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**Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.**

*Topic: Protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly*

**Input by Háttér Society (Hungary)**

*January 31, 2024*

**About Háttér Society**

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

1. **Restrictions on freedom of expression: the Anti-LGBTQI law (so-called propaganda law)**

The Hungarian Government had been advocating for a conservative and restrictive notion of families for over a decade,[[1]](#footnote-1) however, in 2020 their anti-LGBTQI agenda changed gear and rapidly started to repeal rights and benefits that had been available for decades. The legal rampage began with banning legal gender recognition in May 2020[[2]](#footnote-2) and continued in the Fall of 2020 with the LGBTQI-exclusionary reform of the adoption process, from which only a minister – not a childcare professional – can grant exemption.[[3]](#footnote-3) The Ninth Amendment to the [Fundamental Law](https://hunconcourt.hu/fundamental-law/)[[4]](#footnote-4) passed in November 2020 paved the way for a neatly tailored large-scale attack on sexual and gender minorities. Anti-LGBTQI provisions contained in Sections 1, 3, 9, 10, 11 of Act LXXIX of 2021 on stricter actions against pedophile offenders, and the amendment of certain laws for the protection of children (hereinafter: the Anti-LGBTQI law) were introduced in Parliament by pro-government members of the Legislative Committee. The amendments were tabled in the last stage of the parliamentary debate, only five days before the final vote of the law. This short time frame did not allow for any meaningful discussion of the bill by parliamentarians or proper input by civil society or professional organizations.

The Anti-LGBTQI law included amendments to five Acts of Parliament:

1. Act XXXI of 1997 on the protection of children and guardianship administration;
2. Act CCXI of 2011 on the protection of families;
3. Act XLVIII of 2008 on the basic conditions of and certain restrictions on economic advertising activities;
4. Act CLXXXV of 2010 on media services and mass communication; and
5. Act CXC of 2011 on national public education.

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

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

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

While the amendments to the National Public Education Act, the Advertisement Act and the Media Act apply only the specific institutions and actors (namely: schools and teachers, businesses and media service providers), the Act on Child Protection has a much broader scope that applies not only to child protection services, but also to all children and their parents. The Family Protection Act does not contain any limitation on its scope, and thus its provisions apply to all natural persons, public bodies and private entities in Hungary.[[5]](#footnote-5)

Besides the general restrictions, two acts contain additional, more specific provisions. According to Section 9 (6) of the Media Act, media content defined above shall be classified as category V (unsuitable for minors), which can be broadcasted only after 10 p.m. and before 5 a.m. According to Section 32 (4a) of the Media Act, such content cannot be broadcasted as public service advertisement.

According to Section 9/A of the National Public Education Act besides teachers and professionals providing school health services, only those experts and civil society organizations may conduct sexual education activities in schools that are registered by the organ designated by legislation. Sexual education activities are defined broadly to include any discussions on sexual culture, sex life, sexual orientation and sexual development.

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

The National Public Education Act authorizes the minister responsible for education[[7]](#footnote-7) to issue a decree which designates the state organ maintaining the registry of experts and civil society organizations that may hold sex education classes in institutions of public education. Further, it authorizes the minister to regulate in a decree the exact conditions of registration. However, no such decree has been issued as of January 31, 2024. As a result, currently no civil society organization or external expert may hold sex education classes in institutions of public education.[[8]](#footnote-8)

The only new sanction introduced by the Anti-LGBTQI law relates to the field of education. According to the amended Section 248 (3) *d)* of Act II of 2012 on misdemeanors violating the legal provisions on holding classes/sessions in institutions of public education is a punishable misdemeanor. The amendments introduced by the Anti-LGBTQI law left the existing sanctions in sectoral laws untouched, thus these as well as criminal and misdemeanor law could also apply to those violating the provisions of the ban.

In response to the wide criticism, in particular from the European Union,[[9]](#footnote-9) the government on July 21, 2021, announced that it would hold a ‘child protection’ referendum to confirm the Anti-LGBTQI law. The referendum took place on April 3, 2022, together with the parliamentary elections. The referendum turned out to be invalid: more than 1.6 million people cast an invalid vote, thus the threshold for validity was not passed. On April 8, 2022, the National Election Commission delivered a series of decisions declaring the campaign calling for invalid votes on the referendum ballots illegal and imposing high fines on 16 CSOs. The decisions argue that while voters do have the option to consciously cast an invalid vote, campaigning for such an invalid vote is an abuse of rights. On April 13, 2022, the Curia rejected to review the appeal brought by Háttér Society and Amnesty International Hungary, based on a legal technicality, and on April 15, 2022 the Curia ruled the other fines unlawful. After the unsuccessful constitutional complaint, the affected organizations submitted an application to the European Court of Human Rights; the complaint is pending (case no. 43901/22).

On the wide impact of the Anti-LGBTQI law see Háttér Society’s regularly updated reports available here:

* <https://hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-anti-lgbtqi-law-november-2023.pdf>
* <https://en.hatter.hu/publications/updates-on-act-lxxix-of-2021-amending-certain-acts-for-the-protection-of-children-and> (focusing on media and retail bookstores)

Even prior to passing the Anti-LGBTQI law, there had been attempts to censor LGBTQI content: Coca Cola was fined for an ad campaign featuring same-sex couples.[[10]](#footnote-10) In September 2020, Labrisz published a fairy tale collection called *Fairyland is for Everyone* (*Meseország mindenkié*) with diverse (including LGBT+) characters. Prime Minister Viktor Orbán said homosexuals should “leave our children alone”.[[11]](#footnote-11) Minister Gergely Gulyás threatened professionals using the book in educational settings with criminal charges.[[12]](#footnote-12) In January 2021, the consumer protection authority ordered that Labrisz change the cover of the book to clearly state that it includes “patterns of behaviour deviating from traditional gender roles”.[[13]](#footnote-13) Several local governments (Mezőkövesd,[[14]](#footnote-14) Budapest XXI. Csepel,[[15]](#footnote-15) Diósd,[[16]](#footnote-16) Veszprém[[17]](#footnote-17)) banned the use of the storybook in their educational institutions, and one local government (Nagykáta) adopted a ban on “LGBTQ-propaganda” in all of its institutions.[[18]](#footnote-18) The Government County Office found the ban of Mezőkövesd unlawful, arguing that the local government had no legal power to issue such a ban.[[19]](#footnote-19)

1. **Restrictions on freedom of association and freedom of assembly: laws and initiatives (2013-2023)**

Although no legislation exists in Hungary that would explicitly ban LGBTQI organizations or would render their registration conditioned on unacceptable criteria, their operation has been subject to stigmatization, government-led harassment and smear campaigns. In 2014 three LGBTQI NGOs, Háttér Society, Labrisz Lesbian Association and Budapest Pride, and other human rights NGOs were subject to a state-organized [investigation](http://www.ft.com/intl/cms/s/0/274e6f82-0846-11e4-9380-00144feab7de.html#axzz3jjEDJIsi) by Hungary’s Government Control Agency (KEHI). The investigation aimed at examining whether the NGOs lawfully spent funding from the Norwegian Government and followed previous stigmatizing remarks by State officials, including by PM Viktor Orbán, labeling human rights NGOs receiving funding from abroad as “foreign agents”. NGOs had to submit extensive documentation about their spending on extremely tight (3-8 day) deadlines, making it barely possible for them to do their usual tasks. In July 2014, Council of Europe Commissioner for Human Rights [sent a public](http://www.coe.int/en/web/commissioner/country-report/hungary/-/asset_publisher/hKTqZqCwoY6P/content/commissioner-expresses-concern-over-ngos-in-hungary?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fhungary%3Fp_p_id%3D101_INSTANCE_hKTqZqCwoY6P%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1) letter to the Minister of the PM’s Office, urging authorities to refrain from such investigations and stigmatizing NGOs and to ensure an enabling environment for them.

On June13, 2017, a law was passed that required civil society organizations receiving more than 7.2 million HUF (appr. 22 500 EUR) from abroad to register as “foreign funded” organizations, and to make reference to this in all their publications.[[20]](#footnote-20) In a set of bills entitled “Stop Soros” (referring to philanthropist George Soros, whose Open Society Foundations financially supported most human rights organizations in the country) published in January 2018 the government proposed – among others – to strip NGOs of their public benefit status if more than half of their funding comes from abroad.[[21]](#footnote-21) This proposal was not introduced in Parliament, but laws introducing a 25% tax on grants and donations used carry out “any propaganda activities that portray immigration in a positive light”,[[22]](#footnote-22) and criminalizing support for asylum seekers[[23]](#footnote-23) were adopted. The Court of Justice of the European Union (CJEU) found the law [inconsistent with EU law](https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-11/cp210203en.pdf) and as a result, it was repealed. No domestic sanction had been imposed to any organization; however, the stigmatizing effect was immense and kept NGOs in a legal limbo if they decided not to comply.

On December 12, 2023 the Hungarian Parliament passed the [Act on the protection of national sovereignty](https://njt.hu/jogszabaly/en/2023-88-00-00) (Regime Defense Act). According to the governmental narrative the law is meant to protect against foreign interference into domestic affairs and ultimately to protect national sovereignty, yet in effect it serves to conserve their power based on arbitrariness and scapegoating. Apart from taking actions against candidates running for a political office for accepting foreign funding, the law contains deliberately vague and undefined rules on who and how can endanger Hungary’s sovereignty. The law creates the Office for the Defense of Sovereignty with overbroad and arbitrary powers to investigate any person or organization they deem to be serving a foreign interest carrying the risk of jeopardizing Hungary’s sovereignty.

It will have wide investigative powers allowing it to “have access to all data in the possession of the organization under investigation” (Section 8). There is no remedy against the report published. Apart from the sweeping powers the Office will have, investigations are stigmatizing and capable of hindering the daily operation of the affected organizations.

Attacks also included financial investigations against NGOs: in 2014 the foundations responsible for distributing the EEA / Norwegian Civic Fund as well as 58 of the grantees – including several LGBTI organizations – were put under investigation by the Government Control Office (KEHI). The investigation was carried out without respect to the relevant legislation. The investigations were closed without anyone being charged.

Finally, several smear campaigns against NGOs – especially those funded by the EEA / Norwegian Civic Fund and the Open Society Foundations – have been carried out since 2014. The government and pro-government media conduct smear campaigns against human rights organizations, targeting specifically organizations working on the rights of LGBTQI people. Pro-government news portals such as Pesti Srácok, Origo, 888.hu, Vasárnap.hu talk about LGBTQI issues as a form of ideology, and claim that LGBTQI organizations work to recruit 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. In March 2020 Prime Minister Viktor Orbán called for getting rid of “LGBTQ-madness”.[[24]](#footnote-24)

For a recent overview on smear campaigns and other attacks on LGBTQI civil society organizations or those working for such organizations, see Háttér Society’s report submitted to the EU Fundamental Rights Agency available here:

<https://hatter.hu/sites/default/files/dokumentumok/jelentes-a-demokratikus-ertekeket-fenyegeto-veszelyekrol-hatter-tarsasag.pdf>

Pride Marches have not been banned since 2012. The police offer adequate protection for the March itself, but attacks against participants coming to or leaving the Pride March still occur. Between 2014 and 2018, the organizers criticized the police for over-securitizing the March; in 2019 the court agreed with the organizers, and ordered the police not to use excessive security measures.[[25]](#footnote-25) Politicians of the extreme right-wing Jobbik and Mi Hazánk[[26]](#footnote-26) called for banning the Pride March. The government has not condemned any of these statements. On the contrary, FIDESZ representatives and the Budapest mayor have also made similar negative remarks.

Due to the security measures at the march, extreme right-wing groups changed their tactics in 2019: they no longer attack the march itself, but disrupt smaller community events of the Budapest Pride Cultural Festival such as panel discussions, movie screenings or workshops, especially events linked to the ‘Getting to Know LGBT People’ school program run by Labrisz Lesbian Association and Szimpozion Association. Extremists associated with the Hatvannégy Vármegye Ifjúsági Mozgalom and Mi Hazánk entered the premises of the events without permission, harassed and threatened the participants, damage the premises, and disrupted the events by shouting or banging on the door. The police failed to provide proper protection for these events and in November 2020 the Budapest Regional Court found that such inactivity on behalf of the police was unlawful.[[27]](#footnote-27) In some cases the police started criminal investigations against those disrupting the events, but years after the incidents, no charges have been made against the perpetrators yet.

1. For a detailed overview see the shadow reports on LGBTQI rights in Hungary available at: <https://hatter.hu/sites/default/files/dokumentum/kiadvany/hungary-upr-2015-lgbtqi.pdf> (2015), and <https://hatter.hu/sites/default/files/dokumentum/kiadvany/upr-lqbtqi-hu-2021.pdf> (2021). [↑](#footnote-ref-1)
2. For an overview of the cases on Section 33 see: <https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>. [↑](#footnote-ref-2)
3. For an assessment of the recent changes in the adoption process see: <https://hatter.hu/kiadvanyaink/orokbefogadas-jelentes-2022>. [↑](#footnote-ref-3)
4. For an evaluation see: Polgári, Eszter; Dombos, Tamás: A New Chapter in the Hungarian Government’s Crusade Against LGBTQI People, VerfBlog, 2020/11/18, <https://verfassungsblog.de/a-new-chapter-in-the-hungarian-governments-crusade-against-lgbtqi-people/>. [↑](#footnote-ref-4)
5. See Opinion No. 1059/2021 (13 December 2021) of the European Commission for Democracy Through Law (Venice Commission), available at: <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)050-e>, par. 12-13. [↑](#footnote-ref-5)
6. On the practice and the sanctions so far imposed, see: <https://en.hatter.hu/publications/updates-on-act-lxxix-of-2021-amending-certain-acts-for-the-protection-of-children-and> [↑](#footnote-ref-6)
7. Currently, the Minister for Interior. [↑](#footnote-ref-7)
8. Informally, there is information on the existence of a ‘white list’ of organizations that have access to schools, but the content of the list is not known to Háttér Society. [↑](#footnote-ref-8)
9. The European Commission launched an infringement procedure against Hungary, it is currently pending before the Court of Justice of the European Union. See: [C-769/22](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AC%3A2023%3A054%3ATOC&uri=uriserv%3AOJ.C_.2023.054.01.0016.01.ENG). [↑](#footnote-ref-9)
10. For details see Háttér’s UPR shadow report from 2021: <https://hatter.hu/sites/default/files/dokumentum/kiadvany/upr-lqbtqi-hu-2021.pdf>, p 7. [↑](#footnote-ref-10)
11. <https://telex.hu/belfold/2020/10/04/orban-viktor-kossuth-radio-interju-koronavirus-jarvany-meseorszag-mesekonyv> [↑](#footnote-ref-11)
12. <https://telex.hu/belfold/2020/10/08/meseorszag-mindenkie-ovoda-gulyas-gergely-kiskoruak-veszelyeztetese> [↑](#footnote-ref-12)
13. Budapest Government Office BP/2200/00868-2/2021 [↑](#footnote-ref-13)
14. [https://www.facebook.com/mezokovesdkepekben/photos/a.548748668621371/1711427619020131/](https://www.facebook.com/mezokovesdkepekben/photos/a.548748668621371/1711427619020131/?type=3) [↑](#footnote-ref-14)
15. <https://444.hu/2020/10/08/csepelen-az-osszes-ovodaban-betiltottak-a-meseorszag-mindenkie-konyvet> [↑](#footnote-ref-15)
16. <https://kdnp.hu/hirek/kdnp-keresere-diosdon-nem-lesz-meseorszag-mindenke> [↑](#footnote-ref-16)
17. <https://magyarnemzet.hu/belfold/veszprem-sem-ker-a-mesekonyvbe-bujtatott-lmbtq-propagandabol-8944853/> [↑](#footnote-ref-17)
18. <https://index.hu/belfold/2020/11/06/nagykata_szabo_akos_lmbtq/> [↑](#footnote-ref-18)
19. <https://telex.hu/belfold/2020/12/18/a-kormanyhivatal-szerint-jogserto-a-meseorszag-mindenkie-cimu-konyv-betiltasa-mezokovesden> For more details see: <https://hatter.hu/sites/default/files/dokumentum/kiadvany/upr-lqbtqi-hu-2021.pdf>, p. 8. [↑](#footnote-ref-19)
20. Act no. LXXVI of 2017 on the transparency of foreign funded organizations. For an evaluation see: <https://helsinki.hu/wp-content/uploads/What-is-the-Problem-with-the-Law-on-Foreign-Funded-NGOs.pdf>. [↑](#footnote-ref-20)
21. [http://www.kormany.hu/download/c/9a/41000/STOP%20SOROS%20TÖRVÉNYCSOMAG.pdf](http://www.kormany.hu/download/c/9a/41000/STOP%20SOROS%20T%C3%96RV%C3%89NYCSOMAG.pdf) [↑](#footnote-ref-21)
22. Article 253 of Act no. XLI of 2018 on amending tax and other laws, and introducing the special tax on immigration. [↑](#footnote-ref-22)
23. Act no. VI of 2018 amending laws in relation to measures to tackle illegal migration. [↑](#footnote-ref-23)
24. <http://www.miniszterelnok.hu/szamizdat-6/> [↑](#footnote-ref-24)
25. Budapest Regional Court 103.K.700.197/2019/6. [↑](#footnote-ref-25)
26. E.g. <https://444.hu/2014/07/05/ha-a-jobbik-lesz-hatalmon-a-bajtarsiassag-napja-lesz-pride-helyett/>, or <https://mihazank.hu/toroczkai-a-devianciat-nem-unnepelni-hanem-kezeltetni-kell/> [↑](#footnote-ref-26)
27. Budapest Regional Court 11.K.704.923/2020/15. [↑](#footnote-ref-27)