

2021 Rule of Law Report - targeted stakeholder consultation

About you

* I am giving my contribution as

[Civil society organisation/NGO](#)

* Organisation name

[Háttér Society](#)

* Main Areas of Work

[Other](#)

If "Other", please specify: [human rights and social inclusion of LGBTQI people](#)

* Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

www.hatter.hu

[Háttér Society, founded in 1995, is the oldest and largest lesbian, gay, bisexual, transgender, queer and intersex \(LGBTQI\) organization in Hungary. Its aims are calling attention to the problems faced by LGBTQI people; providing support services; exploring the situation and needs of LGBTQI people; mainstreaming these concerns in laws and public services; protecting the human rights of LGBTQI people and tackling discrimination against them; promoting the health and well-being of LGBTQI people; encouraging the self-organization of LGBTQI communities; and preserving and spreading LGBTQI culture and heritage.](#)

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

* Country of origin

[Hungary](#)

* First Name

[Tamás](#)

* Surname

Dombos

* Email Address of the organisation (this information will not be published)

hatter@hatter.hu

* Publication of your contribution and privacy settings

- [Public - Your personal details \(name, organisation name, transparency register number, country of origin will be published with your contribution.](#)

I agree with the [personal data protection provisions](#).

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[overview_topics_for_contribution.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

Questions on developments in Member States

Member States covered in contribution [several choices possible]

[Hungary](#)

Justice System - Hungary

Independence

Appointment and selection of judges, prosecutors and court presidents

(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

3000 character(s) maximum

Promotion of judges and prosecutors

3000 character(s) maximum

Allocation of cases in courts

3000 character(s) maximum

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

3000 character(s) maximum

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

3000 character(s) maximum

Remuneration/bonuses for judges and prosecutors

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

The prosecution service often fails to carry out its duty to supervise criminal investigations and initiate public interest procedures. In particular, the prosecution service has been largely inactive in case the police rejected or stopped investigation of hate crime and hate speech cases against LGBTQI people (B.V.5640/2020/3; B.VI-VII.902/2020/3.). In the latter case the prosecution service argued that an LGBTQI organization whose billboard posters have been vandalized has no right to submit a complaint as they are not a victim in the criminal procedure. According to the law on the prosecution service, prosecutors have the power to intervene in administrative procedures in case an administrative decision is unlawful. Háttér Society requested that the prosecution service reviews an administrative decision imposing a fine of 500.000 HUF on Coca Cola for featuring same-sex couples in their advertisement, as the decision was discriminatory and infringed on the right to freedom of expression. The prosecution service refused to intervene in the case arguing Háttér has no standing in the procedure, even though Háttér was urging a public interest intervention that can be requested by anyone.

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

On 19 October 2020 András Zs. Varga. was elected as the president of the Curia. Varga's election was strongly opposed by the National Judicial Council (Decision no. 120/2020 of 9 October 2020) on the grounds that he has not served as a judge before, and has no courtroom experience. Varga was a law professor at the Pázmány Catholic University and has published multiple academic papers arguing against the legal equality of same-sex couples. Varga considers developments in international human rights law regarding the recognition of family ties between same-sex couples as "deviation from European culture" based on Christianity (<https://folyoirat.ludovika.hu/index.php/actahumana/article/view/5115/4134>). Having such a person appointed to the highest judicial position in the country, with the increasing power of the president of the Curia to sanction judges deviating from the legal standards set by the Curia might have a chilling effect on judges holding views more in line with the development of international human rights norms regarding same-sex families.

Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

Accessibility of courts (e.g. court fees, legal aid, language)

3000 character(s) maximum

Resources of the judiciary (human/financial/material)

Material resources refer e.g. to court buildings and other facilities.

3000 character(s) maximum

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

Human rights organizations offering training to judges, including Háttér Society providing training on respectful and sensitive treatment of LGBTQI persons in the courtroom, have been attacked in pro-government media for "brainwashing judges" and "pushing the agenda of George Soros". Since then, these organizations find it very difficult to organize any training for the judiciary.

(<https://tuzfalcsoport.blogstar.hu/2017/05/04/hogyan-szovi-be-soros-haloja-a-magyar-igazsagszolgaltatast-2-resz-/37866/>)

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

(Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, does not need to be repeated)

3000 character(s) maximum

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

3000 character(s) maximum

The statistical system of the courts is focusing largely on procedural indicators and is not detailed enough to generate data on human rights-relevant court cases, such as the overall number of hate crime cases or the overall number of discrimination cases, let alone disaggregation by protected characteristics.

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization

3000 character(s) maximum

Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

Length of proceedings

3000 character(s) maximum

The Constitutional Court has no deadline for adjudicating constitutional complaints or petitions by the Commissioner for Fundamental Rights, and the procedures take unreasonably long. Even where there is a deadline (constitutional reviews initiated by lower level courts), the deadlines are not kept. For details see under *Regime for constitutional review of laws*.

Other - please specify

3000 character(s) maximum

Anti-Corruption Framework - Hungary

The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant)

3000 character(s) maximum

Prevention

Integrity framework including incompatibility rules (e.g.: revolving doors) *3000 character(s) maximum*

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing) *3000 character(s) maximum*

Rules on preventing conflict of interests in the public sector.

3000 character(s) maximum

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

3000 character(s) maximum

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

3000 character(s) maximum

Measures taken to address corruption risks in the context of the COVID-19 pandemic

3000 character(s) maximum

Any other relevant measures to prevent corruption in public and private sector.

3000 character(s) maximum

Repressive measures

Criminalisation of corruption and related offences.

3000 character(s) maximum

Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards the implementation of EU funds

3000 character(s) maximum

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation). *3000 character(s) maximum*

Other – please specify

3000 character(s) maximum

Media Pluralism - Hungary

Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies.

3000 character(s) maximum

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies *3000 character(s) maximum*

The Media Council of the National Media and Infocommunications Authority consists only of members nominated by the governing parties. In 2019 an *ad hoc* parliamentary committee was set up to select new members, but the committee voted down all candidates nominated by opposition parties. The Media Council applies clear double standards regarding LGBTQI issues: it allows for hate speech against LGBTQI people, while restricts the positive portrayal of LGBTQI people (see details under other).

Existence and functions of media councils or other self-regulatory bodies

3000 character(s) maximum

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

3000 character(s) maximum

Rules governing transparency of media ownership and public availability of media ownership information

3000 character(s) maximum

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

Access to information and public documents

3000 character(s) maximum

Even though legislation requires that public bodies respond to freedom of information requests concerning data of public interest within 15 days (Act no. CXII. of 2011), public bodies often reject the completion of such requests. E.g. in July 2020 the Ministry of Human Capacities refused access to national health programs adopted by the government in 2018 arguing that they served the purpose of later decision-making, even though the programs had been finalized in 2018 and had been adopted by a government resolution (II/8153-1/2020/ADATVED).

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

The Media Council applies clear double standards regarding LGBTQI issues: it allows for hate speech against LGBTQI people, but penalizes anti-majoritarian speech and restricts the portrayal of LGBTQI people. E.g. the Media Council found no violation when a TV program promoted conversion therapies for gay and lesbians, even though the program described same-sex sexual attraction as sickness, deviance and distortion of personality (221/2019. (II. 19.)); found no violation when a TV program likened same-sex families to dog poo (568/2019. (V. 14.)); and found no violation when a guest on a TV program expressed his support for illegally removing the "faggot flag" from public buildings, which is a symbol for "sick and deranged life form" (MN/23195-6/2019.). The Media Council, however, did impose a 100.000 HUF fine when a left-wing mayor criticized the hate-speech of the governing parties which he described as "fearful bunch of white, Christian, heterosexual men" (405/2020. (IV.28.)). Most recently, the Media Council launched an investigation against RTL Klub, the largest commercial channel for airing a video about rainbow families as public service advertisements. The Council argued that the video featuring same-sex families and experts was harmful to children under the age of 16, and thus should not have been aired before 9pm. The investigation is ongoing, no decision has been issued yet (MN/31406-9/2020.).

Other institutional issues related to checks and balances - Hungary

The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms) and transparency and quality of the legislative process

3000 character(s) maximum

While there is legislation that requires public consultation on all bills drafted by ministries and all government and ministerial decrees (Act no. CXXXI of 2010), these requirements are routinely disregarded. Since March 2020 only one draft legislation was published for public consultation (https://kormany.hu/dokumentumtar?categories=2&limit_rows_on_page=8&limit_page=0), while hundreds of bills and decrees have been adopted.

In particular, there were no public consultations on any of the legislation adopted in 2020-2021 restricting the rights of LGBTIQI, in particular bills banning legal gender recognition of trans people (Act no. XXX of 2020), adding transphobic provisions to the Fundamental Law (9th Amendment of the Fundamental Law), restricting adoption by non-married persons (Act no. CLXV of 2020), and on amendments to government and ministerial decrees on detailed rules of the adoption procedure (EMMI decree no. 35/2020. (X. 5.); Govt. Decree no. 94/2021. (II. 27.)). The explanatory memoranda of these pieces of legislation make no reference to impact assessments, and remain vague about why the changes were needed.

The bill abolishing the Equal Treatment Authority (Act no. CXXVII of 2020) was introduced by the Justice Committee in Parliament circumventing the requirement for public consultation. The Hungarian LGBT Alliance requested the bill to be discussed by the LGBT Working Group of the Government's Human Rights Roundtable, but the online meeting on the issues was convened by the Ministry of Justice after the bill had already been adopted by the Parliament.

All these bills were debated in Parliament during the lockdown, civil society organisations had no chance to participate in the committee hearings due to COVID-19 restrictions on who can enter the Parliament building.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

Regime for constitutional review of laws.

3000 character(s) maximum

The Constitutional Court has no deadline for adjudicating constitutional complaints or petitions by the Commissioner for Fundamental Rights, and the procedures take unreasonably long. E.g. the Commissioner requested the constitutional review of the definition of next-of-kin and the exclusion of (same-sex) registered partners from this definition on 16 July 2013. The Constitutional Court delivered its decision seven and a half years later, on 14 January 2021 (3003/2021. (I. 14.) CC decision).

There is a 90-day deadline for constitutional reviews initiated by lower level courts, but that deadline is not kept either. E.g., on 13 March 2020 the Debrecen Administrative and Labour Court initiated the constitutional review of the legislation on legal gender recognition of trans people prior to the adoption of the legal gender recognition ban, but nearly a year after the case was submitted, it has still not been decided by the Constitutional Court (III/00559/2020). Similarly, on 4 December 2020, the Miskolc Court of Appeal initiated the constitutional review of the legislation banning legal gender recognition, the 90 days have passed and no decision has been issued yet (III/02030/2020).

COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic measures taken to ensure the continued activity of Parliament (including possible best practices)

3000 character(s) maximum

Laws restricting the rights of LGBTQI people were adopted at the peak of the COVID-19 pandemic. The bill banning legal gender recognition of trans people was submitted in Parliament the day after the state of danger was confirmed by the Parliament in March 2020. The bills adding transphobic provisions to the Fundamental Law and restricting adoption by non-married persons were submitted to Parliament on the same day as the state of danger was confirmed by the Parliament in November 2020. While these legislations were adopted via regular procedures, their timing was clearly chosen to divert attention away from the inability of the government to tackle the pandemic, at a time when LGBTQI organizations could not use regular advocacy methods (demonstrations were outlawed, organizations had no access to parliamentary procedures and could not meet politicians, media attention to anything not-COVID-19 related was limited). The government gave no reason why these legislative proposals should be debated and adopted at the time of a major health and economic crisis.

Independent authorities

Independence, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>

3000 character(s) maximum

On 1 December 2020, the Parliament adopted legislation to abolish the Equal Treatment Authority (ETA), Hungary's most important equality body set up in 2005. The ETA had a broad mandate to investigate cases of discrimination on grounds of sex, race/ethnicity, religion, age, disability, sexual orientation and gender identity. In recent years the ETA was one of the last public bodies standing up for the rights of LGBTQI people in Hungary: they have delivered several decisions finding discrimination based on sexual orientation and gender identity by public bodies, and in April 2020 they criticized the Government's plan to ban legal gender recognition. From 1 January 2020, the tasks of ETA were taken over by the Commissioner for Fundamental Rights.

Since September 2019, the Commissioner for Fundamental Rights has been Ákos Kozma, former professor of Pázmány Catholic University, a loyal supporter of the government. As opposed to his predecessor, the new Commissioner has not commemorated the International Day Against Homophobia and Transphobia in May 2020, and has not responded to official petitions submitted by LGBTQI organizations concerning the ban of legal gender recognition, growing homophobic hate speech by government officials, and restricting LGBTQI freedom of expression. In recent months several staff members have left the Office of the Commissioner complaining that they can no longer perform their tasks according to professional standards.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect) *3000 character(s) maximum*

Implementation by the public administration and State institutions of final court decisions

3000 character(s) maximum

In June 2018, in a case launched by a transgender refugee from Iran, the Constitutional Court found that there was a constitutional omission because Hungary has no procedure for legal gender recognition for transgender people who are not Hungarian citizens, but lawfully reside in the country permanently. The Court gave a deadline of 31 December 2018 for the government to adopt new legislation (6/2018. (VI. 27.) CC decision). No such legislation has been adopted to date, and in May 2020, the Parliament adopted legislation that banned legal gender recognition for Hungarian citizens as well. The same person also turned to the ECtHR, which also sided with the applicant arguing that the lack of such procedure infringes on the right to respect for private life (Art. 8) of the applicant (*Rana v. Hungary*, no. 40888/17). The just satisfaction was paid to the applicant, but he still has to live with official documents that are not in line with his gender identity.

The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

3000 character(s) maximum

The government and pro-government media conduct a smear campaign against human rights organizations, targeting specifically organizations working on the rights of LGBTQI people. Pro-government news portal such as Pesti Srácok, Origo, 888.hu, Vasárnap talk about LGBTQI issues as a form of ideology, and claim that LGBTQI organization work to recruit more children to become LGBTQI. LGBTQI organizations are often referred to as “LGBTQP” - the “P” standing for pedophilia - conflating lawful sexual orientation and gender identity with unlawful paraphilias. Leading government officials also talk about the need to stop LGBTQ propoaganda (see more under Other).

LGBTQI organizations find it extremely difficult to receive public funding. Calls for proposals prioritize issues that make successful application of LGBTQI organizations nearly impossible. In case LGBTQI organizations do apply with strong proposals, their proposals are evaluated unfavorably or unlawful measures are applied to exclude them from funding. E.g. Tempus Foundation distributing Erasmus+ funds in Hungary disqualified the proposal of Háttér Society on grounds of conflict of interest with an evaluator, even though there was no such conflict of interest, and even if there was, it was the evaluator, not the applicant that should have been disqualified (since the list of evaluators is not public applicants are in no position to prevent such conflict of interest). When the proposal was resubmitted, Tempus rejected the proposal arguing that there was not enough funding, even though the money earmarked for that category of proposals was not spent.

Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)

3000 character(s) maximum

Other – please specify

3000 character(s) maximum

For the past two years, the Hungarian government has been conducting a hate campaign against LGBTQI people, targeting in particular transgender people and same-sex couples raising children. In May 2019 the Speaker of the Parliament, László Kövér talked about gays and lesbians as “second class citizens” and likened same-sex adoption to pedophilia. Vice-chair of the parliamentary group of FIDESZ, István Boldog called for banning the Pride March and boycotting Coca Cola. In October 2020 following the publication of the storybook *Fairyland is for everyone*, PM Viktor Orbán said that homosexuals should “keep their hands off our children”, in March 2020 he called for getting rid of “LGBTQ-madness”.

The discourse was coupled with legislative changes: the ban on legal gender recognition for transgender people (Article 33 of Act no. XXX of 2020), the constitutional amendments on defining the sex of the parents and the protection of identity and the corresponding state duty (“The mother is female, the father is male.” “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.”) (9th amendment to the Fundamental Law), or introducing a restriction on adoptions by individuals making it conditional on the permission of the Minister of Family Affairs (Act no. CLXV of 2020). The aim of the latter was unequivocally to exclude persons living in same-sex partnership from adoption, which was acknowledged by the Minister herself in a public interview. Several local governments (Mezőkövesd, Budapest XXI. Csepel, Diósd, Veszprém) banned the use of the storybook *Fairyland is for everyone* in their educational institutions, and one local government (Nagykáta) adopted a ban on “LGBTQ-propaganda” in all of its institutions.

Besides the newly adopted legislation, public bodies also started using existing legislation to restrict freedom of expression of LGBTQI people. In October 2019, the Consumer Protection Department of the Pest County Government Office imposed a 500.000 HUF fine on Coca Cola for featuring same-sex couples in their advertisement. The authority opined that the portrayal of a gay and a lesbian couple “may impair the physical, mental, emotional, and moral development of children and minors” (PE-06/01/01076-10/2019). In January 2021, the Consumer Protection Department of the Budapest Government Office ordered Labrisz Lesbian Association to clearly indicate on the book *Fairyland is for everyone* that it contains “patterns of behavior deviating from traditional gender roles” (BP/2200/00868-2/2021). In March 2021 the Media Council launched an investigation against RTL Klub, the largest commercial channel for airing a video about rainbow family as public service advertisement before 9pm. The Council argues the video featuring same-sex families and experts was harmful for children under the age of 16 (MN/31406-9/2020.).