

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

Prepared by

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Executive Summary

The Recommendation and its Appendix have so far made only limited impact in Hungary. An official translation was prepared and published on the website of the government in 2012. The 2013 report by Háttér Society on the implementation of the Recommendation and its Appendix was discussed in the Thematic Working Group on the Rights of LGBT People of the Government's Human Rights Roundtable, but most of the 93 recommendations of the report were rejected, progress was only made on 17 recommendations. No dissemination activities were conducted targeting relevant authorities and service providers. Hungarian policy-makers seem to think that Hungary fully complies with the international human rights standard and the recommendations, and thus no action is needed.

While significant progress had been made in the past decades in Hungary in advancing the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI)¹ persons, this gradual process came to an end with the change to a conservative government in 2010. In 2018, Hungary was the 20th among the 49 countries on ILGA-Europe Rainbow Map. Despite the positive legal developments, exclusionary legislation in the field of parenting by same-sex couples, the lack of proper legislation on legal gender recognition and disproportionately low funding for gender affirming treatments for transgender persons still amount to serious *de jure* discrimination based on sexual orientation and gender identity. Attempts by the governing parties to distance the institution of registered partnership from marriage pose a significant threat to level of legal equality secured in previous years.

Moreover, legislation to protect LGBTI persons from discrimination and violence often remains an empty promise due to the lack of proper implementation of existing legal rules. There are very few guidelines or protocols that help authorities and public service providers to put into practice the principle of respect for human dignity and equal treatment. Police, prison staff, lawyers, judges, teachers, doctors and social workers receive only minimal – if at all – training on issues of sexual orientation and gender identity. While the principle of non-discrimination is well-established at least on the level legislation, the understanding that good quality public services would require the recognition of the specific concerns and needs of diverse population, among them those of LGBTI persons, is completely lacking.

When moving beyond the level of legislation and public policy to general social attitudes, the situation is much more problematic. Prejudice and hostility towards LGBTI persons is very widespread; representative public opinion polls consistently find that “homosexuals” are among the most rejected social groups in Hungary, and the acceptance of trans people is among the lowest in the European Union. Discrimination, harassment and various forms of violence are part of the everyday experience for a large proportion of LGBTI persons in Hungary. These views are often shared, in some cases even encouraged, by leading politicians. Openly homophobic and transphobic statements have become tolerated in the public discourse. Responding to these problems would require committed, comprehensive and coordinated actions on behalf of public authorities, including targeted programmes, awareness-raising campaigns and training. However, there is no government strategy or action plan to provide a legislative and financial framework for such measures.

Since 2013, the publication of the previous report, the situation of human rights and human rights defenders have seriously deteriorated in Hungary. The parliament adopted a law stigmatizing “foreign-funded” non-governmental organizations (NGOs), requiring them to disclose the identities

¹ In this report we use the term LGBTI to refer to the sexual and gender minorities in general. We only deviate from this general rule if a particular organization or publication uses a different term (LGBT, LGBTQ, LGBTQI) to name the group.

of their foreign individual donors, and be added to a special registry. The government proposed legislation introducing a special tax on foreign donations and depriving foreign-funded NGOs of their public benefit status, and a law taxing activities related to migration and asylum seekers has been recently passed. NGOs funded by the Open Society Foundations – including several LGBTI organizations – are under constant attack by governing politicians and pro-government media. While these measures do not specifically target LGBTI communities, they have a devastating impact on the situation and advocacy capacity of these communities.

Recommendations to the Hungarian Government

1. General recommendations

- 1.1 Amend the Fundamental Law to explicitly prohibit discrimination based on sexual orientation, gender identity and expression, and sex characteristics.
- 1.2 Adopt a national strategy and action plan to tackle discrimination based on sexual orientation and gender identity regarding all areas covered by the Recommendation and its Appendix.
- 1.3 Extend the mandate of the Department of Equal Opportunities at the Ministry of Human Capacities to specifically include sexual orientation and gender identity.
- 1.4 Develop a system of human rights indicators with specific indicators on LGBTI inclusion to monitor progress.
- 1.5 Conduct regular national and sector-specific surveys to monitor attitudes towards LGBTI persons.
- 1.6 Conduct impact assessment of new legislation and policy measures that specifically cover their impact on LGBTI persons.
- 1.7 Involve LGBTI civil society actors in drafting legislation and guidelines and in conducting trainings when implementing recommendations contained in this report.

2. “Hate crimes” and other hate-motivated incidents

- 2.1 Amend the Criminal Code to allow for taking into consideration hate motivation in cases of stalking, sexual violence and crimes against property.
- 2.2 Introduce a comprehensive definition for hate crimes, including homicide, crimes against property, blackmail, stalking, and violence against a member of a community.
- 2.3 Publish the comprehensive definition of hate crime on the websites of police, courts, prosecution and victim support services.
- 2.4 Disseminate comprehensive and accessible guides to potential victims of hate crimes on available legal remedies and support services.
- 2.5 Adopt an official police protocol on responding to and investigating hate crimes, explicitly including homophobic and transphobic hate crimes.
- 2.6 Introduce training modules on hate crimes including specifically homophobic and transphobic hate crimes into the curricula of basic and in-service police trainings and law school curriculum.
- 2.7 Introduce sensitising training for police, courts, prosecution, victim support services and prison staff on discrimination against and the specific needs and concerns of LGBTI persons.
- 2.8 Establish reference groups with the participation of civil society representatives to monitor procedures in individual cases of hate crimes.
- 2.9 Introduce LGBTI liaison officers at the police to improve the relation between the police and the LGBTI community.

- 2.10 Reform data collection on hate crimes to cover all cases falling under the comprehensive definition, so that it allows for following cases from reporting to sentencing, disaggregated by hate motivation grounds.
- 2.11 Introduce risk assessment of detainees prior to their placement in pre-trial detention and prison cells on the basis of specific information gathered on attitudes towards social minorities, including those based on sexual orientation and gender identity, and previous involvement in hate-motivated incidents against them.

3. Hate speech

- 3.1 Amend the Fundamental Law and the Civil Code to allow for members of the communities based on sexual orientation and gender identity to initiate civil proceedings in cases of homophobic or transphobic hate speech that does not target identifiable individuals.
- 3.2 Amend the Media Constitution to explicitly prohibit incitement to hatred based on sexual orientation and gender identity.
- 3.3 Extend the Internet hotline hosted by National Media Infocommunications Authority to explicitly cover homophobic and transphobic speech.
- 3.4 Include a section in the Public Service Code on the duty to avoid stereotyping based on sexual orientation and gender identity, and on appropriate language use with regard to LGBTI persons.

4. Freedom of association

- 4.1 Repeal legislation stigmatizing foreign funded NGOs, and refrain from adopting similar legislation in the future.
- 4.2 Provide earmarked funding for public services offered by LGBTI civil society actors, including but not limited to health development and prevention, education, victim support, and training of public officials and law enforcement personnel.
- 4.3 Introduce a specific funding scheme for human rights civil society actors, including organisations working in the field of LGBTI human rights.
- 4.4 In funding schemes promoting equal opportunities for vulnerable groups refer explicitly to sexual orientation and gender identity.
- 4.5 Maintain a transparent database on public funding for non-discrimination and equal opportunity projects that allows for tracing the funds allocated to different protected grounds.
- 4.6 Build strategic partnerships with civil society organisations representing LGBTI interests.

5. Freedom of expression

- 5.1 Amend the Media Act to allow civil society organisations representing LGBTI interest to delegate member(s) to the Board of Public Services.
- 5.2 Include LGBTI issues into mainstream news programmes; and similarly to ethnic, national and religious groups offer targeted radio and television programmes for LGBTI persons on social, political and cultural issues affecting the community.

- 5.3 Reflect the social and cultural diversity of the Hungarian society, including sexual and gender diversity, in all production genres in the public media.

6. Freedom of peaceful assembly

- 6.1 Employ security measures at LGBTI assemblies that are proportionate to the risks posed by violent counter-demonstrators; avoid measures that curtail the freedom of movement and freedom of expression of participants such as hermetically fencing off the premises.
- 6.2 Provide sufficient security measures to protect participants of LGBTI assemblies prior to as well as after the events.

7. Respect for private and family life

- 7.1 Include an inclusive definition of family covering same-sex registered and de facto partners in the Fundamental Law.
- 7.2 Abolish the discriminatory provisions in the Registered Partnership Act concerning taking the partner's name and parenting.
- 7.3 Abolish the discriminatory provision in the Criminal Code regarding sanctioning double marriage (bigamy) but not double registered partnership.
- 7.4 Abolish discrimination of lesbian couples in access to assisted reproductive technology.
- 7.5 Introduce publicly available guidelines on adoption suitability criteria including the principle of non-discrimination based on sexual orientation and gender identity.
- 7.6 Give due attention to same-sex families in university curricula for legal studies, psychology, medicine, humanities and social sciences, and social work.
- 7.7 Introduce sensitizing and accredited in-service training covering same-sex families for social professionals working in the field of child protection.

8. Respect for private and family life and access to health care for transgender persons

- 8.1 Revise current legislation and practice on legal gender recognition to clarify requirements and the procedure; and to fully separate the legal procedure from accessing medical services.
- 8.2 Provide full funding for gender affirming treatments by public health insurance.
- 8.3 Introduce a medical protocol on trans specific healthcare based on informed consent in line with the WPATH's Standard of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.
- 8.4 Publish a client-oriented guide on medical treatment and social services available for trans persons and their families.
- 8.5 Establish interdisciplinary medical teams, including psychological, psychiatric, endocrinological, surgical experts, and social workers for the provision of trans-specific health care.
- 8.6 Publish a comprehensive and accessible description of the legal gender recognition procedure on government information websites.

- 8.7 Include information on the social situation, and special health needs and concerns of trans persons into the university curricula for health care professionals.

9. Employment

- 9.1 Extend the requirement to adopt equal opportunity plans to all public employers regardless of the number of employees and lower the threshold concerning the number of employees for private employers.
- 9.2 Remove from the relevant legislation references to transsexualism (F64.00) as a mental condition disqualifying transgender persons from serving in the police and armed forces.
- 9.3 Issue guidelines on the content of equal opportunity plans with specific reference to the needs of LGBTI employees.
- 9.4 Issue guidelines to employers on the implementation of data protection legislation with regards to gender recognition in the context of employment.
- 9.5 Issue a model code of conduct and non-discrimination policy with specific reference to sexual orientation and gender identity.
- 9.6 Develop specific programmes improving the employability of trans persons to prevent long-term unemployment including trainings and financial incentives to employ them.
- 9.7 Introduce financial incentives for employers to provide diversity trainings for their employees specifically including issues concerning sexual orientation and gender identity, or provide financial support for such trainings by LGBTI civil society actors.
- 9.8 Include information on equal treatment procedures and discrimination based on sexual orientation and gender identity into publicly funded materials on employees' rights distributed amongst the general public.
- 9.9 Integrate equal treatment issues covering sexual orientation and gender identity into the work of publicly funded employment legal aid services.

10. Education

- 10.1 Amend the legislation on the National Basic Curriculum and the Framework Curricula to include information on sexual orientation and gender identity.
- 10.2 Ensure that all textbooks and other educational materials authorized for use in public education cover sexual orientation and gender identity in an objective manner, and promote tolerance and respect for LGBTI persons.
- 10.3 Issue a model policy of non-discrimination and anti-bullying for educational institutions with specific reference to sexual orientation and gender identity.
- 10.4 Integrate issues of homophobic and transphobic bullying into anti-violence and safe school programmes.
- 10.5 Include information on the social situation of LGBTI persons and the specific needs and concerns of LGBTI youth in teachers' training curricula.
- 10.6 Introduce sensitising and accredited in-service training for teachers, school counsellors, school nurses and school psychologists covering sexual orientation and gender identity.
- 10.7 Include information on sexual health concerns of LGBTI persons into compulsory sexual education in schools.

- 10.8 Provide moral and financial support for awareness raising school programmes provided by LGBT civil society actors, and create incentives for school administrators to invite such programmes to their schools.

11. Health – other than transgender specific health issues

- 11.1 Adopt a national HIV/AIDS strategy; include men who sex with men (MSM) and trans people as specific target groups.
- 11.2 Adopt a national mental health strategy; include LGBTI persons, and LGBTI youth in particular, as a specific target group.
- 11.3 Introduce sensitizing training for doctors, medical staff and patients' rights representatives on discrimination against and the specific health needs and concerns of LGBTI persons as part of basic and in-service training.
- 11.4 Include LGBTI civil society actors in the National HIV/AIDS Working Group.
- 11.5 Provide funding for HIV/AIDS prevention programs targeting men who sex with men (MSM) and trans people, and suicide prevention programs targeting LGBTI persons.
- 11.6 Include questions concerning sexual orientation and gender identity in health surveys; and publish results in a format allowing for comparison between the LGBTI and the general population.
- 11.7 Integrate the needs and concerns of LGBTI persons into national and local health plans and comprehensive health test programmes.
- 11.8 Introduce a standardised satisfaction questionnaire for health care providers including questions on sexual orientation and gender identity.
- 11.9 Adopt official guidelines on the treatment of intersex children emphasizing the importance of free and informed consent.
- 11.10 Prepare and disseminate educational materials targeting parents of intersex children to assist them in accepting variations in sex characteristics.

12. Housing

- 12.1 Amend the Fundamental Law and the Law on Misdemeanours to abolish the criminalization of homelessness.
- 12.2 Introduce sensitizing training for social workers on discrimination against and the specific health needs and concerns of LGBTI persons as part of basic and in-service training.
- 12.3 Issue guidelines for homeless shelters on the specific needs and concerns of LGBTI persons and same-sex couples.
- 12.4 Commission research into the factors putting LGBTI persons at a high risk of homelessness.

13. Sports

- 13.1 Amend existing provisions on hate speech in the Sport Act to include the prohibition of homophobic and transphobic chanting.

- 13.2 Include LGBTI persons and their sport clubs as a specific target group in funding earmarked for the sport of vulnerable people.
- 13.3 Take measures to facilitate the participation of transgender persons in sports according to their preferred gender.

14. Right to seek asylum

- 14.1 Amend the Asylum Act to abolish transit zones, and measures to restrict access to the Hungarian asylum system.
- 14.2 Amend the Asylum Act to include gender identity as a separate ground for persecution.
- 14.3 Amend the Asylum Act to define LGBTI asylum seekers as a specifically vulnerable group during the asylum procedure.
- 14.4 Repeal legislation criminalizing support for asylum seekers.
- 14.5 Adopt guidelines for the assessment of sexual orientation and gender identity related asylum claims.
- 14.6 Accept the existence of any criminal sanction based on sexual orientation and gender identity in the country of origin as conclusive evidence for persecution; and allow for individual assessment of the existence of persecution even if no criminal sanction exists.
- 14.7 Introduce sensitizing training for the staff of the Immigration and Asylum Office on discrimination against and the specific needs and concerns of LGBTI immigrants and asylum seekers as part of basic and in-service training.
- 14.8 Introduce risk assessment of asylum-seekers prior to their placement in the transit zones, reception and detention centres on the basis of specific information gathered on attitudes towards other social groups, including those based on sexual orientation and gender identity.

15. National human rights structures

- 15.1 Encourage national human rights structures to play a more active role in the legislative process concerning the fundamental rights of LGBTI persons, and speak out publicly in support of LGBTI rights.
- 15.2 Conduct awareness raising campaigns amongst the general public on issues relating to sexual orientation and gender identity.
- 15.3 Organize in-house training for the staff of national human rights structures on the specific needs and concerns of LGBTI persons.

16. Discrimination on multiple grounds

- 16.1 Conduct research into the prevalence and nature of intersectional discrimination, with a particular focus on the experiences of LGBTI people who are women, Roma, living with disabilities, and poor or undereducated.

Introduction

Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.²

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement the main elements of the Recommendation and its Appendix.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

A first review of the implementation of the Recommendation and its Appendix was conducted in 2013 by the Council of Europe’s Steering Committee for Human Rights (CDDH). The report concluded that further follow-up exercises on a regular basis should be carried out.³ Such a follow-up review has been initiated by CDDH to be completed in 2018.⁴

² “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”
<https://rm.coe.int/168071fd86>

³ CDDH(2013)R77 Addendum VI

⁴ CDDH(2017)R88, §§ 37-39

The purpose of this report

The purpose of this report is to assess what progress has been made by Hungarian authorities in implementing the Recommendation, focusing especially on developments between 2013 and 2018. The report also aims to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a baseline against which further progress in implementing the Recommendation in the coming years can be measured. The report builds on the previous report by Háttér Society that assessed the implementation of the recommendation as of January 2013.⁵

The report has been prepared by three prominent LGBTI organizations in Hungary: Háttér Society, the oldest and largest LGBTQI organization in the country offering support services, conducting research and providing training since 1995; the Hungarian LGBT Alliance, a national umbrella organization founded in 2011 bringing together LGBTQI organizations in the country; and Transvanilla Transgender Association, the only organization in the country focusing specifically on trans, gender-nonconforming and intersex issues.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. Second, the Committee of Ministers of the Council of Europe, which is conducting a review of progress towards the implementation of the Recommendation in 2018. It is intended that this report will contribute to that review.

Methodology

The report's assessment of progress is based on the questionnaire disseminated by CDDH to member States, national HR institutions, and NGOs.⁶ The questionnaire was prepared by the SOGI Unit of the Council of Europe's Secretariat, in coordination with the Network of European Governmental LGBTI Focal Points. The questionnaire is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum, and recent case law of the European Court of Human Rights and other international bodies.

This questionnaire and the data which Háttér Society, the Hungarian LGBT Alliance and Transvanilla Transgender Association have compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix III to this report, entitled "Implementation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from ministries and other public bodies to letters from the three organizations listing the relevant questionnaire questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Hungary by the Council of Europe Commissioner for Human Rights, the European Commission against Racism and

⁵ Háttér Society (2013) *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*. Available at: <http://en.hatter.hu/publications/cmrec-report-2013> (hereinafter: 2013 Report).

⁶ CDDH(2018)02 23:28.

Intolerance (ECRI), the European Union Agency for Fundamental Rights (FRA), and various bodies of the United Nations including the Human Rights Council, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child.

- Research and documentation assembled by Háttér Society, the Hungarian LGBT Alliance, Transvanilla Transgender Association and other non-governmental organisations including the Hungarian Helsinki Committee, Rainbow Mission Foundation (Budapest Pride), and Atlasz LGBTQ Sports Association.

Summary report

This section summarizes the main findings of the research in highly condensed format. Detailed information, among others references to sources are included in the Implementation Report in Appendix III.

The Recommendation

The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

Similarly to the previous Constitution (Act no. XX of 1949), the new constitution, entitled the Fundamental Law of Hungary adopted in 2011 contains a general non-discrimination clause including the prohibition of discrimination based on any other ground (Article XV(2)), but no explicit reference is made to sexual orientation or gender identity. During the drafting of the Fundamental Law general human rights organisations campaigned for the specific inclusion of sexual orientation and gender identity in the non-discrimination provisions, but these proposals were rejected.

The constitutional non-discrimination provision is complemented by a comprehensive anti-discrimination legislation (Equal Treatment Act) that offers broad and far-reaching protection against discrimination specifically covering sexual orientation and gender identity. Victims of discrimination have a wide choice of remedies, including a fast and cheap procedure by a designated government agency (Equal Treatment Authority); enforcement of personality rights via civil court procedure; and sectoral remedies in media law. Only the civil procedure allows for the awarding pecuniary and non-pecuniary damages. In addition to the set of remedies available in individual cases of discrimination, the Constitutional Court offers possibilities to challenge allegedly discriminatory legislation (limited abstract review, broad constitutional complaint procedure).

While individual legal remedies exist to address cases of discrimination, there is no systematic equality policy against discrimination based on sexual orientation, gender identity and expression, and sex characteristics, and promoting the fundamental rights and well-being of LGBTI people. While the government claimed in their 2013 report on the implementation of the Recommendation that a comprehensive review was conducted as part of the drafting of the Fundamental Law in order to screen discriminatory legislative and other measures, there is no information available concerning the methodology or the outcome of that review. There are no national strategies or action plans aimed at tackling bias or prejudice in general or specifically concerning sexual orientation or gender identity, a problem that had been noted by several international organizations including the Council of Europe Commissioner for Human Rights, the European Commission against Racism and Intolerance (ECRI), the United Nations Human Rights Council. The mandate of the governmental department on equal opportunities does not specifically include a mandate to work on LGBTI issues.

The Hungarian government has taken only very limited action on implementing the Recommendation and its Appendix. An official translation was prepared and published on the website of the government in 2012. The 2013 report by Háttér Society on the implementation of the Recommendation and its Appendix was discussed in the Thematic Working Group on the

Rights of LGBT People of the Government's Human Rights roundtable, but most of the 93 recommendations of the report were rejected, limited progress was made only on 17 recommendations. No dissemination activities were conducted targeting relevant authorities and service providers. LGBTI organizations were not asked for input on the second national report to be submitted in 2018.

Appendix to Recommendation CM/Rec(2010)5

i. "Hate crimes" and other hate-motivated incidents

The key recommendations in Section I. A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate-motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

Hate crimes and other hate-motivated incidents based on sexual orientation, gender identity and expression are quite common in Hungary. While according to official statistics the number of hate crimes including all victim groups remains quite low, research among LGBTQI people in 2016 found that 46% of respondents have been victims or witnesses of hate crimes or hate speech based on real or perceived sexual orientation or gender identity, but only less than 10% reported such incidents to the authorities. There is a widely shared consensus among civil society actors that even though hate crime legislation is in place, it is severely under-enforced by the relevant authorities.

The Hungarian Criminal Code contains a *sui generis* hate crime provision called *violence against a member* of a community prescribing higher sanctions than similar acts of violence without a hate motivation. Hungarian courts also interpret hate motivation to be recognized as a base motive that allows for higher sanctions for some crimes (most notably homicide) not covered by the *sui generis* hate crimes. Since 1 July 2013, the relevant provision specifically includes references to sexual orientation and gender identity. Legislation does not recognize hate motivation in cases of blackmail, stalking, and crimes against property. Law enforcement and prison authorities have a well-developed mechanism for collecting and responding to complaints concerning human rights violations, yet the low number of reports indicates that victims are not well-informed or lack trust in the authorities.

The topic of hate crimes is not given due attention in the basic training of the police and judiciary. There is an elective course on hate crimes as part of university level police training, and while there have been some initiatives to offer specialized short term training courses to both target groups, these programmes reach only a very limited number of police officers and judges. Besides the general constitutional and statutory requirements of non-discrimination, there are no codes of conduct for law-enforcement agencies to ensure non-discrimination and respect for LGBTI persons. Issues of sexual orientation and gender identity hardly ever feature in the basic and/or further training of the police and judiciary. The concerns of victims, and in particular vulnerable victims are enshrined in legislation, but often disregarded in practice.

The low level of awareness on issues related to sexual orientation, gender identity and expression, and sex characteristics characterizes the prison system equally. Preventing and responding to violence among inmates is allegedly a priority for the Prison Service, but the special vulnerability of LGBTI inmates is not recognized. Placement of a transgender prisoner is based on their

officially registered gender, exposing pre-gender recognition trans persons to risk of harassment and humiliating treatment.

On 6 July 2013 three men among them two Roma were heading home from the Budapest Pride march when they met a group of 20-30 protesters dressed in black, marching in a military formation. The group forced the three men to stop, shouted "You are faggots! You are gypsies!" at them, and beat them up. The assault ended when police arrived to the scene, however, they did not apprehend any of the perpetrators, nor did they check their identity. The police also claimed that the victims disappeared. After widespread media attention the police conducted a thorough investigation and charged six people for violence against a member of a community based on sexual orientation and ethnicity. The court found five of them guilty. The second instance court also found the defendants guilty, and added that chanting homophobic slur as part of a larger group was also unlawful.

The West End shopping centre in Budapest includes an area that is often used by gay men to meet and socialize. On 9 April 2013, a gay man who visits this area quite often was dragged into a service corridor by four security guards, three of whom forced him into an elevator and brutally assaulted him: he was punched and kicked several times. During the attack the following statements were made "you dirty faggot, why do you have to come here", "we are fed up with you all". He was then pushed out to the street. Following the attack he went home, but did not feel well and went to the hospital. The hospital reported the attack to the police. Two police officers appeared in the hospital and started questioning him in the waiting room in the company of other patients including sensitive questions. Although the legal representative of the victim requested several times the case to be qualified as violence against a member of a community, the proper qualification only happened after the case was transferred from the local police station to a different unit as the medical expert found the injuries to be life-threatening. During the view of the scene the victim met the perpetrators, although he had specifically asked the police before to avoid contact. The victim was interviewed five times by various police officers during the investigation. The investigation was closed qualifying the case as violence against a member of a community and life-threatening bodily harm, but the prosecution did not prosecute the case as they found the evidence identifying the perpetrators to be insufficient.

ii. "Hate speech"

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

Hate speech and other forms of discriminatory language on grounds of sexual orientation, gender identity and expression have been on the rise in Hungary in recent years. Organized extreme right wing groups are known to incite to hatred primarily via Internet portals and print media, and at public gatherings. While leading public officials and representatives of governing parties have spoken out against similar forms of speech concerning Roma and the Jews, homo- and transphobic speech remains largely unaddressed by the governing political elite. This is a clear shift from the earlier period – until 2010 – when the public discourse was more balanced: homophobic and transphobic statements had always been made, but were more likely to be condemned by public officials.

The heightened protection afforded to freedom of expression in the Hungarian constitutional system has prevented the legislature to enact criminal or civil law provisions capable of effectively fighting widespread hate speech; proposals have been consistently quashed by the Constitutional Court. Since 1 July 2013 the new Criminal Code specifically addresses the most serious forms of homophobic and transphobic hate speech under the crime of incitement against a community. Due to the strict judicial interpretation requiring a clear and present danger of violence this provision has been seldom used even in response to hate speech on other grounds. An amendment to the law was adopted on 18 October 2016 due to pressure from the European Commission, which will potentially result in stricter legislation: "incitement to hatred" was replaced

by “incitement to hatred or violence”. The legislative change has so far not impacted the legal practice.

While the Civil Code provides partial protection against hate speech as a violation of personality rights, it is seriously limited by the fact that it applies only to cases where identifiable individuals are targeted. The dignity of groups based on sexual orientation or gender identity are not protected under civil law - as opposed to groups based on nationality, race, ethnicity or religion. The harassment provision of the Equal Treatment Act seems to be capable of addressing some forms of hate speech not targeting specific individuals; however, the relatively progressive practice of the Equal Treatment Authority on racist hate speech has sometimes been questioned by court decisions. The current media laws contain only general reference to the respect of human dignity and the prohibition of incitement to hatred and discrimination, without specific references to sexual orientation or gender identity. There have been a few cases where the Media Council imposed sanctions on television channels and print newspapers for inciting hatred and inciting exclusion based on sexual orientation.

On 10 July 2017, after the annual Budapest Pride March, the pro-government newspaper Magyar Hírlap published an opinion piece entitled “Let’s stop here!”. The author argued that homosexual propaganda and Pride Marches should be banned, homosexuals should be barred from becoming teachers or theatre directors, and registrars and police officers should be allowed to decline their participation in celebrating same-sex registered partnerships and protecting homosexual events. The Media Council found that the article contained hurtful and degrading language on homosexuality and called for curtailing the constitutional rights of homosexuals, which amounted to incitement to exclusion. The Council imposed a 150 000 HUF (appr. 500 EUR) fine on the newspaper.

iii. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBTI persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

Organized activism on issues concerning sexual orientation and gender identity started at the end of the 1980s in Hungary, the first organization being registered in 1988. The 1990s brought a proliferation of various organizations working in the field of LGBTI rights: there are currently over a dozen registered civil society organizations with the explicit aim to promote their rights or offer them services.

Organizations working for LGBTI people can be founded and operated freely, but governmental attacks against NGOs, most importantly those involved in human rights protection, create a hostile, threatening working environment. Attacks include legal restrictions: legislation was adopted on 13 June 2017 that require NGOs receiving more than 7.2 million HUF (appr. 22 500 EUR) annually from abroad to register as “foreign funded” NGOs, and to make reference to this in all their publications. In a set of bills entitled “Stop Soros” (referring to philanthropist George Soros, whose Open Society Foundations financially supports 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. 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”, and criminalizing support for asylum seekers were adopted. Attacks also include 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, information was leaked to the public, and organizations were labelled by governing politicians and government oriented media as committing financial irregularities. The investigations were closed without anyone being charged. KEHI also requested documents containing sensitive information, such as list of volunteers and attendees at events. The funding of LGBTI organizations by the Fund was mentioned several times by leading government officials as signs that the Fund finances useless or even harmful projects. 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. These include charging these organizations with being politically motivated or being foreign agents governed by foreign interests. While these measures do not specifically target LGBTI communities, they have a devastating impact on the situation and advocacy capacity of these communities.

In principle LGBTI NGOs can apply for funds generally available for civil society organizations on a competitive basis, but there are no funds earmarked specifically for LGBTI NGOs, funding priorities have been shaped in a way to disfavour LGBTI NGOs or NGOs working on human rights. Only a tiny fraction of public money is distributed to LGBTI NGOs, and the amount has further decreased since 2013.

The work of LGBTI civil society actors is further hampered by the increasing difficulty for them to find venues to hold their events. Several of such rejections (including that of a university, a network of youth centres and a sports facility) were found to be discriminatory on the basis of sexual orientation and gender identity by the Equal Treatment Authority.

While the legislative framework offers numerous opportunities for civil society organizations to participate in policy-making, such opportunities are severely limited in practice by failing to publish draft legislation as part of compulsory public consultation, or setting deadlines for submitting opinions that are impossible to keep (often only one day after a draft is published). The Thematic Working Group on the Rights of LGBT People of the Government's Human Rights Roundtable established in 2012 offers an institutionalized form of dialogue with LGBTI civil society actors, but recommendations brought up at the meetings are most often rejected or left without a response.

The Szeged LGBT Community is an unregistered group of activists operating in the Southern Hungarian city of Szeged. They had been organizing their community events for several months at a local youth centre belonging to the national network of youth centres called New Generation Centre which is operated with financial support by the Hungarian state. In 24 November 2017 the local manager told them they are no longer welcome at the centre since they got an order from the central administration of the network not to work with LGBT organizations which are "too political", and the centre wishes to remain neutral. The Commissioner for Fundamental Rights issued an opinion stating that civil society actors cannot be requested to stay value neutral, as they fight for certain causes. The Equal Treatment Authority found that the "neutrality" requirement was only employed for LGBT groups, which amounted to discrimination based on sexual orientation and gender identity. The Authority imposed a fine of 150 000 HUF (appr. 500 EUR) on the centre.

iv. Freedom of expression

Section IV of the Appendix requires member states to guarantee freedom of expression to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, and encouraging pluralism and non-discrimination in the media.

While open censorship of LGBTI related materials does not exist in Hungary, and LGBTI groups and organizations are free to receive and transmit information and ideas relating to sexual orientation and gender identity, LGBTI organizations often find it hard to communicate their message to wider audiences. The government has completely monopolized the public media, and pro-government businesspeople have taken over a significant portion of privately owned media as well. Dissenting voices including voices of LGBTI organizations are rendered nearly invisible in these media outlets. Regular media monitoring of news programs by the National Media and

Infocommunications Authority was extended to cover LGBTI organizations as well in 2014; the most recent report found that in the second half of 2017 LGBTI organizations amounted to only 1.1% of all civil society speakers, only 0.4% in the public media. The Public Service Code fails to include LGBTI persons, and while various stakeholders are represented in the Public Service Board, LGBTI organizations do not have the right to delegate members.

Following earlier failed attempts by Jobbik MPs and local councillors to ban the “promotion of sexual deviance” in 2012, the village of Ásotthalom led by a mayor who was at the time also the vice-president of Jobbik, adopted a local decree that banned – among others – propagating same-sex marriage and family as anything other than marriage or parent-child relationship. The ban was found unconstitutional by the Csongrád County Government Office, the Commissioner for Fundamental Rights, and was later annulled by the Constitutional Court.

v. Freedom of peaceful assembly

Section IV of the Appendix also requires member states to guarantee freedom of peaceful assemblies via the protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

Demonstrations, marches and other freedom of assembly events promoting the rights of LGBT persons have been held since the beginning of the 1990s: the first public gathering entitled Pink Picnic was organized in 1992, and since 1997 Pride Marches have been held on an annual basis in Budapest. While in the early years these events did not encounter any difficulties neither by authorities, nor by anti-gay counter-demonstrators, severe attacks after 2007 prompted the police to include heavy security measures including the hermetic fencing off of the March from the rest of the city limiting potential participants to join or leave the March after it has started. After the number of violent counter-demonstrators have significantly decreased in 2013-2014, the Pride organizers requested that the police provide less restrictive security measures, but their request was rejected. In protest to the police decision, Pride organizers requested a last minute change of the route in 2017 so that the police would not have time to put up fences. The Pride took place without any security incident, but the person named as the main organizer of the event was fined for requesting a last minute change of the route, the sanction was decreased by the court to a warning. In 2018 organizers could successfully negotiate security measures with the police, and the event took place largely without fences.

The police have not banned Pride Marches or made unsubstantiated references to the violation of public morals by participants since 2012. Leading government politicians including the mayor of Budapest continue to condemn and distance themselves from the March. Conservative groups organized online petitions calling the government to ban the March, no government officials stood up publicly to uphold the right of LGBTI groups to freedom of assembly.

vi. Respect for private and family life

Paragraphs 18, 19, and 23-27 of Section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Consensual same-sex sexual acts are not criminalized since 1962, and the Constitutional Court equalized the age of consent in 2002. Following an amendment to the Civil Code in 1996 same-sex cohabiting couples are conferred the same rights and obligations as different-sex couples, except in the field of assisted reproduction. The institution of registered partnership for same-sex

couples exists since 2009. The rights and obligations of registered partners are equivalent to those of spouses in most fields of life with the exception of parenting and taking the partner's name. Since 2012 marriage is defined as a union between a woman and a man in the Fundamental Law. An increasing number of Hungarians support same-sex marriage and parenting: the most recent poll in 2016 found support for marriage to be at 36%, and for parenting at 46%.

Same-sex parenting remains an issue where *de jure* discrimination against same-sex couples continues. Even though single individuals are permitted to adopt children, the legislation prescribes authorities to give preference to married couples. Assisted reproduction is not legally available to lesbians living with their same-sex partners (whether cohabiting or in a registered partnership). The Commissioner for Fundamental Rights found that preference rules in various pieces of legislation on adoption are contradictory, and employed in an arbitrary manner, which in a particular case of a woman living in a lesbian partnership resulted in the unlawful and discriminatory rejection of her application to adopt. Discriminatory legislation on adoption and assisted reproduction also sends the message to society and public officials that LGBTI people are not suitable parents, which encourages discriminatory court decisions on custody and visitation rights, or the lack of enforcement of otherwise impartial decisions.

While legislation grants most of the rights of spouses to registered partners, same-sex couples often find it difficult to make use of those rights due to the staff of public authorities being unaware or unwilling to apply the legislation. In 2016 the National Tax and Customs Administration (NTCA) following guidance from the Ministry of National Economy issued an opinion stating that registered partnership legislation does not cover tax issues, and thus no tax benefits afforded to spouses are afforded to registered partners. The Commissioner for Fundamental Rights launched an investigation and found that the position was unlawful and discriminatory. In 2018 the Budapest County Office issued an opinion that childcare allowance should not be afforded to the registered partner of an adopting parent, upon complaint the opinion was revoked.

Such problems arise because the staff of government offices, guardianship authorities, child protection services, judges, psychologists, and mediators involved in the procedures receive no guidance or training on how to deal with cases involving partners or parents with non-mainstream sexual orientation and/or gender identity.

In 2015 two surviving registered partners turned to the legal aid service of Háttér Society complaining that they were ordered to pay inheritance tax, even though spouses have full inheritance tax exemption. Following the intervention of Háttér Society the tax authority revoked both decisions and returned the already paid inheritance tax. Since the two separate, but very similar cases made it likely that the problem was of systemic nature, Háttér Society requested the National Tax and Customs Administration (NTCA) to reconsider all similar cases. Rather than reviewing their prior practice, the NTCA responded that in consultation with the Ministry of National Economy they arrived to the conclusion that registered partners are not entitled to any tax benefits afforded to spouses. Háttér Society turned to the Commissioner for Fundamental Rights, who found the practice unlawful and discriminatory.

A lesbian couple from the Southern Hungarian city of Pécs decided to become parents via adoption. Since Hungarian legislation does not allow joint adoption for same-sex couples, they decided that one of them will legally apply to adopt. From the beginning of the procedure they were very open about their relationship, and the psychological assessment found that they are particularly suitable to become parents. In a few months' time they were offered a 16-month-old girl of Roma origin. The adoption procedure was already very advanced when one day the child protection service called them and said: due to an intervention from "above" the adoption procedure had to be stopped. The couple turned to the Commissioner for Fundamental Rights, who found that that several fundamental rights were infringed in the procedure, such as the right of the child to protection and care and the right to fair procedure, and as a whole the procedure amounted to discrimination based on sexual orientation.

vii. Respect for private and family life and access to health care for transgender persons

Paragraphs 20, 21 and 22 of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. Paragraphs 35 and 36 of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Since trans people have historically been – and to a great extent continue to be – largely invisible, state institutions were for a long time highly reluctant to deal with their issues: from the early 2000s there was an uncodified practice that allowed for legal gender recognition without medical interventions, neither hormonal treatment nor gender affirmation surgeries were a prerequisite. In 2016 the Commissioner for Fundamental Rights issued a report calling for the adoption of legislation codifying the procedure. Following the report the government announced that legislation will be drafted, and suspended all legal gender recognition procedures until the new legislation was adopted. The suspension lasted for over a year, meanwhile several trans persons turned to the European Court of Human Rights claiming that lack of legal gender recognition infringed on their human rights, the case is still pending. On 20 December 2017 a new government decree on registries was adopted, which contains a brief provision on legal gender recognition as well. From January 2018, legal gender recognition procedures were resumed, but they were suspended once again in June 2018. The Ministry of Human Capacities argues that the current practice is not in line with data protection legislation, in particular with the GDPR.

Before the last suspension, the requirements for legal gender recognition were being over 18 years old, being single, and having a mental health diagnosis of transsexualism supported by a gynaecology/urology specialist, so legal gender recognition is not based on self-determination. The replacement of documents, such as ID cards, passports, driver's licenses, diplomas and work permits were adequately performed after the new birth certificate containing no reference to the previous gender was issued.

Legislation on mandatory health insurance and related lower level regulation prescribe that only 10% of the costs of the gender affirming treatment shall be covered by mandatory health insurance. In comparison, public funding for other treatments and medical aids fall in the range between 50-98%. The 10% funding, offered solely for gender reassignment is thus discriminatory and largely disproportionate. On the other hand, there exists a general procedure on equity-based coverage of health treatments, that allows for higher coverage in case the applicant is financially indigent. A few trans people have successfully secured funding for their vaginoplasty this way.

In addition to the issue of funding, access to adequate health care for trans persons is severely limited by the lack standards and guidelines concerning their treatment. The scarcity of care providers results in limited choice and heightened vulnerability. Trans topics are not adequately included in medical training curricula.

A trans woman visited a urologist to request a medical opinion for her legal gender recognition procedure. The urologist rejected to issue the opinion, and said that he would be ashamed if his son would do such a thing, adding that the woman could just as well have a hole made on her arm, as her vagina will be completely insensitive. The woman turned to the Equal Treatment Authority, and the parties settled: the hospital apologized, agreed to draft guidelines to urologists on trans issues together with the applicant, and to submit those guidelines to be published in a urological journal.

viii. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

Employment is one of the spheres of life where discrimination and harassment based on sexual orientation and gender identity are the most common in Hungary. Research among LGBTQI people in 2016 found that 29% of respondents were subjected to discrimination or harassment based on their sexual orientation or gender identity, and 62% heard hurtful or ridiculing comments about LGBTQI people at their workplace. Only 29% of respondents reported being fully out to their colleagues and bosses. 59% reported lying about their partner's gender, 44% said they felt lonely at work. The survey also found that transgender people are at a high risk of unemployment: 61% of transsexual, and 52% of other transgender respondents reported having been unemployed for over three months during their life.

The Equal Treatment Act together with the Labour Code provides protection against the difference in treatment on the basis of sexual orientation and gender identity in access to employment, promotion, dismissal and pay. Certain public employers have the duty to adopt workplace equal opportunity plans, but the specific content is not regulated. These plans seldom go beyond referencing sexual orientation and gender identity in their non-discrimination provisions (if at all) and do not contain concrete positive measures promoting the inclusion LGBTI persons at the workplace.

While there are some training programmes available on diversity and non-discrimination at the workplace, very few companies actually participate in these, and LGBTI issues are covered only at the very basic level. There are some general materials explaining discrimination related complaint mechanisms, but these are not specific to the field of employment. Guidebooks on employee rights are usually silent on discrimination issues. There are several public programmes and funding schemes aiming at increasing the employability of vulnerable populations, but none of them specifically target transgender persons.

While homosexuality was removed from the legislation concerning the health and psychological eligibility for members of the armed forces and similar positions, reference to transsexualism is still included.

In 2015 a transgender women from a small village in Western Hungary applied for job at a clothes shop. She had been living, dressing and behaving as a woman for six years, but she had not yet applied for legal gender recognition. She turned up at the job interview, but when the sales manager saw her credentials bearing a male name, she told her that they were seeking a female shop assistant, and then laughed at the applicant when she reaffirmed she was a woman. The woman turned to the Equal Treatment Authority who found that the employer discriminated her on the basis of her gender identity. The Authority also found that seeking a female shop assistant exclusively was direct discrimination on the basis of sex. As a sanction, the Authority forbade future unlawful conduct, and ordered that its decision be published online.

ix. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual

tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

Education is another sphere of life where discrimination and harassment based on sexual orientation and gender identity are common in Hungary. Research among LGBTQI youth aged 13-21 in 2017 found that 53% of respondents reported feeling unsafe at school in the past year because of their sexual orientation; and 37% because of their gender expression. Almost two-thirds of respondents (64%) had been verbally harassed because of their sexual orientation; and more than half of them (56.2%) because of their gender expression. 14% of respondents were assaulted at school because of their sexual orientation; 11% because of how they expressed their gender. 70% reported hearing homophobic and 64% hearing transphobic remarks from their teachers or other school staff. Nearly two-thirds of respondents (64%) said that they had been taught nothing about LGBTQI issues in school, and nearly a quarter (22%) said that they had only been taught negative information.

Discrimination in the sphere of education not only affects LGBTI youth, but also children raised by same-sex parents. Research among LGBTQI people raising children⁷ found that more than half of them were not out to educational institutions about their LGBTQI status (55% for kindergartens, 51% for schools). 3% faced direct discrimination in kindergartens, 4% faced obtrusive questions in schools. 20% said the staff of schools and kindergartens were very surprised when they found out about them raising children in rainbow families.

The Equal Treatment Act includes specific provisions on non-discrimination in education, and the law on public education contains general provisions on safe school environment, but no policies, codes of conduct or official handbooks have been introduced to apply this principle to LGBTI students. The Equal Treatment Authority issued guidance on preventing and responding to harassment in schools, but the publication has not been disseminated widely. Several civil society projects were or are carried out to address bullying against minority students, but none of them received public funding. The issue of homo- and transphobic bullying does not feature in school anti-violence projects. A research in 2015 with the participation of 331 schools found that only very few of them have comprehensive policies to address bullying.

The National Basic Curriculum does not refer to information on sexual orientation or gender identity; schools are free to choose whether to incorporate such topics into their curricula. Research results show that the majority of school textbooks remain silent on these issues. The Ministry of Human Capacities claimed in 2012 that the introduction of ethics education would allow for the discussion of the topic, but of the 16 ethics textbooks currently in use, only one covers the issue, and even that one claims that “homosexuality should never be considered as having the same value as heterosexuality”. The research also found portrayal of homosexuality as unnatural. Of the 21 textbooks including discussions on families only two discussed LGBTQI issues in this context. The lack of proper discussions of homosexuality and transgender issues in schools have been noted by the Council of Europe Commissioner for Fundamental Rights and the European Commission against Racism and Intolerance.

Supporting LGBTI students to enable them to live in accordance with their sexual orientation and gender identity is severely limited by the lack of discussion on related issues in teacher training curricula.

⁷ Háttér Társaság (2017) *Szivárványcsaládok helyzete, 2016-17 Kutatási összefoglaló*. Available at: <http://hatter.hu/kiadvanyaink/szivarvanycsaladok-2017>, p35.

In 2013 the two mothers of a 13-year old boy decided to find a new school for their son. The boy's interview with the future form master went fine, and a trial-week was agreed on. At the end of the interview, the mother told the teacher that she was raising the child together with her same-sex registered partner. The teacher did not react in person, but the next day she wrote an email stating that "due to their family status" the child could not be admitted to her class. The family turned to the Equal Treatment Authority. The school argued in the procedure that it was the interest of the rejected boy they based their decision on: they only wanted to prevent the bullying of the child. The Authority found that the rejection amounted to discrimination based on sexual orientation and imposed a 50.000 forint (c. €600) fine on the school. The family also turned to the court for compensation: agreeing with the legal assessment of the Authority the court awarded the mother 350,000 forints (c. €1,100) in non-pecuniary damages.

x. Health

Paragraphs 33 and 34 of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

While research results show that the level of open discrimination based on sexual orientation by health care providers is relatively low compared to other spheres of life, it is very telling that according to research among the LGBT community in 2010 the large majority of LGB people remained silent about their sexual orientation to their doctors: only 25% are fully or partially out to their GPs, and the situation is only slightly better for specialists (37%). Research on the experience of trans people in healthcare show a significantly worse picture: 19% reported having been rejected treatment, 20% having been harassed or humiliated, and 31% of inappropriate intimate questions. 33% of respondents reported avoiding necessary treatments due to fear of discrimination or intolerance.

Hungarian data confirm findings of research carried out in other countries that LGBTI people are at a significantly higher risk of mental health problems including depression, suicide, alcohol and drug abuse, and that this higher risk is clearly linked to the experience of discrimination and the internalization of negative attitudes towards minority sexual orientations. Research also shows several barriers, including substantial geographical inequalities in accessing sexual health prevention, testing and treatment services.

There is reluctance in the health care system and among policy-makers to acknowledge and address the specific health concerns and needs of LGBTI persons. While the Equal Treatment Act and the Health Care Act contain references to equal treatment and respect for human dignity, there are no guidelines or campaigns to assist health care providers to translate these principles into their practice with LGBTI patients.

None of the large-sample health surveys conducted in recent years contained questions on sexual orientation or gender identity. While there is some awareness among Hungarian experts that LGBTI people are specifically at risk of suicide, there are no public suicide prevention programmes targeting them. Some of the health concerns specific to LGB and specifically trans people are present in medical training programs, the issues covered are very scarce, and oftentimes limited to the issue of sexually transmitted diseases, especially HIV. LGBTI concerns have not been included in the monitoring and quality assessment of health-care services. Only a minor fraction of school-run educational programmes on sexual health are LGBTI inclusive.

In May 2013 a lesbian couple living in a small village volunteered to donate blood at the local blood drive. They were interviewed by a doctor one after the other. When the doctor insisted on asking information about why the second woman did not have a child, the woman shared with the doctor that they were a couple with the woman the doctor had just completed examining. The doctor ran out of the room and stopped the preparation for the blood donation of the other woman and stated in front of several other donors in the room that "this is a sickness", "you should give up with this lifestyle at once", "the kinds like you cannot give blood". The couple turned to the Equal Treatment Authority. The parties settled: the Blood Donation Service issued an apology and agreed to include in their future brochure that a long term relationship between two women is not an exclusion criteria for blood donation.

xi. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

Homelessness is one of the most alarming social problems in Hungary with the number of homeless people growing significantly every year. The problem is linked to the lack of social housing that follows from excessive privatization after the transition in 1989 resulting in a housing market dominated by private actors. Rather than addressing the root causes of homelessness and improving services available to them, the government tried to solve the problem by moving homeless persons out of sight by criminalizing living on the street.

While there is no specific research on homelessness among the LGBTI population, general research on the situation of LGBTI people shows that the factors contributing to homelessness in other countries are equally present in Hungary. Reports about cases of discrimination against LGBT persons and/or same-sex couples at homeless shelters show a very low awareness of the problem. Reports about discrimination based on sexual orientation and gender identity when renting or buying apartments remain rare, this is most likely linked to a general tendency to hide such information from sellers/landlords.

The Equal Treatment Act contains both general provisions and provisions specific to housing that prohibit discrimination based on sexual orientation and gender identity in the sale or rent of apartments and loans for housing purposes. The problem lies in the lack of information materials that explain these provisions in plain language to private landlords. The Equal Treatment Act also covers access to shelters and emergency accommodations. A practical problem is that most domestic violence shelters target women and their children, and men escaping abusive same-sex partners might not find appropriate placement.

There are no specific programmes targeting LGBTI homelessness, and LGBTI concerns are not included in large-scale publicly funded homelessness programmes. There is a severe lack of research data on LGBTI homelessness. Some university courses for social workers are inclusive of LGBTI issues, but homelessness is not a specific issue discussed.

In September 2017, a 20 year university student was threatened with eviction by his landlord after the landlord found out that his tenant was gay. The landlord also said that the tenant and his family should be happy that he would not request compensation in court.

In May 2017 a 68 year old lesbian women requested from the local government to be admitted as co-tenant in the apartment rented by her registered partner from the local government. The relevant subcommittee of the local assembly rejected her request without providing any reason. The local government also failed to inform her that as a registered partner she can live in the apartment as a co-tenant without a special permission as spouses - and thus registered partners - have a statutory permission to reside in public housing rented by their spouses.

xii. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBTI organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

While Hungary takes pride in being a particularly successful sports nation, and specific efforts have been devoted to making sports activities accessible to vulnerable groups including those with disabilities or from minority ethnic communities, the issue of LGBTI people in sports has remained largely ignored. The homo- and transphobic culture in sports is well demonstrated by the fact that not a single known sportsperson has come out of the closet in Hungary.

While the Fundamental Law and the Sport Act grant to right to sport to everyone, and the latter contains specific provisions on paying attention to equal opportunities and vulnerable groups in sports, there have been no specific measures to include LGBTI persons in sports. Several sport organizations and clubs have their own codes of conduct, at most they are general enough to cover sexual orientation and gender identity, but none cover them explicitly. Anti-discrimination campaigns in sports are rare in general, and are only limited to racism and xenophobia. Organizers of sport events carry the duty to remove participants who incite to hatred, but only racist chanting is specifically mentioned.

LGBTI sports associations have reported difficulties in collaborating with mainstream sports clubs and decision-makers in sports administration. Although there are several sports clubs targeting LGBTI people in Hungary, they receive no or minimal public funding; schemes available for the sport of disadvantage groups do not consider LGBTI persons as a target group. A 2017 case in which a local government owned swimming pool rejected an LGBTQ sports association's request to rent a lane for their sports day has received wide media coverage.

There is a general lack of awareness about the specific concerns and barriers to participating in sports for transgender persons even among LGBTI sports associations; there is no information on initiatives to address these issues.

Atlasz LGBTQ Sports Association was looking to rent a swimming lane for their sports day to take place on 4 February 2017. After confirming the price and availability of the lane, the local government owned swimming pool cancelled their reservation when they found out the rentee would be an LGBTQ sports association. The association turned to the Equal Treatment Authority who found that the cancellation amounted to discrimination based on sexual orientation and gender identity, and imposed a fine of 1 million HUF (appr. 3 000 EUR). The Authority found that the claim of the swimming pool that the cancellation was due to overcrowding was not substantiated by evidence, and that the house rules of the swimming pool were amended only after the legal procedure was launched to support the legal argumentation of the company. The Metropolitan Court of Budapest upheld the decision of the Authority.

xiii. Right to seek asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are

not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

The sharp increase in Europe in the number of asylum seekers culminating in 2015 also affected Hungary: while in 2013 18 900 asylum claims were submitted, in 2014 this increased to 42 777, and in 2015 to 177 315. The Hungarian government responded to these changes by adopting a number of legal changes and physical barriers to divert migration flows from the country. This included the building of a fence on the Southern border, designating Serbia as a safe third country, and allowing for expedited asylum determination with a lack of procedural safeguards. A system of transit zones (closed container barracks set up next to the border where asylum seekers have to wait for their case to be processed) was also implemented in 2015, which provide the only option for asylum seekers to legally enter the country. Currently, only 1 person/day is allowed to enter Hungary in each transit zone, resulting in very long waiting times (often up to 1 year) in Serbia. The access of civil society actors offering legal and psycho-social support to asylum seekers is restricted. A chamber of the European Court of Human Rights found detention in the transit zones unlawful (the case is currently pending before the Grand Chamber), and the European Commission against Racism and Intolerance also concluded that the prison-like facilities provided inappropriate for receiving asylum seekers. The legal changes were accompanied by a government-run billboard and media campaign inciting hostility toward migrants and asylum-seekers by linking them to terrorism.

While these provisions are not particularly targeting LGBTI asylum seekers, the general deterioration of the Hungarian asylum system also impacts them negatively. The Asylum Act continues to mention sexual orientation as a ground of persecution, although gender identity is not explicitly referenced, the practice of the Immigration and Asylum Office (IAO) recognize trans status as a ground of persecution as well. There is no official guidance on assessing asylum claims related to sexual orientation and gender identity, IAO claims to have circulated the UNHCR's guidelines pertaining to the issue. For many years IAO requested psychological or psychiatric opinions to assess the sexual orientation of the applicant, a practice that was found illegal by the Court of Justice of the European Union. There is no separate training provided for those who work with LGBTI refugees and asylum seekers within the authority neither in assessing their application, nor on how to provide a safe and supportive environment. A new provision offering limited recognition of trans persons' gender identity during the asylum procedure was adopted on 15 December 2017, but its impact on the safety and well-being of trans asylum seekers is yet to be assessed. Some LGBTI asylum-seekers reported humiliating treatment, including verbal and other forms of abuse by fellow asylum seekers and guards as well. These problems have been exacerbated by the introduction of transit zones, which also removed the previously existing option of being placed in private accommodation.

The system for the integration of recognized refugees has also undergone significant changes: all previously existing forms of support (both financial and in-kind) have been abolished, refugees have to rely on the general social services available to anyone in the country, disregarding the special needs they might have. Trans refugees face further difficulties as the Hungarian authorities deny their requests for legal gender recognition, a practice that has been recently found unconstitutional by the Constitutional Court. The case is also pending before the European Court of Human Rights.

An Iranian trans man arrived to Hungary in the summer of 2015, and asked for asylum. The Hungarian authorities found that he had been persecuted in his home country due to being transgender, and thus recognized him as a refugee. His documents, however, still referred to him as female, so he requested legal gender recognition according to the regular Hungarian procedure. The authorities rejected his request on the ground that Hungary does not have jurisdiction in his case, and he should submit his request in Iran, the country where he had been persecuted. The authority's decision was challenged in court, but the court rejected to fill the gap through judicial law-making in a situation where no law is applicable. In June 2018 the Constitutional Court found that it was an unconstitutional omission that the law does not provide for legal gender recognition and related name change for trans people legally residing in Hungary permanently. The case is also pending in front of the European Court of Human Rights.

A Nigerian man applied for asylum in Hungary in April 2015, after he had suffered serious atrocities in his home country because of his homosexuality. Although the authorities did not find his statements contradictory, they rejected his application based on an 'expert's report' which stated that the client's gay sexual orientation cannot be confirmed. The expert opinion was based on projective psychological tests (namely, the Rorschach and Szondi tests), the reliability of which to measure the sexual orientation of a person is strongly questioned in the psychological community. The man challenged the authority's decision in court, and the judge referred the case to the Court of Justice of the European Union. In January 2018 the Court decided that such expert opinions cannot be relied on when assessing the credibility of asylum seekers.

xiv. National human rights structures

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

While following the transition in 1989 an elaborate system of national human rights structures was set up in Hungary which was further strengthened by the establishment of the Equal Treatment Authority in 2005, these achievements have been significantly undermined by constitutional reforms passed following the change of the government in 2010. Both the Commissioner for Fundamental Rights and the Equal Treatment Authority has mandate to investigate complaints related to sexual orientation and gender identity, and to raise awareness about the rights of LGBTI persons. Activities of the Equal Treatment Authority is largely limited to handling individual cases of discrimination, and some awareness raising among the general population as well as actors covered by the scope of the Equal Treatment Act, it does not address the systemic nature of discrimination, or discrimination resulting from legislation. The Commissioner for Fundamental Rights on the other hand, has become a crucial ally to LGBTI people in the country issuing thorough reports on such diverse issues as legal gender recognition, the rights of registered partners, and same-sex adoptions. The Commissioner also raised awareness on the human rights situation of trans and intersex persons by organizing public workshops. The Commissioner regularly stands up for the rights of LGBTI persons by issuing press releases on the International Day Against Homophobia and Transphobia, or sending welcoming words to the participants of the Budapest Pride Festival.

xiv. Discrimination on multiple grounds

Intersectional discrimination only receives limited attention by both public bodies and civil society actors. There are no specific provisions in the Equal Treatment Act or any other legislation on discrimination on multiple grounds. Most civil society actors have concentrated on improving the situation of particular social groups (Roma, people with disabilities, women, LGBTI people), and have been invested in establishing case law for their particular protected characteristics, and have not been not interested in testing how the legal system would treat more complicated cases of

discrimination on multiple grounds. Some policy documents focusing on other disadvantaged groups (Roma, people living with disabilities, youth) are aware of the issue of multiple discrimination, but do not include sexual orientation or gender identity among the intersecting grounds.

Some survey research by civil society targeting LGBTI people included questions on ethnicity, religion and disability that allow for comparing the experiences of various subgroups, but results have not been published; a qualitative approach is largely missing. Recent years have brought some progress on the level of community organizing including events focused on Roma LGBTI people, Jewish LGBTI people, and LGBTI people with hearing disabilities, but these initiatives only reached a very limited number of people.

Appendix I: Recommendation CM/Rec(2010)5

(Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as “the Convention”) and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights (“hereinafter referred to as “the Court”) 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;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and

support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should 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; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Appendix II: Glossary

This report uses a number of terms and concepts, which are defined and clarified below in order to facilitate the full understanding of the report. The definitions below are built on the report *Discrimination on grounds of sexual orientation and gender identity in Europe* published by the Commissioner for Human Rights of the Council of Europe in 2011,⁸ although some amendments have been made to accommodate newly emerging terminology.

Discrimination is legally defined as unjustified, unequal treatment:

- **Direct discrimination** occurs when for a reason related to one or more prohibited grounds (for example, sexual orientation and gender identity) a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when, for a reason related to one or more prohibited grounds, a person or group of persons is subjected to a detriment.
- **Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds (including sexual orientation and gender identity) at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Gender identity refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, **gender expression**) such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as “transgender” persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

Gender affirming treatment refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity. Hate crime towards LGBT persons refers to criminal acts with a bias motive.

Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

⁸ http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf

Hate-motivated incident are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

Hate speech against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

Heteronormativity can be defined as the institutions, structures of understanding and practical orientations that make heterosexuality seem coherent, natural and privileged. It involves the assumption that everyone is heterosexual, and that heterosexuality is the ideal and superior to homosexuality or bisexuality. Heteronormativity also includes the privileging of normative expressions of gender – what is required or imposed on individuals in order for them to be perceived or accepted as “a real man” or “a real woman” as the only available categories.

Homophobia is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice. **Transphobia** refers to a similar phenomenon, but specifically to the fear of, and aversion to, transgender persons or gender nonconformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

Intersex people are persons who are born with chromosomal, hormonal levels or genital characteristics (that is, **sex characteristics**) which do not correspond to the given standard of “male” or “female” categories as for sexual or reproductive anatomy. This word has replaced the term “hermaphrodite”, which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

LGBTI people or LGBTI persons is an umbrella term used to encompass lesbian, gay, bisexual, transgender, and intersex persons. It is a heterogeneous group that is often bundled together under the LGBTI heading in social and political arenas. Sometimes LGBTI is extended to include queer persons (LGBTQI).

Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

Transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners.

Transsexual refers to a person who has a gender identity that falls within the traditional binary of male and female, but which does not correspond to the sex assigned at birth. Transsexual people have a desire to fully integrate to the gender they identify with, which often also includes a profound need to modify bodily appearance or function by undergoing gender affirming treatment.

Transvestite (cross-dresser) describes a person who regularly, although part-time, wears clothes mostly associated with a gender different from their birth gender.

Appendix III: Implementation Report

Section I – Implementation of the Recommendation

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, [...]

Recommends that member states,

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

Question 1

Has a review been carried out of existing legislative and other measures which could result directly or indirectly in discrimination on grounds of

- sexual orientation?

Yes No Partially

- gender identity?

Yes No Partially

Summary:

While the Government in their 2013 report⁹ claimed that such a review has been performed as part of drafting the new constitution (Fundamental Law) in 2010-2011, no information is available about the methodology or outcome of that review. Although there is an institutional and legal framework for reviewing draft legislation, and assess their constitutionality and indirectly their compliance with international obligations, there is no publicly available information about whether such a mechanism is used to identify legislative and other measures which could result directly or indirectly in discrimination on grounds of sexual orientation or gender identity.

Detailed analysis:

The By-laws of the Ministry of Justice¹⁰ contain a provision that makes the constitutional review of draft legislation mandatory in the legislative process. The Deputy State Secretary Responsible for Coordinating the Preparation of Legislation and for Public Law Legislation is responsible for the constitutionality of all legislation, including their conformity with fundamental rights and international obligations [Article 37(1n)]. The task is carried out by sending written opinion about the constitutionality of draft legislation when the draft is on the agenda Government meetings [Article 37(1j)].¹¹ It is important to note that such legal scrutiny only applies in cases where the bill or other piece of legislation is submitted by the Government or one of its members; the procedure may be circumvented if the bill is submitted by a Member of the Parliament (very often used by the governing coalition). The Equal Treatment Authority (ETAAuth)¹² also has an explicit mandate to comment on draft legislation or reports concerning equal treatment, and it is also entitled to

⁹ Available at: <https://rm.coe.int/1680460c2c>

¹⁰ Order no. 7/2014. (XI. 14.) of the Minister of Justice on the By-Laws of the Ministry of Justice.

¹¹ The authors have not received information from the Ministry on the nature and content of such review, the above information is based on the publicly available by-laws. Similarly, there is no information available with regard to an extensive review prior the adoption of the comprehensive anti-discrimination legislation.

¹² See also Question 52.

submit legislative proposals on issues relating to the principles of equal treatment and equal opportunities. The ETAAuth shall inform the public and the Government about the enforcement of equal treatment as well.¹³ The Commissioner for Fundamental Rights (CFR) also has a mandate to comment on the draft legislation with relevance to its work, and to propose the adoption of legislation or amendments to existing legislation.¹⁴ However, ETAAuth¹⁵ claims that they can only provide such opinion if they are officially asked to do so by the relevant ministries, and they were not approached in any of the cases where the legislation negatively impacted the rights of LGBTI people.

and are there measures in place to redress any such discrimination?

Yes No Partially

Summary:

In addition to the set of remedies available in individual cases of discrimination [see Rec3 i)], the Constitutional Court offers possibilities to challenge allegedly discriminative legislation (limited abstract review, broader constitutional complaint procedure). The practice of the Government to respond to problems of constitutionality by simply amending the Fundamental Law significantly questions the effectiveness of this remedy.

Detailed analysis:

The jurisdiction of the Constitutional Court is defined in Article 24(2) of the Fundamental Law, and Act no. CLI of 2011 on the Constitutional Court of Hungary.¹⁶ Unlike the previous legislation on constitutional review in force before 2012, the new Act – in line with Article 24 (2) e) of the Fundamental Law – significantly narrowed standing rules for abstract review performed by the Constitutional Court. Previously anyone could turn to the Court and request the constitutional review of legal norms (the so-called *actio popularis*), while the current legislation only allows the Government, one-fourth of the Members of Parliament, the Commissioner for Fundamental Rights to request such *ex post* review of legislation. Furthermore, prior to promulgation of laws passed by the Parliament the President of the Republic can request a preliminary review of constitutionality. In addition, courts of law may also refer to the Constitutional Court a question concerning the constitutionality of a legal norm to be applied in a case pending before them (Article 24(2)b) of the new Fundamental Law). Courts are also entitled to suspend the case in front of them if they consider that the applicable legal provision is incompatible with an international obligation (Section 32 (2) of the Act on the Constitutional Court). So far only the Commissioner for Fundamental Rights has exercised his right to petition in defence of LGBTI rights; he submitted a petitions for the review of the much-criticized Act no. CCXI of 2011 on the protection of families, the notion of next-of-kin in the new Civil Code, and a local decree adopted in Ásoththalm banning the promotion of same-sex marriage. The Constitutional Court found key provisions of the Family

¹³ ETA, Article 14. For further details on the ETA see the information provided under Question 52.

¹⁴ Article 2(2) of Act no. CXI of 2011 on the Commissioner for Fundamental Rights. The English text of the Act is available at: <https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>.

¹⁵ Letter no. EBH/216/2/2014 of the Equal Treatment Authority, one file with the authors.

¹⁶ The English text of the Act is available at: <https://hunconcourt.hu/act-on-the-cc/>.

Protection Act unconstitutional,¹⁷ as well as found the local decree unconstitutional.¹⁸ The case concerning the in notion of next-of-kin in the Civil Code has been pending for over five years.¹⁹

Despite the fact that the circle of petitioners entitled to initiate *ex post* review was significantly narrowed, the new legislation introduced a German-type of constitutional complaint procedure. Article 26 (1) of the Act on the Constitutional Court contains the following:

In accordance with Article 24 (2) c) of the Fundamental Law, person or organization affected by a concrete case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the Fundamental Law in their proceedings

- a) *their rights enshrined in the Fundamental Law were violated, and*
- b) *the possibilities for legal remedy have been exhausted or no possibility for legal remedy is available.*

Exceptionally, a constitutional complaint may also be submitted if due to the application of an unconstitutional legal provision or by the mere existence of the provision in question rights were violated directly (without a judicial decision) and there is no remedy available or the petitioner already exhausted those. This provision – in principle – makes it possible to challenge discriminatory legislation without an actual court procedure, however, the Constitutional Court appears to be reluctant to admit petitions from potential victims, only a few of such complaints were declared admissible so far.²⁰ The constitutional complaint procedure has been used in only one LGBTI relevant case so far, that concerned legal gender recognition for a recognized refugee. In that particular case²¹ the Court found that the constitutional complaint procedure does not allow for remedying situations where the problem arises from a lack of legislation, so the constitutional complaint was rejected. On the other hand, the Court found that it was an unconstitutional omission since the law does not provide for legal gender recognition and related name change for trans people legally residing in Hungary permanently (see Case 31).

Sadly, the Government in power since 2010 has oftentimes failed to follow the judgments of the Constitutional Court. There is a clear pattern: if the Constitutional Court finds the unconstitutionality of a law, the Government will pass it with slight modification or amend the Fundamental Law with the contested provisions (and thus they will not be subject of review any longer) or amend the constitutional basis of the decision in a way that prevents the Court to apply the same standard for the newly passed legislation. The first battle between the new Government and the that-time Constitutional Court ended with stripping the Court of its key competence, *i.e.* the possibility to review legislation with any budgetary implication, through a constitutional amendment.

Question 2

Have legislative and other measures been adopted and/or implemented to collect and analyse relevant data on discrimination on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

¹⁷ Decision no. 43/2012 (XII. 20.).

¹⁸ Decision no. 7/2017. (IV. 18.).

¹⁹ Case number: II/01011/2013.

²⁰ For the remedies available in individual cases of discrimination please see under Question 4.

²¹ Decision no. 6/2018. (VI. 27.)

Summary:

There is no comprehensive system to collect and analyse discrimination cases at courts and other public bodies. There have been no publicly funded research projects in recent years on the experience of discrimination and social exclusion of LGBTI people.

Detailed analysis:

There is no comprehensive system to collect and analyse data on sexual orientation and/or gender identity discrimination cases at courts. The statistical system of the courts does not allow for separating discrimination cases from other cases concerning personality rights, let alone disaggregate the number of cases on protected grounds. When the Hungarian LGBT Alliance requested for reforming the statistical system to allow for such data to be gathered, the National Office for Judiciary responded that since sexual orientation and gender identity are sensitive data, due to data protection legislation no such data can be collected.²² The EAuth has a statistical system that allows for identifying cases of discrimination based on sexual orientation and gender identity.²³ The Commissioner for Fundamental Rights has no such statistical system, but upon the suggestion of the Hungarian LGBT Alliance they have initiated internal discussions to develop one.²⁴

The last publicly funded research project into the experiences of LGBTI people was commissioned by EAuth and carried out by the Institute of Sociology of the Hungarian Academy of Sciences in 2010.²⁵ Interestingly, originally sexual orientation and gender identity were not among the grounds included in the study, but the Institute of Sociology of the Hungarian Academy of Sciences was willing to conduct the study only if this target group was included. The 2012 LGBT Survey of the European Union Fundamental Rights Agency also covered Hungary offering a rich source of information on the topic. The validity of research results, however, were questioned by the Hungarian Government,²⁶ but no efforts have been made by the Government to come up with research they consider more valid.

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

Question 3

Have legislative and other measures policy measures been adopted and/or implemented to combat discrimination on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

²² Human Rights Roundtable working document, 8 December 2017, on file with the authors.

²³ Such statistics are included in the EAuth's annual reports, available online at: <http://www.egyenlobanasmod.hu/article/view/tájékoztató-az-az-egyenlő-bánásmód-hatóság-tevékenységéről>

²⁴ Human Rights Roundtable working document, 8 December 2017, on file with the authors.

²⁵ Hungarian Academy of Sciences Institute of Sociology - Equal Treatment Authority (2011) *Extent of Gaining Knowledge of One's Rights as a Victim of Discrimination – With Special Focus on Women, Roma, People with Disabilities, and LGBT people.* Available at: http://www.egyenlobanasmod.hu/tamop/data/MTA_1hullam_english_summary-2.pdf

²⁶ This argument was used by the Hungarian Government in 2015 to block the adoption of a Council response to welcome the European Commission's *List of Actions to advance LGBTI equality.*

and in particular a) by way of legislative measures?
Yes No

Summary:

The comprehensive anti-discrimination legislation (ETA) offers a broad and far-reaching protection against discrimination on the grounds of sexual orientation and gender identity. The ETA was adopted principally in order to give effect to EU anti-discrimination directives, and replaced sectoral laws, some of which still contain references to the principle of equal treatment to be applied in compliance with the ETA. On the constitutional level the Fundamental Law does not include a specific mention of sexual orientation and/or gender identity, which are still subsumed under the category of 'any other ground'.

Detailed analysis:

Fundamental Law

On 1 January 2012 the new Fundamental Law entered into force replacing the old Constitution (Act no. XX of 1949). Despite being pronounced as modern document transferring the rights from the EU Charter on Fundamental Rights, the discrimination clause fails to move significantly beyond the former text. Article XV (2) says:

(2) Hungary shall ensure fundamental rights to every person without any discrimination on the grounds of race, colour, gender, disability, language, religion, political or other views, national or social origin, financial, birth or other circumstances whatsoever.

Although the text contains additional prohibited grounds for discrimination if compared to the previous Constitution (such as disability), yet it fails to prohibit unjustified differential treatment on the basis of sexual orientation and gender identity. According to the consistent practice of the Constitutional Court, discrimination based on sexual orientation is included in the category of discrimination based on other status.²⁷ There has been no similar case law for gender identity or sex characteristics.

Act on Equal Treatment

With the adoption of Act no. CXXV of 2003 on equal treatment and the promotion of equal opportunities (ETA) the Hungarian Parliament introduced a comprehensive anti-discrimination legislation in line with EU and international law obligations of the country. ETA also aimed at implementing the constitutional prohibition of discrimination, which was only regulated by scattered provisions in diverse sectoral laws before.

The scope of ETA covers – among others – the state, actors exercising state power, local governments, organizations exercising public powers or receiving state subsidies, educational institutions, insurance funds, social care and child protection services, parties, budgetary agencies, etc. ETA has a considerable horizontal effect as well: employers, service providers and in cases where private individuals publicly call for entering into contract (for example advertising an apartment for rent in a newspaper). However, ETA does not cover a) family law relationships; b) relationship between relatives; c) relationships of ecclesiastical entities directly connected to

²⁷ See decisions on the criminalization of incest among same-sex siblings [20/1999. (VI. 25.)]; on the age of consent [37/2002. (IX. 4.)]; on registered partnership [154/2008. (XII. 17.)]; and inheritance rights of same-sex couples [43/2012. (XII. 20.).

the religious life of churches; and d) internal operations of NGOs, legal entities or organizations without legal personality (with exceptions as defined by the Act).

The following conducts constitute the violation of the principle of the equal treatment: 1. direct discrimination [Art. 8]; 2. indirect discrimination [Art. 9]; 3. harassment [Art. 10 (1)]; 4. unlawful segregation [Art. 10 (2)]; 5. retribution [victimization; Art. 10 (3)]. Direct discrimination is defined as acts “as a result of which a person or a group is treated or would be treated less favourably than another person or group in a comparable situation” because of his/her protected characteristic. Indirect discrimination is a result of apparently neutral acts but any person or groups having a protected characteristic are “at a considerably larger disadvantage than other persons or groups in a similar situation were or would be”. Harassment is defined as “a conduct of sexual or other nature violating human dignity [in relation to protected characteristic(s)] with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around the person affected.”

Among the protected characteristics listed in Article 8, ETA explicitly makes reference to sexual orientation [*m*] and gender identity [*n*]. The inclusion of both protected grounds was a remarkable step in the protection afforded to the LGBT community as the that-time the Constitution and other laws contained lot more limited – though open – lists. The interpretation of the term gender identity by the ETAuth includes gender expression: ETAuth considered a case where a group of crossdressers were rejected when trying to rent a venue. The case ended in a settlement authorized by ETAuth (see Case 4). There has been no case to test whether the notion of gender identity covers non-binary persons.

Apart from creating the general legislative framework, ETA contains specific provisions for employment, social security and health care, housing, education and training and the sale of goods and use of services.²⁸

Civil Code

Similarly to the old Civil Code (Act no. IV of 1959), the new Civil Code (Act no. V of 2013) in force since 15 March 2014 defines discrimination as a specific violation of personality rights.

Article 2:43 [Specific personality rights]

The following, in particular, shall be construed as violation of personality rights: (...) c) discrimination; (...).

Labour Code

Similarly to the old Labour Code (Act no. XXII of 1992), the new Labour Code (Act no. I of 2012) in force since 1 July 2012 also contains the requirement of equal treatment. Article 12 (1) contains the following formulation:

In relation to employment, particularly with regard to remuneration, the principle of equal treatment shall be respected. The redress afforded in case this principle has been violated cannot lead to the violation or restriction of other employee's rights.

Remuneration is meant to include any kind of financial or in-kind, directly or indirectly paid allocation that is based on a labour contract.

b) by way of a national action plan?
Yes No

²⁸ The English text of the ETA is available at: http://www.egyenlobanasmod.hu/data/Act_CXXXV_2003%20English.pdf. The specific provisions are detailed under the relevant recommendations.

Summary:

No national action plan has been adopted to tackle discrimination in general or specifically concerning sexual orientation or gender identity. Such plans do exist for other vulnerable groups.

Detailed analysis:

No national action plan has been adopted to tackle discrimination in general or specifically concerning sexual orientation or gender identity. Council of Europe Commissioner for Human Rights,²⁹ the European Commission against Racism and Intolerance (ECRI),³⁰ the United Nations Human Rights Council³¹ all called on the Hungarian Government to adopt such action plans.

National equal opportunity programme

In the originally adopted version of the ETA Chapter IV mandated the adoption of the Equal Opportunity Programme of the Republic. The aim of the Programme was to prevent discrimination and promote equal opportunities in all spheres of life for all affected social groups. It should have contained the governmental measures targeted at the implementation of that aim. The Programme was supposed to be proposed – after consultation with the relevant stakeholders – by the government and adopted by the Parliament. It was planned to assess the situation of social groups and identify the objectives. The Programme should have contained the necessary steps needed to positively change social attitudes, measures in order to raise awareness about the available remedies, to improve the labour situation and participation in public education of disadvantaged groups, initiatives for employers, and necessary legislative tasks for achieving the above goals. The government was supposed to report to the Parliament yearly on the implementation. Despite the promising legislative initiative, the Programme was never adopted and Act no. CIV of 2006 repealed the relevant provisions of the ETA.

Initiative for other vulnerable groups

While there is no action plan for the LGBTI population, several policy documents aiming at promoting equal opportunities for other vulnerable groups exist. National strategies have been adopted for women³², people living with disabilities³³, youth³⁴ and the Roma.³⁵ These strategies prescribe the adoption shorter term (one to three years long) action plans to implement them. Such plans have been adopted regularly for people living with disabilities, youth and the Roma, there has been no action plan adopted for the equality between women and men strategy since 2011.

²⁹ Paragraph 96, Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe Following His Visit to Hungary from 1 To 4 July 2014 (CommDH(2014)21).

³⁰ Paragraph 133, ECRI Report on Hungary (fifth monitoring cycle) (CRI(2015)19)

³¹ Paragraphs 122.118, 122.119, 122.122. Report of the Working Group on the Universal Periodic Review. Hungary (A/HRC/33/9)

³² Government Decree no. 1004/2010 (I. 21.) on the National strategy on promoting the social equality of women and men.

³³ Parliamentary Decision no. 15/2015. (IV. 7.) on the National Programme on Disability Affairs.

³⁴ Parliamentary Decision no. 88/2009 (X. 21.) on the National youth strategy.

³⁵ National Social Inclusion Strategy, see <http://romagov.kormany.hu/hungarian-national-social-inclusion-strategy-deep-poverty-child-poverty-and-the-roma>.

Local equal opportunity programmes

Article 31 of the ETA includes provisions on local equal opportunity programmes to be adopted by city councils for five years. The programmes shall contain an assessment of the situation of disadvantaged groups in the fields of education, housing, employment, health, and social situation, and propose a plan of action to address the problems identified. While the adoption of the programmes is optional, from 1 July 2013 only those local governments can apply for public funds for development that have an equal opportunity program [Article 31(6)]. ETA specifically mentions women, people in deep poverty, Roma, disabled people, children and the elderly as disadvantaged groups; LGBTI people are not specifically included, although the text of the law is open to the inclusion of other vulnerable groups. On the other the hand, the detailed legislation on the methodology of preparing local equal opportunity programmes no longer maintains an open list, and only contains a rigid structure not suited for the inclusion of more vulnerable groups.³⁶ To settle this contradiction the Hungarian LGBT Alliance turned to the Ministry of Human Capacities, which in their response confirmed that local governments are free to include other vulnerable groups in their local equal opportunity programmes.³⁷

Following the favourable opinion, the Hungarian LGBT Alliance in cooperation with local LGBTI groups started to advocate for the adoption / amendment of local equal opportunity programs to include LGBTI persons in four cities (Budapest, Szeged, Kecskemét, Nyíregyháza). Meetings with local government officials were held in all four cities, Budapest³⁸ and Szeged³⁹ adopted local equal opportunity programs to include LGBTI persons, negotiations with the other two cities failed.

- c) **by the inclusion of the Recommendation in existing plans?**
Yes No

There is no action plan in place, so the Recommendation cannot be included.

- d) **by the creation of cross-sectoral working groups for its implementation?**
Yes No

There is no action plan in place, so there cannot be a cross-sectoral working groups for its implementation. The Human Rights Roundtable's Thematic Working Group on the Rights of LGBT People has a similar mandate. See Question 20 for more information.

- e) **by way of a comprehensive strategy aimed at combating discrimination and/or biased attitudes and behaviour against LGBT persons within the general public, and at correcting prejudices and stereotypes?**
Yes No Partially

No comprehensive strategy has been adopted to combat discrimination in general or specifically concerning sexual orientation or gender identity. For a list of strategies covering other vulnerable groups, see under Question 3b.

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where

³⁶ Decree no. 2/2012 (VI. 5.) of the Ministry of Human Capacities.

³⁷ Letter from the Ministry of Human Capacities 42873-1/2014/FFF, on file with the authors.

³⁸ Budapest Local Assembly Resolution no. 1825/2016.(XII.7.).

³⁹ Szeged Local Assembly Resolution no. 295/2018 (VI.22).

appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

Question 4

Have effective legal remedies for victims of sexual orientation or gender identity discrimination been adopted and/or implemented including sanctions for infringements?

Yes No Partially

Summary:

Victims of discrimination have a wide choice of remedies each of them having its advantages and disadvantages. The fastest and cheapest remedy is offered by the Equal Treatment Authority, however, it can only impose public interest fines, but not reparation to victims. The enforcement of personality rights under the Civil Code allows the court to award pecuniary damages as well as restitution for cases of discrimination, but it is significantly slower and more expensive. The sectoral remedies – labour and media law – are limited to cases of discrimination that come within the scope the respective act, thus usually offer remedies in a very narrow circle.

Detailed analysis:

Procedures under the Equal Treatment Act

The ETA together with Act no. CL of 2016 on the general administrative procedure (in force since 1 January 2018) provides for an independent enforcement regime which is distinct from that of the Civil Code. The implementation of the ETA is overseen by a separate public body, the Equal Treatment Authority (ETAAuth). Any individual may submit a petition to the ETAAuth claiming the violation of the principle of equal treatment as defined by the ETA. Non-governmental and interest representation organizations may instigate procedures (*actio popularis*) before the ETAAuth if the violation of the principle of equal treatment or a direct threat of the violation was based on a characteristic that is an essential aspect of the individual's personality, and the violation or a direct threat of it affects a larger group of persons who cannot be determined precisely. There is case law to support that sexual orientation is recognized as such essential aspect of the individual's personality.⁴⁰ Proceedings before the ETAAuth may be initiated only within one year after getting to know about the alleged violation or within three years after the alleged violation.⁴¹ The procedures before the ETAAuth are free of charge.

The allegations shall be investigated by the ETAAuth or other public administration body with the authority to assess the violation of the principle of equal treatment. Besides procedures initiated by individuals or NGOs, the ETAAuth shall proceed *ex officio* – if there are no parallel proceedings pending – in cases where the principle of equal treatment is violated by the State, local and minority self-governments and their bodies, organizations exercising powers as authorities, and the armed forces and law enforcement agencies. The ETAAuth cannot investigate decisions and measures exercising public authority by the Parliament, the President, the Constitutional Court, the State Audit Office, the ombudsman, the courts and the public prosecution.

In procedures initiated for the violation of the principle of equal treatment, the injured party or the party entitled to an *actio popularis* must render probable that

⁴⁰ See the argumentation of the courts in Case 5.

⁴¹ Article 169/H of Act no. CXL of 2004 on the general rules of public procedures.

- a) the injured party or group has suffered a disadvantage, or in case of an *actio popularis*, there is a direct danger of such disadvantage;
- b) the injured party or group at the time of the alleged violation that they – actually or by the perception of the offending party – possessed any of the characteristics defined by the ETA.

If all the above have been rendered probable the burden of proof shifts and it is for the other party to show that

- a) that the facts presented by the injured party or by an organization entitled for an *actio popularis* have not existed;
- b) that it observed the principle of equal treatment or in that particular relationship it was not obliged to do so.

If the ETAuth finds that the principle of equal treatment as laid down by ETA has been violated it may order that the situation constituting a violation be eliminated; prohibit the continuation of the conduct constituting a violation; order its decision be published; impose a fine; or apply a legal consequence determined by a separate act. The sanctions can be applied collectively as well. The amount of the fine may vary from 50.000 HUF to 6.000.000 HUF (appr. from 180 EUR to 21.400 EUR). Decisions of the ETAuth are subject to judicial review upon the appeal of either parties, the review falls within the exclusive jurisdiction of the Metropolitan Court.

Successful cases brought under the ETA in recent years concerning sexual orientation and gender identity include the case of a trans person rejected and ridiculed at a job interview (see Case 24), rejection of a student from a school due to being raised by two mothers (see Case 14), rejection of blood donation by a lesbian couples and their humiliation by a doctor (see Case 13), rejection and humiliation of a trans person requesting medical opinion (see Case 34), rejection of an LGBTQ sports association to rent a sports facility (see Case 35), rejection of an LGBTQI organization to host an event at a university (see Case 28), a newspaper's rejection to publish an ad by a documentary filmmaker calling for elderly gay male interviewees (see Case 22), humiliating expulsion of a gay couple from a thermal bath for kissing (see Case 5), harassment of a gay couple at a fast food restaurant by the security guards (see Case 33), rejection of a permission for a local LGBT organization to use the name of the city in the organization's name (see Case 26), and failure to include LGBTI content on a government website (Case 32).

Procedures under the Civil Code

Similarly to the old Civil Code (Act no. IV of 1959), the new Civil Code (Act no. V of 2013) in force since 15 March 2014 also offers an alternative remedy through the protection of personality rights in cases where the principle of non-discrimination has been violated. The Civil Code explicitly qualifies the breach of the principle of prohibition of discrimination as a form of violation of personality rights. The rules set out by the ETA concerning *actio popularis* and burden of proof also apply in these court proceedings. The main difference is the range of available remedies, especially compensation paid to the victim of discrimination.

Section 2:51 [Sanctions independent of attributability]

(1) A person whose personality rights have been violated shall have the right to demand within the term of limitation - based on the infringement - as appropriate by reference to the circumstances of the case:

- a) a court ruling establishing that there has been an infringement of right*
- b) to have the infringement discontinued and the perpetrator restrained from further infringement;*
- c) that the perpetrator make appropriate restitution and that the perpetrator make an appropriate public disclosure for restitution at his own expense;*

d) the termination of the injurious situation and the restoration of the previous state, and to have the effects of the infringement nullified or deprived of their unlawful nature;

e) that the perpetrator or his successor surrender the financial advantage acquired by the infringement according to the principle of unjust enrichment. (...)

Section 2:53 [Liability for damages]

Any person who suffers any damage from the violation of his personality rights shall have the right to demand compensation from the infringer in accordance with the provisions on liability for damages resulting from unlawful actions.

The new Civil Code introduced a new institution instead of non-pecuniary damages: restitution (“*sérelemdíj*”). The main difference is that under the old system the harm and its monetized value had to be proven by the plaintiff, there is no such duty for restitution, the amount is decided by the court based on a number of factors set out in the legislation.

Section 2:52 [Restitution]

(1) Any person whose rights relating to personality had been violated shall be entitled to restitution for any non-material violation suffered.

(2) As regards the conditions for the obligation of payment of restitution - such as the definition of the person liable for the restitution payable and the cases of exemptions - the rules on liability for damages shall apply, with the proviso that apart from the fact of the infringement no other harm has to be verified for entitlement to restitution.

(3) The court shall determine the amount of restitution in one sum, taking into account the gravity of the infringement, whether it was committed on one or more occasions, the degree of responsibility, the impact of the infringement upon the aggrieved party and his environment.

The main deficiency of the procedures based on the violation of personality rights is that the procedures are very long and the plaintiff risks having to pay the cost of the proceedings if the case is lost. This is why it has become a common practice that the victim first turns to ETAuth, and initiates a court procedure only after the ETAuth has already found a violation.

The number of court cases concerning sexual orientation and gender identity discrimination is very low, however, there are some successful ones, including the rejection of a student from a school due to being raised by two mothers (see Case 14), and the discriminatory ban of the Pride March in 2012 (see case 6).

Procedures before the National Media and Infocommunications Authority

There are two supervisory bodies – the National Media and Infocommunications Authority (NMIA) and its Media Council, an organ of the NMIA – that may play a role in fighting against discrimination in advertising and incitement to hatred and exclusion prohibited by the media laws. For a detailed analysis of these provisions see under Question 13.

The NMIA has broader – in practice less concrete – mandate when it comes to protecting individual rights and preventing and sanctioning discriminatory content. It does market analysis and it may proceed in cases when a service provider fails to fulfil its obligation under the Media Constitution⁴² (Media Act,⁴³ Article 110). It is the Media Council, which controls and enforces the freedom of the press as defined by the Media Constitution. The Media Council performs a supervisory role in relation to content recorded by service providers, operates a programming watchdog and analysing service, and initiates awareness raising (Media Act, Article 132).

⁴² Act no. CIV of 2010 on the freedom of the press.

⁴³ Act no. CLXXXV of 2010 on the media services and the mass media.

Anyone can submit request to the NMIA and the Media Council to examine an activity that may not comply with the media legislation, *i.e.* if the relevant provisions of the Media Constitution have been allegedly violated with regard to a minority group, including the LGBTI community as well.⁴⁴ The petitioner is not party to the procedure, but both authorities can consider initiating a procedure *ex officio*. If they fail to do so, an official letter is sent to the petitioner, but according to the Media Act there is no obligation on the authorities to give reasons for the refusal. For any procedure before the two authorities the general rules of administrative procedures apply (Media Act, Article 145).

In applying the legal consequences the Media Council shall respect the principle of equal treatment, proportionality and progressivity [Media Act, Article 185 (2)]. If the infringement is of minor significance and occurred only once, the Media Council while taking notice of the fact, may request the infringer to discontinue the unlawful conduct, refrain from further infringements and act in a law-abiding manner [Media Act, Article 186 (1)]. In case of repeated infringement, a fine not exceeding 2 million forints (appr. 6300 EUR) may be imposed in line with the gravity, nature of the infringement and the circumstances of the particular case [Media Act, Article 187 (1)].⁴⁵ The Media Council may also order the infringer to publish a notice, and it has the right to suspend the exercise of the media service provision right for a certain period of time, or terminate the official contract in cases of repeated grave violations [Media Act, Article 187 (3) *d*) and *e*].

There has been only a very few cases with LGBTI relevance brought in front of the Media Council. Cases include a 2013 decision by the Media Council on a television programme aired in from 2009 (see Case 2), and a recent decision concerning an article calling or discriminating homosexual persons in a daily newspaper (see Case 40).

Procedures under the Consumer Protection Act

The violation of the principle of equal treatment – under defined circumstances – may be redressed through procedures of consumer protection.⁴⁶ The Hungarian system of consumer protection is based on two pillars: administrative / judicial procedures and mediation. Petitions to the court can be filed individually based on a set of facts in an individual case (the victim has standing), and in certain cases a class action is permitted by those defined by law.⁴⁷ Previously, a separate public body, the National Consumer Authority (NCA) was in charge of examining the violations of consumer rights. NCA was dissolved on 31 December 2016, and its tasks were taken over by the district level offices of the government county offices.⁴⁸ Cases can be appealed to the Pest Country Government Office.

An out-of-court settlement is provided if the consumer requests the Mediation Committee to settle the case. The Committee hears the parties and shall deliver a decision in 60 days (optionally extended with 30 days). If the settlement reached by the parties meets the legal requirements, the council acting in the case confirms that, if not, a procedure is conducted. If the respondent party accepts the binding nature of the decision, the Committee will instruct it to remedy the situation. If

⁴⁴ The NMIA in its response to the authors' questionnaire explicitly identified LMBT people as a minority group deserving protection under the above cited grounds. Letter from the National Media and Infocommunications Authority no. NM/13627-2/2012; on file with the authors.

⁴⁵ The rules guiding the amount of the fine are further detailed in Article 187 (3).

⁴⁶ Article 45/A (3f) of Act no. CLV of 1997 on consumer protection.

⁴⁷ Cases where a class action may be brought: unfair conditions of contract (Civil Code), the violation of competition law to the detriment of consumers, violation of the provisions on consumer protection.

⁴⁸ Government Decree 387/2016. (XII. 2.) on selecting the consumer protection authority.

the respondent fails to do so, the Committee may only formulate the findings in the form of recommendation. The Mediation Committee's decisions are not subject to appeal.⁴⁹

The mechanism offered by the Consumer Protection Act is hardly ever used in cases of discrimination, victims are encouraged by these public bodies to turn to the specialized body, the ETAuth.

Procedures under the Police Act

Act no XXXIV of 1994 on the police (Police Act) contains impartiality as one of the principles of police work [Article 13(2)], which has been interpreted by the courts to also include equal treatment. The Police Act contains two complaint procedures in case of police action or inaction violates a person's fundamental rights: the victim can turn to the police body infringing on their rights, or to the Independent Police Complaints Board (IPCB) [Article 92(1)].

The ICPB was set up in 2007 as an organ of civilian control; its members are elected for six years by the Parliament and are renowned lawyers in their field (not necessarily specialized in criminal law). According to Article 92 the IPCB proceed and investigate in complaints in the following cases: 1. failure to fulfil the obligation to perform police tasks and act in line with instructions; 2. police measures and omissions (e.g. ID check; search of clothes, luggage, vehicle; arrest, alien-policing measures; traffic related actions); 3. application and lawfulness of coercive measures (e.g. applying physical force, handcuffing, use of chemicals or electric shock devices, roadblocks, using weapons).

The IPCB examines complaints submitted by victims⁵⁰ from a constitutional and human rights law perspective, outside of the hierarchical relations within the police structure. While not mentioned specifically, discrimination on the grounds of sexual orientation and gender identity clearly constitute a fundamental rights concern. The IPCB cannot initiate procedures on the basis of general remarks, comments or public announcements, or in cases where the police action at issue has occurred in the course of another pending procedure. The IPCB cannot act *ex officio* and the complainant cannot be a fictional person or remain anonymous though the personal data may be requested to be removed from the final resolution. The complaints have to be submitted within 20 days from the infringement, but the procedure allows for some flexibility in this regard as complaint launched with the police within 30 days after the incident can be taken over by the IPCB.

The IPCB has to conclude the procedure within 90 days from the date of submission. It is not an authority, its decisions are not binding, and there is no appeal against the resolutions. If the IPCB finds no violation of fundamental rights, or establishes that the restriction of those was lawful and justified, the resolution is forwarded to the head of the police unit where the contested measure was taken. If the IPCB finds that the complainant's fundamental rights were breached, the complaint and the resolution is forwarded to the Head of the National Police Headquarters, who decides on the case according to the general rules of procedure applicable for public administration. Although the IPCB resolution does not bind him, in case a different decision is taken, he must present reasons for that. Judicial review is available against the decision of the Head of the National Police Headquarters.⁵¹

The annual reports of the ICPB show that the number of discrimination cases is low compared to other fundamental rights violations, and amount to 1.5-5-6% of all cases handled by IPCB in 2013-

⁴⁹ Articles 18-37/A of the Consumer Protection Act.

⁵⁰ Persons who have been personally affected by the action of the police.

⁵¹ For further information see: http://www.panasztestulet.hu/index.php?link=en_main.htm.

2017. The cases are not disaggregated according to grounds of discrimination.⁵² Cases concerning discrimination based on sexual orientation or gender identity include complaint about the harassing behaviour of the police against crossdresser performers during a raid of a gay bar (see Case 10), failure to take action after a gay man was threatened with violence by a group of extreme right wing demonstrators (see Case 7), and failure to take seriously a report by a gay couple after receiving threats of violence and subsequent threats by the police that they could be charged with public indecency by kissing in public (see Case 15). ICPB found no violation in the first case, only minor violation in the second case, and serious violation including discrimination based on sexual orientation in the third case. The third case brought up an interesting question of interpretation: after the IPCB found a serious violation, and the National Chief of Police rejected the ICPB's findings, the victim also turned to EAuth. EAuth declined to examine the case arguing that it has already been examined by a public body, and thus it cannot be reopened. The victim requested a judicial review of the EAuth decision arguing that procedure of the IPCB does not fall under ETA, and thus does not collide with the EAuth procedure. The court sided with the EAuth. The decision has far reaching impact, because if ETA applies to these procedures as well, the reversed burden of proof should be also applied, which has not been the case before.

Procedures before the Commissioner for Fundamental Rights

The office of the ombudspersons was reformed in 2011.⁵³ The Commissioner of Fundamental Rights (CFR) may receive complaints from anyone if in his or her opinion the activity or omission of 1. a public administration organ, 2. local government, 3. nationality self-government, 4. public body with mandatory membership, 5. the Hungarian armed forces, 6. a law-enforcement organ, 7. any other organ act in its public administration competence, in this competence, 8. an investigation authority or an investigation organ of the Prosecution Service, 9. a notary public, 10. a bailiff at a county court, 11. an independent bailiff, or 12. an organ performing public services infringed the fundamental right of the individual submitting the complaint, or presents an imminent danger thereto [Section 18(1)]. The list of authorities against which a complaint may be lodged is exhaustive, and the CFR may not investigate the activities of the Parliament, the President, the Constitutional Court, the State Audit Office, the courts and the Prosecution Service [Section 18(3)]. The CFR may conduct inquiries *ex officio* as well. The procedure is free of charge.

In the course of the inquiries the CFR may request data from the authority against which the complaint was submitted, invite its head, participate in a public hearing or conduct on-site visits that may include entering the premises, the inspection of documents or hearing the employees (Sections 21 and 22). There is a limited possibility for ordering interim measures as well (Section 24). The inquiry of the CFR is closed with a report that are public. If the CFR concludes that the fundamental right(s) of the petitioner have been violated or there is an imminent danger of that, he/she addresses a recommendation to the supervisory organ of the authority subject to inquiry, and it has to report to the CFR on its position with regard to the recommendation and the measures. The supervisory organ may not agree with the recommendation, in such cases the CFR can decide whether he/she maintains, amends or withdraws his/her previous position (Section 31). In order to redress the infringement of rights, the CFR may initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General. The CFR may also – on the basis of the recommendation concluded as the result of the inquiry – turn to the Constitutional Court (as allowed by the Act on the Constitutional Court), initiate criminal proceedings, or request the Parliament – in the annual report – to follow-up on the situation. The

⁵² For the data see: https://www.repate.hu/index.php?option=com_content&view=article&id=36&Itemid=134&lang=hu.

⁵³ The detailed rules are contained in Act no. CXI of 2011 on the Commissioner for Fundamental Rights. Available in English at: <https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>.

law allows the CFR to conduct exception inquiries as well: in these cases organisations not listed above may be subjected to an inquiry.

Although the recommendations of the CFR are not enforceable, they do carry significant weight and generally public authorities comply with his/her findings, and they serve as a useful basis for future advocacy.

- a) Do the remedies include adequate reparation for victims?
Yes No Partially

While the ETAAuth, NMIA and GCOs can only impose fines, if civil proceedings is initiated the plaintiff can file charges for damages in accordance with the general liability regulations under civil law, see under Question 4.

- b) Are the remedies effective, proportionate and dissuasive?
Yes No Partially

There has been no recent research on the sanctioning practice of courts and ETAAuth. A report on access to justice prepared for the FRA in 2011 claims that while in the past the amount of compensation available via judicial procedure was quite steadily around the double of the legally set monthly minimum wage, *i.e.* not a very dissuasive sanction; practicing lawyers say that as of 2011, however, the average amounts have started to rise, which is a promising change in the general judicial approach. With regard to the sanctioning practice of the ETAAuth, it appeared to apply fines between HUF 500,000 (EUR 1,560) and HUF 3,000,000 (EUR 9375), with the fines imposed slightly increasing.⁵⁴

- c) Are there measures in place to raise awareness and facilitate access of victims to such remedies, even when the violation is committed by a person acting in an official capacity?
Yes No Partially

Summary:

There has been no public information campaign on how to address discrimination since 2014. The resident equal treatment experts' network still exists, but the mandate of the network formerly known as the Houses of Opportunities has changed, and it is no longer active in the field. The public Legal Aid and Victim Support Services lack the knowledge to offer practical advice to victims of discrimination, and do not engage in awareness raising activities targeting LGBTI people.

Detailed analysis:

The ETAAuth operates a network of equal treatment experts in each county capital since 1 September 2009. The project was originally funded by TÁMOP (EU-funding), but since the end of the project in 2014 it is part of the regular budget of ETAAuth. The experts in the network, who are experienced attorneys, receive clients (victims of discrimination and others in need of information) for four hours every week in major cities (county capitals), and are also available for two hours in different smaller cities within the county every month. In addition to providing general information on the legislative framework and the available remedies, the experts offer concrete legal help in preparing submissions to the ETAAuth. Apart from the legal help, they take part in the professional and civil partnerships, visit schools and raise awareness on the principle of equal treatment. The

⁵⁴ http://fra.europa.eu/sites/default/files/fra_uploads/1532-access-to-justice-2011-country-HU.pdf

quality of the work performed by the experts, especially the intensity of their awareness raising activities, varies greatly county-to-county.

The mandate and name of the Houses of Opportunities has been changed 2012; they are now called Houses of Family, Equal Opportunity and Volunteering, and are rather inactive. For example the central website of the network has not been updated since December 2017. In principle the Houses focus on six target groups (women, persons living with disability, Roma, children, elderly and people living in disadvantaged regions), but their mandate now also includes promoting volunteering, and offering family counselling. The Houses organize media campaigns, conferences, workshops, etc. However, the LGBTI community is not among the target groups.⁵⁵

With the completion of the EAuth's TÁMOP project in 2014, no large-scale public information campaign has been carried out to raise awareness about discrimination and available remedies. EAuth now focuses its awareness raising activities on social media, but there is no information available about the effectiveness of these campaign.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

Question 5

Have legislative and other measures been adopted and/or implemented to ensure an effective, prompt and impartial investigation into alleged cases of crimes and/or other incidents, where there is reasonable ground to suspect that the victim was targeted due to their

- | | |
|-----------------------|--|
| - sexual orientation? | Yes <input type="checkbox"/> No <input type="checkbox"/> Partially <input checked="" type="checkbox"/> |
| - gender identity? | Yes <input type="checkbox"/> No <input type="checkbox"/> Partially <input checked="" type="checkbox"/> |

There are no specific measures to ensure an effective, prompt and impartial investigation of LGBTI-phobic hate crimes, but general provisions of the Criminal Procedure Act (Act no. XC of 2017) provide a framework suitable for such investigations. There is currently no police protocol on investigating hate crimes. After Hungary has received several recommendations in the framework of the UPR to adopt such a protocol,⁵⁶ the Government officially announced to the UN Human Rights Committee that such a protocol will be developed and adopted by the end of 2018.⁵⁷

⁵⁵ For further information see: <http://eselyteremtesihazak.gov.hu/english/>.

⁵⁶ Recommendation 122.107, *Report of the Working Group on the Universal Periodic Review. Hungary (A/HRC/33/9)*

⁵⁷ Paragraph 11, *Summary record of the 3465th meeting (CCPR/C/SR.3465)*

Question 6

Is there an independent and effective procedure to receive and investigate reports of hate crimes and/or hate motivated incidents allegedly committed by law enforcement staff, particularly where sexual orientation and gender identity constitutes one of the motives?

Yes No Partially

There are no specific provisions or measures in place for hate crimes committed by law enforcement staff, however, the general hate crimes provisions apply in this case as well (see under Question 7). For crimes committed by law enforcement staff investigation is carried out by the Prosecution Service,⁵⁸ and since in such proceedings the rules on military criminal procedures apply,⁵⁹ the military prosecution decides on pressing charges.⁶⁰ Victims of police violence can also turn to the Independent Police Complaints Board (see under Question 4 for details).

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

Question 7

Have legislative and other measures been adopted or implemented to ensure that

a) a bias motive may be taken into account as an aggravating circumstance when related to

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

There are no provisions that directly prescribe bias to be taken into account as an aggravating circumstance, but the combination of a *sui generis* hate crime offense, base reason as a qualifying circumstance for several crimes, most notably murder and bodily harm, and base motive as a general aggravating circumstance in sentencing guidelines makes up system that results in higher sanctions for hate crimes (for more details on these legal provisions see under Question 7b). The *sui generis* hate crime offense has 2.5 to four times the maximum penalty in comparison with a regular assault or coercion depending on the specificities of the case. Murder with a base reason has double; causing a bodily harm with a base reason has 1.5 times the maximum penalty in comparison to acts committed without a base reason.

b) "hate crimes" and other hate motivated incidents recognise as a possible motive

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

Summary:

The Criminal Code contains a *sui generis* hate crime called 'violence against a member of a community' that specifically includes sexual orientation and gender identity. Base motive as a qualifying circumstance for several crimes and as a general aggravating circumstance in sentencing guidelines covers base crimes not included in the *sui generis* hate crime provision. The number of hate crime convictions has significantly increased since the adoption this new

⁵⁸ Article 30 a) of Act no. XC of 2017 on Criminal Procedures (in force since 1 July 2018). The same rule was contained in the former Criminal Procedure Code (Article 29 a) of Act no XIX of 1998).

⁵⁹ Article 696 (1) b) of Act no. XC of 2017 on Criminal Procedures (in force since 1 July 2018). The same rule was contained in the former Criminal Procedure Code (Article 470(1) c) of Act no XIX of 1998).

⁶⁰ Article 700 (1) of Act no. XC of 2017 on Criminal Procedures (in force since 1 July 2018). The same rule was contained in the former Criminal Procedure Code (Article 474(1) of Act no XIX of 1998).

legislation, but investigating and prosecuting hate crimes – if at all – under less serious offences is still common.

Detailed analysis:

Before 2009, LGBTI people were offered no protection against homophobic and transphobic hate crimes indirectly, as the crime violence against a member of a national, ethnic, racial or religious group (Article 174/B) did not cover sexual orientation and gender identity. This changed in 2008 when the relevant provision was amended to include “any other group of society”, making the list of protected groups open. The legislation was further improved in 2012 with the adoption of the new Criminal Code (Act no. C of 2012) that now explicitly includes sexual orientation and gender identity as well.⁶¹ The new Criminal Code entered into force on 1 July 2013. The relevant provision reads as follows:

Article 216.

(1) The person who displays an ostensibly anti-communal conduct against another person because that person belongs or is believed to belong to a national, ethnic, racial or religious group, or any other group of society, in particular based on disability, gender identity, or sexual orientation, and that conduct is suitable for inducing alarm in members of the given group, commits an offence and shall be punishable with imprisonment of up to three years.

(2) The person who assaults another person because that person belongs or is believed to belong to a national, ethnic, racial or religious group, or any other group of society, in particular based on disability, gender identity, or sexual orientation, or coerces that person by violence or threats into doing or not doing or into enduring something, commits an offence and shall be punishable with imprisonment from one year to five years.

(3) The punishment shall be imprisonment from two years to eight years, if the act of crime is committed:

a) by force of arms,

b) in an armed manner,

c) causing a considerable injury of interest,

d) by torture of the injured party,

e) in groups,

f) by criminal conspiracy.

(4) The person who commits preparation directed at violence against a member of a community, shall be punishable with imprisonment up to two years for a felony.

It is important to note that violence against a member of a community is a crime which can be prosecuted *ex officio*, and is different in this sense from the milder forms of causing bodily harm, for which the victim must submit a private motion to have the police start an investigation. The different categorization of the acts also means different punishments: while violence against a member of a community is punishable with imprisonment, merely causing bodily harm – especially in the case of first offenders – is usually sanctioned by a fine, which has a significantly weaker deterrent effect.

Besides the *sui generis* hate crime provision which only covers assault, coercion and disorderly conduct, the Criminal Code prescribes harsher penalties for murder, causing bodily harm, violation of personal liberty, libel, unlawful detention and insult of subordinate⁶² if the crime was committed with a so-called ‘base reason’. In 1995 the Supreme Court (now Kúria) interpreted ‘base reason’ as to include motivation based on the victim’s belonging to an ethnic, national, racial or religious

⁶¹ For a more detailed description of these legislative changes see the 2013 Report.

⁶² Articles 160, 164, 194, 226, 304, and 449 respectively.

community, thus the bias on these grounds shall be considered as an aggravating factor.⁶³ In 2005 homophobic motive was also recognized as a base motive in a concrete case,⁶⁴ but since the final decision was reached in a lower court the case has not received much attention. In a 2013 murder case the court found that the homophobic motive of the perpetrator amounted to ‘base reason’ (see Case 11). Furthermore, the general sentencing guidelines issued by Kúria,⁶⁵ the highest judicial authority, contains that “a morally particularly reprehensible motive” of a crime is an aggravating circumstance. This formulation is the same as the interpretation given to base reason, meaning that for crimes that do not fall in the *sui generis* hate crime offense or have no base reason as a qualifying circumstance, the bias motive can still be taken into consideration in sentencing.

NGOs⁶⁶ and the Commissioner for Fundamental Rights⁶⁷ criticized the legislation for not including crimes against property in the *sui generis* hate crime offense. As a response the Ministry of Justice included in the explanatory memorandum that crimes against property are included in the offense by being considered disorderly conduct. This interpretation prevails in the case law. NGOs⁶⁸ also criticized that base reason is not included as a qualifying circumstance for stalking, which is a typical form of hate crime.

Even though legislation exists to combat LGBTI-phobic hate crimes, it is a widely acknowledged fact that many actual hate crimes are prosecuted – if at all – as less serious offences.⁶⁹ Official statistics show that the number of registered hate crimes is very low 7 in 2013, 33 in 2014, 30 in 2015, 30 in 2016 including all protected groups. Based on the results of victim surveys among the general population an estimated 99,7% of hate crimes cases are either not reported or reported but not treated as such by the authorities,⁷⁰ the existing legislative framework is thus severely under-enforced. A survey conducted by Háttér in the framework of UNI-FORM project⁷¹ in 2016 found that 46% have been the victim or witness of hate crime or hate speech due to their real or assumed sexual orientation or gender identity. 77% of them have experienced online attacks, 89%

⁶³ BH 1995.261 (Published summary of court decisions).

⁶⁴ Judit Utasi (2012): A gyűlölet-bűncselekmények elemzése – esettanulmányok I-II. [Analysing hate crimes – Case-studies I-II.] In *Belügyi szemle*, Issue no. 1-2.

⁶⁵ Opinion no 56. of the Criminal Section on factors to be taken into consideration when imposing sanctions.

⁶⁶ Amnesty International Magyarország, Háttér Társaság a Melegekért, Magyar Helsinki Bizottság, Nemzeti és Etnikai Kisebbségi Jogvédő Iroda, Társaság a Szabadságjogokért: Javaslatok az új Büntető Törvénykönyv gyűlölet-bűncselekményekre vonatkozó szabályozására. [Proposals for the hate crime provisions of the new Criminal Code] 6 March 2012.

⁶⁷ <http://www.ajbh.hu/allam/aktualis/htm/kozlemeny20120723.htm>

⁶⁸ Amnesty International Magyarország, Háttér Társaság a Melegekért, Magyar Helsinki Bizottság, Nemzeti és Etnikai Kisebbségi Jogvédő Iroda, Társaság a Szabadságjogokért: Javaslatok az új Büntető Törvénykönyv gyűlölet-bűncselekményekre vonatkozó szabályozására. [Proposals for the hate crime provisions of the new Criminal Code] 6 March 2012.

⁶⁹ Working Group Against Hate Crimes in Hungary (2014) *Law enforcement problems in hate crime procedures. The experiences of the Working Group Against Hate Crimes in Hungary*. Available at: http://gyuloletelten.hu/sites/default/files/ejk_casesummary.pdf

⁷⁰ Amnesty International Magyarország, Háttér Társaság a Melegekért, Magyar Helsinki Bizottság, Nemzeti és Etnikai Kisebbségi Jogvédő Iroda, Társaság a Szabadságjogokért: Az új Büntető Törvénykönyv gyűlölet-bűncselekményekre vonatkozó rendelkezéseinek kialakítása során figyelembe veendő szempontok. [Concerns to be into consideration in the drafting of the provisions on hate crime in the new Criminal Code] 22 February 2012.

⁷¹ Háttér Society (2016) *UNI-FORM Feasibility Report*.

have been harassed or attacked offline. Of those who have been victims, 92% have experienced verbal violence, 52% psychological violence (such as threats) and 20% physical violence. 93% of those who reported the crime(s) were dissatisfied with the result: their reasons for this included that the report had no result, the authorities did not consider the hate motive during the investigation; the perpetrator was not sentenced or got away with too light punishment. The majority of those who did not report the crime feared they would not be taken seriously (40%), or it would not have a result (49%). Many worried about negative reactions from the police (35%), others were afraid to come out (27%). Another survey conducted by Hättér Society in 2015 in the framework of the *HateNoMore* project found that in 59% of the cases the police completely disregarded the LGBTI-phobic motive, in 62% of cases the attack was not qualified as a hate crime.

Cases that have been successfully prosecuted as violence against a member of a community include several attacks against participants of Pride Marches (see Cases 8, 16 and 18) and an attack against a group of Brazilian gay students (see Case 21). There has been only one known homophobic murder case in the period 2012-2017, in which base reason was correctly applied as a qualifying circumstance (see Case 11). Molotov-cocktail attacks against LGBTI venues in 2008 are still being prosecuted in court, the prosecution service argued they should be considered attempted bodily harm targeting the LGBTI community, and thus committed with a base reason, but the court rejected to treat those incidents separately, and subsumed them under other related attacks aimed at intimidating the general public (see Case 1).

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

Question 8

Have appropriate measures been taken or implemented to

- a) ensure that victims and witnesses of hate crimes and incidents against LGBTI persons are encouraged to report them?

Yes No Partially

The authors know of no publicly funded campaigns or other measures to encourage reporting, even though underreporting is a very serious problem. Research by the Institute of Sociology of the Hungarian Academy of Sciences and Hättér Society in 2010 found that only 15% of victims made an official report.⁷² The 2012 research by FRA found this rate to be 10%,⁷³ the HateNoMore project in 2015 17%.⁷⁴ Most recently a survey conducted by Hättér in the framework of UNI-FORM

⁷² Hättér Society (2015) *The social exclusion of lesbian, gay, bisexual and transgender people in Hungary. Results from the LGBT Survey 2010*. Available at: <http://hatter.hu/kiadvanyaink/lgbt-survey-2010-summary>.

⁷³ FRA (2014) *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey - Main results*. Available at: <http://fra.europa.eu/en/publication/2014/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-main>

⁷⁴ Paulina Górska, Mikolaj Winiewski, Michal Bilewicz (2015) *Hate No More Quantitative study report*.

project⁷⁵ in 2016 found that less than 10% of the victims reported the crime(s) they have suffered, 90% did not.

There have been several attempts by civil society organizations to encourage reporting. Háttér Society launched an online reporting interface *Report homophobia!* in 2012, which is also available as a smartphone app since 2016.⁷⁶ A Europe-wide reporting interface UNI-FROM was launched in 2017 to make reporting to NGOs and the police easier, which is also available in Hungary.⁷⁷ In 2016 Háttér published a highly popular animated video explaining most important legal provisions of hate crimes through the story of a hate crime attack.⁷⁸ In 2018 Háttér is conducting a smaller campaign entitled *Open your mouth!* to encourage reporting as part of the EU-funded project *ComeForward*.⁷⁹ A larger campaign is planned for 2019 as part of the EU-funded *Call It Hate* project.⁸⁰ None of these initiatives has received public funding from the Hungarian state.

b) identify specific LGBTI groups with heightened vulnerability and adopt targeted measures to protect, in particular :

- lesbian, bisexual and trans women?
Yes No
- LGBTI persons of colour?
Yes No
- LGBTI persons of ethnic minority backgrounds, including Roma persons?
Yes No
- LGBTI persons from religious minorities?
Yes No
- LGBTI sex workers?
Yes No
- LGBTI persons with disabilities?
Yes No

The authors know of no targeted measures to protect specific LGBTI groups with heightened vulnerability.

c) ensure that **law-enforcement** possess the knowledge and skills (and are able to apply them) to:

- identify hate crimes and other hate-motivated incidents?
Yes No Partially

⁷⁵ Háttér Society (2016) *UNI-FORM Feasibility Report*.

⁷⁶ The English summary is available at: <http://en.hatter.hu/what-we-do/legal-aid/report-homophobia;>. The reporting interface may be found at: <http://jelentsd-a-homofobiat.hu/>.

⁷⁷ <https://uni-form.eu>.

⁷⁸ <https://www.youtube.com/watch?v=Dyib82utOis>

⁷⁹ <http://hatter.hu/tevekenysegunk/kutatasok/allj-elo>

⁸⁰ http://www.lgbthatecrime.eu/project/project_cih

Summary:

The topic of hate crimes does not feature in the official curriculum of the basic police training offered at high school level. At the university level police training hate crimes are covered only in an optional course. There has been an increasing number of in-service police training on hate crimes by NGOs, but they only reach a small number of professionals.

Details:

The topic of hate crimes does not appear in the official curriculum of the basic police training offered at high school level.⁸¹ Acting without prejudices, human rights, and knowledge about minorities does feature in the curriculum, but only Roma people are specifically mentioned.

To become a higher ranking police officer (“*tiszt*”) police officers have to pursue a BA degree at the Faculty of Law Enforcement at the National University of Public Service. The Faculty has an optional course on hate crimes,⁸² but only a fraction of students graduating take this course. The new sociology textbook introduced in 2013 significantly decreased the coverage of the topic of sexual orientation: the 2003 version⁸³ contained 4.5 pages on homosexuality including information on its cultural history and contemporary public attitudes towards it. The current version⁸⁴ only contains a definition of homosexuality, and lists same-sex couples under the list of alternative family forms. There is not a single mention of transgender people.

There have been several trainings offered free-of-charge by civil society organizations to the police: in 2013 Háttér organized two-day trainings for the newly established hate crime network and to chiefs of police from Budapest (27 participants). In 2015 the Fraternal Association of European Roma Law Enforcement Officers (FAERLEO) organized trainings for 60 uniformed police with the participation of Háttér Society. In 2016 the Hungarian Helsinki Committee organized two-day trainings for 43 police officers in Csongrád and Borsod-Abaúj-Zemplén County with a trainer from Háttér Society. In 2017 Háttér society organized two day trainings for 50 police officers from Győr-Moson-Sopron, Baranya and Hajdú-Bihar Counties. The National University of Public Service is currently developing an online hate crimes course that will be offered to 550 police officers from all around the country. The police cooperate in the implementation of these training programmes by recruiting the participants, but do not contribute to the costs. Since 2016 members of the hate crime network within the police receive annual training organized by the police themselves.

- provide victim and witnesses with adequate assistance and support?
Yes No Partially

The police guidelines on victim support do not treat LGBTI people as a specifically vulnerable victim group (they do so for women, children, youth, elderly people, disabled people and foreigners), and even though police guidelines treat victims of violent crimes and crimes against human dignity as a target group, hate crimes are not explicitly mentioned.⁸⁵ This means that even

⁸¹ http://szakkepesites.hu/szv/1166/SZVK367_Rendor_11.pdf

⁸² <https://rtk.uni-nke.hu/document/rtk-uni-nke-hu/rartb16-gyulolet-buncselekmenyek-levelezo-2015-2016-tanev.original.pdf>

⁸³ Ferenc Krémer (2003): *Szociológiai alapismeretek*. [The basics of sociology] Budapest: Rejtjel.

⁸⁴ Kiss Zoltán László (szerk) (2013) *Bevezetés a szociológiába*. Budapest: Nemzeti Közszerkesztési Központ.

⁸⁵ 50/2008 (OT 29.) ORFK Order on the victims supports tasks of the police.

though the guidelines prescribe the mainstreaming of victim support concerns in the training curricula, the specific concerns for LGBTI hate crime victims can be easily disregarded, procedural victim's rights are also often violated (see Cases 12 and 27).

d) ensure that **the judiciary** possess the knowledge and skills (and are able to apply them) to:

- identify hate crimes and other hate-motivated incidents?
Yes No Partially
- provide victim and witnesses with adequate assistance and support?
Yes No Partially

Summary:

The topic of hate crimes is not given due attention in the basic training of the judiciary, and while there have been some recent initiatives to offer specialized short term training courses to judges, these programmes reach only a very limited number of judges. Besides the general constitutional and legal requirements of non-discrimination, there are no codes of conducts to ensure the non-discrimination and respect for LGBT people. LGBTI people hardly ever feature in the basic and/or further training of the judiciary. The code of ethics adopted in 2014 does not touch upon the issue either.

Detailed analysis:

Basic training for judiciary in the form of law schools is largely evasive of the topic of hate crimes against LGBTI people. The Hungarian Helsinki Committee organized a training for judges on hate crimes,⁸⁶ but it came under attack later and was considered an undue interference in the working of courts by the president of the National Office for Judiciary.⁸⁷ The Council of Europe online HELP course was also piloted in Hungary.⁸⁸ These training initiatives reach only a small number of professionals.

The Code of Ethics of Judges⁸⁹ was adopted in 2014, and entered into force on 1 January 2015. It lists seven principles guiding the work of judges, one entitled "Respect and cooperation", which includes the duty to be free of prejudices and discrimination, and treat people with dignity.

e) ensure that **prison officials** possess the knowledge and skills (and are able to apply them) to:

- identify hate crimes and other hate-motivated incidents?
Yes No Partially
- provide victim and witnesses with adequate assistance and support?
Yes No Partially

The authors have received no information about training on hate crimes to prison officials, or initiatives to provide hate crime victims and witnesses with adequate assistance and support.

⁸⁶ <http://gyuloletellen.hu/aktualitasok/kepzes-biraknak-gyulolet-buncselekmenyek-elleni-fellepesrol>

⁸⁷ <https://birosag.hu/media/aktualis/oktatasnak-vagy-kutatasnak-alcazott-befolyasolasi-kiserletek>

⁸⁸ <http://gyuloletellen.hu/aktualitasok/nemzetkozi-online-biro-es-ugyeszkepzo-program-osszeallitasaban-vettunk-reszt>

⁸⁹ https://birosag.hu/sites/default/files/allomanyok/stat-tart-file/3_etikai_kodex.pdf

Question 9

When a hate crime or other hate-motivated incident against LGBTI persons has occurred, are there, within the police

- a) units tasked specifically with investigating these incidents?

Yes No

Investigating hate crimes cases lies within the competence of county (metropolitan) police headquarters.⁹⁰ In 2012 a hate crime network was set up in the police service to supervise the investigative work of the police. The network consists of a national coordinator at National Police Headquarters and network members at each county police station. They receive specialized training, and can instruct colleagues at county or local police level on how to perform investigations.

- b) liaison officers tasked with maintaining contact with LGBT communities in order to establish a relationship of trust?

Yes No

There are no special liaison officers keeping contact with the LGBTI communities on a permanent basis. This lies in sharp contrast with the close cooperation of the police with the Roma communities and their minority self-governments.⁹¹ A central liaison working group at the National Police Headquarters and regional minority liaison working groups at each county and city police have been organized. The liaison officers responsible for managing the working groups keep contacts with the Roma minority self-governments and NGOs, regularly consult with them and discuss the cases that affected Roma persons. The cooperation covers organizing trainings – among others – for police officers in order to better understand the Roma community and handle the conflicts that may arise more effectively. The programme also aims at deconstructing stereotypes and bias towards the Roma, and facilitate the recruitment of Roma to the police forces.

- c) systems of anonymous complaints or online complaints to allow reporting by third parties of the occurrence of such incidents?

Yes No

Summary:

While there are general tools to report crimes anonymously and/or online, they are not specific to hate crimes.

Detailed analysis:

The Hungarian police operate a free of charge phone line where anyone – including third parties – can report crimes anonymously. The so-called *Phone Witness Programme* (*Telefontanú Program*) started to operate in January 2001 and it was modelled after the UK Crimestoppers. It allows citizens to report on crimes that have been already committed or that are being planned, and on persons wanted by the police. It offers an easy way to submit information without personally going to the police or without revealing the reporting person's identity. The operating hours of the service have been extended to 24/7.

⁹⁰ Annex 1, Paragraph 6.2 Decree no. 25/2013. (VI. 24.) of the Minister of Interior about on the competence and territorial jurisdiction of police investigation bodies

⁹¹ National Police Headquarters' Instruction no. 22/2011 (X. 21.).

Victims can submit anonymous reports at the central email address,⁹² the previously existing general webform to make reports⁹³ no longer exists. Háttér Society maintains two reporting interfaces (*Report homophobia!* and *UNI-FORM*) the latter will allow for reports to be submitted directly to the police as well. Both tools can be used anonymously, although if cases are to be reported to the police, contact information has to be provided. The creation and maintenance of these tools received no funding from the Hungarian state.

There is no legislation or special programmes on third party reporting.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

Question 10

Have specific measures been adopted or implemented to ensure the safety and dignity of lesbian, gay, bisexual and transgender deprived of their liberty?

Yes No Partially

In particular:

a) Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse?

Yes No Partially

Summary:

Preventing and responding to violence among inmates is a priority for the Prison Service, however, the effectiveness of measures is questionable, and the specific vulnerability of LGBTI inmates is not recognized.

Detailed analysis:

The law on the prison system specifically includes that:⁹⁴

Article 11:4

Members of the prison staff have the duty to prevent inmates from assaulting or torturing each other, or to perform any other behaviour against human dignity.

The Code of Ethics of the Prison Service reiterates this duty [Article III (3)]. Article 181 of Act no. XLII of 2015 on the service status of professional members of law enforcement agencies contains that disciplinary procedure shall be initiated if a staff member fails to perform his/her duty. If the breach of official duty is committed with the aim of causing unlawful disadvantage, criminal sanctions (abuse of authority) also apply.⁹⁵

Inmates retain full legal capacity and thus they may directly turn to the public prosecutor exercising supervision over the prison service. The prosecutor has a duty to investigate all complaints. In

⁹² panasz.orfk@ork.police.hu.

⁹³ <http://www.police.hu/bejelentesek/bejelentes>.

⁹⁴ Act no. CVII of 1995 on the organization of penitentiary institutions.

⁹⁵ Article 305 of Act no. C of 2012 on the Criminal Code.

case the suspicion arises that a member of the prison staff has committed a crime, the head of the prison has an obligation to turn to the prosecution.⁹⁶ In disciplinary offences by a prison staff member the head of the institution has the power to order proceedings; the military prosecution supervises the legality of such procedures.

As part of OPCAT the Commissioner for Fundamental Rights conducts regular visits to prisons. During these visits they can request information and access any documents. The findings of the visits are published as reports. The Commissioner can issue recommendations in case the institutional practices are not in line with the optional protocol.

While the above general measures offer some protection for LGBTI inmates as well, there are no specific prevention mechanisms (guidelines or policies) to address the dangers of physical assault, etc. against LGBTI inmates; only the general legal framework applies in this regard.

The Prison Service reported that LGBTI inmates might be placed at so-called psycho-social units created to take care of prisoners with special needs. These units cater for the needs of prisoners who are physically weak, mentally challenged, inclined to commit suicide, or at greater risk of violence from other inmates, or who suffer from depression. Also young offenders are placed in such units. Currently three prisons (Budapest, Sopronkőhida and Tököl) have such units, where prepared professionals hold sessions and organize programmes for prisoners. Within this programme special emphasis is put on suicide prevention.⁹⁷

Several reports, including an official report of the that-time Parliamentary Commissioner for Fundamental Rights found that violence among prisoners and by prison staff is widespread evidenced by the number of suspicious deaths.⁹⁸

b) Have the authorities adopted and implemented anti-bullying strategies to prevent violence against LGBT detainees?

Yes No Partially

The authors received no information on anti-bullying strategies to prevent violence against LGBT detainees.

c) Are trans prisoners given the possibility to be allocated to either a male or female facility based on their self-determined gender identity?

Yes No Partially

The registered gender is decisive for the placement and body search of all prisoners. For post-gender recognition transgender people, this means full recognition of their gender identity without the need to undergo hormonal or surgical gender reassignment in line with the procedure on gender recognition. Pre-gender recognition trans people, on the other hand face significant problems as they are placed together with inmates of their sex registered at birth.

Media reported about a case in which a trans woman awaiting legal gender recognition was placed in male prison. Her access to hormones was restricted for several months. She was touched inappropriately and humiliated by a prison guard. She submitted a complaint, but it was rejected claiming there was no proof for the mistreatment (see Case 38).

⁹⁶ Article 376 (2) of Act no. XC of 2017 on the criminal procedure.

⁹⁷ Letter from the Hungarian Prison Service no. 4/II-5/66/2011 in response to a questionnaire assessing the implementation of the Yogyakarta Principles; on file with the authors.

⁹⁸ Erika dr. Pajcsicsné dr. Csóré (2009): *Országgyűlési Biztosi Tájékoztató a magyarországi büntetés-végrehajtásban tapasztaltakról* [Report of the Parliamentary Commissioner on prison conditions in Hungary] Budapest.

- d) Do protective measures avoid placing LGBT detainees in solitary confinement?
Yes No Partially

There are no rules requiring or forbidding the placement of LGBTI detainees in solitary confinement.

- e) Are there training programmes and/or codes of conduct for prison staff to ensure that prisoners are treated with respect and without discrimination with regard to their
- sexual orientation? Yes No Partially
 - gender identity? Yes No Partially

Summary:

Although the training and Code of Ethics of the Prison Service put special emphasis on the respect of prisoners' human rights, LGBTI inmates do not constitute a specific concern for the prison authorities. There are no special programmes addressing their needs; and they only get closer supervision (and thus more attention) if they are at risk of committing suicide or suffer of some sort of mental illness.

Detailed analysis:

The Equal Treatment Act applies to prison services prohibiting discrimination and harassment based on sexual orientation and gender identity [Articles 4 d)]. The Code of Ethics of the Prison Service⁹⁹ has detailed rules on the expected behaviour of the staff towards prisoners. In all interactions, the domestically and internationally recognized rights of prisoners shall be respected; inmates and their family members have to be respected and they deserve humane treatment. The prison staff shall remain impartial, must refrain from physical violence, and they have the responsibility to protect prisoners from violence by other staff member. Discrimination is prohibited within the prison setting, although no specific grounds of discrimination are mentioned. The abuse of power also needs to be eliminated from their work.

The authors received no information on trainings tailored to discrimination on the basis of sexual orientation and gender identity.

Media reported about a case in which prison management rejected visitation rights to the registered partner of an inmate (see Case 39).

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

Question 11

Is there an effective system to register complaints and collect data on hate crime and hate-motivated incidents related to

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

⁹⁹ Available at:

<http://bv.gov.hu/download/8/ff/01000/A%20bv%20szervezet%20etikai%20kódexe%202010.pdf>.

Summary:

There is no special form to register hate crime, information provided by the person reporting is recorded in a narrative form. There is a statistical system collecting information on all recorded crimes, but it does not contain all reported incidents, does not cover all forms of hate crimes and does not disaggregate hate crimes based on victim groups. Data on sentencing of hate crimes are not available. No summary report on hate crimes based on the data in the system is publicly disseminated. There are no regular victim surveys to assess the number of unreported hate crimes.

Detailed analysis:

There is no special form to register hate crime reports, the police officer or prosecutor produces a summary of the facts reported in a narrative form. There is a template for the report that includes some basic questions concerning the person reporting and legal disclaimers, but there is no set of questions guiding the interview. Investigators are expected to cover main questions of criminalistics: What? Where? When? How? Who? To whom? Why?¹⁰⁰

The Police and the Prosecution Service' maintain a joint statistical system called ENYÜBS.¹⁰¹ The system supposedly contains all reported incidents, however, not in a format that allows for the proper recording and tracing of hate crimes. Firstly, the system is based on the categorization of a crime according to the assessment of the authorities; that is if a victim or witnesses perceive an incident as a hate crime, the authorities have no duty to record this information in the statistical system. If they think the incident does not reach the level of criminal sanctioning or consider the crime to be a crime other than the *sui generis* hate crime, there is no way to identify this case as a hate crime / hate incident.

Secondly, the system is based on the categorization of crimes according to various provisions of the Criminal Code combined with some analytic grouping of crimes (e.g. 'domestic violence' or 'corruption'). Since there is no definition of hate crimes encompassing all forms of hate crimes, the system does not allow for querying all hate crimes together, only queries on specific Articles of the Criminal Code are possible.

Thirdly, since hate motivation is not separated from other forms of 'base reasons' there is no possibility to separate e.g. murders committed with a hate motivation from murders committed out of profit motive.

Fourthly, for violence against a member of a community and incitement against a community the system requires disaggregating cases based on ethnicity, race, religion and nationality, but only optionally for cases based on sexual orientation and gender identity, which might be lumped together with disability and other grounds not explicitly mentioned in the law under the category of 'any other groups of society'.

Finally, the system contains data only about the investigation and prosecution phase, but not about sentencing. The sexual orientation or gender identity of the victims is not recorded in the system (only their age, gender, citizenship and occupation).

¹⁰⁰ Research report of the *Come Forward* project, under internal review.

¹⁰¹ Decree no. 12/2018. (VI. 7.) of the Minister of Interior on the common criminal statistical system of police and the prosecution service, about detailed rules of data collection and processing.

With the entry into force of the new Criminal Procedure Act (Act no. XC of 2017) on 1 July 2018, the ENYÜBS system will undergo major developments. Information about how hate crimes will be handled by the new system is not available yet.¹⁰²

There are no regular crime victim surveys in Hungary similar to the British Crime Survey (UK) or the National Crime Victimization Survey (USA), which would allow for assessing the real number of hate crimes and the level of underreporting. Victim surveys conducted by Hungarian institutions in 1996, 2000, 2003 failed to ask questions on hate crimes. The only study with relevant questions was the European Crime and Safety Survey conducted in 2005, but its one-off nature does not allow for assessing trends.

When the Hungarian LGBT Alliance requested for reforming the statistical system to allow for data to be gathered in a consistent way to allow disaggregation by all protected characteristics mentioned in the Criminal Code, the National Police Headquarters acknowledged that such data are already collected in the criminal case files, but found no reasons to make that data accessible for statistical analysis. The response seems to be unaware that such disaggregation is already available for race, ethnicity, nationality and religion.¹⁰³

and are there official statistics publicly available with regard to hate crime and hate-motivated incidents related to

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

There is a public query interface for ENYÜBS that allows for accessing the number of crimes registered disaggregated by Criminal Code offences,¹⁰⁴ but data disaggregated by victim groups are not available. The public query interface is currently disabled awaiting the launch of the new ENYÜBS in mid-August 2018.

Question 12

Have measures been adopted or implemented to regularly gather data on the levels of social acceptance towards

- Lesbians, gay, and bisexual persons? Yes No Partially

There is no publicly funded regular research into social attitudes towards LGB persons specifically. Brussels Institute, the research branch of the Action and Protection Fund (TEV), an organization set up to fight anti-Semitism, has a multi-year contract from the Prime Minister's Office to monitor anti-Semitism and related intolerance. The annual public opinion poll¹⁰⁵ contains one question on attitudes towards homosexuals. There is no similar contract with any LGBTI organizations to monitor discrimination based on sexual orientation and/or gender identity.

Even though public funding for such research is very limited, there have been several projects carried out from private or EU funding to assess social attitudes towards and/or experiences of discrimination by LGBTI people in various fields of life. A report summarizing the findings of all such studies was prepared in the framework of the *WeAreHere* project funded by the EU.¹⁰⁶ The

¹⁰² Letter no. 13251/2018 of the Ministry of Interior, on file with the authors.

¹⁰³ Human Rights Roundtable working document, 8 December 2017, on file with the authors.

¹⁰⁴ <https://bsr.bm.hu>.

¹⁰⁵ <http://tev.hu/antiszemitizmus-kutatasok>.

¹⁰⁶ <http://en.lmbtszovetseg.hu/wearehere>.

report identified 98 empirical studies in the period between 1982 and 2018, 86 of them on social attitudes.

- Transgender persons? Yes No Partially

There is no publicly funded regular research into social attitudes towards transgender persons. The TEV survey mentioned above contains a question only on homosexuals, but not on transgender persons. Of the 86 empirical studies on social attitudes identified in the *WeAreHere* project only 6 have specific questions on transgender persons.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

Question 13

Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

Yes No Partially

Summary:

The Criminal Code punishes the most serious forms of hate speech as incitement against a community explicitly covering sexual orientation and gender identity. The Civil Code enables individuals personally affected by hate speech to get damages and restitution through the protection of personality rights, but unlike for nationality, race, ethnicity and religion, it does not allow for addressing hate speech targeting a whole group. ETA’s harassment provisions have been used creatively to address hate speech by public officials. Media legislation also offers tools to address hate speech in print, electronic and online media.

Detailed analysis:

Criminal Code

The new Criminal Code (Act no. C of 2012) in force since 1 July 2013 contains the offense of incitement against a community similarly to the old Criminal Code (Act no. IV of 1978), but with explicitly including sexual orientation, gender identity and disability as well. Furthermore the provision was amended in 2015 to include reference to incitement to violence, besides incitement to hatred. The current provision reads as follows:

Article 332 – Incitement against a community

A person who incites to hatred or violence before the general public against

a) the Hungarian nation,

b) any national, ethnic, racial group, or any group of the society, in particular based on disability, gender identity, or sexual orientation, shall be punishable for such an offence with imprisonment of up to three years.

The addition of “violence” next to “hatred” was meant to lower the criminal threshold: case law of the courts had interpreted incitement to hatred to mean incitement to violence, the legislator

thought that by adding both terms to the provision, the two cannot be interpreted to mean the same, and thus will prompt a new interpretation to be given to the term “incitement to hatred”. This builds upon the amendment to the Fundamental Law adopted in 2013 that amended the provisions on freedom of speech to give more prevalence to considerations of human dignity.

Article 9 (4)

The right to freedom of expression may not be exercised with the aim of violating the human dignity of others.

While these two changes should have resulted in a significant shift in the case law of incitement against a community, the police and prosecution service have largely disregarded these amendments and still refer to the old case law of the courts giving absolute prevalence to freedom of speech, and only sanctioning incidents with a clear and present danger of violence.¹⁰⁷ Since the lack of indictment means that no cases reach the courts, they are in no position to revise their earlier case law in light of the new constitutional provisions. There has been no case of homophobic or transphobic hate speech ever prosecuted as incitement against a community, and the number of prosecutions remains similarly low for other social groups as well; the provision is often considered by practitioners as unenforced.

Civil Code

In addition to criminal law protections victims of homophobic and transphobic speech may seek a remedy in civil law. The protection of personality rights is not specifically aimed at providing legal remedies against homo/transphobic speech although, through the reference to the principle of non-discrimination, human dignity, integrity and reputation,¹⁰⁸ it does supply a sufficient legal basis for such civil law claims. One of the main deficiencies of the civil law regulation is that it only provides protection if the speech is targeted directly at identifiable individual(s), which makes the regulation difficult to use against general homo/transphobic expressions, no matter how harmful they may be.¹⁰⁹ For an example of how these provisions have been used in case of individuals, see Case 3.

Recognizing this deficiency the new Civil Code (Act no. V of 2013) adopted in February 2013 and in force since 15 March 2014 contains the following provision:

Article 2:54 (5)

Any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights, with the exception of laying claim to the financial advantage achieved.

To safeguard this provision from any interference by the Constitutional Court,¹¹⁰ the Fundamental Law was also amended a few weeks later to add the following provision to the article on freedom of speech:

Article 9 (5)

¹⁰⁷ For an overview of this case law see 2013 Report.

¹⁰⁸ Articles 2:42 (3), 2:43 (c-d) of the Civil Code.

¹⁰⁹ See the case of Péter Ádám v. Lóránt Hegedűs, jr. All documents related to the case available at: <http://www.jogvita.hu/per/tartalom.html>.

¹¹⁰ For an overview of how similar legislative attempts have been overridden by the Constitutional Court see 2013 Report.

The right to freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates their community, invoking the violation of their human dignity, as provided for by an Act.

Since both provisions contain a closed list of groups, and groups based on sexual orientation and gender identity are not included, these provisions cannot be relied on to address homophobic and transphobic hate speech.

Sanctions to be imposed in civil procedures against hate speech are the same as for any other personality rights violations, and include among others damages and restitution. For a complete list of sanctions see under Question 4.

Act on Equal Treatment and the Promotion of Equal Opportunities

In addition to the remedies provided by the Civil and Criminal Codes, worthy of mention is the definition of harassment in the Act no. CXXV of 2003 on equal treatment and promotion of equal opportunities (ETA) in Article 10.

(1) Harassment is a conduct of sexual or other nature violating human dignity related to the person's characteristics as defined in Article 8, with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around that person.

The rules of ETA provide a legal remedy even in cases where the protection of personality rights cannot be pursued due to limited standing (*i.e.* the victim has to be personally identifiable), and an *actio popularis* claim might be initiated on the grounds of this provision, with the possibility of the ETAAuth imposing a public interest fine. For the ETA, the prohibition of harassment aims at combating behaviour and actions violating the human dignity of a person. Such acts range from mocking an individual on the basis of their actual or assumed sexual orientation, voicing prejudiced views about LGBTI persons, telling anti-LGBTI jokes etc. some of which fall under the broad category of hate speech. The ETAAuth,¹¹¹ or the court adjudicating on the basis of the ETA, must primarily consider the affected person's subjective perception of the situation and reach an objective decision on the basis of that perception. The rules on evidence as specified in the ETA's rules of evidence (Article 19) are also applicable in cases of alleged harassment: petitioners must prove that they have suffered a disadvantage (due to a violation of their dignity or the fact that, in their opinion, a hostile, degrading or offensive environment was created around them). Respondents must prove that they were not obliged to respect the principle of equal treatment (*i.e.*, the provisions of the ETA) in the particular case or that they had acted in accordance with the law.¹¹²

The only limitation for using harassment provisions to address hate speech is the scope of ETA: the hate speech should occur in institutional contexts (such as workplace or schools). A creative use of these provisions concerned addressing hate speech by public officials, who fall under the scope of ETA by representing the Hungarian State, local governments or organisations exercising powers as authorities. There have been two cases where the ETAAuth sanctioned anti-Roma statements by mayors as harassment. In one of them, the Supreme Court (now Kúria) found that the scope of the ETA does not cover the mayor's statement, and ETAAuth's decision was

¹¹¹ For detailed information on the Equal Treatment Authority, see: <http://www.egyenlobanasmod.hu/index.php?lang=en>.

¹¹² József Kárpáti, László Bihary, András K. Kádár, and Lilla Farkas (2006): *Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény magyarázata*. [Commentary to the Act no CXXV of 2003 on the principle of equal treatment and promotion of equal opportunities] Budapest: Másság Alapítvány.

overruled.¹¹³ In the other case, the Kúria confirmed EAuth's assessment that the mayor's articles on Roma people amounted to harassment.¹¹⁴

Media Laws

The current Hungarian media regulation rests on two pillars: the basic principles and ground rules are contained in Act no. CIV of 2010 on the freedom of the press and the fundamental rules on media content (hereinafter: Media Constitution) and the detailed rules on operation and procedures are provided by Act no. CLXXXV of 2010 on the media services and the mass media (hereinafter: Media Act).

According to Article 14 (1) of the Media Constitution prescribes that:

The media service provider shall respect human dignity in the media content that it publishes.

Articles 17 further prescribes that

(1) The media content may not incite hatred against any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group.

(2) The media content may not exclude any nation, community, national, ethnic, linguistic and other minority or any majority as well as any church or religious group.

The media content cannot – furthermore – violate one's right to respect for private life [Article 18]. Protection against discrimination based on sexual orientation is afforded with regard to commercial advertisement by Article 24 (1) of the Media Act:

The commercial communication broadcasted in the media service

(a) may not violate human dignity;

(b) may not contain and may not support discrimination on grounds of gender, racial or ethnic origin, nationality, religion or ideological conviction, physical or mental disability, age or sexual orientation;

For procedures of the National Media and Infocommunications Authority and its Media Council concerning the violation of these provisions, see under Question 4.

There have been only a very few cases with LGBTI relevance brought under these provisions. Following a long legal debate in courts concerning the appropriateness of sanctions, EchoTV was fined in 2013 for inciting hatred against LGBT persons in 2009 (see Case 2). In 2017 the print and online newspaper *Magyar Hírlap* was fined for inciting to exclusion by publishing an opinion piece that argued that homosexual propaganda and Pride Marches should be banned, homosexuals should be banned from becoming teachers or theatre directors, and registrars and police officers should be allowed to decline their participation in celebrating same-sex registered partnerships and protecting homosexual events (see Case 40).

In particular, are legislative measures adopted or implemented to criminalise "hate speech" against LGBTI persons on the internet?

Yes No Partially

Summary:

There is no specific legislation criminalizing hate speech on the internet. The Criminal Code and the Criminal Procedure Act contain provisions for the temporary or permanent removal and blocking of illegal content. The NMIA and the Media Council have a broad mandate to monitor

¹¹³ Kfv.37.551/2010/5.

¹¹⁴ Kfv.III.37.848/2014/6.

internet services and on the basis of that recommend state intervention or facilitate voluntary rights-enforcement. The NMIA also operates an internet hotline, but only racist and xenophobic content can be reported, there is no category to include homophobic or transphobic speech.

Detailed analysis:

There is no specific legislation criminalizing hate speech on the internet. For the overview of the current general legal framework applicable to homophobic and transphobic speech regardless of where it appears, see under Question 13.

The new Criminal Code (Act no. C of 2012) in force since July 1 2013 introduced a new sanction: making illegal content (including implicitly content that is found by the court to be incitement against a community) permanently inaccessible [Article 77]. Practical rules on how to make the content inaccessible are regulated by the Criminal Procedure Act (Act no. XC of 2017): it can take the form of permanent removal by the internet service provider or permanently blocking access to the content [Article 570]. The service provider can also be ordered to temporarily remove the content until the criminal procedure finishes [Article 336] The legislation also allows for temporarily blocking access to content, but this option is limited to only a few offenses, and incitement against a community is not among them [Article 337].

NMIA operates an Internet Hotline.¹¹⁵ It allows the reporting of paedophile and racist content, websites that promote marginalizing views, drug trafficking and terrorism. Although the hotline seems to cover a broad range of illegal or semi-illegal content, among the hateful content explicitly it only mentions the ones that are racist and xenophobic, but not homo-/transphobic. It is important to note that it is not the role of the hotline to examine any online media content, such as online press, on-demand or other media content. These cases fall within the authority of the Media Council, only content providers outside the above circle can be reported through the hotline. The Internet Hotline notifies the content provider about the objectionable content calling attention to its liability by citing the applicable civil or criminal law obligations (not the media legislation as these service providers do not fall within the scope of the Media Constitution or the Media Act). In case of foreign servers, the hotlines of the relevant countries are contacted. The Internet Hotline's actions are not authority procedures, the Media Council cannot impose sanctions, it can merely call on the website or the service provider to remove the illegal content. During the discussions of the 2013 report NMIA agreed to extend the Internet Hotline to cover homophobic and transphobic content as well,¹¹⁶ but the change has not been implemented.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

Question 14

Have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

Yes No Partially

¹¹⁵ Available at: <http://nmhh.hu/internethotline/>.

¹¹⁶ Letter NH-31879-2/2014 of the National Media Infocommunications Authority, on file with the authors.

Summary:

Incidents of “hate speech” are frequent by conservative politicians, television programmes, newspapers and websites. Such incidents are most common in relation to the annual Pride March. Leading public officials do not to disavow these incidents.

Detailed analysis:

In earlier years most homophobic and transphobic comments were linked to the extreme right wing party Jobbik.¹¹⁷ With the governing party FIDESZ moving further to the right especially in their approach to migration, Jobbik changed their political strategy and used a more moderate voice. After the 2018 elections a more radical group of politicians split from Jobbik under the leadership of László Toroczkai, Mayor of Ásotthalom (convicted in 2011 for organizing violent attacks against the Pride March). The press release issued by his movement called on the Government to ban the Pride March, and if the Government failed to do so, they would organize a National Resistance Movement to stop the event.¹¹⁸

Meanwhile politicians from governing parties and especially pro-government media started to use more openly homophobic speech as well. In 2015 István Tarlós, mayor of Budapest in a TV interview called Budapest Pride “unnatural and disgusting” which is “not worthy enough for the historic surrounding of the Andrassy street.”¹¹⁹ Pro-government TV2 launched a campaign against Gábor Vona, president of Jobbik, claiming that he had homosexual relationships before. PM Viktor Orbán also played along with this campaign when in September 2017 he said in Parliament that “It takes more to govern a country than eyebrow pinchers”.¹²⁰ Pro-government *Ripost* published the profile of an opposition activist from a gay dating website.¹²¹ In June 2018 pro-government *Magyar Idők* published a review of the musical Billy Elliot claiming it propagates homosexuality.¹²² The Director of the Hungarian Opera first defended the musical, later cancelled 15 performances of the show.¹²³ Debates about Central European University often feature the criticism that it gives too much attention to issues such as “gender theory” and “homosexuality.”¹²⁴ In June 2018 the pro-government *Figyelő* published a list of researchers at the Hungarian Academy of Sciences whose research interests were found to be inappropriate. The article claimed that “gender and homosexuality are particularly popular topics”.¹²⁵ Such content would not be so remarkable in a working democracy, but in contemporary Hungary pro-government media is directly influenced by the governing parties, often giving precise orders on what to communicate and how. Such media content clearly serves propaganda purposes, and its role is to influence voting behaviour.

¹¹⁷ For a description of such incidents see 2013 Report.

¹¹⁸ <https://www.hvim.hu/single-post/2018/06/10/A-Varmegye-eletre-hivja>

¹¹⁹ https://tv2.hu/musoraink/mokka/178051_a_homoszexualitasrol_ez_a_szemelyes_velemenye_tarlosnak.html

¹²⁰ <https://444.hu/2017/09/18/orban-vonanak-a-kormanyzashoz-komolyabb-eszkozok-kellenek-mint-egy-szemoldokcsipesz>

¹²¹ <https://ripost.hu/cikk-gulyas-martont-nem-torte-meg-a-borton-azonnal-egy-specialis-tarskereson-vigasztalodott>

¹²² <https://magyaridok.hu/velemen/botranyos-eloadas-az-erkel-szinhazban-3146662>

¹²³ <http://168ora.hu/itthon/levelben-mondta-le-a-magyar-allami-operahaz-igazgatoja-szerda-este-a-billy-eliot-15-eloadasat-151827>

¹²⁴ <https://magyaridok.hu/velemen/ceu-vitatott-megitelese-2668534/>

¹²⁵ <https://figyelo.hu/v/bevandozlas-homoszexualisok-jogai-es-gendertudomany--ezek-foglalkoztatjak-leginkabb-az-mta-munkatarsait-->

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

Question 15

Are trainings, awareness raising activities or any other form of guidance provided to public officials and state representatives to promote tolerance towards LGBTI persons whenever they engage with civil society, media and sports organisations, political organisations and religious communities?

Yes No

The authors received no information on trainings, awareness raising activities or any other form of guidance to promote tolerance towards LGBTI persons specifically. The legislation on civil servants¹²⁶ contains general rules on code of conduct (including honesty, integrity, prohibition of misuse of power) that are applicable for all civil servants. All civil servants have to be members of the Hungarian Government and State Officials Corps, which has code of ethics.¹²⁷ The code includes impartiality and equal treatment as principles, but no specific groups / protected characteristics are mentioned.

Besides the Commissioner for Fundamental Rights, there have been no public officials taking a public stance promoting tolerance towards LGBTI persons since the conservative Government took power in 2010. Previously several public officials including the then Mayor of Budapest Gábor Demszky¹²⁸ and Minister of Equal Opportunities Kinga Göncz¹²⁹ came out in support of tolerance for LGBTI people. Such statements are currently limited to parties in opposition.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

Question 16

Is the freedom of association of LGBTI human right organisations ensured by

a) the possibility to obtain official registration?

Yes No

¹²⁶ Act no. CXCIX of 2011 on civil servants.

¹²⁷ <https://mkk.org.hu/hivatasetika>

¹²⁸ <http://pride.hu/article.php?sid=2740>.

¹²⁹ <http://www.szmm.gov.hu/main.php?folderID=1052&articleID=6176&ctag=articlelist&iid=1> and <http://www.szmm.gov.hu/main.php?folderID=1052&articleID=4488&ctag=articlelist&iid=1>.

Summary:

Organizations working for LGBTI people can be freely founded and can operate without any specific restrictions, but governmental attacks against NGOs, most importantly those involved in human rights protection, create a hostile, threatening working environment. The work of LGBTI civil society actors is further hampered by the increasing difficulty for them to find venues to hold their events.

Detailed analysis:

Associations and foundations whose explicit aim is to promote human rights and equality of LGBTI persons can get official registration without serious difficulties, there are currently over a dozen such organizations officially registered. Earlier restrictions on the minimum age of members and areas of activities such organizations can officially work on are no longer enforced.¹³⁰ One organization in the city of Miskolc faced difficulty with their registration when the local government refused to grant permission for them to use the name of the city in the name of the organization. The decision was successfully challenged in front of the ETAAuth (see Case 26).

For information about the legislative and political factors making the everyday operation of these organizations difficult see under Question 18.

- b) the removal of discriminatory administrative procedures and/or restrictions based on public health, morality and public order?

Yes No

There have not been such restrictions in place in Hungary.

- c) the involvement or consultation of such organisations when policies that concern or affect LGBTI persons are being adopted or implemented?

Yes No

See under Question 20.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

Question 17

Is public funding available for non-governmental organisations the purpose of which is, or includes, the protection of the rights of LGBTI persons?

Yes No

Summary:

In principle LGBTI NGOs can apply for funds generally available for NGOs on a competitive basis. There are no funds earmarked specifically for LGBTI NGOs. Only a tiny fraction of public money is distributed to LGBTI NGOs, and the amount has significantly decreased since the entry into power of the conservative government in 2010, partly as a result of thematic priority areas disadvantaging LGBTI NGOs.

¹³⁰ For an overview of these earlier restrictions see 2013 Report.

Detailed analysis:

There are several funding schemes available for NGOs in Hungary.

According to the law on personal income tax, every taxpayer can freely decide on 1% of their income tax to be transferred to the NGO of their preference.¹³¹ In 2017 7.5 billion HUF (appr. 23,250 million EUR) was distributed this way.

The National Cooperation Fund provides core funding and project-based funding on a competitive basis. In 2017 3.4 billion HUF (appr. 10,500 million EUR) were distributed via 4,077 funding decisions.

Besides these general funding frameworks several ministries and government agencies have funds available for NGOs working in specific thematic fields (e.g. youth, drug prevention, consumer protections, sport activities, promoting family values etc.) There has never been a specific call on LGBTI issues. Funds available for vulnerable groups are most often limited to Roma, women and people with disabilities, so LGBTI NGOs cannot apply. Furthermore, thematic calls under the conservative government tend to prioritize issues (e.g. promoting family values etc.) that disadvantage LGBTI NGOs. For example, in 2016 a call entitled *Protection net for families* with a budget of 6.2 billion HUF (appr. 19,221 million EUR) was launched, with a clear focus on conservative family values. In 2016 a call entitled *Strengthening social responsibility by developing communities* with a budget of 14.2 billion HUF (appr. 44,000 million EUR) was launched, but applicants had to submit a statement from the local government that their target group is covered by the local equal opportunity programme, and since LGBTI persons are not included in the relevant legislation, no LGBTI organizations could apply.

Finally, some prioritized NGOs receive funding directly from the central state budget as a separate budget line (e.g. umbrella organizations for disabled people, certain Roma NGOs), no LGBTI organizations are included this way.

Assessing the openness of state funding to LGBTI NGOs is made difficult by the lack of a central database containing data on all the various funding schemes, and the lack of filtering on the basis of causes.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

Question 18

What measures are in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression?

Summary:

While there has been no serious hostility or aggression directed against LGBTI human rights organizations, the situation of human rights defenders in general has seriously deteriorated in recent years as a result of restrictive legislative changes and a political campaign against them.

¹³¹ Act no. CXXVI of 1996 on the use of a specified amount of personal income tax in accordance with the taxpayer's instruction

Detailed analysis:

Civil society organizations involved in human rights protection, are under constant attack by the Government, creating a hostile, threatening working environment.¹³² Attacks include legal restrictions: legislation was adopted on 13 June 2017 that require 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.¹³³ In a set of bills entitled “Stop Soros” (referring to philanthropist George Soros, whose Open Society Foundations financially supports 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.¹³⁴ 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”,¹³⁵ and criminalizing support for asylum seekers¹³⁶ were adopted.

Attacks also include 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, information was leaked to the public, and organizations were labelled by governing politicians and government oriented media as committing financial irregularities. The investigations were closed without anyone being charged. KEHI also requested documents containing sensitive information, such as list of volunteers and attendees at events. The funding of LGBTI organizations by the Fund was mentioned several times by leading government officials as signs that the Fund finances useless or even harmful projects.¹³⁷

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. These PM Viktor Orbán charging these organizations with being “politically motivated foreign agents” governed by foreign interests.¹³⁸

A report by the UN Special Rapporteur on the situation of human rights defenders in Hungary¹³⁹ found that they have to work in an ever more politicized environment, where defending human rights have become a “political activity” in the discourse of the Government, and their fundamental rights and freedoms are violated. Legislative restrictions, financial instability, financial investigations, and media campaigns stigmatizing them restrict their work. Independent NGOs are not invited by the public media, they are blacklisted by publicly owned companies. The report

¹³² For an overview of developments between 2013 and 2017, see: https://www.helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_short_22022017.pdf

¹³³ Act no. LXXVI of 2017 on the transparency of foreign funded organizations

¹³⁴ <http://www.kormany.hu/download/c/9a/41000/STOP%20SOROS%20TÖRVÉNYCSOMAG.pdf>

¹³⁵ Article 253 of Act no. XLI of 2018 on amending tax and other laws, and introducing the special tax on immigration

¹³⁶ Act no. VI of 2018 amending laws in relation to measures to tackle illegal migration

¹³⁷ <https://24.hu/belfold/2014/07/29/reagaltak-a-leszbikusok-soltesz-beszolasara>

¹³⁸ <http://www.kormany.hu/hu/a-miniszterelnok/beszedek-publikaciok-interjuk/a-munkaalapu-allam-korszakakövetkezik>

¹³⁹ Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary, March, 2017 (A/HRC/34/52/Add.2)

notes that women's rights, Roma rights, LGBTI right NGOs and NGOS working with refugees are the most targeted.

While the measures mentioned above do not specifically target LGBTI human rights defenders, they have a devastating impact on the situation and advocacy capacity of these communities.

The work of LGBTI civil society actors is further hampered by the increasing difficulty for them to find venues to hold their events. Several of such rejections (including that of a university (Case 28), a network of youth centres (Case 43) and a sports facility (Case 35) were found to be discriminatory on the basis of sexual orientation and gender identity by the Equal Treatment Authority.

Question 19

Are LGBTI human rights organisations able to

a) work with national human rights institutions? Yes No

LGBTI human rights organizations have not experienced any difficulty in working with the national human rights institutions: cooperation with the Commissioner for Fundamental Rights has significantly strengthened in recent years (for more information see under Question 52). ETAAuth on the other hand has become more reserved to cooperate with LGBTI NGOs outside of the framework of individual complaints.

b) work with the media? Yes No

LGBTI organizations often find it hard to communicate their message to wider audiences. The government has completely monopolized the public media, and pro-government businesspeople have taken over a significant portion of privately owned media as well. Dissenting voices including voices of LGBTI organizations are rendered nearly invisible in these media outlets. Regular media monitoring of news programs by the National Media and Infocommunications Authority most recently found that in the second half of 2017 LGBTI organizations amounted to only 1.1% of all civil society speakers, only 0.4% in the public media.¹⁴⁰ For more details see under Question 21c.

c) work with other human rights organisations? Yes No

LGBTI human rights organizations have not experienced any difficulty in working with other civil society organizations. There have been several joint advocacy efforts (e.g. improving hate crimes legislation and its implementation; preventing the adoption of an amendment emptying out the Registered Partnership Act; and calling for the ratification of the Istanbul Convention). LGBTI organizations are members of several thematic coalitions or network including the Working Group Against Hate Crimes,¹⁴¹ the Diversity Education Working Group,¹⁴² and *Civilizáció*, a large network of NGOs fighting against the restrictive legislation on foreign funding and similar initiatives.¹⁴³

d) take part in training sessions or conferences ? Yes No

¹⁴⁰ Nemzeti Média és Hírközlési Hatóság (2018) *Társadalmi sokszínűség a hírműsorokban. 2017. július 1. - december 31.* Available online at: http://nmhh.hu/cikk/195459/Tarsadalmi_sokszinuseg_a_hirmusorokban_2017_Julius_1__december_31

¹⁴¹ <http://gyuloleletellen.hu/about-us>

¹⁴² <http://sokszinusegoktatas.hu>

¹⁴³ <http://fb.com/civilizacio2017>

There have been no restrictions – formal or informal – on LGBTI human rights organizations' work, travel, or participation in conferences. Hungarian LGBT NGOs regularly hold conferences, workshops and talks on topics they work on, and so far there has been no pressure from the authorities that would discourage holding such events. Similarly, no limitation has been placed on participation in conferences organized by international or national organizations on sexual orientation and gender identity.¹⁴⁴ Representatives of the community are usually invited by the public authorities to events that touch upon LGBTI issues.¹⁴⁵

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

Question 20

Have measures been taken to ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

Yes No Partially

Summary:

While the legislative framework offers numerous opportunities for civil society organizations to participate in policy-making, such opportunities are severely limited in practice by failing to publish draft legislation as part of compulsory public consultation, or setting deadlines for submitting opinions that are impossible to keep. The Thematic Working Group on the Rights of LGBT People of the Government's Human Rights Roundtable established in 2012 offers an institutionalized form of dialogue with LGBTI civil society actors, but recommendations brought up at the meetings are most often rejected or left without a response.

Detailed analysis:

Act on social participation

Act no. CXXXI of 2010 on the social participation in the preparation of legislation aims at providing a practical framework to include the broadest range of stakeholders into the decision-making. Through participation – according to the preamble of the act – the quality of legislation can be improved and the obstacles of effective implementation may be eliminated. The act's scope is however limited: it applies only to legislation prepared by the ministers, although it includes the preparatory concept papers as well.¹⁴⁶ The law tries to ensure that the consultation is as broad as possible and it is transparent. There are two forms of consultation: 1. publishing the draft on the Internet (general consultation); 2. consulting selected stakeholders chosen by the minister responsible for the preparation of the draft legislation (direct consultation). It is mandatory to organize general consultation, *i.e.* all draft legislation falling within the scope of the act needs to be made accessible.

¹⁴⁴ LGBTI activists have participated at ILGA and ILGA-Europe events since the beginning of 1990s.

¹⁴⁵ *E.g.* the workshops on intersex (20 May 2015) and trans issues (25 October 2017) organized by the Commissioner for Fundamental Rights.

¹⁴⁶ Acts of Parliament, Government Decrees and Decrees of ministers fall within the scope of the act.

While the setting up of a centralized database for drafts published for consultation by all ministries in 2011 improved the accessibility of the consultation, it is still common practice for drafts not be published at all, or setting deadlines for submitting opinions that are impossible to keep (such as one working day or even less).¹⁴⁷ Ministries are encouraged to develop strategic partnerships – among others – with civil society organizations to facilitate direct consultations.¹⁴⁸ There have been no strategic partnership agreements concluded with any LGBTI organizations by any ministries. This is particularly alarming taken into consideration that for example the Ministry of Public Administration and Justice had 92 such partnership agreements with civil society organizations in August 2014, many of them of local interest, but none of them working in the field human rights.¹⁴⁹

An example to illustrate problems with the system of consultations: in September 2016, the Commissioner for Fundamental Rights issued a report¹⁵⁰ calling on the Ministry of Human Capacities and the Ministry of Interior to codify the legal gender recognition procedure. The report specifically called on the ministries to cooperate with civil society organisations in the drafting of the new legislation. Both the Transvanilla Transgender Association and the Hungarian LGBT Alliance informed the Ministry of Human Capacities that they would like to be consulted during the drafting of the legislation. To Transvanilla, the Ministry responded that their contribution would be welcome later on in the drafting process.¹⁵¹ To the Hungarian LGBT Alliance the Ministry responded that only the general consultation would be available.¹⁵² On 20 December 2017 a Government Decree was published including a (short) provision on legal gender recognition.¹⁵³ The draft decree had not even been made available for general consultation on the Government's website, let alone direct consultation with relevant civil society actors.

Since 2013 the Hungarian LGBT Alliance submitted six written opinions on bills discussed in Parliament or draft legislation put up for consultation, Háltér Society two more. Of the eight opinions two (a minor correction to the translation of a Council of Europe convention, and the suggestion to drop the amendment to the Registered Partnership Act emptying out the institution) was fully adopted; one on asylum law was largely adopted, but the updated draft was never submitted to Parliament. Two opinions on the criminal procedure and victim support were partly adopted, partly rejected. Three opinions were fully rejected (amendment to the National Core Curriculum, inclusion of LGBTI people in the Human Resources Operative Program, suggestion to recognize foreign same-sex marriages as registered partnerships in the law international private law)

Parliamentary debates

The House Rules of the Parliament¹⁵⁴ in force before 2014 allowed for national interest-representation and civil society organizations to get registered with the Parliament [Article 141],

¹⁴⁷ Eötvös Károly Intézet (2015): *Civil részvétel a jogalkotásban Magyarországon 2010-2015*. 2015. november

¹⁴⁸ Article 13 (3) Act no. CXXXI of 2010 on the social participation

¹⁴⁹ Letter V/ID/188/2/2014 of the Ministry of Public Administration and Justice, on file with the authors.

¹⁵⁰ AJB-883/2016.

¹⁵¹ Letter no. 11293-7/2016/EGP of the Ministry of Human Capacities, on file with the authors.

¹⁵² Letter no. 20177-1/2017/KÖZEG of the Ministry of Human Capacities, on file with the authors.

¹⁵³ Government Decree 429/2017 (XII.20) on detailed regulations regarding tasks related to registries

¹⁵⁴ Parliamentary resolution no. 46/1994. (IX. 30.) on certain house rules.

and have their opinion heard by MPs in committees [Article 81 (2)]. The new House Rules¹⁵⁵ adopted in 2014 abolished the registry. Civil society organizations can only speak in committees as experts if they are invited by a member of the committee and if the committee votes to hear them.¹⁵⁶ Civil society organizations were rejected from speaking in the Justice Affairs Committee on 18 May 2016 regarding an amendment to the Registered Partnership Act, on 31 May 2016 regarding a bill to amend the family provisions in the Fundamental Law, and on 28 March 2017 regarding the bill on the new Civil Procedure and its provisions on hate crime victims.

Human Rights Working Group

Government Decision no. 1039/2012 (III. 22.) established the Human Rights Working Group (HRWG) as an inter-ministerial organ entitled to propose, express opinion and assist the work of the government. The members of the HRWG are:¹⁵⁷

- a) *the Parliamentary state secretary of the Ministry of Interior,*
- b) *the state secretary of the Ministry of Human Capacities (MHR) responsible for religious, ethnic and civil society relations,*
- c) *the state secretary of the MHR responsible for social inclusion,*
- d) *the state secretary of the MHR responsible for health,*
- e) *the state secretary of the MHR responsible for education,*
- f) *the Parliamentary state secretary of the Ministry of Defence,*
- g) *the state secretary of the Ministry of Public Administration and Justice (MPAJ) responsible for justice affairs,*
- h) *the state secretary of the MPAJ responsible for government communication,*
- i) *the Parliamentary state secretary of the Ministry of Foreign Affairs (MFA),*
- j) *the state secretary of the MFA responsible for EU affairs,*
- k) *the state secretary of the Ministry of National Economy responsible for employment policy.*

The HRWG has to monitor the implementation of human rights in Hungary. It needs to consult the civil society organizations working in the field of human rights, representative organizations and constitutional organs responsible for the effective enforcement of basic rights. It is the task of the HRWG to overview the obligations under human rights treaties and monitor the fulfilment of the commitments. HRWG has to follow up on the implementation of the recommendations received by Hungary in the 11th session of the Human Rights Council within the framework of Hungary's universal periodic review. The working group may submit proposals with regard to legislation and implementation to state organs in order to enhance respect for human rights. Furthermore, the HRWG assists the communication about the human rights situation of the country. The HRWG shall have at least one meeting in every three month.

One of the most important aspects of its work is to maintain a Human Rights Roundtable giving the human rights NGOs opportunity for consultation and the roundtable can submit recommendations on the work and tasks of the HRWG. The members of the Human Rights Roundtable are:

- a) *members of the HRWG*
- b) *the Commissioner for Fundamental Rights, the president of the Equal Treatment Authority and the president of the National Authority for Data Protection and Freedom of Information,*
- c) *the following persons invited by the president of the HRWG and working on issues that fall within the competence of the HRWG*
 - ca) *representative a constitutional organ, head of a central public administrative body,*

¹⁵⁵ Parliamentary resolution no. 10/2014. (II. 24.) on certain house rules.

¹⁵⁶ Article 40 (4) of Act no. XXXVI of 2012 on the Parliament.

¹⁵⁷ As modified by Government Decision no. 1147/2012. (V. 11.).

cb) NGOs, interest groups and professional organizations.

An open call for civil society representatives was launched on 28 September 2012, 47 organisations were selected for participation, among them three LGBTI organizations. The launch meeting of the Roundtable was held on 13 December 2012. The work started in 12 thematic working groups, among them one specifically focusing on the rights of LGBT persons, some of the LGBTI organizations also joined the working groups on children's rights, women's rights, migration and asylum, the rights of elderly persons, political rights and social rights. The quality of the work in the various thematic working groups varies greatly, but the LGBTI working group is one of the most active ones. The working group had 11 meetings so far; thematic sessions covered issues such as employment, healthcare, parenting, security at public events etc. Sessions have also been devoted to discussing the 2013 report about the implementation of the Recommendation, and the UPR recommendations Hungary has received in 2011 and 2016. LGBTI organisations are free to set the agenda of the meetings, and when requested an extraordinary meeting was held to urgently discuss pending legislation. LGBTI organizations are free to voice their opinion in the meetings, however, arguments put forward orally are hardly ever responded to. The working group developed a working method in which suggestions are communicated by the LGBTI organizations in writing, the secretariat identifies the competent authorities, collects their responses, which are then communicated back in writing and discussed at the next meeting.

Unfortunately, most of the suggestions put forward have so far been either rejected or left unresponded. Two cases where the working group had directly positive impact on outcomes was the Ásotthalom ban on promoting same-sex marriage (see under Question 21a) and the provisions on trans asylum seekers adopted in December 2017 (see under Question 28).

Some organizations including the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee and Amnesty International left the Roundtable in protest against the attacks on civil society organizations.

Specialized councils

In line with the separate strategies on integration and equal opportunities,¹⁵⁸ the government has set up consultative bodies (so called "councils") dealing with the rights of some disadvantaged or minority group where NGO may participate in policy-making or preparation of legislation. Act no. XXVI of 1998 on the rights and equal opportunities of people living with disabilities ordered the establishment of the National Council on Disability Affairs in order to assist the work of the government. It can initiate decisions, make proposals, submit opinions on the rights of people with disabilities, it coordinates among the stakeholders, and monitors and assesses the implementation of such decisions. The representatives of organizations working on the rights of people with visual and hearing impairment, physical disability, psycho-social disability, autism are regular members of the Council.¹⁵⁹

Similarly, Government Decision no. 1008/2009 (I. 28.) set up the Council of Social Equality between Women and Men with very similar mandate to that of the disability rights council. Civil society organizations may take part in the work of the Council pending that their basic goal is to work towards the equality of women and men. The Council has held no meetings since 2010.¹⁶⁰

Finally, Government Decision no. 1102/2011 (IV. 15.) deals with the Roma Coordination Council explicitly aiming at ensuring civil and social participation in the preparation, implementation and

¹⁵⁸ See Question 3b.

¹⁵⁹ Articles 24 and 25 of the Act no. XXVI of 1998 on the rights and equal opportunities of people living with disabilities.

¹⁶⁰ Magyar Női Érdekérvényesítő Szövetség (2016) *A Magyar Női Érdekérvényesítő Szövetség közpolitikai ajánlásai*, p102.

assessment of the Roma integration strategy. The Roma Coordination Council has 27 members, out of which 6 are representatives of the Roma community. The Decision does not contain reference to civil society organizations, while minority self-governments, churches and government officials are listed. The Roma Coordination Council already indicates a serious step-back from the solutions applied with regard to other vulnerable communities, it minimizes the civil society participation.

While the Thematic Working Group on the Rights LGBT People offers a formalized consultation mechanism with LGBTI civil society organizations, it is a lower level institution compared to the councils mentioned above, which are established via acts of Parliament or government decisions. This difference shows that LGBTI issues are still taken less seriously than issues of other vulnerable groups.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

Question 21

Are there measures in place to ensure the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, including

a) Organising activities that support the human rights of LGBTI persons?

Yes No Partially

Summary:

There has been an attempt in a village to ban propagating same-sex marriage and family as anything other than marriage or parent-child relationship, but the ban was annulled by the Constitutional Court. There have been no other direct restrictions on receiving or transmitting information on activities that support the human rights of LGBTI persons, but the attacks against NGOs, including LGBTI NGOs have a chilling effect.

Detailed analysis:

On 23 November 2016, the assembly of representatives in the village of Ásotthalom (in Southern Hungary, pop. 3849) adopted a local government decree¹⁶¹ that bans (1) muezzins, (2) the wearing of burqa, niqab, chador and burkini (3) propagating same-sex marriage, (4) propagating family as anything other than marriage or parent-child relationship. "Propagation" includes any activity in public space including demonstrations, performances, posters, flyers and loudspeaker advertisement. The Government Office of Csongrád County, supervising the lawful operation of local governments requested that the local decree be revoked as it was not in line with the Equal Treatment Act and the Act on Freedom of Assembly. Since the Ásotthalom Local Government did not revoke the decree by the 15 February 2017 deadline set by the Government Office, the Office

¹⁶¹ Decree no. 25/2016.(XI.23.) of the Ásotthalom Local Assembly of Representatives amending decree no. 12/2014. (IV.30.) on the basic rules of community living.

turned to the Kúria and asked for the annulment of the local decree.¹⁶² Parallely, the Commissioner for Fundamental Rights turned to the Constitutional Court claiming that the local decree infringed on the rights of freedom of expression, freedom of assembly, freedom of religion and equal treatment guaranteed by the Fundamental Law. On 11 April 2017 the Constitutional Court annulled the local decree.¹⁶³

While there have been no other direct restrictions on receiving or transmitting information on activities that support the human rights of LGBTI persons, the attacks against NGOs, including LGBTI NGOs negatively impact their capacity to freely organise and share their views. For a detailed description of these attacks see under Question 18.

b) Publishing material that raises awareness on the human rights of LGBTI persons?

Yes No Partially

No restriction has been placed on the publication of content on sexual orientation and gender identity. LGBTI organizations are free to publish information materials and leaflets,¹⁶⁴ campaign materials,¹⁶⁵ and several recently published academic books¹⁶⁶ deal with the above topic as well.

c) Securing visibility via media coverage?

Yes No Partially

Summary:

There are no specific measures in place to promote the media coverage of LGBTI issues. Media representation of the LGBTI community remains a concern: while left-leaning media services provide a balanced coverage on LGB issues, right-wing media still builds on stereotypes and is often openly homophobic and transphobic. The visibility of trans issues is significantly lower, and even otherwise LGB-friendly media outlets publish opinion pieces questioning the human rights of transgender persons. LGBTI organizations have practically no access to the public media.

Detailed analysis:

The media coverage of LGBTI issues is increasingly controversial. On the one hand left-leaning, opposition print and electronic newspapers regularly cover news and events of the LGBTI community, and generally provide a fair coverage. Trans issues are significantly less covered, and even some otherwise LGB-friendly news outlets have published opinion pieces questioning the human rights of transgender persons.¹⁶⁷ Press releases, statements by LGBTI organizations regularly make it to the news section of the above mentioned media organizations.

¹⁶² <http://www.csmkh.hu/en/sajtokoezlemlenyek/a-kuriahoz-fordul-asotthalom-ugyeben-a-kormanyhivatal>

¹⁶³ Decision no. 7/2017. (IV. 18.)

¹⁶⁴ See for example the publications of Háttér Society (<http://www.hatter.hu/kiadvanyaink>) and Transvanilla Transgender Association (<http://transvanilla.hu/letoltesek>).

¹⁶⁵ See for example the billboard campaigns *Szevasztok! Szavaztok?* in 2014 (<http://szavaztok.hu>) and *Itt vagyunk!* in 2015 (<http://ittvagyunk.lmbtszovetseg.hu>).

¹⁶⁶ See for example the Andrea Ritter (2014) *Melegek - Ismeretlen ismerősök a 21. században*. Budapest: Corvina; Judit Takács (2018) *Meleg század - Adalékok a homoszexualitás 20. századi magyarországi társadalomtörténetéhez*. Budapest: Kalligram.

¹⁶⁷ For example: <http://reflektor.hu/velemen/rosenfeld-mirjam-rahel-transzszido-kialtvany> and <http://magyamarancs.hu/publicisztika/isten-az-ankertben-109869>

On the other hand publicly subsidized, pro-government private media outlets often publish openly homophobic and transphobic content. Some of these media content have been found illegal by the NMIA (see Cases 2 and 40) or the courts (see Case 36). For an overview of recent media content by these service providers amounting to hate speech see under Question 14.

Finally, state owned and run public media (both television and radio) remain largely silent on these issues.

There are no specific measures in place to promote the media coverage of LGBTI issues. Article 13 of the Media Constitution prescribes the following:

Linear media content providers engaged in news coverage operations shall provide comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the general public and on any event bearing relevance to the citizens of Hungary and members of the Hungarian nation.

The Media Council shall proceed in cases where the observance of the above principles is at stake,¹⁶⁸ however, in 2012 NMIA explicitly refused that it was a task for them to encourage pluralism and non-discrimination in the media as this would amount to prior censorship.¹⁶⁹

The provisions in the Media Act and the Family Protection Act on the protection of family values might undermine freedom of expression with regards to LGBTI-related content. Article 83 of the Media Act contains that:

(1) The objectives of public media service are as follows:

(...)

c) to promote and strengthen national cohesion and social integration, and to respect the institution of marriage and the value of family,

(...)

This duty is confirmed by Article 5 of the Family Protection Act, which reads as follows:

In order to achieve the goals enshrined in this law and for the protection of children, media service providers shall offer their services protecting the institution of family and the value of family and raising children. The state shall encourage the broadcasting of programmes and media content that carries the values of family and raising children. A separate law shall contain sanctions on violations by media service providers.

These provisions might result in sanctions against media content that provide a neutral or positive image of LGBTI people. So far, no such sanctions have been imposed, but the possibility of preventive self-censorship cannot be ruled out. While there have been several petitions to the former and current media authorities concerning LGBTI content on television that the petitioners felt was unsuitable for TV, NMIA and its predecessor, the National Radio and Television Commission, refused those petitions, and only found a violation when explicit sexual content was aired.

The Public Service Code for the national public media¹⁷⁰ contains the basic rules applicable both for the public radio and television. Among the goals of the public media the document lists the provision of space for debates of the community; improvement of cultural responsibility, and furthering social cohesion and integration. Among the aims of the public media service the Code explicitly names the requirement of balanced, precise and thorough coverage, and reiterates the provision the Media Act on “facilitating and strengthening of national cohesion and social

¹⁶⁸ For the procedure see under Question 4.

¹⁶⁹ Letter from the National Media and Infocommunications Authority no. MN/13627-2/2012; on file with the authors.

¹⁷⁰ Available at: http://www.noe.hu/anyagok/noe_kozszolgalati_kodex.pdf.

integration, and respect and support for the value of the institution of marriage and family”, providing information about constitutional rights and order, meeting the media expectations of national, ethnic, religious minorities and other communities. However, the public media can not only serve minority needs as that would run counter the principle of diversity.

Although among the basic principles the Code lists the requirement to provide an overview of the cultural, scientific, religious diversity and of the different worldviews, the phrasing undoubtedly does not show any intent to include LGBT topics. The document puts a heavy emphasis on national heritage, preserving traditions and values, historically oppressed religions, language and the culture of Hungarians living beyond the borders and it does not mention contemporarily vulnerable groups (except for people living with disabilities). Diversity is frequently used in the above context; however, discrimination is only mentioned in relation to ‘traditional’ minorities, such as ethnic and national, or religious minorities.

The implementation of the Code and respect for the principles contained therein is supervised by the Board of Public Service. The members of the Board are delegated by organizations listed in the Annex of the Media Act for 3 years (Media Act, Article 97). Human rights organizations, let alone LGBT organizations are not listed (representative organizations for people with disabilities are the only ones entitled to delegate a member). Interestingly, the Hungarian Academy of Science, the Hungarian Olympic Commission, all four historical churches, the Chamber of Commerce and organizations catering for the needs of families (*i.e.* protecting traditional family values and representing the so-called big families) have the privilege to delegate members (Annex 1 to the Media Act).

In January 2014 the regular media monitoring of news programs by NMIA was extended to cover LGBT organizations as well. The reports published twice a year found that LGBT civil society organizations amount to a very low proportion (0.1-1.1%) of all civil society speakers, only a few dozen of media appearances a year in the eight media service providers monitored. The most recent report found that in the second half of 2017 LGBT organizations amounted to only 1.1% of all civil society speakers, only 0.4% in the public media.¹⁷¹

d) Disseminating or accessing information on safe sexual practices?

Yes No Partially

There have been no limitations on dissemination of information on safe sexual practices, but LGBTI NGOs receive less and less funding for such activities. For more information on this see under Question 40b.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

Question 22

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

Yes No Partially

¹⁷¹ Nemzeti Média és Hírközlési Hatóság (2018) *Társadalmi sokszínűség a hírműsorokban. 2017. július 1. - december 31.* Available online at: http://nmhh.hu/cikk/195459/Tarsadalmi_sokszinuseg_a_hirmusorokban_2017_Julius_1__december_31

Summary:

Pride Marches have not been banned since 2012, but over-securitization of the Marches, including the hermetic closure of the surrounding areas restrict the rights of (potential) participants to join and leave the march, and has a stigmatizing effect on the community.

Detailed analysis:

Article 8 (1) of the Fundamental Law and the Assembly Act¹⁷² provide the right to peaceful assembly. Article 2 (3) of the Assembly Act contain only a content-neutral limitation on public gatherings:

The exercise of freedom of assembly shall not constitute a crime or an incitement to crime; moreover, it should not result in the infringement of the rights and freedoms of others.

Furthermore, Article 8 (1) states that an assembly can be banned in the following cases:

If the holding of an event subject to prior notification seriously endangers the proper functioning of the representative bodies or courts, or the circulation of traffic cannot be secured in any other way, the police may ban the holding of the event at the place or time indicated in the notification, within 48 hours from the receipt of the notification by the authority.

In 2008, 2011 and 2012 the Police banned the Pride Marches with reference to traffic concerns, but in 2008 the Police itself revoked the ban, and in 2011 and 2012 the Metropolitan Court of Budapest annulled these police decisions. No bans have been issued since. Following the 2012 ban Háttér Society and an individual sued the police claim that the ban of the march amounted to discrimination and harassment based on sexual orientation and gender identity. The courts agreed, and ordered the Police to issue an apology (see Case 6 for more details).

In recent years a debate has developed between the organizers and the police on proper security measures. Due to the severe attacks against the marches in 2007-2009 the police started to use a fence system to separate the Pride participants from counter-demonstrators. Participants could only join the march at secured gates at the starting point of the march, and leave it at the end point. Furthermore, fences were set up not next to the march route but one or two streets away, meaning that people in the city could not even see the march. In 2014 the Pride organizers started to campaign for new security measures claiming that the hermetic closure of the event is not proportionate to the security risks. They built the argument on the report of the Commissioner for Fundamental Rights concerning the 2009 Pride that found that large scale hermetic closure of an event might violate freedom of expression as the demonstration has to take place in an empty space without any spectators, which restricts participants in communicating their messages.¹⁷³

In 2017 the organizers were not informed until the very last moment whether fences would be used or not. When on the day of the march it became clear that fences had been installed, the organizers sent a last minute notification to the police to change the route. The police did not have time to move the fences to the new route. The event took place largely without fences, without any security problems. The main organizer of the march was fined for 50,000 HUF (appr. 155 EUR) for the last minute change in the route, but the court later decreased the sanction to a warning. The case is currently pending at the European Court of Human Rights. In 2018 the police was more cooperative in negotiating the security measures, and while there were security gates at the start point, and fences at a few hot spots, the march took place largely without fences.

¹⁷² Act no. III of 1989 on freedom of assembly. The Parliament adopted a new law on freedom of assembly on 20 July 2018 (Act no. XV of 2018); it will enter into force on 1 October 2018.

¹⁷³ Gyülekezési Jogi Projekt (Freedom of Assembly Project), 2009/1.

Some smaller LGBTI events have met administrative difficulties. In 2015 the Hungarian LGBT Alliance in cooperation with local LGBTQI activist groups held tabling events in larger cities outside the capital. The event took the following form: a tent was set up on main squares, demonstration materials were placed in front of the tent, and volunteers of the organizations engaged with passers-by via interactive games and personal discussions. The events were held as freedom of assembly events. In Miskolc, the police first rejected the notification about the assembly, claiming that the event does not fall within the scope of the Assembly Act.¹⁷⁴ When an appeal was officially submitted, the police revoked their earlier opinion and acknowledged the assembly. In Kaposvár, the assembly was acknowledged by the police, but the local government ordered the tent to be removed as no permission from the local government to use public space for the tent had been secured. The court found the action of the local government unlawful claiming that there is no need for a public space use permission for assemblies.¹⁷⁵

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

Question 23

Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

Yes No Partially

The police employ extensive security measures to protect the Pride Marches including fences and manpower. In recent years no physical assaults were reported, some participants, however, were harassed and threatened by extreme right wing counter-demonstrators. Debates in recent years focused more on over-securitization, rather than a lack of protective measures. For these debates see under Question 22.

And are law enforcement officers sensitized and trained to protect specific social groups, including LGBT persons, during public demonstrations?

Yes No Partially

The authors have received no information about such initiatives. There have been no reports of disrespectful police behaviour at Pride Marches since 2012.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

Question 24

What measures are in place to prevent the abuse of legal or administrative provisions on grounds of public health, public morality or public order resulting in restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly by LGBTI persons or human rights organisations supporting the rights of LGBTI persons?

¹⁷⁴ Memo of the meeting with the police, August 25 2015, on file with the authors.

¹⁷⁵ Kaposvári Administrative and Labour Court Decision no. 1 .K.27.292/2015/4/II.

There have been no such restrictions in place since 2012: Pride Marches have not been banned and the police no longer call on participants of the Pride March to refrain from acts that violate public taste or public morals, and only refer to refraining from unlawful behaviour in general.

Article 9 of the Assembly Act sets out the remedies available in case the police do not allow a demonstration to proceed as the organizers have submitted. There is no appeal against the decision of the police; however, the decision may be challenged through judicial review within 3 days. The court shall decide – with the participation of lay persons – in a non-contradictory procedure within 3 days after receiving the request challenging the decision of the police. The court may hold a hearing. If the petition is accepted, the court quashes the decision of the police and the demonstration can take place according to the terms set out in the original notification to the police. There is no further appeal against the decision of the court.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

Question 25

Have public authorities publicly condemned any unlawful interferences with the exercise of freedom of expression and peaceful assembly by LGBTI persons or human rights organisations supporting the rights of LGBTI persons?

Yes No

While there have been no such interferences to condemn since 2012, politicians and public officials often voice their opposition to Pride Marches. In 2015 István Tarlós, Mayor of Budapest in a TV interview called Budapest Pride “unnatural and disgusting”, which is “not worthy enough for the historic surrounding of the Andrásy street.”¹⁷⁶ Also in 2015, Máté Kocsis, Mayor of District 8 said in an interview that “such provocative events should not be held on Andrásy street at a World Heritage site”, it should rather be held “in the parking lot of the wholesale market”.¹⁷⁷ In 2017 a Jobbik politician issued a press release calling to ban the Pride March: “Jobbik stands by its definite opinion that the Budapest Pride severely violates public morality, and is an anti-family event. Obscene provocation by several participants does harm to the social acceptance of homosexuals in Hungary.”¹⁷⁸ In 2018 the organization of László Toroczkai, Mayor of Ásotthalom issued a press release, which called on the Government to ban the Pride March, and if the Government failed to do so, they would organize a National Resistance Movement to stop the event.¹⁷⁹ No public authorities publicly condemned these statements.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may

¹⁷⁶ https://tv2.hu/musoraink/mokka/178051_a_homoszexualitasrol_ez_a_szemelyes_velemenye_tarlosnak.html

¹⁷⁷ <https://444.hu/2015/05/30/kocsi-mate-felmerult-hogy-legyen-a-pride-a-nagybani-piac-parkolajaban>

¹⁷⁸ https://alfahir.hu/2017/07/08/provokacio_budapest_pride_fidesz_kdnp

¹⁷⁹ <https://www.hvim.hu/single-post/2018/06/10/A-Varmegye-eletre-hivja>

lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

Question 26

Have measures been taken to repeal, amend or apply in a manner which is compatible with the principle of non-discrimination, any criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

There is no criminal provision that either by wording or scope could be applied in a discriminatory way. Consensual same-sex sexual acts are not criminalized since 1962.¹⁸⁰ A Constitutional Court decision equalized the age of consent in 2002.¹⁸¹

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

Question 27

Are there measures in place to ensure that personal data are not collected, stored or otherwise used when referring to

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

Summary:

Legislation provides heightened protection for data concerning sexual life and state of health, the latter is interpreted to cover the transition history of transgender persons. Such sensitive data can be collected only in strictly and narrowly defined cases and there is a semi-independent authority supervising data management. Previously there have been records containing sensitive data, but there is no proof of maintaining similar ones today.

Detailed analysis:

Data concerning sexual orientation and gender identity have been considered as sensitive data since the first data protection legislation adopted in 1992.¹⁸² The current data protection law adopted in 2011¹⁸³ contains the following definition of sensitive data:

Article 3 (3)

special data: any personal data falling in special categories of personal data, that is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, as well as

¹⁸⁰ Abolished by Act no. V of 1961.

¹⁸¹ Constitutional Court Decision no. 7/2002 (VI. 28.)

¹⁸² Act no. LXIII of 1992 on the protection of personal data and the disclosure of data of public interest.

¹⁸³ Act no. CXII of 2011 on informational self-determination and freedom of information. The Act is in force since 1 January 2012.

genetic data, biometric data for the purpose of uniquely identifying a natural person, health data or data concerning a natural person's sex life or sexual orientation.

Such data can be managed only if 1. it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person, or necessary to prevent direct danger to the life, bodily integrity or property of persons and is proportionate to it; 2. if the person has made it public, and data management is necessary and proportionate to the aim of the data management; 3. the management of such data is necessary and proportionate for the implementation of an international agreement promulgated by an act of parliament, or was ordered by law in order to enforce fundamental rights enshrined in the Fundamental Law or in the interest of national security, crime prevention, investigation or prosecution of crime, or defence. These provisions apply to both public authorities, as well as non-state actors.

Sexual orientation has been recently explicitly added to the legislation (the amendment is in force since 26 July 2018) to comply with the General Data Protection Regulation¹⁸⁴ of the European Union. The question whether gender identity including information on prior legal gender recognition is also special data has been settled by the National Authority for Data Protection and Freedom of Information (NADPFI). In 2016, the Commissioner for Fundamental Rights requested an opinion from NADPFI on this question. According to NADPFI name and gender on its own is not special data, but the change of gender and the related name change, as well as any personal data related to it are special data, even if no medical interventions are performed, since such a procedure is based on psychological reasons, in order to restore or protect mental health, and based on a medical opinion.¹⁸⁵

Respect for personal data is monitored by the National Authority for Data Protection and Freedom of Information, which is autonomous – but not independent – public administration body that to a large extent took over the functions of the Commissioner for Data Protection. Anyone may submit a request to the NADPFI if he thinks that the rules for data protection have been violated, and the NADPFI is entitled to launch an official data protection procedure *ex officio* if it is presumed that the illegal processing of personal data concerns a wide range of persons; concerns special data, or significantly harms interests or results in the risk of damages. The NADPFI has the authority to impose fines.¹⁸⁶

Furthermore, there are two criminal offenses related to the protection of personal data:

Misuse of Personal Data

Article 219

(1) Any person who, in violation of the statutory provisions governing the protection and processing of personal data: a) is engaged in the unauthorized and inappropriate processing of personal data; or b) fails to take measures to ensure the security of data; is guilty of a misdemeanour punishable by imprisonment not exceeding one year.

(2) The penalty in accordance with Subsection (1) above shall also be imposed upon any person who, in violation of the statutory provisions governing the protection and processing of personal data, fails to notify the data subject as required, and thereby imposes significant injury to the interests of another person or persons.

(3) Any misuse of personal data shall be punishable by imprisonment not exceeding two years if committed in connection with special data.

¹⁸⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

¹⁸⁵ Quoted in AJB-883/2016.

¹⁸⁶ For further information see: <http://www.naih.hu/general-information.html>.

(4) The penalty shall be imprisonment not exceeding three years for a felony if the misuse of personal data is committed by a public official or in the course of discharging a public duty.

Invasion of Privacy

Article 223

(1) Any person who reveals any private secret he has obtained in a professional or official capacity without due cause is guilty of a misdemeanour punishable with custodial arrest.

There had been at least one case where Article 219 was used: in 2013 an extreme right wing news portal published a list of LGBTI people under the title “The big faggot database 2”. The database was compiled based on Facebook event attendance. The prosecution service found this amounted to Misuse of Personal Data, but the perpetrators have not been identified, so no charges were pressed (see Case 17).

And are existing records that do not comply with this principle destroyed?

Yes No Partially

There is no evidence of the existence of such records or collection of such data on sexual orientation. The former Commissioner for Data Protection raised concerns about the collection of data on sexual orientation by the Office of National Security in 2009, but the head of the Service strongly denied the existence of such data collection. Since there were no reliable sources of information on the continued data collection, the Commissioner closed the case.¹⁸⁷

On the other hand there are frequent reports of public authorities, employers and healthcare providers storing data on the transition history of transgender persons. This most often takes the form of including the pre-legal gender recognition name of persons in the “name at birth” field or in the comment field of databases.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

Question 28

Are legal gender recognition procedures available that are quick, transparent, accessible and based on self-determination?

Yes No Partially

Summary:

While there is now a government decree that refers to legal gender recognition, unlike the long established and consistently applied procedure on officially recognizing a person’s gender this new procedure lacks clarity, accessibility and transparency, and still carries a significant risk of arbitrariness.

Detailed analysis:

The recognition of a person’s gender from 2004 was based on a very concise statement in the law decree on registries:¹⁸⁸

Article 32:2

¹⁸⁷ Case 608/2010/T, further info at: <http://abi.atlatszo.hu/index201.php?menu=beszamolok/2009/99&dok=beszamolok/2009>.

¹⁸⁸ Law Decree no. 17 of 1982 on registries, marriage procedure and bearing names.

In case of a change of data the following events have to be registered:

(...)

d) change of the child's sex;

On 1 July 2014 the new Registry Act (Act no. I of 2010 on the registry procedure) entered into force, replacing the law decree from 1982. The new legislation does not contain a similarly specific provision, it only states that the registry shall contain – among others – the sex of a person, and all changes in data have to be registered in the registry [Articles 69/B (1be) and (1d)]. The entry into force of the new legislation has not affected legal gender recognition procedures.

Based on these broad provisions and the general rules of administrative procedures there existed an uncodified, but consistently applied procedure until November 2016.

Following petitions from Transvanilla Transgender Association and two individuals, in 2015-2016 the Commissioner for Fundamental Rights carried out an extensive investigation into the regulatory issues concerning legal gender recognition procedure in Hungary. In his report published in September 2016¹⁸⁹ the CFR made it clear that gender identity is one's personal experience of one's own gender. In the case of transgender persons, legal gender should be based on their identity, their own definition and self-determination, regardless of their sex characteristics. One of his important remarks is that legal gender recognition procedure should not assume that the person will make use of trans specific medical procedures, and should not imply a logical connection between these two procedures. The gender identity of trans persons might not be in line with their external sex characteristics. In such cases, the possibility of changing the legal gender is not a medical issue, but the realization of human dignity and the right to self-determination. The report also highlights that with regards to regulation, it is crucial that the change of name and gender be treated primarily as a legal rather than a medical issue. The CFR asked the Minister of Human Resources to draft legislation in cooperation with the Minister of Interior to ensure legal certainty and a fair procedure for trans people wishing to choose their name and gender according to their gender identity. The CFR strongly emphasized in his report the need to separate the process for legal gender recognition from access to trans-specific health care.

The Ministry of Human Capacities notified the CFR and Transvanilla Transgender Association¹⁹⁰ that they agree with the findings of the report and new legislation will be drafted. The Ministry informed the Hungarian LGBT Alliance that the legislation would be adopted in the first half of 2017.¹⁹¹ From January 2017 those that have filed requests for legal gender after that date were informed that their procedures had been suspended without further information.

On 1 January 2018 Government Decree 429/2017 (XII. 20.) on detailed regulations regarding tasks related to registries came into effect. The decree contains the following brief provision:

Article

7

In case of the change of gender and the related change in given name, the registry bureau responsible for name changes shall notify the registry bureau at the place of birth within 8 days after the reception of the medical expert's opinion supporting the change of gender in order for the changes to be entered in the registry. The registrar will enter the changes in the registry based on the notification received from the registry bureau responsible for name changes and the certified photocopy of the medical expert's supporting opinion.

In January 2018 those who had filed their requests between November 2016 and late 2017 started to receive answers to their requests. Many of them had to wait 13 months.

¹⁸⁹ AJB-883/2016.

¹⁹⁰ Letter no. 11293-7/2016/EGP of the Ministry of Human Capacities, on file with the authors.

¹⁹¹ Letter no. 20177-1/2017/KÖZEG of the Ministry of Human Capacities, on file with the authors.

The brief provision in the Government Decree does not contain even the most basic questions related to legal gender recognition. It is not clear what kind of medical expert opinions are needed, what terms and conditions apply, what deadlines have to be met. From January 2016 until January 2018 a guideline was published on the website of the Budapest Government Office that clearly stated the documents to be submitted. In January 2018 this was replaced with a very laconic description without detailing the exact requirements. The practice (similar to the one in place before the suspension in November 2016) is the following:

The applicant submits a request to the Budapest Government Office¹⁹² asking for a change of gender and name. The request has to be supported by forensic documents: the result of an examination by a gynaecologist or urologist; the opinion of a forensic psychologist and a psychiatrist have to be attached. The request is submitted for a supporting opinion to the Ministry of Human Capacities – dealing with issues of public health. The authorities involved have 60 days to deliver a decision.¹⁹³ If authorized, the local registrar is ordered to amend the registry within 8 days and alter the gender and name of the applicant. With the registry amended, the applicant is fully recognized in their new gender. In principle if the change of gender or name is rejected, it is subject to appeal and judicial review according to the general rules of administrative procedure.¹⁹⁴ As opposed to the CFR's recommendations, legal gender recognition remained a medical issue, as it is connected to medical expert opinions.

A change of name to the other gender without the change of gender is not possible, as the Registry Act specifically contains that:

Article 44 (3)

A maximum of two given names that correspond to the sex of the child can be picked by the parents from the list of given names compiled by the Hungarian Academy of Sciences (hereinafter: HAS). The parents can decide the order of the given names. The list of given name shall be published on the website of HAS.

The details of the procedure described above are still not codified, thus there is a fair chance of arbitrariness in the procedure due to the discretionary nature of the decision. There are no general policy guidelines or information on government websites on the procedure; the ministries only supply information on an individual basis. The practice has been slightly changed several times without informing the public in recent years, individual procedures are often delayed because the documentation provided is not in line with the current requirements which are never publicly available. Information provided by the authorities to individuals is often not detailed enough either.

In a recent case concerning legal gender recognition by a trans refugee, the Constitutional Court for the first time directly dealt with the question of legal gender recognition.¹⁹⁵ The Court confirmed that legal gender recognition and related name change is a fundamental right of trans persons deriving from the principle of human dignity. The decision also emphasizes that medical interventions are not a prerequisite for legal gender recognition (see Case 31).

In particular, is legal gender recognition of transgender persons

a) conditional on undergoing an operation or treatment entailing irreversible sterilisation against their wishes?

¹⁹² The Budapest Government Office is the registry bureau is responsible for all name changes in the country.

¹⁹³ Article 50 (2c) of Act no. CL of 2016 on the general administrative procedure.

¹⁹⁴ Chapter IX of Act no. CL of 2016 on the general administrative procedure and Act no. I of 2017 administrative court procedure.

¹⁹⁵ Decision no. 6/2018. (VI. 27.)

Yes No

Summary:

Medical interventions including surgeries have not been a prerequisite since around 2004, but there is no legislation or publicly available document to back this statement.

Detailed analysis:

Before the 1990s the Hungarian situation was characterized by the total lack of a care system for trans people. In the early 1990s when the first gender reassignment surgeries took place, the practical rule was that in order to change one's birth certificate and other official documents, a person should have undergone irreversible changes. This unfair arrangement, requiring patients to go through a medical process without any help or recognition, was abandoned in 2004.

Currently surgeries are not a prerequisite, but there is no legislation or publicly available document to back this statement. Between January 2016 and January 2017 a detailed guideline on legal gender recognition was available on the Budapest Government Office's website that clearly stated this,¹⁹⁶ but in January 2018 it was replaced by a shorter guideline not containing this information.¹⁹⁷

b) conditional on undergoing hormonal treatment or any other form of medical treatment or surgical procedure?

Yes No Partially

Summary:

Medical interventions including hormonal treatment and other types of gender affirming interventions including surgeries have not been a prerequisite since around 2004, but there is no legislation or publicly available document to back this statement. Mandatory gynaecological/urological examination and expert opinion, however, are still required.

Detailed analysis:

Medical interventions including hormonal treatment and other types of gender affirming interventions including surgeries are not a prerequisite, but there is no legislation or publicly available document to support this statement.

Mandatory medical examination and medical opinion, on the other hand, are required from a gynaecologist/urologist based on the registered gender of the applicant. Until 2016 a simple status statement from the expert on the healthy state of the person's reproductive organs and genitals had been accepted. In 2016 a new requirement was introduced with regards to this document; it has to contain the following sentence: "there are no medical reasons preventing the person from undergoing gender confirming surgery". This caused delays in those procedures which were under evaluation at that time, as applicants had to acquire new medical opinions. It is also far more difficult to obtain such an opinion, as many gynaecologists/urologists have no expertise in this field. There are no guidelines available to doctors and they are not informed on the procedure.

¹⁹⁶ <http://www.kormanyhivatal.hu/download/b/dd/53000/T%C3%A1j%C3%A9koztat%C3%B3%20a%20N%C3%A9vv%C3%A1ltoztat%C3%A1si%20%C3%A9s%20Anyak%C3%B6nyvi%20Oszta%C3%A1ly%20feladatair%C3%B3l.pdf>

¹⁹⁷ <http://www.kormanyhivatal.hu/download/a/37/24000/N%C3%A9vv%C3%A1ltoztat%C3%A1si%20%C3%A9s%20Anyak%C3%B6nyvi%20Oszta%C3%A1ly%20t%C3%A1j%C3%A9koztat%C3%B3%20%2020180129.pdf>

c) conditional on a psychological diagnosis or expert statement?

Yes No Partially

The applicant is required to provide medical diagnosis of transsexualism from a psychiatrist and a supporting opinion from a clinical psychologist. The requirement is not included in any legislation or publicly available document. There are no medical protocol or guidelines on the diagnosis or transsexualism, making patients very vulnerable.

d) conditional on the capacity to demonstrate a period of “life experience” in the self-determined gender?

Yes No Partially

There is no such requirement, but there is no legislation or publicly available document to support this statement.

e) accessible irrespective of
- age?

Yes No Partially

Summary:

While there is no legislation requiring it, in practice applicants in legal gender recognition procedures have to be over 18 years of age.

Detailed analysis:

There is no legislation restricting the possibility of legal gender recognition for adults, however, applicants under the age of 18 are rejected systemically.

In 2011 a client of Transvanilla applied for legal gender recognition at the age of 17. She received no official reply to her request. Over the phone she was informed by the authorities that two persons had to sign all requests, and one of them refused to allow her to change her gender under the age of 18. The authorities refused to put the information in writing. On the day she turned 18 she re-applied and got accepted without further delay.

In 2016 two trans men both 16 years of age applied for legal gender recognition, both with explicit parental consent. In both cases the authorities informed their parents on their requests for legal gender recognition, and that they do not support surgeries and hormonal replacement therapy at their age. Both applicants turned to the Commissioner for Fundamental Rights, who carried out an investigation and advised the legislator to create transparent legislation that is also clear on age restrictions if there are any.¹⁹⁸ Both of the rejected applicants re-applied again and got their gender recognised as soon as they turned 18.

- medical status?

Yes No Partially

The mandatory gynaecological/urological medical examination and medical opinion is a form of medical status check. Since the medical opinion has to include that “there are no medical reasons preventing the person from undergoing gender confirming surgery”, there might be cases when legal gender recognition is denied in case the applicant does not pass this check. On the other hand the authors of this report know of no urological or gynaecological reasons that could prevent a person from undergoing genital surgery. The mandatory inclusion of such a sentence is particularly problematic, since gender affirmative medical interventions are not mandatory for

¹⁹⁸ AJB-883/2016.

persons getting their legal gender recognised, so such medical check-up is arbitrary, and serves no legitimate aim.

- financial situation ? Yes No Partially

Applicants have to pay fee of 3,000 HUF (appr. 9.5 EUR) for their request to be evaluated. The amount is relatively low, and thus can be considered as accessible. However, obtaining the necessary medical opinions is a financial burden to many persons seeking legal gender recognition. The lack of national guidelines on trans specific health care creates high level of uncertainty on who has to provide diagnoses or supporting opinions and under what conditions. Many applicants rather choose private care to avoid rejection and humiliation. For information about the experience of trans people in the healthcare system, see under Question 40a.

- police record? Yes No Partially

The authors know of no cases where a police record was used to reject legal gender recognition.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

Question 29

Have appropriate measures been adopted and/or implemented to guarantee full legal gender recognition of a person in all areas of life, including adapting official documents, and educational or work certificates issued by non-state actors?

Yes No Partially

Summary:

Following the amendment of the registry a new birth certificate is issued. New identity cards and passports can be applied for with reference to the new birth certificate. State agencies maintaining official registries are automatically informed about the change of name and gender. General rules on replacing diplomas following the change of name apply to gender recognition as well. Such legislation exists for public education, but not for higher education.

Detailed analysis:

Following the amendment of the registry the registrar issues a new birth certificate containing only the new name and gender of the applicant, generates a new personal identification number, and informs the Personal Data and Address Register (PDAR) about the amendment. The PDAR then informs the tax authority, the social security authorities, the Financial Supervisory Authority, the State Treasury, the registry of vehicles, the authority maintaining criminal records, the armed forces and the immigration authority.¹⁹⁹ New identity cards, address cards, passports, driving licenses, social security and tax cards, and amendments to the land registry have to be applied for individually at the relevant authorities based on the new birth certificate. The electoral registry is based on PDAR, so there is no need for a separate amendment.²⁰⁰

¹⁹⁹ Act no. XX of 1996 on identification methods and identification codes replacing the personal identification number.

²⁰⁰ Letter from the Human Rights Working Group no. XX-E/6/1/2012; on file with the authors.

Some applicants faced difficulties accessing their new birth certificate via registered postal mail: the letter was addressed to their new name, and the post office refused to hand over the letter, because they could not prove that they are the addressee, since their ID card was for their previous name.

There is no specific legislation on amending diplomas following gender recognition, but the decree on the operation of schools contains regulation on the general procedure to replace diplomas following the change of names that is also applicable to changing of the name due to gender recognition.²⁰¹ On the other hand, there is no similar legislation concerning amending diplomas issued by higher education institutions, or institutions of adult learning.

There have been several reports – and even requests for information by education institutions – to both the informational service of Transvanilla and the legal aid service of Háttér that the replacement of diplomas is not without difficulties. Educational institutions are not aware of the possibility of legal gender recognition, and often do not know how to respond to such requests. Particular difficulty might arise from amending diploma issued by institutions of adult learning that have ceased operation without a legal successor. Insistence and reference to legislation and a formal information letter by either of the NGOs mentioned above, however, usually work. Transvanilla is aware of cases where the applicant decided not to change their certificate or diploma because this seemed to be too much of a burden for them. The authors know of no cases where the issuing of a new diploma or other type of school certificate was refused in the end.

The authors received no information concerning problems with the amendment of certificates of employment.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

Question 30

Are there legal and other measures in place to protect the right of transgender persons to marry?
Yes No Partially

a) In particular, are transgender persons allowed to marry a person of the sex opposite to their reassigned sex?

Yes No Partially

Summary:

Upon the official change of gender, the person is fully recognized in their new gender also for the purpose of entering into marriage/registered partnership.

Detailed analysis:

The Civil Code only contains the formal requirements of marriage when it states:

Article 4:5 (1)

Marriage shall be considered contracted if a man and a woman together appears before the registrar in person and declare their intention to marry.

²⁰¹ Article 113 (2) of Decree no. 20/2012 of the Ministry of Human Capacities on the operation of teaching-educational institutions and naming institutions of public education

Personal data of those seeking to marry are verified based on the birth certificate not containing reference to the situation prior the legal gender recognition. Thus those who have officially changed their gender are eligible to marry their partner of the opposite sex.

Interestingly, Decision no. 154/2008 (XII. 17.) of the Constitutional Court when assessing the constitutionality of the originally passed act on registered partnership devotes a section to summarizing the trans-related case-law of the European Court of Human Rights. Without drawing further conclusions to the Hungarian law, especially the act in question, the Court reaffirmed the ECtHR's stand that transsexuals are entitled to marry according to their newly acquired gender.

b) Where married trans persons are required to divorce prior to obtaining the legal recognition of their self-determined gender, are measures in place compensating for a loss in acquired rights of spouses?

Yes No Partially

Summary:

Legislation states that legal gender recognition shall be rejected in case the applicant is married or in a registered partnership. There is no compensation for any loss to those being required to divorce prior legal gender recognition.

Detailed analysis:

An amendment to the law decree on registries was adopted in 2009 to introduce divorce requirement for people requesting to officially change their gender.²⁰² Authors of this report are not aware of any cases where married trans persons requested legal gender recognition before 2009. The new Registry Act in force since 2014 maintained a similar provision, which currently reads as follows:

Article 69/B (4)

Registering the change of gender shall be refused if the person concerned is legally married or in a registered partnership.

The version of the Civil Code adopted by the Parliament in 2009²⁰³ would have contained an alternative regulation on this issue: it made changing one's gender automatically dissolve marriage and registered partnership, but allow partners to re-marry/re-register their partnerships that would legally be treated as a continuation of their previous relationship. The Civil Code adopted by the Parliament was revoked, and the divorce requirement returned in its earlier form.

Trans people are the only group forced to divorce in Hungary. Forcing partners to divorce when they wish to stay together through a transition violates respect for their family life, and is particularly problematic in light of the high level of legal protection given to a marriage in the Fundamental Law. No one should be put in a position to choose between their relationship and their gender identity. Forced divorce has financial and emotional impact on children as well as parents. No policy exists on how to assist or support those couples that are forced to divorce by this provision. Transvanilla provided assistance in a few cases to couples who wanted to stay together. In all those cases the couples decided not to take any risk of facing delays in the legal gender recognition procedure, nor taking on any additional burdens in addition to the divorce procedure.

²⁰² Law Decree no. 17 of 1982 on registries, marriage procedure and bearing names.

²⁰³ Act no. CXX of 2009 on the Civil Code (never entered into force).

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

Question 31

Does national legislation confer rights and obligation on unmarried couples?

Yes No Partially

If so, have measures been adopted and/or implemented so that the same rights and obligations apply to same-sex couples and different-sex couples?

Yes No Partially

Summary:

Following an amendment to the Civil Code in 1996 same-sex cohabiting couples (“*élettársak*”) are conferred the same rights and obligations as different-sex couples, except in the field of assisted reproduction where only different-sex cohabiting couples are entitled for treatment. The lack of parenting rights results in indirect discrimination regarding survivor's pension, right to maintenance and tenancy upon separation as the rules on cohabiting partners with a common child are significantly more beneficial.

Detailed analysis:

The old Civil Code contained a definition of cohabitation without any reference to the partners' gender since 1996.²⁰⁴ The new Civil Code in force since 15 March 2014 contains a similar provision:

Article 6:514 (1)

Cohabitation means when two persons are living together outside of wedlock in an emotional and financial community in the same household, provided that neither of them is engaged in wedlock, registered partnership or cohabitation with another person, and that they are not related in direct line, and they are not siblings

While the rights of same-sex and different sex couples are largely the same, there are some notable differences where that is not the case.

According to the Act no. CLIV of 1997 on health care (Health Care Act) assisted reproduction is available only to married couples, different-sex cohabiting couples and single women.

Article 167

(1) Reproduction procedures may be performed on married couples or cohabiting couples of different sexes if, for reasons of health existing among either party (infertility), it is highly probable that a healthy child cannot be produced through natural means. Among cohabiting couples, the procedures only may be conducted if neither of the partners is married to another person.

There are also several pieces of legislation that confer some rights on cohabiting couples if they have a common child. For example Act no. LXXXI of 1997 on social security pension benefits regulates survivor's pensions. According to the law spouses, divorced spouses and cohabiting partners are entitled to survivor's pensions. In case of spouses and divorced spouses the law does not contain any minimum length for the partnership, however, cohabiting partners are only entitled to survivors pensions if they have been living together for a year and have a common child, or have been living together for ten years. The legislation applies to same-sex and different-sex couples equally, however, since same-sex couples are not allowed to adopt jointly or to adopt

²⁰⁴ For an overview of the legislative developments leading to this legislation, see 2013 Report.

their partner's child, same-sex parents are discriminated indirectly by having to prove ten years of cohabitation even in cases where they are bringing up a child together.

The Civil Code grants cohabiting partners the right to maintenance and tenancy upon separation. That is, either cohabiting partner shall be entitled to demand maintenance from their partner upon separation if unable to support themselves for reasons beyond their control. [Article 4:86]. Similarly, the court can grant either cohabiting partner the right to stay in the home owned by both partners, and in some cases also to a home owned by the other partner [Articles 4:92-95]. However, both provisions are limited to cohabiting partners that have been living together for a year and have a common child. Since same-sex couples are not allowed to adopt jointly or to adopt their partner's child, same-sex couples are discriminated by not being able to make use of these provisions. Unlike for survivor's pension, same-sex couples are not entitled to these rights even after ten years of cohabitation.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

Question 32

Do same-sex couples have access to registered partnerships under national law?

Yes No

a) If so, are the legal status, rights and obligations of same-sex couples equivalent to those of different-sex couples in a comparable situation?

Yes No Partially

Summary:

The institution of registered partnership for same-sex couples exists since 2009. The rights and obligations of registered partners are equivalent to those of spouses in most fields of life with the exception of parenting and taking the partner's name. Some further differences exist in the minimum age for partners, the existence of a simpler divorce procedure for registered partners, and the limited number of registry offices where registered partnership ceremonies can be celebrated. Couples often face difficulties when trying to make use of the rights offered by registered partnership.

Detailed analysis:

The institution of registered partnership was introduced in Hungary in 2009. The Act no. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (Registered Partnership Act) is force since 1 July 2009. The law establishes a general equivalence between marriage and registered partnership with a few notable exceptions. The so-called general reference rule in Article 3 (1) stipulates that unless the RPA otherwise provides or explicitly excludes the application of it, the rules governing marriage shall be applied to registered partnerships as well. The RPA specifies three areas where this general reference rule is not applicable: 1) registered partners cannot jointly adopt a child,

registered partners cannot adopt each other's child, and the presumption of paternity is not applicable to registered partners; 2) the rules on bearing each other's name cannot be applied; and 3) registered partners cannot take part in assisted reproductive services.

The RPA contains some other minor differences from marriage, which are worth mentioning. While according to the Civil Code the minimum age for entering into marriage is the age of majority (18), with special permission by the guardianship authority different-sex couples can marry at the age of 16.²⁰⁵ Such a procedure is unavailable for same-sex couples wishing to register their partnership under the age of 18.²⁰⁶ RPA also allows for an out-of-court divorce procedure for registered partners if the partners are not raising children and can agree on all aspects (including the division of property) of the divorce.²⁰⁷ In case both conditions are met, registered partners can get a divorce by appearing in person at a public notary and signing the agreement. If one of the conditions is not met, or the partners choose not to take advantage of the simpler divorce procedure, the same rules on divorce apply as for spouses. Finally, registered partnership ceremonies can only be conducted by registrars in so-called "district centres" (*"járasközpontok"*, around 300 registry offices), instead of all registry offices where marriage ceremonies can be performed (around 3200 registry offices).

The almost full equality between registered partners and married couples (bearing in mind the significant differences enshrined in the RPA) was (potentially) seriously affected by the adoption of Fundamental Law and especially its Fourth amendment.

On 23 December 2011 the Parliament adopted a cardinal law²⁰⁸, the Family Protection Act, which entered into force on 2 January 2012. The act strongly reflects the conservative approach of the governing parties. The act puts heavy emphasis on marriage and childbearing. It repeats the Fundamental Law's commitment to the protection of marriage – defined as the union of a woman and a man – and the importance of raising children. The preamble states that the institution of family is "an institution that predates law and the state" and which "is based on moral grounds", that "being raised in families is more secure than any other forms of upbringing" and that "families fulfil their role if the stable and firm relationship of a mother and a father is consummated by taking responsibility for a child".

The Act declared that:

Article 7

(1) Family is the relationship between natural persons in an economic and emotional community that is based on a marriage between a woman and a man, or lineal descent, or family-based guardianship.

(2) Lineal descent is established by way of filiation or adoption.

The definition simply excluded cohabiting partners (both different- and same-sex) and also registered partners. In relation to inheritance rights the act referred to spouses, which by the reference rule of RPA in principle applies to registered partners as well, however, there was a dispute among experts whether the reference rule contained in a more detailed act passed by simple majority can override a provision set by a cardinal law. On 17 December 2012 the

²⁰⁵ Article 4:9 (4) of the Civil Code.

²⁰⁶ Article 1 (2) of RPA.

²⁰⁷ Articles 36/A-D of Act no. XLV of 2008 on certain non-litigious notarial procedures.

²⁰⁸ According to the Fundamental Law [Article T(4)], the adoption and amendment of cardinal laws require two-thirds majority in the Parliament.

Constitutional Court declared both challenged provision unconstitutional.²⁰⁹ With regards to the definition of family the Court found the law too restrictive, but not because the exclusion of same-sex couples. The Court reasoned that the protection of family in the Fundamental Law is closely linked to raising children (“family as the guarantee of the survival of the nation”) and as same-sex couples cannot have children together, they fall outside the protection of this clause. On the other hand, the Court recognized that relationships other than those based on marriage and filiation are also covered by the notion of family, such as cohabiting partners taking care of each other’s children, cohabiting couples who do not wish to have children, or cohabiting different-sex couples who cannot have children. The Court failed to reconcile this inconsistency: it was open to interpret family as a social reality (“sociological notion of family”), but fell short of explicitly granting same-sex couples the same protection. With regards to inheritance the Court went beyond the petition: not only is the provision unconstitutional because of legal uncertainty, but also it discriminatively strips same-sex couples their rights without any legitimate justification.

Following the Constitutional Court’s decision, an amendment to the Fundamental Law was adopted to extend the marriage protection provision, which now reads as follows:

Article L

(1) Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children.

Many feared that the constitutional amendment would endanger the rights of same-sex couples afforded by the RPA, but so far this has not been the case. In 2016 the Ministry of National Economy submitted a bill to Parliament amending a large number of laws in relation to the adoption of the 2017 state budget.²¹⁰ Article 98 contained a small amendment to the RPA that would delete the word “this” from the text of the general reference rule. This would have had huge implication on the rights of same-sex couples, because it would have allowed any legislation to deviate from the general reference rule, and according to some interpretations, it would have in itself meant that the general reference rule was no longer applicable. The amendment was revoked in the Parliament, RPA remains to be in force in the way it was adopted in 2009.

Some further amendments to legislation show the political will to undermine the rights of same-sex couples, even if those provisions have only limited legal relevance. While the old Criminal Code (Act no. IV of 1978) equally punished double marriage and double registered partnership, the Criminal Code adopted in the summer of 2012 (Act no. C of 2012) only sanctions double marriage. It is a criminal offense if a person contracts a new marriage during the existence of his marriage, or contracts marriage with a person living in marriage, but a person who contracts a marriage or a registered partnership while in a registered partnership is not criminally liable. Further dogmatic problems are caused by the Criminal Code treating registered partners on par with cohabiting partner, rather than with spouses [Article 459 (1:32:2)], even if it has not much legal relevance since in the Criminal Code spouses and cohabiting partners are treated in the exact same way.

While the rights of same-sex registered partners are nearly equal to the rights of different-sex spouses, in practice same-sex couples often find it difficult to enforce those rights. In 2015 two male widows turned to the Legal Aid Service of Háttér Society complaining that they were ordered to pay inheritance tax, even though as registered partners they should have been treated as spouses and enjoy full tax-exemption. Following the intervention of Háttér Society the tax authority revoked both decisions and returned the already paid inheritance tax. The two very similar cases,

²⁰⁹ Decision no. 43/2012 (XII. 20.).

²¹⁰ Bill no. T/10536 of 2016.

however, made it likely that the tax authority was systematically disregarding the existing legislation, so Háttér Society requested the National Tax and Customs Administration (NTCA) to reopen all inheritance tax files of registered partners in order to make sure the legislation was applied properly. Rather than reviewing their prior practice, the NTCA responded that it consulted with the Ministry of National Economy and arrived to the conclusion that the general reference rule in the Registered Partnership Act (RPA) does not apply to tax laws. The authority reasoned that all tax related provisions have to be contained in targeted tax legislation, and thus the RPA cannot have an impact on tax benefits. In a later letter the NCTA similarly argued that the newly introduced newlyweds income tax benefit also does not apply to registered partners. Háttér Society turned to the Commissioner for Fundamental Rights claiming that the legal interpretation of the tax authority amounts to discrimination on the ground of sexual orientation, as same-sex registered partners are treated differently from different-sex spouses.

In a report published in December 2016, the CFR agreed with the reasoning of Háttér, and declared that the practice of the NTCA runs contrary to existing legislation, disrupts the rule of law and discriminates on the ground of sexual orientation. The CFR requested the NCTA to revise its policies and pay back any taxes unlawfully levied. In a public statement issued on 25 January 2017 the NCTA announced that they accept the report of the ombudsman. Since then they updated their information materials, issued a circular among their staff on the correct interpretation of the law, and paid back any unlawfully levied tax with interests.

Registered partners had to face similar difficulties in accessing child allowance (*“gyermekgondozási díj”*) after adoption (see Case 45), and making use of legislation that allows for spouses (and thus registered partners) to move into the apartment rented from the local government by their partner without asking for a permission from the local government (see Case 44).

A further problem arises in case of couples that enter into same-sex marriage abroad. Current practice rejects to recognize those marriages in Hungary even as registered partnership. There has been a binding court decision requiring the Budapest Government Office to register foreign same-sex marriages as registered partnership, the case is currently pending at the Kúria (see Case 30).

Some binational couples have difficulties entering into registered partnership, because Hungarian authorities require them to acquire documents from their home countries that are impossible to get, and for persons from countries that persecute homosexuals even trying to request such document might endanger the life and safety of applicants. The Commissioner for Fundamental Rights is currently investigating these problems.²¹¹

b) And have legal measures been adopted and/or implemented to ensure that the same-sex partner of a national may obtain a residence permit for family reasons?

Yes No Partially

The general reference rule of the RPA also apply to immigration issues, and Act no. I of 2007 on the entry and residence of persons entitled to free movement and residence contains a specific provision prescribing the recognition of registered partners as family members [Article 2 (bi-bj)]. Furthermore, cohabiting partners of Hungarian nationals can also be recognized as family members [Article 3 (3a)].

²¹¹ AJB-2745/2018

- c) If same-sex couples do not have access to registered partnerships, are there measures in place to provide them with the possibility to address the practical problems related to the social reality in which they live?

Yes No Partially Not applicable

Same-sex couples have access to registered partnerships.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

Question 33

Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on

- | | |
|-----------------------|--|
| - sexual orientation? | Yes <input type="checkbox"/> No <input type="checkbox"/> Partially <input checked="" type="checkbox"/> |
| - gender identity? | Yes <input type="checkbox"/> No <input type="checkbox"/> Partially <input checked="" type="checkbox"/> |

Summary:

While there is evidence that discriminatory considerations are present in certain decisions regarding the parental responsibility for, or guardianship of a child, there are no known cases where such considerations were shared by courts delivering a binding decision. The number of persons living in same-sex partnership adopting children has been on the rise, however, there has been a widely cited case where application to adopt was rejected in a discriminatory way. Staff of guardianship authorities, child protection services, judges and mediators involved in such procedures receive no guidance or training on how to deal with such cases.

Detailed analysis:

Parental responsibility

Parental responsibility and guardianship of a child are regulated by the Chapter XII of the Civil Code and Chapters VIII-XII of the Act No XXXI of 1997 on the protection of children and guardianship (hereinafter: Child Protection Act).

The Civil Code defines the notion of parental authority in the following was:

Article 4:146 [Legal status of minors; rights and obligations stemming from parental responsibility]

(1) Minor children are under parental responsibility or guardianship.

(2) Parental responsibility covers the right to select the minor child's name, to provide care, to determine the child's place of residence, to handle his/her financial affairs, including the right and obligation of representing the child in legal forums, and the right to exclude guardianship and other forms of social care

According the law, parental responsibility for a child is shared by both parents.

Article 4:147 [Principles of exercising parental supervision]

(1) Parental supervision shall be exercised by the parents in collaboration with one another in the interest of the child's physical, intellectual and moral development.

(2) In exercising parental supervision jointly the rights and obligations of the parents shall be equal.

Unless the parents agree otherwise, or the guardianship authority or the courts order otherwise parental responsibility is exercised jointly even if parents are separated [Articles 4:164]. The parents living separately have to provide a balanced life for the children. In case of urgency either parent can decide on their own.

Article 4:166 [Decision on disputes arising out of or in connection with joint custody]

If, in the case of joint custody, the parents fail to agree on certain issues, the guardian authority shall decide such issues, with the exception of issues connected to the right of freedom of conscience and religion. 2. Settlement of parental custody by way of judicial process

Article 4:167 [Settlement of parental custody by way of judicial process]

(1) In the absence of an agreement between the parents living separate and apart the court shall decide - upon request or ex officio if deemed necessary for the protection of the child's best interest - which parent shall have the right of custody.

(2) The court shall make the above decision with a view to finding the best way to ensure the child's physical, intellectual and moral development.

To encourage out-of-court settlements parents may turn to mediation in order to resolve their dispute over the parental custody of children.²¹²

According to the Child Protection Act, in case the parent(s) cannot provide for the well-being of the child the local child protection services intervene. The intervention can take the form of protection, temporary placement, temporary education and long-term education. In case of protection (“*védelembe vétel*”) the parent(s) are required to cooperate with a family counsellor to minimize the risks to the child. Temporary placement (“*ideiglenes hatályú elhelyezés*”) is an emergency solution to prevent severe harm to the child, which can be ordered if “there is no one in charge of the child or physical, intellectual, emotional and moral development of the child is severely endangered by his/her family environment or him/herself”.

Article 71

(2) Severe endangerment leading to temporary placement is understood to be maltreatment or negligence of the child which puts the child's life at immediate risk, or which causes a severe and irreparable damage to the physical, intellectual, emotional and moral development of the child.

In case the family environment endangers the child's development and the endangerment cannot be solved by protection measures, the child is placed under temporary education (“*átmeneti nevelésbe vétel*”). If the parent(s) do not cooperate with the child protection services or are not willing to change their behaviour or circumstances that lead to the intervention, the guardianship authority initiates at the court the termination of parental responsibility. In case the parental responsibility of both parents is ended by court, the child is placed under long-term education (“*tartós nevelésbe vétel*”).

Neither of the two pieces of legislation contains reference to the sexual orientation or gender identity of the parents. In 2012 the Human Rights Working Group confirmed that sexual orientation and gender identity of the parents shall not be taken into consideration when making decisions on custody, the sole factor in the decision should be the suitability for parenting.²¹³

Since its establishment in 2001 the legal aid service of Háttér has provided legal advice and representation in several cases involving the custody and parental responsibility of children or involving visitation rights. In the majority of these cases the clients turned to our service because they were afraid that their non-heterosexual sexual orientation might surface in the court

²¹² Act no. LV of 2002 on mediation.

²¹³ Letter from the Human Rights Working Group no. XX-E/6/1/2012; on file with the authors.

procedure over the custody of their child following separation from their former heterosexual partners, or following attempts by their former partners to use that argument in court. The service was also informed of cases where psychological experts have issued statements with grossly discriminatory statements about the suitability of a parent living with a same-sex partner to take care of a child. On the other hand, out of all relevant cases that we have identified in our archives, none ended unfavourably to our client. In no cases have we found evidence that the court delivering a binding decision acted in a discriminatory manner.

There have been several cases reported where the other parent convinced the LGBTI parent through intimidation to enter into an informal, out-of-court arrangement by arguing that if taken to court an unfavourable decision would be taken against them. In many cases this results in delaying divorce and limited parental custody and visitation rights compared to what could have been reached in a neutral court procedure.

Adoption

The basic rules of adoption are also governed by the Civil Code. Even though the legislation does not explicitly discuss who is permitted to become adoptive parent in Hungary (only the age, legal competence, and general 'suitability' are mentioned explicitly in the legislation) it is inferred from the text of the law that individuals regardless of their family status are – in theory – allowed to adopt in Hungary. The law contains no prohibition on adoption by gays or lesbians, or people living with their same-sex partners, or people living with their same-sex registered partners. The Human Rights Working Group confirmed that the sexual orientation or gender identity of the applicant does not disqualify LGBTI applicants, and the decision is based solely on the suitability of the adoptive parent. The law, however, is very clear that once a child is adopted, only the spouse of the adoptive parent can adopt the child,²¹⁴ thus cohabiting partners (neither same-sex nor different-sex) and registered partners are not entitled for consecutive adoptions. The adoption procedure consists of two steps: first the applicant has to undergo a thorough investigation whether s/he is suitable to become an adoptive parent. The assessment concerns both the psychological suitability, as well as the socio-economic circumstances of the applicant.²¹⁵ If the applicant is declared suitable s/he is added to a waiting list. If the child protection service finds a child suitable for adoption, the potential parents on the waiting list are contacted. If during the personal meetings both the parents and the guardian of the child agree, an application for adoption is submitted to the guardianship authority.²¹⁶ If the office authorises the adoption, the adoptive relationship is established.

With regards to final authorisation, the Civil Code contains the following provision:

Article 4:120 (5)

Moreover, after the requirements set out in this Act are satisfied, the guardian authority shall authorize the adoption if it is deemed to be in the child's best interest. In the interest of the minor child, in its adoption decision the guardian authority shall give preference to adoptive parents living in wedlock.

This preference rule was introduced into the law in 2002 following a legal and political debate concerning adoption of a child by a well-known drag performer, motivated clearly by homo- and

²¹⁴ Article 4:123 of the Civil Code.

²¹⁵ Articles 38-39 of Government Decree no. 149/1997. (IX. 10.) on guardianship authorities, and on child protection and public guardianship procedures.

²¹⁶ Articles 40-41 of Government Decree no. 149/1997. (IX. 10.) on guardianship authorities, and on child protection and public guardianship procedures.

transphobia.²¹⁷ This article has been widely criticized by human rights organizations and practicing lawyers/judges as running contrary to the best interest of children. The drafters of the principles of the new Civil Code emphasized²¹⁸ that this overall preference rule is problematic as it disregards situations in which a relative or a person previously participating in raising the child wants to adopt the child. Handing over the child to a person unrelated to the child in cases where there is a person with established emotional link to the child who is willing to adopt him/her can by no means be in the best interest of the child. A further problem is that it is not clear how the provision should be implemented in practice: how long should a child ready to be adopted wait for a suitable married partner until they are declared not wanted, and thus ready to be adopted by single persons as well? The first draft of the new Civil Code²¹⁹ thus would have removed this provision, however, as a result of pressure from the Ministry of Social Affairs and Labour, the provision was added once again to the bill submitted to and then later adopted by the Parliament. While the Civil Code adopted by the Parliament in 2009 was revoked, the final version adopted in 2013 and entered into force in 2014 contains a similar provision.

Even with the existence of the preference rule, several persons living in same-sex partnerships have been successful in adopting children after their partnership status was made known to the authorities. The authors know of only one case where the authorities openly discriminated against LGBTI persons, although discrimination might go unnoticed as waiting lists are not very transparent. The case concerned a lesbian couple who wanted to adopt a child. After they were found particularly suitable to become parents, they were offered a 16-month-old girl of Roma origin. The couple was getting acquainted with the child for months, however, one day the child protection service called them and said: due to an intervention from “above” the adoption procedure had to be stopped. The women turned to the Commissioner for Fundamental Rights, who found that several fundamental rights were infringed in the procedure, such as the right of the child to protection and care and the right to fair procedure, and as a whole the procedure amounted to discrimination based on sexual orientation. The CFR’s report also examined the various preference rules prescribed in different pieces of legislation (the preference for adoption within Hungary, the preference to adopt locally, and the preference to adopt by married couples), and found that the latter preference rule can only prevail if the first two have been fulfilled (see Case 29).

Háttér Society conducted a survey research in 2016-2017 with the participation of over a thousand LGBTQI persons. 13% of respondents were parents or stepparents, among those above the age of 26 the ratio is 24%. Further 9% have already made concrete steps to become parents. 57% of respondents plan to have children in the future.²²⁰ The research also covered public opinions towards same-sex parenting. 39% of the representative sample agreed that same-sex couples can also be good parents, 45% that children are better placed with same-sex than in the child protection system. 43% supported second parent adoption, 39% access to assisted reproduction for lesbian couples, and 32% surrogacy for gay couples.²²¹ The research also found that more

²¹⁷ The provision was originally Article 49(1) of Act no. IV of 1952 on marriage, family and guardianship, which was kept in the Civil Code that entered into force in 2014.

²¹⁸ Ministry of Justice and Law Enforcement (2003) *Principles of the New Civil Code*. Second Book: Family Law. Available at http://jogalkotas.hu/files/ptk.csaladjog_0.pdf.

²¹⁹ Ministry of Justice and Law Enforcement (2007) *Draft of the New Civil Code*. Available at http://www.jogalkotas.hu/files/ptk-normaszoveg-tervezet_20071029.pdf.

²²⁰ Háttér Társaság (2017) *Szívárványcsaládok helyzete, 2016-17 Kutatási összefoglaló*. Available at: <http://hatter.hu/kiadvanyaink/szivarvanycsaladok-2017>, p7.

²²¹ <http://hatter.hu/hirek/sajtokozlemenymegugrott-az-azonos-nemu-parok-gyermekevallalasanak-tamogatottsaga>.

than half of same-sex parents do not come out to schools, healthcare providers or public authorities, and prejudiced views and discrimination were most common in kindergartens, schools and child protection services.²²²

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

Question 34

When national legislation permits unmarried different-sex couples to adopt each other's children (a second-parent or step-parent adoption), does it also apply to unmarried same-sex couples?

Yes No Partially Not applicable

Summary:

The Civil Code only allows spouses to adopt each other's children;²²³ different-sex cohabiting partners and same-sex cohabiting or registered partners are not allowed. Allowing second parent adoption was the most commonly cited measure rainbow same-sex parents have identified as needed for the improvement of their situation. 99% of LGBTQI respondents,²²⁴ and 43% of the general public support granting this right to same-sex couples.²²⁵

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

Question 35

Does national law permit assisted reproductive treatment for single women?

Yes No Partially

Summary:

Assisted reproduction is available to single women who are infertile or due to their age are at the risk of infertility soon. Access to assisted reproduction with sperm from an anonymous donor has been severely restricted in recent years.

Detailed analysis:

Since 2005 the Health Care Act contains the following provisions:²²⁶

Article 165 (...)

²²² Háttér Társaság (2017) *Szivárványcsaládok helyzete, 2016-17 Kutatási összefoglaló*. Available at: <http://hatter.hu/kiadvanyaink/szivarvanycsaladok-2017>, p35.

²²³ Article 4:132 of the Civil Code.

²²⁴ Háttér Társaság (2017) *Szivárványcsaládok helyzete, 2016-17 Kutatási összefoglaló*. Available at: <http://hatter.hu/kiadvanyaink/szivarvanycsaladok-2017>, p38.

²²⁵ <http://hatter.hu/hirek/sajtokozlemenymegugrott-az-azonos-nemu-parok-gyermekvallalasanak-tamogatottsaga>.

²²⁶ For the legislative history of this provision, see 2013 Report.

c) single woman: a woman of major age, who at the time of starting the reproduction procedure is not married or living in cohabitation. (...)

Article 167

(4) In the case of a single woman reproduction procedures may be performed if by way of her age or medical condition (infertility) it is highly probable that she cannot produce a child through natural means.

If so, are there measures in place to ensure that access by single women to assisted reproductive treatment is without discrimination based on sexual orientation?

Yes No Partially

There is no evidence to suggest that single women having legal access to such treatments are hindered in practicing this right in a discriminatory manner. On the other hand, the fact that women whose official family status is single, but live with their same-sex partner are excluded amounts to discrimination based on sexual orientation. For details see under Question 36.

Question 36

Where national law permits assisted reproductive treatment for unmarried different sex couples, does it also permit such treatment for unmarried lesbian couples?

Yes No Partially

Summary:

Assisted reproduction is available to single women who are infertile or due to their age are at the risk of infertility soon, but is not available to lesbians living with their same-sex partners (whether cohabiting or in a registered partnership).

Detailed analysis:

Since 2005 the Health Care Act contains the following provisions:²²⁷

Article 167

(1) Reproduction procedures may be performed on married couples or cohabiting couples of different sexes if, for reasons of health existing among either party (infertility), it is highly probable that a healthy child cannot be produced through natural means. Among common-law spouses, the procedures only may be conducted if neither of the partners is married to another person.

Even though the legislation only makes assisted reproduction treatments available to a limited number of (infertile) single women, research with the participation 154 LGBTQI person currently raising children found that 12% of them have become parents via assisted reproduction.²²⁸ It is thus clear that many lesbian couples do use assisted reproduction treatments by circumventing the law, often with the help of their gynaecologist. Falsifying one's family status, however, is a criminal offence punishable up to three years imprisonment.²²⁹

Afraid of these consequences many lesbian couples decide to organize assisted reproduction for themselves by using home insemination techniques. 15% of respondents to the research

²²⁷ For the legislative history of this provision, see 2013 Report.

²²⁸ Háttér Társaság (2017) *Szívárványcsaládok helyzete, 2016-17 Kutatási összefoglaló*. Available at: <http://hatter.hu/kiadvanyaink/szivarvanycsaladok-2017>, p24.

²²⁹ See Articles 342 and 345 of the Criminal Code.

mentioned above have become parents this way. Besides the obvious medical risks involved in non-supervised insemination these women also risk criminal prosecution according to the Criminal Code:

Illegal Use of a Human Body

Article 175

(1) Any person who illegally acquires, sells or trades for pecuniary gain human genes, cells, gametes, embryos, organs, tissues, or a cadaver or part(s) of such, or a deceased foetus, is guilty of a felony punishable by imprisonment not exceeding three years.

(2) The penalty shall be imprisonment between one to five years if the illegal use of human body is committed by an employee of a healthcare service provider acting for purposes relating to his profession.

(3) The penalty shall be imprisonment between one to five years in the case provided for in Subsection (1) or imprisonment between two to eight years in the case provided for in Subsection (2) if the illegal use of human body is committed: a) against a person under the age of eighteen years; b) on a commercial scale; or c) in criminal association with accomplices.

(4) Any person who engages in preparations for the illegal use of a human body is guilty of a misdemeanour punishable by imprisonment not exceeding one year in the case provided for in Subsection (1), or with imprisonment not exceeding two years in the cases provided for in Subsections (2) and (3).

(5) For the purposes of this Section embryo shall also mean an embryo removed from the mother's uterus as well as those produced in special procedures for the purpose of human reproduction, which are not placed into the uterus.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

Question 37

Does legislation prohibit discrimination in employment

- a) in the public sector on grounds of
- sexual orientation? Yes No Partially
 - gender identity? Yes No Partially
- b) in the private sector on grounds of
- sexual orientation? Yes No Partially
 - gender identity? Yes No Partially

Summary:

The ETA in addition to the general anti-discrimination provisions contains specific rules on employment. The prohibition of difference in treatment on the basis of sexual orientation and gender identity applies specifically to access to employment, promotion, dismissal and pay.

Detailed analysis:

The ETA unequivocally prohibits discrimination on the basis of sexual orientation and gender identity, and the Labour Code (Act no. I of 2012) also refers to the principle of equal treatment as defined by the more general and comprehensive the ETA (see under Question 3a).

In addition, the ETA contains detailed rules on employment in Articles 21-23. Article 21 contains the following:

It is considered to be a violation of the principle of equal treatment if – in particular – the employer applies direct or indirect discrimination against the employee, especially in defining and applying the dispositions:

a) for access to work, especially in public job advertisements, hiring, and regarding the conditions of employment;

b) for a disposition made before the establishment of the employment relationship or other relationship related to work, related to the procedure facilitating the establishment of such a relationship;

c) in establishing and terminating the employment relationship or other relationship related to work;

d) in relation to any training before or during the work;

e) in determining and providing working conditions;

f) in establishing and providing allowances due on the basis of the employment relationship or other relationship related to work, particularly in establishing and providing wages/salaries defined in Article 12(2) of Act I of 2012 on the Labour Code;

g) in relation to membership or participation in employees' organizations;

h) in the promotion system;

i) in the enforcement of a liability for damages or of a disciplinary liability.

The above provision applies equally to public and private employers. However, the principle of equal treatment is not violated if

a) the difference in treatment that is justified by the characteristics or nature of the work, and it is proportionate taking into account all essential and legitimate conditions considered in the hiring process;

b) the difference in treatment is based directly on religious or other ideological conviction, or belonging to a national or ethnic origin fundamentally determining the nature of the organization, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.²³⁰

Discrimination in wages, salaries or allowances based on sex, racial origin, colour, nationality, and belonging to a national or ethnic minority cannot be justified, it automatically means the violation of the principle of equal treatment [ETA, Article 22 (2)].

A survey from 2010 among LGBT persons²³¹ found that 13% percent of respondents reported having experienced discrimination at work before. Of those discriminated 81% said they had been subjected to gossip, and 41% said they experienced harassment or humiliation. Trans people were twice as likely to be discriminated at work than non-trans LGB people (29% v. 12%). A similar research from 2016²³² found that 10% have suffered concrete disadvantage at the workplace such as having been rejected promotion, not being sent to trainings or receiving lower salary.

²³⁰ Article 22 (1) of ETA.

²³¹ Háttér Társaság (2015): *A leszbikus, meleg, biszexuális és transznemű emberek munkahelyi tapasztalatai Magyarországon. Az LMBT Kutatás 2010 eredményei.* Available at: <http://hatter.hu/kiadvanyaink/lmbt-kutatas-2010-munka>.

²³² Háttér Társaság (2016) *"They can be anything?" Employment and Workplace Discrimination against LGBTQI People in Hungary.* Available at: <http://hatter.hu/kiadvanyaink/they-can-be-anything>.

Question 38

Are there measures in place to provide effective protection against discrimination in

a) Access to employment on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

ETA Article 21 a) contains that the principle of equal treatment shall be kept in access to employment, especially in public job advertisements, hiring, and in the conditions of employment.

In the survey among LGBTQI people carried out in 2016 every fifth respondent (20%) said that their LGBTQI identity influenced their career choices; that is, they did not choose a given career or occupation because they were afraid of the homophobic, biphobic, or transphobic attitudes of others working in the given field. The 2010 survey found that of the 13% percent of respondents had experienced discrimination at work before, 31% had been rejected when applying for work because of their sexual orientation or gender identity.

b) Promotion, dismissals, pay and other working conditions employment on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

ETA contains that the principle of equal treatment shall be kept in terminating the employment relationship [Article 21 c)], determining and providing working conditions [Article 21 e)], establishing and providing benefits, especially in establishing and providing wages [Article 21 e)], and the promotion system [Article 21 h)].

Research among HR personnel in 2016²³³ found that only 18% of them indicated that their employers guarantee the same benefits to different- and same-sex partners. This means that even if HR professionals are aware of the requirement of equal treatment, their knowledge of family law is so inadequate that they cannot apply the principle of equal treatment in practice. 14% of LGBTQI respondents to the 2016 research answered that they had not claimed benefits for partners because they did not want people at their workplace to know that they had a same-sex partner.

c) Prevention and punishment of harassment employment on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

ETA Article 10 defines harassment in the following way:

Harassment is a conduct, sexual or other, violating human dignity related to a person's characteristic defined in Article 8 with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person.

In 2015 ETAAuth published a booklet for employers on preventing and responding to harassment.²³⁴ The booklet contains several references and example related to sexual orientation, but only mentions gender identity once in a list of protected characteristics.

Survey research in 2016 among LGBTQI people found that almost every third respondent (29%) had been harassed because of their being LGBTQI (e.g. they were rumoured about or mocked), and 62% replied that they had heard hurtful and derisive remarks and jokes about LGBTQI people in general from their colleagues at work. 12% of respondents left a job because of a homophobic,

²³³ Háttér Társaság (2016) "They can be anything?" *Employment and Workplace Discrimination against LGBTQI People in Hungary*. Available at: <http://hatter.hu/kiadvanyaink/they-can-be-anything>, p43-46..

²³⁴ Equal Treatment Authority (2015) *A munkahelyi zaklatás megelőzése és a jogérvényesítés formái*. Available at: <http://www.egyenlobanasmod.hu/article/view/munkahelyi-zaklatas-ebb-fuzetek>.

biphobic or transphobic workplace climate. Almost half (43.5%) of respondents felt lonely at work because of being LGBTQI.

The survey among HR professionals found that while 87% of the respondents knew that Hungarian legislation prohibits dismissing someone because of sexual orientation or gender identity, but less than one third (29%) knew that employers are obliged to act against a colleague's harassment and abuse on the same basis.

Do those measures take into consideration the heightened vulnerability of specific LGBTI groups, such as:

- lesbian, bisexual and trans women?
Yes No
- LGBTI persons of colour?
Yes No
- LGBTI persons of ethnic minority backgrounds, including Roma persons?
Yes No
- LGBTI persons from religious minorities?
Yes No
- LGBTI sex workers?
Yes No
- LGBTI persons with disabilities?
Yes No

The authors have received no information on programmes specifically targeting any of these groups.

In particular, is the privacy of transgender persons protected so as to prevent the disclosure of transgender persons' gender history and former name in the context of employment?

Yes No Partially

The authors received no information about the existence of such measures.

General notes:

Prevention and inclusive work environment

While legislation in place offers protection against discrimination and harassment, once it happened, initiatives by employers to prevent discrimination and harassment, and create an inclusive work environment are very sporadic.

The Hungarian Business Leaders Forum and mtd Consulting Group implement the EU Diversity Charter in Hungary.²³⁵ The Charter refers to sexual orientation but not to gender identity:

We create equality and a discrimination-free environment in order to ensure that all our employees are treated in accordance with the mutually agreed values and policies. We pursue a human resources policy based on the

²³⁵ <https://sokszinusegikarta.hu>.

principle of equal treatment, avoiding discrimination based on race, skin colour, age, disability, sexual orientation, religion or political views.

The Code further includes commitments to equal opportunity and non-discrimination for everyone, respect and fairness, and respect each employee's need to balance work and personal demands. The adoption of the Code was not the result of promotion by authorities, but rather on the own initiative of participating corporations.

WeAreOpen is a community initiative set up by companies to carry out campaigns in coalition with businesses to promote diversity and inclusion.²³⁶ It was founded in 2013 by Prezi, espell and Google. WeAreOpen's mission is to raise public awareness about the fact that diversity is a value for organizations, and to give companies tools to become more open workplaces. It designed more than 10 campaigns that resulted in 1,000+ companies and organizations publicly joining WeAreOpen's manifesto about openness; 150+ public commitments from companies about improving gender equality at their workplace in a given year; 100+ CEOs, and many company groups, attending Budapest Pride march to support LGBTQ inclusion; and dozens of publicly shared stories from influencers about why it is worthwhile to be open.

Their manifesto explicitly mentions sexual orientation, but not gender identity:

As open companies, we regard it as a fundamental corporate value that our employees and our partners are judged solely on the basis of their actions and their work performance, and without regard for their sex, age, sexual orientation, national or ethnic background, political convictions, physical abilities, or other characteristics.

WeAreOpen created OPEN Conference in 2016, the first international diversity conference for business leaders in Central Eastern Europe, attracting top global speakers; and it commissioned representative research to better understand the needs and wishes of Hungarian employees.

The 2016 research with HR professionals found that 59% of those participating said their management is not at all committed to the equal opportunities of LGBTQI people; only slightly more than one third (36%) of companies have equal opportunity plans or anti-discrimination policies that contain sexual orientation and gender identity. Research among LGBTQI people found that only 18% of respondents answered that some kind of equal opportunities program (e.g. an equal opportunities plan or anti-harassment measure) was in effect at their workplace, but nearly twice that (32%) answered that they did not know whether such policies exist. This shows that even though some employers have put forth policies to prevent and respond to discrimination, a remarkable proportion of employees do not know about, and thus cannot make use of these initiatives.

The lack of such positive initiatives discourages LGBTI people from coming out at work. The 2010 survey among LGBT persons found that only 17% of respondents were fully out to the co-workers, while another 32% were selectively out to a few of their colleagues. 59% percent of LGB respondents said that they had lied about their partner's gender at work. 58% of trans respondents never talked about their gender identity to their co-workers, and 70% to their superiors. The research from 2016 found 29% of respondents are out to all of their superiors and colleagues, and almost the same amount of respondents (27%) answered that no one knew about this at their workplace.

Training

While there are some training programmes available on diversity and non-discrimination at the workplace,²³⁷ very few companies actually participate. LGBTI issues are covered only at the very

²³⁶ <https://nyitottakvagyunk.hu/en/>.

²³⁷ See for example the following trainings: <http://www.liganet.hu/page/313/artID/7718/html/eselyegyenlosegi-kepzes-a-liga-szekhazaban-.html>, <http://www.victum.hu/felnottkepzes/tartalmak/munkahelyi-eselyegyenloseg-kepzes-24->

basic level, meaning that sexual orientation and gender identity are often mentioned as protected grounds without going into details about the specific situation of LGBTI employees.

The 2016 research among HR professionals found that only 5 employers organised LGBTQI-related sensitivity / diversity trainings, and only 6 of the HR professionals participating in the research attended trainings related to the equal opportunities of LGBTQI people.

Legal aid

A further problem in the enforcement of equal treatment legislation is that the number of civil society organisations offering legal aid is limited. In 2016 the publicly funded legal aid service providing legal advice on labour issues was relaunched with EU funding under the name JOGPONTOK. This network has branches in 136 settlements, but does not cover the capital and Pest County, those areas are only covered via phone and internet. While their mandate covers all aspects of labour law, the list of issues people can turn to them with does not contain reference to discrimination or harassment, even though ETA is mentioned as relevant legislation.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

Question 39

Taking into due account the over-riding interests of the child, are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

oraban, <http://www.victum.hu/szolgaltatasok/treningek/eselyegyenlosegi-treningek-kepzesek>,
<http://felnottkepzes.gak.hu/kepzesek/engedelyezett-kepzesek/munkahelyi-eselyegyenloseg-trening>,
http://www.pestesely.hu/?pageid=kepzesek_kepzesei_es_szolgaltatasi_kinalatunk#eselyegyenloseg

Summary:

ETA contains specific provisions on non-discrimination in education, but no policies, codes of conduct or handbooks have been introduced or updated to apply this principle to LGBTI students.

Detailed analysis:

The ETA contains specific provisions on non-discrimination in education [Articles 27-29]; the scope of the legislation covers all educational institutions that provide “any care, education and training a) carried out in accordance with requirements approved or mandated by the State, or b) whose organisation is supported by the State.” The Act further contains that

Educational institutions shall not allow the operation of any groups pursuing extracurricular activities, pupil or student societies and other organisations of pupils, students or parents, whose objectives are to discredit, stigmatise or exclude other individuals or groups.²³⁸

If so, are there measures in place concerning in particular:

a) Anti-discrimination training or support and teaching aids?

Yes No Partially

Research by the European Union Agency for Fundamental Rights found that teachers in Hungary do not receive appropriate training on LGBTI issues.²³⁹ Labrisz Lesbian Association published a teaching aid²⁴⁰ to be used in schools to talk about LGBTI issues, but no public funding was used to compile and print the publication.

b) Information, protection and support for pupils and students?

Yes No Partially

The authors have received no information about any past or ongoing initiatives to provide information, protection and support to LGBTI persons. Háttér Society is currently involved in a project called *Look Wide*²⁴¹ that will offer training and mentoring for school psychologists and social worker to launch such programs. The project receives no public funding from the Hungarian state.

c) Respect for the self-determined name and gender marker of pupils and students in form of address, educational documents, and use of gendered facilities/classes?

Yes No Partially

While there is no clear legislative basis for it, trans people under the majority age of 18 are refused access to medical treatment as well as legal gender recognition. The authors have received no information about such measures.

d) Objective information on sexual orientation and gender identity in school curricula?

Yes No Partially

²³⁸ ETA, Article 27 (4). For further details on the ETA see under Question Q3a.

²³⁹ FRA (2016) *Professionally speaking: challenges to achieving equality for LGBT people*. Available at: <http://fra.europa.eu/en/publication/2016/professional-views-lgbt-equality>.

²⁴⁰ Labrisz Leszbikus Egyesület (2018) *Még mindig tabu?* Available at: https://labrisz.hu/content/_common/attachments/file6.pdf

²⁴¹ <http://lookwideproject.eu>

Summary:

The National Basic Curriculum does not refer to information on sexual orientation or gender identity; schools are free to choose whether to incorporate such topics into their curricula. Research results show that the majority of school textbooks remain silent on these issues, and only a small minority of schools provide detailed information on these matters.

Detailed analysis:

The current National Basic Curriculum (Government Decree no. 110/2012 (VI. 4.) on issuing, introducing and applying of the National Basic Curriculum, NBC) was adopted in June 2012, and is applicable from September 2013. According to NBC the aim of the public education is to educate future generations in order to ensure that they:

- *are responsible citizens of the country;*
- *have patriotic feelings;*
- *have realistic self-recognition and strong moral judgment;*
- *find their place in the family, closer and broader community, and in the sphere of employment;*
- *aspire to full and long-lasting relationships;*
- *are capable of taking responsible decisions in relation to their own life and those who they take care of;*
- *are capable of independent orientation, forming of opinion and acting;*
- *know and understand the natural, social, cultural phenomena and processes;*
- *consider the maintenance of cultural and natural diversity as a value and task.*²⁴²

In line with the above objectives NBC has detailed description of the key areas of education. Among others the first of these is the moral education of children: it aims to prepare pupils for the “value-conflicts” they might face in life, and it will help them to understand the essential questions of life and the world around them. The key competences students are expected to acquire are, for example, sense of duty, value of work, helpfulness, respect and honesty, empathy, rejection of corruption, patience, understanding and acceptance. Another area is self-consciousness and social culture, which also puts heavy emphasis on raising a generation that has respect for work and is moderate; thus can live in mutual respect in the society. On the other hand, competences such as critical thinking; creativity; ability to take initiatives, solve problems, cooperate with others, assess the risks; decision-making, managing emotions, relationship culture, and social tolerance; as well as the importance of developing positive attitudes, which are based on the respect of human rights, including equality, democracy, religious and ethnic diversity are also included.²⁴³ Among the democratic values, the NBC mentions rule of law, participation in decision-making, social justice, self-determination, solidarity, acceptance and tolerance.²⁴⁴

A novelty of NBC is that on the basis of the act on national public education (Act no. CXX of 2011) religious education or alternatively classes on ethics are mandatory part of the curriculum (Article 37). The content of the religious education is exclusively decided by the church delivering the classes. With regards to ethics, NBC speaks of “Sexuality, love. Marriage. Family, founding a home”, and separately of “Prejudice, trust, compassion” in grades 5-8, and the following vague, but potentially LGBT inclusive issues for grades 9-12:²⁴⁵

²⁴² NBC, Section I. I.1.

²⁴³ NBC, Section II.1.

²⁴⁴ NBC, Section II.3.4. A).

²⁴⁵ NBC, Section II.3.4. C), Ethics for grade 5-8 (3.2. and 3.3.).

- 3.1. *Me and You. Love, friendship, relationship, sexuality. Parents and children. home, family.*
- 3.2. *Me and Us. Individual and community. Citizenship and patriotism. The order of freedom: rights and duties.*
- 3.3. *Us and Them. Majority and minority. Solidarity, mutual help. The question of social justice.*
- 3.4. *Morals and politics. Individual interest and public good. Participation in public life. Clean public life. Freedom of speech and the responsibility of public speaking the information society.*

Sexual education is not mentioned often in the NBC: one of the rare occasions is where the need to prepare students for family life is described. The section follows the narrow understanding of family as is envisaged in other laws adopted by the currently ruling conservative government. The Family Protection Act e.g. contains that:²⁴⁶

Information on the value of human life, healthy lifestyle, preparation for marriage, responsible partnerships and family life shall be part of primary and secondary education curricula.

Some schools might interpret this as an encouragement to spread distorted, prejudicial views on LGBTI issues in schools. Education on physical and mental health is also silent about the need to raise awareness on sexual life, different sexual orientations and gender identity – it seems that for the legislator these do not form part of mental health.²⁴⁷ Recommendations by the Hungarian LGBT Alliance on how to include more LGBT-related information in the NBC were completely disregarded.²⁴⁸

Following the adoption of the new NBC in 2012 the new Framework Curricula were published on 21 December 2012.²⁴⁹ The importance of creating a tolerant environment towards minorities is mainstreamed in the curricula all through the 12 years of public education. However, the more than 10,000 pages long document mentions homosexuality only twice in the subject of sport ethics, taught only in very few specialized schools, transgender people are not mentioned at all. The most thorough discussion of the issues is featured in biology classes in grade 10 for students specialising in natural sciences (students aged 16). The curriculum prescribes the discussion on “social groups with different sexual cultures” and the differentiation between chromosomal, genital and psycho-sexual sex/gender. General biology classes for grades 7-8 and 10 provide general detailed information (10-13 hours) on human reproduction, including topics such as contraception, STDs, masturbation, abortion, and “gender roles for girls and women, boys and men.” History, social and civil studies, as well as ethics contain discussion on human rights, social groups, identity, multiculturalism, stereotypes, social groups, freedom and choice, norms, prejudice, and inequalities. The examples used by the curricula are exclusively religious, national and ethnic minorities. Discussion of gender roles remains within the conservative, traditional gender norms.

An analysis of textbooks currently in use was carried out in 2018.²⁵⁰ The research identified 27 topics based on the framework curricula where LGBTI issues might appear. The research identified 176 textbooks of relevance, but only 92 of those contained one or more of the 27 topics. LGBTI topics are mentioned only in 21 textbooks, altogether 46 times. The subjects most frequently mentioned are Hungarian language and literature (17 mentions, especially in biographic data) and history (14 mentions). Biology, ethics, morality and social studies textbooks have significantly lower number of mentions (5, 4, 1, 1, respectively). Most mentions are very short: 14 of them are shorter than a sentence, 9 are 1-2 sentences long, and a whole paragraph is only

²⁴⁶ Article 3 (2) of Act no. CCXI of 2011.

²⁴⁷ NBC, Section I. I.1.1.

²⁴⁸ http://lmbtszovetseg.hu/sites/default/files/mezo/file/lmbtszov_nat_2012marc.pdf.

²⁴⁹ Decree no. 51/2012 of the Ministry of Human Capacities on issuing and validating framework curricula.

²⁵⁰ <http://hatter.hu/tevekenysegunk/kutatasok/tankonyvkutatas-2018>.

devoted to the topics in 10 cases (13 other mentions are pictures or poems where length is not relevant). Some of the longer sections contain rich, nuanced information on the issues, but there are several confusing or negative statements as well. One book claims sexual orientation is learnt, another book uses the term “gender orientation” and “gender based exclusion” for homo- and transphobia, one biology textbook states that homosexuality is unnatural, an ethics textbook that “homosexuality cannot be valued equally with heterosexuality”. Another textbook considers intersex conditions unnatural. While the notion of family features in 21 textbooks, only 2 (both for vocational training) mentioned LGB topics in this context. Trans issues are not mentioned at all in any school textbooks.

Research among LGBTQI youth aged 13-20 in 2017²⁵¹ found that only 36% of respondents have learnt about LGBTI topics in school, but 22% of them only negative things. Negative content was most prominent in history, literature, religion and home class classes.

Labrisz Lesbian Association started a school programme entitled ‘*Melegség és megismerés*’ (*Getting to Know Gays and Lesbians*) in 2000 with the support from the EU PHARE program. Since 2007, the programme is run jointly with Szimpozium Association. In the programme a gay man and a lesbian woman visit high schools to tell their personal stories about sexual orientation, and introduce students to the most important terminology. In 2000 a letter was sent to 1300 high schools offering the programme for free; only 7 schools responded. The same year an extreme right wing MP interpellated the Minister of Education on the programme, who said in Parliament that no schools should participate in it.²⁵² The ministry responsible for education has somewhat developed its position since then, as in a newspaper article in 2010 about the program, the conservative state secretariat for education said that such discussions have a place in schools, even though they also added that the priority of the government is education on family values.²⁵³

e) School equality and safety policies and action plans?

Yes No Partially

Summary:

While school safety is given high prominence in the Public Education Act, there are only very few schools with comprehensive anti-bullying initiatives.

Detailed analysis:

School safety is given high prominence in Act no. CXCV of 2011 on national public education (Public Education Act). It contains that:

Article 25 (5)

Educational-teaching institutions shall take care of the supervision of children and students placed in their custody and create healthy and safe conditions for school education and teaching.

Article 46:2

The personality, human dignity and rights of the child or student shall be respected, and protection against physical and psychological violence shall be provided. The child and student shall not be subjected to physical or psychological punishment, torture, inhuman or degrading punishment or treatment.

Article 46:3

²⁵¹ <http://hatter.hu/tevekenysegunk/kutatasok/iskolai-kornyezet-2017>.

²⁵² Oral question by MP Tibor Erkel to the Minister of Education no. A/3602. on 18 December, 2000.

²⁵³ http://mno.hu/belfold/tiz_ev_300_alkalom_az_iskolak_falain_belul_beszelnok_a_massagrol-202143.

The child or student has the right to:

(...)

b) be educated and taught in a safe and healthy environment in an educational or educational-teaching institution

(...)

There is no legislation requiring schools to adopt equality and safety policies and action plans, and there are no model policies on bullying either. The issue of homo- and transphobic bullying does not feature in school anti-violence projects. Research by four civil society organizations working with different minority groups in 2015 with the participation of 331 Hungarian schools found that while bullying against minority students (Roma, Jews, LGBT persons) are present in 65% of schools, only 21% of them consider that they are fully equipped to handle such incidents. There are hardly a dozen schools that have complex bullying programs that cover prevention, response, and evaluation as well. The research results were published in a guideline for schools to tackle bullying against minority students.²⁵⁴

Research among LGBTQI youth aged 13-20 in 2017²⁵⁵ found that more than half (53%) of the respondents felt unsafe at school due to their sexual orientation, and 27% due to their gender expression. 82% of them reported having been verbally harassed, 22% were physically harassed, and 13% were physically assaulted during the last school year due to their sexual orientation, results for gender expression were 56, 19 and 11% respectively. 62% of victims never reported the incidents to school staff. Those that did report experienced school staff to be rather inactive: 52% said the teacher told them not to deal with such incidents, 33% said the teacher did not do anything. In 44% of the cases the teacher said to the perpetrator to stop.

VII. Health

33. Member states should 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; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

Question 40

Are there appropriate measures in place to ensure that

a) the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of

- sexual orientation? Yes No Partially

- gender identity? Yes No Partially

Summary:

ETA and the Health Care Act provides protection against discrimination and harassment in the field of health care, but the authors have received no other information on related measures.

²⁵⁴ *Útmutató az előítéletes alapú iskolai zaklatás megelőzésére és kezelésére.* Available at: http://iskolaizaklatas.hu/sites/default/files/iskolaizaklatas_utmutato.pdf.

²⁵⁵ <http://hatter.hu/tevekenysegunk/kutatasok/iskolai-kornyezet-2017>.

Detailed analysis:

The Health Care Act (Act no. CLIV of 1997) contains references to equal treatment (Article 7), respect for human dignity (Article 10), the right to appropriate and continuously accessible health care justified by the individual's health condition (Article 7), the right to access information on medical services and prevention [Article 5 (3)], and the right to self-determination (Article 15). The ETA contains specific provisions concerning equal treatment in the field of social security and health care, prohibiting discrimination in prevention and testing programmes, access to treatment and placement in health institutions.²⁵⁶ The Code of Ethics of the Hungarian Medical Chamber also contains the general provision on equal treatment and non-discrimination (II.1.3 8.), and contains that medical services shall not be refused solely on the basis of race, colour, gender, language, religion, political or other views, national or social origin, financial, birth or other circumstances (II.2.2 6), but sexual orientation and gender identity are not specifically mentioned.

A survey by Háttér and the Institute of Sociology of the Hungarian Academy of Sciences among LGBT people in 2010 found that 58% of respondents agreed with the statement that "I am afraid to share problems related to my sexual orientation/gender identity with my doctor." Only 16% of respondents are fully, and 10% partly open about their sexual orientation or gender identity to their GPs. 11% of those who were out to their GPs had been subject to discriminatory comments or treatment.²⁵⁷

A survey by Transvanilla among trans people in 2014 found that 26% of respondents felt discriminated based on their gender identity and/or expression. 3% of respondents faced physical assault when seeking health care and 19% was denied care. 19% did not go to see their family doctor or a specialist because of being afraid of discrimination based on their gender identity or expression. 4 out of 66 person discriminated against had reported it, in two cases no investigation started, in the other two investigation started but nothing happened.²⁵⁸ For experiences of transgender people in healthcare see Cases 20, 34, and 23.

b) education, prevention, care and treatment programmes and services in the area of sexual and reproductive health are available to all individuals, regardless of their

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

Summary:

Assisted reproduction is not available to lesbian women living in registered or *de facto* partnership and to trans men whose legal gender is male, and surrogate parenthood is banned. Only a minor fraction of school-run educational programmes on sexual health are LGBTI inclusive.

²⁵⁶ ETA, Article 25.

²⁵⁷ Háttér Society (2015) *The social exclusion of lesbian, gay, bisexual and transgender people in Hungary. Results from the LGBT Survey 2010*. Available at: <http://hatter.hu/kiadvanyaink/lgbt-survey-2010-summary>.

²⁵⁸ Transvanilla Transgender Association (2014) *Transcare - Documentation of discrimination in the field of health of trans* people in Hungary*. Available at: <http://transvanilla.hu/letoltesek/transcare-report>.

Detailed analysis:

Since 2006, the Health Care Act makes it possible for single women (regardless of sexual orientation) to participate in assisted reproduction.²⁵⁹ The current legislation is the following:

Article 167

(1) *Reproduction procedures may be performed on married couples or on two persons of opposite genders living together as common-law spouses if, for reasons of health existing among either party (infertility), it is highly probable that a healthy child cannot be produced through natural means. Among common-law spouses, the procedures only may be conducted if neither of the partners is married to another person.*

(...)

(4) *In the case of a single woman reproduction procedures may be performed if by way of her age or medical condition (infertility) it is highly probable that she cannot produce a child through natural means. (...)*

Although the Health Care Act mentions married couples, by virtue of an exception in Article 3(4) of the RPA, Article 167(1) of the Act on health care²⁶⁰ does not apply to registered partners. RPA lists among the few differences between marriage and registered partnership participation in assisted reproduction, in addition to joint adoption of children, and the right to take the partner's name. Article 165 of the Health Care Act defines single women as "a woman of age who at the time of starting the procedure is neither married to, nor cohabiting with a partner." This means that lesbians cohabiting with their partners or living in registered partnerships are not allowed to participate in assisted reproduction. Single women are allowed to participate (regardless of sexual orientation) if they are infertile or, due to age, likely to become infertile soon. The reference in Article 167(1) to "two persons of opposite genders living together as common-law spouses" is arguably contrary to the principle of *Karner v. Austria* (2003).

While the original Health Care Act adopted in 1997 would have allowed surrogacy (but postponed the entry into force of relevant provisions), the FIDESZ Government in 1999 removed the relevant provisions of the law, and banning all reproductive services not specifically mentioned in the Act, effectively making surrogacy illegal in Hungary. The provisions disproportionately disadvantage gay men, for whom surrogacy would be the easiest way to have biological children.

The 2010 survey research among the LGBT community found that while 69% of the respondents reported participating in school organized sex education programmes, only 13% of those programmes were inclusive of LGBT issues.

In 2012 the National AIDS Committee was dismantled and a new body, the National HIV/AIDS Working Group was set up.²⁶¹ The body serves as a consultative forum of the minister responsible for health, and brings together representative of state bodies, experts and civil society actors involved in the struggle against HIV/AIDS. Civil society representatives of men who have sex with men (MSM) are not directly represented in the Committee. In 2013 members of the Working Group voted to invite the Hungarian LGBT Alliance as a regular member, but the Ministry of Human Capacities rejected the proposal.²⁶² The Working Group has not met for several years.²⁶³ A first National AIDS Strategy was adopted in 2004–2010,²⁶⁴ which even in the Government

²⁵⁹ Amended by Act no. CLXXXI of 2005. The modified text came into force on 1 January 2006.

²⁶⁰ Available in English at: <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex10.pdf>.

²⁶¹ Decree no. 23/2012. (XII. 29.) of the Minister of Human Capacities on National HIV/AIDS Working Group

²⁶² Letter no. OTF-550-2/2015 of the Chief Medical Officer, on file with the authors.

²⁶³ Information received from the Civil AIDS Forum.

²⁶⁴ <http://regi.oefi.hu/aids.pdf>.

representative's opinion failed.²⁶⁵ A draft of a new strategy for the period 2014-2017 was circulated for comments in 2013, but it was never adopted. The budget of the Committee has been significantly reduced over the years, while in the early 2000 it disposed over 100 million HUF (EUR 310,000), in 2013 only 15 million HUF (EUR 46,600) was distributed for HIV/AIDS prevention. The central state budget for 2014-2017 also contained the same amount, but no competitive call was published, and no LGBTI organization received funding.

A network of HIV-centres outside the capital was set up in 2014, centres operate in Debrecen, Miskolc and Pécs. Free, anonymous HIV testing is available in every county, but rapid tests are limited to private care providers. While according to the relevant legislation STD counselling is a compulsory part of every HIV testing, there are no protocols to guide medical professionals on how to perform this task. PrEP is authorised for use, but it is practically not available.²⁶⁶

- c) the specific needs of LGBTI persons are taken into consideration in the development of national health plans, including
- suicide prevention measures? Yes No Partially

The Healthy Hungary 2014–2020 programme²⁶⁷ contains suicide prevention as a priority area, but LGBTI persons are not specifically mentioned. While there is some awareness among Hungarian experts that LGBTI people are specifically at risk of suicide, there are no public suicide prevention programmes targeting them. The LGBTQI targeted counselling hotline operated by Háttér does not receive any public funding for its activities.

- health surveys? Yes No Partially

None of the large-sample health surveys conducted in the last two decades (Hungarostudy Health Panel 2002, 2005; National Health Interview Survey 2000, 2003; European Health Interview Survey 2009, 2014) contained questions on sexual orientation or gender identity, so the data do not allow for analysing the specific health needs of LGBTI people.

- medical curricula and training programmes? Yes No Partially

Summary:

While some health concerns specific to LGB and specifically trans people are present in medical training programs, the issues covered are very scarce, and are oftentimes limited to the issue of sexually transmitted diseases, especially HIV/AIDS; and very basic information on gender identity disorders in psychiatry and various intersex conditions in genetics and endocrinology.

The LGBTQ section of the Hungarian Psychological Association developed an accredited training program in 2015 for counsellors, doctors, psychiatrists, and psychologists,²⁶⁸ but there is no information whether the training program is still implemented and if yes, how many professionals have participated in it.

²⁶⁵ http://magyarnarancs.hu/belpol/tavaly_ketszer_is_-_medgyaszai_melinda_a_nemzeti_aids_bizottsag_nab_elnoke_az_egeszsegugyi_miniszterium_egeszsegpolitikai_szakallamtitkara-71968.

²⁶⁶ <http://hatter.hu/hirek/ogyei-allasfoglalas-a-prep-magyarorszagon-is-engedelyezett>

²⁶⁷ Government Decree no. 1039/2015. (II. 10.)

²⁶⁸ Hungarian Psychological Association (2016) *Útmutató a meleg, leszbikus, biszexuális, transznemű és gender-nonkonform kliensekkel folytatott pszichológiai munkához*. Available at: http://mpt.hu/wp-content/uploads/2016/12/MPT_APATerapiasUtmutato.pdf, p10.

- in the monitoring and evaluating of quality of health-care services?
Yes No Partially

The authors have received no information about the inclusion of LGBTI concerns in the monitoring and evaluating of quality of healthcare services.

Question 41

Are patients in hospital able or subject to medical emergencies free to identify their “next of kin”?

Yes No

And are rules on issues regarding “next of kin” applied without discrimination on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

Summary:

Patients are free to decide with whom to keep in contact or whom to entrust with the responsibility of taking medical decision on their behalf. In case the patient does not specify such a person, next of kins as defined by law inclusive of cohabiting and registered partners shall be informed and take decisions.

Detailed analysis:

According to Article 3 r) of the Health Care Act the term ‘next of kin’ refers to: “spouse, direct-line relative, adopted, step and foster child, adoptive, step and foster parents, sibling, cohabiting partner.” Read together with legislation concerning registered partners and cohabiting partners, the wording of the text allows for recognizing same-sex partners as next of kins. Furthermore, Article 16 guarantees the right to name in writing any person to be responsible for making medical decision and receiving information. If such person is not named, next of kins are made responsible in an order set by Article 16 (2) of the law.

The authors have received no information about discriminatory practices on the recognition of next of kins.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

Hungary follows the International Classification of Diseases (ICD-10) and it was transposed into the Hungarian legal system by Decree no. 42/1995 (XI. 14.) of the Ministry of Public Health. No other national classification of diseases exists in domestic law.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

Question 42

Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment specialised psychological, endocrinological and surgical services without being subjected to unreasonable requirements?

Yes No Partially

Summary:

Access to adequate health care for trans persons is severely limited by the lack of standards and guidelines concerning their treatment. The scarcity of care providers results in limited choice and heightened vulnerability. Trans topics are not adequately included in medical training curricula.

Detailed analysis:

No medical protocols concerning the diagnosis of transsexualism, or the medical interventions sought by trans people exists. The development of such a protocol was promised as early as in 2004, and explicitly commissioned by the Minister of Health in 2009.²⁶⁹ Various drafts were been prepared (the latest in May 2014), but no final version was adopted. There are no established paths for psychological, endocrinological or surgical care; trans people acquire information from each other and Transvanilla about health care institutions offering gender affirming treatments and trustable doctors. The various specialists involved in the process (psychiatrist, endocrinologist, surgeon) do not form a team, oftentimes they are located in different institutions, in different cities. Often, the trans patients are better informed than the doctors themselves. The European Commission against Racism and Intolerance (ECRI) noted the lack of clinical guidelines and medical protocols in relation to transgender issues in its report in March 2015. The government was requested to present their position which was included as an appendix to the ECRI report. In that document the Government noted that the preparations of clinical guidelines or medical protocols had already begun in Hungary. No guidelines or protocols have been adopted since then.²⁷⁰

Effective access to treatment is also hindered by the exceptionally low funding from the public health system for gender affirming surgeries. For more details see under Question 43.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

Question 43

Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, are there measures in place to ensure that gender reassignment procedures are covered?

Yes No Partially

Summary:

Legislation in force since December 2006 adopted by the socialist-liberal coalition puts gender affirming surgeries in the category of treatments only partially funded by public health insurance.

²⁶⁹ Letter from the Ministry of Health no. 4904-2 /2009-0003EGP; on file with the authors.

²⁷⁰ Paragraph 130, ECRI Report on Hungary (fifth monitoring cycle) (CRI(2015)19).

A government decree sets fees at 90% of the cost of the treatment, thus public health insurance covers only 10% of the costs of gender reassignment treatments.

Detailed analysis:

According to Article 23 k) of the Act LXXXIII of 1997 on mandatory health insurance (MHIA) persons entitled for public insurance receive partial funding for

treatment to alter external sexual characteristics unless the aim of the treatment is to construct external sexual characteristics in line with the genetically defined sex following a developmental disorder.

On the basis of equity the health insurer – within the confines of the budget of the Health Insurance Fund – can fully or partially assume, among others, the costs of procedures that have been approved in Hungary but fall outside the funding scheme or the costs of health care services that are provided at a fee only.²⁷¹

MHIA's implementing Government Decree sets the fee payable by the patient for treatments to alter external sexual characteristics at 90% of the amount that the health provider may claim from the National Health Insurance Fund (NHIF).²⁷² However, the actual cost paid for treatments on the other hand varies significantly between health care providers and on a per patient basis as well. Since there are no established funding protocols (it is not clear 90% of what to pay), prices are often negotiated on an individual basis. Some medical personnel would record gender affirming surgeries under a different label thus making them free.

There is a general procedure on needs-based coverage of health treatments set by the NHIF.²⁷³ The order classifies among others treatment to alter external sexual characteristics among the health services where the fees may be taken over on grounds of equity.²⁷⁴ In evaluating the application the following facts are to be taken into consideration:

*(d) the social situation of the insured person. Taking over 100% of the partial fees shall be authorized only if according to the statement of the insured person the average income per person does not exceed twice the amount of the minimum old age pension, or 2.5 times the amount for insured persons living alone. In all other cases taking over maximum 70% of the partial funding shall be authorized.*²⁷⁵

Setting the eligibility criteria so low, almost all patients who have a regular income lose the possibility for equity-based funding. Furthermore, even if they are eligible, they depend on the discretion of the authorities as there is no automatic procedure for taking over the fees by the NHIF. Needs-based funding became slightly more accessible when a form to be completed with a list of documents to be attached was introduced in 2017. Yet, trans patients are still in a very vulnerable position: their right to gender affirming treatments is dependent on the goodwill of medical personnel and the health insurance authorities, and often the only option for them is to pay bribes ("hálapénz") to access treatment.

While it is true that there are several other medical interventions for which the patient has to pay, and thus this limitation may appear reasonable, non-arbitrary and non-discriminatory, the 10% coverage is exceptionally low. In comparison, public funding for other treatments and medical aids (e.g. prosthesis, spectacle-glasses etc.) fall in the range between 50-98%. It is unclear how the

²⁷¹ MHIA, Article 26 (1).

²⁷² Government Decree no. 284/1997. (XII. 23.), Appendix I, par. 6.

²⁷³ Instruction no. 28/2008 (Eb.K.10.) of the National Health Insurance Fund (OEP)..

²⁷⁴ Part B, Section I, 2. dd).

²⁷⁵ Part B, Section IV, 2. d).

legislator set the different categories for funding, treatment to alter external sexual characteristics falls within the same group as going to a sanatorium or getting dental prosthesis.

Less and less gender affirming surgeries are available at publicly funded institutions, pushing trans patients out to private clinics where prices are getting higher. No quality care is available as a result and the lack of available options remains the biggest obstacle for most trans persons seeking medical interventions in the public health care system.

Question 44

Are there legislative or other measures in place ensuring that no person is subjected to gender reassignment procedures, including so-called “conversion therapies”, without their informed consent?

Yes No Partially

Summary:

The Health Care Act contains provisions on the right to self-determination that in principle guarantees that people are not subjected to forced treatment or testing.

Detailed analysis:

The Fundamental Law in Article III (2) contains the following general rule: “All medical and scientific experiments on human subjects without their free and informed consent shall be prohibited.” The Health Care Act furthermore contains more specific provisions on the right to self-determination, which may only be restricted in the cases and in the ways defined by law. The right is further specified to mean that the patient is free to decide whether he wishes to use health care services, and which procedures to consent to or to refuse. The consent should be on the basis of appropriate information, free from deceit, threats and pressure. [Article 15] Exceptions by law include compulsory treatment of psychiatric patients threatening the integrity of themselves or others, and treatment of certain contagious diseases, but those cases are not related to sexual orientation or gender identity.

Since the level of awareness among Hungarian medical professionals concerning trans issues is still very low, and trans people are required to ask for the expert opinions of psychiatrists, it might easily happen that a trans person encounters a psychiatrist who believes that such therapy (*i.e.* therapy to accept their birth gender) can be beneficial. Authors of this report do not know of such therapeutic practice.

In particular, are there measures in place to ensure that, unless necessary for health reasons, no child has their body irreversibly changed by medical practices designed to impose a gender identity because of their sex characteristics without their full, free and informed consent?

Yes No Partially

Summary:

The Health Care Act contains that for persons without legal capacity (such as those of minor age) consent shall be given by the legal guardian, but the opinion of the patient shall be taken into account to the extent professionally possible. Such consent can be given only to procedures that do not lead to serious or lasting impairment to the health. No protocols or guidelines are in place to implement this principle with regard to intersex children.

Detailed analysis:

Article 16 of the Health Care Act contains that:

(2) If a patient has no or limited legal capacity, and there is no person entitled to make a statement on the basis of Paragraph a) Subsection (1), the following persons, in the order indicated below, shall be entitled to exercise the right of consent and refusal within the limits set out in Subsection (4), subject to the provisions of Paragraph b) of Subsection (1):

- a) the patient's legal representative, in the absence thereof,*
- b) the following individuals with full disposing capacity and sharing household with the patient:*
 - ba) the patient's spouse or common-law spouse, in the absence thereof,*
 - bb) the patient's child, in the absence thereof,*
 - bc) the patient's parent, in the absence thereof*
- (...)*

(5) In making decisions on the health care to be provided, the opinion of a patient with no or limited legal capacity shall be taken into account to the extent professionally possible also in cases where the right of consent and refusal is exercised by the person defined in Subsection (2).

While these general provisions – in theory – ensure that irreversible changes are not imposed by medical professionals except in those few cases where required to save the life of the child, there are no official protocols or guidelines that clearly include such guidance.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

Question 45

Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property?

Yes No Partially

Summary:

The ETA contains both general provisions and provisions specific to housing that prohibit discrimination based on sexual orientation and gender identity in the sale or rent of apartments.

Detailed analysis:

The ETA [see under Question 3a] covers the sale or rent of housing as well. According to Article 5 a) of the ETA the scope of the act covers situations – i.e. the principle of equal treatment shall be respected – when someone makes a proposal to persons not defined preliminarily to enter into a contract. In addition to this, the ETA contains a specific provision on housing:

Article 26

(1) In particular it constitutes a violation of the principle of equal treatment if individuals on the basis of a characteristic defined in Article 8

a) are directly or indirectly discriminated against in respect of granting state or municipality housing subsidies, benefits, and interest subsidies;

b) are put in a disadvantageous position in determining the conditions of selling or renting state or municipality owned apartments or plots.

(2) The issuance of occupancy or other construction permits by the relevant authorities shall not be denied or tied to any condition on grounds that are directly or indirectly based on characteristics defined in Article 8.

(3) The conditions of access to housing shall not aim at artificially separating groups based on characteristics defined in Article 8 in any settlement or part thereof without the voluntary decision of the affected group.

Article 8 of the ETA specifically prohibits any form of discrimination on the basis of sexual orientation and gender identity.

There is no legislation in place that restricts the ownership of land and other property based on sexual orientation, gender identity or family status.

The relevance of partnership for evictions according to Hungarian law is minimal²⁷⁶, but partners are recognized without discrimination based on sexual orientation or gender identity.

There have been no awareness-raising among landlords on equal treatment provisions, many of them think that they are free to prefer or reject certain people when renting or selling, claiming that the apartment is their own property, so they dispose over it. In September 2017, a 20-year old university student was threatened with eviction by his landlord after the latter found out that his tenant was gay (see Case 42).

Problems in the field of housing also arise from public officials not fully aware of registered partnership and the rights that come with it. For example, in May 2017 a 68-year old lesbian woman was rejected from residing in her registered partner's apartment rented from the local government, even though spouses (and thus registered partners) have a statutory permission to live in public housing rented by their spouses (see Case 44).

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

Question 46

With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

The ETA [see under Question 3a] contains specific provisions for social security and health care. The principle of equal treatment shall be observed during the application and provision of personal care services.²⁷⁷ Premises for stay include shelters and other emergency accommodation run by

²⁷⁶ A moratorium on evictions shall not be observed if the person living together with the debtor has another place of dwelling. (Article 182/A (3) a) of Act LIII of 1994 on judicial execution.

²⁷⁷ ETA, Article 24 b).

the state or the municipality. There have been reports of discriminatory behaviour towards same-sex couples and trans people at homeless shelters. The authors have received no information about any practical initiatives to make shelters more welcoming to LGBTI persons.

The problem of homelessness is further exacerbated by the fact that the cornerstone of the current conservative government's homelessness policy is not support or prevention, but criminalization. On 20 June 2018 an amendment to the Fundamental Law was adopted: it declares that living permanently on the streets is illegal. On the other hand a provision that the state shall strive to provide humane living conditions to everyone was also added.²⁷⁸

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

Question 47

Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

Yes No Partially

Summary:

While the Fundamental Law and the Sport Act grants to right to sport to everyone, and the latter contains specific provisions on paying attention to equal opportunities and vulnerable groups in sports, there have been no specific measures taken to include LGBTI people in sports. Although there is a complex set of legislation aiming at eliminating discriminatory incidents in sport events, their implementation is far from effective. Homophobic, anti-Semitic or racist banners and chanting is widespread.

Detailed analysis:

Article XX (2) of the Fundamental law contains that the exercise of the right to physical and mental health shall be promoted by “supporting sports and regular physical exercise”. The preamble of Act no. I of 2004 on sport (Sport Act) confirms that

The Hungarian Parliament declares that everyone has a fundamental right to sport, and this right is ensured by the state whether in the form of competitive sport, leisure sport, student- or university sport, the sport of disabled people or health promotion.

²⁷⁸ The seventh amendment to the Fundamental Law of Hungary

Furthermore, Article 49 contains that:

In order to realize the socially beneficial aims of sport, the state:

(...)(...)

e) in line with equal opportunities, supports the sport of children and youth, the sport of women and families, the sport of disadvantaged social groups, and the sport of disabled people,

(...)(...)

The provisions of ETA on access to goods and services [Articles 30 and 30/A] also apply to sports clubs and facilities. There have been two cases in recent years at ETAuth concerning sports: in 2017 an LGBTQ Sports Association was rejected from renting a swimming lane. ETAuth found that the claim of the swimming pool that the cancellation was due to overcrowding was not substantiated by evidence, and imposed a 1 million HUF fine (appr. 3,100 EUR, see Case 35). In 2013 ETAuth authorised a settlement between Háttér Society and the Hungarian Football Federation to change the latter's policy which excluded same-sex couples and their children from those entitled to buy football tickets at a reduced price available to families (see Case 9)

Detailed analysis:

The Criminal Code punishes harsher forms of discriminatory insults during and in relation to sports events via the offense of disorderly conduct:

Article 340

(1) Any conduct of violent or intimidating resistance against the actions of the keeper or security personnel to maintain order at a public event is guilty of a misdemeanour punishable by imprisonment not exceeding two years, insofar as the act did not result in a more serious criminal offense.

(2) Any person who in a sports event enters without authorization or breaches any restricted area where no visitors are allowed, or that is restricted for a specific group of visitors, or if throws any object into such an area and thereby jeopardizing the sport event or the physical integrity of others shall be punishable in accordance with Subsection (1), insofar as the act did not result in a more serious criminal offense.

(3) The penalty for a felony shall be imprisonment not exceeding three years if disorderly conduct is committed: a) in a gang; b) by displaying a deadly weapon; c) by carrying a deadly weapon; or h) by a habitual recidivist.

In addition to the specific crime applicable in the context of sport events, in many cases the offences would amount to incitement to hatred, though despite the evident facts, the prosecution and the courts are reluctant to use this provision of the Criminal Code [Article 332, for details see under Question 7b].

Act no. II of 2012 on misdemeanours further criminalizes milder instances of hooliganism and breaching the public peace.

Article 169 (1) who

(...)

c) in events falling within the scope of the act on freedom of assembly or in sport events falling within the scope of the Government Decree on the security of sport events appears or is present with the face covered in a way that is suitable to make it impossible for the authorities or the responsible official person to identify him/her commits a misdemeanour.

Article 170. Who displays a provocative anti-communal conduct that is capable of inducing shock or fear in others commits a misdemeanour.

The Sport Act contains further constraints on spectators of sport events. According to Article 71 (1) d) a person can be let enter a sport event if "she/he does not possess banner inciting to hatred against others, flag or otherwise prohibited symbols of despotism." Furthermore, Article 71(2) raises the obligation of the organizers:

The organizer shall remove the participants, who endanger holding a sport event or the personal and material security of others, or shall call to stop those, who display conduct in relation to unsportsmanlike supporting, chanting that is racist, incites to hatred or creates fear or shock in others.

The Government Decree²⁷⁹ on the security of sport events details the applicable precautionary measures for larger sport events, including the necessity of a security plan from the organizers. Failing to meet the requirements of the decree may result in fines.

In recent years Hungarian teams have received penalties from international federations for homophobic chanting by their fans. On 22 August 2013, UEFA imposed a 50,000 EUR fine on Bp. Honvéd for chanting racist and homophobic slur at a football game on 25 July 2013. In October 2017 FIFA imposed a fine of 20,000 CHF (appr. 17,300 EUR) on the Hungarian national team, because Hungarian fans shouted homophobic slur at C. Ronaldo in the World Cup qualifying round on 3 September 2017. The authors do not know of cases where such sanctions were imposed by the Hungarian Football Federation.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

Question 48

May a well-founded fear of persecution be recognised as a valid ground for the granting of refugee status and asylum under your national law, when based on

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

Summary:

YES. The Asylum Act explicitly mentions that “acts committed on account of the sexual orientation of the person concerned” may constitute a well-founded fear of persecution. Although gender identity is not explicitly referenced in the act, in practice it is considered as a possible ground for persecution that is accepted in the asylum procedure.

Detailed analysis:

The basic rules of the asylum procedure are contained in Act no. LXXX of 2007 (Asylum Act). Article 60 explicitly recognizes the well-founded fear of persecution based on sexual orientation:

(1) Upon the examination of the criteria of recognition, all acts shall be regarded as acts of persecution which are sufficiently serious by their nature, repetition or accumulation, to constitute a severe violation of basic human rights, in particular, the right to life, the prohibition of torture, the prohibition of slavery or servitude and the principle to tie any punishment to statutory provisions.

(2) Persecution may, in particular, take the form of the following acts:

- a) acts of mental or physical violence, including acts of sexual violence;*
- b) acts committed on account of the sexual orientation of the person concerned;*
- c) acts committed in connection with the childhood of the person concerned;*

²⁷⁹ Government Decree no. 54/2004 (III. 31.)

d) legal provisions or administrative measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

e) disproportionate or discriminatory measures implemented in criminal proceedings, including disproportionate or discriminatory punishment;

f) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

g) punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses related to recognition as a refugee or as a beneficiary of subsidiary protection.

Following discussions between LGBTI organizations and the Office of Immigration and Nationality (now: Immigration and Asylum Office, IAO), a draft bill²⁸⁰ was published for consultation in August 2015 that would have included gender identity in as a specific ground for persecution. The bill was never submitted to Parliament, most likely because the direction of the changes were not in line with the anti-migrant discourse of the Government

and are measures in place to ensure that asylum requests may not be turned down on the ground that the claimant can escape persecution in the country of origin by keeping their sexual orientation or gender identity secret?

Yes No Partially

The authors know of no such decision from recent years.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

Question 49

Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

Summary:

There are no specific procedures to ensure that asylum seekers are not sent back to countries where they would face persecution on the basis of sexual orientation or gender identity, however, the general rules of asylum procedure apply for such cases as well.

Detailed analysis:

The IAO does not deem it necessary to develop guidelines, instructions, circulars, etc. specifically on LGBTI asylum-seekers. Thus, the relevant provisions applicable for such cases are in the Asylum Act and in Government Decree no. 301/2007 (XI. 9.) on the implementation of the Asylum Act. In line with the applicable EU law, Article 2 of the Asylum Act contains the following definition of safe country of origin:

h) safe country of origin: the country included in the shared minimum list of third countries regarded as safe countries of origin approved by the Council of the European Union or in the national list stipulated by a Government Decree or part of these countries; the presence of the country of origin on any of such lists is a rebuttable presumption with regard to the applicant according to which no persecution is experienced in general and systematically in that country or in a part of that country, no torture, cruel, inhuman or degrading treatment

²⁸⁰ <http://www.kormany.hu/download/0/5d/60000/tervezet.pdf>

or punishment is applied, and an efficient system of legal remedy is in place to address any injury of such rights or freedoms.

This means that in principle no one can be sent back to a country where his or her life or freedom would be threatened.

- a) In particular, does your country remove from the lists of safe countries of origin any state that criminalise or persecute same-sex relations or transgender identities?
Yes No Partially

Yes, there are no such countries on the list of safe countries of origin.²⁸¹

- b) Are there measures in place to ensure that applicants will not be asked to provide detailed account of their sexual practices or to produce “evidence” such as images or films of intimate acts to prove their sexual orientation or gender identity in asylum claims?
Yes No Partially

The authors have received no information about cases where applicants were asked to provide detailed account of their sexual practices or to produce “evidence”.

- c) Are there measures in place to ensure that applicants will not be subjected to psychological tests to determine there
- sexual orientation? Yes No Partially
 - gender identity? Yes No Partially

Requesting psychological expert opinion was common practice for several year. After the first case at the Court of Justice of the European Union (CJEU) concerning this issue,²⁸² some courts stopped admitting psychological expert opinion on sexual orientation as evidence. Other courts continued to rely on such evidence, until one judge requested a preliminary ruling from the CJEU. The court found that such psychological expert opinions cannot be admitted as evidence.²⁸³ There has not been enough time since the decision to assess if the courts and authorities abide by the decision.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

Question 50

Are specific measures in place to prevent violence against LGBT asylum seekers deprived of their liberty?

Yes No Partially

²⁸¹ Government Decree 91/2015. (VII. 21.) on countries declared safe countries of origin and safe third country on a national level

²⁸² A, B, C v Staatssecretaris van Veiligheid en Justitie (C-148/13, C-149/13, C-150/13)

²⁸³ F. v Bevándorlási és Állampolgársági Hivatal (C-473/16)

In particular, are alternatives to detention offered to LGBT asylum seekers whose protection cannot be guaranteed?

Yes No Partially

Summary:

The most widely used measure was to allow LGBTI applicants to live in private accommodation. Since the introduction of transit zones, this option is no longer available.

Detailed analysis:

In 2015 legislation was adopted to create transit zones (closed container barracks set up next to the border where asylum seekers have to wait for their case to be processed). Transit zones are currently the only option for asylum seekers to legally enter the country. Currently, only 1 person/day is allowed to enter Hungary in each transit zone, resulting in very long waiting times (often up to 1 year) in Serbia.²⁸⁴ The access of civil society actors offering legal and psycho-social support to asylum seekers is restricted. A chamber of the European Court of Human Rights found detention in the transit zones unlawful (the case is currently pending before the Grand Chamber), and the European Commission against Racism and Intolerance²⁸⁵ also concluded that the prison-like facilities provided inappropriate for receiving asylum seekers. The legal changes were accompanied by a government-run billboard and media campaign inciting hostility toward migrants and asylum-seekers by linking them to terrorism.

Question 51

Is the self-determined name and gender identity of a transgender asylum seeker respected throughout, including in particular related to placement, use of gendered facilities, form of address, and official documents?

Yes No Partially

Legislation was adopted on 15 December 2017²⁸⁶ to allow limited recognition of transgender asylum seekers identity during the asylum procedure. The legislation mentions placement [Articles 22, 33 (4), 42] and the gender of interpreters and interviewers [Article 66 (3a)], but does not apply to form of address or official documents.

General notes:

The sharp increase in Europe in the number of asylum seekers culminating in 2015 also affected Hungary: while in 2013 18 900 asylum claims were submitted, in 2014 this increased to 42 777, and in 2015 to 177 315. The Hungarian government responded to these changes by adopting a number of legal changes²⁸⁷ and physical barriers to divert migration flows from the country. This included the building of a fence on the Southern border, designating Serbia as a safe third country, and allowing for expedited asylum determination with a lack of procedural safeguards. While these

²⁸⁴ <http://www.iom.hu/migration-issues-hungary>

²⁸⁵ ECRI Conclusions on the Implementation of the Recommendations in Respect of Hungary Subject to Interim Follow-up Adopted on 21 March 2018 (CRI(2018)24).

²⁸⁶ Government Decree 301/2007. (XI. 9.) on implementing Act . LXXX of 2007 on asylum.

²⁸⁷ Act XX of 2017 on the amendment of certain acts to tighten the procedures conducted on the border

provisions are not particularly targeting LGBTI asylum seekers, the general deterioration of the Hungarian asylum system also impacts them negatively.

The Asylum Act continues to mention sexual orientation as a ground of persecution, although gender identity is not explicitly referenced, the practice of the Immigration and Asylum Office (IAO) recognize trans status as a ground of persecution as well. There is no official guidance on assessing asylum claims related to sexual orientation and gender identity, IAO claims to have circulated the UNHCR's guidelines pertaining to the issue. For many years IAO requested psychological or psychiatric opinions to assess the sexual orientation of the applicant, a practice that was found illegal by the Court of Justice of the European Union. There is no separate training provided for those who work with LGBTI refugees and asylum seekers within the authority neither in assessing their application, nor on how to provide a safe and supportive environment. A new provision offering limited recognition of trans persons' gender identity during the asylum procedure was adopted on 15 December 2017, but its impact on the safety and well-being of trans asylum seekers is yet to be assessed. Some LGBTI asylum-seekers reported humiliating treatment, including verbal and other forms of abuse by fellow asylum seekers and guards as well. These problems have been exacerbated by the introduction of transit zones, which also removed the previously existing option of being placed in private accommodation.

The system for the integration of recognized refugees has also undergone significant changes: all previously existing forms of support (both financial and in-kind) have been abolished, refugees have to rely on the general social services available to anyone in the country, disregarding the special needs they might have. Trans refugees face further difficulties as the Hungarian authorities deny their requests for legal gender recognition, a practice that has been recently found unconstitutional by the Constitutional Court. The case is also pending before the European Court of Human Rights.

XI. National Human Rights Structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

Question 52

Are National Human Rights Structures (equality bodies, ombudsperson, national human rights institutions, and/or National Preventive Mechanisms) clearly mandated to address discrimination on grounds of

- sexual orientation? Yes No Partially
- gender identity? Yes No Partially

Summary:

The ETA includes references to both sexual orientation and gender identity, and thus the Equal Treatment Authority has clear mandate. The mandate of the Commissioner for Fundamental Rights does not specifically include sexual orientation and gender identity, but the term “most vulnerable social groups” is interpreted inclusively. While the CFR is very actively promoting the rights of LGBTI people, the ETAuth has taken a more reserved role in recent years focusing on adjudicating case only.

Detailed analysis:

Article 8 of the ETA explicitly mentions sexual orientation and gender identity as protected characteristics, thus any unjustified discrimination based on the grounds of those is prohibited. The ETA – as described under Question 3a – outlaws direct and indirect discrimination, harassment, segregation and victimization. The body entrusted with enforcing and implementing the ETA is the Equal Treatment Authority (ETAAuth), which was set up on 1 February 2005. The ETAAuth deals with individual complaints and *actio popularis* submissions as well within the scope of the ETA.²⁸⁸

Act no. CXI of 2011 on Commissioner for Fundamental Rights does not mention LGBTI persons. The Act mandates the Commissioner to “pay special attention, especially by conducting proceedings *ex officio*, to the protection of” – among others – “the rights of the most vulnerable social groups” [Article 1 (2)], which may be interpreted as to include the LGBTI community as well.²⁸⁹ The Commissioner has become quite active in recent years on LGBTI issues. Not only did he prepare reports on such crucial questions as legal gender recognition,²⁹⁰ same-sex adoption²⁹¹ and the rights of registered partners;²⁹² but also organized workshops on the rights of trans²⁹³ and intersex persons;²⁹⁴ regularly issued press releases on occasion of the International Day Against Homophobia and Transphobia;²⁹⁵ wrote welcome letters to the Budapest Pride;²⁹⁶ invited Háttér Society to train staff on the rights of LGBTI persons, and set up an internal network to coordinate LGBTI related work and appointed an LGBTI liaison officer.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Question 53

Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

Yes No

²⁸⁸ For details on the remedies see: Rec3 i).

²⁸⁹ The English text of the law is available at: <http://www.obh.hu/allam/eng/index.htm>.

²⁹⁰ AJB-883/2016.

²⁹¹ AJB-485/2017.

²⁹² AJB-4819/2016.

²⁹³ Roundtable at the ombuds office on the fundamental rights of transgender persons, 25 October 2017.

²⁹⁴ The situation of intersex children - mapping the problem, 20 May 2015.

²⁹⁵ Issued every years since 2014, most recently: <http://www.ajbh.hu/-/az-alapveto-jogok-biztosanak-kozlemenye-a-homofobia-es-transzfobia-elleni-vilagnap-alkalmabol>

²⁹⁶ For example: <https://www.ajbh.hu/en/-/az-alapveto-jogok-biztosanak-uzenete-a-budapest-pride-kulturalis-fesztival-megnyitojan>

Intersectional discrimination only receives limited attention both by public bodies and civil society actors. There are no specific provisions in the Equal Treatment Act or any other legislation on discrimination on multiple grounds. Most civil society actors have concentrated on improving the situation of particular social groups (Roma, people with disabilities, women, LGBTI people), and have been invested in establishing case law for their particular protected characteristics, and have not been interested in testing how the legal system would treat more complicated cases of discrimination on multiple grounds. Some policy documents focusing on other disadvantaged groups (Roma, people living with disabilities, youth) are aware of the issue of multiple discrimination, but do not include sexual orientation or gender identity among the intersecting grounds.

Question 54

Are there measures in place pro-actively identifying, protecting and/or supporting groups affected by multiple discrimination?

Yes No

In particular, with regard to

- lesbian, bisexual and trans women?

Yes No

- LGBTI persons of colour?

Yes No

- LGBTI persons of ethnic minority backgrounds, including Roma persons?

Yes No

- LGBTI asylum seekers and refugees?

Yes No

- LGBTI persons from religious minorities?

Yes No

- LGBTI sex workers?

Yes No

- LGBTI persons with disabilities?

Yes No

The authors have received no information of such measures at public bodies. Civil society organizations on the other hand devote more and more effort the intersectional discrimination. There is a specific organization (Labrisz Lesbian Association) set up for lesbian, bisexual and trans women. Open Society Foundations have launched a fellowship program for young activists working on health issues of Roma LGBT people. Budapest Pride has had a Roma LGBTQ truck since 2016. A conference was organized about Roma LGBTQI issues at the Hungarian Academy of Sciences with support from the Hungarian LGBT Alliance. Mozaik Hub and Bálint Jewish Community centre in cooperation with Háttér Society launched a series of events and published a guide on LGBTQ inclusion in the Jewish Community. Transvanilla organized a workshop on sex work in the LGBTI community. Háttér Society regularly hosts meetings of a group for hearing impaired LGBT persons. Furthermore, some survey research by civil society targeting LGBTI people included questions on ethnicity, religion and disability that allow for comparing the

experiences of various subgroups, but results have not been published; a qualitative approach is largely missing.

Section III - General assessment and dissemination of the Recommendation and its Appendix

Question 55

How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory Adequate Insufficient Absent

There are several recommendation that are not or only partially implemented.

Question 56

Which obstacles, if any, have been encountered in the implementation of the Recommendation?

The current Government has political views that do not support the human rights of LGBTI persons. Public bodies lack the necessary knowledge and resources to carry out activities

Question 57

Has the Recommendation, including its Appendix, been translated in all your national languages?

Yes No Partially

The Ministry of Public Administration and Justice (now: Ministry of Justice) prepared the translation of the Recommendation and its appendix.

Question 58

Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation and its appendix was translated in 2012 and published on the website of the Government.²⁹⁷ There is no information about further dissemination activities.

²⁹⁷ Available at <http://www.kormany.hu/download/3/8d/80000/CM-Rec-2010-5-ajanlas.pdf>.

Appendix IV: Cases referred to in the report

Case 1: Molotov cocktail attacks

Date, time and location: 27 June and 2 July 2008, Action Bar and Magnum Sauna, Budapest

Source of information: media, court website

Description: At around 2.30 a.m. on 27 June 2008 a Molotov-cocktail was thrown to the entrance of a known gay venue. It was unequivocally a protest against the Pride march as the organizer of the event, Rainbow Mission Foundation was registered at the address of Action Bar. Nobody was injured, but significant material damage was caused. The attackers made a threatening phone call to the bar prior to the incident. A few days later, on 2 July 2008 a similar attack took place at an openly gay sauna operating in the 8th district of Budapest: four Molotov-cocktails were thrown at the sauna in the early hours. A few chairs burned down and the receptionist suffered minor burning injuries. Before the attack, a phone call was made to the establishment to confirm that there were people on the premises.

Legal outcome: The police started the investigation for hooliganism. LGBT organizations published a joint statement calling on the police to re-classify the incidents and investigate for hate crimes as the attack – in the light of the preceding phone call to confirm that the place was open and there were several people in the establishment – was capable of seriously injuring or killing people. Downgrading the offense to hooliganism – according to the statement – signalled that hate crime committed against LGBT people was considered as a morally more acceptable act, thus it violated legal certainty and encouraged the perpetrators to keep committing similar acts. The well-known radical right-wing figure, György Budaházi and his 16 fellows (all members of the Hunnia movement) were eventually charged for terror plot (for other offenses allegedly committed by them) and also for both Molotov-cocktail attacks. The attacks against gay venues originally prosecuted as criminal damage (Article 324), however, in the closing speech the prosecutor argued, that the aim of the attacks was to intimidate a group of society, and to cancel the Budapest Pride. Háltér Society requested to join the case representing a larger group of victims of unknown size. Even though the prosecutor supported the request, the court rejected it arguing that the offense of terrorism with which the perpetrators are charged with is a crime against public order, which does not have a victim. As opposed to the prosecutor's assessment, the court found that the attacks against the gay venue should not be treated separately. In April 2018, the Budapest Regional Court of Appeal annulled the judgement, and ordered a new court procedure.

Case 2: Hate speech on EchoTV

Date, time and location: 18 July 2009, 3 p.m.

Source of information: case file at Háltér (Case no. MN/1579/2011.)

Description: The television programme 'Képtelenségek' (Nonsense) covered the Pride March and apart from showing previously recorded footage (*i.e.* from a police press conference), guests were

invited too. The presenter categorized homosexuality as a deviant behaviour, and in the case of the Pride it was not about the protection of human rights but about glorifying deviancy. Furthermore, a guest expressed opinions such as recognizing same-sex relationships would lead to the decomposing of the society and lesbian and gay people are like 'cancer cells'. Finally, the press conference from which statements were shown related to an event the Hungarian Gárda (a paramilitary, extremist group) and not to the Pride March, thus the warning of the illegality of uniforms, etc. showed a very distorted picture of the LGBT community in addition to the factually false and hateful statements.

Legal outcome: The Hungarian LGBT Alliance supported by the legal aid service of Háltér submitted a complaint first to EchoTV, then to the National Radio and Television Commission (NRTC). The Complaint Board first rejected the complaint. The NRCT, however, overturned the decision and found the violation of the that-time in force media legislation, according to which no content could be capable of inciting hatred towards a minority group. The programme contained openly homophobic and hateful statements that violated the LGBT community's human rights and human dignity and fuelled hatred towards them. As NRTC found that the TV channel violated the media law five times in 2008, and twice in 2009, its operation was suspended for 90 minutes. The NRTC also adopted a text, which needed to be shown during the period of suspension.

EchoTV appealed against the decision. In November 2010 the Metropolitan Court upheld the decision and sanctions of the NRTC. Both the procedural and the substantive claims of EchoTV were rejected. In the ordinary appeal process the case reached the Metropolitan Court of Appeals that in April 2011 upheld the NRTC decision without modifying or amending it the judgment of the first instance court. Finally, EchoTV submitted a motion for review to the Supreme Court that partly overturned the lower courts' judgments. The Supreme Court found that NRTC had no legal basis to prescribe the text that needs to be shown during the blackout of the television (which clearly indicated the reason for the sanction, *i.e.* the violation of the human rights of the LGBT community). The final decision was issued on 28 August 2013, in which NMIA imposed a fine 200,000 HUF (appr. 625 EUR) on EchoTV.

Case 3: Hate speech against theatre director

Date, time and location: 1 December 2010, Budapest

Source of information: media, court judgement (Case no. Pfv. IV.20.926/2013.)

Description: The theatre of the National Theatre was a controversial artist who had been often criticized by right wing parties. He was also widely known to be gay, although at this point he had not yet talked about his private life (since then, he publicly came out as gay). On 1 December 2010 a demonstration was organized by Jobbik MPs in front of the National Theatre. Speeches were held in which the director was called "sick, pervert", "the symbol of dirt and trash".

Legal outcome: The director sued the speakers, claiming that his human dignity and good reputation was harmed. The court agreed with the claim and ordered the two speakers to pay 300,000 HUF (935 EUR) in damages. The judgement was appealed, and the Kúria had the final say in the case on 14 January 2015 when it upheld the judgement of the lower court.

Case 4: Crossdresser photoshoot

Date, time and location: 2011, hotel near Budapest

Source of information: case-file at Háttér (Case no. 1007/2011),

Description: The victim reserved on the Internet a room in the hotel, for the explicit purpose of taking photos in wedding dress in the scenic garden of the hotel. When the colleague of the hotel dealing with sales realized that after a phone call that it would be a photo-shoot involving cross-dressers, he rejected the request claiming that the management did not authorize “such” photo sessions and did not allow the hotel to appear in “such” pictures. The victim claimed that the only reason for rejection was his gender identity, since similar photo shoots regularly take place in the garden of the hotel.

Legal outcome: The victim was represented by Háttér before the EAuth. In the hearing the manager of the hotel explained that the permission was rejected because the date was not suitable for the event, as the hotel was full and it would have been difficult to provide the space necessary. He emphasized that similar photo sessions with cross-dressers had already taken place in the garden and only unfortunate misunderstandings led to initiating the procedure before the EAuth. He acted in good faith and was cooperative from the first moment. In the hearing the parties concluded a friendly settlement that was approved by the EAuth as well. The hotel apologized and confirmed that the photo-shoot can take place on an agreed date in the Spring. Furthermore, they ensured the applicant and the EAuth of doing everything in order to respect the requirement of equal treatment in the future.

Case 5: Removal from thermal bath

Date, time and location: 5 March 2012, Budapest

Source of information: case file at Háttér (Case no. EBH/41/2013)

Description: In March 2012 a gay couple visited the historic Király Thermal Bath in Budapest. They were sitting around, chatting and exchanged a few kisses – like any other couple in a bath would do. Their behaviour, however, enraged another guest, who demanded, using very rude words, that the couple stop their activity. The guest also complained to the staff, who instead of taking action against the harassing guest, asked the couple to leave.

Legal outcome: The couple turned to the Equal Treatment Authority. During the procedure the bath claimed that the couple purported behaviour running against public morals, and thus disrupted the order of the bath. According to the bath, standards of public morality are set by the majority of guests present in the bath at any given time. The EAuth rejected this notion of relative public morality, and found that the incident amounted to harassment based on sexual orientation. The company initiated a judicial review of the decision. On 14 November 2013 the Metropolitan Court of Budapest annulled the decision arguing that the actions of the staff at the bath did not create a hostile, humiliating environment, but was merely the debate which was not related to the couple’s sexual orientation but to their behaviour.

Case 6: Pride Ban 2012

Date, time and location: 5 April 2012, Budapest (Case no. 18.Pf.20.436/2014.)

Description: The notification of the Pride organizers submitted in time was rejected by the National Headquarter of the Police. Similarly to the year before, the reasoning was detailed: the police listed all the traffic lines that would have been remotely affected by the march and they concluded that it was not possible to rearrange the circulation of traffic.

Legal outcome: The Metropolitan Court overturned the decision of the police. The court emphasized that the police may only consider if the circulation of the traffic could be ensured on alternative routes and there is no proportionality analysis in the decision-making as it was the case prior the 2004-amendment. This ground may only be referred to – reasoned the court – if it is supported by relevant evidence, and the mere fact that a demonstration causes traffic disruption cannot justify the banning of it. The police have no legal basis to weigh the interest of the non-participants against the rights of the participants and decide in favour of the former. After the Pride March took place successfully, Háttér Society and the individual turned to the court claiming that several other events following the same route were not banned, even those with substantially larger number of participants including the pro-government ‘*Békemenet*’ (*Peace March*) with over 100,000 participants, yet, the police thought this would not cause such a disruption of traffic as the yearly LGBTQ event. In January 2014, acting as a first instance court, the Metropolitan Court agreed with the plaintiffs and decided that the ban by the Budapest Police amounted to direct discrimination, that is that the police treated the plaintiffs less favourably than participants of other demonstrations not banned. The first instance court also argued that the ban amounted to harassment as well, since the decision of the Budapest Police contributed to creating and strengthening a degrading, hostile and threatening environment based on sexual orientation. The court emphasized that the discriminatory decision of the police amplified the hostility towards the gay community already present in the society that manifests itself in violent counter-demonstrations. The decision was appealed by the Budapest Police, and the individual submitted a supplementary appeal to get compensation. In the decision delivered on 18 January 2014, the Regional Court of Appeal of Budapest arrived to the conclusion that the private individual did not have standing in this case and rejected his claim. On the other hand, the appeals court fully agreed with the lower level court that since the Budapest Police could not put forward any legitimate argument, their actions amounted to direct discrimination and harassment based on sexual orientation.

Case 7: Activist at Jobbik demonstration

Date, time and location: 20 May 2012, Budapest

Source of information: case file at Háttér (Case no. FRP 397/2012)

Description: A well-known LGBTI and political activist whose photos have been widely circulated in the right wing media was taking a Sunday afternoon walk on 20 May 2012. He noticed a larger group of people in front of a bookshop. He went closer to see what is going on, and saw it was a

demonstration by the extreme right wing party Jobbik. Since his PhD research topic includes political movements, he stayed to observe the event. Soon he was recognized by some people in the crowd as a “dirty liberal” and a “faggot”. When the possibility was offered for anyone at the event to speak, he was encouraged by these people to also speak. When he took the microphone in his hand, the crowd started shouting “dirty faggot”, and surrounded him in a threatening manner. The police securing the event intervened and rescued him from the crowd. He started walking away, but members of the crowd followed him shouting violent threats such as “an umbrella should be stuck and opened in your ass”. After the police noticed that he was still followed by members of the crowd, he was surrounded by the police and asked for an ID. While checking his ID, the police let the perpetrators so close that they had the opportunity to see his personal data in his documents over the shoulder of the police officers. No one of the perpetrators was asked for an ID or apprehended.

Legal outcome: The victim reported the incident to the Police. The police started the investigation of the incident as a hate crime, but closed it on 13 December 2012 claiming that no crime had been committed. The victim submitted a complaint, but the Prosecution Service agreed with the Police. The victim also turned to the Independent Police Complaint Board claiming that the Police failed to perform their duty when they were informed about a crime: rather than checking the identification of the perpetrators, they checked the ID of the victim, and did it in a way that allowed the perpetrators to see his private data. The IPCB found that a minor violation of rights took place when the police failed to identify the perpetrators, and did not provide an adequate reason for identifying the victim. The report was forwarded to both police forces participating at the incident, but both decided that no violation of law happened.

Case 8: Pride 2012 - brothers

Date, time and location: 7 July 2012

Source of information: case file at Háltér (Case no. 27.Bf.582/2016)

Description: Participants of the 2012 Pride March were leaving the end scene of the March via the route suggested by the police. Right outside the police cordons a larger group of anti-gay protesters dressed in clothes usually associated with extreme right wing groups were verbally harassing those leaving the premises. A mother with her small child carrying balloons was also harassed, and the balloons were punched. Two brothers were also harassed and one of them was kicked by an anti-gay protester.

Legal outcome: The two brothers requested help from the police officer present nearby, but he refused claiming he was only responsible for guiding the traffic. Soon other police officers arrived, and started questioning the attackers still present. The police started investigating the case as a hate crime, the victims and several witnesses were questioned. The police carried out a long investigation in which dozens of police officers and participants were interrogated, and the prosecution charged the two persons with violence against a member of a community committed as part of a group via anti-communal behaviour inciting alarm in others. While physical assaults were also committed, the investigation was not able to uncover exactly which member of the group

committed them. In a judgement pronounced on 12 November 2015, the court found one of the defendants guilty, while acquitted the other defendant as the prosecution was unable to prove beyond reasonable doubt that he was also part of the group and did not arrive at the scene later. In its judgement the court declared that “freedom of expression – which is guaranteed by the Fundamental Law and other laws – is not without limits. Its limit is the sovereignty of other persons, their freedom, security and sense of security. (...) Making hateful and hurtful comments, wearing clothes different from those of the participants or taking part in a spontaneous counter-demonstration is not a crime, but threatening others or exhibiting other frightening behaviour is suitable to make the participants feel alarmed, which amounts to violence against a member of a community.” The perpetrator was sentenced to two years of imprisonment - suspended for three and a half years. Both the prosecutor and the perpetrator appealed, but second instance court upheld the judgement.

Case 9: Reduced price football tickets

Date, time and location: August 2012, Budapest

Source of information: case file at Háltér (Case no. EBH/88/2015)

Description: The Hungarian Football Federation adopted a decision in August 2012 which established a family sector for families of 3-5 persons attending matches of the Hungarian national football team. According to the policy reduced-price tickets were available to the sector under the following terms: “the man is to pay a full price, the accompanying woman can enter for free, and (up to three) children are to pay a 25% price”. Háltér Society wrote a letter to the Federation requesting a change of the policy, but the Federation refused the amendment arguing that the new Fundamental Law defines marriage as a union between a woman and a man.

Legal outcome: Háltér submitted an *actio popularis* complaint to the Equal Treatment Authority. Soon after the submission, the Football Federation changed its opinion and amended its policy to entitle two adult citizens and their children to enter at a reduced price. The official procedure at the ETAuth ended with a settlement, as the Federation changed its policy on its own initiative.

Case 10: Drag queens police harassment

Date, time and location: 25 August 2012, Budapest

Source of information: case file at Háltér (Case no. FRP/734/2012)

Description: On the night from the 24 to the 25 August 2012 the police, the local government and the fire-protection service raided the LGBTI venue ‘*Club Underground*’. Guests are regularly entertained by crossdressing drag queens in the club. During the raid the guests and the performers were sent out of the building. The police frequently commented on the drag performers saying things like: “look, how that one looks!”, booing and laughing at the performers. One performer was told to go back inside as her clothes were violating public morality. One police officer was heard saying to the other: “This is not a woman, it’s a fag!” The managers were told to send guests away without paying. When they refused the police said “I am not going to stand here

for seven hours, until faggots pay their bills". The head of the raid also added "at least the fags will have a nice day".

Legal outcome: The manager of the club and one of the drag performers turned to the Independent Police Complaints Board. The IPCB found no proof for harassing statements. They did confirm that the guest had been let go without paying, but found that this did not violate fundamental rights. One member of the IPCB issued a minority opinion, in which he argued that both aspects of the complaint amounted to a serious violation of fundamental rights.

Case 11: Murder of pharmacist

Date, time and location: 25 August 2012, Debrecen

Source of information: media, court judgement (Case no. Bf.I.892/2013.)

Description: On 25 August 2012 a 24-year old man murdered an elderly gay pharmacist whom he got to know via personal advertisements. The perpetrator went to the meeting prepared to kill the victim, he took a pocket-knife and an extra set of clothes to change into. Soon after arriving to the victim's apartment he killed the victim with 20 stabs, including one in the eye.

Legal outcome: The police apprehended the defendant within 48 hours. He talked openly to the police about his motivation: he had been seeing a spread of gay personal advertisements in the media, and decided to "kill them all one by one". He also shared with the police his sympathies for Hitler, his slight dislike of Jews and his detest for Gypsies and "faggots". A first instance court decision was delivered on 18 October 2013: the victim was convicted for homicide with a base motive, planned in advance, committed with special cruelty; the defendant received life imprisonment. In its decision delivered on 10 February 2014, Regional Court of Appeal of Debrecen upheld the decision of the lower level court.

Case 12: West End assault

Date, time and location: 9 April 2013, Budapest

Source of information: case file at Háltér (Case no. NF.4243/2014)

Description: The West End shopping centre in Budapest includes an area that is often used by gay males to meet and socialize. The victim also visits this area quite often. On 9 April 2014 he was dragged into a service corridor by four security guards, three of whom forced him into an elevator and brutally assaulted him: he was punched and kicked several times. During the attack the following statements were made "you dirty faggot, why do you have to come here", "we are fed up with you all". He was then pushed out to the street. Following the attack he went home, but did not feel well and went to the hospital. The hospital reported the attack to the police.

Legal outcome: Two police officers appeared in the waiting room at the hospital where the victim was waiting for his admission. They started questioning him on the spot, including questions concerning whether the attackers used words such as "faggot" during the attack. This took place

in a waiting room with several other patients around, which made the victim very uncomfortable. He had not heard back from the police for over a month, when he was interrogated once again. The victim requested several times (also in writing) that the case be investigated as violence against a member of a community, but the police refused it, claiming that in order to settle the motivation, first the perpetrators have to be questioned. On 5 February 2014 the victim successfully identified his perpetrators from a list of photos shown to him by the police. For five months the victim received no update on his case. In July 2014 the case was handed over to the Homicide Department of the Budapest Police as the medical expert found that the injuries were life-threatening. The victim was interviewed once again, he asked once again for the crime to be qualified as violence against a member of a community. On 16 August 2014, 16 months after the incident happened the case was requalified and handed over to the appropriate police department. The victim was asked to attend a meeting with the perpetrator, but he rejected it and specifically asked the police not to meet the perpetrators under any circumstances. Disregarding this request a view to the scene was organized at a time when the perpetrators were on duty at their work, and they met during the view. The investigation was closed qualifying the case as violence against a member of a community and life-threatening bodily harm. The Budapest Prosecution Service did not prosecute the cases as they found the evidence to be insufficient. The victim did not want to pursue the case, and thus did not submit a complaint.

Case 13: Lesbian blood donation

Date, time and location: May 2013, Tiszanána

Source of information: media, ETA website (Case no. EBH/499/2013)

Description: In May 2013 a lesbian couple living in a small village volunteered to donate blood at the local blood drive. They were interviewed by a doctor one after the other. When the doctor insisted on asking information about why the second woman did not have a child, the woman shared with the doctor that they were a couple with the woman the doctor had just completed examining. The doctor ran out of the room and stopped the preparation for the blood donation of the other woman and stated in front of several other donors in the room that “this is a sickness”, “you should give up with this lifestyle at once”, “the kinds like you cannot give blood”.

Legal outcome: The couple turned to the Equal Treatment Authority. The parties settled: the Blood Donation Service issued an apology and agreed to include in their future brochure that a long term relationship between two women is not an exclusion criteria for blood donation.

Case 14: Rejection student with two mothers

Date, time and location: August 23 2013, Budapest

Source of information: case file at Háttér (Case no. EBH/366/2014, 31.P.25.499/2015/16/1.)

Description: In August 2013 the two mothers of 13-year old boy decided to find a new school for their son. The boy’s interview with the future form master went fine, and a trial-week was agreed on. At the end of the interview, the mother told the teacher that she was raising the child together

with her same-sex registered partner. The teacher did not react in person, but the next day she wrote an email stating that “due to their family status” the child could not be admitted to her class. The mother turned to the leadership of the school who confirmed that the teacher’s decision is final, so she decided to start legal action against the school.

Legal outcome: The legal mother of the child turned to the Equal Treatment Authority. The school argued in the procedure that there had been a misunderstanding, it was not the interest of other children in the class, but rather the interest of the rejected boy that they based their decision on: they only wanted to prevent the bullying of the child. The ETAAuth fully rejected argumentation of the school, and stated that: “Being admitted to a community of students cannot be rejected by arguing that since the child lives in a family different from the majority, the community would not accept him, and the teacher would not be able to handle the conflict. It should be one of the aims of schools to teach children tolerance towards each other (...). The school’s behaviour ran against acceptance and inclusion, and the inability of a teacher to handle such a conflict cannot serve as an excuse.” The ETAAuth imposed a 50,000 HUF (155 EUR) fine on the school, and ordered that its decision be published on the website of the school and the Authority. The mother found the fine humiliatingly low, and decided to also ask for compensation from the school. The Metropolitan Court of Budapest shared the factual assessment of the case by the ETAAuth, and declared that the child’s admittance to the school was rejected due to his mother’s sexual orientation. In response to the school’s argument that the rejection was in line with the interest of the child, the court made a principled statement that “(a)ny educational institution and their teachers are expected (...) to use the necessary pedagogical tools to prevent the bullying of students who differ from their classmates in whatever aspect. Students with such characteristics diverging from the majority cannot suffer disadvantage because an educational institution or a form master is not willing to, or is not able to take into consideration their special needs and facilitate their integration to the community of students.” The court awarded the mother 350,000 forints (c. €1,100) in non-pecuniary damages, and ordered the school to cover the interests and legal fees.

Case 15: Baseball bat threat

Date, time and location: 14 August 2013, Budapest

Source of information: case file at Háttér (Case no. 01000/2676/2013.bü., FRP/637/2013, 105/887/2013.RP.)

Description: Three young men were heading home from a party at 3 a.m. One of them went into a shop to buy cigarettes. The two others started kissing in front of the shop. Two men came out from a nearby shop and started harassing the boys saying “You faggots, don’t do your faggot thing around here, get the hell out of here!” When the young men did not stop, one of the men went into the shop and came out with a baseball bat and made threatening moves with it.

Legal outcome: The young men called the police. The police arrived to the spot more than half an hour after the call was made. The young men insisted that they want to press charges against the perpetrator, but the police officers said they should keep calm as they could also be taken to the police station as they had committed public indecency by kissing. The police said if the young men

want to press charges, they have to go to the police station. The police went into the shop, but did not perform a thorough search for the baseball bat. When the next day the victim went to report the case to the police, he was told he does not have to report, as most likely there is already an investigation ongoing. The victim reported the case to several news media that covered the story in great details. The Communication Service of the National Police Headquarters issued a press release claiming that the victim lied about the time it took for the police to arrive to the spot (the truth is: the time of the call and the arrival of the police is well documented), and that no criminal offense happened (meanwhile the local police informed the victim that a preliminary investigation is ongoing). Later, the victim was summoned for a police interview, and an investigation was launched based on violence against a member of the community. One of the victims turned to the Independent Police Complaint Board claiming that the police failed to come to the scene in time, failed to perform the tasks they should do at a crime scene, and acted in a discriminatory way. The IPCB found the complaint to be valid, and found that the failure to arrive to the scene on time and providing false information on the legality of the young men kissing amounted to the breach of fair procedure, impartiality and equal treatment. The report was forwarded to the National Police Headquarter, who agreed with the finding that the police provided false information on the legality of the young men kissing, and that the police unlawfully rejected to take a crime report, but rejected all other claims. The criminal procedure is still pending, under investigation.

Case 16: Pride 2013 – racist-homophobic attack

Date, time and location: 6 July 2013, Budapest

Source of information: case file at Háltér (Case no. 201.B.V.12.195/2014.)

Description: Three men, two of them Roma participated at the Budapest Pride March on 6 July 2013, and were heading home after the march ended. Close to the endpoint of the march they were spotted by a group of 20 right wing extremists coming from a protest against the march. They started shouting things like: “those are faggots, those are gypsies”, the victims asked them to leave them alone, but as soon as they got close enough the perpetrators started punching the victims shouting “you faggots, you gypsies”. At least 4-5 members of the larger group were actively involved in the attack. One of the victims fell to the ground and was kicked several times. One other victim tried to run away and call the police, but the perpetrators wanted to take away his phone. Police cars appeared and the attack ended. The police asked for the documents of the victims, but failed to do the same for the perpetrators some of whom were still present 5-10 meters away. When asked by the victims to do something with the perpetrators, the police claimed they were only there to protect the victims, and not to act against the perpetrators. Harassing shouts continued even after the police appeared. A video crew of a newspaper appeared and the victims gave an interview criticizing the police for their inactivity.

Legal outcome: The police launched an investigation, and the attackers were identified via media footage of the counter-demonstration, and existing police files. The prosecution charged six men with violence against a member of a community committed in a group as well as causing light bodily harm. One of the perpetrators was acquitted during the court procedure, five perpetrators were found guilty. The investigation uncovered that all the perpetrators were members of the New

Hungarian Guard, the successor organization of the Hungarian Guard, which was banned by the Hungarian authorities in 2009 for organizing marches that intimidated the Roma minority and disrupted the public order. Two of the perpetrators sentenced had a leading role in the New Hungarian Guard. The court found the testimony of the perpetrators against each other, a testimony of a fellow guard member and police tapping of the perpetrators' mobile phones to be decisive evidence. Two perpetrators, who had a criminal record, were sentenced to three and two years' imprisonment. The other three perpetrators received two years imprisonment suspended for four and five years. The second instance procedure took place in June 2017 and found the perpetrators guilty as well. As opposed to the first instance court, the court also found that chanting homophobic slur as part of a larger group is not free speech, as it is suitable to induce alarm in others. The court lowered the penalty for two perpetrators: the prison penalty was suspended for one of them, and for the other the length of the suspension was reduced from five to four years.

Case 17: Deres.tv faggot list

Date, time and location: 29 June 2013

Source of information: case file at Háltér (Case no. B V.-XIII. 9431/2013/7-II.)

Description: On 29 June 2013, the extreme right wing news portal deres.tv issued a list of persons with their names and photos. The article bore the title "The big faggot database 2." referring to a similar article a year earlier listing organizers of the LGBT sport event EuroGames. The article contained the sentences "We do not let faggots hide this year either". About the method of data collection, the article described the people on the list as "people that officially registered at Facebook events".

Legal outcome: Several people on the list reported the incident to the police claiming it was misuse of personal data. The police first launched an investigation, but soon closed it arguing that the publication of the list was not motivated by profit seeking and it did not cause a significant injury of interests, which is needed to treat the incident as misuse of personal data. The victims appealed the decision arguing that publishing such a list in such a context amounts to significant injury of interests. The prosecution service agreed, and ordered the investigation to be resumed. A few months later, the investigation was suspended arguing that the webserver is hosted outside of Hungary, and there is way to find out the editors of the website. The suspension was appealed, but this time the prosecution service agreed with the police.

Case 18: Pride 2013 – bicycle man

Date, time and location: 6 July 2013, Budapest

Source of information: case file at Háltér (Case no. 21.B.V.20.812/2014.)

Description: The victim was walking home from the Budapest Pride March on 6 July 2013, when he met a larger group of anti-gay protesters shouting "Dirty faggots! Dirty faggots!" A woman in her thirties left the larger group, walked up to the man, tore off his rainbow badge and hit him. The

victim suffered no injury. The TV crew of an online newspaper recorded the whole incident on video.

Legal outcome: The victim reported the incident to the police. Since the woman was a well-known extreme right wing activist, it was easy for the police to identify her based on the video footage. The Central District Court of Pest delivered its decision on 29 April 2015 finding the perpetrator guilty of violence against a member of a community for the incident at the Budapest Pride and incitement to violence for posting pictures of Roma children online with a call to kill them all before they grow up to be criminals. The defendant received three years' imprisonment, and will also have to serve eight more months for a crime committed earlier. This was the first case the court convicted a person for violence against a member of a community on homophobic ground.

Case 19: Hospital kitchen harassment

Date, time and location: September 2013, Kecskemét

Source of information: case file at Háttér (Case no. 3/M/82/2014.)

Description: Both members of a gay couple had been working at the kitchen of a hospital. In September 2013, the head of unit had a discussion with the couple. She stated that the younger man of the couple is “pulling down” the older one, who used to be a perfect father. From then on, both members of the couple were regularly harassed by several colleagues. The younger man was moved to a different, more difficult position. He was called “stupid, useless scum”, “you are a nothing, how dare you”. On 14 January 2014 a debate concerning over hours evolved between the younger partner and the head of the kitchen, which ended in the head of kitchen stating that the man would be fired. The head of unit tried to talk the man into signing a mutual agreement on ending the employment contract, but the man rejected it. He was sent home, and due to the stress he suffered he did not go back to his workplace. Ten days later, he received a letter that he should resume work at once. He went back to work but the head of unit tried to talk him into signing a mutual agreement again. Five days later, he received notification that he was fired due to not showing up at work.

Legal outcome: The two man sue the hospital for damages. They claimed that the treatment they had received amounted to harassment, and that the younger partner was laid off because of his sexual orientation. The parties settled, and both plaintiff received 100,000 HUF (appr. 310 EUR).

Case 20: Rejection at lung screening centre

Date, time and location: 20 January 2014, Budapest

Source of information: ProTrans research

Description: A trans man who looked manly, but according to his papers was still a woman visited a lung screening centre to have a chest X-ray. The staff refused to perform the examination and did not even let him explain why he looks like a man. He was laughed at in a humiliating way, and told not to play tricks. They threatened to call the security service on them.

Legal outcome: no procedure launched

Case 21: Brazilian students

Date, time and location: 21 April 2014, Budapest

Source of information: case file at Háltér (Case no. 10.Fk.21.453/2015.)

Description: Three young gay Brazilians studying in Budapest were heading home from their friends home on 21 April 2014 at 2 a.m. Two young men stopped them, and when they found out that the Brazilians did not speak Hungarian, one of them asked them in bad English whether they were gay. He continued asking questions concerning the victims' sexual orientation ("Why are you gay?", "Have you fucked a woman?"), and stood in the way of the victims. When the victims tried to pass them, one of the attackers kicked one of the victim's leg to trip him. To counteract the attack the victims slapped his attacker in the phase. Making use of the temporary confusion of the attackers, they rushed to the tram stop, but their attackers – joined by a third person – followed them closely and provoked them saying "What's up? What's up?". When one of the victims asked them to stop, he was spat in the face. To escape from further attacked the victims jumped to the tram waiting in the stop.

Legal outcome: The victims reported the incident to the police in writing, and the police started an investigation on account of violence against a member of a community. The police identified two perpetrators, but stopped the investigation against one of them (the one who did not kick) claiming he committed no crime. The victims complained against the police decision claiming that the second perpetrator also committed violence against a member of a community (threatening behaviours), and was also a psychological accomplice to the attack by the other attacker. The prosecution service agreed with the victims and ordered the police to continue investigation against both perpetrators. In its judgement on 11 February 2016 the court found both defendants guilty of violence against a member of a community. The defendant kicking the victim received a sentence of 1.5 year imprisonment – suspended for 2.5 years, the other defendant received a sentence of 120 hours of community work for being an accomplice to the crime.

Case 22: Ad for documentary

Date, time and location: 24 November 2014, Budapest

Source of information: case file at Háltér (Case no. EBH/127/2107.)

Description: On 24 November 2014, a volunteer for the documentary film project *Hot Men Cold Dictatorship* wanted to post an advertisement at an ad office. The advertisement would have called for interviewees to volunteer for the film project documenting the life of gay man in socialist Hungary. Posting the advertisement was rejected by the staff of the office claiming that the company is a conservative one, and reject everything that is not in line with traditional values.

Legal outcome: The civil society organisation hosting the film project turned to the Equal Treatment Authority claiming, that the rejection amounted to discrimination as it was based on gay

content of the advertisement. In the beginning of the procedure it was not clear who was the legal entity operating the ad office, and the EAuth rejected the claim arguing that they have no powers to investigate who might be the perpetrator. The decision was challenged in court, and in January 2017 the EAuth started to investigate the case. Meanwhile, the movie has been completed that won several international prizes. The company contested that the rejection was discriminatory, but the parties settled: the TV station agreed to screen the movie three times making it accessible to a wide audience.

Case 23: Hospital treatment after suicide attempt

Date, time and location: 27 March 2015, Budapest

Source of information: TransCare research

Description: After a suicide attempt, a trans man was delivered, unconscious, to the hospital's toxicology central intensive care unit. The hospital's final report states, based on information provided by the emergency unit, that 'their patient is a woman but had a sex-change operation to become a man', and it provides a detailed description of the operation and repeatedly refers to him as someone having undergone 'virilising surgeries'. It even diagnosed a rare urinary condition that he has never had. It provided a detailed description about female genitalia, which he has had nothing to do with for many years. While he was being treated, hospital staff said things in front of him such as 'Is this a boy or a girl?' On top of his basic situation, all this was very difficult for him because he has been passable for many years and has never faced such questions or attitudes. He filed two complaints to the hospital but has not received a substantive response to date.

Legal outcome: no procedure launched

Case 24: Trans job interview

Date, time and location: 27 July 2015, Szombathely

Source of information: case file at Háltér (Case no. EBH/168/2016.)

Description: A transgender woman from a small village in Western Hungary had been living as a woman for six years. She dressed and behaved accordingly, but had not yet applied for legal gender recognition. She went for a job interview at a clothing store in a nearby city. However, when the sales manager saw her credentials bearing a male name, she told her that they were seeking a female shop assistant, and then laughed at the applicant when she reaffirmed she was a woman.

Legal outcome: She turned to the Equal Treatment Authority to hold the firm accountable for rejecting her application on the basis of her gender identity and for hostile behaviour (harassment). The EAuth agreed with the complainant that the employer discriminated her on the basis of her gender identity. The EAuth also found that seeking a female shop assistant exclusively was direct

discrimination on the basis of sex. As a sanction, the ETAuth forbade future unlawful conduct, and ordered that its decision be published online.

Case 25: Inheritance tax for registered partner

Date, time and location: 11 January 2016, Budapest

Source of information: case file at Háttér (Case no. AJB-4819/2016)

Description: Two surviving registered partners approached the legal aid service of Háttér Society in 2015 complaining that they were ordered to pay inheritance tax, even though spouses have full inheritance tax exemption. Following the intervention of Háttér Society the tax authority revoked both decisions and returned the already paid inheritance tax. The two very similar cases, however, made it likely that the tax authority was systematically disregarding the existing legislation, so Háttér Society requested the National Tax and Customs Administration (NTCA) to reopen all income tax files of registered partners in order to make sure the legislation was applied properly. Rather than reviewing their prior practice, the NTCA responded that it consulted with the Ministry of National Economy and arrived to the conclusion that the general reference rule in the Registered Partnership Act does not apply to tax laws. The authority reasoned that all tax related provisions have to be contained in targeted tax legislation, and thus the RPA cannot have an impact on tax benefits. In a later letter the NCTA similarly argued that the newly introduced newlyweds income tax benefit also does not apply to registered partners.

Legal outcome: Háttér Society turned to the Commissioner for Fundamental Rights claiming that the legal interpretation of the tax authority amounts to discrimination on the ground of sexual orientation, as same-sex registered partners are treated differently from different-sex spouses. They also argued that tax legislation cannot be hermetically separated from other fields of law, as many concepts used in tax legislation are defined elsewhere, thus the notion of spouse should be interpreted in line with the general reference rule contained in the Registered Partnership Act. In a report published in December 2016, the Commissioner agreed with the reasoning of Háttér, and declared that the practice of the NTCA runs contrary to existing legislation, disrupts the rule of law and discriminates on the ground of sexual orientation. The Commissioner requested the NCTA to revise its policies and pay back any taxes unlawfully levied. In a public statement issued on 25 January 2017 the NCTA announced that they accept the report of the ombudsman. Since then they updated their information materials, issued a circular among their staff on the correct interpretation of the law, and paid back any unlawfully levied tax with interests.

Case 26: Use of city name by organization

Date, time and location: 17 January 2016, Miskolc

Source of information: case file at Háttér (Case no. EBH/420/2016.)

Description: A LGBT community group in the city of Miskolc in existence since 2013 applied to be registered as an NGO. The group wished to include the city's name in the name of their organisations, but a local government decree prescribed that an explicit permission from the local

government is needed for such use of the name of the city. They submitted an official request to the mayor, but on 17 January 2016, the mayor rejected the request without providing any justification.

Legal outcome: Háttér Society submitted a freedom of information request to the local government, and found out that no such requests have been rejected before. With this information, the organization turned to the Equal Treatment Authority claiming their request was rejected because they were an LGBT organization. The local government argued, that it was not obvious from the request how the activities of the organization would contribute to the good reputation of the city. The EAuth did not accept the argumentation of the local government claiming that if the request submitted lacked information, the local government could have asked for more information from the applicant. The EAuth also noted that “for a large city to have a local LGBT organization that bears the name of the city in itself contributes to the good reputation of the city, and thus is in the interest of the city.” The EAuth imposed a fine of 500,000 HUF (EUR 1,560), that is relatively high for similar cases.

Case 27: Assault in Pápa

Date, time and location: 1 April 2016, Budapest

Source of information: case file at Háttér (Case no. 12.Fk.172/2016.)

Description: On 1 April 2016 a young gay man was insulted by two young man, and made comments on his earlier TV performance. He was called several times a faggot, and shouted at him “Stop, you little faggot!” The victim did not stop, he was pushed from the back, fell to the ground, and one of the men punched him in the shoulder.

Legal outcome: The victim called the police, who came to the crime scene, took his data, but told him only he can initiate a case at the court for libel, as no other crime happened. The victim got in touch with Háttér Society, who notified the hate crime coordinator about the case. Soon after the case was requalified as violence against a member of a community, and the victim was questioned. The police asked several times for the victim to meet that perpetrator, but the victim did not want this. The police requalified the case as disorderly conduct. On 1 February 2017 the victim was questioned in court. It became clear, that it was not the first court hearing, but the victim was not informed about previous hearings. Months later, Háttér Society found out that a judgement had been delivered, the perpetrator had been found guilty, but the victim had not been informed. The victim requested in writing the written judgement, but the court rejected it on ground that he was merely a witness, not a victim, and has no access to the judgement.

Case 28: University roundtable

Date, time and location: 19 April 2016, Debrecen

Source of information: case file at Háttér (Case no. EBH/322/2017)

Description: In 2015-2016 the Hungarian LGBT Alliance, the national umbrella organization was carrying out a national campaign entitled *We are here!* in which they cooperated with local activist groups to organize tablings at main squares in larger cities outside the capital to engage people in discussions about LGBTQI topics, as well as to organize lectures and roundtable discussions at local universities. As part of the program series, the Alliance was planning to organize a roundtable discussion in April 2016 on coming out at the University of Debrecen in cooperation with the local LGBTQI activists group CívísColors. Participants would have been professionals and LGBTQI people. The program was also supported by the Debrecen German Cultural Forum. The room reservation was organized in the same way as for any other events organized by the Cultural Forum. However, once the leadership of the University was informed about the event, they banned it not only in the main building of the University, but at any other venue on campus. The organizers found a new venue, the Nagyerdei Old Water Tower cultural centre that was willing to host the event, but they also cancelled at the last moment due to the University's opposition.

Legal outcome: The Hungarian LGBT Alliance took the case to the Equal Treatment Authority. The University claimed it was not the topic of the discussion but the way the room reservation was made that prompted the cancellation of the event. The University, however, could not explain that if the problem was administrative, why they did not allow for the mistake to be corrected. The Debrecen Campus Non-profit Ltd., a company owned by the University which operates the Nagyerdei Old Water Tower cultural centre made conflicting statements during the procedure whether an approval by the University was needed for all events to take place at the centre. The ETAuth found that the event was banned due to its topic, and thus the ban amounted to discrimination based on sexual orientation and gender identity. The ETAuth imposed a fine of 100.000 HUF (appr. 315 EUR) on the University, ordered both the University and its subsidiary to refrain from such actions in the future, and ordered the publication of the decision on its own and the University's website. The University initiated a judicial review of the ETAuth's decision, but in its judgement delivered on 30 May 2018 the Metropolitan Court upheld the decision.

Case 29: Lesbian adoption rejected

Date, time and location: 4 May 2016, Pécs

Source of information: case file at Háltér (Case no. AJB-6093/2016)

Description: A lesbian couple who had been living together for five years decided to become parents via adoption. Since Hungarian legislation does not allow joint adoption for same-sex couples, they decided that one of them would legally apply to adopt. From the beginning of the procedure they were very open about their relationship, and the psychological assessment found that they are particularly suitable to become parents. In a few months' time they were offered a child: a 16-month-old girl of Roma origin. The couple was getting acquainted with the child for months, and in April 2016 they took care of her during daytime for three weeks. The little girl soon developed a bond towards her new mothers. One day, however, the child protection service called them and said: due to an intervention from "above" the adoption procedure had to be stopped. The decision disrupted the life of the child: she did not eat properly, lost weight, her speaking skills

regressed, was constantly crying, became shy with strangers, so she had to be taken to a child psychologist and an expert on early child development.

Legal outcome: The woman first appealed the authorities' decision to the Government County Office, and after it was rejected, she turned to the Commissioner for Fundamental Rights. The CFR's investigation lasted for over a year, and concluded with a report finding that several fundamental rights were infringed in the procedure, such as the right of the child to protection and care and the right to fair procedure, and as a whole the procedure amounted to discrimination based on sexual orientation. The CFR also examined the preference rules in various pieces of legislation on adoption (the preference for adoption within Hungary, the preference to adopt locally, and the preference to adopt by married couples), and found that the latter preference rule can only prevail if the first two have been fulfilled.

Case 30: Foreign same sex marriage

Date, time and location: 6 May 2016, Budapest

Source of information: case file at Háttér (Case no. 1.Kf.650.054/2017)

Description: An American-Hungarian couple living in Belgium got married in 2013. On 29 December 2015 they requested the domestic registration of their marriage from the Hungarian authorities. In March 2016 the Budapest Government Office suspended its procedure and requested a legal opinion from the Ministry of Justice. The Ministry issued an opinion that according to Hungarian international private law a marriage is only valid, if it is valid for both partners. Since the Hungarian Fundamental Law defines marriage as a union between a woman and a man, the marriage is invalid. Hungarian law does not contain provisions on recognizing foreign marriages as registered partnership, so the marriage cannot be registered as registered partnership either. The Budapest Government Office rejected the domestic registration on 6 May 2016.

Legal outcome: The couple initiated a judicial review of the decision of the Government Office. On 25 April 2017, the Administrative and Labour Court of Budapest decided in favour of the couple, the decision was upheld on 8 February 2018 by the Regional Court of Budapest. According to the courts' argumentation current Hungarian legislation contains no explicit provisions, neither requiring, nor forbidding the recognition of foreign same-sex marriages, so according to the general principles of international private law a foreign same-sex marriage should be recognized as the institution most similar to it in Hungarian law, that is registered partnership. Rejecting such a recognition would infringe on the fundamental rights of the couple, as their stable relationship would not be recognized. The Budapest Government Office submitted a petition for review by the Kúria; the review proceeding is pending.

Case 31: Iranian trans man

Date, time and location: 6 July 2016, Budapest

Source of information: case file at Háttér (Case no. 7/2017. (IV. 18.) AB)

Description: An Iranian trans man arrived to Hungary in the summer of 2015, and asked for asylum. The Hungarian authorities found that he had been persecuted in his home country due to being transgender, and thus recognized him as a refugee. His documents, however, still referred to him as female, so he requested legal gender recognition according to the regular Hungarian procedure. The authorities rejected his request on the ground that Hungary does not have jurisdiction in his case, and he should submit his request in Iran, the country where he had been persecuted.

Legal outcome: He requested judicial review of the authority's decision, but the court rejected to make law in a situation where no law is applicable. The case ended up at the Constitutional Court as a constitutional complaint. In its unanimous decision published on 21 June 2018 the Constitutional Court rejected the constitutional complaint, on the ground that such procedure cannot address missing legislation, on the other hand – proceeding *ex officio* – the Court found that it was an unconstitutional omission that the law does not provide for legal gender recognition and related name change for trans people legally residing in Hungary permanently. The decision also confirmed that legal gender recognition and related name change is a fundamental right of trans persons deriving from the principle of human dignity. The decision also emphasizes that medical interventions are not a prerequisite for legal gender recognition. The Constitutional Court gave a deadline of 31 December 2018 for the legislator to adopt a new legislation.

Case 32: csalad.hu

Date, time and location: 15 July 2016, Budapest

Source of information: case file at Háttér (Case no. EBH/450/2017, EBH/456/2017)

Description: In 2015 the Ministry of Human Capacities launched a new website csalad.hu to provide information about family policy initiatives of the Government and information materials about various forms of family support (child allowance, child tax benefit, tax benefit for people married for the first time), as well as a list of family organizations from Hungary and the neighbouring countries. In December 2015 the Hungarian LGBT Alliance suggested to the institute responsible for the operation of the website to include in the list of family organizations the Rainbow Families Associations, and to include in the information materials that registered partners are also entitled to the same benefits. After several reminders, the successor of the institute responded that they will include the information if they want to. The information was not included.

Legal outcome: The Rainbow Families Foundation and Háttér Society turned to the Equal Treatment Authority claiming that the ministry and the non-profit company maintaining the website discriminated against the Rainbow Families Foundation by not including them on the list of family organizations, and that ministry and the non-profit company maintaining the website discriminated against same-sex couples by not including information about registered partners in their information materials. EAuth agreed with the claimants, and ordered the information to be included. The information materials were amended, the decision concerning adding Rainbow Families Foundation to the list has been challenged in court; the case is pending.

Case 33: Harassment at fast food restaurant

Date, time and location: 24 December 2016, Budapest

Source of information: case file at Háttér, ETA website (Case no. EBH/58/2017)

Description: On 24 December 2016 a gay man and his friends entered a fast food restaurant at the early morning hours. One of their orders was not ready in over 30 minutes so they cancelled the order, and left a written complaint. While leaving the restaurant a security guard told them “You are bad faggots, aren’t you!” When the group complained about the behaviour of the security guard, the incident nearly escalated into violence.

Legal outcome: The gay man reported the incident to the Equal Treatment Authority. The company agreed that the security guard would apologize and the employees would be informed about the importance of equal treatment.

Case 34: Trans at urologist

Date, time and location: 2017

Source of information: ETA website (Case no. EBH/36/2018)

Description: A transgender woman visited a urologist to request a medical opinion for her legal gender recognition procedure. The urologist rejected to issue the opinion, and said that he would be ashamed if his son would do such a thing, adding that the woman could just as well have a hole made on her arm, as her vagina will be completely insensitive.

Legal outcome: The woman turned to the Equal Treatment Authority. The parties settled: the hospital apologized, and agreed to draft guidelines to urologists on trans issues together with the applicant, and to submit those guidelines to be published in a urological journal.

Case 35: Swimming pool for sports day

Date, time and location: 5 January 2017, Budapest

Source of information: case file at Háttér (Case no. EBH/203/2017)

Description: Atlasz LGBTQ Sports Club organizes an annual Atlasz Sports Day. In January 2017 they contacted MOM Sports Pool, a swimming pool operated by a subsidiary of the Budapest District XII Local Government to rent two lanes for their event. The sports centre confirmed the availability of the pool via email, but when they learnt the name of the club, they declined the offer.

Legal outcome: The sports club turned to the Equal Treatment Authority to investigate the case. During the investigation, the sports centre argued that the rejection was not based on the sexual orientation or gender identity of the members of the club, but rather overcrowding in the pool and the fact that Atlasz wanted to bring their own trainer, which was not allowed by the house rules. The ETAuth, however, found that neither the pool occupancy nor the ticket sale data of the pool

supported the argument, and the house rules were modified only after the investigation was launched to conform to the legal argumentation of the centre. Besides declaring that the sports centre discriminated against the sports club on the basis of its members' sexual orientation and gender identity, the EAuth also ordered the centre to pay a fine of 1 million HUF (appr. 3250 EUR), the highest fine the EAuth has ever imposed in a sexual orientation / gender identity discrimination case. The EAuth also ordered its decision to be published in full on its own and on the sports centre's website for preventive purposes. The sports centre initiated a judicial review of the decision but on 11 July 2018 the Metropolitan Court of Budapest confirmed the decision of the Equal Treatment Authority.

Case 36: Dating site profile released

Date, time and location: 14 April 2017, Budapest

Source of information: media, court judgement (32.Pf.21.334/2017/4-II.)

Description: A well-known opposition activist was detained for 72 hours for participating in a demonstration that ended in a paint attack at a public building. After he was released a pro-government news portal posted an article in which they stated that the prison had not broken the activist as his first activity after prison was to login to a "special dating website", and published a screenshot of his profile. The article did not clearly state the dating website was a gay one, but the article linked to the Wikipedia pages of "PlanetRomeo", "Homosexuality", "Bisexuality", "Transgender". Another pro-government news portal also published the article. After the articles were published, activist received several obscene comments.

Legal outcome: The activist sued both news portals for restitution claiming that they had violated his human dignity, right to privacy, right to his own image, and had unlawfully managed special data on his sexual orientation. In September 2017 Metropolitan Court of Budapest agreed with plaintiffs claim concerning the right to privacy, right to his own image, but rejected the claim concerning human dignity. The news portal that first published the story was ordered to pay 3.5 million HUF (appr. 10,915 EUR), the second news portal 800,000 HUF (appr. 2500 EUR). In January 2018, the Budapest Regional Court of Appeal upheld the judgement.

Case 37: Registered partnership for Egyptian man

Date, time and location: 8 May 2017, Budapest

Source of information: case file at Háttér (Case no. AJB-2745/2018)

Description: A Hungarian-Egyptian gay couple wanted to enter into registered partnership in Hungary. The authorities insisted on them getting a certificate from the Egyptian authorities stating that there is no legal barrier to their partnership. Since LGBTI people are persecuted in Egypt, the couple did not want to inform the Egyptian Authorities that they are partners. They requested an exemption from acquiring the certificate, but the Hungarian authorities insisted on at least getting a statement from the Egyptian Consulate that the certificate needed cannot be issued. The couple got in touch with the Egyptian Consulate via Háttér Society without their name being released, but

the Egyptian Consulate rejected to respond to an intermediary. The couple appealed the rejection of the exemption to the Government County Office, but it was rejected.

Legal outcome: The couples turned to the Commissioner for Fundamental Rights, the case is pending.

Case 38: Trans woman in male prison

Date, time and location: May 2017, Budapest

Source of information: media (“Transzneműként a börtönben”, Riasztás, HírTV, 22 April 2018. Available at: <https://hirtv.hu/video/205675>)

Description: A trans woman awaiting legal gender recognition was detained due to criminal charges: the police found drugs in her boyfriend's apartment, and they charged her with connivance. She had socially transitioned several years before, and already had psychiatric evaluation stating she was transsexual. When she was detained, she requested to be placed in a female prison or in a single person cell. Her request was supported by the prison medical service, but was rejected by the prison management. Her access to hormones was restricted for several months. While she received no harassment from other detainees, she was touched inappropriately and humiliated by a prison guard. A media crew wanted to make an interview with her several times, but it was rejected by the prison service claiming she did not consent to the interview, while in fact she did.

Legal outcome: She submitted a complaint about the behaviour of the prison guard, but the prison service found no evidence for the abuse. She is planning on suing the prison service once the criminal procedure against her is over.

Case 39: Prison visit by registered partner

Date, time and location: February 2018, Sopronkőhida

Source of information: media (“Börtönesküvő” Riasztás, HírTV, 20 March 2018. Available at: <https://hirtv.hu/video/203870>)

Description: Two male inmates fell in love with each other, and after one of them was released from prison, they entered into registered partnership within the prison walls. While they faced no difficulties with the ceremony itself, their subsequent requests for visits were rejected. The official reasoning provided was that he had only recently been released from the same prison. The man still in prison have been harassed and humiliated by his inmates since it has been made public that they entered into registered partnership.

Legal outcome: The couple turned to the Equal Treatment Authority, the case is pending.

Case 40: Hate speech in Magyar Hírlap

Date, time and location: 10 July 2017, Budapest

Source of information: case file at Háttér (Case no. MN/30676/2017)

Description: On 10 July 2017, following the Budapest Pride an opinion piece was published in the print and online version of the daily newspaper Magyar Hírlap entitled “Let’s stop here!”. The author argued that homosexual propaganda and Pride Marches should be banned, homosexuals should be barred from becoming teachers or theatre directors, and registrars and police officers should be allowed to decline their participation in celebrating same-sex registered partnerships and protecting homosexual events.

Legal outcome: Háttér Society reported the article to the Media Council. The Media Council found that the article contained hurtful and degrading language on homosexuality and called for curtailing the constitutional rights of homosexuals, which amounted to incitement to exclusion. The Council imposed a 150 000 HUF (appr. 500 EUR) fine on the newspaper.

Case 42: Threat of eviction

Date, time and location: 9 September 2017, Budapest

Source of information: case file at Háttér

Description: In September 2017, a 20 year university student was threatened with eviction by his landlord after the landlord found out that his tenant was gay. The landlord also said that the tenant and his family should be happy that he would not request compensation in court.

Legal outcome: no procedure launched

Case 43: Expulsion from youth centre

Date, time and location: 24 November 2017, Budapest

Source of information: media (<http://www.szegedilmbt.hu/hireink.php#446>)

Description: The informal activist group Szeged LGBT Community had been holding their meetings and events in the ‘Új Nemzedék Központ’ (New Generation Centre, ÚNK) youth centre in Szeged, which is part of a nationwide publicly funded network. After half a year of cooperation, on 24 November 2017 they were informed that based on the order from the Budapest ÚNK centre, from then on no LGBTQ groups can hold events at ÚNK centres. The official reasoning was that ÚNK wants to remain neutral and apolitical, while LGBTQ organizations are doing political work. The argumentation was quite problematic, since several leaders of ÚNK are politicians in the governing FIDESZ party, and the same people regularly organized events in ÚNK.

Legal outcome: The group turned to the Equal Treatment Authority. ÚNK offered to settle in the procedure by offering to host events on a case-by-case basis. The group rejected this offer as

with other groups a looser agreement was in place. On 5 July 2018 the EAuth found that ÚNK discriminated against the group based on the sexual orientation of its members and their political opinion. The Authority imposed a fine of 100.000 HUF (appr. 312 EUR).

Case 44: Residence card for lesbian

Date, time and location: 12 February 2018, Budapest

Source of information: case file at Háttér

Description: In May 2017 a 68-year old lesbian women requested from the local government to be admitted as co-tenant in the apartment rented by her registered partner from the local government. The relevant subcommittee of the local assembly rejected her request without providing any reason. The local government also failed to inform her that as a registered partner she can live in the apartment as a co-tenant without a special permission as spouses – and thus registered partners – have a statutory permission to reside in public housing rented by their spouses. The woman also wanted to have her new address put on her residence card, but the government office rejected her claim arguing that there a contradiction between the local government decree and the law on the use of apartments concerning the status of registered partners, which can only be solved by an official statement from the local government stating that registered partners need no permission from the local government.

Legal outcome: The woman complained to the notary of the local government and asked the notary to investigate why she had not been informed about the possibility to reside in the apartment without a permission, as well as an official from the notary that she does not need such permission. The case is pending.

Case 45: Adoption child allowance

Date, time and location: 26 April 2018, Budapest

Source of information: case file at Háttér (Case no. 3541)

Description: A gay couple in registered partnership decided to adopt a child. Since Hungarian legislation does not allow joint adoption for same-sex couples, they decided that one of them would legally apply to adopt. In spring 2018 they successfully adopted a child. They decided that both of them would make use of child allowance, first the adoptive parent then his registered partner would stay at home with the child. They turned to the Budapest Government Office to inquire about the procedure. The Office replied that since only one of them legally adopted the child, the other person cannot make use of child allowance. When they called the attention to the provision the spouse of a parent (and thus via the general reference rule the registered partner of a parent) is also entitled, the Office responded that the scope of the Registered Partnership Act does not cover social security law.

Legal outcome: The couples submitted an official complaint to the Budapest Government Office, and in 11 days the Office responded with a letter stating that indeed registered partners are entitled, and they apologized for the earlier faulty interpretation of the law.

Appendix V: List of abbreviations

Assembly Act – Act no. III of 1989 on freedom of assembly
Asylum Act – Act no. LXXX of 2007 on asylum
Child Protection Act – Act no. XXXI of 1997 on the protection of children and guardianship
(old) Civil Code – Act no. IV of 1959 on the Civil Code
Civil Code – Act no. V of 2013
(old) Criminal Code – Act no. IV of 1978 on the Criminal Code
Criminal Code – Act no. C of 2012 on the Criminal Code
ETA – Act no. CXXV of 2003 on equal treatment and the promotion of equal opportunities
ETAAuth – Equal Treatment Authority
Family Protection Act – Act no. CCXI on the protection of families
FIDESZ – Hungarian Civic Union (right-wing party in the governing coalition since 2010)
Háttér – Háttér Society
Health Care Act – Act no. CLIV of 1997 on health care
HRWG – Human Rights Working Group
IAO – Immigration and Asylum Office
IPCB – Independent Police Complaints Board
Jobbik – The Movement for a Better Hungary (extreme right-wing parliamentary party in opposition in the Parliament since 2010)
Media Act – Act no. CLXXXV of 2010 on the media services and the mass media
Media Constitution – Act no. CIV of 2010 on the freedom of the press and the fundamental rules on media content
MHIA – Act LXXXIII of 1997 on mandatory health insurance
NADPFI – National Authority for Data Protection and Freedom of Information
NBC – National Basic Curriculum; Government Decree no. 110/2012 (VI. 4.)
NHIF – National Health Insurance Fund
NMIA – National Media and Infocommunications Authority
NTCA – National Tax and Customs Administration
PDAR – Personal Data and Address Register
Police Act – Act no. XXXIV of 1994 on the police
Public Education Act – Act no. CXC of 2011 on national public education
RPA – Act no. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation
Sport Act – Act no. I of 2004 on sport