

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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HUNGARY: HUNGARIAN PARLIAMENT MUST REJECT AMENDMENTS FURTHER UNDERMINING THE RIGHTS OF LGBTI PEOPLE

Amnesty International calls on the Hungarian Parliament to reject the proposed 9th Amendment to the Fundamental Law (the Hungarian Constitution) and the draft bill T/13648 (hereinafter the omnibus bill) that further undermines the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, including by denying adoption rights to same-sex couples.

Amnesty International calls on the General Affairs Council (GAC) of the European Union to address the violations of LGBTI rights in Hungary at the next hearing under Article 7.1 TEU (Treaty on European Union)¹. This hearing should be organised urgently as the situation in Hungary continues to deteriorate.

On November 10, the Hungarian government announced a package of legislative changes, some of which would further restrict the rights of LGBTI people.

The omnibus bill amendment stipulates that only married couples should be allowed to adopt children, while single people can adopt by special permission of the Minister for family affairs. Same-sex marriage is not legalised in Hungary, and same-sex partnerships do not contain adoption rights, thus preventing LGBTI people from adopting children.

The government has also proposed two constitutional amendments as part of the legislative changes. The first one restricts childrens' gender identity to their sex assigned at birth and ensures an upbringing that "reflects the values based on Hungary's constitutional identity and Christian culture."² This proposal comes following the adoption of a law in May³ banning the legal gender recognition of trans and intersex people.⁴ The reference to "Christian culture" is contrary to the rights to freedom of conscience and religion enshrined in the Constitution⁵ and the right to education⁶ and potentially can be used to undermine the equal enjoyment of human rights by everyone, including non-Christians.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M007>

² <https://www.parlament.hu/irom41/13647/13647.pdf>, <https://telex.hu/english/2020/11/10/hungary-constitutional-amendment-gender-family-public-funds-special-legal-order>

³ <https://www.amnesty.org/en/documents/eur27/2085/2020/en/>

⁴ According to the latest news, The Court of Appeal of Miskolc submitted a complaint to the Constitutional Court asking to determine the ban on legal gender recognition is contrary to the Constitution (<https://hatter.hu/hirek/miskolci-torvenyszek-alaptorveny-ellenes-a-transz-emberek-nemenek-jogi-elismereset-tilto>)

⁵ Magyarország Alaptörvénye, VI. cikk/Fundamental Law, Article VI (<https://www.parlament.hu/irom39/02627/02627.pdf>)

⁶ Protocol 1, Article 2, ECHR (https://www.echr.coe.int/documents/guide_art_2_protocol_1_eng.pdf)

The second proposed constitutional amendment aims to institutionalize the restrictive interpretation of a family and marriage, by stating that family ties must be based on marriage, where "the mother is a woman and the father is a man".⁷

New proposed legislation discriminates against LGBTI people

The proposed changes violate human dignity, the rights to private and family life and the right to protection from discrimination. The constitutional amendment suggesting "Hungary protects children's right to an identity corresponding to his or her sex at birth"⁸ further strengthens the ban on legal gender recognition as it would mean that gender would only be determined by medical professionals based on biological markers and chromosomes.

The proposed provisions also contradict Hungary's international human rights obligations. Under international law, Hungary is obligated to respect the dignity of every individual without discrimination and their right to private and family life.⁹ The European Court of Human Rights confirmed that gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8 of the European Convention on Human Rights.¹⁰ In a resolution in 2015, 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."¹¹ In a more recent resolution, the Assembly called on the member states, including Hungary, to "refrain from adopting changes to their constitutions that would prevent the recognition of same-sex marriage or of other forms of rainbow families"¹².

The proposed changes are in breach of Hungary's obligation under domestic law.¹³ The Fundamental Law stipulates that "every human being shall have the right to life and human dignity...", and "the right to have his or her private and family life".¹⁴

The Council of Europe Convention on preventing and combating violence against women and domestic violence - the Istanbul Convention - has recognized everyone's right to live free from violence, regardless

⁷ <https://www.parlament.hu/irom41/13647/13647.pdf>, <https://telex.hu/english/2020/11/10/hungary-constitutional-amendment-gender-family-public-funds-special-legal-order>

⁸ <https://www.parlament.hu/irom41/13647/13647.pdf>, <https://telex.hu/english/2020/11/10/hungary-constitutional-amendment-gender-family-public-funds-special-legal-order>

⁹ Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the European Convention on Human Rights (ECHR), Amnesty International Public Statement, 03/04/2020, EUR 27/2085/2020

¹⁰ 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.

¹¹ 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://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25166&lang=en).

¹² <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25166&lang=en>

¹³ 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." Article XIV in Fundamental Law

(<https://www.parlament.hu/irom39/02627/02627.pdf>), <https://www.amnesty.org/download/Documents/EUR2720852020ENGLISH.PDF>

¹⁴ Article II and Article V in Fundamental Law, (<https://www.parlament.hu/irom39/02627/02627.pdf>)

of sexual orientation, gender identity, or other characteristics. The Hungarian Parliament rejected to ratify the Convention in May this year.¹⁵

Timing of the proposed legislation

The proposed amendments were officially tabled by the government on November 10, only hours after the parliamentary ratification of the second state of emergency¹⁶ mandating tougher COVID-19 restrictions. According to Háttér Társaság, one of the leading Hungarian LGBTI NGOs, the timing is not accidental¹⁷; the authorities were aware that the restrictions on freedom of movement and gathering that were implemented to contain the spread of the Covid-19 would effectively prevent people from expressing their views through public gatherings and protests. The government proposed the first set of restrictive changes similarly during the state of emergency earlier in March 2020.

The proposed legal changes were discussed by the Hungarian Parliament on 17 and 18 November, pending final adoption by mid-December. The representative of the opposition parties rejected the proposals, saying these changes would take Hungary back "to the middle ages"¹⁸ while Katalin Novák, the Minister for family affairs said, the "government does not make the life of homosexual couples impossible".¹⁹

Over the past few years, the government's anti-LGBTI rhetoric has intensified. Prime Minister Viktor Orbán gave an interview in May 2016²⁰, where he stated that same-sex couples could "do what they want, but they cannot get their marriages recognized by the state. An apple cannot ask to be called a pear".²¹ In 2019, the Speaker of the Hungarian National Assembly, László Kövér, compared same-sex couples wanting to adopt or marry, to pedophiles²². "Morally, there is no difference", said Kövér, a founding member of Fidesz and a close ally of Orbán. Later in 2019, senior party officials even called for a boycott of Coca-Cola when it launched a LGBTI-inclusive ad campaign.²³ These statements were followed by the ban on legal gender legislation in May 2020 which is a direct attack to the lives, physical and mental wellbeing of LGBTI people and severely violates their rights to privacy, to self-determination, further exposes them to discrimination in all spheres of life, and fails to protect their human dignity²⁴. If the new proposed changes are accepted, they will further strip away the rights of LGBTI people who already face discrimination in different spheres of life.

On November 12, the European Commission presented the first-ever EU strategy for LGBTI equality, announced by President von der Leyen in her 2020 State of the Union address.²⁵ One of the key action points outlined in the strategy includes protecting the rights of rainbow families and setting out a

¹⁵ <https://www.amnesty.org/en/documents/eur27/2085/2020/en/>

¹⁶ In Hungary it is called state of danger

¹⁷ <https://en.hatter.hu/news/instead-of-controlling-the-pandemic-hungarian-government-launches-crusade-against-lgbtqi-people>

¹⁸ <https://24.hu/belfold/2020/11/18/orokbefogadas-egyedulallok-parlament-vita/>

¹⁹ <https://444.hu/2020/11/21/novak-nem-lehetetlenitjuk-el-a-homoszexualis-parokat-csak-bezartunk-egy-jogi-kiskaput> to Portuguese weekly Expresso

²¹ <https://www.nbcnews.com/feature/nbc-out/pandemic-rages-hungary-ramps-anti-lgbtq-legislation-n1248659>

²² <https://www.theguardian.com/world/2019/oct/25/anti-lgbt-rhetoric-stokes-tensions-in-eastern-europe>

²³ <https://www.nbcnews.com/feature/nbc-out/coca-cola-ads-promoting-gay-tolerance-stir-furor-hungary-n1039251>

²⁴ <https://www.amnesty.org/en/documents/eur27/2085/2020/en/>

²⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2068

number of targeted actions, including legal and funding measures, for the next 5 years.²⁶ The funds will be conditional upon compliance with EU anti-discrimination law.²⁷ Vera Jourova, the Vice President of the EU Commission, had said on November 12 that abuse against LGBTI people “belongs to the authoritarian playbook and has no place in the EU”²⁸.

The Hungarian Justice Minister, Judit Varga dismissed the EU strategy, calling it a "seemingly limitless ideology forced on member states" and saying the country would "not accept any financial threats for protecting the traditional role of family and marriage."²⁹

On November 20, the Council of Europe Human Rights Commissioner, Dunja Mijatović also urged Hungary’s Parliament to postpone the vote on draft bills saying that, if adopted, it will have far-reaching adverse effects on human rights in the country.³⁰ Her statement quoted the Venice Commission’s report from this summer³¹ that such far-reaching legislative proposals, particularly constitutional amendments, should not be introduced during states of emergency.³²

Dunja Mijatović fears “that several proposals contained in the complex legislative package, submitted without prior consultation and relating to matters including the functioning of the judiciary, election law, national human rights structures, scrutiny over public funds, and the human rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) people, could serve to undermine democracy, the rule of law and human rights in Hungary.”³³

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²⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2068

²⁷ <https://www.independent.co.uk/news/world/europe/hungary-to-restrict-adoption-to-lgbt-people-in-line-with-other-populist-countries-b1724896.html>

²⁸ <https://www.independent.co.uk/news/world/europe/hungary-to-restrict-adoption-to-lgbt-people-in-line-with-other-populist-countries-b1724896.html>

²⁹ <https://www.independent.co.uk/news/world/europe/hungary-to-restrict-adoption-to-lgbt-people-in-line-with-other-populist-countries-b1724896.html>

³⁰ <https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in>

³¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)014-e)

³² <https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in>

³³ <https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in>