



Hungary: Continued Backsliding on LGBTQI Rights

Selected Developments and Recommendations for the General Affairs Council Hearing on Article 7(1) TEU (November 15, 2023)

Joint brief by Amnesty International Hungary and Háttér Society

CONTEXT

The human rights situation of LGBTQI people has significantly [deteriorated](#) in the past years, and the dismantling of legal guarantees changed pace in 2020: restrictive laws further curtailing the rights of LGBTQI persons have been passed, and the anti-LGBTQI rhetoric has permeated the political and public discourse. Following the ban on legal gender recognition introduced in May 2020, the [Ninth Amendment to the Fundamental Law](#) adopted in November 2020 opened a new chapter in the crusade against sexual and gender minorities: it entrenched on a constitutional level that “(t)he mother shall be a woman, the father shall be a man” and that the children’s right “to a self-identity corresponding to their sex at birth” shall be protected. Parallel with changing the text of the Fundamental Law, the legal framework for adoption was also amended with the explicit aim of restricting adoption by LGBTQI persons. In June 2021, the Parliament passed [the so-called “Child Protection” Act](#) that bans the display and promotion of homosexuality and gender diversity for minors. The existing safeguards for the protection of LGBTQI rights remain under or non-enforced in Hungary: the anti-LGBTQI rhetoric of the ruling majority has resulted in a rise in hate speech, hate crimes and other hate-motivated incidents.

1. THE SO-CALLED “CHILD PROTECTION” LAW

- What actions have been taken to revoke the anti-LGBTQI provisions in the so-called "Child Protection" Act?
- Has the minister responsible for public education taken steps to issue a decree which designates the state organ maintaining the registry of experts and civil society organisations that can hold sex education classes in institutions of public education?
- How does the government ensure that children in institutions of public education are not deprived of their right to receive objective, unbiased and scientifically sound information on sexual orientation and gender identity?
- What safeguards are in place to prevent self-censorship and the arbitrary application of the so-called “Child Protection” law?

Background: The so-called “Child Protection” law was passed – amid fierce domestic and international criticism – in June 2021. The European Commission (EC) shortly after the adoption started an infringement procedure against Hungary; it is currently pending before the Court of Justice of the European Union (CJEU). The EC’s

submission alleges the violation of the directives on electronic commerce, services, and audiovisual media services, all in conjunction with the Charter of Fundamental Rights, and Article 2 TEU. 15 Member States intervened in the case in support of the EC's position. The so-called "Child Protection" law prohibits minors from accessing content which promotes or portrays gender identities that do not correspond to the sex at birth, sex reassignment and homosexuality. As the law amended the Child Protection Act, Advertisement Act, Media Act, National Public Education Act, and the Family Protection Act, the ban applies beyond the sectoral boundaries and may be enforced in every field of life.

In line with the so-called "Child Protection" law, in August 2021 Government Decree 473/2021. (VIII. 6.) was passed amending Government Decree 210/2009. (IX. 29.) on commercial activities ("Packaging decree"). It prescribes that products under the above-described ban can be sold if they are wrapped and separated from other goods. Based on the Decree, products that promote or portray gender identities that do not correspond to the sex at birth, sex reassignment and homosexuality are not allowed to be marketed within 200 meters of any entrance to educational, child and youth protection institutions, churches and other places of religious practice. The "Packaging decree" is not subject to the infringement procedure.

Recent developments: Until Spring 2023, provisions of the so-called "Child Protection" law remained underenforced; only the Media Council attempted to take action against media service providers registered abroad. In the known cases, no foreign media authority has complied with the legal aid request, and no sanctions have been imposed. However, in May-June 2023 consumer rights protection procedures based on the "Packaging decree" were launched against bookstores (Libri and Líra) selling publications featuring LGBTQI content. In both cases an appeal was launched against the fines, the court procedures are still pending. In Líra's case the objectionable content was the Heartstopper series, and it was recommended from the age of 14. The Budapest Capital Government Office (BCGO) in its decision briefly reviewed the content and layout of the publication and found that they "also targeted children and display homosexuality", and the investigation revealed that these books "were not separated from other products and were not distributed in closed packaging" in violation of the "Packaging decree".¹ After the fine, Libri wrapped the books featuring LGBTQI characters, however, it reportedly has no intention to remove them from its stores or online offer. In the case of the Kölcsey bookstore in Pásztó, which belongs to Líra's bookshop network, [government office staff took measurements](#) at the end of October 2023 and found that the distance between the front door of the bookstore and the front door of the Catholic school was less than 200 meters, but no other information was reported about the procedure.

Budapest Pride submitted a [short film](#) for the 2023 event to be aired as a public service advertisement on the broadcasting channel RTL. However, in June 2023, RTL requested the Media Council to *a priori* classify the content. The Media Council of the National Media and Infocommunications Authority, [in Decision no. 496/2023. \(VII. 4.\)](#) found that the impugned content is not in line with the requirements set out for social service advertisement, and it may be aired only between 10 p.m. and 5 a.m.. After establishing that Pride Festival "is known to be one of the major events and celebration of people with orientations other than heterosexual", the Media Council invoked the provisions that were added to the Media Act by the so-called "Child Protection" law. It concluded: "the Program is capable of adversely influencing the appropriate physical, mental and moral development of children, and therefore may not be published (...) as a public service advertisement". In response, Budapest Pride filed a lawsuit against the Media Council's decision. Their application sought to overturn the decision, terming it "homophobic and transphobic." The petition was rejected by the court for lack of standing: as Budapest Pride was not party to the proceeding before the Media Council. The court also rejected that the Media Council's decision indeed impacted the rights and interests of Budapest Pride. With the assistance of Háttér Society Budapest Pride appealed the decision. RTL, as the broadcasting channel, also challenged the Media Council's decision separately by filing an administrative lawsuit and refuted the Council's claims that the short film could negatively impact minors' development, emphasising the harmless nature of the content. Both procedures are still pending.

The "Nemzeti Jogvédő Szolgálat" (National Legal Defense Service; NJSZ) [filed a complaint](#) over a same-sex kiss featured in the [campaign video](#) for the 2023 Sziget Festival. The complaint is based on the so-called "Child protection" law, and it argues that since the video is paid advertising, it needs to adhere to the anti-LGBTQI requirements of the Advertisement Act as amended in June 2021. BCGO has responded by stating that they have started an investigation on their own initiative already against the Sziget Festival, and they will proceed once sufficient evidence has been collected.

¹ Case file: BP/2200/03940-5/2023. On file with Háttér Society.

In October 2023, the National Museum of Hungary [communicated](#) that, based on the so-called “Child Protection” Act, people under 18 are not allowed to purchase tickets for the World Press Photo exhibition on display in Budapest because of the LGBTQI content in some of the photos. However a few days later [444.hu reported](#) that the museum cannot enforce the ban since visitors cannot be asked to present identity cards. This development in the effects of the law how Articles 16 and 19 of on services in the internal market might be violated by prohibiting children from accessing content which promotes or portrays gender identities that do not correspond to the sex assigned at birth, sex reassignment or homosexuality regarding a cross-border service.

Recommendations:

- Revoke the anti-LGBTQI provisions of the so-called “Child Protection” Act and refrain from interpreting other child protection provisions in an arbitrary and discriminatory manner.
- Take necessary measures to ensure that children have access to comprehensive sex education, establish the registration procedure for civil society organizations and experts without which they may not hold sex education classes in institutions of public education.
- Ensure that textbooks and other educational materials used in public education cover sexual orientation and gender identity in an objective manner and promote tolerance and respect for LGBTQI persons.
- Take EU action against the “Packaging decree” as it runs counter to the TRIS Directive [Directive (EU) 2015/1535]: it sets a technical requirement (goods to be wrapped and separated), and the Hungarian government failed to notify the European Commission when introducing it. Furthermore, the “Packaging decree” seriously curtails the right to freedom of expression of retail book sellers and disproportionately limits children’s access to age-appropriate books and other products.

2. BAN ON LEGAL GENDER RECOGNITION

- Has the government taken any steps to create a prompt, foreseeable and accessible procedure for legal gender recognition?
- Has the government taken any measures to implement the relevant judgments of the European Court of Human Rights? (*Rana v. Hungary* and *R.K. v. Hungary*)

Background: On May 19, 2020 the Hungarian Parliament adopted Act no. XXX. of 2020 on the amendment of specific administrative laws and free donations of property. Its Section 33 amended Act no. I of 2010 on the registry procedure (RPA), so that the civil registry no longer contains 'sex', but 'sex at birth', and define sex at birth as the “the biological sex based on primary sex characteristics and chromosomes”. A paragraph was also added that explicitly declares that the 'sex at birth', once recorded in the registry, cannot be amended.

Recent developments: On February 2, 2023, the Hungarian Constitutional Court (CC) published its long-awaited [decision](#) on legal gender recognition. Upon a petition submitted by a judge in a case pending before her, the CC for the first time reviewed the provisions introduced into the Act on Registry Procedure (RPA) in late May 2020 requiring the registration of the sex at birth (instead of sex) and banning any modification to that registry entry. The CC held that since the concept of sex at birth is contained in the Fundamental Law, its mandatory and unalterable registration does not constitute a violation of human dignity and the right to respect for private life. With this decision, the CC chose to remain concordant with the perceived political expectations, blatantly served the interest of the government majority, and echoed their fixation of biologically determined sex. In line with the decision, in May the CC rejected the constitutional complaints that were submitted directly against the new provisions of the RPA leaving no further effective domestic remedy for trans people wishing to change their gender marker and name in the Hungarian registry. Háttér Society launched strategic litigation before the European Court of Human Rights (ECtHR) with over 60 clients arguing that the lack of access to a prompt and foreseeable legal gender recognition procedure violates Article 8 of the European Convention on Human Rights.

On June 22, 2023 the ECtHR condemned Hungary for denying trans individuals the right to alter their name and gender marker ([CASE OF R.K. v. HUNGARY; 54006/20](#)). The application was submitted prior to May 2020 when in principle legal gender recognition was still available in Hungary, however, the Hungarian authorities – due to legislative gaps and omissions – failed to proceed in these cases. The ruling serves as a powerful reminder of the vital importance of respecting and protecting the rights of transgender individuals. Hungary’s failure to provide an accessible and effective procedure for legal gender recognition is a violation of fundamental human rights.

The decision has far-reaching implications for urging Hungary to ensure that transgender individuals can exercise their rights to modify their name and gender marker in line with international human rights standards.

In May 2023, the CJEU communicated [Case C-247/23 \(Deldits\)](#): in the procedure of refugee who sought to have his gender marker and name changed in Hungary, a judge of the Budapest-Regional Court submitted a request for preliminary ruling. Although the applicant was not prevented from having his gender legally recognized based on the general rule, the questions submitted are not restricted to his situation as a refugee. The questions referred to the CJEU seek clarification on whether the right to have one's personal data rectified as guaranteed by Article 16 of the GDPR read together with Article 5 (principle of accuracy) can be interpreted as to apply to 'sex' as well in case changed after it was entered into the registry. If the answer is affirmative, the CJEU will need to specify what evidence needs to be presented, and finally, if "sex reassignment surgery" can be required. The case is pending, 5 Member States and the European Commission submitted written observations. The ECtHR delivered a judgment in similar case holding that Hungary failed to comply with its positive obligation under Article 8 of the Convention, yet it has not been implemented since June 2020 ([CASE OF RANA V. HUNGARY; 40888/17](#)).

Recommendations:

- Repeal the current ban on legal gender recognition and develop a quick, transparent and accessible procedure based on personal autonomy and self-identification.
- Guarantee that trans people have access to medical services, including gender-affirming treatment and care.
- Ensure compliance promptly and fully with all relevant CJEU judgments as well as all relevant ECtHR judgments in cases where the execution is still pending.

3. RIGHTS OF SAME-SEX FAMILIES

- Has the government taken any steps to create a legal framework that complies with the Coman judgment of the Court of Justice of the European Union?
- How does the government ensure that LGBTQI people are not discriminated based on sexual orientation, gender identity or family status in the adoption process?

Recent developments: Same-sex marriages concluded abroad (predominantly in another EU Member State or in the US) are still not recognized in Hungary, and they are not automatically converted into registered partnerships either. This means that such couples are deprived of the benefits married couples enjoy in Hungary, and although they can enter into a registered partnership – in spite of their existing marriage –, the time spent in marriage is not counted towards the rights and benefits that are dependent on the length of the relationship (e.g. citizenship). At the beginning of 2023 Hättér Society was cautiously optimistic: the Budapest-Regional Court in a case [ruled](#) that the BCGO should have considered recognizing the clients' American marriage as registered partnership and it quashed the authority's decision. BCGO requested the review of the Curia that in turn [held](#): there is no room for recognizing same-sex marriages concluded abroad as registered partnerships. After the ruling of the Curia, there is no room for successful litigation in Hungary, and all of the cases pending litigation are geared towards the European Court of Human Rights, or in case they have an EU angle, the Court of Justice of the European Union (here we would need fact patterns calling for the application of the [Coman](#) judgment). In June 2022, a complaint for the breach of EU law was submitted to the European Commission by Hättér Society and ILGA-Europe. The complaint argues that the written opinion of the Ministry of Justice, which was recently confirmed by the Prime Minister's Office and the decisions in individual cases serve as evidence for the violation of the [Coman](#) judgment in Hungary. The Commission has not yet responded to the complaint.

Since 2020, adoption is restricted to married couples as a general rule, individual adoption is an exception and final approval of suitability for adoption is vested with the minister responsible for family and youth affairs (*i.e.* not with a professional expert). In the cases that had started before the amendment the guardianship authorities – using every possible means to further prolong the procedure – rejected the applications, even after they had been instructed by the reviewing court to weigh in only professional arguments. The reasoning presented in the guardianship decisions echoes the anti-LGBTQI narrative of the government and tries to reinforce the 'traditional family' model contained in the Fundamental Law. In order to achieve this, decisions rely on outdated, scientifically inaccurate information, use an alienating and biased language. The repeat review procedures are pending.

Recommendations:

- Ensure equal treatment to same-sex relations by removing discriminatory differences between registered partnership and marriage and provide legal recognition to same-sex parenting.
- Revoke all discriminatory laws that limit LGBTQI people's access to adoption, regardless whether they wish to adopt individually, adopt their partner's child or adopt jointly.
- Take concrete measures to prevent and prohibit discrimination against LGBTQI people, and specifically same-sex couples and their children, in the fields of employment, education, healthcare and access to social benefits.

4. FURTHER CONCERNS

Recent developments: With the permission of the Budapest 9th District Municipality, Amnesty International Hungary (AI HU) [painted a bench in rainbow colours](#) to celebrate Budapest Pride Month and to symbolise inclusivity and support. The bench was repainted multiple times and defaced by anti-LGBTQI groups. On one occasion, the phrase "STOP LMBTQ" was spray-painted on the ground in front of the bench. Amnesty International Hungary initiated criminal proceedings regarding the defacement, as the painting 'STOP LMBTQ' sign is considered an act of hate crime violating Art 216 (1) of the Criminal Code. The procedure is still pending.

AI HU scheduled a public program in Pécs on August 19, 2023, to address LGBTQI issues with youth participation. The event's objective was to promote understanding, acceptance, and dialogue around LGBTQI topics. The original venue was cancelled, which forced a search for an alternative location. AI HU and 12 institutions and individuals issued an [open letter](#) addressing the mayor and the executive president of the planned. The letter demands assurance that the Municipality or its affiliated institutions will not pressure lawful event organizers to cancel or relocate their events in the future. Cancelling this event raises concerns about freedom of expression, the rights of vulnerable groups, and the ability of civil society organizations to operate without interference. The municipality failed not only the LGBTQI community but also sent a message to all the people of Pécs, that the city government succumbs to hatred and exclusion. The incident reflects broader challenges faced by organizations advocating for LGBTQI rights and inclusive events in Hungary, especially in a climate of increasing conservatism.

The stigmatization and scapegoating of civil society organizations have been present in the public discourse since the Government's attack against the Civil Fund of the EEA/Norway Grants in 2014, which gained new impetus with the launch of the Stop Soros campaign back in 2017. Civil society organizations and actors whose work includes reporting on the situation of human rights in Hungary, or litigation before regional or international human rights bodies are frequently called out for their work implying that they serve (an undefined and vaguely referenced) external, non-Hungarian interest. The extreme right Sixty-Four Counties Youth Movement (SFCYM, Hatvannégy Vármegye Ifjúsági Mozgalom) on a press conference held on the occasion of the Budapest Pride March [stated](#): "organizations such as Háttér Society – which is funded by hundreds of millions of dollars in foreign donations – are laying down the foundations of the deep state".

CSOs working for the rights of sexual and gender minorities have been extensively subject to hatred and biased speech alleging that it is condoning pedophilia and other unlawful activities, *e.g.* the violation of the provisions of the so-called "Child Protection" law. Labeling LGBTQI rights organizations as LGBTQP – P standing for pedophilia – is widespread in the extreme right-wing media: on July 25, 2023 SFCYM published a [document](#) titled 'Proposals to curb the harmful activities of foreign-funded LGBTQP lobbying organizations'. SFCYM not only declared that LGBTQI organizations – Háttér Society being the oldest and biggest among these – constitute "national security threats", manifested in their submission of shadow reports to UN treaty bodies and their efforts devoted to international advocacy. SFCYM explicitly calls for establishing a "special monitoring body" to scrutinize LGBTQI civil society actors' work, funding, network and their attempts to influence, assumably, state actors. The proposal maps instances of collaboration and cooperation between LGBTQI NGOs and public bodies, *e.g.* the police, the prosecution service or the Ministry of Justice, and suggests that these NGOs have already infiltrated state organs. No public official or public body condemned these attacks.

Recommendations:

- Duly investigate hate crime and improve quality and access to victim support and legal aid services for victims of hate crimes by training professionals and providing public funding to services tailored to the needs of hate crime victims.
- Strengthen efforts to fight sexist, homophobic and transphobic hate speech by amending relevant provisions of the Fundamental Law and the Civil Code and by condemning such statements, especially if made by public officials.
- Ensure an enabling environment for LGBTQI CSOs by avoiding stigmatising statements and providing appropriate funding for their work.