

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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HUNGARY: THE RUSSIAN-STYLE PROPAGANDA LAW VIOLATES HUMAN RIGHTS AND THREATENS LGBTI PEOPLE

Amnesty International calls on the Hungarian Officer for Fundamental Rights (hereafter the Ombudsperson) to publicly condemn and immediately refer to the Constitutional Court the recently adopted and promulgated law¹ (hereafter the Hungarian Propaganda Law) that would ban education and advertising that “promotes” or „portrays” homosexuality and gender reassignment among minors. The law violates several human rights, including the rights to freedom of expression, to equality and non-discrimination, and to education.

On 26 May, MPs of the main governing party Fidesz submitted a bill² to the Parliament on “Harsher sentencing for paedophile criminal offences and set-up a criminal registry for perpetrators of such offences”. On 10 June, the Parliament’s Legislative Committee submitted a series of proposed amendments³ containing discriminatory provisions targeting the members of the LGBTI community amending several laws, including the Child Protection Act⁴, the Act on Advertising⁵, the Media Act⁶, the Family Protection Act⁷, the Public Education Act⁸ and the Petty Offences Act⁹. The government has failed to conduct any kind of public consultation prior to the submission of the bill. On 14 June, a day before the Parliamentary vote, more than 10,000 people demonstrated against the proposal in front of the Hungarian Parliament in Budapest.¹⁰ The protest was organized by Amnesty International Hungary jointly with local LGBTI organizations and other stakeholders. On 14 June, the Council of Europe’s Commissioner for Human Rights, Dunja Mijatovic, urged the Members of the Parliament to reject the proposal, claiming that „this is not only an affront against the rights and identities of LGBTI persons but also curtails the freedom of expression and education of all Hungarians”.¹¹

Despite the widespread domestic and international criticism and outrage, the governing majority in the Parliament adopted the law on 15 June with the support of one of the opposition parties, the right-wing Jobbik. After the vote, another demonstration was held in front of the office of the President of Hungary to call on him to not sign the law.¹² The President signed and promulgated the law on 23 June, and it entered into force on 8 July.

The new law was adopted only a few weeks after Hungary took the important role of President of the Committee of Ministers of the Council of Europe, which comes with significant responsibilities to lead the organization’s work for the defence and promotion of human rights, the rule of law and democracy across the region.¹³ It is a role which must, inevitably, expose its bearer to greater scrutiny of its own human rights record and it comes with the need for Hungary to

1 Act LXXIX of 2021 On harsher sentencing for paedophile criminal offences and amendments to certain laws to protect children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

<https://magyarkozlony.hu/dokumentumok/ba643dee7b59c2a1901132e6e3320483d2245b56/megtekintes>

2 <https://www.parlament.hu/irom41/16365/16365.pdf>

3 <https://www.parlament.hu/irom41/16365/16365-0015.pdf>

4 Act XXXI of 1997 on Child Protection and Guardianship Administration <https://net.jogtar.hu/jogszabaly?docid=99700031.tv>

5 Act XLVIII of 2008 on the Basic Conditions and Certain Restrictions of Commercial Advertising Activities

<https://net.jogtar.hu/jogszabaly?docid=a0800048.tv>

6 Act CLXXXV of 2010 on Media Services and Mass Communication <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>

7 Act CCXI of 2011 on the Protection of Families <https://net.jogtar.hu/jogszabaly?docid=a1100211.tv>

8 Act CXC of 2011 on National Public Education <https://net.jogtar.hu/jogszabaly?docid=a1100190.tv>

9 Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry <https://net.jogtar.hu/jogszabaly?docid=a1200002.tv>

10 Dark day for LGBTI rights as homophobic and transphobic law adopted, 15 June, 2021, <https://www.amnesty.org/en/latest/news/2021/06/hungary-dark-day-for-lgbti-rights-as-homophobic-and-transphobic-law-adopted/>

11 <https://www.coe.int/en/web/commissioner/-/commissioner-mijatovic-urges-hungary-s-parliamentarians-to-reject-draft-amendments-banning-discussion-about-sexual-and-gender-identity-and-diversity> and <https://twitter.com/CommissionerHR/status/1404414081147326464>

12 <https://twitter.com/AmnestyHungary/status/1405226576875339777>

13 Human Rights Violations in Hungary Discredit Presidency of the Council of Europe Committee of Ministers, <https://www.amnesty.eu/news/human-rights-violations-in-hungary-discredit-presidency-of-the-council-of-europe-committee-of-ministers/>

set a good human rights example.¹⁴ It is particularly alarming that Hungary's human rights record has significantly deteriorated during the last decade, particularly with regards to increasing restrictions of the rights of LGBTI persons.

The law effectively bans the portrayal of diverse sexual orientations, sex characteristics and gender identities in the Hungarian public sphere, including in media and in schools, and deliberately conflates LGBTI people with perpetrators of child abuse. Amnesty International is concerned that these amendments arbitrarily limit the enjoyment of several human rights, including the rights to freedom of expression, to equality and non-discrimination and to education enshrined, amongst others, in the European Convention on Human Rights,¹⁵ the International Covenant on Civil and Political Rights (ICCPR),¹⁶ the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁷ and the Fundamental Law of Hungary (Constitution).¹⁸ Amnesty International is also concerned that they will endanger the safety and well-being of LGBTI children and create a chilling effect amongst media service providers and teachers.

THE RIGHTS TO FREEDOM OF EXPRESSION AND EQUALITY AND NON-DISCRIMINATION

The explanatory memorandum of the law¹⁹ states Hungary's constitutional obligation to "protect the children's physical, mental and moral development" and their "unalterable self-image that originates from their birth". Therefore, media content (commercials, media programmes etc.) that could "baffle" children's moral values and "their image of themselves or the world" must be made unavailable to them.²⁰ Therefore, the adopted amendments to the Child Protection Act,²¹ Act on Advertising,²² and Media Act²³ require that advertisements and media content that depicts "pornography or sexuality for its own sake", "promote or portray deviation from gender identity aligned with sex at birth, gender reassignment and homosexuality is prohibited to be made available to children under the age of 18".²⁴

The law requires media service providers to assign a rating to the media programmes (with a few exceptions only), which are "capable of adversely affecting the physical, mental or moral development of minors". Such media programmes must

14 Human Rights Violations in Hungary Discredit Presidency of the Council of Europe Committee of Ministers, <https://www.amnesty.eu/news/human-rights-violations-in-hungary-discredit-presidency-of-the-council-of-europe-committee-of-ministers/>

15 Article 10 and 14 of the European Convention on Human Rights https://www.echr.coe.int/Documents/Convention_ENG.pdf

16 Article 19 and 26 of the International Covenant on Civil and Political Rights <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

17 Article 13 of International Covenant on Economic, Social and Cultural Rights https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf

18 Article IX, XI and XV of the Fundamental Law of Hungary

https://hunconcourt.hu/uploads/sites/3/2021/01/thefundamentallawofhungary_20201223_fin.pdf

19 Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children

<https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV> The text was translated by Amnesty International. We also used the unofficial translation of parts of the law prepared by Hungarian Helsinki Committee (https://helsinki.hu/en/wp-content/uploads/sites/2/2021/06/unofficial_translation_LGBT_amendments.pdf)

20 Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children

<https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

21 Section 3/A: In the child protection system, the State protects children's right to [gender]identity aligning with their sex at birth.

Section 6/A: To achieve the objectives of this Act and safeguard the rights of the child, it is prohibited to make available to children under the age of eighteen any pornographic content or content that depicts sexuality for its own sake or promotes or portrays deviation from [gender]identity aligning with birth at sex, gender reassignment, or homosexuality.

22 Section 8(1a): It shall be prohibited to make any advertisement available for children under the age of eighteen that depicts sexuality for its own sake or promotes or portrays deviation from [gender]identity aligning with birth at sex, gender reassignment, or homosexuality.

23 Section 9(1): Media service providers providing linear media services shall assign a rating to every programme they intend to broadcast in accordance with the categories under paragraph (2)-(7) prior to broadcasting, apart from news programmes, political magazines, sports programmes, previews and advertisements, political advertisements, teleshopping, social responsibility advertisements and public service announcements."

Section 9(6): A programme which is capable of adversely affecting the physical, mental or moral development of minors, in particular because its dominant element is violence or content promoting or portraying deviation from [gender]identity aligning with birth at sex, gender reassignment, or homosexuality, or the direct, natural or autotelic depiction of sexuality, shall be classified as falling into Category V. Rating of such programmes shall be: not recommended for those under the age of eighteen.

Section 32(4a): A programme which is capable of adversely affecting the physical, mental or moral development of minors, particularly because its dominant element is sex depicted for its own sake, pornography, or the promotion or portraying of deviation from [gender]identity aligning with birth at sex, gender reassignment, or homosexuality, shall not be qualified as a public service announcement or a social responsibility advertisement.

Section 179(2): In case of problems identified in connection with paragraph (1), as well as when the relevant provisions of this Act and the Media Act have been violated, the Media Council shall request effective action by the Member State having jurisdiction over the media service. In this context, the Media Council shall call on the Member State to take action to put an end to the infringements identified by the Media Council.

24 1.(&) of the Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

be classified as “not recommended for minors” and can only be shown between 10pm and 5am.²⁵ In cases of breach of the new rules, the relevant Hungarian authorities, such as the consumer protection authorities in the case of advertisements²⁶ or the Media Council,²⁷ can impose severe sanctions, including the removal of such content, the suspension of media services, the removal of the media service provider from the media registry and heavy fines of up to 571,000 EUR.²⁸

The vaguely worded legislation does not clarify for example how “promotion” or “portraying” of homosexuality or gender reassignment is to be interpreted, leaving the interpretation and implementation solely to the executive authorities such as the Media Council which only consist of members selected by the main governing party.²⁹ The ambiguous wording coupled with the severe sanctions could easily create a chilling effect amongst companies, advertisers and media service providers who might choose self-censorship to comply with the law and avoid potential sanctions. These provisions contravene Hungary’s international human rights obligations and are also in breach of Hungary’s domestic law. As such they arbitrarily limit the right to freedom of expression and are discriminatory.

Article IX (1) and (2) of the Fundamental Law of Hungary (Constitution) (Constitution) protects the right to freedom of expression, including the freedom and diversity of the press.³⁰ It states that Hungary “recognizes and protects the conditions for the free dissemination of information necessary for the formation of democratic public opinion”.³¹ Article XV (2) of the Fundamental Law of Hungary (Constitution) also guarantees fundamental rights to everyone without any discrimination.³²

Article 10 (1) of the European Convention on Human Rights (ECHR) ensures the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.³³ Article 10 (2) states that this right may be subject to restrictions only “as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.³⁴ According to Article 14 of the ECHR, “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground (...).”³⁵

While in certain instances limiting media content available to minors can be reasonable or objective (for example in the case of pornography or extreme violence), the broad restrictions contained in the “Hungarian Propaganda Law” do not meet these requirements. The law provides no reasonable or objective criteria to justify differentiation and amounts to discrimination based on sexual orientation and gender identity. Depicting different sexual orientations and/or gender identities cannot be lawfully considered as “harmful” content that minors need to be protected from. Comparing

25 9.(&) of the Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

26 Under Section 45/A (1) of Act CLV of 1997 on Consumer Protection, the consumer protection authority shall monitor provisions related to the protection of children and minors. Under Section 47, if the authority establishes a breach of the provisions guaranteeing consumers’ rights, it may apply several sanctions, including the immediate removal of online content, the confiscation of goods, the closing down of places of service and imposing a fine, the maximum amount of which is determined by the annual revenue of the service provider concerned. In the case of companies with an annual net revenue exceeding HUF 100 million (EUR 286,000), the maximum of the fine is 5% of the annual net revenue, but no more than HUF 500 million (EUR 1.43 million), or in very severe cases, no more than HUF 2 billion (EUR 5.7 million). For companies below the threshold, the maximum fine is HUF 500,000 (EUR 1,430), or in very severe cases, 5% of the annual net revenue but no more than HUF 5 million (EUR 14,300).

27 Under Section 185 of the Media Act, the Media Council may apply sanctions vis a vis those who violate its provisions. Under Section 186, if the violation is not severe, and is a first-time breach, the Media Council shall warn the perpetrator, oblige it to put an end to the breach and to refrain from violations in the future. It may also determine the conditions for conducting lawful behaviour. However, under Section 187, the Media Council can apply severe sanctions if the violation is repeated or if it is severe. It can suspend the right to provide media services for a period ranging from 15 minutes to 7 days; it could terminate the service contract with the service provider or order that it is deleted from the media registry. It might also impose a fine on the service provider, the maximum of which ranges from HUF 3 million (EUR 8,600) to HUF 200 million (EUR 571,000) depending on the type of media service provider. It may also impose a fine (up to HUF 2 million – or EUR 5,700) on persons fulfilling a management role at the service provider.

28 Chapter 5, Section 185-187 of the Media Act (Act of CLXXXV), <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>

29 Subject to a two-thirds majority vote of MPs present, the Council’s President and its four Members are elected by the Hungarian Parliament for a term of nine years. (<https://english.nmhh.hu/media-council>) As the main governing party, Fidesz has the two-thirds majority in the Parliament, their candidates were elected on December 10, 2019 (<https://english.nmhh.hu/media-council/members>)

30 Article IX (1) and (2) of the Fundamental Law of Hungary/Magyarország Alaptörvénye, <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv>

31 Article IX (2) of the Fundamental Law of Hungary/Magyarország Alaptörvénye, <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv>

32 Article XV (2) of the Fundamental Law of Hungary/ Magyarország Alaptörvénye, <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv>

33 Article 10 (1) of the European Convention on Human Rights, https://www.echr.coe.int/documents/convention_eng.pdf

34 Article 10 (2) of the European Convention on Human Rights, https://www.echr.coe.int/documents/convention_eng.pdf

35 Article 14 of the European Convention on Human Rights, https://www.echr.coe.int/documents/convention_eng.pdf

depictions of LGBTI people with pornography or extreme violence is stigmatizing and fails to meet the requirements of necessity and proportionality. To make this even more problematic, the governing party embedded the discriminatory amendments to the bill that aims to impose harsher sentencing on offenders of child abuse, deliberately conflating criminals with LGBTI people and creating a false narrative that LGBTI people are a threat to children.

With this legislation, Hungary follows in the footsteps of Russia and other autocratic states as the law seems to copy the infamous Russian „Propaganda Law” targeting LGBTI people. According to the European Commission for Democracy through Law (The Venice Commission),³⁶ legislation like this only strengthens prejudice and homophobia which are incompatible with human rights. In its opinion published in 2013 on existing or proposed laws banning “propaganda of homosexuality” in Russia, Ukraine and Moldova, the Venice Commission found that such laws should be repealed as “statutory provisions prohibiting ‘propaganda of homosexuality’ are incompatible with the ECHR and international human rights standards”.³⁷ The Venice Commission argued that “homosexuality as a variation of sexual orientation, is protected under the ECHR and as such, cannot be deemed contrary to morals by public authorities”.³⁸ It added that prohibiting “propaganda of homosexuality” without any reasonable or objective criteria, amounted to discrimination based on sexual orientation.³⁹

In 2017, the European Court of Human Rights (ECtHR) in the case of *Bayev and Others v. Russia* found that the prohibition of the “promotion of homosexuality” among minors is to be a violation of Article 10 (Freedom of expression) and Article 14 (Prohibition of Discrimination) of the ECHR.⁴⁰ The court also argued that the “anti-gay propaganda law” embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority which cannot in itself be considered to amount to sufficient justification for the differential treatment.⁴¹ Even more unacceptable are the attempts to draw parallels between homosexuality and paedophilia.⁴² The Court reiterated that it would be incompatible with the underlying values of the Convention if the exercise of rights by a minority group were made conditional on its being accepted by the majority.⁴³

Amnesty International believes that the recently adopted “Hungarian Propaganda Law” constitutes a violation of the rights to freedom of expression and to equality and non-discrimination enshrined in the ECHR and in the Fundamental Law of Hungary (Constitution) by effectively erasing LGBTI people from public discourse and “exiling” non-heterosexual and/or non-cisgender people from the public sphere of Hungary.

THE RIGHT TO EDUCATION, INCLUDING TO RECEIVE COMPREHENSIVE SEXUALITY EDUCATION

The ban on depiction or discussion of diverse gender identities and sexual orientations in schools, television, and advertising in Hungary clearly violates children’s rights as laid down in the United Nations Convention on the Rights of the

36 „OPINION ON THE ISSUE OF THE PROHIBITION OF SO-CALLED “PROPAGANDA OF HOMOSEXUALITY” IN THE LIGHT OF RECENT LEGISLATION IN SOME MEMBER STATES OF THE COUNCIL OF EUROPE, Adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)022-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)022-e)

37 OPINION ON THE ISSUE OF THE PROHIBITION OF SO-CALLED “PROPAGANDA OF HOMOSEXUALITY” IN THE LIGHT OF RECENT LEGISLATION IN SOME MEMBER STATES OF THE COUNCIL OF EUROPE, Adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)022-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)022-e), page 20, VI/78-79.

38 OPINION ON THE ISSUE OF THE PROHIBITION OF SO-CALLED “PROPAGANDA OF HOMOSEXUALITY” IN THE LIGHT OF RECENT LEGISLATION IN SOME MEMBER STATES OF THE COUNCIL OF EUROPE, Adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)022-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)022-e), page 20-21, VI/80-81.

39 OPINION ON THE ISSUE OF THE PROHIBITION OF SO-CALLED “PROPAGANDA OF HOMOSEXUALITY” IN THE LIGHT OF RECENT LEGISLATION IN SOME MEMBER STATES OF THE COUNCIL OF EUROPE, Adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)022-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)022-e), page 20-21, VI/80-81.

40 CASE OF BAYEV AND OTHERS v. RUSSIA (Applications nos 67667/09, 44092/12 and 56717/12), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174422%22%5D%7D>

41 CASE OF BAYEV AND OTHERS v. RUSSIA (Applications nos 67667/09, 44092/12 and 56717/12), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174422%22%5D%7D>, ECtHR finds Russia’s gay propaganda law on discriminatory in strong-worded judgment (<https://strasbourgoobservers.com/2017/07/11/ecthr-finds-russias-gay-propaganda-law-discriminatory-in-strong-worded-judgment/>)

42 CASE OF BAYEV AND OTHERS v. RUSSIA (Applications nos 67667/09, 44092/12 and 56717/12), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174422%22%5D%7D>, ECtHR finds Russia’s gay propaganda law on discriminatory in strong-worded judgment (<https://strasbourgoobservers.com/2017/07/11/ecthr-finds-russias-gay-propaganda-law-discriminatory-in-strong-worded-judgment/>)

43 CASE OF BAYEV AND OTHERS v. RUSSIA (Applications nos 67667/09, 44092/12 and 56717/12), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174422%22%5D%7D>, ECtHR finds Russia’s gay propaganda law on discriminatory in strong-worded judgment (<https://strasbourgoobservers.com/2017/07/11/ecthr-finds-russias-gay-propaganda-law-discriminatory-in-strong-worded-judgment/>)

Child (CRC)⁴⁴ to which Hungary has been part since 1991. Children have the right to healthy development, freedom of expression, self-identity, inclusive education and access to justice.⁴⁵ This legislation violates all these rights and risks harming the very children it claims to protect.⁴⁶ It also contributes to a climate of fear, raising concerns for the well-being of all children and society as a whole.⁴⁷

The right to education is of particular importance for children. This is enshrined in the Universal Declaration of Human Rights (UDHR)⁴⁸ as well as the ICCPR,⁴⁹ the ICESCR,⁵⁰ the Convention on the Rights of the Child,⁵¹ and the Convention on the Elimination of All Forms of Discrimination against Women.⁵² The right to quality education is provided by Article X of the Fundamental Law of Hungary (Constitution) as well.⁵³

Comprehensive sexuality education is part of the right to education and the right to health. International human rights bodies have established that children and young people have the right to receive comprehensive, scientifically accurate and evidence-based, age-appropriate, gender sensitive, and culturally sensitive sexuality education, based on existing international standards.⁵⁴

The right to comprehensive sexuality education derives from a range of rights that are protected by international human rights law. For instance, the right to live free from discrimination,⁵⁵ the right to the highest attainable standard of mental and physical health,⁵⁶ and the right to receive and impart information⁵⁷ and the right to quality and inclusive education,⁵⁸ including human rights education. In a 2010 report⁵⁹ on sexuality education, the UN Special Rapporteur on the Right to Education stressed that the right to education includes the right to sexuality education, which is both a human right in itself and an indispensable means of realizing other human rights, such as the right to health, the right to information and sexual and reproductive rights,⁶⁰ therefore “sexuality education should be considered a right in itself and should be clearly linked with other rights in accordance with the principle of the interdependence and indivisibility of human rights.”⁶¹

Sexuality education serves many essential functions, such as to prevent and combat sexual abuse of children, sexual violence and exploitation. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (“the Lanzarote Convention”)⁶² requires from states that they “ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity.”⁶³

44 <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

45 Article 24, Article 13, Article 2, Article 28 and Article 12 of the UN Convention on the Rights of the Child, <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

46 <https://www.eurochild.org/news/new-hungarian-legislation-not-only-fails-to-protect-children-it-puts-them-at-greater-risk-of-harm/>

47 <https://www.eurochild.org/news/new-hungarian-legislation-not-only-fails-to-protect-children-it-puts-them-at-greater-risk-of-harm/>

48 Article 26 of the Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

49 Article 18 (4) of the International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

50 Article 13 of the International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

51 Article 28 and 29 of the Convention of the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

52 Part III, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women

<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

53 Article X (1) Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge and, within the framework laid down in an Act, the freedom of teaching.

(2) The State shall have no right to decide on questions of scientific truth; only scientists shall have the right to evaluate scientific research.

54 Comprehensive sexuality education protects children and helps build a safer inclusive society, July 21, 2021.

<https://www.coe.int/en/web/commissioner/-/comprehensive-sexuality-education-protects-children-and-helps-build-a-safer-inclusive-society>

55 Article 1 of the Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Article 1 of the

International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, Article 1 of the

International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

56 Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>,

Article 24 of the Convention of the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

57 Article 19 of the Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

58 Article 26 of the Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, Article 18 (4) of the

International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Article 28 and 29 of the Convention

of the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

59 https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_Sexual_Education_2010.pdf

60 https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_Sexual_Education_2010.pdf, page 7, Section D (19)

61 Comprehensive sexuality education protects children and helps build a safer inclusive society, July 21, 2021.

<https://www.coe.int/en/web/commissioner/-/comprehensive-sexuality-education-protects-children-and-helps-build-a-safer-inclusive-society>

62 <https://www.coe.int/en/web/children/lanzarote-convention>

63 <https://www.coe.int/en/web/commissioner/-/comprehensive-sexuality-education-protects-children-and-helps-build-a-safer-inclusive-society>

The provisions of the new law differentiate between employees and partners of educational institutions⁶⁴ providing specific programmes⁶⁵ and when these programmes are provided by others e.g. civil society organizations and external individual experts.⁶⁶ If the programme is provided by others, only “a person or organisation registered by the body designated by law shall be allowed to hold, in the framework of the regular curriculum or other activities organized for the students”.⁶⁷ The information provided by the organizations who are registered, shall be made public online by the government body designated by the minister of education.⁶⁸ Detailed provisions will be issued in a decree by the minister who is authorized by the Act to set the detailed requirements for registration, the detailed rules for maintaining and publicising the information in the register.⁶⁹

The Act introduces changes to the Act on petty offences, including creating a new petty offence.⁷⁰ The person conducting an unregistered lecture, training or workshop and the head of the institution could be held liable for committing a petty offence which is punishable by fine or community service.⁷¹

The legal changes followed a communication campaign that had lasted several months and attacked educational programmes that raise awareness on LGBTI related topics. The programme called ‘Melegség és Megismerés’ (Getting to know LGBTI people), provided by two Hungarian LGBTI NGOs, Labrisz and Szimpozion Associations, had become the primary target of these attacks in the government-aligned media.⁷² Amnesty International’s own human rights education programme was also heavily smeared.⁷³ In this coordinated campaign, government-aligned media made it clear which programmes should be considered harmful to children. The law does not provide sufficient clarity about the criteria of the registration of the programme service providers,⁷⁴ which leads to a lack of legal certainty and allows for discretionary decisions in an undue procedure by the government authorities. If school programme providers are permitted or denied being registered in an unclear, arbitrary and non-transparent way, children will be denied access to information and support that may be vital as part of their comprehensive sexuality education,⁷⁵ and consequently their right to access quality education under international human rights law is violated.

64 The law defines these as “the educational institution’s own employee employed as a teacher, a specialist providing school health services in the educational institution and a state body with a cooperation agreement concluded with the educational institution” Part 7 (2), Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

65 The programmes provided by health care professionals cover on “sexual culture, sexual life, sexual orientation, sexual development, the harmful effects of drug use, the dangers of the Internet, and other issues related to physical and mental health development” Part 7 (2), Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

66 Part 7 (2), Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

67 Paragraph 11 of the Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

68 Paragraph 11 of the Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

69 Paragraph 11 of the Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

70 Paragraph 13 of the Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

71 Paragraph 247 of the Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry: <https://net.jogtar.hu/jogszabaly?docid=a1200002.tv>

72 <https://magyarnemzet.hu/belfold/soros-szervezete-immar-20-eve-erzekenyit-az-iskolakban-9215420/>

73 <https://www.origo.hu/itthon/20201109-orszagjaras-es-kepzes-ezerrel-porog-az-amnesty-international.html>

74 Part 7 (2), Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

75 Comprehensive sexual education is essential in view of the threat of HIV/AIDS and sexually transmitted diseases, especially for groups at risk and persons in particularly vulnerable situations, such as women and girls exposed to gender-based violence or persons in difficult financial circumstances. In paragraph 16 of its General Comment No. 3, the Committee on the Rights of the Child has emphasized that “effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that [...] States parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality”.

Even if some service providers are registered, neither these programme providers nor teachers will be permitted to discuss the question of “sexual culture, sexual life, sexual orientation, sexual development”⁷⁶ openly, as the new provision refers⁷⁷ to the Fundamental Law of Hungary (Constitution) and declares that these sessions “shall not be aimed at promoting gender identity, gender reassignment or homosexuality.”⁷⁸ Although Article XVI (1) of the Fundamental Law of Hungary (Constitution) stipulates that “every child has the right to the protection and care necessary for their adequate physical, intellectual and moral development,”⁷⁹ it excludes legal gender recognition from this right and restricts Hungary’s obligations to the protection of the rights of the child “in accordance with Hungary’s constitutional identity and the Christian culture.”⁸⁰

HISTORY OF ANTI-LGBTI LEGISLATION IN HUNGARY

The legal exclusion of LGBTI people started already in 2020. The Fundamental Law of Hungary (Constitution) declares that “the inviolable and inalienable fundamental rights of man must be respected”⁸¹ but amendments accepted in December 2020 stipulate that children’s gender identity is restricted to their sex assigned at birth,⁸² that their upbringing must reflect the values based on Hungary’s constitutional identity and Christian culture. It further states that family ties must be based on marriage, where “the mother is a woman, and the father is a man.”⁸³ The restriction on children’s gender identity came after a law was passed in May 2020, which banned legal gender recognition for transgender and intersex people. It requires the recording of the individual’s sex assigned at birth in the national registry of birth, marriages and deaths, which cannot later be changed.⁸⁴

The ban on legal gender recognition makes it impossible to obtain documents that reflect the gender identity of transgender and intersex people. This particularly affects those individuals whose appearance, gender expression or gender identity may not match their sex assigned at birth on their official documents. Many communities – especially in smaller villages – are actively ostracizing trans people.⁸⁵ In March 2021, the Constitutional Court decided that the ban cannot be applied retroactively,⁸⁶ which means it does not apply to procedures started before the law passed. Regardless of the judgment, the ban on legal gender recognition violates transgender and intersex people’s dignity and their rights to privacy and family life, and to legal recognition of their gender based on self-determination.⁸⁷

76 Part 7, Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

77 The law inserts new provisions into Act CXC of 2011 on National Public Education [1][1]. Section 9 (12) prescribes that ‘In conducting sessions on sexual culture, sexual life, sexual orientation and sexual development, special attention shall be paid to Article XVI (1) 2 of the Fundamental Law. These sessions shall not be aimed at promoting deviation from the child’s [gender]identity aligning with sex at birth, gender reassignment, or homosexuality.’

78 Part 7, Act LXXIX of 2021 On Harsher Sentencing for Paedophile Criminal Offences and Amendments to Certain Laws to Protect Children <https://mkogy.jogtar.hu/jogszabaly?docid=A2100079.TV>

79 Article XVI (1) of the Fundamental Law of Hungary/Magyarország Alaptörvénye, <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv>

80 “Hungary shall protect the right of children to their [gender]identity in line with their sex at birth and shall ensure an upbringing in accordance with the values based on our homeland’s constitutional identity and Christian culture.” Article XVI (1) of the Fundamental Law of Hungary/Magyarország Alaptörvénye, <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv>

81 Magyarország Alaptörvénye/Fundamental Law (2011. April 25) <https://theorangefiles.hu/amendments-to-the-fundamental-law/>

82 The Venice Commission has been requested by the PACE Monitoring Committee to prepare an opinion on the constitutional and legislative amendments adopted by the Hungarian Parliament in December 2020. The “Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020”, adopted by the Venice Commission at its 127th Plenary Session (Venice and online, 2-3 July 2021) was published on July 5, 2021 and focuses on the constitutional amendments. The Venice Commission noted “with concern that the amendments were adopted during a state of emergency, without any public consultation (...)”. The Venice Commission considers that “this swift procedure is not in line with its recommendations in the Rule of Law Checklist, nor is it compatible with the Commission’s Report on Respect for democracy, human rights and the rule of law during states of emergency and the Report on the Role of the opposition in a democratic Parliament”. The Venice Commission made a few key recommendations, among them it suggested that “the amendment ‘Hungary shall protect the right of children to a self-identity corresponding to their sex at birth’ should be repealed or modified to ensure that it does not have the effect of denying the rights of transgender people to legal recognition of their acquired gender identity”. ([https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)029-e))

83 <https://www.parlament.hu/irom41/13647/13647.pdf>, Hungarian Parliament must reject amendments further undermining the rights of LGBTI people, 26 November 2020, <https://www.amnesty.org/en/documents/eur27/3353/2020/en/>

84 Government must revoke prohibition of legal gender recognition, 3 April, 2020, <https://www.amnesty.org/en/documents/eur27/2085/2020/en/>

85 The reality for trans people in Hungary, 1 June, 2020, <https://www.amnesty.org/en/latest/campaigns/2020/06/the-reality-for-trans-people-in-hungary/>

86 Hungarian Constitutional Court: Retroactive prohibition of legal gender recognition unconstitutional, 12 March, 2021.

<https://en.hatter.hu/news/annuled-provision>

87 Government must revoke prohibition of legal gender recognition, 3 April, 2020, <https://www.amnesty.org/en/documents/eur27/2085/2020/en/>

Amnesty International is seriously concerned that these amendments unlawfully limit the enjoyment of several human rights, including the right to freedom of expression, the right to equality and non-discrimination, and the right to education. The organization calls on the Hungarian Officer for Fundamental Rights to publicly condemn the law and immediately refer it to the Constitutional Court for constitutional review.

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