

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# HUNGARY: GOVERNMENT MUST REVOKE PROHIBITION OF GENDER LEGAL RECOGNITION

Amnesty International is concerned that the Hungarian government submitted a bill to Parliament that would gravely violate transgender and intersex people's rights, while all efforts should focus on protecting and guaranteeing the right to health for everyone without discrimination, and taking urgent measures necessary to combat the COVID-19 pandemic.

The Hungarian Parliament is debating the proposed *Bill on Changes of Certain Administrative Laws and Free Donation of Property* (or Bill [T/9934](#)<sup>1</sup>) that would require the recording of individuals' sex by birth in the national registry of birth, marriages and deaths, which could not later be changed. This also means that individuals' identification documents would contain the same, unchangeable information. These provisions severely violate the rights of transgender and intersex people to privacy, their right to legal recognition of their gender based on self-determination under international human rights law and fail to protect their human dignity. It is unclear how those people who are currently medically transitioning would be impacted by the proposed changes. Moreover, the proposed changes are likely to expose transgender and intersex people to discrimination in all spheres of life.

Transgender people should be able to obtain legal gender recognition through quick, accessible and transparent procedures and in accordance with their own perceptions of gender identity. States must ensure that transgender people can obtain documents reflecting their gender identity without being required to satisfy criteria that in themselves violate their human rights.

Amnesty International urges the government to revoke the above provisions not allowing individuals to change their legal name and gender markers on all official documents issued by the state and by other institutions, and to ensure that the process for issuing those documents respects the people's right to privacy. The organization also calls on Parliament to remove the above provisions during the parliamentary debate, before adopting the bill and use the opportunity to protect transgender and intersex people's rights. Amnesty International also calls on the Commissioner for Fundamental Rights to publicly condemn the provisions before the vote.

In case Parliament fails to remove the discriminatory provisions, Amnesty International urges the President of Hungary, to submit the bill to the Constitutional Court, before signing it, to confirm its unconformity with Article II, VI(1) and XV(2) of the Fundamental Law (Hungary's Constitution). Should the President fail to act, the Commissioner for Fundamental Rights must request the constitutional review of the bill based on Art 24. (2) of Act CLI. of 2011 on the Constitutional Court.

## PROPOSED CHANGES VIOLATE THE HUMAN DIGNITY, RIGHTS TO PRIVACY AND TO RECOGNITION BEFORE THE LAW OF TRANSGENDER AND INTERSEX PEOPLE AND THEIR PROTECTION FROM NON-DISCRIMINATION

The explanation of the bill to amend Act I. of 2010 on registration process of births, deaths and marriages<sup>2</sup> states that it is important to define the sex by birth by recording it in the official registry, as for an individual certain rights and obligations emerge based on their sex. Moreover, the registration claims that sex can only be determined by doctors based on biological markers and chromosomes. In addition, the explanation states that "as there is no possibility to fully change

<sup>1</sup> In Hungarian 'Törvényjavaslat egyes közigazgatási tárgyú törvények módosításáról, valamint ingyenes vagyonjuttatásról'.

<sup>2</sup> Act I. of 2010 on registration process of registration of births, deaths and marriages (2010. évi I. törvény az anyakönyvi eljárásról), available at: <https://net.jogtar.hu/jogszabaly?docid=A1000001.TV&searchUrl=/gyorskereso%3Fkeyword%3Danyak%25C3%25B6nyv>.

someone's biological sex by birth, the law should stipulate that there are no changes allowed in the official registry, either"<sup>3</sup>.

Transgender individuals whose official documents do not reflect their gender identity, name or gender expression will have to disclose they are transgender every time they produce these documents. In many situations, this is likely to be almost a daily occurrence. In situations where official documents are required to obtain goods or services – for example, in finding employment, enrolling in education, obtaining housing, or claiming welfare benefits – transgender individuals will be forced to give up aspects of their right to private life in order to obtain them.

The proposed provisions of the bill contradict Hungary's international human rights obligations in relation to several rights. Under international law, Hungary is required to respect the dignity of every individual<sup>4</sup> without discrimination and their right to private and family life<sup>5</sup>. As the European Convention on Human Rights states "the right to privacy is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons."<sup>6</sup> The European Court of Human Rights clarified that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8.<sup>7</sup> The European Court of Human Rights has found states to be in breach of Article 8 of the ECHR in several instances where transgender individuals were not allowed to obtain legal recognition of their gender. For instance, also by ruling that the lack of "quick, transparent and accessible procedures" for changing the registered sex of transgender people on the birth certificates had resulted in a violation of Article 8.<sup>8</sup>

The impossibility to obtain documents that reflect gender identity and expression may also constitute a violation of the transgender individuals' right to recognition before the law, which is protected under international human rights law, including by the ICCPR (Article 16) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, Article 15).<sup>9</sup>

International human rights treaties that Hungary is party to clearly prohibit any forms of discrimination on the grounds of sex, gender orientation and sexual identity.<sup>10</sup> In a resolution, the Parliamentary Assembly of the Council of Europe called on member states, including Hungary, to "explicitly prohibit discrimination based on gender identity in national non-discrimination legislation and implement international human rights standards, including the case law of the European Court of Human Rights in this field, without discrimination on grounds of gender identity".<sup>11</sup> Concerning the legal gender recognition, the Parliamentary Assembly prescribed that member states shall establish prompt, transparent and accessible procedures based on self-determination for changing the name and registered sex of transgender people on birth certificates and other identification and other documents.<sup>12</sup>

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<sup>3</sup> See explanation on Article 33 of the proposed bill, *Bill on Changes of Certain Administrative Laws and free donation of property*, pp. 23., available at: <https://www.parlament.hu/irom41/09934/09934.pdf>.

<sup>4</sup> Article 1 of the Universal Declaration of Human Rights, and also the preamble of the International Covenant on Civil and Political Rights recognizes that the Covenant rights are derived from the inherent dignity of the human person, at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>5</sup> Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the European Convention on Human Rights (ECHR).

<sup>6</sup> Article 8 of the ECHR, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf). States can may not interfere with this right except as is 'in accordance with law and is necessary in the interests of a democratic society, in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others'.

<sup>7</sup> Guide on Article 8 of the European Convention on Human Rights, *Right to respect for private and family life, home and correspondence*, Updated on 31 August 2019, pp. 31., para 128., available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf).

<sup>8</sup> Ibid, para. 228., referring to the ruling concerning the case *X v. the former Yugoslav Republic of Macedonia*, § 70.

<sup>9</sup> 28 Yogyakarta Principles on the applications of human rights Law in relation to sexual orientation and gender identity, Principle 3. The Human Rights Committee, tasked to monitor the implementation of the ICCPR, found in several instances that the state's failure to issue birth certificates or to keep civil registries amounted to a violation of Article 16 and led to the violation of other rights included access to social services or education. See for example: Concluding Observations on Albania, CCPR/CO/82/ALB (HRC, 2004), para. 17, Concluding Observations on Bosnia and Herzegovina, CCPR/C/BIH/CO/1 (HRC, 2006), para. 2, Concluding Observations on the Democratic Republic of Congo, CCPR/C/COD/CO/3 (HRC, 2006), para 25.

<sup>10</sup> Article 24 of ICCPR and Article 14 of ECHR. The Committee of Ministers of the Council of Europe confirmed in the preamble of its Recommendation CM/Rec(2010)5, adopted in 31 March 2010 that "considering the case law of the European Court of Human Rights and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons", see: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a).

<sup>11</sup> Council of Europe Parliamentary Assembly *Resolution 2048 (2015)1 on Discrimination against transgender people in Europe*, Paras 6.1.1. and 6.1.2., at: [bit.ly/coe-pace-resolution2048](http://bit.ly/coe-pace-resolution2048).

<sup>12</sup> Ibid, para. 6.2.1.

The changes proposed by the bill are also in breach of Hungary's obligation under domestic law. The Fundamental Law (Hungary's constitution) stipulates that "every human being shall have the right to life and human dignity..."<sup>13</sup>, and "the right to have his or her private and family life".<sup>14</sup> In addition, Hungary must guarantee fundamental rights to every person "without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, ...birth or any other status."<sup>15</sup> Additionally, the Equal Treatment Act explicitly forbids any forms of discrimination and harassment based on sexual orientation and gender identity.<sup>16</sup>

In addition, a landmark decision of the Constitutional Court<sup>17</sup> clearly ruled that the recognition of transgender people and their potential name change relates to the fundamental right to dignity. The Court stated that changing somebody's name is inherently related to changing their gender, and the authorities are required to establish a legislation that guarantees the recording of both sex and name change in the official registration without discrimination.<sup>18</sup>

## FURTHER RESTRICTIONS ON HUMAN RIGHTS

Amnesty International is also concerned that if Parliament passes the proposed changes curtailing people's rights to register their names and obtain associated documents in accordance to their gender identity, this will lead to further discrimination, while attacks and hate crimes against transgender and intersex people might further intensify. Moreover, the uncertainty and daily struggles these changes bring in accessing basic services, institutions and opportunities might lead to self-harm, suicide, and other mental health challenges for people who are unable to have their gender identity recognised.

This would affect in particular those individuals whose appearance, gender expression or gender identity do not match their sex on official documents, since their right to privacy might be violated whenever they are required to prove their identity. Moreover, they might face additional legal, social and institutional hurdles and violations of their economic, social and cultural rights.

In Hungary, transgender and intersex people are often subject to discrimination, in particular in employment<sup>19</sup>, education, accessing goods and services, and housing.<sup>20</sup> Moreover, they often experience violations of the right to health, both in obtaining treatment related to their gender identity and in obtaining general medical care. Besides the legal obstacles, the often outdated approach of certain medical staff can lead to transgender and intersex people avoiding a visit to a doctor for a long time.<sup>21</sup> Recognizing the above phenomenon, the Committee of Ministers recommended the member states to "take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity" and also to "take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans ... when monitoring and evaluating the quality of health care services".<sup>22</sup>

The International Covenant on Economic, Social and Cultural Rights, however, clearly stipulates that any rights in the Covenant, including the right to health, housing, education and employment shall be guaranteed to everyone without discrimination.<sup>23</sup>

<sup>13</sup> Article II of the Fundamental Law, available at: <https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV>.

<sup>14</sup> Article VI(1) of the Fundamental Law.

<sup>15</sup> Article XV(2) of the Fundamental Law.

<sup>16</sup> Section 8(a) and (m-n) of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, at: <https://net.jogtar.hu/jogszabaly?docid=A0300125.TV>.

<sup>17</sup> Hungary's Constitutional Court, "Transzszexuális menekült ügyében döntött az alkotmánybíróság" („The Constitutional Court made a decision in the case of a transgender refugee”), 21 June 2018, available at:

<https://alkotmanybirosag.hu/kozlemeny/transzszexualis-menekult-ugyeben-dontott-az-alkotmanybirosag>.

<sup>18</sup> Ibid.

<sup>19</sup> Hatter Tarsasag: *A kirekesztés arcai: A transz emberek foglalkoztatási és munkahelyi hátrányos megkülönböztetése*, January 2018, at: <http://hatter.hu/kiadvanyaink/kirekesztesarcai>.

<sup>20</sup> Hättér Society – Hungarian LGBT Alliance – Transvanilla Transgender Association, Report about the Implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5) in Hungary, 31 July 2018, pp. 23-17., at: <http://hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-cmrec2010-5-report2018.pdf>.

<sup>21</sup> Ibid., pp. 26.

<sup>22</sup> Committee of Ministers of the Council of Europe, Recommendation, Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, section VII. Health, paragraph 33., at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a).

<sup>23</sup> Article 2 of the International Covenant on Economic, Social and Cultural Rights, at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

Amnesty International calls on the Hungarian authorities to repeal all laws that discriminate against transgender and intersex people and ensure that they can enjoy the right to privacy and protection from discrimination in relation to economic, social and cultural rights.

## BACKGROUND

The proposed changes represent the latest attempt to curtail transgender and intersex people's rights. Since its submission for parliamentary debate, the new law has triggered domestic outcry, including civil society organizations calling for its revocation in a [joint statement](#). Moreover, the bill also received international criticism by the [Commissioner for Human Rights](#) and [Committee on Equality and Non-Discrimination of the Parliamentary Assembly](#) of the Council of Europe, and several regional LGBTI organizations have condemned the discriminatory law, including [ILGA-Europe](#) and [Transgender Europe](#).

In the past 3.5 years, none of the individuals requesting gender- or name change received any certificate, with an exception of a brief period in April 2018, during the parliamentary elections. These procedures were officially suspended in November 2018 with the justification that a new, standardized, more transparent legislation would be established.<sup>24</sup>

In addition, politicians, including the Speaker of the Parliament, and certain public figures have increasingly targeted LGBTI people with homophobic and discriminatory comments.<sup>25</sup> Attacks and hate crimes against LGBTI people continued. In 2019 from July, far-right groups verbally and physically attacked people who organized and participated in the Budapest Pride Month events and other workshops organized by LGBTI organizations on several occasions.<sup>26</sup> NGOs and the media reported that in some cases police had failed to provide adequate protection against such attacks.<sup>27</sup>

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<sup>24</sup> Joint statement by Hungarian civil society organizations, 2 April 2020, available at: <https://budapestpride.hu/hirek/vonjak-vissza-a-transznemueket-ellehetetlenito-torvenyjavaslatot>.

<sup>25</sup> Index: "Speaker of Hungarian Parliament: Fighting for LGBT adoption is morally equivalent to paedophilia", 17 May 2019, available at: [https://index.hu/english/2019/05/17/speaker\\_of\\_hungarian\\_parliament\\_a\\_normal\\_homosexual\\_does\\_not\\_regard\\_himself\\_as\\_equal/](https://index.hu/english/2019/05/17/speaker_of_hungarian_parliament_a_normal_homosexual_does_not_regard_himself_as_equal/), also 444.hu, "A melegeket kigyógyítani szándékozó pap is megszólalt, miután botrány kerekedett a köztévé műsorából", 20 January 2019, at: <https://444.hu/2019/01/20/a-melegeket-kigyogyitani-szandekozo-pap-is-megszolalt-miutan-botrany-kerekedett-a-kozteve-musorabol>, Magyar Narancs, Bayer Zsolt büszke arra, hogy homofób, 15 July 2019, at: <https://magyarnarancs.hu/belpol/bayer-zsolt-buszke-arra-hogy-homofob-121400/?orderdir=novekvo> and HVG, "Gajdics Ottó együtt tud élni a melegekkel, mint a száraz kutyapiszokkal az árokparton", 2 April 2019, at: [https://hvg.hu/kultura/20190402\\_Gajdics\\_Otto\\_egyutt\\_tud\\_elni\\_a\\_melegekkel\\_mint\\_a\\_szaraz\\_kutyapiszokkal\\_az\\_arokparton](https://hvg.hu/kultura/20190402_Gajdics_Otto_egyutt_tud_elni_a_melegekkel_mint_a_szaraz_kutyapiszokkal_az_arokparton).

<sup>26</sup> Hungary Today, "Minor Incidents and Controversial Statements Precede 24th Budapest Pride", 05 July 2019, available at: <https://hungarytoday.hu/incidents-controversial-statements-lmbtg-budapest-pride/>.

<sup>27</sup> Merce, "Még a wc is megrongálódott, amikor Budaházyék megzavarták a Pride egyik eseményét", 17 June 2019, available at: <https://merce.hu/2019/06/17/meg-a-wc-is-megrongalodott-amikor-budahazyek-megzavartak-a-pride-egyik-esemenyet/>.