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Very Uncertain Times: The Situation of LGBTQI people in Hungary in 2020-21¹

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LGBTQI people and organizations seem to be especially vulnerable when political actors decide to mobilize their constituency by the polarization of societies, using conservative and traditionalist narratives. “Gender ideology” narratives have proven successful at mobilizing socially conservative constituencies of conservative and extremist parties and other political formations in various countries of the world. “Gender ideology” narratives, that is, anti-LGBTQI and anti-feminist narratives strengthened by governmental communication and action, have gained momentum in Hungary in recent years as well, especially in the first few months of 2020. This can be seen most clearly in the banning of gender studies programs (October 2018), the rejection of the Istanbul Convention by the Parliament (May 2020) with reference to “gender” in the treaty text and obligations to receive refugees persecuted on grounds of sexual orientation or gender; and adopting legislation banning legal gender recognition for trans people (May 2020). These moves have been accompanied by fear-mongering in public by pro-government and government sponsored conservative NGOs about the powerful “gender lobby”, as well as attacks by extremist groups against LGBTQI events in the summer of 2019 and 2020.

“Gender ideology” narratives block advocacy efforts promoting the human rights and equality of LGBTQI people; limit social support for civil society organizations working on LGBTQI issues; and undermine efforts to promote a more just and equitable vision of society. The present summary attempts to assess legislative and social changes that make these years very uncertain for the LGBTQI community in Hungary.

Hate speech, stigmatization and the treatment of discrimination by political actors

The Constitution (Fundamental Law) in force since April 2011 does not explicitly include sexual orientation and gender identity in the list of protected characteristics in the prohibition of discrimination² – the government argues that “other status” already covers these grounds. Further hierarchy between minority groups exists in the Fundamental Law³ and Civil Code⁴ provisions on hate speech: only national, ethnic, racial or religious groups are included in the

¹ This paper largely relies on the joint submission by the Hungarian LGBT Alliance, Háttér Society, Transvanilla Transgender Association and Labrisz Lesbian Association Hungary to the UN Human Rights Council for the UPR 3rd cycle (LGBTQI Rights in Hungary, March 2021), on the Memorandum on freedom of expression and media freedom in Hungary issued by the Commissioner for Human Rights of the Council of Europe (30 March 2021) and on Háttér Society’s yet unpublished report on the situation of intersex people and their rights in Hungary.

² Fundamental Law of Hungary, Art. XV:2

³ Fundamental Law of Hungary, Art. IX:5

⁴ Act no. V. of 2013 on the Civil Code, Art. 2:54(5)

closed list, leaving LGBTQI people without any effective tools against homophobic and transphobic hate speech.

Incitement to hatred against sexual and gender minorities is on the rise: in recent years not only extreme right wing politicians, but also leading government officials made prejudiced statements against these groups. House Speaker László Köver likened homosexual couples raising children to pedophiles⁵, Prime Minister Viktor Orbán said homosexuals should “leave our children alone”⁶, the deputy leader of the Fidesz political group in Parliament called for banning the Pride march⁷, deputy Prime Minister Zsolt Semjén called for banning “gender propaganda” in the Fundamental Law.⁸ No government officials distanced themselves from these statements.

These statements are particularly harmful as LGBTQI people are one of the most discriminated social groups in Hungary, and both public attitudes and experiences of discrimination have worsened over the past years. In 2018 53% of Hungarians would not welcome a ‘homosexual’ person as their neighbor, an increase from 46% in 2011.⁹ Less than half (48%) agree that lesbian, gay and bisexual people should have the same rights as heterosexuals, and only 16% agree that transgender persons should be able to change their documents to match their gender identity.¹⁰ A 2019 poll by the European Union Agency for Fundamental Rights (FRA)¹¹ found that 49% of Hungarian LGBTI respondents, and 64% of trans respondents have felt discriminated against due to being LGBTI in the 12 months preceding the research, a sharp increase for trans people since 2012 (46%).¹²

As the *Memorandum on freedom of expression and media freedom in Hungary*, issued recently by the Commissioner for Human Rights of the Council of Europe¹³ observes, civil society representatives and human rights defenders have also been demonised as “foreign agents” and “traitors to the nation”, particularly when protecting the rights of migrants, Roma or LGBTI people. Legislative amendments in recent years have shown blatant disrespect for the important role that civil society organisations play in modern democratic societies. In June 2020, the Court of Justice of the European Union found the registration and publication obligations imposed on civil society organisations who receive support from abroad to be in breach of Hungary’s obligations under EU law, as they undermined their right to freedom of association and created a climate of suspicion and stigmatisation towards them. Following the judgment, the Prime Minister talked of “liberal imperialism in Western Europe” and

⁵ https://index.hu/belfold/2019/05/15/kover_laszlo_forum_normalis_homoszexualisok_pedofilia

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<https://telex.hu/belfold/2020/10/04/orban-viktor-kossuth-radio-interju-koronavirus-jarvany-meseorszag-mesekonyv>

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<https://telex.hu/belfold/2020/10/04/orban-viktor-kossuth-radio-interju-koronavirus-jarvany-meseorszag-mesekonyv>

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https://index.hu/belfold/2020/11/04/semjen_zsolt_genderpropaganda_kdnp/

⁹ https://tev.hu/wp-content/uploads/2019/07/TEV_Antiszemitizmus2018-Median_72dpiKE%CC%81SZ.pdf

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<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2251>

¹¹ <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>

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<https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-fundamental-rights-lesbian-gay-bisexual-and>

¹³ <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-hungary/1680a1e67e>

“conspiracies to manoeuvre for power”, referring to “political organisations in Hungary that are striving to erode the independence of their own country. Suddenly they’re not on the side of the Hungarians, but are always found on the side of foreigners, outsiders, centres of power...”.¹⁴

Attacks against civil society organizations, among others LGBTQI organizations in recent years have included mentions in government-controlled traditional and social media, statements by politicians of the governing party, accusations in the so-called “national consultations”, and rallies outside organizations’ offices. The government and pro-government media has conducted a smear campaign 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 as well as extreme right (and pro-government) news outlets like Vadhajtasok.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”.¹⁵

On 1 December 2020, the Parliament adopted legislation to abolish the Equal Treatment Authority (ETA)¹⁶, Hungary's most important equality body set up in 2005. The ETA had a broad mandate to investigate cases of discrimination, among others, on grounds of 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. No public consultation preceded the adoption of the law. From 1 January 2020, the tasks of ETA were taken over by the Commissioner for Fundamental Rights. Since he assumed office in September 2019, the new Commissioner has failed to protect the rights of LGBTQI people: he has not commemorated the International Day Against Homophobia and Transphobia in May 2020, and has not responded to official petitions submitted by LGBTQI organizations.¹⁷

Transgender and intersex people: the ban on legal gender recognition

On 29 May 2020, the Hungarian Parliament adopted legislation amending the Registry Procedure Act, which made legal gender recognition impossible (Section 33 of Act no. XXX. of 2020 on the amendment of specific administrative laws and free donations of property). According to the new law, the civil registry no longer contains 'sex', but 'sex at birth', and defines sex at birth as the "the biological sex based on primary sex characteristics and chromosomes". A paragraph was also added that explicitly declares that the 'sex at birth' in the registry once recorded, cannot be amended. The new legislation thus bans legal gender recognition for those persons in Hungary whose sex is recorded in the civil registry.

Trans people face a wide range of discrimination in employment, healthcare, housing and access to goods and services. Every time they have to identify themselves (e.g. at a job interview, a bank, when signing a contract, accepting a letter or paying with a bank card), the

¹⁴ Ibid. Article 36.

¹⁵ <https://miniszterelnok.hu/szamizdat-6/>

¹⁶ Act no. CXXVII of 2020 on amending laws to strengthen the enforcement of the principle of equal treatment

¹⁷ <https://helsinki.hu/en/assessment-of-the-activities-and-independence-of-hungarys-ombudsperson/>

discrepancy between their appearance and identification papers draw attention to the fact that they are transgender, and thus makes them especially vulnerable to discrimination or even physical violence. It is of basic importance that transgender people can obtain legal recognition of their gender through a quick, accessible and transparent procedure in accordance with the individual's own sense of their gender identity, while preserving their right to privacy.

The ban on legal gender recognition was criticized by the Hungarian Psychological Association,¹⁸ the Equal Treatment Authority,¹⁹ the National Authority for Data Protection and Freedom of Information,²⁰ the Council of Europe's Commissioner for Human Rights,²¹ the European Parliament,²² the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity,²³ the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the right to privacy, the Special Rapporteur on violence against women, its causes and consequences,²⁴ the Conference of INGOs of the Council of Europe,²⁵ UNAIDS,²⁶ and the UN High Commissioner for Human Rights.²⁷ On 9 March 2021, upon a judicial motion the Constitutional Court quashed one of the new provisions, i.e. the provision that prescribed the application of the new rules in pending procedures as well. The Constitutional Court reaffirmed its previous opinion put forward in a previous case (6/2018. (VI. 27.) Constitutional Court decision) that the change of name and gender for transgender persons is a fundamental right and the corresponding positive obligation of the state is also recognized (Para. 35, 11/2021. (IV. 7.) Constitutional Court decision). However, strongly divided opinions of judges make it unlikely that the present Constitutional Court would decide about the unconstitutional nature of the ban on legal gender recognition.

The same legislative change also worsens the situation of intersex children in Hungary. It is very likely that it has a negative impact on parents' and doctors' willingness to postpone surgical procedures: while until 2020, doctors could argue that a child's legal gender can be changed at any point if the child is intersex, now "birth sex" is put in the registry before a baby is 6 weeks old and it cannot be changed. This will possibly entail much more

¹⁸ <https://www.facebook.com/230520050844602/photos/a.444597792770159/659477584615511/>

¹⁹ Ministry of Justice, VII/37/7/2020.

²⁰ NAIH-944-3/2021

²¹ <https://www.facebook.com/CommissionerHR/posts/1512688642240374>

²² https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.html;
https://www.europarl.europa.eu/doceo/document/TA-9-2021-0089_EN.html

²³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25844>

²⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25172>

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https://www.coe.int/en/web/ingo/newsroom/-/asset_publisher/BR9aikJBXnwX/content/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards

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https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/may/20200508_hungary

²⁷ <https://www.ohchr.org/Documents/Issues/LGBT/LGBTpeople.pdf>

unnecessary, that is, not medically required treatments and surgical interventions compared to the previous years.

Freedom of expression

Freedom of expression by LGBTQI NGOs and companies supporting their equality have also been under attack by extremist groups, and most recently by public bodies as well. In October 2019, Coca Cola was imposed a fine of 500.000 HUF for featuring a gay and a lesbian couple in their billboard campaign #loveislove.²⁸ The consumer protection authority argued that the portrayal of same-sex couples in advertisements damages the physical, mental, emotional, or moral development of children and adolescents. Háttér Society launched cases at the Equal Treatment Authority, the Commissioner for Fundamental Rights and the prosecution service, but no public bodies were willing to challenge the decision of the consumer protection authority.

In September 2020, a lesbian organization, Labrisz Lesbian Association published a fairy tale collection called *Fairyland is for Everyone (Meseország mindenkié)* with diverse (including LGBTQI) characters. Mi Hazánk MP Dóra Dúró shredded the book publicly²⁹; the party organized a demonstration in front of the office of Labrisz³⁰; and a conservative online platform called for a boycott against bookshops where the book was sold.³¹ Posters and stickers were placed on bookshops saying “homosexual propaganda literature harming children is sold here”.³² In an interview, Prime Minister Viktor Orbán said homosexuals should “leave our children alone”.³³ Minister Gergely Gulyás threatened professionals using the book in educational settings with criminal charges.³⁴ In January 2021, the consumer protection authority ordered that Labrisz change the cover of the book to clearly state that it includes “patterns of behavior deviating from traditional gender roles”.³⁵ Several local governments (Mezőkövesd, Budapest XXI. Csepel, Diósd, Veszprém) 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. (The Government County Office found the ban of Mezőkövesd unlawful, arguing that the local government had no legal power to issue such a ban.³⁶)

In March 2021 the Media Council launched an investigation against RTL Klub, the largest commercial channel for airing a video about rainbow families as public service advertisement

²⁸ Pest County Government Office PE-06/01/01076-10/2019

²⁹ <https://hirado.hu/belfold/cikk/2020/09/30/duro-dora-nyilvanosan-ledaralta-az-lmbtg-mesekonyvet>

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https://mandiner.hu/cikk/20201004_demonstraciot_tartott_a_labrisz_leszbikus_egyesulet_szekhaza_elott_a_mi_hazank_mozgalom

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<https://citizengo.org/hu/fm/182339-vegye-le-kinalatabol-az-lmbtg-mesekonyvet-pagony-gyerekkonyvesbolt-tobbi-arusitohely>

³² <https://mihazank.hu/a-mi-hazank-peldat-mutat-a-labrisz-leszbikus-egyesuletnek/>

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<https://telex.hu/belfold/2020/10/04/orban-viktor-kossuth-radio-interju-koronavirus-jarvany-meseország-mesekonyv>

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<https://telex.hu/belfold/2020/10/08/meseország-mindenkie-ovoda-gulyas-gergely-kiskoruak-veszelyeztetese>

³⁵ Budapest Government Office BP/2200/00868-2/2021

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<https://telex.hu/belfold/2020/12/18/a-kormanyhivatal-szerint-jogserto-a-meseország-mindenkie-cimu-konyv-betiltsa-mezokovesden>

before 9pm.³⁷ The Council argues the video featuring same-sex families and experts was harmful for children under age 16. 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 described same-sex sexual attraction as sickness, deviance and distortion of personality³⁸; when a TV program likened same-sex families to dog poo³⁹; when a guest on a TV program expressed his support for illegally removing the “faggot flag” from public buildings, which he called a symbol for “sick and deranged life form.”⁴⁰ 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 a “fearful bunch of white, Christian, heterosexual men.”⁴¹

Not only companies and organizations, but also individuals are put under immense pressure to keep silent about LGBTQI issues. If someone speaks up against growing political hostility they risk losing their jobs or livelihood. For example, in March 2021 two sport reporters were fired from a pro-government commercial TV channel after they expressed their support for a soccer player who joined the #familyisfamily campaign calling for the social acceptance of same-sex families and criticizing recent amendments to adoption legislation.⁴²

As a result of the above imbalances, the overall climate for LGBTQI persons is deteriorating rapidly, resulting in their being marginalised and silenced still more. While LGBTQI persons themselves are not given access to the media to express their views and concerns, violent homophobic groups are given ample coverage. This imbalance fuels a general climate of hostility against the LGBTI community while, at the same time, making them invisible and reducing the public space on offer to them.⁴³

Same-sex parents and their children

In December 2020 the Parliament adopted amendments to the Civil Code and the Child Protection Act that restrict adoption by non-married couples.⁴⁴ Joint adoption has always been limited to (different-sex) spouses, but those living with their same-sex partners were allowed to adopt as individuals. The new provision does not completely outlaw adoption by a non-married person, but it is only possible with a special permission by the Minister of Family Affairs; thus the decision on who is a suitable parent will not be made by professionals but by a politician. Furthermore, the current minister made it clear in a public interview⁴⁵ that the aim of the amendment was to make sure that persons living in same-sex partnership cannot adopt. No public consultation preceded the adoption of the law. Adoption specialists and child rights advocates including UNICEF Hungary criticized the move, arguing that it would

³⁷ Media Council MN/31406-9/2020

³⁸ Media Council 221/2019. (II. 19.)

³⁹ Media Council 568/2019. (V. 14.)

⁴⁰ Media Council MN/23195-6/2019

⁴¹ Media Council 405/2020. (IV.28.)

⁴² <https://index.hu/sport/2021/03/22/nem-hrutka-az-egyetlen-akit-elkoszontek-a-sportmediaban/>

⁴³ <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-hungary/1680a1e67e> Art. 39.

⁴⁴ Act no. CLXV of 2020 on amending justice-related laws, amending Act no. V of 2013 on the Civil Code, Art.

4:121

⁴⁵ <https://index.hu/gazdasag/2021/02/19/novak-katalin-miniszter-csalad-index/>

result in longer adoption procedures, and by decreasing the number of adoptive parents it would force more children to live out of families or be adopted abroad.⁴⁶

Legislation on assisted reproduction technologies is openly discriminatory: while it is possible for married couples, different-sex cohabiting couples and single women to access such services, lesbian couples (whether in registered partnership or cohabiting) are excluded.⁴⁷

The lack of recognition for same-sex parents creates legal and practical problems for the growing number of children living with same-sex parents: they cannot inherit from their non-biological parent without a will, and if there is a will their inheritance tax is significantly higher; in case the parents' relationship deteriorates they are not entitled to receive child maintenance from their non-biological parents; and the non-biological parent cannot make even urgent medical decisions on their behalf. De jure discrimination against same-sex parents also makes discriminatory behavior socially acceptable. A survey among same-sex couples raising children in 2017⁴⁸ found that the large majority of rainbow families are not out to doctors, kindergartens, schools, workplaces or child protection authorities. They have most likely been discriminated against or have received prejudiced comments at child protection services, workplaces and maternity wards. The legal aid service of Háttér dealt with cases where a child was not admitted to a school because he was raised by two women, where childcare allowance (GYED) or family allowance (családi pótlék) were denied from same-sex parents, and where people living in same-sex partnership were discriminated during the (individual) adoption procedure.

Online hate speech

Háttér Society has been participating in monitoring the EU Code of Conduct, an agreement between the European Commission and social media platforms (2016) since 2017.⁴⁹ The 6th monitoring round had just ended in April 2021. The results will be published in the forthcoming months, but we could clearly see that there has been a sharp increase in anti-LGBTQI hate speech over the social media pages of conservative and extremist parties and other political formations during 2020 and 2021.

Summary

In summary, the realization and encouragement given to anti-LGBTQI hate speech by political and government-supported or -supporting media actors, the smear campaigns directed at LGBTQI organizations both by the government and extremist parties and organizations, the inaction of the national human rights institution, legislative changes having very negative impacts on the lives of transgender and intersex people (including intersex children) as well same-sex couples who raise or plan to raise children and the children of

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<https://unicef.hu/ezt-tesszuk-itthon/gyermekjogi-koalicio/a-gyermekjogi-civil-koalicio-allasfoglalasa-az-orokbefogadas-uj-szabalyairol>

⁴⁷ Act no. CLIV of 1997 on health care, Art. 167:1

⁴⁸ <https://hatter.hu/kiadvanyaink/szivarvanycsaladok-2017>

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https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en

LGBTQI people, building anti-LGBTQI “defence of children” arguments into the Fundamental Law to discourage teachers referring to LGBTQI people and issues in any way in educational institutions (where many young LGBTQI people face severe discrimination and abuse⁵⁰), and the growth of anti-LGBTQI hate speech on social media platforms are all signals of very uncertain times for LGBTQI people in Hungary.

Bea Sándor is the Director of the Legal Program of Háttér Society. Háttér Society, founded in 1995, is the largest and oldest currently operating 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 countering discrimination against them; promoting the health and well-being of LGBTQI people; encouraging the self-organization of LGBTQI communities; and preserving and spreading LGBTQI heritage and culture.

⁵⁰ Cf. Háttér Society’s report on the experience of LGBTQI students in Hungarian schools (2017), <https://hatter.hu/sites/default/files/dokumentum/kiadvany/school-environment-report-en.pdf>