009. (IX. 29.) on commercial activities, if the provisions relating to the sale of goods are violated, sanctions defined in the Consumer Protection Act (see above) can be applied. Furthermore, according to Section 27 (1) the chief clerk (*jegyző*) of the local government can suspend certain commercial activities or close the shop for a maximum of 90 days if such rules are violated. According to Section 27

⁵ The Media Council of a body operating within the National Media and Infocommunications Authority (NMHH, for more information see: <https://english.nmhh.hu/the-nmhh>). The Media Council monitors the lawful operation of Hungarian media service providers, i.e. their compliance – among others – with the Media Act.

(2) in case the owner does not comply with the requirements imposed by the chief clerk, they can permanently close down the shop.

III. Implementation of the so-called ‘child protection’ law in media

Media Council guidelines revised after the adoption of the anti-LGBTQI law

The Media Council of the National Media and infocommunication Authority (*Nemzeti Média és Hírközlési Hatóság*) updated its “*recommendation on classification (ratings)*” on September 15, 2021,⁶ in line with new provisions of the Media Act [Section 9 (6) as amended by the so-called ‘child protection’ law]. This document describes the classification of media content as not recommended for viewers under 18 if its “*defining element*” is the propagation or depiction of deviation from the self-identity in line with the birth sex, sex change or homosexuality. The recommendation states that it is not generally the depiction of deviation from the self-identity in line with the birth sex, sex change or homosexuality that is banned, but only if it is a defining element of the media content at hand. In other words, if it is the “*message*” of the media content, or “*this is what the content is about*” (see p. 17 of the recommendation). Further, “*topics concerning sex change and homosexuality are defining elements if the media content focuses on emphasizing the values, advantages, specialty, individuality; that is, these topics constitute a central, essential, indispensable part of the content*” (p. 17). The recommendation also offers an interpretation of “*propagation*”: “*presenting homosexuality or the change of sex at birth as social norms, as lifestyles that are more appealing than traditional forms of life; or lifestyles that set an example.*” Moreover, “*all propagandistic activities related to these topics that appear in media content, if their aim is to spread these ideologies and views, or to exert emotional influence on the underaged, or to persuade them with communicative means,*” also constitute propagation (p. 17).

However, the recommendation suggests extreme caution. Whenever a media content “*depicts the deviation from the self-identity in line with the birth sex, sex change or homosexuality, or its propagation [!], the media service provider shall take into consideration if this depiction requires class V classification [not recommended for viewers under 18] due to its suitability to adversely impact the physical, intellectual and moral development of the underaged*” (p. 18).

The recommendation of the Media Council includes some alarming examples of classification based on the new provisions. It includes highly acclaimed works of cinematographic art such as *All about my mother*, as well as politically and historically subtle depictions of the HIV/AIDS epidemic and homophobia in the 1980s such as the series *It’s a Sin* – both mentioned in the recommendation as unambiguous examples of “*propagating*” homosexuality or sex change (p. 18). Note that the latter example, just as the TV series *Queer as Folk* (also listed as an example of this category) explicitly contradict a further piece of guidance in the recommendation: to wit, that series should not be classified in their entirety – the same classification applied to each episode –, but each episode of a series should be classified in itself (p. 2). At any rate, the examples provided in the

⁶ The document is available at: https://nmhh.hu/dokumentum/214969/klasszifikacios_ajanlas.pdf.

recommendation make it clear that the Media Council cannot be expected to interpret the new legal provisions with any regard for the value of the works classified as vehicles of artistic or political expression, or with due regard for the context of the objectionable content element in the works at hand that should guide and inform the interpretation of these works.

While the guidance seems to offer a narrower interpretation of the restrictions, it has to be emphasized that the recommendation of the Media Council does not have the quality of law. It is not a source of law at all; it does not bind either the addressees of the legal provisions it interprets, or the Media Council itself that is supposed to apply the critical provisions. Second, the recommendation emphasizes that *“it does not aim to lay down strict, rigidly interpreted rules for each classification [rating]”*, and that the list of considerations it recommends to take into account *“is not at all comprehensive or final, as professional practice requires the continuous review and amendment of these considerations”* (p. 2). Third, note that although similar terms appear in the Media Act as in the other acts amended, there is no reason to take guidance from the Media Council’s recommendation on media content classification to apply to similarly worded provisions in the National Public Education Act or the Family Protection Act, and so forth. These acts are interpreted and applied by different bodies, and hence relying on guidance in one domain (e.g., media services) may actually mislead addressees about how similar provisions are applied in another domain (e.g., public education). Also, for instance, propagation may have entirely different meanings in media service provision than in public education: these terms should be interpreted with due regard for the context to which they are applied. Yet no guidance exists in other domains but for media service provision – apart from the substantive concerns Hättér has voiced repeatedly, it is insufficient to guarantee foreseeability by guide addressees about how they should interpret the new legal provisions and adapt their conduct accordingly.

Proceedings after the entry into force of the so-call ‘child protection’ law:

Since July, 2021, the Media Council has not initiated proceedings against a media service provider registered in Hungary and thus within its jurisdiction.⁷ In two cases a service provider registered in Hungary (Rtl Klub) requested a *a priori* classification of a content (*i.e.* setting the rating prior to airing it): in case of the film titled [“Jenny’s wedding”](#) the Media Council found that it belongs to class V (not recommended to viewers under the age of 18). The other case related to the promotional video for the 2023 Pride Community Festival, discussed in detail below.

Until mid-June the Hungarian media authority received **136** reports alleging non-compliance with Section 9 (6) of the Media Act outlawing content depicting or promoting homosexuality, divergence from the sex at birth or gender reassignment for minors.

- **22 reports** concerned content aired by a service provider registered in Hungary (thus within the jurisdiction of the Media Council): **no procedure was initiated** against such service providers, and hence no sanction was imposed.

⁷ Representative of the Media Council confirmed this in an interview given to the researcher of Amnesty International Hungary in June 2023.

- **58 reports** were submitted against foreign service providers: **36** related to content aired in linear media services, while **22** targeted streaming services registered outside Hungary.

The Media Council reached out to its foreign counterparts with requests to proceed against service providers registered in another EU member state in **24** instances.

2 cases have been closed: the approached foreign media authority refused to proceed in both cases, thus no sanctions have been imposed.

The low numbers of procedures do not reflect the real impact of the so-called ‘child law in media: between June 8, 2021 and December 31, 2022, the Hungarian media authority received **169** reports altogether alleging the violation of Section 9 of the Media Act (not only Section 9 (6) outlawing LGBTQI content) – this marks a significant increase compared to the period of January 1, 2018 - June 7, 2021 where **198** reports were submitted.⁸ As explained in Háltér’s previous report, the Media Council’s practice is unpredictable in implementing the so-called ‘child protection’: in several cases the content was reclassified (*i.e.* in case of cartoons, but no 18+ rating was required).

The case files Háltér has access to indicate that the media authority selectively refers explicitly to the so-called ‘child protection’ law, but it follows the spirit of the law and seeks to sanction LGBTQI content not rated – in its view – adequately. While the foreign media authorities have so far refrained from imposing sanctions upon the request of the Media Council, these proceedings contribute to the chilling effect of the law. The Media Council’s reasoning in these cases is inconsistent: at times they take action against content touching upon sexual orientation and gender identity, yet they do not refer to the specific provisions introduced by the so-called ‘child-protection’ law. It is, thus, unforeseeable what content will trigger the application of the law and will result in an 18+ rating.

→ The official campaign film of the 28th Pride Festival

In June, 2023 Rtl Klub requested the *a priori* classification of "The official campaign film of the 28th Pride Festival" from the Media Council. Prior to the adoption of the so-called ‘child protection’ law, the promotional video of the yearly Pride festival was aired as a social service advertisement by the service provider. In 2022, they refrained from it, however, no Media Council assessment was requested.

In **Decision No 496/2023 (VII. 4.)** the Media Council found that the impugned content is not in line with the requirements set for social service advertisement, and it may be aired only between 10 p.m. and 5 a.m.⁹ After establishing the Pride Festival “that is known to be one of the major events and celebration of people with orientations other than heterosexual”, the Media Council immediately invoked the provision inserted by the so-called ‘child protection’ act in the Media Law (the ban on content depicting and promoting homosexuality and gender diversity) and concluded that it belongs into class V (not recommended below the age of 18).

⁸ Response of the National Media and Infocommunication Authority to Háltér Society’s freedom of information request on February 8, 2023. The FoI request was only partially complied with, Háltér is currently litigating for full compliance.

⁹ The translation of the decision is available at:

https://docs.google.com/document/d/1wBcnGSbcqarY4r8DpytFL_PGdLofq2JsHz_DazGdAw/edit?usp=sharing.

After recalling the above-mentioned Guidelines, it concluded: “the Programme is capable of adversely influencing the appropriate physical, mental and moral development of children, and therefore may not be published by the Media Service Provider as social service advertisement pursuant to Section 32 (4a) of the Media Act.”

A judicial review against the decision is currently pending, both Rtl Klub and Budapest Pride (represented by Háttér Society) will submit a challenge.

IV. Implementation of the so-called ‘child protection’ law in retail trade of books

In February, 2023 Háttér Society approached all government offices in Hungary with a freedom of information request in the hope to map the ongoing consumer protection cases with reference to the so-called ‘child protection’ law: out of 20 government offices, only the Budapest Capital Government Office reported pending procedures (**14 in total**).¹⁰ While there have been reports in the press about shelving books targeted at young people (between the age of 14 and 18) to adult literature on account of their content (e.g. for having gay or lesbian characters), there was no further information available on sanctions.¹¹ In late May - June, two procedures received significant media attention; these are detailed below.

The first one concerned Libri, a bookstore chain, where the majority shares have been recently purchased by [Mathias Corvinus Collegium](#) which is known for its close ties to the government. It is not known which book that triggered the sanction imposed on Libri, but it is known that they received a 1.000.000 HUF fine (appr. 2.700 EUR). After the change in ownership and the fine imposed, Libri reportedly started to review the books in its stores and re-shelved those that could fall within the scope of the so-called child-protection law: as a result, a number of books have been wrapped (in transparent foil that prevents browsing), and moved to entertaining adult literature.¹² "Libri's mission, and the key to its business success, is to make written culture widely available to the reading public," they stated, adding that "the Libri Group – similarly to other actors in the book market – operates as a responsible company, in compliance with the law and legislations". Libri, however, reportedly has no intention to remove any books from its stores, even if they are sold within 200 meters from schools or churches.¹³

On July 13, 2023 Lira, another major bookstore chain in Hungary, received the decision of the Budapest Capital Government Office (BCGO) imposing 12.000.000 HUF fine (appr. 32.000 EUR) for selling the Heartstopper series without wrapping and among literature accessible to youth.¹⁴ BCGO not only imposed a fine on Lira, but also ordered to sell the Heartstopper books “in close wrapping and separated from the other products”. The

¹⁰ On file with Háttér Society.

¹¹ See for instance:

<https://merce.hu/2023/05/31/a-homofob-torvenyre-hivatkozva-levettek-egy-magyar-szerzo-konyveit-a-libri-polcairol-egy-et-pedig-ki-sem-adtak/> (Libri took action against the books of a Hungarian author).

¹² See:

<https://telex.hu/english/2023/07/20/hungarys-biggest-book-retailer-considers-removing-all-books-with-lgbtq-related-content-from-dozens-of-its-stores-due-to-anti-gay-law>.

¹³ See: <https://telex.hu/english/2023/07/20/libri-we-have-no-intention-of-removing-any-books-from-our-stock>.

¹⁴ Case file: BP/2200/03940-5/2023. On file with Háttér Society.

investigation established that since its publication in Hungarian, 4198 Heartstopper copies had been sold and the different volumes were available in 55-67 stores belonging to the Líra chain. None of the volumes had been advertised. The Heartstopper series is published by Könyvmolyképző, a publisher specialized in youth literature, and the books were recommended from the age of 14.

BCGO briefly reviewed the content and the layout and found: the publications “also targeted children and display homosexuality”, however, the investigation revealed that they “were not separated from other products and were not distributed in closed packaging”, which violates the above-described Government Decree (thus, not the so-called ‘child protection’ law was invoked in support of the fine). Líra will challenge the decision before court.

V. Conclusion

The so-called ‘child protection’ law has been in force since July 2021, and so far its chilling effect and the self-censorship it prompted has been the biggest concern for human rights defenders on the ground. Apart from the media, no procedures were known to the public, Háttér had only knowledge of pending procedures without any specificities. In the Summer of 2023, the authorities seemingly changed pace and bookstores became targets of implementing measures. The two fines imposed for books containing content on sexual and gender minorities visibly triggered compliance: ‘suspicious’ contents have been wrapped and removed from the shelves for youth literature.

The law does not protect children, it shields them from information that is vital for their development as well-informed, open-minded human beings who respect sexual and gender diversity, and ultimately equal human dignity. The pretense of protecting children shall not be the basis of a legal framework that encourages discrimination, stigmatizes sexual and gender minorities, and above all, violates children’s right to education that entails the right to receive objective, unbiased and comprehensive information on sexual and gender diversity.

To ensure that the harmful impact of the law is minimized, we urge the European Commission and Member States to seek interim measure from the Court of Justice of the European Union: the implementation of the so-called ‘child protection’ law shall be suspended pending the infringement procedure before the CJEU.