

# Violation of fundamental rights of LGBTIQ people by Hungary

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*This brief gives an overview of the violations of fundamental rights of LGBTIQ people in Hungary, the reactions of EU institutions, the importance of these reactions in protecting the rights of LGBTIQ people in Hungary and beyond, as well as the main challenges they may face.*

In recent years, the human rights of lesbian, gay, bisexual, transgender, intersex and queer people (LGBTIQ) in Hungary have come under fire from the authorities. The country has a high level of discrimination, stigmatization and violence caused by sexual orientation, gender identity and expression and gender characteristics of people. The annual review of the human rights situation of LGBTIQ people ranked Hungary 31<sup>st</sup> (one lower than last year) out of 49 countries, with an overall score of 30% and the lowest score for legal gender recognition (LGBTIQ), bodily integrity of intersex people and freedom of association.<sup>1</sup> The latest survey published by the European Union Agency for Fundamental Rights,<sup>2</sup> of 2020, found that 49% of participants from Hungary experienced discrimination in the previous year, while for transgender respondents it was 64%. Only 5% of participants believe that the authorities effectively fight LGBTI prejudice and intolerance compared to the EU average of 33%.<sup>3</sup> The situation worsened during the COVID-19 pandemic, when Orban's government, using its powers under the "state of emergency", began to introduce laws against LGBTIQ people, which prompted several large protests and legal proceedings by the European Union (EU).

1 ILGA-Europe, Annual Review of Laws and Policies in Europe Relating to LGBT Rights 2023, available at: [https://www.ilga-europe.org/sites/default/files/2023/full\\_annual\\_review.pdf](https://www.ilga-europe.org/sites/default/files/2023/full_annual_review.pdf) .

2 EU, FRA (2020b): Second EU LGBTI Survey: Long Road to LGBTI Equality, Hungary Data, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/lgbti-survey-country-data\\_hungary.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/lgbti-survey-country-data_hungary.pdf).

3 Ibid.



## Hungary misusing 'state of emergency' powers attacks LGBTIQ people

Entry into the EU (2004) contributed to the promotion of human rights of LGBTIQ people in Hungary, including the enactment of the Law on Anti-discrimination, which included sexual orientation and gender identity (SORI) as protected characteristics (2003),<sup>4</sup> the abolition of forced sterilization for transgender persons when accessing CPD (2008)<sup>5</sup> and the introduction of registered same-sex partnerships (2009).<sup>6</sup> But it wasn't long-lasting. Since Viktor Orban and his conservative Fidesz party came to power in 2010 (by a two-thirds majority),<sup>7</sup> there have been several key setbacks for LGBTIQ rights, including constitutional changes (2012) defining marriage as a union exclusively between a man and a woman.<sup>8</sup>

Negative homo/transphobic trends in Hungary continued with the adoption of a series of restrictive amendments to fast-track laws during the COVID-19 pandemic and the declared "state of emergency". In May 2020, Hungary replaced the category "sex" with "sex assigned at birth" in the register of citizens (Law XXX of 2020)<sup>9</sup> and added that the sex assigned at birth cannot be changed later, effectively restricting access to CPD. By the end of the same year, changes were introduced in the Constitution, the Civil Code and the Law on Child Protection by introducing a ban on the adoption of children by persons living in same-sex partnerships and by single men, which created a series of legal problems for children already living in same-sex families.<sup>10</sup>

In June 2021, Hungary passed a new law imposing restrictions on the display of Sori-related content in the public sphere, including schools and the media, for persons up to the age of 18 (Law LXXIX of 2021).<sup>11</sup> This law, which contains unjustified and disproportionate restrictions that discriminate against people on the basis of their SORI, was preceded by a public homo/transphobic attack prompted by the publication of a children's book with LGBTIQ characters.<sup>12</sup> It is important to point out that the amendments to the aforementioned law were passed allegedly to strengthen the criminal measures for sexual violence against minors, which is an open attempt by Hungary to put a sign of equality between paedophilia and sexual and gender minorities.<sup>13</sup>

In an attempt to legitimize, the Hungarian authorities organized a referendum on certain articles of this law. As a result of the successful NGO campaign,<sup>14</sup> the referendum did not receive the necessary support to be valid, but this did not prevent Hungary from further applying the law. Disturbing trends continue this year when a law was passed allowing same-sex couples who have children to be anonymously reported if they are believed to be violating the "constitutionally defined role of marriage and the family" or "violate children's rights to an identity according to their designated sex at birth".<sup>15</sup>

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4 European Commission, Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, available at: [https://ec.europa.eu/migrant-integration/library-document/act-cxxv-2003-equal-treatment-and-promotion-equal-opportunities\\_en](https://ec.europa.eu/migrant-integration/library-document/act-cxxv-2003-equal-treatment-and-promotion-equal-opportunities_en).

5 ILGA-Europe, Annual Review on Laws and Policies in Europe Related to LGBT Rights 2011, available at: <https://www.ilga-europe.org/report/annual-review-2011/>.

6 Ibid.

7 Reuters, Fidesz won the election in Hungary with a strong mandate, available at: <https://www.reuters.com/article/us-hungary-election-idUSTRE63AIGE20100412>

8 Project Constitutionality, The 2011 Hungarian Constitution (Article L), available at: [https://www.constituteproject.org/constitution/Hungary\\_2011.pdf](https://www.constituteproject.org/constitution/Hungary_2011.pdf).

9 Council of Europe, European Commission against Racism and Intolerance: Report on Hungary (sixth monitoring cycle), available at: <https://rm.coe.int/ecri-6th-report-on-hungary-translation-in-hungarian-/1680aa687b>.

10 Ibid.

11 Ibid.

12 Time, Why the children's book becomes a symbol of resistance in Hungary's struggle for LGBT rights, available at: <https://time.com/5897312/hungary-book-lgbt-rights/>.

13 Telex, Representation and Promotion – explanation of the latest Hungarian anti-LGBT law, available at: <https://telex.hu/english/2021/06/23/hungary-anti-lgbt-law-sexual-minorities-portrayal-promotion-paedophilia-viktor-orban-ursula-von-der-leyen>.

14 Amnesty International, Human Rights in Hungary, available at: <https://www.amnesty.org/en/location/europe-and-central-asia/hungary/report-hungary/#endnote-1>.

15 Bloomberg, The new Hungarian law allows residents to report same-sex families, available at: <https://www.bloomberg.com/news/articles/2023-04-13/hungary-s-new-law-allows-locals-to-report-on-same-sex-families#xj4y7vzkg>.

## Reactions of the European Union

The European Commission (EC) initiated infringement proceedings against Hungary in July 2021,<sup>16</sup> and in December of the same year,<sup>17</sup> and following Hungary's failure to submit a satisfactory explanation, it submitted a reasoned opinion. The Hungarian authorities failed to improve the explanation after which the EC referred Hungary to the Court of Justice (July 2022).<sup>18</sup> The EC argues that the law violates internal market rules, fundamental rights of individuals and EU values. The Hungarian law contains provisions contrary to the promotion of the interest and protection of children and violates several EU rules, including the Audiovisual Media Services Directive,<sup>19</sup> the E-Commerce Directive,<sup>20</sup> the Agreement on Freedom to Provide Services<sup>21</sup> and the Services Directive.<sup>22</sup> The law also violates several fundamental rights defined in the Chapter on Fundamental Rights,<sup>23</sup> including the right to respect for private and family life, the right to freedom of expression and the right to non-discrimination. The litigation is ongoing, and the outcome will be key in defining the EU's capabilities in protecting the rights of LGBTIQ people.

In March 2023, the Legal Affairs Committee of the European Parliament decided to join the court case against the Hungarian law by submitting written observation,<sup>24</sup> which is a historically significant decision and stresses the importance of the EU institutions working together in the protection of human rights. Additionally, on the basis of EU values, as well as in support of LGBTIQ people, fifteen EU Member States joined the litigation.<sup>25</sup>

## Conclusion

Court cases at the Court of Justice of the EU can be long and complex and can take several years before the court makes a final decision. During this time, Hungarian law may remain in force. Even if the court finds that Hungarian law is contrary to EU law, enforcing the judgment can be challenging. Hungary is known to have a history of non-enforcement of EU law, so it may not comply with the court's decision. In addition, the authorities can consider the decision of the European Parliament to join the court case as an attack on their national sovereignty, and this may lead to a reaction against the EU, which will further affect the EU's relations with Hungary and the remaining member states and candidate countries.

Despite these challenges, actions taken by the European Commission and the European Parliament show that the EU is committed to defending equality and fundamental rights and to preventing discrimination, hate crimes and hate speech against LGBTIQ people from going unpunished. Finally, the outcome of the court case will have important implications for the protection of the rights of LGBTIQ people in Hungary and beyond.

16 European Commission, Founding Values of the EU: The Commission has launched legal proceedings against Hungary and Poland for violating the fundamental rights of LGBTIQ people, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3668](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668).

17 European Commission, December infringements package: key decisions, available at: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_21\\_6201](https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201).

18 European Commission, Commission refers Hungary to the EU Court of Justice for violating the rights of LGBTIQ people, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2689](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2689).

19 Official Journal of the EU, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain articles established by law, regulation or administrative procedure in the Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013>.

20 Official Journal of the EU, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, particularly electronic commerce, in the internal market (Directive on electronic commerce), available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>.

21 Official Journal of the EU, Consolidated version of the Treaty on the Functioning of the European Union, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FTXT&qid=1683312926767>.

22 Official Journal of the EU, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123>.

23 European Commission, Chapter on EU Fundamental Rights, available at: [https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights\\_en](https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en).

24 LGBTI Intergroup of the European Parliament, the European Parliament joins the litigation against Hungary after the vote in the Legal Affairs Committee, available at: <https://lgbti-ep.eu/2023/03/21/press-release-the-european-parliament-joins-the-court-case-against-hungary-after-vote-in-the-committee-on-legal-affairs/>.

25 Politico, Germany and France join EU lawsuit against Hungarian anti-LGBTQ+ law, available at: <https://www.politico.eu/article/germany-france-eu-lawsuit-hungary-lgbt-law/>.

