Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Hungary

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Executive summary

Since the coming into power of the conservative government in 2010 with a two-thirds majority, the Hungarian legal system has been significantly transformed. A new constitution (called: the Fundamental Law (*Alaptörvény*)) was adopted,[1] new legislation on the Constitutional Court,[2] the ombuds system[3] and the media authority[4] restructured the institutional framework for the protection of fundamental rights, and the adoption of a new Civil Code,[5] a new Labour Code,[6] a new Criminal Code[7] and new laws on public[8] and higher education[9] changed the most basic laws affecting the lives of Hungarians.

These changes also included provisions affecting directly the rights and protections afforded to LGBTI people. Of considerable importance was the inclusion of the definition of marriage as a union between a woman and a man in the Fundamental Law,[10] followed by the passing of a constitutional amendment[11] that added to this provision a new sentence containing that family is based on marriage or filiation. Such a focus on traditional family values was also present in adopting a media legislation that prescribe to public service media providers to respect the institution of marriage and family,[12] the introduction of a new subject area called family education in the school curricula,[13] deleting the institution of registered partnership from the Civil Code,[14] cutting back on the rights of cohabiting partners,[15] and introducing differential treatment between marriage and registered partnership in criminal law (concerning the issue of bigamy).[16]
On the other hand, the new Criminal Code adopted in 2012 explicitly refers to sexual orientation

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[1] Hungary, The Fundamental Law of Hungary (*Magyarország Alaptörvénye*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.248458. All hyperlinks were accessed on 30 April 2014.
[2] Hungary, Act No. CLI of 2011 on the Constitutional Court (*2011. évi CLI. törvény az Alkotmánybíróságról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139622.256434.
[3] Hungary, Act No. CXI of 2011 on the commissioner for fundamental rights (*2011. évi CXI. törvény az alapvető jogok biztosáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139247.250707.
[4] Hungary, Act No. CLXXXV of 2010 on the media services and the mass media (*2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról*), *Art. 83 (1)*, available at: http://nmhh.hu/dokumentum/162261/mttv_110803_en_final.pdf
[5] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298
[6] Hungary, Act No. I of 2012 on the Labour Code (*2012. évi I. törvény a Munka Törvénykönyvéről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143164.256101.
[7] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.
[8] Hungary, Act No. CXC of 2011 on national public education (*2011. évi CXC. törvény a nemzeti köznevelésről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139880.244832.
[9] Hungary, Act No. CCIV of 2011 on national higher education (*2011. évi CCIV. törvény a nemzeti felsőoktatásról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=142941.243649.
[10] Hungary, The Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Art. L, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.248458.
[11] Hungary, Fourth Amendment to the Fundamental Law of Hungary (*Magyarország Alaptörvényének negyedik módosítása*), Art. 1, available www.kormany.hu/download/3/90/d0000/20130312%20Fourth%20Amendment%20to%20the%20Fundamental%20Law.pdf.
[12] Hungary, Act No. CLXXXV of 2010 on the media services and the mass media *(2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról*), Art. 83 (1), available at: http://nmhh.hu/dokumentum/162261/mttv_110803_en_final.pdf.
[13] Hungary, Government Decree No. 110/2012. (VI. 4.) on the publication, introduction and application of the National Basic Curriculum (*110/2012. (VI. 4.) Korm. rendelet a Nemzeti alaptanterv kiadásáról, bevezetéséről és alkalmazásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=149257.256438.
[14] Hungary, Amendment No. T/7971/106, available in Hungarian at: http://www.parlament.hu/irom39/07971/07971-0106.pdf.
[15] Hungary, Amendment No. T/7971/211, available in Hungarian at: http://www.parlament.hu/irom39/07971/07971-0211.pdf.
[16] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Art. 214, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

and gender identity in its provisions on hate speech[17] and hate crime;[18] the new media law prohibits discrimination based sexual orientation in advertising;[19] and the notion of family member in certain parts of immigration law was extended to explicitly cover (both same-sex and different-sex) registered partners.[20]

Implementation of Employment Directive 2000/78/EC

There have been no significant changes in the content of anti-discrimination legislation in recent years, however, some minor changes to the institutional framework and procedural aspects of the legislation did occur.

Hungary transposed Directive 2000/78/EC[21] by adopting a comprehensive anti- discrimination code, Act No. CXIV of 2003 on equal treatment and the promotion of equal opportunities (Equal Treatment Act, ETA),[22] which came into force on 27 January 2004.

ETA defines[23] sexual orientation and gender identity as two of the numerous protected grounds and defines both direct[24] and indirect discrimination.[25] These definitions are greatly though not fully based on the concepts used by the EU Equality Directives.[26] Harassment,[27] instruction to discriminate[28] and victimisation[29] are also defined and outlawed in the Hungarian system.

ETA covers both employment and all aspects of education, thus in relation to sexual orientation

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[17] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Art. 332, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[18] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Art. 216, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[19] Hungary, Act No. CLXXXV of 2010 on the media services and the mass media *(2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról*), Art. 24 (1) b), available at: http://nmhh.hu/dokumentum/162261/mttv_110803_en_final.pdf

[20] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), Art. 2, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

[21] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303.

[22] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[23] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Art. 8. m), n), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[24] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Art. 8, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[25] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Art. 9, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[26] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ L 180; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204.

[27] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Art. 10 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[28] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Art. 7 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[29] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Art. 10 (3), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

as a protected ground and the field where protection is provided (different aspects of employment and vocational training) Hungarian law is mostly in conformity with the Employment Directive.[30]

However, conformity is not complete, as exceptions provided by ETA in relation to employment by religious organisations[31] are not fully in line with the Directive's provisions, being more lenient, not containing the requirement of a legitimate aim and allowing differentiation not only on the basis of the individual's religion but also on other grounds such as his/her sexual orientation, gender identity or family status. An attempt has been made to grant further exceptions to religious institutions in the new law on churches, [32] but upon the intervention of the European Commission[33] the provision was replacedby a provision in line with the relevant EU directives.[34]

There are numerous public bodies victims of discrimination may turn to in Hungary. At the centre of the system is the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) operating since 1 February 2005.[35] This is an autonomous administrative organ with the power to act against any discriminatory act irrespective of the ground of discrimination (sex, race, age, sexual orientation, gender identity etc.) or the field concerned (employment, education, access to goods, etc.). Beyond the requirements under Article 13 of the Race Equality Directive,[36] the Authority is vested with the right to impose severe sanctions on persons and entities violating the obligation of equal treatment,[37] although in recent years the Authority has become more reluctant to impose fines as sanctions.

Parallel to the operation of the Authority, organs that had played a role in combating discrimination before also continue to act in the field. Labour court procedures continue to be available for victims of discrimination, but since 1 January 2012 labour inspectorates (*munkaügyi felügyelőségek*) no longer have the power to act against instances of discrimination.[38] The Commissioner for Fundamental Rights (*Alapvető Jogok Biztosa*)[39] has also retained his power to investigate cases of discrimination, but – as was the case before – only in case the discrimination is committed by a public authority or public service provider. Victims are free to choose the public body they find the most appropriate. This can be seen as a positive aspect of the Hungarian legal system, since victims have a wider choice of redress mechanisms, however, it carries the

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[30] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303.

[31] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Art. 22 b), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[32] Hungary, Act No. CCVI of 2011 on the right to freedom of conscience and religion, and on the legal status of churches, religious denominations and religious communities (*2011. évi CCVI. törvény a lelkiismereti és vallásszabadság jogáról, valamint az egyházak, vallásfelekezetek és vallási közösségek jogállásáról1*), Art. 12 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143091.245146.

[33] European Parliament (2012), Parliamentary question E-001428/2012 and its response, available at: www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-001428&language=EN.

[34] Hungary, Act No. CCVI of 2011 on the right to freedom of conscience and religion, and on the legal status of churches, religious denominations and religious communities (*2011. évi CCVI. törvény a lelkiismereti és vallásszabadság jogáról, valamint az egyházak, vallásfelekezetek és vallási közösségek jogállásáról1*), Art. 19 (3), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143091.245146.

[35] Hungary, Government Decree 362/2004. (XII. 26.) on the Equal Treatment Authority and the detailed regulations on its procedures (*362/2004. (XII. 26.) Korm. rendelet az Egyenlő Bánásmód Hatóságról és eljárásának részletes szabályairól*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=86668.122451.

[36] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ L 180

[37] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), Arts. 17/A (1) d), (5), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[38] Hungary, Act No. CXCI of 2011 on benefits provided to employees with changed work ability and on the amendment of certain acts (*2011. évi CXCI. törvény a megváltozott munkaképességű személyek ellátásairól és egyes törvények módosításáról*), Art. 90 (1) b), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139884.209365.

[39] Hungary, Act No. CXI of 2011 on the commissioner for fundamental rights (*2011. évi CXI. törvény az alapvető jogok biztosáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139247.250707.

risk that individual victims of discrimination feel confused about whom they can turn to.

A major novelty introduced by the ETA was the possibility of associations and other entities with a legitimate interest in ensuring compliance with the obligation of equal treatment to engage in judicial and administrative proceedings on behalf or in support of complainants.[40] Another important innovation was the standing of representative organisations in *actio popularis* claims meaning that in case the violation affects a larger group of persons that cannot be determined accurately, representative organisations can take the place of individual victims and litigate on their own behalf.[41] Such a possibility does not exist with the Commissioner for Fundamental Rights, although the Commissioner can start investigating cases *ex officio* if they concern vulnerable groups of the society.[42] The previously existing *actio popularis* in front of the Constitutional Court has been abolished,[43] making it significantly more difficult to challenge the constitutionality of discriminative legislation.

Freedom of movement

The current framework for entry and residence for persons with the right to free movement is in place since 2007, however, in 2011 there were some changes introduced concerning registered partners.

Hungarian legislation was brought in line with relevant community law concerning the right to free movement with the adoption of two pieces of legislation in 2007: one on entry and residence for persons with the right to free movement,[44] and one on entry and residence for third country nationals.[45] Family members of Hungarian and EEA citizens are covered by the first one. According to the legislation, EEA citizens and their accompanying or joining family members have the right to legally stay in Hungary for a maximum period of 90 days without prior notice or administrative measures. [46]

Third country nationals who are married to a Hungarian or EEA citizen can enjoy freedom of movement in Hungary since spouses are explicitly mentioned in the relevant legal regulations as family members.[47] However, there has been no known case where this was tested in practice for same-sex spouses.

The Act also offers several possibilities for a same-sex non-married partner of a Hungarian or an

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[40] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 18, *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[41] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 20 (1), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[42] Hungary, Act No. CXI of 2011 on the commissioner for fundamental rights (*2011. évi CXI. törvény az alapvető jogok biztosáról*), Art. (2) d), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139247.250707.

[43] Hungary, Act No. CLI of 2011 on the Constitutional Court (*2011. évi CLI. törvény az Alkotmánybíróságról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139622.256434.

[44] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

[45] Hungary, Act No. II of 2007 on entry and residence by third country nationals (*2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108621.256031.

[46] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), Art. 3 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

[47] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), Art. 2 ba) and bb), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

EEA citizen to enter and reside in Hungary. Since 2011 the law contains a specific provision[48] on registered partners (not limited to registered same-sex partners, and not limited to those registering their partnership in Hungary) who are recognised as family members on equal footing with spouses. The Act also offers on opportunity for non-married and non-registered cohabiting partners (regardless of gender) to also be recognised as family members,[49] however, in such cases the recognition is not automatic. For partners of Hungarian citizens, a one-year long cohabitation is required, for partners of EEA citizens there is no such requirement. There have been several cases where entry or residence – including permanent residence (*letelepedés*) – have been granted based on registered same-sex partnership or cohabitation.

The act on entry and residence of third-country nationals pertaining to partners of non-Hungarian and non-EEA citizens does not contain a specific provision on registered partners, and does not allow the entry or residence for cohabiting partners as family members.[50] However, due to Article 3 of the Registered Partnership Act (the equivalence rule),[51] registered same-sex partners are treated the same way as spouses.

Concerning mutual recognition, there have been several cases[52] where registered partnerships concluded abroad were registered in Hungary as well, this is the so called 'domestic registration' (*hazai anyakönyvezés*). The domestic registration of same-sex marriages performed abroad have all been rejected.[53].

Asylum and subsidiary protection

There have been no changes in legislation pertaining to the recognition of persecution based on sexual orientation or gender identity since the adoption of the relevant legislation in 2007.

Sexual orientation is specifically mentioned in the legislation as a ground of persecution to be looked at in asylum procedure,[54] gender identity on the other hand is not specifically mentioned, and the Government has no plans to amend the legislation,[55] even though the new, recast Qualification Directive does list gender identity as a specific ground as well.

According to the relevant practice of the Office of Immigration and Nationality (*Állampolgársági és Bevándorlási Hivatal*, OIN), persecution on account of sexual orientation and gender identity has been continuously accepted as a ground for qualifying as a refugee or beneficiary of

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[48] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), Art. 2 bi) and bj), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

[49] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), Art. 8 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

[50] Hungary, Act No. II of 2007 on entry and residence by third country nationals (*2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról*), Art. 2 (d), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108621.256031.

[51] Hungary, Act No. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (*2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=124380.178392.

[52] Hungary, Office of Immigration and Nationality (2014), Letter No, 106-Ji/5143/9/2014 in response to an information request by the Hungarian Helsinki Committee, 30 April 2014.

[53] Hungary, Office of Immigration and Nationality (2014), Letter No, 106-Ji/5143/9/2014 in response to an information request by the Hungarian Helsinki Committee, 30 April 2014.

[54] Hungary, Act No. LXXX of 2007 on asylum (*2007. évi LXXX. törvény a menedékjogról*), Art. 64, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=110729.259725.

[55] Hungary, Ministry of Interior (2014), Letter No. BM/3129-3/2014 in response to an information request by the Hungarian Helsinki Committee, 24 February 2014.

subsidiary protection.[56] Asylum seekers – mostly from Islamic countries such as Algeria and Iran – have successfully argued that their sexual orientation or gender identity was the reason of their persecution.

Family reunification

There have been no changes in legislation concerning family reunification.

The procedure is governed by Act No. II of 2007 on the entry and residence of third-country nationals.[57] Any kind of partnerships which have not been registered, including both different- and same-sex cohabitations, are automatically excluded from family reunification procedures. Registered partners, on the other hand, while not mentioned specifically, are recognised for family reunification purposes on equal footing with different-sex spouses due to Article 3 of the Registered Partnerships Act (the equivalence rule).[58]

Freedom of assembly

While members of the LGBTI community enjoy the right to freedom of assembly in Hungary, and several events and demonstrations including Pride Marches have taken place, in recent years LGBTI people faced difficulties both in acquiring permissions for their events and being able to practice their rights free from violence.

The Constitution (since 2012 called the Fundamental Law[59]) and the Act on the Freedom of Assembly[60] ensure the right to freedom of assembly. The first ban for a Pride event happened in 2008, but the police withdrew their own decision within 24 hours.[61] In 2009 and 2010, the Pride Marches were not banned, although in 2010 the police put considerable pressure on the organisers to cancel the event last minute.[62] In 2011[63] and 2012,[64] the police issued bans claiming that the March would disrupt the traffic. In both years, the court overruled the police decision,[65] and the events could take place, eventually. A court case[66] was brought against the Budapest Police's (*Budapesti Rendőr-főkapitányság*, BRFK) decision of 2012 that claimed that the police acted in a discriminative manner and also harassed the members of the LGBT community by disregarding

[56] See cases under the heading *Asylum and Subsidiary Protection* in Annex I.
[57] Hungary, Act No. II of 2007 on entry and residence by third country nationals (*2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108621.256031.
[58] Hungary, Act No. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (*2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=124380.178392.
[59] Hungary, The Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Art. VIII (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.248458.
[60] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.
[61] Hungary, Budapest Police (2008), A BRFK visszavonta a tiltást, Press release, 12 June 2008, available in Hungarian at: http://pride.hu/article.php?sid=2739
[62] Pride.hu (2010), Megfélemlítéssel lehetetlenítette volna el a rendőrség a melegfelvonulást, 16 July 2010, available in Hungarian at: https://pride.hu/Art..php?sid=3035.
[63] Hungary, Chief of the Budapest Police (*Budapesti Rendőrfőkapitány*) (2011), Decision No. 01000/37289-15/2011.Ált., 11 February 2011.
[64] Hungary, Chief of the Budapest Police (*Budapesti Rendőrfőkapitány*) (2012), Decision No. 01000/15246-6/2012.Ált., 5 April 2012.
[65] Hungary, Metropolitan Court of Budapest (2011), Decision No. 27.Kpk.45.188/2011/4, 18 February 2011; and Hungary, Metropolitan Court of Budapest (2012), Decision No. 27.Kpk.45.385/2012/2, 13 April 2012.For detailed summaries, see cases *Pride Ban 2011* and *Pride Ban 2012* in Annex I.
[66] Hungary, Metropolitan Court of Budapest (2014), Decision No. 22.P.26.019/2012/10, 16 January 2014. For a detailed summary, see *Pride discrimination 2012 case* in Annex I.

their fundamental rights. The case was recently won on the first instance, an appeal is pending.

The security of participants of the Pride Marches has been an issue since 2007, when the March was attacked by extremist groups. In 2007 such attacks surprised both the organisers and the police, and not enough security measures were in place. In 2008 the police introduced fences to separate the participants from the extremist protestors, but could not stop the latter from injuring the participants by throwing objects at them and assaulting several participants after they had left the event. Police protection has become more professional since then, and in recent years no participants were assaulted while participating at the March, however, several of them were attacked and injured when going to or leaving the premises of the March. There have been criticisms against the police for too restrictive security measure (fencing of the whole route of the March and only allowing participants to join or leave the March at the opening and end point respectively) which runs counter to the idea of the Pride to create visibility, and forces the event to take place in an emptied out urban space. Furthermore, the police was also criticised for issuing press releases[67] advising the participants of the marches to respect public taste and morality. Upon consistent criticism from NGOs and the Commissioner for Fundamental Rights,[68] the police have given up with this practice most recently. The first cases (from 2012) charging the perpetrators with hate crimes based on sexual orientation for attacks at the Pride Marches have just reached the courts,[69] no court decisions have been issued yet.

Criminal law, hate speech

The field of hate speech and hate crimes are the one where most positive steps have been taken in recent years, both in terms of legislation and their application. Since July 2013 Hungarian criminal law[70] offers explicit protection against both hate speech and hate crimes based on sexual orientation and gender identity.

The crime of 'violence against a member of a community' was introduced in 2008[71] by renaming and extending the crime 'violence against members of national, ethnic or religious minorities' with the catchall term 'any group of society'. The protection was further strengthened in 2012 with the adoption of the new Criminal Code (in force since 1 July 2013)[72] that explicitly includes both sexual orientation and gender identity.

The criminal law provision on hate speech followed a similar path: the new Criminal Code also extended the provision on 'incitement against a community' with an explicit mention of sexual orientation and gender identity.[73] It has to be noted, however, that this provision of the Criminal Code is largely dormant (i.e. not enforced by the police and the courts) due to a very restrictive interpretation by the courts that finds that incitement against a community established only if

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[67] Hungary, Budapest Police (2009), Közlemény - Meleg Méltóság Menete - frissítve (BRFK), Press release, 4 September 2009.
[68] Hungary, Parliamentary Commissioner for Civil Rights (2009), Report No. AJB 6021/2009, 17 November 2009, available in Hungarian at: http://www.ajbh.hu/documents/10180/104939/200906021.rtf.
[69] Hungary, Pest Central District Court (*Pesti Központi Kerületi Bíróság*), Case No. 19 B. 33 334 / 2013 (pending); and Hungary, Budapest Chief Prosecution Service (*Fővárosi Főügyészség*) (2014), Vádemelés a Budapest Pride felvonulás résztvevőit zaklató férfi ellen, Press release, 21 February 2014, available in Hungarian at: http://mklu.hu/hnlp14/wp-content/uploads/sajto1/2014/02/2014.02.21-fovaros-vademeles-a-budapest-pride-resztvevoit-zaklato-ferfi-ellen.pdf
[70] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Arts. 216 and 332, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.
[71] Hungary, Act No. IV of 1978 on the Criminal Code (*1978. évi IV törvény a Büntető Törvénykönyvről*), Art. 174/B, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=3356.237644.
[72] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.
[73] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Art. 332, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

'stirring up hatred' carries the direct and immediate risk of violent action. General racist, homophobic or transphobic comments that do not reach this level of severity are not sanctioned by Hungarian criminal law.

After several failed attempts[74] to introduce criminal and / or civil law sanctions against less severe forms of hate speech, of which all had been found unconstitutional by the Constitutional Court,[75] the Parliament adopted an amendment to the Fundamental Law in March 2013[76]. The proposal adopted altered the balance between freedom of speech and the protection of human dignity to establish the constitutional basis for new hate speech legislation. The new provision in the Fundamental Law contains a general provision favouring dignity over free speech, and also a more specific provision making it possible for communities to launch legal action against such offensive speech. This latter provision contains a closed list of such communities (national, ethnic, racial or religious communities), thus homophobic and transphobic speech is not covered.

The new Civil Code[77] that entered into force on 15 March 2014 contains the details of that legal procedure, and similarly to the Fundamental Law, is not inclusive of sexual orientation or gender identity.

There are two further legal procedures that might be used to counter homophobic and transphobic speech. Media legislation contains a ban on inciting hatred against any minority or majority,[78] and there has been one case where the media authority found such a violation against LGBT people;

The ETA also offers a possibility of *actio popularis* claims[79] to be initiated in a civil proceeding on account of harassment. While the Equal Treatment Authority has been active in pursuing such an interpretation with regards to anti-Roma statements,[80] these decisions have been successfully challenged in courts,[81] although some of the procedures are still pending.

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[74] Hungary, Bill No. T/3719, available in Hungarian at: www.parlament.hu/irom38/03719/03719.pdf; Hungary, Act No. IV of 1978 on the Criminal Code (*1978. évi IV törvény a Büntető Törvénykönyvről*), Art. 181/A (adopted, but never entered into force), available in Hungarian at: www.parlament.hu/irom38/02785/02785.pdf; Hungary, Bill No. T/6219 on securing legal means protecting from certain severe conducts violating human dignity (*T/6219. számú törvényjavaslat az ember méltóságát súlyosan sértő egyes magatartásokkal szembeni védelem érdekében szükséges jogérvényesítési eszközök biztosításáról*), available at: www.parlament.hu/irom38/06219/06219.pdf.

[75] Hungary, Constitutional Court (2008), Decision No. 96/2008 (VII. 3.), 3 July 2008, available at: http://www.mkab.hu/letoltesek/en_0096_2008.pdf; Hungary, Constitutional Court (2008), Decision No. 95/2008. (VII. 3.), 3 July 2008, available in Hungarian at: http://public.mkab.hu/dev/dontesek.nsf/0/FC794F16CCE9B140C1257ADA00526A21?OpenDocument.

[76] Hungary, Fourth Amendment to the Fundamental Law of Hungary (*Magyarország Alaptörvényének negyedik módosítása*), Art. 5 (2), available www.kormany.hu/download/3/90/d0000/20130312%20Fourth%20Amendment%20to%20the%20Fundamental%20Law.pdf.

[77] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), Art. 2:54 (5), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[78] Hungary, Act No. CIV of 2010 on the freedom of the press and the fundamental rules on media content (*2010. évi CIV. törvény a sajtószabadságról és a médiatartalmak alapvető szabályairól*), Art. 17, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=132460.256038.

[79] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 20 (1) c), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[80] Hungary, Equal Treatment Authority (2009), Decision No. EBH/1475/6/2009, 30 September 2009; and Hungary, Equal Treatment Authority (2010), Decision No. EBH/187/1/2010, 19 January 2010.

[81] Hungary, Supreme Court (2010), Decision No. Kfv.II.37.551/2010/5, 16 March 2011; and Hungary, Supreme Court (2010), Decision No. Kfv. III. 39.302/2010/8, 15 December 2011, respectively.

Transgender issues

The legal situation of transgender persons is quite ambivalent in Hungary: although Hungary was the first country in Europe to introduce gender identity as an autonomous ground in its national ant-discrimination legislation,[82] since 2013 criminal law provisions on hate speech and hate crimes also specifically refer to gender identity,[83] and the Government has officially endorsed depathologisation,[84] there is still no legislation on legal gender recognition, and access to gender reassignment treatments is severely restricted due to a statutory limit on the coverage of such treatments by the public health insurance system.[85]

In spite of no legal regulation on legal gender recognition, a procedure introduced in 2002 to change the name and amend sex in the birth certificate has been applied consistently. The procedure[86] does not require any medical intervention as a prerequisite of modifying name and sex in birth certificates, only majority age, a medical diagnosis of transsexualism and being single is required to initiate the procedure. The request is handled as part of an administrative procedure lasting no more than 60 days. While the requirement to divorce and to be at least 18 years old have been criticised by LGBTI rights organisations, the speed of the procedure and the fact that no medical interventions are forced on applicants is exemplary. On the other hand, the fact that such an important fundamental rights issue is handled in this semi-formal way, and the procedure is not codified carries the risk of arbitrariness and does not provide enough transparency about the procedure to those who are seeking gender recognition. The working group set up by the government in 2009 to draft a proper legislation was terminated without any draft being published. A parallel procedure on issuing a professional (medical) protocol on diagnosing and treating transsexual people was also initiated in 2009, and a draft protocol was circulated in 2011, but the adoption procedure was stopped following the issuing of the opinion of the Psychiatry and Psychotherapy Section and Council of the Professional College for Health (*Egészségügyi Szakmai Kollégium Pszichiátriai és Pszichoterápiás Tagozata és Tanácsa*) that transsexualism is not a mental disorder, and thus no medical protocol on diagnosis is needed. [87] A protocol on treatment is still in the pipeline, but there is no information on when it will be adopted.[88]

According to the rules governing services of the compulsory health insurance scheme[89] a person must pay 90 % of the costs of a gender reassignment treatment, which means that transgender persons should cover most of the costs of such interventions even if gender reassignment is justified by medical-psychiatric reasons. This is highly problematic since it has been widely recognised that gender reassignment treatments are the only option for many transgender people

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[82] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 8 n), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[83] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Arts. 216 and 332, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[84] Hungary, Ministry of Human Resources (2014), Letter no. 12460-7/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 12 March 2014.

[85] Hungary, Act No. LXXXIII of 1997 on mandatory health insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), Art. 23 k), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30386.255766.

[86] The summary of the procedure is based on the following document: Hungary, Ministry of Justice and Law Enforcement (2009), *Az ember nemének megváltoztatásával kapcsolatos jogi szabályozás*. The document is a working paper prepared by the Ministry in the framework of the working group set up to draft a legislation on legal gender recognition.

[87] Hungary, Ministry of Human Resources (2014), Letter no. 12460-7/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 12 March 2014.

[88] Hungary, Ministry of Human Resources (2014), Letter no. 12460-13/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 8 May 2014.

[89] Hungary, Act No. LXXXIII of 1997 on mandatory health insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), Art. 23 k), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30386.255766.

to live a full life. A discretionary procedure (*méltányossági eljárás*) exists[90] that allows the coverage of more than 10 % of the costs in case of financial need, but the procedure is highly bureaucratic and not adequately known among transgender people.

As part of the various drafts of the Civil Code, a proposal was made (and in fact adopted by Parliament in 2009)[91] to abolish the divorce requirement and switch to a regime of automatic dissolution of marriage / registered partnership with an option to "convert" it to registered partnership / marriage, but the final version of the Code adopted in 2013[92] and related legislation return to the current system of divorce requirement.

In 2013, the government asked its advisory body, the Psychiatry and Psychotherapy Section and Council of the Professional College for Health to deliver an opinion on the pathologization of transsexualism, which issued an opinion that transsexualism cannot be considered a mental disorder.[93]

Miscellaneous

While the future of registered partnerships seemed uncertain in 2010 with the coming into power of the parties that previously strongly criticized it, the institution has not been abolished, and except for one provision in criminal law (bigamy),[94] the rights and duties that come with it have been let untouched. According to the legislation, except for a few explicit exceptions in the legislation, the rights and obligations of registered partners are the same as married partners. [95] The exceptions are that same sex couples cannot adopt children together, cannot adopt each other's children, cannot take each other's name and cannot participate in assisted reproduction. Provisions on adoption and assisted reproduction are structured differently, resulting in more restrictive legislation for the latter. Legislation on adoption states that only married couples can adopt jointly or consecutively, or adopt their partners' child.[96]. So when the law on registered partnership says that the provisions on adoption by spouses does not apply to registered partners, this means that individual adoption (regardless whether the person lives in a registered partnership or cohabits with a same-sex partner) is still available. On the other hand the legislation on assisted reproduction states that only married couples, different-sex cohabiting couples and single women are allowed to participate in assisted reproduction.[97] So when the law on registered partnership says that the provisions on assisted reproduction for spouses do not apply to registered partners, this means neither women in a registered partnership, nor women cohabiting with their same sex partners can participate in assisted reproduction. Single women still can, regardless of their sexual

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[90] Hungary, Instruction No. 28/2008 (Eb.K.10.) of the National Health Insurance Fund (OEP) (*28/2008. (Eb. K. 10.) számú OEP utasítás a gyógyszerek, gyógyászati segédeszközök és gyógyászati ellátások járóbeteg-ellátás keretében nyújtott méltányossági alapú ártámogatásáról és a méltányosságból igénybe vehető egészségügyi szolgáltatásokról*).

[91] Hungary, Act No. CXX of 2009 on the Civil Code (*2009. évi CXX. törvény a Polgári Törvénykönyvről*), Art. 3:21 (1) c) (adopted but never entered into force), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=125917.181317.

[92] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[93] Hungary, Ministry of Human Resources (2014), Letter no. 12460-7/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 12 March 2014.

[94] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Art. 214, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[95] Hungary, Act No. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (*2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*), Art. 3, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=124380.178392.

[96] Hungary, Act No. IV of 1952 on marriage, family and guardianship (*1952. évi IV. törvény a házasságról, a családról és a gyámságról*), Arts. 47 (5) and 51 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=308.232505.

[97] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény - az egészségügyről*), Art. 167 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.

orientation. In 2013, the government planned on integrating registered partnership in the Family Book of the new Civil Code,[98] however, under the pressure of the Christian Democratic People's Party (*Kereszténydemokrata Néppárt*, KDNP), the bill was amended,[99] and all references to registered partnership were removed from the Civil Code. The separate legislation on registered partnership remains in force.

The situation concerning blood donation by gay persons has become quite confusing in recent years with contradictory statements from various officials at the National Blood Supply Society (*Országos Vérellátó Szolgálat*, OVSZ). Until 2008, the OVSZ asked potential blood donors whether they had previously entered into homosexual relationships and stored responses to that question in its database.[100] The current questionnaire[101] only contains a general question on risky sexual behaviours, however, a guidance issued to all donors still lists all male-to-male sexual activity as risky. In a press interview[102] the Director of OVSZ claimed that a personal risk assessment is done in each case, and answering yes to having had risky sexual behaviour does not automatically lead to exclusion. Another high ranking official of OVSZ claimed[103] she was misquoted and there is a clear ban against donation by gay males.

In 2011 a new Constitution (Fundamental Law) was adopted that defines marriage as a union between a woman and a man.[104] While the list of grounds of prohibited discrimination was expanded in the new Fundamental Law,[105] calls to explicitly include sexual orientation and gender identity were rejected, and these grounds are only subsumed under "any other ground". A cardinal law (*sarkalatos törvény*) requiring two thirds majority to be amended called Family Protection Act[106] with a restrictive definition of family (only relationships based on marriage or filiations)[107] and provisions limiting inheritance by non-spouses[108] was adopted and later found unconstitutional by the Constitutional Court.[109] The Parliament responded with including the unconstitutional definition of family in the Fundamental Law[110] to avoid judicial review. The institution of registered partnership was somewhat weakened in both criminal and civil law.

Parenting rights by same-sex couples have come to the forefront of the debates in recent years. The new Civil Code adopted in 2009 would have allowed second parent adoption of cohabiting couples (regardless of gender),[111] but after the new government prepared a new draft the provision

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[98] Hungary, Bill. No. T/7971, available in Hungarian at: www.parlament.hu/irom39/07971/07971.pdf

[99] Hungary, Amendment No. T/7971/106, available in Hungarian at: http://www.parlament.hu/irom39/07971/07971-0106.pdf.

[100] Hungary, Parliamentary Commissioner for Civil Rights (2007), Letter No. 1716/P/2007-5, January 2008, available in Hungarian at: http://abi.atlatszo.hu/index.php?menu=aktualis/allasfoglalasok/2008&dok=1716_P_2007-5.

[101] http://www.ovsz.hu/sites/ovsz.hu/files/veradas_dokumentum/donork_20120510.pdf

[102] Népszabadság (2010), 'A homoszexuális viszonyra Magyarországon is rákérdeznek', 5 August 2010, available in Hungarian at: www.nol.hu/lap/vilag/20100805-a_homoszexualis_viszonyra_magyarorszagon_is_rakerdeznek

[103] Hungary, Kalász L. (Regional Director of OVSZ) (2013), Email to a potential donor.

[104] Hungary, The Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Art. L, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.248458.

[105] Hungary, The Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Art. XV (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.248458.

[106] Hungary, Act No. CCXI on the protection of families (*2011. évi CCXI. törvény a családok védelméről*), available in Hungarian at: http://jogszabalykereso.mhk.hu/cgi_bin/njt_doc.cgi?docid=143574.581276.

[107] Hungary, Act No. CCXI on the protection of families (*2011. évi CCXI. törvény a családok védelméről*), Art. 7, available in Hungarian at: http://jogszabalykereso.mhk.hu/cgi_bin/njt_doc.cgi?docid=143574.581276.

[108] Hungary, Act No. CCXI on the protection of families (*2011. évi CCXI. törvény a családok védelméről*), Art. 8 (1), available in Hungarian at: http://jogszabalykereso.mhk.hu/cgi_bin/njt_doc.cgi?docid=143574.581276.

[109] Hungary, Constitutional Court (2012), Decision No. 43/2012 (XII. 20.), 20 December 2012, available in Hungarian at: http://public.mkab.hu/dev/dontesek.nsf/0/065D43D1183D5A48C1257AE8004C12E8?OpenDocument.

[110] Hungary, Fourth Amendment to the Fundamental Law of Hungary (*Magyarország Alaptörvényének negyedik módosítása*), Art. 1, available at: www.kormany.hu/download/3/90/d0000/20130312%20Fourth%20Amendment%20to%20the%20Fundamental%20Law.pdf.

[111] Hungary, Act No. CXX of 2009 on the Civil Code (*2009. évi CXX. törvény a Polgári Törvénykönyvről*), Art. 3:130 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

was dropped. Several amendments were submitted in Parliament by opposition MPs to reinstate this or similar provisions, but they did not succeed.[112] Joint adoption and second parent adoption remains the privilege of (different-sex) spouses,[113] both same-sex and different sex cohabiting couples and registered same-sex couples are excluded. The legislation on assisted reproduction on the other hand allows different-sex cohabiting couples besides spouses to access treatment, while different sex cohabiting couples are explicitly excluded.[114]

'Family education' as a new subject area was introduced in public education,[115] its curricula contains statements that were heavily criticised as homophobic and transphobic by LGBT rights groups. Religious education was introduced in public education as an optional subject;[116] a Catholic textbook[117] to be used by 10 year olds called homosexuality "a deadly sin". There is no information on how many schools use this textbook.

An extreme right wing opposition party introduced a bill in Parliament to outlaw the "propaganda of sexual perversions",[118] but the bill was rejected by the relevant committee in the Parliament, and was not put on the agenda.

Good practices

ETA recognises both sexual orientation and gender identity as protected grounds,[119] and the scope of ETA is wider than that of the Employment Directive[120] since beyond employment it also encompasses fields such as education, housing, access to public goods and services, health care and social security. The fact that the law goes beyond the standards set by the Employment Directive can be considered a good practice.

The Hungarian legal framework regarding gender reassignment has several shortcomings, although the good practice of competent authorities currently does not require any medical interventions as a prerequisite of modifying name or sex in birth certificates. This good practice shows that even in the absence of express legal provisions the relevant procedures can comply with human rights standards.

The legislation on registered partnership for same-sex couples introduced in 2009[121] provides

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[112] Hungary, Amendments No. T/7971/0137 and T/7971/171, available in Hungarian at: http://www.parlament.hu/irom39/07971/07971-0137.pdf and http://www.parlament.hu/irom39/07971/07971-0171.pdf

[113] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), Arts 4:123 (2) and 4:132 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[114] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény az egészségügyről*), Art. 167 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.

[115] Hungary, Government Decree No. 110/2012. (VI. 4.) on the publication, introduction and application of the National Basic Curriculum (*110/2012. (VI. 4.) Korm. rendelet a Nemzeti alaptanterv kiadásáról, bevezetéséről és alkalmazásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=149257.256438.

[116] Hungary, Act No. CXC of 2011 on national public education (*2011. évi CXC. törvény a nemzeti köznevelésről*), Art. 35, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139880.244832.

[117] Fülöpné, E.M. (2010), *Élet a hitben. Hit- és erkölcstan gyerekeknek*, Szent István Társulat, Budapest.

[118] Hungary, Bills No. T/6719., T/6720., T/6721. available in Hungarian at: www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6719, www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6720, www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6721.

[119] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról)*, Art. 8 m) and n), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[120] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303.

[121] Hungary, Act No. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (*2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*),

many of the rights available to spouses in several fields of life including property relations, inheritance, tax and social benefits, immigration etc. While it falls short of providing equality for same-sex couples – exceptions concerning parenting create serious legal uncertainty for same-sex couples raising children – it does offer a solution to many of the previous forms of discrimination in the field of immigration for example.

An NGO consultation mechanism called the Human Rights Roundtable (*Emberi Jogi Kerekasztal*) was set up by the government in 2012,[122] which has a specific working group on the rights of LGBT people.

The Parliamentary Commissioner on Civil Rights (currently called: Commissioner for Fundamental Rights) monitoring project on freedom of assembly events[123] can be considered a good practice with its specific focus on Pride Marches as well. The appointment of LGBTI liaison officers at the Office of the Commissioner[124] also shows a high level of commitment to LGBTI equality and can contribute to reducing the underreporting of cases concerning sexual orientation and gender identity.

Intersex

There is no legislation or case law on how to deal with cases of discrimination based on intersex status, and there are no policies concerning the issue either.[125] Intersex people are forced to appear as male or female in the birth registry.[126]

The Health Care Act secures informed consent for patients,[127] prescribes patients of minor age to also be consulted, and limits parents' competence to agree to medically required interventions only, still, surgeries performed on minors are part of the professional consensus.[128]

available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=124380.178392.

[122] Hungary, Government Decision no. 1039/2012 (III. 22.) on the Human Rights Working Group (*1039/2012. (II. 22.) Korm. határozat az Emberi Jogi Munkacsoportról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=146229.230814.

[123] Hungary, Commissioner for Fundamental Rights (2009): *Gyülekezési jog*, available in Hungarian at: www.ajbh.hu/documents/10180/124842/gyulekezesijogi.pdf

[124] Hungary, Commissioner for Fundamental Rights (2014), Letter No. AJB-1098/2014 in response to an information request by the Hungarian Helsinki Committee, 26 February 2014.

[125] Hungary, Ministry of Human Resources (2014), Letter no. 12460-7/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 12 March 2014.

[126] Hungary, Law Decree No. 17 of 1982 on registries, marriage procedure and bearing names (*1982. évi 17. törvényerejű rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=5276.242620; confirmed by: Hungary, Ministry of Public Administration and Justice (2014), Letter No. XVII/102/3/(2014) in response to an information request by the Hungarian Helsinki Committee, 25 February 2014.

[127] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény az egészségügyről*), Art. 15 (5), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.

[128] In order to assess the medical communities' opinion, a search was conducted in the Hungarian Medical Bibliography (*Magyar Orvosi Bibliográfia*), for a list of results see: http://mob.gyemszi.hu/itmsbydict.jsp?DCTID=207430&DCTDESC=HERMAPHRODITISMUS

A. Implementation of Employment Directive 2000/78/EC

A.1. Main features

Hungary accomplished the task of transposing Directives 2000/43/EC and 2000/78/EC by adopting a comprehensive anti-discrimination code, the Act on equal treatment and the promotion of equal opportunities (hereinafter: Equal Treatment Act, ETA), which came into force on 27 January 2004.[129]

The ETA defines sexual orientation as one of the numerous protected grounds (along with gender identity).[130] The ETA contains the definition for both direct and indirect discrimination. These definitions are greatly though not fully based on the concepts used by the Directives. Harassment, instruction to discriminate and victimisation are also defined and outlawed in the Hungarian system.

Employment[131] and education[132] are both covered by the ETA, so from the point of view of sexual orientation as a protected ground and the sectors where protection is provided (different aspects of employment and vocational training), the Hungarian legal framework is in conformity with the Employment Directive.

However, the conformity is not complete; the main gap in transposition being that Article 22 ETA setting out a specific exemption clause for employment is not fully in line with Article 4 of the Employment Directive. Article 22 of the ETA runs as follows:

> *"(1) The principle of equal treatment is not violated if*
> *a) the differentiation is proportionate, justified by the characteristics or nature of the job and is based on all relevant and legitimate terms and conditions that may be taken in consideration in the course of recruitment; or*
> *b) the differentiation arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit."*[133]

Article 22(1)(a) ETA does not clearly specify the need for a 'legitimate aim', which is a key element of the Directive's 'genuine occupational requirement' exception. Article 22(1)(b) does

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[129] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[130] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról)*, Art. 8, *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[131] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról)*, Art. 21, *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[132] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról)*, Art. 27, *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[133] EU Network of Independent Legal Experts (2007*), Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 43, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.

not only suffer from this shortcoming, but also lacks the Employment Directive's important stipulation, namely that a differentiation based on the religious ethos of an organisation may only be related to the religion of the person suffering that differentiation and not any other characteristics (e.g. the sexual orientation) of his/hers. This problem has become even more prominent with the adoption of the new law on churches,[134] which provides that "since church institutions are ideologically committed, they may determine such conditions concerning recruitment and the establishment, maintenance and termination of the legal relationship of employment as are necessary to preserve their specific identity." Following a written question from Members of the European Parliament the Commission requested further information from the Hungarian government.[135] In response the Parliament deleted the relevant provision of the legislation, and added a new paragraph to the act:

> *"The activity set out in Article 9 (1) is carried out by the religious community directly or through its institutions in accordance with its identity, accordingly necessary and proportionate requirements to uphold and practice such an identity can be put in place in admission, and establishment, continutation or termination of employment if such requirements are necessitated by the nature or content of such a religious commitment."*

The new provision is still unclear on whether characteristics other than religious belief (such as sexual orientation or family status) can be considered such 'necessary and proportionate requirement'. There are a number of complaint mechanisms that victims of discrimination based on sexual orientation may resort to. The most evident such forum is the Equal Treatment Authority (hereinafter: the Authority), which started its operation in February 2005. The Authority has power to act against any discriminatory act irrespective of the ground of discrimination (sexual orientation, gender identity, race, age, etc.) or the field concerned (employment, education, access to goods, etc.). Furthermore, the Authority is vested with the right to impose severe sanctions on persons and legal entities violating the ban on discrimination[136] (for more details, see A.3.). However, other fora that had existed for victims of discrimination have remained to be operational even after the establishment of the Authority.

The most important ones in the field of employment are the labour courts,[137] which are vested with the task of adjudicating employment-related legal disputes and are relatively independent within the Hungarian judiciary. While a new Labour Code was adopted in 2011 which entered into force on 1 July 2012,[138] most remedies at the disposal of the courts remain the same, the most important ones being:

- the declaration of an agreement as null and void;[139]
- order to continue employment;[140]
- employer's full liability for damages, including the payment of lost income, moral

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[134] Hungary, Act No. CCVI of 2011 on the right to freedom of conscience and religion, and on the legal status of churches, religious denominations and religious communities (*2011. évi CCVI. törvény a lelkiismereti és vallásszabadság jogáról, valamint az egyházak, vallásfelekezetek és vallási közösségek jogállásáról1*), Art. 12 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143091.245146.

[135] European Parliament (2012), Parliamentary question E-001428/2012 and its response, available at: www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-001428&language=EN

[137] Their scope of authority is described on the basis of the EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 59, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.

[138] Hungary, Act No. I of 2012 on the Labour Code (*2012. évi I. törvény a Munka Törvénykönyvéről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143164.256101.

27[139] Hungary, Act No. I of 2012 on the Labour Code (*2012*2012*I a munka törvénykönyvéről*), Art. 27, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143164.256101.

83[140] , Act No. I of 2012 on the Labour Code (*2012I a munka törvénykönyvéről*), Art. 83, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143164.256101.

damages and justified expenses.[141]

One significant difference from the earlier legislation is that the sanction of payment of average earnings for a maximum of twelve months as a form of compensation is no longer an option.[142]

Until 1 January 2012, labour inspectorates *(munkaügyi felügyelőségek)* [] had the mandate to examine compliance with non-discrimination provisions.[143] Labour Inspectorates are administrative bodies which may resort to a number of sanctions,[144] such as:

- call on employers to abide by the rules of labour law;
- oblige employers to terminate the violation;
- propose the imposition of the so-called 'labour law fine';
- conduct a petty offence procedure.[145]

The mandate of labour inspectorates to investigate cases of discrimination was abolished in 2011.[146] The argument put forward by the government was that the Equal Treatment Authority can investigate such cases more efficiently, and there is no reason to have parallel institutions with a similar mandate.[147]

Until 2012, under Government Decree 218/1999 on Petty Offences,[148] an employer who refused to hire a person owing to – among others – his/her gender, age, race, religion, or any other circumstance that is not relevant from the point of view of the occupation or discriminated between employees on the same basis was liable to be fined up to HUF 100,000 (€400). Such proceedings were conducted by the local notary or the *Országos Munkavédelmi és Munkaügyi Felügyelőség (OMMF)* [Hungarian Labour Inspectorate]. The same Government Decree also stipulated that a private employment agent who discriminated between job-seekers on the basis of their gender, age, race, religion, or any other circumstance that was not relevant from the point of view of the occupation, was liable to be fined up to HUF 60,000 (€240).[149] The Government Decree was replaced by an act of Parliament in 2012,[150] which – while maintaining most of the petty offences – abolished both of those provisions. The only provision relevant to discrimination that was maintained is that of discrimination in education: the person who purposefully discriminates against a student by violating regulations on the operation of schools and other

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169[141] , Act No. I of 2012 on the Labour Code (*2012I a munka törvénykönyvéről*), Art. 169, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143164.256101.

[142] Hungary, Act no XXII of 1992 on the Labour Code (*1992. évi XXII. törvény a Munka Törvénykönyvéről*), Art. 100, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=16990.213459,.

[143] Hungary, Act. No. LXXV of 1996 on labour inspections (*1996. évi LXXV. törvény a munkaügyi ellenőrzésről*), Art. 3, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=27047.256006.

[144] Their scope of authority is described on the basis of EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 60, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.

[145] Hungary, Act. No. LXXV of 1996 on labour inspections (*1996. évi LXXV. törvény a munkaügyi ellenőrzésről*), Art. 6, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=27047.256006.

[146] Hungary, Act No. CXCI of 2011 on benefits provided to employees with changed work ability and on the amendment of certain acts (*2011. évi CXCI. törvény a megváltozott munkaképességű személyek ellátásairól és egyes törvények módosításáról*), Art. 90 (1) b), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139884.209365.

[147] Hungary, Explanatory memorandum to Bill. No. 5000, p. 93, available in Hungarian at: www.parlament.hu/irom39/05000/05000.pdf

[148] Hungary, Government Decree 218/1999. (XII. 28.) on certain misdemeanours (*218/1999. (XII. 28.) Korm. rendelet az egyes szabálysértésekről*), Art. 93, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=42163.213816.

[149] Hungary, Government Decree 218/1999. (XII. 28.) on certain misdemeanours (*218/1999. (XII. 28.) Korm. rendelet az egyes szabálysértésekről*), Art. 96, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=42163.213816.

[150] Hungary, Act No. II of 2012 on misdemeanours, misdemeanour procedures and the misdemeanour registration system (*2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszerről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143166.252010.

educational institutions commits a petty offence.[151]

In case the discrimination is committed by a public authority or service provider it is also possible for a victim of discrimination to turn to the Commissioner for Fundamental Rights (for details, see A.3.).

The relation between the different fora is the following: it is possible for a victim of discrimination to complain to the Equal Treatment Authority, or any other administrative organ before bringing a lawsuit based on the Labour Code.[152] If however, one brings a case before a labour court, administrative organs, including the Equal Treatment Authority may not deal with the case, unless it had been filed with them before the court case started. In such instances, the Authority may only proceed with the case once the court case is over, and may only base its decision on the facts established by the court. In the relationship between the proceedings of the different public administrative authorities the key principle is that it is up to the victim to decide which authority he/she wishes to turn to. In order to avoid double proceedings, the Authority shall inform other organs, and other organs shall inform the Authority, about the initiation of a proceeding into a case of discrimination. With the abolishment of the mandate of OMMF to examine cases of discrimination, the procedure has become somewhat simpler, as the Equal Treatment Authority is the only administrative organ invested with the mandate to examine cases of labour discrimination, however, in the field of access to goods and services, such parallel procedures are still in place (see under A.2).

A.2. Areas covered

As it was outlined above, the ETA is a comprehensive anti-discrimination code. This means in this respect that discrimination on the ground of sexual orientation and gender identity is prohibited not only in relation to employment, but to all the fields and sectors covered by the ETA. As to the ETA's material scope, the following can be said: "The ETA approaches the issue of scope from the personal, instead of the material aspect. It prohibits any discrimination in the public sector, so with regard to this sector the ETA's material scope is in fact broader than that of the equality directives."[153] In the private sector however, only four groups of actors fall under the ETA's scope (regardless of the field concerned):

- *"those who make a public proposal for contracting (e.g. for renting out an apartment) or call for an open tender;*
- *those who provide services or sell goods at premises open to customers;*
- *self-employed persons, legal entities and organisations without a legal entity receiving state funding in respect of their legal relations established in relation to the usage of the funding;*
- *employers with respect to employment (interpreted broadly)."*[154]

Unlike the OMMF, the Authority for Consumer Protection *(Nemzeti Fogyasztóvédelmi Hatóság,*

[151] Hungary, Act No. II of 2012 on misdemeanours, misdemeanour procedures and the misdemeanour registration system (*2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszerről*), Art. 248 (5) , available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143166.252010.
[152] On this topic see: EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 61, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.
[153] This topic is described in: EU Network of Independent Legal Experts (2007), *Executive Summary Hungary country report on measures to combat discrimination*, p. 3, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/husum07_en.pdf.
[154] EU Network of Independent Legal Experts (2007), *Executive Summary Hungary country report on measures to combat discrimination*, p. 3, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/husum07_en.pdf.

NFH*)* still has a mandate to examine cases of discrimination in the area of access to goods and services.[155] The NFH may impose a fine if the rights of consumers have been violated, however, reparation to the consumers cannot be prescribed. The broad mandate of the Commissioner for Educational Rights (*Oktatási Jogok Biztosa*)[156] also allows the Commissioner to examine cases of discrimination in the area of education, although its sanctioning powers are very limited, and is restricted to mediation and issuing an opinion to the educational institutional violating the rights or to its supervising authority.

A.3. Equality body

The **Equal Treatment Authority** is the specialised equality body. Established by Article 13 of the ETA the Authority started its operation on 1 February 2005. On 26 December 2004 a Government Decree was adopted on the detailed rules of its procedure.[157] As it was outlined above, the Authority is vested with the power and duty to act against any discriminatory act irrespective of the ground of discrimination (sexual orientation, gender identity, racial or ethnic origin, age, etc.) or the field concerned (employment, education, access to goods, etc.). Beyond the powers required by the Race Equality Directive, the new body is vested with the right to impose severe sanctions on persons and legal entities violating the ban on discrimination.

The Authority is a public administrative body with the overall responsibility to ensure compliance with the principle of equal treatment. Originally, it was supervised by the Minister of Social and Labour Affairs. In order to guarantee independence, the ETA declared that "the Authority shall not be instructed in relation to the exercise of its duties defined in this law."[158] This meant that in theory, despite the Ministerial supervision, the Authority was to enjoy full independence in performing its statutory tasks. A further provision was aiming to protect its independence, which sets forth that the Minister may not change or abolish the Authority's decisions in his/her supervisory role.[159] However, according to expert analyses, the Authority's independence was not fully guaranteed due to its restricted budgetary independence and the fact that the President of it can easily be removed by the Prime Minister.[160]

The institutional position of the Equal Treatment Authority significantly improved in 2011 with the inclusion of the Authority in the category of autonomous public administration bodies (*autonóm államigazgatási szerv*). The president of Authority is appointed for a nine year term by the President of the Republic and can be removed from office only in case he or she cannot fulfil the job for over 90 days or if lying in his/her declaration of interests. The Authority has a main budget heading in the annual budget of the country, it is not subsumed under a ministry.

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[155][155], Hungary, Act No. CLV of 1997 on consumer protection (*1997. évi CLV. törvény a fogyasztóvédelemről*), Art. 45/A (3) f), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30909.256011.3 f).

[156] Hungary, Minister of Education Decree No. 40/1999. (X. 8.) on the on the tasks and operation of the Office of the Commissioner for Educational Rights (*40/1999. (X. 8.) OM rendelet az Oktatási Jogok Miniszteri Biztosa Hivatalának feladatairól és működésének szabályairól*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=40515.62187.

[157] Hungary, Government Decree 362/2004. (XII. 26.) on the Equal Treatment Authority and the detailed regulations on its procedures (*362/2004. (XII. 26.) Korm. rendelet az Egyenlő Bánásmód Hatóságról és eljárásának részletes szabályairól*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=86668.122451.

[158] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 13 (3), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[159] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 17 (2), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[160] EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 73-74, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.

The strengthening of the institutional position of the Authority (and several other similar public bodies) on the other hand have been met with criticisms claiming that the reason for such a long mandate was not to strengthen independence, but to secure that leaders loyal to the current government will not be removed in case the current governing parties lose the next election. The President of the Authority appointed by the previous government was indeed removed in August 2010, and replaced by a lawyer with no substantive experience in the field of equal treatment. The quest for financial resources (especially in the times of serious budget cuts) also results in being vulnerable to governmental pressure. The budget of the Authority was nearly halved between 2010 and 2012 (from HUF 198.5 million to HUF 108.8 million), but has significantly improved in recent years (HUF 265.8 million in 2014). Former staff members of the Authority claim that there was direct pressure put on the Authority with regards to its sanction practices (the use of fines) and concerning the use of media especially with regards to sexual orientation and gender identity cases.[161] The low number of sexual orientation / gender identity cases ending with a decision finding a violation does not allow for assessing whether there is such a trend in sanctioning.[162] Regarding the avoidance on media, the pattern is clear: the Authority has not actively worked with the media on any of the relevant cases, when they were reported in the media, it happened because the victim or the NGO representing him/ her turn to them.[163]

At the time of its establishment the Authority was assisted by an advisory board called the Equal Treatment Advisory Board (Advisory Board) (*Egyenlő Bánásmód Tanácsadó Testület*), whose members had extensive experience in the protection of human rights and in enforcing the principle of equal treatment, and were invited by the Prime Minister to join the Advisory Board. With regard to decisions on individual complaints, the Advisory Board's role was restricted to providing legal interpretations assisting the Authority's work.[164] An important power of the Board was to issue recommendations to the government. One such recommendation was the one issued in 2007 that called for the opening up of marriage to same-sex couples, which contributed to speeding of the process on the adoption of the Registered Partnership Act.[165] After the mandate of the first members of the Board was over in 2011, no new members were appointed, and the Board was abolished. According to the official argumentation the reason for the abolishment was that the Board has served its role in providing guidance following the introduction of the legislation, but that by then all contested questions have been settled, the courts can provide the necessary interpretations of the law, and thus there is no need for such a body.[166]

The competences of the Authority are set forth by Article 14 of the ETA. The Authority:

- *"shall, based on a complaint or – in cases defined in the ETA – ex officio, conduct an investigation to establish whether the principle of equal treatment has been violated, or based on a complaint conduct an investigation to establish whether employers obliged to adopt an equal opportunities plan have abided by this duty, and deliver a decision on the basis of the investigation;*
- *may initiate an* actio popularis *claim with a view to protecting the rights of persons and groups whose rights have been violated;*

[161] The informants wish to remain anonymous.
[162] The analysis is based on consulting all decisions of the Authority on sexual orientation or gender identity as provided by the Authority to the author of the report on 5 May 2014.
[163] The analysis is based on consulting news items on the website of the Authority as well as reports about sexual orientation and gender identity cases at the Authority in online and print media.
[164] On this topic see: EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 74, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.
[165] Hungary, Recommendation No. EBHTT/10.007/10/2007 of the Equal Treatment Advisory Board.
[166] Explanatory memorandum to Bill No. T/4855, p. 128, available in Hungarian at: www.parlament.hu/irom39/04855/04855.pdf

- *review and comment on drafts of legal acts and reports concerning equal treatment;*
- *make proposals concerning governmental decisions and legislation pertaining to equal treatment;*
- *regularly inform the public and the Government about the situation concerning the enforcement of equal treatment;*
- *in the course of performing its duties, co-operate with the social and representation organisations and the relevant state bodies;*
- *continually provide information to those concerned and provide them with assistance in acting against the violation of equal treatment;*
- *provide assistance in the preparation of governmental reports to international organisations, especially to the Council of Europe concerning the principle of equal treatment;*
- *provide assistance in the preparation of the reports for the Commission of the European Union concerning the harmonisation of directives on equal treatment;*
- *shall prepare an annual report to the Government on the activity of the Authority and its experiences obtained in the course of the application of ETA."*[167]

As it can be seen from the above list, the Authority is vested with all the tasks included in Article 13 of Directive 2000/43/EC, but "in fact, the key element of the Authority's activity is none of [these] three tasks [...], but investigating into and deciding on individual instances of discrimination. In terms of Article 14 Paragraph (1) Point (a) of the ETA, the Authority has the mandate to conduct independent investigations both ex officio and also based on individual complaints. [...] This is a quasi-judicial function, so in this regard the service provided by the Authority goes beyond simple assistance in asserting claims. On the other hand, due to the scarce financial and human resources this function [does] in practice prevent the Authority from actually fulfilling the other tasks [...]."[168]

This means that although Article 14 (1) (g) of ETA gives the Authority mandate to provide independent assistance to victims of discrimination the Authority shall "continually provide information to those concerned and provide them with assistance in acting against the violation of equal treatment". This is not done in practice, because the scarce financial and human resources prevent the Authority from focusing on any activity other than the investigation and adjudication of complaints from victims of discrimination.[169] In a letter sent to Háttér Society[170] in 2012, the Authority acknowledged it has never used its mandate to represent victims of discrimination in court during the seven years of its existence.[171]

A further problem with the operation of the Authority is its reluctance in recent years to work

[167] Quoted by: EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 75, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.
[168] EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 76, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.
[169] See: EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 75, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.
[170] Háttér Society is the only NGO providing legal aid targeted at LGBT people: they deal with over a 100 cases per year and are actively involved in advocating for the rights of LGBTI people with various public bodies. This explains why Háttér is the key source of information, especially on individual cases. Whenever information was available from other sources (Hungarian Helsinki Committee for asylum, Hungarian Association for Civil Liberties (TASZ) for freedom assembly), they were also included as references.
[171] Hungary, Katalin Gregor, Head of the Legal Department at Equal Treatment Authority (*Egyenlő Bánásmód Hatóság Jogi Főosztály*) (2012), Letter sent in response to an information request by Háttér Society, 22 June 2012.

directly with NGOs. While cooperating with civil society organisations is listed in the legislation as a specific task of the Authority, such for a for cooperation have nearly completely disappeared. While earlier the Authority organised yearly meetings to discuss its annual report with the participation of NGOs and trade unions, the Authority stopped that practice. In 2012, the Hungarian LGBT Alliance (*Magyar LMBT Szövetség*) called for a meeting with the Authority to discuss the implementation of recommendations by the EQUINET on working with LGBTI issues. In a letter sent to the Alliance[172] the Authority rejected to receive the representatives of the Alliance claiming that they do not find such a meeting appropriate, and the forum for cooperation is trainings provided by the Authority. This shows that rather than seeing NGOs as strategic partners and source of insight and expertise, the Authority sees them as students to be taught.

The **Commissioner for Fundamental Rights** can also deals with discrimination on the grounds of sexual orientation or gender identity.[173] The ombuds system was significantly restructured in Hungary in 2012. While earlier, there were four ombuds to cover various areas (Commissioner for Civil Rights, Commissioner for Future Generations, Commissioner for the Rights of National and Ethnic Minorities, and Commissioner for Data Protection), the first three was merged into the Commissioner for Fundamental Rights, while the fourth position was transformed into the National Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság,* NAIH).

Act CXI of 2011[174] kept in place most of the substantive provisions of the earlier legislation[175] on the ombuds system: any victim of acts or omissions of public authorities or public service providers can complain to the Commissioner for Fundamental Rights, provided that all administrative remedies are exhausted or none exist. The Commissioner can also proceed *ex officio*.

The Commissioner can investigate into any authority, including the armed forces, national security services, and policing organisations. The Commissioner may request information, a hearing, written explanation, declaration or opinion from the competent official or demand that an inquiry be conducted by a superior. When finding a violation, the Commissioner issue recommendations, to which perpetrators must respond within 30 days. Further, Commissioner may:

- petition the Constitutional Court;
- initiate that the prosecutor issues a protest;
- propose that a legal provision be amended, repealed or issued;
- initiate disciplinary or criminal proceedings.

The first option has proven to be very important in recent years after the right to turn to the Constitutional Court for a constitutional review of legal norms (the so-called *actio popularis*) was significantly restricted in 2011.[176] The Commissioner has used this power twice in recent year

[172] Hungary, Equal Treatment Authority (2013), Letter No. EBH/89/46/2013 in response to an request for meeting by the Hungarian LGBT Alliance, 11 December 2013.
[173] The institution is described on the basis of EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 63-64, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.
[174] Hungary, Act No. CXI of 2011 on the commissioner for fundamental rights (*2011. évi CXI. törvény az alapvető jogok biztosáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139247.250707.
[175] Hungary, Act No. LIX of 1993 on the parliamentary commissioner for civil rights (*1993. évi LIX. törvény. az állampolgári jogok országgyűlési biztosáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=19315.30043.
[176] Hungary, Act No. CLI of 2011 on the Constitutional Court (*2011. évi CLI. törvény az Alkotmánybíróságról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139622.256434.

with regards to discrimination based on sexual orientation: the first case[177] concerns the definition of family and rules on inheritance in the Family Protection Act[178] which resulted in the Constitutional Court annulling those provisions,[179] the second one[180] concerns the notion of next-of-kin in the new Civil Code[181] which excludes cohabiting and registered partners, the case is still pending in front of the Constitutional Court.

The ETA fails to settle potential clashes of authority between the Authority and the Commissioner for Fundamental Rights who is also entitled to conduct individual and comprehensive investigations into cases of discrimination. The ETA contains no solution for cases in which the conclusion of and the sanction imposed by the Authority is not in line with the opinion of the Commissioner. It only restricts itself to exempting the decisions and measures of the Commissioner from the Authority's investigation.[182] In practice however, a relatively good working relationship has been evolving between the two entities.

A.4. Art 9/2 of the Employment Directive 2000/78/EC

The ETA has brought significant improvement in the possibilities of interested associations in the combat of discrimination. The law introduced the term 'social and interest representation organisation' (*társadalmi és érdek-képviseleti szervezet*, hereinafter: representative organisations). Pursuant to Article 3 (f) ETA, such organisations include

- any civil society organisation whose objectives set out in its articles of association or statutes include the promotion of equal social opportunities of disadvantaged groups or the protection of human rights;
- in respect of a particular national and ethnic minority, the minority self- government;
- the trade union in respect of matters related to employees' material, social and cultural situation and living and working conditions.[183]

In 2011 the relevant Article was amended to require that civil society organisation wishing to participate in equal treatment procedure have their articles of association or statutes clearly state the protected ground(s) (e.g. race, gender, sexual orientation) they wish to represent.[184] The

[177] Hungary, Commissioner for Fundamental Rights (2012), Petition No. AJB-4159/2012 to the Constitutional Court, 24 May 2012, available in Hungarian at: www.ajbh.hu/documents/10180/143994/201204159Ai.rtf.
[178] Hungary, Act No. CCXI on the protection of families (*2011. évi CCXI. törvény a családok védelméről*), Arts. 7 and 8 (1), available in Hungarian at: http://jogszabalykereso.mhk.hu/cgi_bin/njt_doc.cgi?docid=143574.581276.
[179] Hungary, Constitutional Court (2012), Decision No. 43/2012 (XII. 20.), 20 December 2012. See an analysis of the decision under heading H.1.
[180] Hungary, Commissioner for Fundamental Rights (2013), Petition No. AJB-1812/2013 the to the Constitutional Court, 27 June 2013, available in Hungarian at: www.ajbh.hu/documents/10180/111959/201301812Ai.rtf.
[181] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), Art. 8:1 (1) 1, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.
[182] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015,* Art. 15.
[183] On this issue see: EU Network of Independent Legal Experts (2007), *Report on Measures to Combat Discrimination – Directives 200/43/EC and 2000/78/EC – Country Report/Update 2006 – Hungary – State Of Affairs Up To 8 January 2007*, p. 65, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/hurep07_en.pdf.
[184] Hungary, Act CLXXIV of 2011 on amendments to act No. CXL of 2014 on the general rules of administrative procedures and services and related acts, and of certain acts relating to the review of the competences of ministries acting in administrative capacity (*2011.*[184] Hungary, Act CLXXIV of 2011 (*2011. évi CLXXIV törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény és egyes kapcsolódó törvények, valamint a miniszteri hatósági hatáskörök felülvizsgálatával összefüggő egyes törvények módosításáró*l), available in Hungarian at: http://kozlony.magyarorszag.hu/dokumentumok/65ae4ccb51cff7bcb24a3540be5935993d9f0bd3/megtekintes

legislation also imposed strict time limits on how long after the occurrence of discrimination complaints can be launched with the Authority. The new provisions contain that complaints have to be launched within three months following the incident if a fine is requested, within one year after the petitioner learns about the incident, or within three years after the incident occurred if the petitioner learns about it later.[185]

Under ETA,[186] unless stipulated otherwise by the law, any social and interest representation organisation, as well as the Authority may – based on an authorisation by the victim – engage on behalf of the victim in proceedings initiated due to the infringement of the requirement of equal treatment. Furthermore, representative organisations are entitled to exercise the rights of the concerned party in administrative proceedings initiated due to the infringement of the requirement of equal treatment.

Another important novelty introduced by the ETA is the possibility of bringing an *actio popularis* claim (not to be mixed with *actio popularis* in front of the Constitutional Court which was severely restricted in 2011). The relevant legal provision provides that if the principle of equal treatment is violated or there is a direct danger thereof, a lawsuit for the infringement of inherent rights or a labour lawsuit may be brought by

> *"a) the Public Prosecutor;*
> *b) the Authority, or*
> *c) any social and interest representation organisation, provided that the violation of the principle of equal treatment or the direct danger thereof was based on a characteristic that is an essential feature of the individual, and the violation affects a larger group of persons that cannot be determined accurately."*[187]

Furthermore, a representative organisation may – if the above conditions prevail – also choose to launch a proceeding before the Authority.[188]

The first *actio popularis* case regarding discrimination on the ground of sexual orientation under the ETA was the claim brought by the LGBT organisation Háttér Society (*Háttér Társaság*) against a denominational university, which declared that homosexual persons may not be students of the faculty of theology.[189] While the case itself was lost, the court established that religious educational institutions are also bound by the principle of equal treatment (except in the case of educational programmes training future clergy), and that sexual orientation is an essential feature of the individual. A more recent *actio popularis* case on sexual orientation was a case also brought by Háttér Society concerning the exclusion of same-sex couples and their children from buying tickets at a reduced price for football matches of the Hungarian National Football Team.[190] While the case ended in a settlement, thus no binding decision was issued, it was the first case to

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[185] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Arts. 17 and 17/A (7), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[186] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 18, *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[187] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 20 (1), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[188] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 20 (1) c), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[189] Hungary, Supreme Court (2005), Decision No. Pfv. IV. 20.678/2005, 8 June 2005. For a detailed summary, see *Károli case* in Annex I.

[190] Hungary, Equal Treatment Authority (2013), Case No. 88/15/2013, 27 June 2013. For a detailed summary, see the *MLSZ case* in Annex I.

(successfully) challenge the practical consequences of the restrictive definition of family in real life.

The possibility of *actio popularis* litigation can under certain circumstances be very beneficial for victims of discrimination based on sexual orientation and gender identity. For instance, in cases of discriminatory practices (i.e. when the violation concerns LGBT persons as a group as well and not only as particular individuals), it has become possible to take effective legal action without any individual being forced to 'come out' and possibly face further discrimination or victimisation stemming from his/her decision to assert their rights.

While there are over a dozen registered LGBT organizations in Hungary, the number of civil society organizations that actually make use of the provisions providing them standing in such legal procedures (either by representing victims or through *actio popularis*) is very low: the overwhelming majority of sexual orientation or gender identity cases were taken to court or the Authority by the Legal Aid Service Háttér Society. Other organizations that from time to time provided such a service include the Legal Defence Bureau for National and Ethnic Minorities (*Nemzeti és Etnikai Kisebbségi Jogvédő Iroda,* NEKI), and the Hungarian Helsinki Committee (*Magyar Helsinki Bizottság*, MHB).

A.5. Statistics and case law

Statistics

In 2008 and 2010 the National Justice Council (NJC) (*Országos Igazságszolgáltatási Tanács*, OIT),) the supreme organ of judicial administration, informed the Senior Expert that data collection conducted on the basis of the National Statistics Program (*Országos Statisztikai Adatgyűjtési Program*) does not extend to statistics that show the number of court cases regarding discrimination, let alone being disaggregated by the ground of discrimination.[191] In 2014 the National Office for the Judiciary confirmed this answer. In 2008 and 2010 the Hungarian Labour Inspectorate also informed the Senior Expert that it does not have data concerning cases of discrimination on the ground of sexual orientation;[192] since OMMF no longer has the power to investigate discrimination cases they were not approached in 2014. In 2008 the National Consumer Protection Authority reported that there have not been any complaints in respect of discrimination on the ground of sexual orientation in the indicated period.[193] The Commissioner for Fundamental Rights reported two cases in 2012 and four in 2013, neither of which, however, concerned the field of employment, but rather the notion of family, the inclusion of registered partnership in the category of next of kin, funding of gender reassignment treatments and access to assisted reproduction to lesbian couples.[194] The Equal Treatment Authority presented detailed statistics in 2008[195] and 2014[196], which show a low, stagnating number of 3-5 complaints every

[191] Hungary, National Justice Council (2008), Letter No. 18.011/2008/2. OIT Hiv. in response to an information request by Otherness Foundation, 4 February 2008. Information was confirmed by telephone interview on 22 February 2010.
[192] Hungary, Hungarian Labour Inspectorate (2008), Letter No. 1361-2/2008-5060 in response to an information request by Otherness Foundation, 5 March 2008. Information was confirmed by: Hungary, Hungarian Labour Inspectorate (2010), Letter No. 2481-2/2010-5010 in response to an information request by Otherness Foundation, 25 February 2010.
[193] Hungary, National Consumer Protection Authority (2008), Letter No. HAJ-885-2/2008, 22 February 2008. Information was confirmed by telephone interview on 22 February 2010.
[194] Hungary, Commissioner for Fundamental Rights (2014), Letter No. AJB-1098/2014 in response to an information request by the Hungarian Helsinki Committee, 26 February 2014.
[195] Hungary, Equal Treatment Authority (2008), Letter No. EBH/217/2/2008, 18 February 2008. See Annex II.
[196] Hungary, Equal Treatment Authority (2014), Letter No. EBH/216/2014 in response to an information request by the Hungarian Helsinki Committee, 10 March 2014.

year.

Case law

Access to the case law of the courts have significantly improved in recent years in Hungary. All decisions of the Constitutional Court are available online on the website of the Court. All conceptual standpoints (*elvi állásfoglalás*) and some actual decisions (*eseti döntés*) are available on the website of the Curia (formerly: Supreme Court). Since 01 July 2007 the National Justice Council has been obliged to maintain an online database, which contains certain types of court judgments.[197] Some improvements have been made to respond to criticisms concerning the scope and technical design of the database,[198] and several relevant cases were identified this time via full text search, however, due to the exclusion of cases from the database that are not appealed to higher level courts, and the unreliable quality of the full text online search engine one cannot be sure to have identified all relevant court cases.

Cases identified show that discrimination and harassment based on sexual orientation and gender identity can be ultimately challenged via the equal treatment legislation, although the procedures are often complicated and lengthy. For example a case concerning discrimination against a school teacher in employment[199] was launched in 2005, and the procedure is still pending. A major victory took place in 2012 when the Curia (formerly: Supreme Court) declared that his sexual orientation was the reason why the school did not extend his contract at the end of the school year, which lower level courts failed to acknowledge. Cases at the Equal Treatment Authority seem to be quicker and smoother. Among the employment related cases was a case launched by two female nurses against a hospital that refused to hire them after they revealed they were a couple.[200] Another case involved a TV presenter – perceived to be gay – who was harassed and moved to an off-screen when rumour was spread at the company that he was gay.[201] Finally there was also a case by an employee at an IT company who was severely harassed by his boss.[202] This latter case shows how the two-level procedure (first a procedure at the Equal Treatment Authority for finding a violation and fining the company, then a procedure for compensation at the court) can work well in practice: the company was first fined for HUF 2,000,000 (approx. €6,500) by the Authority, and then the employee received HUF 600,000 in compensation from the company as a result of the subsequent court procedure.

[197] The database is available at: www.birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara.
[198] Eötvös Károly Intézet (2009), *Az igazságszolgáltatás nyilvánossága különös tekintettel a bírósági határozatok nyilvánosságára*, p. 40, available at: http://ekint.org/ekint_files/File/tanulmanyok/bhgy/birosagok_nyilvanossaga_20090909_vegleges.pdf.
[199] Hungary, Curia (2012), Decision No. Mfv.III.10.100/2012/9, 17 September 2012. For a detailed summary, see *School teacher case* in Annex I.
[200] Hungary, Equal Treatment Authority (2009), Decision No. 200EBH/1023/16/2009, 17 December 2009.
[201] Hungary, Equal Treatment Authority (2010), Case no. 985/2010, 23 August 2010. For a detailed summary, see *Cable TV case* in Annex I.
[202] Hungary, Equal Treatment Authority (2010), Case No. 49/2010, 1 June 2010; and Hungary, Metropolitan Court of Budapest (2012), Decision No. 22.P.24.669/2010/14, 24 January 2012. For a detailed summary, see *Telecom company case* in Annex I.

B. Freedom of Movement

B.1. EU citizen LGBT partners of EU citizens

The Act no. I of 2007[203] (hereinafter: Free Movement Act, FMA) governs the rules related to the freedom of movement in Hungary.

According to Article 1) of FMA the right of free movement and residence is provided to all EU Member State citizens, their accompanying or joining family members in compliance with the rights equally granted by the Treaty on the European Union.

Thus, EU citizen LGBT partners of Hungarian or EU citizens have a self-standing right to free movement.

According to Article 1 (1) FMA the right to free movement and residence is provided to the accompanying or joining family members of EU and Hungarian citizens.

According to the FMA the term 'family member' covers

> *"ba) the spouse of an EEA citizen;*
> *bb) the spouse of a Hungarian citizen;*
> *bc) the descendant under the age of 21 or the dependant descendant of an EEA citizen or his/her spouse;*
> *bd) the descendant under the age of 21 or the dependant descendant of a Hungarian citizen or his/her spouse;*
> *be) the ascendant of an EEA citizen or his/her spouse;*
> *bf) the ascendant of a Hungarian citizen or his/her spouse;*
> *bg) a person granted custody of a minor Hungarian citizen;*
> *bh) a person whose entry and stay as a family member was granted by the acting authority*
> *bi) the third country citizen life-partner of an EEA citizen if their registered common law partnership was established before a Hungarian authority or the authority of another EU member state;"*

bj) the third country citizen life-partner of a Hungarian citizen if their registered common law partnership was established before a Hungarian authority or the authority of another EU member state."[204] Points *bi)* and *bj)* were introduced in 2011[205] following an imminent infringement procedure by the European Commission concerning entry and residence of registered partners. While registered partnership is only available to same-sex couples in Hungary, it is treated as equivalent to marriage in many areas of life. Article 3 of the Registered Partnership Act[206] (the

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[203] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

[204] Hungary, Act No. I of 2007 on the entry and residence of persons entitled to free movement and residence (*2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról*), Art. 2, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108557.256030.

[205] Hungary, Act No. CV of 2011 on the amendment of certain labour and other related laws for legal harmonisation purposes (*2011. évi CV. törvény egyes munkaügyi tárgyú és más kapcsolódó törvények jogharmonizációs célú módosításáról*), available in Hungarian at: http://kozlony.magyarorszag.hu/dokumentumok/faf6bf42a99b8c3713461449ace716af11a09ef5/megtekintes.

[206] Hungary, Act No. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (*2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*),

equivalence rule) establishes that everywhere the legislation mentions spouses, it should be interpreted to include registered partners. So even before the amendment, same-sex registered partners were considered family members.[207] However, a debate has emerged concerning whether those couples who enter into registered partnership abroad (including different-sex couples) are included or not. The Government decided to extend the notion of family member to include all couples who enter into some form of state-registered partnership in any Member State of the EU regardless of the sex of the partners. To emphasise this latter aspect the legislation does not use the term registered partner (*bejegyzett élettárs*) as used in other Hungarian legislation, but a different formulation (*regisztrált élettársi kapcsolat*), which also translates to registered partnership in English.[208]

The question of whether same-sex marriages performed abroad would be recognised in Hungary for the purpose of entry and residence has not been settled so far. In 2009 in the negotiations around the introduction of registered partnership the Hungarian LGBT Alliance requested the legislator to include a provision in the law to the effect that same-sex marriage performed abroad are recognised in Hungary as registered partnerships.[209] This, however, was disregarded and according to the OIN[210] all requests for the domestic registration of same-sex marriages performed abroad were declined. OIN claims this was done after consultation with the Ministry of Public Administration and Justice, and particularly with reference to the new Article L of the Fundamental Law defining marriage as a heterosexual institution. There is no information on whether such marriages were recognized in a more limited sense for entry and residence purposes. Registered partnerships performed abroad among same-sex partners have been recognised in Hungary and registered domestically without any problem.[211]

Article 1 (1) *bh)* of FMA provides the possibility to recognise as family members other persons not contained in this list, including cohabiting partners:

> *"(1) The competent authority may grant the right of residence to persons as family member, who:*
> *a) are dependants or for a period of at least one year have been members of the household of a Hungarian citizen, or where serious health grounds require the personal care of the family member by the Hungarian citizen; or*
> *b) had been dependants or for a period of at least one year had been members of the household of an EEA national - who satisfies the requirements set out in Subsection (1) of Section 6 - in the country from which they are arriving, or where serious health grounds require the personal care of the family member by the EEA national"*

The current form of the provision (i.e. making a difference between EEA and Hungarian citizens) is the result of an imminent infringement procedure by the European Commission with regards to the one year cohabitation requirement which originally was imposed on partners of both Hungarian and EEA citizens. Rather than abolishing the requirement altogether, the legislator chose to drop the requirement where it was requested by EU law, but kept it where the EU has no

available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=124380.178392.

[207] Office of Immigration and Nationality (2010), Letter No. 106-Ált-53/744/2010 in response to an information request by Otherness Foundation, 23 February 2010.

[208] The reasons behind using the non-standard terminology were inclded in: Hungary, Ministry of National Economy (2011), E-mail sent to Háttér Society following a written opinion of Háttér Society about the proposal, 22 June 2011.

[209] Hungarian LGBT Alliance (*Magyar LMBT Szövetség*) (2009), *A Magyar LMBT Szövetség véleménye a bejegyzett élettársi kapcsolatról szóló T/8847. sz. törvényjavaslatról*, available in Hungarian at: www.hatter.hu/kiadvanyaink/a-magyar-lmbt-szovetseg-velemenye-a-bejegyzett-elettarsi-kapcsolatrol-szolo-t8847-sz-to

[210] Hungary, Office of Immigration and Nationality, (2014), Letter no. 106-Ji/5143-9/2014 in response to an information request by the Hungarian Helsinki Committee, 30 April 2014.

[211] Hungary, Office of Immigration and Nationality (2014), Letter No, 106-Ji/5143/2/2014 in response to an information request by the Hungarian Helsinki Committee, 6 March 2014.

competence – resulting in a very strange legal situation in which the Hungarian state discriminates against its own citizens.

The legal aid service of the Háttér Society knows of several cases where same-sex registered partners and cohabiting partners have been granted family member status.[212]

B.2. Statistics and case law

Statistics

In 2008 and 2010 Office of Immigration and Nationality, the authority dealing with foreigners entering or residing in Hungary claimed that relevant Hungarian laws forbid keeping statistical data referring to sexual orientation; therefore there is no statistics that demonstrate the impact/social reality of relevant legislation for LGBT persons.[213] The OIN replied[214] to our current request claiming its statistical system does not separate same-sex and different-sex cohabiting and registered partners being recognized for freedom of movement purposes, and thus only provided data in a disaggregated way. The data show a significant number of non-married partners to be recognized: in 2013, for example, four registered partners of EU citizens and 112 registered partners of Hungarian citizens, as well five 'quasi family members' (including cohabiting partners) of EU citizens and 62 of Hungarian citizens were recognized. The OIN dealt with five cases of domestic registration for foreign same-sex marriages (four rejected, one pending) and 10 cases of domestic registration of foreign same-sex registered partnerships (eight registered, two pending) between 2009 and 2014.

Case law

As noted in section A.5 there is no comprehensive and reliable case law database in Hungary. A search in the Complex Decision Archive on 3 March 2014 did not result in any relevant case law. The Complex Decision Archive contains the conceptual standpoints and actual decisions of the Curia (formerly: Supreme Court). A search in the online court judgments database yielded no relevant results. The OIN does not have an accessible case law database. A relevant case launched before the introduction of the institution of registered partnership and the current acts on entry and residence was identified in the database of the Constitutional Court.[215] In that case the Court found no discrimination based on sexual orientation, because not only unmarried same-sex couples, but also unmarried different-sex couples were excluded from being recognized as family members.

[212] See e.g.: Hungary, Office of Immigration and Nationality (2012), Decision No. 106-1-57119/ / 2011-Tk, 3 February 2012.

[214] Hungary, Office of Immigration and Nationality (2014), Letter No, 106-Ji/5143/2/2014 in response to an information request by the Hungarian Helsinki Committee, 6 March 2014.

[215] Hungary, Constitutional Court (2011), Decision No. 68/E/2004, 11 March 2011. For a detailed summary, see *Immigration by cohabiting same-sex couple case* in Annex I.

C. Asylum and subsidiary protection

C.1. Persecution of LGBT persons as ground for asylum

Article 64 of the Asylum Act (hereinafter: AA)[216] specifically mentions sexual orientation (but not gender identity) as a ground for prosecution:

> *"A group where a common characteristic of its members is based on their sexual orientation or persuasion may, depending on the circumstances of the country of origin, also qualify as a particular social group."*

The original Hungarian version of the text contains "*szexuális irányultságon vagy a nemi hovatartozáson"*, '*nemi hovatartozás'* is more commonly translated as sex or gender to English, but the fact that the official translation uses this formulation might imply some level of uncertainty in the interpretation of the Hungarian text as well by OIN. In a response to a question concerning the transposition of the Qualification Directive and is introduction of 'gender identity' as a ground of persecution, the Ministry of Interior responded[217] that they consider the Directive to be fully transposed and do not plan on any further legislative action, since sexual orientation (sic!) is fully covered. This is a clear sign that the Ministry does not properly differentiate between sexual orientation and gender identity.

Moving away from legislation to practice, in recent years the OIN was consistent in treating persecution because of sexual orientation and gender identity as an accepted ground for qualifying as a refugee or beneficiary of subsidiary protection. Asylum seekers – mostly from Islamic countries such as Algeria and Iran – successfully argued that their sexual orientation or gender identity was the reason of their persecution as a member of a particular social group.

While it is not a consistent practice, the OIN in some cases requested psychiatric expert opinions upon the asylum seekers' sexual orientation. There is no specific legal regulation that would require obtaining such expert opinion, although the general rules of administrative procedure do allow for the authorities to request an expert opinion:

> *"An expert shall be consulted or an expert opinion shall be obtained if the competent authority does not have sufficient expertise and special expertise is required in the case for establishing a material fact or other circumstance."*[218]

The practice of the OIN is not consistent in this regard since such expert opinions are not requested in every relevant case. The Hungarian Helsinki Committee argued that requesting such medical expert opinion is problematic, because it presupposes that LGBT status is a medical condition and denies the right to self-determination. Also, it makes asylum procedures significantly longer and more expensive. There are no documented court decisions in which the tenability of such expert opinion would have been raised. When brought up in an advocacy

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[216] Hungary, Act No. LXXX of 2007 on asylum (*2007. évi LXXX. törvény a menedékjogról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=110729.259725.

[217] Hungary, Ministry of Interior (2014), Letter No. BM/3129-3/2014 in response to an information request by the Hungarian Helsinki Committee, 24 February 2014.

[218] Hungary, Act No. CXL of 2004 on the general rules of administrative procedures and services (*2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól*), Art. 5 (1) a), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=85989.256023.

meeting with a representative of OIN,[219] the officer claimed that similar expert opinions by anthropologists and experts of religions are routinely used to asses credibility of religious or ethnic affiliation, but MHB claimed that this is in fact not true.

There have been no reports on applying 'phallometric testing' in Hungary.

The Hungarian national report prepared in the framework of the *Fleeing homophobia* project quotes a case in which the OIN argued in case of an Algerian applicant that: "even if criminal sanctions against homosexuals or homosexual behaviour are in force, the sexual orientation can be practised in a hidden, discreet way, which prevents the eventual attacks",[220] but according to the MHB this argumentation is not common, and is rather an exception, than a norm.[221] The report also cites "two court decisions – issued by the same judge in 2008 and 2009 – expressly stated that, based on the 1951 Refugee Convention, homosexual orientation is not a ground for protection." But the report adds that "this is however not the general position of administrative authorities or the judiciary."

While the legislation and practice of the OIN is relatively progressive, it has to be noted that neither the website nor information booklets published by OIN specifically mention sexual orientation or gender identity as a ground for persecution. In fact, when the MHB was producing its own asylum brochures a few years ago and included sexual orientation, the OIN suggested its removal claiming that applicants should not be given 'ideas' (i.e. that the inclusion of sexual orientation would make applicants submit fabricated stories of sexual orientation persecution).[222] The lack of information in a readily understandable format might discourage asylum seekers to report the true reason for their persecution.

Legal gender recognition for transgender asylum seekers raises serious questions, as there is no established procedure on how to deal with such applications since the Hungarian procedure is based on amending the birth registry record, but non-Hungarian citizens do not have such records. This was uncovered during a case of the legal aid service of the Háttér Society, where a transgender asylum seeker was to be sent back to Hungary from Switzerland as part of the Dublin procedure, but due to the lack of such procedure (and of accessible gender reassignment treatments), the Swiss authorities decided not to send back the applicant to Hungary.[223] The Ministry of Public Administration and Justice promised to come up with some solution if they receive such an application in the future.[224] OIN is only obliged to reason its resolutions when it refuses to grant asylum, therefore it is often impossible to assess even based on the official decision what was the ground of persecution based on which the asylum was granted. Even though by legislation OIN is required to collect data on the ground based on which the asylum claims are granted,[225] the OIN does not publish such data, and for many years refused to provide data even when requested. That has recently changed, but the methodology of the data collection is still unclear, so the reliability of the data is questionable.

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[219] Personal meeting with Zoltán Szabó, Office of Immigration and Nationality on 13 December 2011 at the Office of Immigration and Nationality.
[220] www.rechten.vu.nl/nl/Images/Hungary%20questionnaire_tcm22-236589.pdf, pp. 2–3.
[221] Personal interview with representative of the Hungarian Helsinki Committee on 23 February 2010.
[222] Information provided by Gábor Gyulai, head of the Refugee Programme at MHB on 2 July 2014.
[223] Switzerland, Federal Office for Migration (*Bundesamt für Migration*) (2014), Dossier N 530 356 Otr, 31 January 2014.
[224] Telephone conversation with Zsuzsanna Piros, Head of the Department of Registry Affairs at the Ministry of Public Administration and Justice (*Közigazgatási és Igazságügyi Minisztérium Anyakönyvi Osztály*) on 28 March 2011.
[225]Hungary, Act No. LXXX of 2007 on asylum (*2007. évi LXXX. törvény a menedékjogról*), Art. 83 (1) m), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=110729.259725. 1 m).

C.2. Family members in the context of asylum

AA[226]does not specifically list registered partners as family members, but due to Article 3 of the Registered Partnership Act (the general equivalence rule) same-sex registered partners are recognised on equal footing with married heterosexual couples. Concerning same-sex spouses, the same questions arise as for freedom of movement (see under section B.1). However, unlike for freedom of movement, the legislation only allows for the recognition of the following categories of persons as family members:

> *"(j): family member is: a foreigner's'*
> *ja) spouse,*
> *jb) minor child (including adopted and foster child),*
> *jc) parent(s) if the person seeking recognition is a minor;"*

Cohabiting partners are thus not recognised. According to the Háttér Society[227] this is very problematic since LGBTI asylum seekers tend to come from countries which do not recognise any form of same-sex partnerships, so they do not stand a chance of having a legally registered partnership before entering the country. This has serious consequences, since if an asylum seeker is granted refugee status his/her family members are automatically recognised as refugees according to AA, which same-sex couples cannot make use of. The lack of partnership recognition might also cause problems with joint placement at accommodation centres and lack of coordination of the procedure if both of the partner apply for asylum.

C.3. Statistics and case law

Statistics

Responding to information requests in 2008,[228] 2010[229] and 2014[230] for the current report, OIN consistently replied that it did not collect data on sexual orientation and gender identity of asylum applications. In 2011,[231] however, the OIN did report on the number of successful and unsuccessful asylum requests for another report: OIN reported 37 asylum applications based on sexual orientation or gender identity in the period 2006-2011, five of which were granted. The When asked about the methodology for collecting those statistics, OIN responded[232] that due to the "low number and special nature" of such requests, staff members of OIN "remembered those cases". Since the number of asylum claims have significantly increased, and several staff members have left OIN, no such statistics can be compiled now. Due to the lack of data no trends can be analysed.

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[226] Hungary, Act No. LXXX of 2007 on asylum (*2007. évi LXXX. törvény a menedékjogról*), Art. 2 j), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=110729.259725.

[227] Háttér Society (2010),[227] *A Háttér Társaság a Melegekért véleménye az egyes migrációs tárgyú törvények jogharmonizációs célú módosításáról szóló T/1320. számú törvényjavaslat kapcsán*, available in Hungarian at: www.hatter.hu/kiadvanyaink/t3404-bek-idegenrendeszet-velemeny

[228] Hungary, Office of Immigration and Nationality (2008), Letter No. 106-JI-2205/1/2008 in response to an information request by Otherness Foundation, 20 February 2008

[229] Hungary, Office of Immigration and Nationality (2010), Letter No. 106-Ji-4795/1/2010 in response to an information request by Otherness Foundation, 23 February 2010.

[230] Hungary, Office of Immigration and Nationality (2014), Letter No, 106-Ji/5143/2/2014 in response to an information request by the Hungarian Helsinki Committee, 6 March 2014.

[231] Hungary, Office of Immigration and Nationality (2011), Letter No. 106-Ji-10745/3/2011 in response to an information request by Háttér Society, 24 July 2011.

[232] Hungary, Office of Immigration and Nationality (2014), Letter No, 106-Ji/5143/9/2014 in response to an information request by the Hungarian Helsinki Committee, 30 April 2014.

Case law

As noted in section A.5 there is no comprehensive and reliable case law database in Hungary. A search in the Complex Decision Archive on 3 March 2014 did not result in any relevant case law. The Complex Decision Archive contains the conceptual standpoints and actual decisions of the Curia (formerly: Supreme Court). A search in the online court judgments database yielded several results, most of them focused on the credibility of the narrative the asylum seeker told. There was one case with interesting argumentation on the duty to rely on state and NGO support, as well as a discussion of public morality laws.[233] The OIN does not have an accessible case law database. The Hungarian Helsinki Committee, a Hungarian NGO that assists asylum seekers in Hungary, is aware of several relevant cases in which asylum claims based on sexual orientation and gender identity have been recognised.[234]

[233] Hungary, Metropolitan Court of Budapest (2010), Decision No. 21.K.32987/2009/5, 7 January 2010. For a detailed summary, see *Asylum seeker from Ivory Coast case* in Annex I.
[234] See cases in Annex I.

D. Family reunification

The family reunification procedure is governed by Act No. 2 of 2007.[235] Article 2 (d) of the Act stipulates that 'family member' shall mean:

> *"(da) the spouse of a third-country national;*
> *(db) the minor child (including adopted children) of a third-country national and his/her spouse;*
> *(dc) the minor child, including adopted and foster children, of a third-country national where this third-country national has parental custody and the children are dependent on him/her;*
> *(dd) the minor child, including adopted and foster children, of the spouse of a third-country national where the spouse has parental custody and the children are dependent on him/her;"*

The list does not specifically list registered partners as family members, but due to Article 3 of the Registered Partnership Act (the general equivalence rule) same-sex registered partners are recognised on equal footing with married heterosexual couples. Concerning same-sex spouses, the same questions arise as for freedom of movement (see under section B.1). Similarly to family reunification for asylum seekers cohabiting partners are not recognised as family members.

Statistics

In 2008 and 2010, the OIN informed the Senior Expert that it does not have statistics that contain the sexual orientation of its clients.[236] The OIN replied[237] to our current request claiming that besides not having statistics separating same-sex and different-sex couples, they also have no statistics at all broken down by the type of family relations based on which recognition is provided, so no data was reported.

Case law

As noted in section A.5 there is no comprehensive and reliable case law database in Hungary. A search in the Complex Decision Archive on 3 March 2014 did not result in any relevant case law. Complex Decision Archive contains the conceptual standpoints and actual decisions of the Supreme Court. A search in the online database of court judgments yielded no relevant results. The OIN does not have an accessible case law database.

[235] Hungary, Act No. II of 2007 on entry and residence by third country nationals (*2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=108621.256031.

[236] Hungary, Office of Immigration and Nationality (2008), Letter No. 106-JI-2205/1/2008 in response to an information request by Otherness Foundation, 20 February 2008. Information was confirmed by: Hungary, Office of Immigration and Nationality (2010), Letter No. 106-Ji-4795/1/2010 in response to an information request by Otherness Foundation, 23 February 2010.

[237] Hungary, Office of Immigration and Nationality (2014), Letter No, 106-Ji/5143/2/2014 in response to an information request by the Hungarian Helsinki Committee, 6 March 2014.

E. Freedom of assembly

The Hungarian legal system recognises the right to freedom of assembly. The former Constitution provides that "the Republic of Hungary acknowledges the freedom of peaceful assembly and ensures its free exercise,"[238] which is maintained in a largely unchanged format in the new Fundamental Law: "Every person shall have the right to peaceful assembly."[239]

The Freedom of Assembly Act[240] (hereinafter: FAA) specifies the legal rules originating from the general clause of the Constitution.In the framework of the freedom of assembly peaceful meetings, demonstrations or processions can be organised, in which the participants could freely express their opinion. Furthermore, participants are entitled to impart their opinion to those who are concerned. However, the exercise of the freedom of assembly must not constitute any crime or call for a crime and must not infringe the rights or freedoms of others.[241]

Under FAA the exercise of the freedom of assembly is subject to a prior notification to the police, which is entitled to prohibit the assembly only in cases provided by law. These are the following:

- If the event would endanger the undisturbed operation of democratic institutions or courts;
- If public transport may not be organised elsewhere.[242]

If any of these dangers are present, the police – within 48 hours after receiving the notification– is entitled to prohibit the organisation of the event at the indicated time or in the indicated place.[243] This decision can be challenged in a speedy court procedure.[244]

The organiser has the primary task of securing order during events. However, the police, if requested, cooperates in securing public order and removes any persons intending to violate peacefulness.[245]

The police is entitled to break up the event in the following circumstances:

- If the event constitutes a crime or call for a crime or violates the rights or freedoms of others;
- If participants appear in the event with weapons or with any other tools capable of causing harm to others;
- If the event had not been notified to the police;
- If the event is not conducted as notified in advance (e.g. if another route is used).[246]

In the Hungarian legal system the police has a very limited discretion to ban demonstrations. In

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[238] Hungary, Act No. XX of 1949 on the Constitution of the Hungarian Republic (*1949. évi XX. törvény a Magyar Köztársaság Alkotmánya*), Art. 62 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=222.207867.
[239] Hungary, The Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Art. VIII (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.248458.
[240] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.
[241] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 2, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.
[242] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 8 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.
[243] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 8 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.
[244] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 9, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.
[245] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 11, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.
[246] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 14, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.

most cases it is possible to hold two fundamentally antagonistic events at the same time and virtually the same place since it is impossible to foresee whether a demonstration would "endanger the undisturbed operation of democratic institutions or courts".[247] Furthermore, the police cannot examine the risk of any other crimes being committed at demonstrations. However, if the police notices that a demonstration is violating the rights or freedoms of others it must immediately take action to maintain order at the events and if necessary disperse the unlawful demonstration.[248]

The Hungarian LGBT community has been organising the yearly Pride Marches since 1997, and several other smaller demonstrations for the rights of LGBTI persons have taken place. The police had been able to secure the safety of these events until 2007. Prior to 2007 persons who demonstrated against gay pride festivals used to express their disapproval as spectators in a rather unorganised way. Their homophobic remarks had been disturbing but never exceeded the level of verbalism and no physical atrocities had ever been reported.

However, in 2007 organisers of the 12th LGBT Cultural Festival reported that they encountered difficulties in negotiating with the police about the route of the Gay Pride March. According to the police these difficulties were due to the tense political and public reactions (the LGBT community received threats from extremist political groups). Nevertheless, there were no legal objections to organise the event.

On 07 July 2007, after previous threats and with the verbal support of a non- parliamentary, small right wing party, extremist groups attacked the participants of the Pride March. The attackers were organised, threw bottles, stones and Molotov cocktails at the marchers and made homophobic comments while following the march for several kilometres.[249] The comments included "dirty fags", and "fags and Jews to the Danube" and "soap factory" the latter two referred to the activities of the Nazis during the II World War in Budapest. The attackers also demonstrated the Nazi arm waving. Furthermore, organisers reported that these groups severely injured eleven participants after they had left the event.[250] Rather than being spontaneous, the homophobic counter-demonstrations were also organized events, that had been duly notified to the police, who did not raise any legal objections.

According to media reports eight people of the anti-gay demonstration were arrested by the police in connection with the attacks.[251] However, LGBT civil society organizations pointed to the fact that the representatives of the Ministry of Justice and Law Enforcement (the Minister and the Secretary of Law Enforcement Issues) did not condemn with necessary emphasis the violent action and blurred the responsibility of the participants of the Pride March and that of the extremist demonstrators.[252]

In 2008, the police first tried to prevent such incidents by banning the Pride March, but within 24 hours revoked their own decisions[253] and the March could go on. Organised extremist groups

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[247] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 8 (1) , available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.

[248] Hungary, Act No. III of 1989 on the right to freedom of assembly (*1989. évi III. törvény a gyülekezési jogról*), Art. 14, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094.

[249] The events are described by interviews of participants in: Patent Association (2008), *Rideg bánásmód*, available in Hungarian at: http://patent.org.hu/LMBT_emberi_jogok_2002-2007.pdf.

[250] Patent Association (2008), *Rideg bánásmód*, p. 47, available in Hungarian at: http://patent.org.hu/LMBT_emberi_jogok_2002-2007.pdf.

[251] See for example: Népszabadság (2007), 'Szkinhedek és tojászápor kísérte a budapesti melegfelvonulást', 10 July 2007, available in Hungarian at: http://nol.hu/archivum/archiv-453102-259916.

[252] Háttér Society, Labrisz Lesbian Association (2007), Elítélő nyilatkozatok a büszkeségnapi támadásokról, Press release, 14 July 2007, available in Hungarian at: http://www.labrisz.hu/elitelo-nyilatkozatok-a-buszkesegnapi-tamadasokrol

[253] Hungary, Budapest Police (2008), A BRFK visszavonta a tiltást, Press release, 12 June 2008, available in Hungarian at: http://pride.hu/article.php?sid=2739

tried to attack the Pride March once again. The police introduced fences to isolate the march from the attackers, but this still allowed the protestors to get very close to the participants and throw objects (especially eggs, but also rocks, rotten vegetables and eggs filled with feculent liquids) at them. The police had to evacuate peaceful demonstrators at the end spot via the underground system as extremist groups were severely threatening them. Several people were assaulted when trying to leave the end point of the march on their own. Police reports showed that after the 2008 Pride March 57 protesters were arrested and 12 officers were injured.[254] The report[255] of the Parliamentary Commissioner for Civil Rights found that while the police performed its duty adequately, the relevant legislation should be amended to better cater for cases where two events with opposing aims are to be organized at the same location in order to prevent violence.

In 2009, the police changed their tactics and introduced a double fence system (one right next to the route of the march, and another, one block away from the route), this fully separated the marchers and the protesters, and protesters were not able to throw things at the marchers. Clashes with the police and some sporadic attacks against participants, however, still happened. 41 protesters were arrested. Criminal proceedings were initiated against seven attackers on the basis of violence against a member of a certain social group.[256] A few days before the march László Toroczkai, a leader of an extreme right wing group published an article that called for disrupting the march. Criminal charges were pressed, and the court found him guilty of preparation to the violation of the right to freedom of association, freedom of assembly and to participate in election campaign events (Art. 174/C of the Criminal Code).[257]

In 2010, the Police did not ban the event, but tried to pressure the organisers to cancel the event in the last minute. At the preparatory meetings, the police promised to use the same fence system as used in 2009. Half an hour before the march was to start, the Chief of Police of Budapest appeared at the meeting point, and told the organisers, that the fences will not be used, it is the responsibility of the organisers to provide for the security, and it is up to the organisers whether to hold the march under such circumstances. The organisers did not cancel the event, and minutes after the decision was communicated, the police put up the fences.[258] It was clear that the police were willing to provide the protection agreed upon, but used such threats to pressure the organisers into cancelling.

In 2011, the original notification to hold a Pride march – submitted on 30 September 2010 – was initially accepted by the police. Due to the EU Presidency that Hungary held in the first half of 2011 and in opposition to the that-time only draft of the new Fundamental Law (passed in April 2011) the organisers wished to extend the route and march to the Parliament. The modification of the route was, however, rejected and the entire march was banned.[259] The reasoning of the police was detailed: they listed all the traffic lines that would have been remotely affected by the march and they concluded that it was impossible to rearrange the circulation of traffic. The organisers appealed the ban, and the Metropolitan Court quashed the decision of the Budapest Police and gave way to the Pride March.[260] The court found that the police acted unlawfully when

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[254] Origo (2008), 'Tojászáporban és könnygázban vonultak a melegek', 5 July 2008, available at: http://www.origo.hu/itthon/20080705-meleg-meltosag-menet-budapest-rendzavaras-tojaszaporban-vonultak-a-melegek.html

[255] Hungary, Parliamentary Commissioner for Civil Rights (2008), Report No. OBH 3262/2008, 7 July 2008, available in Hungarian at: https://www.ajbh.hu/documents/10180/103448/200803262.rtf

[256] Hungary, Budapest Police (*Budapesti Rendőr-főkapitányság*) (2009), Összefoglaló - számokkal (BRFK), Press release, 6 September, 2009.

[257] Hungary, Central District Court of Pest (2011), Decision no. 17. B. 80.001/2011/6, 22 March 2011. For a detailed summary, see *Toroczkai's incitement against the Pride March case* in Annex I.

[258] Pride.hu (2010), 'Megfélemlítéssel lehetetlenítette volna el a rendőrség a melegfelvonulást', 16 July 2010, available in Hungarian at: https://pride.hu/article.php?sid=3035.

[259]Hungary, Chief of the Budapest Police (*Budapesti Rendőrfőkapitány*) (2011), Decision No. 01000/37289-15/2011.Ált., 11 February 2011.

[260] Hungary, Metropolitan Court of Budapest (2011), Decision No. 27.Kpk.45.188/2011/4, 18 February 2011. For a detailed summary, see *Pride ban 2011* case in Annex I.

considering the effects of the modification on the already acknowledged original route. The procedure of the police violated the principle of legal certainty and the protection of acquired rights, in addition to Article 8 (1) of the Assembly Act. The Pride March took place without any major difficulties; however, some participants leaving the march were assaulted by the protestors. Investigations into violence against a member of the community were started, but no perpetrators were found.[261]

In 2012, the notification of the Pride organisers submitted in time was also rejected by the Budapest Police.[262] Similarly to the 2011 decision, 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 possible to rearrange the circulation of traffic. The Metropolitan Court overturned the decision of the police.[263] The court emphasised 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. The Pride March took place without any major difficulties, however, several of the participants leaving the march were verbally and physically assaulted by the protestors. In two cases the investigation was successful, and perpetrators were charged with violence against a member of a community, the court procedures in these cases are pending.

The Háttér Society (representing LGBT people via *actio popularis*) and an individual started a civil law procedure against the Budapest Police claiming that the decision to ban the Pride amounted to discrimination and harassment based on sexual orientation and gender identity. On first instance, the court agreed with the claimants and ordered the Police to refrain from such behaviour in the future. The Police appealed the decision, the case is still pending.[264]

The police also came under criticism for issuing press releases before the marches in which they called on participants to refrain from acts that violate public taste or public morals, or that may be seen as provocative acts.

The first such public statement was published by the police in 2009, in which they called on the participants "to refrain from any behaviour that could potentially harm public taste".[265] In addition to the civil society's uproar, the Commissioner for Fundamental Rights – among others – examined this issue as well in relation to the police actions taken with regard to the Pride March that year. The Head of the Budapest Police replied to the question of interpretation in the following way: "the statement aimed at ensuring that the participants respect the generally accepted norms of social behaviour and do not commit any unlawful activity." When the police issue a public statement, they try to phrase it in a way that is generally understandable for the general public and this is why they referred to public taste instead of public morals protected by the law on misdemeanours. The Commissioner heavily criticised the statement. First, it is very unfortunate and misleading to use public taste as it is not synonymous with public morals. Second, the police have no authorisation to issue such statement, thus it did not have any legal force. Despite this, it was capable of appearing as a rule, which could suggest that the participants shall

[261] Háttér Society (2012), *Submission by Háttér Support Society for LGBT People in Hungary for the OSCE ODIHR Annual report on hate crimes 2011*, 30 March 2012, available in Hungarian at: www.hatter.hu/download/file/fid/4475.
[262] Hungary, Chief of the Budapest Police (*Budapesti Rendőrfőkapitány*) (2012), Decision No. 01000/15246-6/2012.Ált., 5 April 2012.
[263] Hungary, Metropolitan Court of Budapest (2012), Decision No. 27.Kpk.45.385/2012/2, 13 April 2012. For a detailed summary, see *Pride ban 2012* case in Annex I.
[264] Hungary, Metropolitan Court of Budapest (2014), Decision No. 22.P.26.019/2012/10, 16 January 2014. For a detailed summary, see *Pride discrimination 2012* case in Annex I.
[265] Hungary, Budapest Police (2009), Közlemény - Meleg Méltóság Menete - frissítve (BRFK), Press release, 4 September 2009.

act accordingly, and this resulted in the violation of the freedom of expression and assembly.[266]

A very similar statement was issued in 2010 as well: the police not only reminded the organisers of this duty at the preliminary negotiations, but a press release was published to this effect.[267] Although the Hungarian News Agency (*Magyar Távirati Iroda*, MTI) published a similar statement in 2011 as well,[268] but they issued a correction later claiming that they have accidentally used materials from the year before, and that Police also requested a correction. The spokesperson of the Police confirmed the mistake.[269]

In 2012, first the minutes of the meeting about the proposal submitted by the organising Rainbow Mission Foundation (*Szivárvány Misszió Alapítvány*) contained warnings about public morals from the side of the police. The police officer present at the meeting drew special attention to "the offences relating to public morality and sexual morality and to the fact that in case the police noticed such crimes, they will take the necessary measures."[270] Such a warning is clearly discriminatory, as similar warnings are not made in relation to any other type of assembly. Previous Pride Marches do not substantiate the concern of the police: according to the information received from the BRFK the police did not initiate any proceeding against anyone for crimes against public morality in the past 15 years during the Pride events.[271] Two days before the Pride March the spokesperson of the police called on the participants to refrain from "provocative behaviour" in a media spot.[272] The call was criticised once again by the Commissioner for Fundamental Rights on grounds similar as in 2009.[273]

Furthermore, in 2012 at the beginning of the march the liaison officer in charge asked the organisers to remove a banner showing the following text: "Gay division of Jobbik". Jobbik is the extreme right-wing party in the Parliament often making openly homophobic comments; furthermore, this party has submitted the 'gay propaganda' amendment-proposals.[274] The request took the form of 'Information and request', a document that is officially not binding. However, the police personnel present on location warned the organisers that the float could not start if the banner was displayed. Consequently, the banner was removed before the start of the march. The Police claim that the removal of the banner was needed to prevent violent attacks against the Pride March. [275]

There have also been discussions concerning the necessity of the fences and whether the police 'overprotects' the march. Fences do secure the physical integrity of participants, however the complete isolation of the march prevents supporters of the event to join or leave it freely as participants have to join the march at the starting point and can only leave it at the end spot. Furthermore, being closed off from the city runs contrary to the idea of the Pride to create

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[266] Hungary, Parliamentary Commissioner for Civil Rights (2009), Report No. AJB 6021/2009, 17 November 2009, available in Hungarian at: http://www.ajbh.hu/documents/10180/104939/200906021.rtf..

[267] Czene, G. (2010), 'Melegfelvonulás: a rendőrség a közerkölcsöt is védi', *Népszabadság*, 9 July 2010, , available in Hungarian at: http://nol.hu/belfold/melegfelvonulas__a_rendorseg_a_kozerkolcsot_is_vedi-732381.

[268] Index (2011), 'Nagy erőkkel készül a rendőrség a melegfelvonulásra', 17 June 2011, available in Hungarian at: http://index.hu/belfold/2011/06/17/nagy_erokkel_keszul_a_rendorseg_a_melegfelvonulasra/.

[269] Telephone discussion of Tamás Dombos (Háttér Society) with the Hungarian News Agency and the Press Department of the Budapest Police on 11 July 2011.

[270] Hungary, Budapest Police (2012), Minutes No. 01000/15246-2/2012. ált. of the meeting with the Rainbow Mission Foundation, 4 April 2012.

[271] Hungary, Communications Office of the Budapest Police (*BRFK Kommunikációs Szogálat*), 2012, Letter in response to an information request by Háttér Society, 25 May 2012.

[272] Index (2012), 'Garamvölgyi: Ne provokáljanak a melegfelvonulás résztvevői', 5 July 2012.

[273] Hungary, Commissioner for Fundamental Rights (2012), Report No. AJB-5595/2012, 27 July 2012, available in Hungarian at: http://www.ajbh.hu/documents/10180/108908/201205595.rtf.[273] AJB-5595/2012.

[274] See under heading *E. Freedom of Assembly*.

[275] Index (2012), 'A rendőr sem takartathatja le a meleg jobbikos transzparenst', 9 July 2012, available in Hungarian at: http://index.hu/belfold/2012/07/09/a_rendor_sem_takartathatja_le_a_meleg_jobbikos_transzparenst/

visibility, and forces the event to take place in an emptied out urban space.

Several actors have noted that in 2007 and 2008 the police ought to have recognised the aggression of extremists appearing at the anti-gay demonstration and called upon them to discontinue the unlawful activities. Furthermore, the police ought to have dispersed the anti-gay demonstration if the aggression had not been ended. However, there were no official proceedings conducted in respect of the responsibility of the police and there were no legal or non-legal consequences of the police's conduct. In 2007 the Minister of Justice and Law Enforcement declared in an interview that according to his opinion the police "'knew what to do and secured the demonstration with appropriate force".[276] Such an opinion could explain the lack of any official investigations in this matter.

On 9 July 2007 LGBT organisations issued a statement, in which they condemned the violent acts committed in the Gay Pride March and called upon the Minister of Justice and Law Enforcement to investigate why the police had failed to protect the peaceful demonstrators.[277] The organisations received no response to the statement.

Political actors were quite divided concerning the incidents at the Pride and its banning. While condemning the attacks in 2007, Christian Democrats also added that they consider the Pride March a provocation, implying that marchers deserved the attack.[278] Ilona Ékes, an MP for the current governing party Fidesz (in opposition at the time) called for public authorities to ban the Pride March in 2009. When the march was indeed banned in 2011, the Christian Democrats welcomed the decision claiming "leisure activities for hundreds of thousands of families in the capital and providing public transportation is a public interest that outweighs the articulation of a lot smaller community".[279] The extreme right wing Jobbik have called for banning the Pride every year,[280] and some of its leaders participated at the often violent protests around the marches.[281]

On 10 April 2012 the extreme right wing party Jobbik tabled three bills banning homosexual propaganda in the Hungarian Parliament. The three bills included two amendments to the Fundamental Law that would have amended the article on freedom of assembly to revoke protection from events that "propagate disorders of sexual behaviour – especially sexual relations between members of the same-sex".[282] The proposal was voted down. Similar proposals were submitted by Jobbik in local assemblies in Budapest, in District VIII of Budapest, in Pécs,

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[276] Interview with Albert Takács broadcasted on Klubrádió. http://www.klubradio.hu/data/files/takacs_albert_melegek.mp3.
organisations[277] Meleg szervezetek nyilatkozata a büszkeségnapi támadásokról, Press release, 11 July 2007, available in Hungarian at: https://pride.hu/article.php?sid=2411

[278] Christian Democratic People's Party (*Kereszténydemokrata Néppárt*) (2007), Az SZDSZ politikai provokációja a másság ünnepe, Press release, 10 July 2007, available in Hungarian at: http://web.archive.org/web/20071018221853/http://kdnp.hu/index.php?type=cikk&cikkid=2155

[279] Magyar Nemzet (2011), 'Budapest büszke lehet a rendőrségre – a KDNP üdvözli a döntést', 16 February 2011, available in Hungarian at: http://mno.hu/migr/budapest_buszke_lehet_a_rendorsegre__a_kdnp_udvozli_a_dontest-165076

[280] Jobbik (2005), A Jobbik a melegfelvonulás betiltását kéri, 5 July 2005, available in Hungarian at: www.jobbik.hu/rovatok/kozlemeny/a_jobbik_a_melegfelvonulas_betiltasat_keri; Jobbik (2007), Tüntetés a melegfelvonuláson, 29 June 2007, available in Hungarian at: www.jobbik.hu/rovatok/kozlemeny/tuntetes_a_melegfelvonulason; Jobbik (2011), Jobbik: provokáció a szombati melegfelvonulás, 17 June 2011, available in Hungarian at: www.jobbik.hu/rovatok/budapest/jobbik_provokáció_a_szombati_melegfelvonulás; Jobbik (2013), A Jobbik kormányra kerülésével véget érnek a melegfelvonulások is, 4 July 2013, available in Hungarian at: www.jobbik.hu/hireink/jobbik-kormanyra-kerulesevel-veget-ernek-melegfelvonulasok.

[281] Index (2013), 'A Jobbik szerint jogos önvédelem volt a rendőrkutya fejbe rúgása', 9 July 2012, available in Hungarian at: http://index.hu/belfold/2012/07/09/a_jobbik_szerint_jogos_onvedelem_volt_a_rendorkutya_fejberugasa/.

[282] Hungary, Bills No. T/6719., T/6720., T/6721. available in Hungarian at: www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6719, www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6720, www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6721.

Békéscsaba and Érpatak. While all of these proposals were voted down, it is worth noting that as a response to the first proposal in the Budapest Assembly, Fidesz councillors also introduced a motion[283] to refuse granting public space permits to activities that "harm the environment, pose a health or public security risk, and marches that are obscene or cause a public indignation". The proposal was not voted on, it was revoked for further consideration and never resurfaced in the Assembly.

Statistics

In 2012 the National Police Headquarters (*Országos Rendőr-főkapitányság*, ORFK) informed the Háttér Society that the police does not collect statistics on the aims of demonstrations, and thus cannot provide data on the number of LGBTI-related freedom of assembly events.[284] Responding to a request for statistics for the current report, the police reported that five LGBTI-related demonstrations were notified to the police, the police banned three of them, two of those were successfully challenged in court.[285] The author of the report knows about several other LGBTI-related freedom of assembly events, what seems to indicate that the statistics of the police are not reliable. [286]

Case law

As noted in section A.5 there is no comprehensive and reliable case law database in Hungary. A search in the Complex Decision Archive on 3 March 2014 did not result in any relevant case law. The Complex Decision Archive contains the conceptual standpoints and actual decisions of the Curia (formerly: Supreme Court). A search in the online database of court judgments yielded some results, for example cases challenging police maltreatment of protestors (all cases failed). Interestingly, the search did not return any criminal cases against protestors, even though criminal procedures were initiated. It is not clear, whether this is because of technical difficulties with the system, or the fact that the cases initiated were never prosecuted in courts.

Of the bans issued by the police against LGBTI-related freedom of assembly events those that were challenged in front of the court were all struck down.[287] In the 2012 decision, the court used a strong language condemning the police for using the same arguments that a year before the court had already found unlawful, and ordered to police to abide by the courts' ruling. Another case was also successfully launched claiming the 2012 police decision was discriminatory and amounted to harassment based on sexual orientation, which the court agreed with (an appeal is pending).[288]

[283] Proposal available in Hungarian at: http://infoszab.budapest.hu:8080/GetTirFile.aspx?id=100982.
[284] Hungary, National Police Headquarters (2012), Letter No. 21990/8/2012/Ált. in response to an information request by Háttér Society, 21 September 2012.
[285] Hungary, National Police Headquarters (2014), Letter No. 2900/8268-5/2014.Ált. in response to an information request by the Hungarian Helsinki Committee, 28 February 2014.
[286] Hungary, National Police Headquarters (2012), Letter No. 21990/8/2012/Ált. in response to an information request by the Háttér Society, 21 September 2012.
[287] Hungary, Metropolitan Court of Budapest (*Fővárosi Törvényszék*) (2011), Decision no. 27.Kpk.45.188/2011/4, 18 February 2011; Hungary, Metropolitan Court of Budapest (2011), Decision no. 27.Kpk.45.385/2012/2., 13 April 2012.
[288] Hungary, Metropolitan Court of Budapest (2014), Decision no. 22.P.26.019/2012/10, 16 January 2014.

F. Criminal law, hate speech

F.1.Hate speech

The Hungarian legal system does not contain a general prohibition of hate speech. It only prohibits incitement against a community, the most extreme form of hate speech. Article 332 of the Criminal Code[289] (formerly Article 269 of the Criminal Code[290] provides that:

> *"A person who in front of a wider public, stirs up hatred against*
> *a) the Hungarian nation or*
> *b) a national, ethnic, racial, religious group or certain groups of the society, in particular based on disability, gender identity, or sexual orientation, is guilty of a crime and is liable to imprisonment up to three years."*

A novelty of this provision is the specific inclusion of sexual orientation and gender identity. Even though a 'certain group of the society' already – theoretically – covered these grounds as well, the specific inclusion sends a clearer message to society concerning the unacceptability of such speech. It has to be noted, however, that this provision of the Criminal Code is largely dormant (i.e. not enforced by the police and the courts) due to a very restrictive interpretation by the courts that finds incitement against a community established only if 'stirring up hatred' prompts direct and immediate violent action.[291] General racist or homophobic comments that do not reach this level of severity are not sanctioned by Hungarian criminal law.

Various civil society organisations have in recent years tried to initiate proceedings in cases of severe forms of homophobic and transphobic hate speech. The Human rights organisation Hungarian Civil Liberties Union (*Társaság a Szabadságjogokért*,TASZ) requested the police to investigate incitement against a community and violating the freedom of assembly following events that occurred before and during the 2008 Gay Pride March.[292] First, the police terminated the proceedings arguing that the incidents reported did not constitute a crime. However, after the complaint of TASZ the Budapest Prosecutor's Office ordered the police to continue the proceedings, arguing that the facts of the case had not been sufficiently established.[293]

In 2009, the Háttér Society reported an article of László Toroczkai, a well-known extremist leader published an article on a neo-Nazi website, *kuruc.info* calling for the disruption of the March. Háttér argued that the article committed several crimes, including incitement against a community, preparation to commit violence against a member of a community, and preparation to commit the violation of the right to freedom of association, freedom of assembly and to participate in election campaign events. The police dropped the charges of hate speech and preparation to commit hate crime, but did prosecute Toroczkai for preparation to commit the violation of the right to freedom of assembly for which he was found guilty, but no sanctions

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[289] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[290] Hungary, Act No. IV. of 1978 on the Criminal Code (*1978. évi IV. törvény a Büntető Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=3356.237644.

[291] Hungary, Constitutional Court (1992), Decision No. 30/1992 (V.26.), 26 May 1992, available at: http://www.mkab.hu/letoltesek/en_0030_1992.pdf; and Hungary, Constitutional Court (1999), Decision No. 12/1999 (V.21.), available at: http://www.mkab.hu/letoltesek/en_0012_1999.pdf

[292] Hungarian Civil Liberties Union (*Társaság a Szabadságjogokért*) (2009), 'Megszüntették a nyomozást a Meleg Méltóság Menetén történt támadásokkal kapcsolatban – a TASZ panasszal él', 9 February 2009, available in Hungarian at: http://tasz.hu/gyulekezesi-jog/megszuntettek-nyomozast-meleg-meltosag-meneten-tortent-tamadasokkal-kapcsolatban-tas.

[293] Hungarian Civil Liberties Union (2009), 'Folytatódik a nyomozás', 8 July 2009, available in Hungarian at: http://tasz.hu/gyulekezesi-jog/folytatodik-nyomozas.

were imposed, he was put on probation.[294]

In 2011, the Háttér Society requested from the police to investigate a case involving a group of activists affiliated with the extreme right-wing website mozgalom.org holding up signs calling for the extermination of gays (the signs showed a rope, a pink triangle referring to the persecution of gays in Nazi Germany and the words: "New treatment for the gays") at the Pride March. The police argued that the incidents did not constitute incitement against a community (Article 269). Háttér Society appealed the decision, but the Prosecution Service agreed with the police and argued that "holding up the signs might have incited hatred, but not active hatred" and thus the incident "does not reach the minimum level of criminal sanctioning".[295]

Introducing legal sanctions against less severe forms of hate speech has been on the agenda of various governments and parliaments for many years. Some of these legislative attempts also included sexual orientation and gender identity. In September 2007 the Ministry of Justice and Law Enforcement submitted to the Parliament a bill which proposed to give civil courts the power to impose sanctions that were otherwise available in cases of violation of personal rights, such as objective (establishing the infringement, refraining from the infringement, and ordering an apology) and subjective sanctions (compensation). The Bill defined hate speech as follows:

> *"(1) Personal rights are violated particularly when hate speech is directed against racial origin, national or ethnic minority membership, religious or other belief, sexual orientation, gender identity or other important features of personality and are concerning a minority community, which owns these features.*
> *(2) The perpetrator cannot allege that his/her conduct was not directly and recognisably aimed at the party or parties specified above in section (1)"*[296]

The bill was adopted by the Parliament, however, the Hungarian President declined to sign the Bill and remitted it to the Constitutional Court for 'prior constitutional control', i.e. asking the Court to examine the Bill's compliance with the Constitution.[297] The President argued that the Bill contained several provisions that appeared unconstitutional. He expressed his fears that on the basis of one expression concerned individuals could flood the courts with petitions, notwithstanding the possibility of NGOs to initiate claims as well. The President argued that:

> *"The possibility of several thousands of civil court proceedings and the amount of related compensations would circumscribe freedom of expression more than any other criminal law sanction."*

According to his submission this phenomenon would also deter other non- offending expressions that are necessary in a democratic society and thus hamper the functioning of a free public debate.

Furthermore, in its submission the President stated that the Bill would violate the principle of non-discrimination as members of the majority population were not provided legal protection, although their personal features were just as valuable as those of minority communities.

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[294] Hungary, Central District Court of Pest (2011), Decision no. 17. B. 80.001/2011/6, 22 March 2011. For a detailed summary, see *Toroczkai's incitement against the Pride March* case in Annex I.
[295] Hungary, Budapest District VI and VII Prosecution Service (*Budapesti VI. és VII. Kerületi Ügyészség*) (2012), Decision No. B. VI-VII. 5303/2011/4, 29 November 2012. For a detailed summary, see *Hateful signs at Pride 2012* case in Annex I.
[296] Hungary, Bill No. T/3719, Art. 1, available in Hungarian at: http://www.parlament.hu/irom38/03719/03719.pdf.
[297] Hungary, President of the Republic (2007), Letter No. I-2/4742-0/2007 to the Constitutional Court, 13 November 2007, available in Hungarian at: http://www.solyomlaszlo.hu/archiv/admin/data/file/2771_20071113abinditvany_ptk_modositas_gyuloletbeszed_cimerrel.pdf

The expression 'minority community' was also found problematic by the President since it did not offer an answer to who constituted a minority. A grammatical approach would consider a minority a group that is in numerical minority compared to the whole of the society, whereas an approach that more corresponds to the aims of the bill would take into account a minority group in a smaller context such as a town or region. The President believed that this feature of the Bill would be contrary to the rule of law.

Finally, according to the submission of the President the right of any legal aid (representative) organisation to public interest litigation is also unconstitutional since it contravenes the right of self-determination.

On 30 June 2008 the Constitutional Court annulled the Act on the basis of reasons identical to those presented by the President.[298]

On 18 February 2008 Parliament adopted 'abuse' (*gyalázkodás*), a new form of crime relating to hate speech. The provision inserted a new Article into the Criminal Code:

> *"(1) A person who in front of a wider public uses or spreads an expression, which, in connection with the Hungarian nation or certain groups of society, particularly national, ethnic, racial or religious groups, is capable of infringing the honour or violating the human dignity of members of those groups is guilty of a misdemeanour and is liable to imprisonment up to two years.*
> *(2) A person who in front of a wider public demonstrates a gesture – especially if it resembles or refers to an absolutist regime or idea - which is capable of infringing the honour or violating the human dignity of members of the Hungarian nation or certain groups of society, particularly national, ethnic, racial or religious groups is liable as provided in section (1).*
> *(3) A person cannot be held liable if, in connection with the public activity of a political party or societal group conducting political activities,*
> *a) uses or spreads an expression, which is capable of infringing the honour or violating the human dignity of that group of the society,*
> *b) demonstrates a gesture provided in section (2)."*[299]

At this time sexual orientation and/ or gender identity were not included. The Article did not enter into force however, as the President declined to sign this piece of legislation too and submitted it to the Constitutional Court for 'prior constitutional control.[300] On 30 June 2008 the Constitutional Court annulled the Article arguing that it would have imposed undue limitations on the freedom of expression.[301]

On 10 November 2008 the Parliament attempted once again to introduce a civil law mechanism to tackle hate speech.[302] The bill aimed to create a possibility for members of certain groups to

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[298] Hungary, Constitutional Court (2008), Decision No. 96/2008 (VII. 3.), 3 July 2008, available at: http://www.mkab.hu/letoltesek/en_0096_2008.pdf.
[299] Hungary, Act No. IV of 1978 on the Criminal Code (*1978. évi IV törvény a Büntető Törvénykönyvről*), Art. 181/A (adopted, but never entered into force), available in Hungarian at: http://www.parlament.hu/irom38/02785/02785.pdf.
[300] Hungary, President of the Republic (2008), Letter No. II-1/01170-2/2008 to the Constitutional Court, 29 February 2008, available in Hungarian at: http://www.solyomlaszlo.hu/archiv/admin/data/file/2772_20080301abinditvany_btk_modositas_gyuloletbeszed_cimerrel.pdf
[301] Hungary, Constitutional Court (2008), Decision No. 95/2008. (VII. 3.), 3 July 2008, available in Hungarian at: http://public.mkab.hu/dev/dontesek.nsf/0/FC794F16CCE9B140C1257ADA00526A21?OpenDocument.
[302] Hungary, Bill No. T/6219 on securing legal means protecting from certain severe conducts violating human dignity (*T/6219. számú törvényjavaslat az ember méltóságát súlyosan sértő egyes magatartásokkal szembeni védelem érdekében szükséges jogérvényesítési eszközök biztosításáról*), available at: www.parlament.hu/irom38/06219/06219.pdf.

combat hate speech against the group he/she belongs to. According to the bill, the personal rights of members are violated if someone publicly carries out a conduct that is offending, humiliating or frightening – either in its aim or in its effect – towards groups identified by national or ethnic origin, religious belief or sexual orientation. The defendant could be freed from sanctions if he/she is able to show that his/her conduct was not severe enough to violate the personal rights of members of protected groups. The bill stipulated that public conduct involves dissemination through media, or other mass communication means, replication and electronic communication channels. Civil suits can be initiated within 30 days after the unlawful conduct by a member of the protected group and ordinary civil law sanctions can be requested from the court. The bill explicitly covered sexual orientation but did not mention gender identity.

The bill was adopted on 10 November 2008, but the President of the Republic submitted it before its promulgation for a 'prior constitutional control' to the Constitutional Court.[303] According to the President, the Act establishes an irrefutable presumption that an offending conduct targeted towards a group 'reaches out' (*átsugárzik*) to the members of that group. He stated that:

> *"[a]ccording to the Act it is not possible to refute this presumption since the defendant cannot challenge either the existence of a connection between the plaintiff and the protected group or the nature, intensity and depth of that connection. The justification of the defendant can only regard the severity of the unlawful conduct. However, without examining the above circumstances the gravity of the conduct cannot be assessed."*

The Constitutional Court has not delivered a decision in the case yet, but since then a new Civil Code[304] was adopted the petition has become outdated.

The series of failures at the Constitutional Court prompted the legislator to use its two-thirds majority and alter the balance of freedom of expression and human dignity in the Fundamental Law. As part of the Fourth Amendment to the Fundamental Law[305] the following new provisions were adopted:

> *"(4) The exercise of one's right to free expression cannot be aimed at violating other persons' human dignity.*
> *(5) The exercise of one's right to free expression cannot be aimed at violating the dignity of the Hungarian nation or the dignity of any national, ethnic, racial or religious group. Members of such groups are entitled to turn to court as defined by an Act against the expression violating the group in order to enforce their claim related to the violation of their human dignity."*

The amendment on the one hand contains a general provision not specifying any protected characteristic, while the latter provision contains a closed list of communities (national, ethnic, racial or religious communities) entitled to launch legal procedure, thus homophobic and transphobic speech is not covered. The new Civil Code[306] that will enter into force on 15 March 2014 contains the details of such legal procedures, and similarly to the Fundamental Law, is not

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[303] Hungary, President of the Republic (2008), Letter No. II-1/04960-1/2008 to the Constitutional Court, 26 November 2008, available at: www.solyomlaszlo.hu/archiv/admin/data/file/2769_20081126abinditvany_gyuloletbeszed_2008_nov_cimerrel.pdf

[304] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[305] Hungary, Fourth Amendment to the Fundamental Law of Hungary (*Magyarország Alaptörvényének negyedik módosítása*), available at: www.kormany.hu/download/3/90/d0000/20130312%20Fourth%20Amendment%20to%20the%20Fundamental%20Law.pdf.

[306] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

inclusive of sexual orientation or gender identity:

> *"In the event of any legal injury made before great publicity, to some essential trait of his or her personality, in relation to him or her belonging to the Hungarian nation or to some national, ethnic, racial or religious community, severely offensive to the community or unreasonably insulting in its manner of expression, any member of the community is entitled to enforce his or her personality right within a thirty-day term of preclusion from the occurrence of the injury. With the exception of surrendering the material advantage achieved through the infringement, any member of the community may enforce any sanction of the infringement of personality rights."*[307]

Even in the absence of an additional legal provision on hate speech there is a possibility to challenge such expressions by the means of civil law. An *actio popularis* claim[308] can be initiated in a civil proceeding or before the Equal Treatment Authority on the ground of harassment as provided by the Equal Treatment Act, which defines harassment as conducts of sexual or other nature related to protected grounds (e.g. sex, ethnic origin, sexual orientation, gender identity) with the purpose or effect of violating human dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment.[309] In such proceedings harassment might be established on the basis of homophobic or transphobic comments as they could be capable to create an humiliating or hostile environment. So far this possibility has been tested only in cases of hate speech in respect of the Roma community,,[310] and the courts were – so far – not very open to such use of the ETA provisions, however, the court procedures are still pending.[311]

Another legal remedy to be used for hate speech transmitted over the media is the media law.

Article 14 (1) of the Media Constitution[312] 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."*

There is one known case where the media authority (then called: National Radio and Television Commission (*Országos Rádió és Televízió Testület*, ORTT), now called National Media and

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[307] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), Art. 2:54 (5), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[308] See under heading "A.3. Equality body" of the present report.

[309] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 10 (1*)*, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015.

[310] Hungary, Equal Treatment Authority (2009), Decision No. EBH/1475/6/2009, 30 September 2009; and Hungary, Equal Treatment Authority (2010), Decision No. EBH/187/1/2010, 19 January 2010.

[311] Hungary, Supreme Court (2010), Decision No. Kfv.II.37.551/2010/5, 16 March 2011; and Supreme Court (2010), Decision No. Kfv. III. 39.302/2010/8, 15 December 2011.

[312] Hungary, Act No. CIV of 2010 on the freedom of the press and the fundamental rules on media content (*2010. évi CIV. törvény a sajtószabadságról és a médiatartalmak alapvető szabályairól*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=132460.256038.

Infocommunications Authority (*Nemzeti Média- és Hírközlési Hatóság*, NMHH) established that a media provider incited hatred against members of the LGBTI community. The television programme in question was a talk show with several guest discussing the Pride march. The guest categorised homosexuality as a deviant behaviour, and Pride as an event glorifying deviancy. Another guest also expressed opinions such as recognising same-sex relationships would lead to the decomposing of the society and lesbian and gay people are like 'cancer cells'. The decision was originally delivered in 2009, but a long legal battle in the form of its judicial review took years, and ended in a new decision being delivered by NMHH still finding a violation, but significantly reducing the penalty (from suspension for 90 minutes to a fine of HUF 200,000).[313]

NMHH informed the author of the current report that between 2010 and 2013 the Authority received only one complaint concerning homophobic or transphobic hate speech, but the complaint was refused as it concerned a comment on a website, which is not edited content and the publisher cannot be held liable.[314] It is worth noting that the Internet Hotline (http://internethotline.hu/) operated by NMHH to collect complaints about unlawful internet content does not contain a section where homophobic or transphobic hate can be reported, while there is a specific section for reporting racist and xenophobic content. In the same letter the NMHH also informed us that they introduced the monitoring of the representation of LGBTI people in news programming as part of their regular diversity monitoring program, and the first report covering the period July–December 2013 was to come out soon, The report was indeed published in March 2014,[315] but it still does not include the monitoring of LGBTI people's representation.

F.2.Homophobic violence

Article 216 of the new Criminal Code[316] that entered into force on 1 July 2013 (formerly Article 174/B. of the Criminal Code)[317] contains a *sui generis* hate crime provision called violence against a member of a community:

> *"(1) The person who displays an ostensively 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*

[313] Hungary, National Radio and Television Commission (2009), Decision No. 2005/2009 (XII.16.), 16 December 2009. For a detailed summary, see *Echo TV case* in Annex I.
[314] Hungary, National Media and Infocommunications Authority (2014), Letter No. 4604-2/2014 in response to an information request by the Hungarian Helsinki Committee, 24 February 2014.
[315] Hungary, National Media and Infocommunication Authority (2014), *Társadalmi sokszínűség a hír- és politikai magazinműsorokban (2013. július 1. – 2013. december 31)*, 9 April 2014, available in Hungarian at: http://mediatanacs.hu/dokumentum/162875/tarsadalmi_sokszinuseg_2013_2.pdf
[316] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.
[317] Hungary, Act No. IV of 1978 on the Criminal Code (*1978. évi IV törvény a Büntető Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=3356.237644.

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."

A novelty of this provision is the specific inclusion of sexual orientation and gender identity. Even though a 'certain group of the society' already – theoretically – covered these grounds as well, the specific inclusion sends a clearer message to society concerning the unacceptability of such forms of behaviour.

This provision has undergone significant developments in the past few years. Until 2009, the same provision was called violence against a member of a national, ethnic, racial or religious community, and did not cover homophobic or transphobic hate crimes. After the attack of the participants of the 12th Lesbian Gay Bisexual Transgender Film and Cultural Festival[318] on 07 July 2007 in a joint statement eleven NGOs condemned the attacks and requested the Government to initiate the reviewing of Article 174/B of the Criminal Code regulating violence against a member of a national, ethnic or religious minority so as to include violence against the LGBT community. They argued that the Article should cover violent acts committed because of someone's sexual orientation, gender identity or belonging to another social group. The Government did not react to the statement.

A similar joint statement was issued in 2008 as well, and this time it prompted response by the government. The NGOs stated that without such regulation perpetrators of homophobic violence thus could only be held liable for less serious conducts such as disorderly conduct or causing bodily harm. The criminal proceedings initiated after the attack on the 12th Lesbian Gay Bisexual Transgender Film and Cultural Festival illustrated this practice as perpetrators were accused of disorderly conduct.[319]

Partly owing to the attacks against the Pride Marches the Parliament adopted the amendment of the Criminal Code's Article 174/B regulating violence against a member of a national, ethnic or religious minority. From 1 February 2009 Article 174/B referred to the crime 'violence against a member of a community'. The Article provided that such crime occurs when an individual "injures or with threats or violence forces another to do something, to refrain from doing something or to endure something on the basis of his/her real or perceived belonging to a national, ethnic, racial, religious group or certain groups of the population." The main novelty of the new text of Article 174/B was the term 'certain groups of the population', which in theory could refer to the LGBT community.

Two further developments are worth noting: first, that in 2011, following anti-Roma incidents in

[318] See under heading *E. Freedom of assembly*.
[319] Hírszerző (2007), 'Tojással mentek neki a melegeknek - vádat emeltek a rendzavarók ellen', 16 November 2007, available in Hungarian at: https://web.archive.org/web/20070515162023/http://www.hirszerzo.hu/cikk.tojassal_mentek_neki_a_melegeknek_-_vadat_emeltek_a_rendzavarok_ellen.49659.html

a small village called Gyöngyöspata, Article 174/B was extended[320] to also cover less severe forms of hate crimes, i.e. when no assault or coercion happen, but where the perpetrator commits on ostensively anti-communal conduct against another person because that person belongs to a certain social group (see paragraph 1 of the current provision above). Finally, as described above, as part of the adoption of the new Criminal Code in June 2012, sexual orientation and gender identity were included in the relevant provisions of the Code.

Violence against a member of a community is not the only crime where hate motive can be taken into consideration: the Criminal Code prescribes harsher penalties for murder, causing bodily harm, violation of personal liberty, libel, unlawful detention and insult of a subordinate[321] if the crime was committed with a so-called 'base reason'. In 1995 the Supreme Court interpreted 'base reason' as to include motivation based on the victim's belonging to an ethnic, national, racial or religious community, thus the bias on these grounds shall be considered as an aggravating factor.[322] In some cases the courts have also referred to homophobic motive as a 'base reason', the first such case known concerned a case of assault in 2005, where homophobic motive was recognised as base motive[323] (at the times this was the only option, since Article 174/B not yet covered sexual orientation or gender identity). A similar reasoning was put forward in a recent court decision concerning a homophobic murder.[324]

It has to be noted, that the enforcement of Article 216 (formerly: Article 174/B) is still problematic, in many cases with a bias motive the authorities still fail to investigate and prosecute the crime based on the appropriate provision of the Code. For example in 2012, the police and prosecution decided that the fact that perpetrators where consistently using homophobic slur against a gay male victim was not enough to establish hate motivation, as such swearwords are commonly used by everyday people under alcoholic influence.[325] The police so far have also been quite reluctant to use Paragraph 1 of Article 216 in relation to homophobic and transphobic cases. E.g. in 2012 the police and the prosecution decide that the marching by extreme right wing groups up and down in front of a summer camp organised for LGBTI people and singing songs about the potential burning down of the site did not amount to antisocial intimidating behaviour, and thus no crime was committed.[326] Several of the reports concerning the intimidating behaviour by protestors at Pride Marches were also reported, but the police refused to investigate most of these reports claiming no crime was committed.[327] There seems to be a positive shift in the police practice most recently: in two cases concerning similar intimidating behaviour at the Pride March in 2012 the prosecution decided to press charges against perpetrators.[328]

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[320] Hungary, Act No. XL of 2011 amending Act No. IV of 1978 on the Criminal Code (*2011. évi XL. törvény a Büntető Törvénykönyvről szóló 1978. évi IV. törvény módosításáról*), available in Hungarian at: http://kozlony.magyarorszag.hu/hivatalos-lapok/f5c94869b7e914355bbfd29a2095573c943449e6/dokumentumok/90aa7b11ce3226582da904ea545c7acbf7e3c3cf/letoltes

[321] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Arts. 160, 164, 194, 226, 304 and 449, respectively, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[322] BH 1995.261 (Published summary of court decisions).

[323] Utasi, Judit (2012), 'A gyűlölet-bűncselekmények elemzése – esettanulmányok I–II.', In *Belügyi Szemle*, Issue No. 1–2.

[324] Hungary, Debrecen City Court (*Debreceni Városi Bíróság*) (2013), decision No. 25.B.48/2013/23, 18 October 2013. For a detailed summary, see *Homophobic murder case* in Annex I.

[325] Hungary, Budapest District VI. Prosecution Service (*Budapest VI. Kerületi Ügyészség*) (2012), Decision No. B. VI-VII. 3541/2012/2, 23 July 2012. For a detailed summary, see *Lövölde tér homophobic assault case* in Annex I.

[326] Hungary, Komárom Prosecution Service (*Komáromi Városi Ügyészség*) (2012), Decision no. B. 1439/2012/1, 29 August 2012. For a detailed summary, see *Kisigmánd summer camp case* in Annex I.

[327] Hungary, Budapest District VI and VII Prosecution Service (*Budapesti VI. és VII. Kerületi Ügyészség*) (2012), Decision No. B. VI-VII. 5303/2011/4, 29 November 2012. For a detailed summary, see *Hateful signs at Pride 2012 case* in Annex I.

[328] Hungary, Pest Central District Court (*Pesti Központi Kerületi Bíróság*), Case No. 19 B. 33 334 / 2013 (pending); and Hungary, Budapest Chief Prosecution Service (*Fővárosi Főügyészség*) (2014), Vádemelés a Budapest Pride

According to experience of NGOs offering legal aid to victims of hate crimes it happens often that the police only start treating the incidents as hate crimes if the victim is represented by a lawyer or an NGO, or when civil society organisations start publishing press releases.[329] Such was the case in 2009 when the police started investigating a case involving the beating of a woman wearing the T-shirt of the March as disorderly conduct (*garázdaság*), a crime which is punishable with lighter sanctions.[330] Similarly, it was only after several interviews with the media, and employing a lawyer that the case of three gay male participants (two of them Roma as well) beaten up when leaving the Pride March in 2013 was taken seriously.[331] In August 2013, when a group of young gay men were threatened with a baseball bat after kissing in front of a shop during the night, the police arriving on the spot threatened the victims that if they plan to carry on with the case they can also be charged with indecent behaviour.[332] The criminal investigation as well as a complaint procedure concerning the conduct of the police is still pending.[333]

F.3.Statistics and case law

Statistics

Until 1 July 2013 homophobic and transphobic hate crime cases were lumped together with other bias motivate crimes in the category of 'a group of society' in the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (*Egységes Nyomozóhatósági és Ügyészségi Bűnügyi Statisztika*, ENYÜBS) system. New code words of sexual orientation and gender identity were introduced with the entry into force of the new Criminal Code, but not enough time has passed yet to have reliable data in the system (crimes are only entered in the system when the investigation is closed or suspended, so no data is available on ongoing investigations. Unfortunately if a crime does not fall into the category of violence against a member of a community or incitement against a community (such as homicides or stalking), homophobic and transphobic incidents cannot be disaggregated from regular crimes or crimes committed with another base reason. Interestingly, both the Office of the Prosecutor General (*Legfőbb Ügyészség*, LÜ)[334] and National Police Headquarters[335] responded to our information request arguing that data is not collected at all on type of bias motive (protected ground), which has not been true for race, ethnicity, nationality and religion before, and since July 2013 is no longer true for sexual orientation or gender identity. The National Police Headquarters later modified their opinion claiming they do not have data on sexual orientation and gender identity related hate crimes, because marking those categories is optional (while race, ethnicity, nationality and religion are compulsory). Both authorities only provided data on hate crimes and hate speech in general. The National Office for the Judiciary (*Országos Bírósági Hivatal*, OBH) responded that they do not disaggregate cases based on the victims groups, and thus cannot

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felvonulás résztvevőit zaklató férfi ellen, Press release, 21 February 2014, available in Hungarian at: http://mklu.hu/hnlp14/wp-content/uploads/sajto1/2014/02/2014.02.21-fovaros-vademeles-a-budapest-pride-resztvevoit-zaklato-ferfi-ellen.pdf

[329] Otherness Foundation (2014), *Hate crimes in Hungary, Problems, recommendations, best practices*, p. 12, available at: www.neki.hu/gyuloletbuncselekmenyjelentes.

[330] Hungarian Civil Liberties Union (2010), 'Nem garázdaság, közösség tagja elleni erőszak – rendőrséghez fordul a TASZ a megvert nő ügyében', 7 September 2009, available at: http://tasz.hu/gyulekezesi-jog/nem-garazdasag-kozosseg-tagja-elleni-eroszak-rendorseghez-fordul-tasz-megvert-no.

[331] Hungary, Budapest Police, Case No. 01000/2183/2013. bü. (pending).

[332]. Hungary, Budapest Police, Case No. 01000/2676/2013. bü. (pending).

[333] Hungary, Independent Police Complaint Commission (*Független Rendészeti Panasztestület*), Case No. FRP 637/2013/Pan. (pending).

[334] Hungary, Office of the Prosecutor General (2014), Letter No. Ig. 106/31/2014. Legf. Ü. szám LFIIGA//254-2/2014. in response to an information request by the Hungarian Helsinki Committee, 28 February 2014.

[335] Hungary, National Police Headquarters (2014), Letter No. 2900/8268-5/2014. Ált. in response to an information request by the Hungarian Helsinki Committee, 28 February 2014.

provide statistics on sexual orientation or gender identity related hate speech and hate crimes cases.[336] the statutory deadline. The National Media and Infocommunications[337] reported that they received only one complaint related to sexual orientation and gender identity between 2010 and 2013.

Case law

As noted in section A.5 there is no comprehensive and reliable case law database in Hungary. A search in the Complex Decision Archive on 3 March 2014 did not result in any relevant case law. The Complex Decision Archive contains the conceptual standpoints and actual decisions of the Curia (formerly: Supreme Court). A search in the online database of court judgments did not yield any relevant results, but based on literature review and cases of the legal aid service of the Háttér Society several relevant cases were identified.[338]

The fact that no homophobic or transphobic hate speech cases prosecuted under Article 332 (formerly Article 269) of the Criminal Code (incitement against a community) could be identified confirms a general trend in Hungary that this provision of the Criminal Code is severely under-enforced. Constitutional Court decisions have created such a restrictive understanding of this provision, that it is nearly impossible to apply it to any real life example; the police and the prosecution service stops any investigation, and the cases do not even reach the court. To illustrate this, according to the National Police Headquarters, in 2012 45 investigations on incitement to violence were started, only five of which were found to be crimes and the perpetrators were only found in two of those cases. In all the cases of homophobic or transphobic hate speech that were reported to the police, the same pattern appeared, i.e. the investigation was declined or was started but closed later claiming that no crime had been committed.[339] Interestingly, progress was made to bring justice in some of those cases by using other crimes in the Criminal Code (namely preparation to commit violence against a member of a community, and preparation to commit violation of the right to freedom of association, freedom of assembly and to participate in election campaign events).[340]

A positive shift can be noticed in case law concerning the media: while in the early 2000s media reports inciting hatred against LGBTI people were only found to be infringing on the duty to report objectively, in 2009 ORTT found a similar TV-programme not only violating the duty to report objectively, but also of inciting hatred against LGBT people. After a long legal debate, NMHH (established in 2011 to take the place of ORTT) maintained the content of the earlier decision, however, decreased the sanction considerably.[341] There have been no cases since then to assess whether the 2009 decision to treat LGBT people as a minority against which incitement to hatred is not allowed is a sustained legal development, or whether it would remain an isolated

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[336] Hungary, National Office for the Judiciary (2014), Letter no. 2014.OBH.XX.T.6.7/2 in response to an information request by the Hungarian Helsinki Committee, 11 March 2014.
[337] Hungary, National Media and Infocommunications Authority (2014), Letter No. 4604-2/2014 in response to an information request by the Hungarian Helsinki Committee, 24 February 2014.
[338] See Annex I.
[339] Hungary, Budapest District XIV and XVI Prosecution Service (*Budapesti XIV. és XVI. Kerületi Ügyészség*) (2012), Decision no. B. 8027/2012/3-I, 25 October 2012; Hungary, Budapest District VI and VII Prosecution Service (2011), Decision No. B. VI-VII. 5303/2011/4, 29 November 2012; Hungary, Budapest District VIII Prosecution Service (*Budapest VIII. Kerületi Ügyészség*) (2010), Decision No. 6266/2010/2, 3 December 2010; and Hungary, Central District Court of Pest (2011), Decision no. 17. B. 80.001/2011/6, 22 March 2011. For detailed summaries, see cases *Deres.tv, Hateful signed at Pride 2012, Desecration of the grave of Kertbeny, Toroczkai's incitement against the Pride March* in Annex I.
[340] Hungary, Budapest District XIV and XVI Prosecution Service (*Budapesti XIV. és XVI. Kerületi Ügyészség*) (2012), Decision no. B. 8027/2012/3-I, 25 October 2012; and Hungary, Central District Court of Pest (2011), Decision no. 17. B. 80.001/2011/6, 22 March 2011. For detailed summaries, see cases *Deres.tv, Toroczkai's incitement against the Price March* in Annex I.
[341] Hungary, National Radio and Television Commission (2009), Decision No. 2005/2009 (XII.16.), 16 December 2009. For a detailed summary, see *Echo TV case* in Annex I.

decision.

Concerning hate violence, the situation is somewhat different. While it has been possible to prosecute homophobic and transphobic hate crimes under Article 174/B (now Article 216) of the Criminal Code (violence against a member of a community) since February 2009, the first such case to reach the court was only prosecuted very recently and thus no court decisions have been delivered yet. The reason for that is that in all known assault cases reported to the police, the police was not able to identify the perpetrator, and thus there was no prosecution. There are, however, now several cases regarding incidents after the 2012 and 2013 Budapest Pride Marches where court hearings are on the way.[342]

For cases not fitting under 'violence against a member of a community' (either because they happened before the amendment to the legislation in 2008, or because of acts not covered by that article, such as homicide) homophobia has been recognized as a base motive leading to higher sanctions in several cases.[343]

[342] Hungary, Pest Central District Court (*Pesti Központi Kerületi Bíróság*), Case No. 19 B. 33 334 / 2013 (pending); and Hungary, Budapest Chief Prosecution Service (*Fővárosi Főügyészség*) (2014), Vádemelés a Budapest Pride felvonulás résztvevőit zaklató férfi ellen, Press release, 21 February 2014, available in Hungarian at: http://mklu.hu/hnlp14/wp-content/uploads/sajto1/2014/02/2014.02.21-fovaros-vademeles-a-budapest-pride-resztvevoit-zaklato-ferfi-ellen.pdf

[343] Hungary, Central District Court of Pest (*Pesti Központi Kerületi Bíróság*) (cited by Judit Utasi (2012): A gyűlölet-bűncselekmények elemzése – esettanulmányok I-II. [Analysing hate crimes – Case-studies I–II.] In *Belügyi Szemle*, Issue no. 1–2.) and Hungary, Debrecen City Court (2013), Decision No. 25.B.48/2013/23, 18 October 2013. For detailed summaries, see cases *Homophobic assault* and *Homophobic murder* in Annex I.

G. Transgender issues

The legal situation of transgender persons is quite ambivalent in Hungary: although Hungary was the first country in Europe to introduce gender identity as an autonomous ground in its national ant-discrimination legislation,[344] and since 2013 criminal law provisions on hate speech and hate crimes also specifically refer to gender identity,[345] there is still no legislation on legal gender recognition, and access to gender reassignment is severely restricted due to a statutory limit on the coverage of gender reassignment treatments by the public health insurance system.[346]

In spite of no legal regulation on legal gender recognition, a procedure introduced in the 2002 to change the name and amend the sex in the birth certificate has been applied consistently.[347] The procedure is based on Article 32 d) of the law decree on registries which prescribes that if the sex of the child is altered the relevant birth certificate entry has to be corrected.[348] As regards the procedural rules of legal gender recognition the law decree does not prescribe any specific rules. The Act regulating the procedural rules of administrative authority proceedings states however that this piece of legislation is applicable in authority registry proceedings.[349] Since the birth certificate procedure is such a proceeding the general rules of administrative proceedings can be applied in cases of gender recognition as well.

There are no legal provisions that regulate what evidence can be accepted in support of "having the sex of the child altered". According to the fundamental principle of administrative proceedings authorities are free to judge the value of evidence and enjoy certain discretion in this regard.

In 2009, the Ministry of Justice and Law Enforcement launched a working group to create legislation on legal gender recognition. A preparatory document was prepared by the staff of the Ministry that outlines the procedure as follows:The request to change one's name and sex should be submitted to the Department of Registries and Administrative Matters of the Ministry of Justice and Law Enforcement (now called Ministry of Public Administration and Justice).). The request should be accompanied by an expert opinion from a forensic psychologist or psychiatrist and a medical record from an urologist or gynaecologist. The medical opinions are submitted to the Ministry of Health (now the Department of Health Policy of the Ministry of Human Resources) who – as a quasi professional authority – evaluate the medical documentation, and either recommends or does not recommend the registration of the change of gender. The Ministry then informs the local registry office to amend the birth certificate. The request is handled as part of an administrative procedure lasting no more than 60 days (30 days for the basic procedure, and 30 days for the expert procedure). The formal act of legal gender recognition is the decision of

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[344] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 8 n)*, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[345] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Arts. 216 and 332, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[346] Hungary, Act No. LXXXIII of 1997 on mandatory health insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), Art. 23 k), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30386.255766.

[347] The summary of the procedure is based on the following document: Hungary, Ministry of Justice and Law Enforcement (2009), *Az ember nemének megváltoztatásával kapcsolatos jogi szabályozás*. The document is a working paper prepared by the Ministry in the framework of the working group set up to draft a legislation on legal gender recognition.

[348][348] Hungary, Law Decree No. 17 of 1982 on registries, marriage procedure and bearing names (*1982. évi 17. törvényerejű rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*), Article 32 d), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=5276.242620.

[349] Hungary, Act No. CXL of 2004 on the general rules of administrative procedures and services (*2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól*), Art. 12 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=85989.256023.

the local registrar to amend the registry. Members of TransVanilla Transgender Association confirmed that this procedure is consistently used ever since.

The procedure does not require sterilisation, or any medical intervention as a prerequisite of legal gender recognition, only majority age, a medical diagnosis of transsexualism and being single is required to initiate the procedure. In a response to a letter of inquiry sent to the Ministry of Public Administration and Justice, the Ministry acknowledged that there is no legal basis for denying minors legal gender recognition in case their parents are supportive, they noted that requests for change of sex and name are "typically submitted by persons of majority age, there are no special rules for minors in registry legislation".[350]

The requirement to be single was introduced in 2009. Article 32 (3) of the law decree on registries[351] currently reads as the following:

> *"Registering the change of gender shall be refused if the person concerned is legally married or in a registered partnership."*

As part of the various drafts of the Civil Code, a proposal was made to abolish the divorce requirement and switch to a regime of automatic dissolution of marriage / registered partnership with an option to "convert" it to registered partnership / marriage. The Family Code in force before March 2014[352] did not recognise gender reassignment as a reason of terminating marriage, only death of a spouse and court termination is recognised.[353] The new Civil Code adopted in 2009, which never entered into force, explicitly mentioned this reason of terminating marriages.[354]

The Háttér Society expressed its concerns towards the Government in connection with the future rules. It suggested that

> *"a transgender person and his/her spouse should have the right to declare whether they want to continue living together. If they do not, then the marriage terminates and the spouses can initiate a separate court procedure in order to settle the various financial issues, child supervision rights and other questions. If the spouses want to continue living together the marriage would alter to a registered partnership and the starting date of marriage would qualify as the starting date of the partnership. In this way, it could be avoided that the spouses do not receive certain benefits that are dependent of the length of mutual cohabitation (i.e. widower's pension)."*[355]

The Háttér Society also expressed its concerns in connection with the legal rule that intends to automatically terminate registered partnerships in case of gender reassignment. According to the organisation such a rule contradicts the right of self-determination and is not reasonable since

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[350] Hungary, Ministry of Public Administration and Justice (2014), Letter No. XVII/102/3/(2014) in response to an information request by the Hungarian Helsinki Committee, 25 February 2014.

[351] Hungary, Law Decree No. 17 of 1982 on registries, marriage procedure and bearing names (*1982. évi 17. törvényerejű rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=5276.242620.

[352] Hungary, Act No. IV of 1952 on marriage, family and guardianship (*1952. évi IV. törvény a házasságról, a családról és a gyámságról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=308.232505.

[353] Hungary, Act No. IV of 1952 on marriage, family and guardianship (*1952. évi IV. törvény a házasságról, a családról és a gyámságról*), Art. 17 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=308.232505.

[354] Hungary, Act No. CXX of 2009 on the Civil Code (*2009. évi CXX. törvény a Polgári Törvénykönyvről*), Art. 3:21 (1) c) (adopted but never entered into force), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=125917.181317.

[355] Háttér Society (2008), A Háttér Társaság a Melegekért véleménye az új polgári törvénykönyv tervezetének transzszexuálisokat érintő szabályai kapcsán, 28 January 2008, available Hungarian at: www.hatter.hu/kiadvanyaink/a-hatter-tarsasag-a-melegekert-velemenye-az-uj-polgari-torvenkonyv-tervezetenek-transzs.

parties of registered partnerships (according to the legislation at the time, which was later annulled by the Constitutional Court) can be of different sexes.

As a response to these concerns the government introduced a new provision that stipulated that if parties of the marriage enter into registered partnership with each other within 90 days after the termination of marriage, the period of marriage and same sex partnership is regarded as a perpetual interval in respect of rights that are connected to a certain duration of marriage or registered partnership. In conformity with the 'automatic termination' paradigm, the Act on Registries[356] adopted in 2010 did not contain the requirement to be single. An amendment was also adopted to the Civil Procedure Act,[357] which declared that in case a marriage is automatically terminated because the gender of a spouse changes, and the partners do not enter into registered partnership subsequently, the partners have to initiate a court proceeding to settle parental authority and property-related questions. Parental authority refers to which parent has the right to make decisions concerning the child. Not having parental authority does not mean that the parent-child relationship ceases to exist, a parent not having parental authority still appears in the birth certificate and the child inherits from the parent. If they fail to initiate such a procedure, the Guardianship Office starts the proceeding *ex officio*. The provision implies that in case the partners continue their marriage in the form of registered partnership, parental authority of both parents is left untouched.

The Civil Code adopted in 2009 never entered into force, the new government that came into power in 2010 drafted a new Civil Code, which was adopted by the Parliament in February 2011.[358] This version of the Code does not contain the change of sex a reason for terminating marriage. The related amendments to the Civil Procedure Act were also revoked. In December 2013 the requirement to be single was reintroduced[359] in its earlier form to the Act on Registries. The author of the report requested data from the Ministry of Justice and Public Administration on how many people this provision might impact (asking questions on the number of requests for legal gender recognition that are rejected because the applicant is not single, and on the partnership history of applicants), but the Ministry responded they have no such data.[360]

Regarding the situation of children following legal gender recognition there is one provision in the Law decree on registries, which states that:

> *"The change of the name of the parent shall not be registered in the birth registry of the child if the change of name has been registered in relation to the change of gender."*[361]

At a meeting of the working group set up to draft a legislation on legal gender recognition (see next paragraph), a representative of the Ministry of Social Affairs and Labour brought up the

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[356] Hungary, Act No. I of 2010 on registry procedure (*2010. évi I. törvény. az anyakönyvi eljárásról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=129886.242811.

[357] Hungary, Act No. XV of 2010 on the entry into force and implementation of Act No. CXX of 2009 on the Civil Code (*2010. évi XV. törvény a Polgári Törvénykönyvről szóló 2009. évi CXX. törvény hatálybalépéséről és végrehajtásáról*), Art. 84, *available in Hungarian at:* http://njt.hu/cgi_bin/njt_doc.cgi?docid=130782.239988.

[358] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[359] Hungary, Act No. CCXVIII of 2013 on creating government windows and amending certain acts related to the operation of county and Budapest government offices (*2013. évi CCXVIII törvény a kormányablakok kialakításával, valamint a fővárosi és megyei kormányhivatalok működésével összefüggő egyes törvények módosításáról*), available in Hungarian at: http://kozlony.magyarorszag.hu/hivatalos-lapok/4c9bd860386512bebbd2f96dd014de94d35fffc1/dokumentumok/8d9ba663292ac7cd151e09c50ad258fa07c38657/letoltes.[359] Hungary, Act no. CCXVIII of 2013 (*2013. évi CCXVIII törvény*)

[360] Hungary, Ministry of Public Administration and Justice (2014), Letter No. XVII/102/3/(2014) in response to an information request by the Hungarian Helsinki Committee, 25 February 2014.

[361] Hungary, Law Decree No. 17 of 1982 on registries, marriage procedure and bearing names (*1982. évi 17. törvényerejű rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*), Art. 32 (4), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=5276.242620.

issue of children after legal gender recognition and confirmed that it should not have impact on the parental authority of the parent whose gender changes.[362] TransVanilla Transgender Association reported a case of a trans man who was threatened by a local registrar that changing his gender would negatively affect his parental authority, but the registrar pursued no legal action.[363]

While the requirement to divorce and to be at least 18 years old have been criticised by LGBTI rights organisations, the speed of the procedure and the fact that no medical interventions are forced on applicants is exemplary. On the other hand, the fact that such an important fundamental rights issue is handled in this semi-formal way, and the procedure is not codified carries the risk of arbitrariness and does not provide enough transparency to those seeking gender recognition. The working group mentioned earlier set up by the government in 2009 to draft a proper legislation was terminated without any draft being published.

A parallel procedure on drafting and adopting a professional (medical) protocol on diagnosing and treating transsexual people was also initiated in 2009, and a draft protocol was circulated in 2011, but it has not been officially adopted yet. In a letter[364] to the author of this report the Ministry of Public Administration and Justice explained that the reason for the delay was that the adoption of a new legislation on the adoption and content of medical protocols[365] requires further work on the draft. On the other hand, the Ministry of Human Resources[366] reported that the preparation of the diagnostic protocol was completely stopped, as the Psychiatry and Psychotherapy Section and Council of the Professional College for Health, a consultative forum of the Ministry delivered an opinion according to which transsexualism cannot be considered a mental disorder and thus there is no need for such a protocol.

As opposed to the relatively progressive practice on legal gender recognition, access to gender reassignment treatments is severely limited by a lack of financial support for these services. The Act regulating the services of the compulsory health insurance scheme states that an operation that aims to change a person's primary sex characteristics is only partially financed by the social health insurance scheme, unless the aim is to create primary sex characteristic in line with the genetic sex following a developmental disorder.[367] The governmental decree determining the fees of various medical interventions provides that the patient has to cover 90 % of the fee in case of an operation that aims to change one's primary sex characteristics.[368] This is a highly questionable approach since gender reassignment treatments are directed to alter one's sex so as to correspond to his/her real gender identity. Financial burdens can hamper this process to a great extent. It would be justified to fully cover the expenses of such operations.

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[362] Hungary, Memo of the meeting held on 29 September 2009 in the Minsitry of Justice and Law Enforcement.

[363] 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*, 29 January 2013, p. 156–157, available at: http://en.hatter.hu/publications/coe-report

[364] Hungary, Ministry of Public Administration and Justice (2014), Letter No. XVII/102/3/(2014) in response to an information request by the Hungarian Helsinki Committee, 25 February 2014.

[365] Hungary, Decree 18/2013. (III. 5.) of the Minister of Human Resources on developing and compiling diagnostic and therapeutic protocols and of uniform rules on the professional consultation of such protocols (*18/2013. (III. 5.) EMMI rendelet a vizsgálati és terápiás eljárási rendek kidolgozásának, szerkesztésének, valamint az ezeket érintő szakmai egyeztetések lefolytatásának egységes szabályairól*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159268.238200.

[366] Hungary, Ministry of Human Resources (2014), Letter no. 12460-7/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 12 March 2014.

[367] Hungary, Act No. LXXXIII of 1997 on mandatory health insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), Art. 23- k), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30386.255766.

[368] Hungary, Government Decree No. 284/1997. (XII. 23.) on fees payable for certain health care services which can be provided at a fee (*284/1997. (XII. 23.) Korm. rendelet a térítési díj ellenében igénybe vehető egyes egészségügyi szolgáltatások térítési díjáról*), Appendix I, Art. 6, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=31253.259620.

Háttér Society submitted a letter to the Ministry of Justice and Public Administration and the Ministry of Health in 2009 requesting the amendment of the legislation and the introduction of full coverage of the costs. Both Ministries rejected the call, the Ministry of Justice and Public Administration[369] using Constitutional Court arguments to support its position that the state has no duty to cover medical expenses related to a particular medical condition, the right to the highest attainable standard of health only requires the operation of a healthcare system. The Commissioner for Fundamental Rights rejected a complaint by Háttér Society in 2013 following a similar line of argument.[370]

Data provided by the National Health Insurance Fund[371] shows that the Hungarian public health care system spends only a few thousand euros a year on trans-related health care. In 2013, a sum of HUF 639,720 on (approx. €2,095) was spent on trans related hormone treatments and HUF 1,033,268 (approx. €3,386) on trans related surgeries. It has to be noted though, that such statistics are based on official accounting of health services, and many trans people report receiving trans related treatment not coded under the diagnosis of transsexualism.

To complete the picture, one also has to take into account that there is a general procedure on equity-based coverage of health treatments set by the National Health Insurance Fund (*Országos Egészségbiztosítási Pénztár*, OEP).[372] 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.[373] 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 authorised 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 authorised."*[374]

The minimum old age pension in 2014 is HUF 28,500 (€93),[375] so having a monthly salary of over €186 (€232 for a person living alone) already disqualifies the person from full coverage. The monthly average net salary in 2013 was HUF 151,085 (€493).[376] 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

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[369] Hungary, Ministry of Justice and Public Administration (2009), Letter No. IRM/KJSZAT /66/2009. of the in response to Háttér Society, 25 May 2009.
[370] Hungary, Commissioner for Fundamental Rights (2013), Letter No. AJB4126/2/2013 in response to Háttér Society, 10 September 2013.
[371] Hungary, National Health Insurance Fund (2014), Letter No. 1021/41-3/2014 in response to an information request by the Hungarian Helsinki Committee, 3 March 2014.
[372] Hungary, Instruction No. 28/2008 (Eb.K.10.) of the National Health Insurance Fund (OEP) (*28/2008. (Eb. K. 10.) számú OEP utasítás a gyógyszerek, gyógyászati segédeszközök és gyógyászati ellátások járóbeteg-ellátás keretében nyújtott méltányossági alapú ártámogatásáról és a méltányosságból igénybe vehető egészségügyi szolgáltatásokról*).
[373] Instruction No. 28/2008 (Eb.K.10.) of the National Health Insurance Fund (OEP) (*28/2008. (Eb. K. 10.) számú OEP utasítás a gyógyszerek, gyógyászati segédeszközök és gyógyászati ellátások járóbeteg-ellátás keretében nyújtott méltányossági alapú ártámogatásáról és a méltányosságból igénybe vehető egészségügyi szolgáltatásokról*), Part B, Section I, 2. dd).[373] Part B, Section I, 2. *dd)*.
[374] Hungary, Instruction No. 28/2008 (Eb.K.10.) of the National Health Insurance Fund (OEP) (*28/2008. (Eb. K. 10.) számú OEP utasítás a gyógyszerek, gyógyászati segédeszközök és gyógyászati ellátások járóbeteg-ellátás keretében nyújtott méltányossági alapú ártámogatásáról és a méltányosságból igénybe vehető egészségügyi szolgáltatásokról*), Part B, Section IV, 2. *d)*.[374] Part B, Section IV, 2. *d)*.
[375] Hungary, National Employment Service (*Nemzeti Fogalkoztatási Szolgálat*) (2014), Tájékoztató az öregségi nyugdíjról, available in Hungarian at: http://www.afsz.hu/engine.aspx?page=allaskeresoknek_tajekoztato_oregsegi_nyugdij_legki
[376] Hungary, Central Statistical Office (*Központi Statisztikai Hivatal*) (2014), Az alkalmazásban állók havi nettó átlagkeresete, available in Hungarian at: http://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_qli030.html

no automatic procedure for taking over the fees by the OEP. Thus, trans patients are put in a very vulnerable position: their right to gender reassignment 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.[377]

The National Health Insurance Fund refused[378] to provide data on how many transgender patients received equity based funding for gender reassignment treatments claiming that the number of patients was under ten between 2010 and 2013, and due to data protection concerns they do not report data that affects such few people. They did report the sum of money spent in such procedures, and based on the very low figure (HUF 249,000) it is very likely that only one or two patients used this opportunity.

Statistics

In 2014, the Ministry of Justice and Public Administration (*Közigazgatási és Igazságügyi Minisztérium*) provided the author with statistics on requests for legal gender recognition based on the document management system of the ministry, but were not able to provide data on how many of these requests were granted. They did, however, provide an estimate of 90 % success rate[379]. The National Health Insurance Fund reported detailed data on the use of health services by transgender persons.[380]

The data show a considerable increase in the number of legal gender recognitions from 15-20 cases a year in 2003-2008 to 30-40 in 2009-2013, although the data is not fully comparable. For 2003-2009 the data shows the number of times legal gender recognition was authorized, while the data for 2009-2013 shows the number of requests submitted. The trend, however, is not fully explained by this difference, since the Ministry estimates about 90% of the request submitted have been authorized.

Case law

As noted in section A.5 there is no comprehensive and reliable case law database in Hungary. A search in the Complex Decision Archive on 3 March 2014 did not result in any relevant case law. Complex Decision Archive contains the conceptual standpoints and actual decisions of the Curia (formerly: Supreme Court). A search in the online court decision database yielded a few results concerning legal cases involving transgender people (medical malpractice, request to recognise transgender status for disability benefits, supposed maltreatment by the authorities), but none of them included relevant fundamental rights arguments. TheThe Constitutional Court had three cases that touched upon the rights of transgender persons: the Court noted that gender reassignment treatments are treatments needed to preserve health,[381] that changing one's name is a fundamental right for trans people,[382] and finally, summarising the case law of the European

[377] 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*, 29 January 2013, p. 130, available at: http://en.hatter.hu/publications/coe-report

[378] Hungary, National Health Insurance Fund (2014), Letter No. 1021/41-3/2014 in response to an information request by the Hungarian Helsinki Committee, 3 March 2014.

[379] Hungary, Ministry of Public Administration and Justice (2014), Letter No. XVII/102/3/(2014) in response to an information request by the Hungarian Helsinki Committee, 25 February 2014.

[380] Hungary, National Health Insurance Fund (2014), Letter No. 1021/41-3/2014 in response to an information request by the Hungarian Helsinki Committee, 3 March 2014.

[381] Hungary, Constitutional Court (2005), Decision No. 43/2005. (XI. 11.), 11 November 2005, available at: http://www.mkab.hu/letoltesek/en_0043_2005.pdf.

[382] Hungary, Constitutional Court (2001), Decision No. 58/2001. (XII. 7.), 7 December 2001, available at: http://www.mkab.hu/letoltesek/en_0058_2001.pdf.

Court of Human Rights (ECtHR) the court noted the post-transition transgender people have the right to marry according to their preferred gender.[383] A search on the website of the Equal Treatment Authority also revealed several cases of discrimination based on gender identity, which were complemented by some cases from the practice of the legal aid service of Háttér Society.[384]

Regarding these cases, it has to be noted that most of them lack a thorough analysis of the issues at hand. None of the Constitutional Court decisions concerned trans issues per se, trans aspects were only brought up to illustrate a certain point to argue in a different matter (such as a husband's right to take his wife's name, access to voluntary sterilization, and the constitutionality of same-sex registered partnership), thus they do not go beyond one-sentence references.

Case law at the Equal Treatment Authority is also quite superficial, as all cases ended in a settlement (i.e. the Authority did not deliver an argumentation, only approved a settlement reached by the parties) or were rejected on a reasonable ground. What the case law does show is that gender identity is recognized by the Authority as a ground of discrimination (which is not surprising, since it appears as an autonomous ground in the text of the legislation as well), but also that it includes gender expression as well.[385]

The only case identified with a substantive argumentation on trans related questions was the one concerning data protection and the right to privacy: in a case concerning a pharmacy licences the Office of Health Authorisation and Administrative Procedures (*Egészségügyi Engedélyezési és Közigazgatási Hivatal*) recognized that using the general procedure of not issuing a new licence, but only issuing a decision on amending the old licence results in the violation of human dignity for trans people since it exposes their gender history.[386]

[383] Hungary, Constitutional Court (2008), Decision No. 154/2008. (XII. 17.), 17 December 2008, available at: http://www.mkab.hu/letoltesek/en_0154_2008.pdf.
[384] See cases in Annex I.
[385] Hungary, Equal Treatment Authority (2011), Case No. 1007/2011, 24 November 2011. For a detailed summary, see *Cross-dresser photo shooting case* in Annex I.
[386] Hungary, Office of Health Authorisation and Administrative Procedures (2011), Decision No. 28326-004/2011/ELN, 8 August 2011. For a detailed summary, see *Trans pharmacist case* in Annex I.

H. Miscellaneous

H.1. Registered partnership

On 17 December 2007, following heated political debate the Parliament enacted the legal regulations concerning registered partnerships (Registered Partnership Act, hereinafter: RPA).[387] The attack on the Pride Parade in July 2007[388] and the coming out of the State Secretary of Human Resources at the Office of the Prime Minister, brought issues relating to LGBT rights to the centre of political attention.The RPA would have entered into force on 01 January 2009.

Before adopting the Act, the Alliance of Free Democrats (*Szabad Demokraták Szövetsége*, SZDSZ) , the small liberal party then in the governing coalition, submitted a bill on 24 September 2007 that aimed at securing equal rights of LGBT persons with respect to marriages. However, the bill was not supported by the Parliamentary Commission on Human Rights, Minority and Religious Affairs.[389]

Meanwhile, on 22 September 2007 the Equal Treatment Authority's Advisory Board issued a proposal for legislation in this respect.[390] The Advisory Board supported the opening up of the institution of marriage to same-sex couples thus promoting equal treatment in relation to the right to marry. The Board

> *"recommend[ed] to open up the institution of marriage to lesbian, gay, bisexual and transgender persons as well. Consequently, it recommends the Government of the Hungarian Republic to draft and submit a bill to the Parliament that makes it possible for persons of the same sex to enter into marriage under the same conditions as those applying to persons of different sex."*[391]

RPA was challenged by several organisations before the Constitutional Court. The submissions' main argument was that the Act violated the protection of marriage and family as provided for by Article 15 of the Constitution. On 17 December 2008 the Constitutional Court annulled the Act.[392]

However, the Court underlined that creating the possibility of a registered partnership for same-sex partners is not unconstitutional. What the Court found unconstitutional in the Act was registered partnership for heterosexual couples. The Court argued that Article 15 of the Constitution includes the obligation of the state not only to protect existing marriages but to create a legal environment, which encourages its citizens to choose marriage from the available forms of cohabitation. The Court stated that the existence of two institutions, different only in their names and not in their legal content, could eviscerate the constitutional protection and would cause legal uncertainty. According to the Court, therefore, the full spectrum of rights and

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[387] Hungary, Act CLXXXIV of 2007 on registered partnership (*2007. évi CLXXXIV. törvény a bejegyzett élettársi kapcsolatról*), available in Hungarian at: http://kozlony.magyarorszag.hu/hivatalos-lapok/43c392bec0b2c6a164135ff9ab4cf9d61e9ff632/dokumentumok/afcbfa76e55e37ed988cc9cad441e94f6f55c82a/letoltes

[388] See under heading *E. Freedom of assembly*.

[389] Hungary, Bill No. T/3832, available in Hungarian at: http://www.parlament.hu/irom38/03832/03832.pdf.

[390] Hungary, Equal Treatment Advisory Board (2007), Recommendation No. EBHTT/10007/2007, 21 September 2007, available in Hungarian at: http://www.egyenlobanasmod.hu/tt/TTaf_070927jj.

[391] Hungary, Equal Treatment Advisory Board (2007), Recommendation No. EBHTT/10007/2007, 21 September 2007, available in Hungarian at: http://www.egyenlobanasmod.hu/tt/TTaf_070927jj.

[392] Hungary, Constitutional Court (2008), Decision No. 154/2008 (XII. 17), 17 December 2008, available at: http://www.mkab.hu/letoltesek/en_0154_2008.pdf.

obligations connecting to marriage cannot be made available for persons who would have the possibility to enter into marriage but chose otherwise. The Court concluded that such decision would 'constitutionally devalue' the institution of marriage, decrease its social and institutional importance and hence would not be constitutionally acceptable.

As regards same sex registered partnerships the Court found no constitutional barriers, given that for same-sex couples the institution of marriage is not available and an institution that involves rights similar to those in marriage is not only constitutional in respect of same-sex couples but can be derived from the Constitution.

On 20 April 2009 the Parliament adopted the revised Registered Partnership Act (hereinafter: New RPA).[393] Principally, the New RPA contains the same regulations as had the former Registered Partnership Act, but only for same-sex couples. The Act entered into force on 01 July 2009. The New RPA was also challenged before the Constitutional Court by several organisations claiming that the law is not in line with the Constitutional Court decision on the earlier version of RPA. On 23 March 2010 the Constitutional Court in its decision declared that the Act in its current form – that is, being available only to same-sex couples – is constitutional.[394] Another interesting question the Court decided was that one petitioner claimed that the fact that the legislation does not allow for conscientious objection to conducting registered partnership ceremonies is itself unconstitutional as it infringes on the freedom of religion. The Court rejected this claim arguing that the role of registrars in registered partnership ceremonies is only to register the fact that two persons of the same-sex declared they want to become registered partners (it is the declaration, not the registration that creates registered partnership), thus registrars are not forced to do anything their religion prohibits them, so they cannot refuse conducting such ceremonies based on religious grounds.

Though not ensuring full equality, the RPA can still be considered as progressive – even according to Hungarian LGBT organisations. In 2007 14 groups and organisations published a joint statement, in which they welcomed the new legal rules but at the same time noticed that a full respect of human rights would require that full equality is granted in relation to the right to marry.[395]

The Act on Registered Partnerships makes it possible for same-sex couples to establish before the registrar registered partnership (the procedure very closely follows that of marriage). The basic logic of the act is that rather than amending all the various laws and lower level legal norms, Article 3 contains a so called general equivalence rule that links to institution of registered partnership to that of marriage: if a piece of legislation contains a reference to marriage, spouse, etc. it should be interpreted to refer to registered partners as well. The act on the other hand contains a few contains a few important exceptions: registered partners 1. may not adopt children together; 2. do not enjoy the right to artificial insemination; 3. may not adopt each other's names (a separate administrative decision is needed to change their names); 4. if the parties agree on all aspects of the separation, a public notary is entitled to end the partnership, there is no need to go to court for a divorce.

In recent years the debate around registered partnerships continued: in 2012 the Parliament adopted a new Criminal Code that removed the bigamy rule for registered partners (i.e. entering into a new registered partnership when still married or in a registered partnership with another

[393] Hungary, Act No. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (*2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=124380.178392.,

[394] Hungary, Constitutional Court (2010), Decision No. 32/2010 (III. 25), 25 March 2010, available in Hungarian at: http://public.mkab.hu/dev/dontesek.nsf/0/F78D82B977A20D74C1257ADA00527EEF?OpenDocument.

[395] Nyilatkozat: Bejegyzett élettársi kapcsolat, Press release, 23 November 2007, available at: www.hatter.hu/hirek/sajtokozlemeny-bejegyzett-elettarsi-kapcsolat.

person no longer constitutes the crime of bigamy).[396] The legislator argued that such a heightened level of protection should only be afforded to the traditional form of partnership, that is, marriage.[397]

A new cardinal law (which requires a two third majority to amend) called the Family Protection Act[398] was adopted on 23 December 2011, and entered into force on 2 January 2012. It reflects the conservative approach of the governing parties. The act puts heavy emphasis on marriage and child bearing. 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".

Article 7 of the Act declared that:

> *"(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."*

Article 8 limited inheritance to spouses and blood relatives.

Following a motion by the Commissioner for Fundamental Rights, on 17 December 2012 the Constitutional Court declared both challenged provisions unconstitutional.[399] 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 recognised 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.

Rather than abiding by the decision of the Court the Parliament responded with including the unconstitutional definition of family in the Fundamental Law to avoid judicial review. Article L of the Fundamental Law now reads as follows:

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[396] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Art. 214, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[397] Hungary, Explanatory memorandum to Bill. No. T/6958, p. 335, available at: www.parlament.hu/irom39/06958/06958.pdf

[398] Hungary, Act No. CCXI on the protection of families (*2011. évi CCXI. törvény a családok védelméről*), available in Hungarian at: http://kozlony.magyarorszag.hu/hivatalos-lapok/e5e4c551063f2679db3409e0e9bed5d14c96945e/dokumentumok/0735f767501fbe8e77e7cb65a13ddc7cc92a869e/letoltes.

[399] Hungary, Constitutional Court (2012), Decision No. 43/2012 (XII. 20.), 20 December 2012, available in Hungarian at: http://public.mkab.hu/dev/dontesek.nsf/0/065D43D1183D5A48C1257AE8004C12E8?OpenDocument. [399] Decision no. 43/2012 (XII. 20.).

> *"Hungary shall protect the institution of marriage, understood to be the union of a man and a woman established by their voluntary decision, and the family as the basis of the nation's survival. Marriage and the parent-child relationships are the basis of the family."*

The move evoked serious criticisms form human rights institutions and NGOs. The Venice Commission found that "Article L.1 of the Fundamental Law should not exclude other guarantees of family and family life. Article 12 ECHR guarantees the right of a man and a woman to marry. In the last decades, the European Court of Human Rights has gradually broadened the scope of Article 8 ECHR on the right to family life."[400] The Committee on the Elimination of Discrimination against Women (CEDAW) recommended that the Government "amend its law in line with the Constitutional Court's view that the definition of family is too narrow and ensure that further amendments of the relevant laws will be in conformity with this".[401] The European Parliament in its Tavares report[402] noted that the Parliament "Notes with concern repeated changes to the legal order restricting the rights of lesbian, gay, bisexual and transgender (LGBT) people, for instance by seeking to exclude same-sex couples and their children, as well as other varied family structures, from the definition of 'family' in the Fundamental Law; stresses that this runs counter to recent European Court of Human Rights jurisprudence and fuels a climate of intolerance vis-à-vis LGBT people."

The Government responded to these criticisms arguing that "(t)he statement contained in Article L) is of a moral character, rather than of normative content. Consequently, this provision cannot be regarded as an exclusive definition and it does not preclude the statutory protection of family relations in a wider sense."[403]

The parliamentary debate of the new Civil Code started in June 2012. The bill submitted to Parliament would have incorporated the basic rules of registered partnerships to the Book on Family Law of the Code, while maintaining the spate legislation as well.[404] The Christian Democrats forced through an amendment[405] that deleted all references to registered partnership from the Code, claiming it has no place in the Book of FAMILY Law. The Government supported the adoption of the amendment, although using a more technical argument and claiming it makes no sense to have the same provisions both the Civil Code and the RPA. While legally the formal removal of registered partners does not have much impact since the general equivalence role of RPA is still in place, the removal further segregated same-sex couples from different-sex couples and resulted in a lot of uncertainty among the LGBTI community (but legal professionals as well) concerning the future of registered partnership.

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[400] Council of Europe, European Commission for Democracy Through Law (2013), Opinion on the fourth amendment to the fundamental law of Hungary, CDL-AD(2013)012, 17 June 2013, available at: www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)012-e

[401] United Nations (UN), Committee on the Elimination of Discrimination against Women (CEDAW), 2013, *Concluding observations on the combined seventh and eighth periodic reports of Hungary adopted by the Committee at its fifty fourth session (11 February – 1 March 2013)*, CEDAW/C/HUN/CO/7-8, 1 March 2013, available at www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.HUN.CO.7-8.pdf.

402 European Parliament (2013), Report on the situation of fundamental rights: standards and practices in Hungary, A7-0229/2013, Strasbourg, 25 June 2013

[403] Hungary, Government (2014), *Comments of the Government of Hungary on The Draft Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, 11 June 2013, available at: www.kormany.hu/download/d/5c/e0000/HUresponse_VenCom_DraftOp_20130611%28FINALfin%29.pdf

[404] Hungary, Bill. No. T/7971, available in Hungarian at: www.parlament.hu/irom39/07971/07971.pdf

[405] Hungary, Amendment No. T/7971/106, available in Hungarian at: http://www.parlament.hu/irom39/07971/07971-0106.pdf.

H.2. Adoption and assisted reproduction

The issue of parenting has become a hot topic in the LGBTI movement in Hungary in recent years. Two organisations have been established to deal specifically with this issue Inter Alia Foundation (*Inter Alia Alapítvány*)[406] and Rainbow Families Foundation (*Szivárványcsaládokért Alapítvány*).[407] Reports

on the legal and social situation of such families were published,[408] and the first Rainbow Families Day was held in 2013.[409]

Individual adoption is available to anyone in Hungary regardless of sexual orientation, gender identity or family status, so people living in same-sex partnerships (whether registered partnership or cohabiting) can adopt a child individually. However, Article 49 of the Family Code[410] contained that:

> *"(1) The guardianship authority – in conformity with the aim of adoption – shall primarily authorise the adoption of children by married persons."*

This preference rule was introduced in 2002 following a legal and political debate concerning adoption of a child by a well-known drag performer motivated clearly by homo- and transphobia. The new Civil Code in force from 15 March 2014 keeps the same provision.[411] Since there is a large number of children up for adoption in Hungary, even this preference rule does not exclude people living in same-sex partnerships from such adoptions, and there are a few known cases[412] where a person living in a same-sex partnership have adopted a child even though being fully open about their sexual orientation in the procedure.

Joint adoption and second parent adoption on the other hand are limited to different-sex married couples both in the old Family Code[413] and the new Civil Code.[414] This means that children from an earlier heterosexual relationship, a child adopted individually, or conceived via assisted reproduction can only have one legal parent, the same-sex partner of the parent cannot adopt the child even if he/ she wishes to. The new Civil Code adopted in 2009 would have allowed second parent adoption of cohabiting couples (regardless of gender),[415] but after the new government prepared a new draft the provision was dropped. Several amendments were submitted in Parliament by opposition MPs to reinstate this or similar provisions, but they did not succeed.[416]

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[406] http://interalia.org.hu/

[407] www.szivarvanycsaladokert.hu/

[408] Háttér Society (2010), *The situation of LGBT families in Hungary*, available at: www.hatter.hu/node/7326; and Inter Alia Foundation (2010), *„Mi vagyunk a család, a biztonság, az otthona" Leszbikus anyák, meleg apák és „pótapák". Interjúk*, available in Hungarian at: http://interalia.org.hu/sites/default/files/Interj%C3%BAk_3.pdf

[409] https://web.archive.org/web/20131212034458/http://melegpar.hu/csaladinap

[410] Hungary, Act No. IV of 1952 on marriage, family and guardianship (*1952. évi IV. törvény a házasságról, a családról és a gyámságról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=308.232505.

[411] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), Art. 4:120. § (5), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[412] See e.g.: Hungary, Miskolc District Office District Guardianship Office (*Miskolci Járási Hivatal Járási Gyámhivatala*), Decision No. BO-08C/ JGY/8846-19/2013, 13 November 2013.

[413] Hungary, Act No. IV of 1952 on marriage, family and guardianship (*1952. évi IV. törvény a házasságról, a családról és a gyámságról*), Arts. 47 (5) and 51 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=308.232505.

[414] Hungary, Act No. V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), Arts 4:123 (2) and 4:132 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[415] Hungary, Act No. CXX of 2009 on the Civil Code (*2009. évi CXX. törvény a Polgári Törvénykönyvről*), Art. 3:130 (2), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159096.239298.

[416] Hungary, Amendments No. T/7971/0137 and T/7971/171, available in Hungarian at: http://www.parlament.hu/irom39/07971/07971-0137.pdf and http://www.parlament.hu/irom39/07971/07971-

The legislation on assisted reproduction also contains discriminatory provisions of same-sex couples. The current legislation on assisted reproduction according to the Health Care Act is the following:

> *"(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.*
> *(…)*
> *(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."*[417]

In 2013, Háttér Society turned to the Commissioner for Fundamental Rights to ask for a constitutional review of the law. The Commissioner rejected the call[418] arguing that according to the case law of the Hungarian Constitutional Court the Court would most likely not find a violation of constitutional principles, but agreed with the petitioner that the case was quite strong with regards to the case law of the ECtHR, and thus suggested a procedure at the ECtHR. Háttér's original plans was to turn to the ECtHR in the first place.[419] This, however was hindered by the reluctance of individual complainants to launch such a case when they found out that their anonymity is necessarily compromised with regards to Hungarian authorities. Háttér continues to search for potential complainants to such a case.[420]

H.3. Blood donation

The exclusion of sexually active gay man from blood donation has been a controversial issue for over a decade. Until 2008 the questionnaire to be filled before giving blood contained a specific question on having had homosexual sexual relations, and the responses were recorded in the database of the National Blood Supply Society.[421] The Parliamentary Commissioner for Data Protection (*adatvédelmi biztos*) was asked to issue an opinion in relation to this practice.

The Parliamentary Commissioner for Civil Rights, acting as Parliamentary Commissioner for Data Protection, established that the question regarding homosexual relationships

> *"…is not inappropriate with a view to data protection, however* [the Commissioner] *is firmly against the registering of data concerning homosexual relationships."*[422]

0171.pdf

[417] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény - az egészségügyről*), Art. 167 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.

[418] Hungary, Commissioner for Fundamental Rights (2013), Letter No. AJB3970/2013 to Háttér Society, 24 October 2013.

[419] Háttér Society (2012), Felhívás leszbikus párok részére, 30 October 2012, available in Hungarian at: http://www.hatter.hu/hirek/felhivas-leszbikus-parok-reszere.

[420] Information received from Háttér Society on 29 April 2014.

[421] Origo (2007), 'Beintenek a véradásra váró melegeknek', 7 September 2007, available in Hungarian at: www.origo.hu/itthon/20070907-nem-adhatnak-vert-a-melegek.html.

[422] Hungary, Parliamentary Commissioner for Civil Rights (2007), Letter No. 1716/P/2007-5, January 2008, available in Hungarian at: http://abi.atlatszo.hu/index.php?menu=aktualis/allasfoglalasok/2008&dok=1716_P_2007-5.

The Commissioner argued that the question is necessary because of medical reasons. In order to single out diseases that spread through sexual contact (e.g. HIV) doctors should be aware of this information since homosexual contacts are considered as 'risky sexual behaviour' in the case of blood donation. The category of 'risky sexual behaviour' concerns persons – including prostitutes and men entering into homosexual relationships — subjected to a higher risk of diseases that spread through sexual contact.

The Commissioner argued that the latency of HIV is around 1-3 months, which means that the virus cannot be detected in the blood during this period. The problem is that blood from donors is used after a much shorter time. In this way excluding gays from blood donation, is not an inappropriate practice from the viewpoint of data protection. The Commissioner, however, also added that storing such a data in a database is problematic.

As a response to the opinion of the Commissioner, the OVSZ changed their practice, there is no longer a question on homosexual relations directly, but only a general question of risky sexual behaviours in the past 12 months.[423] On the other hand an information sheet[424] given to all donors before completing the questionnaire contains that any man who has had sex with a man throughout his life should not give blood. In several occasions, the director of OVSZ responded to questions by the media claiming that even answering yes to the question of risky behaviours means no automatic exclusion, and an individual assessment is performed.[425] Háttér Society sent a letter of inquiry[426] to settle the inconsistency between the three approaches (lifetime exclusion based on the donor information sheet, one year exclusion based on the questionnaire, and individualised assessment based on the statements of OVSZ). Háttér also requested all internal policies concerning blood donation. OVSZ responded[427] that they see no inconsistency, and there are no internal policies which are not publicly available.

In 2011 a gay man reported to the legal aid service of Háttér that he was excluded from giving blood when telling the doctor of his sexual orientation. The doctor showed him a confidential internal policy (a quality manual) clearly stating that gay man should be excluded. Háttér once again turned to the OVSZ now requesting the quality manual specifically. The OVSZ responded[428] that they are willing to provide the manual only if a confidentiality agreement is signed, Háttér refused to sign, and asked for a clarification of why the document is not publicly available. OVSZ never responded. In 2013, another gay man reported to Háttér Society having been excluded from giving blood, and also attached a letter[429] from high level official of OVSZ stating that homosexuals have always been excluded, and claiming the Director of OVSZ was misquoted in the media (yet, when Háttér asked for a clarification from the Director herself, she did not say she was misquoted).[430] Other donors, however, reported not having problem giving blood even after stating their sexual orientation.

Severe doubts have been raised to the efficiency of any such blanket exclusion: it is likely to result in donors keeping silent about their actual sexual practices, which, rather than contributing the blood safety, results in more risks.

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[423] http://www.ovsz.hu/sites/ovsz.hu/files/veradas_dokumentum/donork_20120510.pdf
[424] http://www.ovsz.hu/sites/ovsz.hu/files/veradas_dokumentum/donortajekoztato20081.pdf
[425] Népszabadság (2010), 'A homoszexuális viszonyra Magyarországon is rákérdeznek', 5 August 2010, available in Hungarian at: www.nol.hu/lap/vilag/20100805-a_homoszexualis_viszonyra_magyarorszagon_is_rakerdeznek
[426] Háttér Society (2011), Email to OVSZ, 7 March 2011.
[427] Hungary, Miskovits, E., Director of OVSZ (2011), Email in response to Háttér Society, 8 March 2011.
[428] Hungary, OVSZ (2011), Letter No. 4633-5/2011/2150 in response to an information request by Háttér Society, 20 October 2011.
[429] Hungary, Kalász L. (Regional Director of OVSZ) (2013), Email to a potential donor.
[430] Hungary, Eszter Miskovits, E., Director of OVSZ (2011), Email in response to Háttér Society, 8 March 2011.

H.4. School curricula

The recent introduction of religious education in school curricula, and the adoption of the new National Basic Curriculum and the framework curricula has become the subject of many criticisms, also from an LGBTI perspective.

Currently the applicable National Basic Curriculum (NBC) is contained in Government Decree no. 243/2003 (XII. 17.).[431] While there are certain values and goals (human rights, solidarity, tolerance etc.) therein which are broad enough to cover the questions of sexual orientation and gender identity, these topics are not specifically mentioned in the document. A very detailed Framework Curricula[432] (over 6,000 pages) also does not even mention the concepts of sexual orientation, gender identity, homosexuality or transgender issues. The Hungarian LGBT Alliance[433] as well as the Commissioner for Fundamental Rights[434] criticised these documents for their negligence of issues concerning sexual minorities.

'Family education' as a new subject area was introduced in public education, its official curricula contains statements such as that the aim of family education is „to help students strengthen a gender identity in conformity with their genetic sex", and talks consistently only about relationships between women and men, and marriage, disregarding intimate relations between members of the same-sex, and the possibility offered by the institution of registered partnership to live in a state-sanctioned form of partnership. The Hungarian LGBT Alliance strongly criticised[435] the curricula for being openly transphobic and very heteronormative.

One aspect of the educational reform introduced in 2012 with potential impact on the situation of LGBT students in schools was the introduction of religious education in state-operated schools.[436] Previously, religious education could be organised in state-operated schools as extra-curricular activity, while from 2013 parents have to decide whether to enrol their children in religious education or non-religious moral education. According to the Ministry of Human Resources, the parents of 52 % of students starting public education in 2013 opted for religious education.[437] According to the National Basic Curriculum, the key subject to teach the promotion of tolerance and acceptance is moral education, thus for 52 % students promotion of tolerance (among others towards LGBT persons) should be taught by churches, which in Hungary are quite conservative

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[431] Hungary, Government Decree No. 110/2012. (VI. 4 17.) on the publication, introduction and application of the National Basic Curriculum (*110/2012. (VI. 4.) Korm. rendelet a Nemzeti alaptanterv kiadásáról, bevezetéséről és alkalmazásáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=149257.256438.

[432] Hungary, Decree No. 51/2012 (XII. 21.) of the Ministry of Human Resources on issuing and validating framework curricula (*51/2012. (XII. 21.) EMMI rendelet a kerettantervek kiadásának és jóváhagyásának rendjéről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=157752.257953.

[433] Hungarian LGBT Alliance (2012), *A Magyar LMBT Szövetség véleménye a Nemzeti Alaptanterv tervezetéről*, 5 March 2012, available in Hungarian at: http://m.cdn.blog.hu/lm/lmbtszovetseg/file/lmbtszov_nat_2012marc.pdf; and Hungarian LGBT Alliance (2012), *A Magyar LMBT Szövetség véleménye a kerettantervek tervezetéről*, 25 October 2012, available at: http://m.cdn.blog.hu/lm/lmbtszovetseg/file/lmbtszov_kerettanterv_2012okt.pdf

[434] Hungary, Commissioner for Fundamental Rights (2013), Report No. AJB-1199/2013, available in Hungarian at: http://www.ajbh.hu/documents/10180/111959/201301199.doc.

[435] Hungarian LGBT Alliance (2012), *A Magyar LMBT Szövetség véleménye a családi életre nevelés tantárgy kerettantervének tervezetéről*, 12 March 2013, available in Hungarian at: http://m.cdn.blog.hu/lm/lmbtszovetseg/file/lmbtszov_csen_2013marc.pdf

[436] Hungary, Act No. CXC of 2011 on national public education (*2011. évi CXC. törvény a nemzeti köznevelésről*), Art. 35, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139880.244832.

[437] Hungary, Ministry of Human Resources (2013), Hoffmann Rózsa: minél több gyermek részesüljön keresztény nevelésben!, Press release, 27 August 2013, available in Hungarian at: http://www.kormany.hu/hu/emberi-eroforrasok-miniszteriuma/oktatasert-felelos-allamtitkarsag/hirek/hoffmann-rozsa-minel-tobb-gyermek-reszesuljon-kereszteny-nevelesben.

with regards to LGBT issues. One book on religious education for 10 year olds,[438] for example, contains that homosexuality is a deadly sin without any mention that such a position might not be shared by the whole of society, or that discrimination against gays and lesbians is rejected even by the Catholic church. The State Secretary for Public Education (*Oktatásügyi Államtitkár*) commented that the state has no control of what is taught as part of religious education.[439] There is no information on how many schools use this textbook.

[438] Fülöpné, E.M. (2010), *Élet a hitben. Hit- és erkölcstan gyerekeknek*, Szent István Társulat, Budapest.

[439] Hír24 (2013), 'Halálos bűn a homoszexualitás egy hittankönyv szerint', 13 September 2013, available in Hungarian at: www.hir24.hu/belfold/2013/09/12/halalos-bun-a-homoszexualitas-egy-hittankonyv-szerint/

I. Good practices

ETA[440] recognises both sexual orientation and gender identity as protected grounds, which clearly goes beyond the standards set by the Employment Directive. Furthermore, the scope of ETA is wider than that of the Employment Directive since beyond employment it also encompasses fields such as education, housing, access to public goods and services, health care and social security.

The Hungarian legal framework regarding legal gender recognition has several shortcomings, although the good practice of competent authorities currently does not require an any medical interventions as a prerequisite of modifying name or sex in birth certificates.[441] This good practice shows that even in the absence of express legal provisions the relevant procedures can comply with human rights standards.

Registered partnership for same-sex couples introduced in 2009[442] provide many of the rights available to spouses in several fields of life including property relations, inheritance, tax and social benefits, immigration etc. While it falls short of providing equality for same-sex couples – exceptions concerning parenting create serious legal uncertainty for same-sex couples raising children – it does offer a solution to many of the previous forms of discrimination in the field of immigration for example. The adoption of the new Criminal Code[443] somewhat weakened the institution of registered partnership by introducing new differences between marriage and registered partnership. While under the previous Criminal Code marriages and registered partnerships were treated equally in the provisions on bigamy,[444] that is if a married person entered into registered partnership with another person, or a person in a registered partnership married or entered into registered partnership with other person, these scnearios all fell under the crime of bigamy. The new provision on bigamy only criminalizes if a married person marries another person. This new legislation is symbolically important as there is yet another area of life where spouses and registered partners are not treated equally, but since such a legislation affects a very low number of people if at all, its real impact on same-sex couples is marginal.

In February 2011, the Government set up the Human Rights Working Group, an inter-ministerial committee to coordinate the work of the Government on human rights issues.[445] As a complementary institution the same resolution also sets up a Human Rights Roundtable, which has civil society members. In Fall 2012, a call was launched for NGOs active in the fields of human rights to apply for membership in the Roundtable.[446] NGOs could choose from a list of 12 thematic focus area, one being the rights of LGBT people. Five NGOs applied in this category, all of them were invited to participate in the work of the LGBT working group. Four meetings

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[440] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról)*, Art. 8 m) and n), *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.

[441] See more details under heading *G. Transgender issues*.

[442] Hungary, Act No. XXIX of 2009 on registered partnership and related legislation and on the amendment of other statutes to facilitate the proof of cohabitation (*2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=124380.178392.

[443] Hungary, Act No. C of 2012 on the Criminal Code (*2012. évi C törvény a Büntető Törvénykönyvről*), Art. 214, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.258827.

[444] Hungary, Act No. IV of 1978 on the Criminal Code (*1978. évi IV törvény a Büntető Törvénykönyvről*), Art. 192, available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=3356.237644.

[445] Hungary, Government Decision no. 1039/2012 (III. 22.) on the Human Rights Working Group (*1039/2012. (II. 22.) Korm. határozat az Emberi Jogi Munkacsoportról*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=146229.230814.

[446] http://www.kormany.hu/download/3/be/a0000/P%C3%A1ly%C3%A1zati%20ki%C3%ADr%C3%A1s%20Emberi%20Jogi%20Kerekasztal%20m%C5%B1k%C3%B6d%C3%A9s%C3%A9ben%20t%C3%B6rt%C3%A9n%C5%91%20r%C3%A9szv%C3%A9telre.pdf

have been held so far[447] discussing the most urgent human rights issues concerning LGBTI people. The setting up of this new consultation mechanism is clearly a good practice (there has never been such a similar, institutionalised form of dialogue between the state and LGBT NGOs before), but it is yet to be seen how much of the recommendations made by the members will be implemented by the Government.

The Commissioner for Fundamental Rights reported about the recent appointment of officers at the Office of the Commissioner to liaise with the LGBTI community.[448] The aim of such liaison officers is to tackle the problem of underreporting via trust building in the LGBTI community towards the institution of the Commissioner for Fundamental Rights.

The Parliamentary Commissioner for Civil Rights started an ongoing monitoring project on freedom of assembly events in 2007, with a specific focus on Pride Marches as well. Findings of the monitoring efforts were published in a report.[449] Public statements from the Commissioner concerning the lack of adequate security measures and criticising the 'public morality' calls of the police (see under E.1) contributed to the positive developments of the police practice.

[447] Meetings were held on 28 June 2013, 30 August 2013, 15 November 2013, and 21 February 2014.
[448] Hungary, Commissioner for Fundamental Rights (2014), Letter No. AJB-1098/2014 in response to an information request by the Hungarian Helsinki Committee, 26 February 2014.
[449] Hungary, Commissioner for Fundemental Rights (2009): *Gyülekezési jog*, available in Hungarian at: www.ajbh.hu/documents/10180/124842/gyulekezesijogi.pdf

J. Intersex

There is no specific legislation or case law on how to deal with discrimination based on intersex status.

It could be dealt with either as sex discrimination, or discrimination based on gender identity, but also as discrimination based on health status or discrimination based on "other ground", as these latter two are also specifically included as protected grounds in the comprehensive equal treatment legislation (ETA). [450]

Intersexuality is not referred to in any legislation or policy, except for the provision on public health coverage for gender reassignment treatments: the legislation provides that "treatment to alter external sexual characteristics" are only partially covered by the public health insurance, unless "the aim of the treatment is to construct external sexual characteristics in line with the genetically defined sex following a developmental disorder". [451] By literal interpretation of the legislation, this means that those intersex people who have a clear genetic sex and would like their body to correspond to that sex get their gender reassignment treatments free of charge, while transgender people, those intersex people who have no clear genetic sex, or do, but have a different gender identity would not be fully funded by the public health insurance. There is no information available on whether this literal translation holds true, or whether the exception rule is liberally interpreted as covering all intersex people.

Intersex children cannot remain without a gender marker/identification on their birth certificates. Article 32 c) of the legislation on registries[452] clearly states that the sex of the child is a compulsory element of the birth registry. The Ministry of Public Administration and Justice has confirmed[453] that there are no exceptions for intersex children either, they have to be registered as male or female. The law decree on registries states that any birth shall be reported to the registrar on the first working day following birth (by the head of the hospital, if the birth happened at an institution; or by the parent if it took place outside of an institution).[454] In case the report does not contain all the necessary data, the registration is put on hold for a maximum of 30 days. If the missing information is not completed within this time limit, the data is entered to the registry as is.[455] Since healthcare providers play a key role in the procedure, as the reporting duty – primarily – lies with them, it is very unlikely that any report without a gender marker would be submitted to the registrar.

Surgeries on intersex people are performed in Hungary. In an article published in *Gyermekgyógyászat* (Paediatrics) in 2008, surgeons at Semmelweis University summarise their experience with such surgeries, and provide statistics: between 1984 and 2008 92 feminisation

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[450] Hungary, Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról),* Art. 8 point a), n), respectively, *available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.256015*.[450] See Article 8 point a), n), respectively.

[451] Hungary, Act No. LXXXIII of 1997 on mandatory health insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), Art. 23 k), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30386.255766.

[452] Hungary, Law Decree No. 17 of 1982 on registries, marriage procedure and bearing names (*1982. évi 17. törvényerejű rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=5276.242620.

[453] Hungary, Ministry of Public Administration and Justice (2014), Letter No. XVII/102/3/(2014) in response to an information request by the Hungarian Helsinki Committee, 25 February 2014.

[454] Hungary, Law Decree No. 17 of 1982 on registries, marriage procedure and bearing names (*1982. évi 17. törvényerejű rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*), Art. 10 (1), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=5276.242620.

[455] Hungary, Minister of Interior Decree No. 6/*2003. (III. 7.)* on registries, marriage procedure and bearing names (6/*2003. (III. 7.) BM rendelet az anyakönyvekről, a házasságkötési eljárásról és a névviselésről*), Art. 17., available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=73674.260754.

and 35 masculinisation surgeries were performed on intersex patients. In a research interview with one of the authors,[456] the professor claimed that 2/3 to 4/5 of such surgeries in Hungary are performed at his institution. The National Health Insurance Fund reported[457] that their records show 22 genital reconstruction surgeries performed on minors in the period 2010-2013.

The Ministry of Human Resources reported that there are no specific regulations on surgical and medical interventions performed on intersex people, the general rules of healthcare provision apply.[458] The Ministry cited Article 15 (2) of the Healthcare Act on consent as the key provision.[459]

The Ministry of Human Resources reported[460] that there are no medical protocols or procedures applying to such cases, general rules on healthcare provision apply.

Consent to medical interventions are governed by The Health Care Act.[461] Article 15 contains the general principle that patients have the right to self-determination, Article 15 (2) more specifically says:

> *"As part of patients' right of self-determination, patients are free to decide whether to make use of medical services, and when doing so, which treatments they agree to and which one they reject."*

Consent to invasive treatments shall be provided in writing, or in case acquiring such a consent is impossible, verbally in the presence of two witnesses.[462]

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.

> *"(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*
> *(…)*
> *(4) The declarations of persons listed under paragraph (2) can only extend to invasive interventions suggested by the doctor, and only after being fully*

[456] Personal interview with Dr. Zoltán Jenővári on 19 April 2012 conducted in a research project by Háttér Society.
[457] Hungary, National Health Insurance Fund (2014), Letter No. 1021/41-3/2014 in response to an information request by the Hungarian Helsinki Committee, 3 March 2014.

[458] Hungary, Ministry of Human Resources (2014), Letter no. 12460-7/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 12 March 2014.
[459] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény - az egészségügyről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.
[460] Hungary, Ministry of Human Resources (2014), Letter no. 12460-7/2014/NEUF in response to an information request by the Hungarian Helsinki Committee, 12 March 2014.
[461] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény - az egészségügyről*), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.
[462] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény - az egészségügyről*), Art. 15 (5), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.

informed according to Article 13. Except for the case covered under Article 20:3, such a declaration cannot have a detrimental effect on the health of the patient – except for the risks involved in the intervention –, and in particular cannot lead to severe or permanent damage to health. The patient shall be informed about the decision as soon as possible after he (re)gains legal capacity.

(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)."

A further important provision is that minors above the age of 16 can name a person of major age other than their parents to practice the right of consent until they reach majority. [463]

There is no guidance available on what "to the extent professionally possible" means in case of intersex minors, but in the interview mentioned above, Dr. Jenővári claimed that adolescents are always consulted, and that for minors above the age of 14 they request all the papers to be signed by the patients themselves besides their parents (even though it is legally not required).

The Ministry of Human Resources emphasized the provision in the legislation that requires that consent given by the parents "cannot have a detrimental effect on the health of the patient", i.e. that consent can only be given to treatments medically required. The question on what treatment is "medically required" for intersex people, however, is not clearly settled. In the interview mentioned above, Dr. Jenővári claimed that destructive surgeries are no longer performed on minors (unless medically indicated), only fully reversible ones.

Based on other articles published on the subject,[464] it seems to be the case that most Hungarian medical professionals share the view that early interventions are needed to "save" children from the negative impact of gender ambiguity. One article, for example, clearly states that the aim of the intervention should be to create functioning heterosexuals out of intersex people.[465]

[463] Hungary, Act No. CLIV of 1997 on health care (*1997. évi CLIV. törvény – az egészségügyről*), Art. 16 (6), available in Hungarian at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=30903.255769.

464 In order to assess the medical communities' opinion, a search was conducted in the Hungarian Medical Bibliography (*Magyar Orvosi Bibliográfia*), for a list of results see: http://mob.gyemszi.hu/itmsbydict.jsp?DCTID=207430&DCTDESC=HERMAPHRODITISMUS

[465] László Ságodi (2006), 'Interszexuális betegek ellátása, az átmeneti külső genitalék sebészeti kezelése', *Gyermekgyógyászat*, 57:5, 543-552.

Annex 1 – Presentation of case law

Implementation of Employment Directive 2000/78/EC

Case title	**Cable TV case**
Decision date	23 August 2010
Reference details	Equal Treatment Authority, case no. 985/2010
Key facts of the case	The petitioner worked at the local cable TV for about a year. He dealt with marketing issues and also served as a presenter and reporter. In his account the harassment started after a vacation where he had to share room with his male colleague. From there on, his boss showed a very hostile attitude towards both of them, not only in private but also in front of other employees related to his perceived sexual orientation (the petitioner maintained throughout the case he was not homosexual). The petitioner provided records and called witnesses who confirmed the harassment. At one occasion the boss said that the petitioner and his colleague did not meet the social expectations that "this will sooner or later bring trouble". He also recalled that "in his times" "these people" were beaten up, and no matter that effeminate men are accepted today, in the countryside this could not be tolerated. The boss also complained to the mother of the petitioner that her son behaved like a girl.
Main reasoning/argumentation	The Authority found that the respondent was not only aware of the harassment but was the instigator of that. The Authority reasoned that the employer violated the prohibition of direct discrimination when the petitioner was removed from his position of presenter and reporter and could not appear on the TV channels programs because of his assumed sexual orientation. Furthermore, it constituted harassment that the respondent created a hostile environment, which constituted a violation of the petitioner's human dignity.
Key issues (concepts, interpretations) clarified by the case	This was the first sexual orientation case concerning discrimination based on perceived sexual orientation. While the legislation clearly states that actual or perceived characteristics can both serve as a ground of discrimination, this was the first case when that was actually applied by the authority.
Results (sanctions) and key	The respondent was banned from future infringements and ordered to pay a fine of HUF 1,000,000 (appr. €3,570).

consequences or implications of the case	

Case title	**Telecom company case**
Decision date	1 June 2010 and 24 January 2012
Reference details	Equal Treatment Authority, case No. 49/2010 Metropolitan Court of Budapest, decision No. 22.P.24.669/2010/14.
Key facts of the case	The petitioner submitted a complaint against his former employer for creating a hostile working environment around him on the basis of his sexual orientation. The employer widely shared the confidential information concerning the sexual orientation of the petitioner received in a friendly conversation, and the sexual orientation of the petitioner thus became a standard topic for discussion at the workplace.
Main reasoning/argumentation	As part of the procedure, witnesses were questioned and confirmed that one of the employers regularly mocked the petitioner and told jokes about his sexual orientation. During the hearing, the employer admitted that although his remarks had been made "in good faith", he might have offended the employee, but he had not intended to harass him within the meaning of the ETA's definition. The company where both people worked tried to defend itself by emphasising that it could not assume responsibility for remarks made by its employees, but the Authority rejected this argument. The reasoning behind this decision stressed the fact that violating the prohibition of harassment does not presuppose intentional acts; actions or behaviour which potentially have the effect of creating a degrading environment could also be unlawful. In practice, expressions or jokes not intended to humiliate the person towards whom they were directed but which, in the subjective perception of the victim, were degrading, fall under the prohibition of harassment.
Key issues (concepts, interpretations) clarified by the case	The decision lowered the threshold for establishing harassment set in an earlier school harassment case (decision no. 611/2006), especially by making it possible to violate the prohibition of harassment with non-intentional acts. Creating a hostile environment needs no longer be intended, as long as it is the result (based on the victim's subjective perception) of the perpetrator's conduct.

Results (sanctions) and key consequences or implications of the case	The company was fined HUF 2,000,000 (appr. €6,500). Following the procedure at the Authority, the petitioner also launched a civil law case and was awarded HUF 600,000 (appr. €2,000) in compensation.

Case title	**School teacher case**
Decision date	17 September 2012
Reference details	Curia, decision No. Mfv.III.10.100/2012/9
Key facts of the case	The plaintiff was a temporary teacher hired by a high school for two years. After he tried to protect a student from homophobic bullying, he was also bullied by the students and called a fag, once in the presence of the headmaster of the school. A few weeks later, he was told that his contract will be shortened to one year. At the end of the year, rather than extending his contract, he was told to leave the school and was replaced by another teacher in the same position. The plaintiff sued the school on several accounts one of them that the refusal the extend his contract happened because of his sexual orientation.
Main reasoning/argumentation	After 6 years of litigation, the Curia ruled that none of his claims were right, except for the claim of discrimination in not extending his contract. The school argued against the charge of discrimination by claiming that the headmaster did not know about the sexual orientation of the plaintiff. Lower level courts found this argument convincing and rejected all claims of the plaintiff. The Curia on the other hand found that simply stating that the headmaster did not know about the sexual orientation of the plaintiff is not enough, the school should have proved that the reason for non-extension was something other than the sexual orientation of the victim, and that the burden for proving that the headmaster did not know about the plaintiff's sexual orientation lied with the school. The Curia found that taking into consideration all aspects of the case and statements by the headmaster, it is very unlikely he did not know about the sexual orientation of the plaintiff, thus the school was not able to disprove the discrimination.
Key issues (concepts, interpretations) clarified by the case	Burden of proof for not knowing about a protected characteristic of an employee lies with the respondent.

Results (sanctions) and key consequences or implications of the case	A new procedure for compensation for damages caused by discrimination is still pending.

Freedom of Movement

Case title	**Immigration by cohabiting same-sex couple case**
Decision date	11 March 2011
Reference details	Constitutional Court, decision No. 68/E/2004
Key facts of the case	The petitioners, a Hungarian and a non-Hungarian citizen, had been living together as a cohabiting partners for several years. In 2004 the non-Hungarian partner applied for a permanent residence permit (*letelepedési engedély*), but he was denied the request claiming that the legislation does not provide the possibility to recognise cohabitation for immigration purposes. The immigration case itself was solved in 2006 when the court found that even though cohabiting partners are not specifically included in the list of family members, but anyone (including a cohabiting partner) can provide accommodation and financial support to an applicant, and thus the requirements of applying for a permanent residence permit were met. Meanwhile, however, the petitioners also launched a case with the Constitutional Court claiming that the fact that unlike spouses, cohabiting partners are not recognised as family members, and the fact that same-sex couples are not allowed to marry amounts to discrimination based on sexual orientation.
Main reasoning/argumentation	The Constitutional Court found that there was no unconstitutional discrimination in this case as the distinction was not based on sexual orientation (different sex cohabiting couples were just as much not recognised as same-sex cohabiting couples), but rather on the differential treatment of two institutions (marriage and cohabitation). Referring to its earlier cases on marriage and registered partnership, the Court found that granting a privileged position to spouses is not unconstitutional. Interestingly, the Court made no notice of the fact that after the petition was submitted, the institution of registered partnership was introduced that significantly altered the position of the couple (since they could decide to register their partnership and be treated the same way as spouses for immigration purposes). Neither did they take note of

	the fact after the petition was submitted, the legislation in question was split into two separate legislations (one for persons with the right to freedom of movement, and one for third country nationals – the court focused only on the latter), and the law that actually applied to the couple at hand did include the possibility to recognise cohabiting couples as family members.
Key issues (concepts, interpretations) clarified by the case	This was the only case the Constitutional Court had the chance to recognise the indirect discrimination resulting from the exclusion of same-sex couples from marriage. The Court refused to recognise such form of discrimination, a position contrary to the later practice of the European Court of Justice (C-267/12). Since the introduction of registered partnership the legal situation is different, and thus the same question of indirect discrimination will no longer arise.
Results (sanctions) and key consequences or implications of the case	-

Asylum and Subsidiary Protection

Case title	**Algerian asylum seeker**
Decision date	21 June 2004
Reference details	(Office of Immigration and Nationality, case No. 106-1-25433/9/04-M
Key facts of the case	The Algerian applicant worked as a model and hairdresser in his country of origin. He only had friends amongst his colleagues. According to his statements because of his lifestyle his sexual orientation was obviously identifiable. Once the villa where a fashion show took place was burned down as a threat against homosexuals. His best friends were shot later, he also received serious threats so the applicant realised he had to leave his country Due to his lifestyle it was evident that he did not have the possibility to avoid serious punishment according to the Algerian criminal code, which penalises homosexuality.

Main reasoning/argumentation	Due to the fact that Algerian criminal code penalises homosexuality and that the applicant has been seriously threatened his asylum claim had to be considered well founded under 1951 Geneva Convention.
Key issues (concepts, interpretations) clarified by the case	In this case the authority accepted the reasoning that someone who works as a model, whose profession is hardly tolerated in Islamic countries, cannot renounce his sexual orientation.
Results (sanctions) and key consequences or implications of the case	The applicant was recognised as refugee on 21 June 2004.

Case title	**Algerian asylum seeker**
Decision date	2007
Reference details	(Office of Immigration and Nationality, case No. 106-1-9320/40/07-M
Key facts of the case	The Algerian applicant revealed his concealed sexual orientation to one of his colleagues who was thought to be a friend. However, this friend presumably had close connections to an extremist Islamic Salafist terrorist group (the activity of which has been increasing in the region), and informed them about this. He received serious threats after that from this terrorist group, and tried to avoid them by moving to another city. Despite his efforts, the group found him again, and caught him in the street, and threatened to kill him if he does not renounce his sexual orientation. The local criminal code penalises homosexuality, and though the state authorities do not persecute such persons directly if they are able to keep this characteristic hidden, no protection might have been expected from them either in such case, so he chose to leave the country.
Main reasoning/argumentation	Due to the fact that Algerian criminal code penalises homosexuality and that the applicant has been seriously threatened his asylum claim had to be considered well founded under 1951 Geneva Convention.
Key issues (concepts, interpretations) clarified by the	Sexual orientation qualifies as ground of persecution in asylum matters.

case	
Results (sanctions) and key consequences or implications of the case	The applicant was granted refugee status in 2007.

Case title	**Iranian asylum seeker (case No.:)**
Decision date	12 April 2006
Reference details	(Office of Immigration and Nationality, case No. 106-5-362/32/2006-M
Key facts of the case	The 18 year old Iranian client claimed asylum on the basis of persecution for reasons of membership of a particular social group. He had homosexual relationships in his country of origin and once his sister-in- law saw them together and called the police. Simultaneously the client was an activist of a Christian association.
Main reasoning/argumentation	Due to his homosexuality he had to face discrimination, harassment and even potential death penalty in his country of origin. According to the latest country of origin information, homosexual orientation can be considered as the ground of persecution as a member of a particular social group. Also apostasy is severely punished by Iranian law, therefore these circumstances had to be taken into consideration in favour of the applicant.
Key issues (concepts, interpretations) clarified by the case	Psychiatric examination of homosexuality lead to controversial results, two experts stated that the applicant showed signs of homosexual orientation while the third expert concluded that his sexual evolution was rather heterosexual. This example proved that sexual orientation cannot be subject of medical evaluation and treated as a psychiatric disease.
Results (sanctions) and key consequences or implications of the case	The client was recognised as refugee on 12 April 2006.

Case title	**Asylum seeker from Ivory Coast**
Decision date	7 January 2010
Reference details	Metropolitan Court of Budapest, case no. 21.K.32987/2009/5.
Key facts of the case	The claimant was a bisexual man from Ivory Coast, country with no sanctions for homosexuality. He claimed he was persecuted in his country due to his sexual orientation, his family turned away from him. He said he was assaulted three times in his country, and recounted in details one such incident: when he was leaving a gay bar with a friend hugging and kissing each other, they were assaulted by strangers. They reported it to the police, but the police said "this" should not happen anymore as "this is prohibited here".
Main reasoning/argumentation	The court agreed with the decision of OIN that since homosexuality is not criminalised and there are NGOs offering help for gays, the claimant should have turned for help to the authorities or NGOs. The court held that some form of discrimination against homosexual people happen in every country, but that does not amount to persecution. The fact that they were kissing and hugging on the street might amount to public indecency, and the police legitimately threatened with pressing charges.
Key issues (concepts, interpretations) clarified by the case	If there are no laws against homosexuality and NGOs exist in a country, victims of homophobic violence should first turn to them before requesting asylum.
Results (sanctions) and key consequences or implications of the case	The client's asylum claim was rejected.

Criminal law, hate speech

Case title	**EchoTV case**

Decision date	16 December 2009
Reference details	National Radio and Television Commission, case No. 2005/2009 (XII.16.)
Key facts of the case	On 18 July 2009 in the television show *Képtelenségek* (Absurdities) on radical EchoTV the host and the guests of the program made statements concerning the LGBT community in Hungary. The guests in relation to LGBT rights talked about "decaying, destroying the society". They referred to the participants of the Gay Pride March as people with the "most disgusting and distasteful" attitude. LGBT persons were called "destructive parasites" and were compared to cancerous cells that are automatically rejected from the body. A statement from the Chief of National Police in relation to the Hungarian Guard, an extremist movement, was broadcasted in the framework of the program. The statement was intentionally misinterpreted and was brought into connection with the Gay Pride March. A further statement of one guest was capable of making the impression that "the civilisations of gays" and the "civilisation of white Christians" cannot exist together and one of the two should disappear.
Main reasoning/argumentation	The Commission in its decision concluded that the statements in the television show were capable of stirring up hatred against gays and violated their human rights. Thus, they violated Article 3(2) of the Radio and Television Act. The Commission stated that the said article does not mean that in television and radio programs there wouldn't be place for debate or criticism. The aim of that article is to prevent that the television and the radio become an 'amplifier' of those who call for discrimination. Since this was not the first violation of the law by EchoTV, the television company was sanctioned to interrupt its broadcasting for 90 minutes and to screen a message during that time containing the main finding of the Commission's decision. 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 in April 2011 who also upheld the NRTC decision without modifying or amending it the judgment of the first instance court. Both decision emphasised that it is the duty of the host of the TV programme to moderate the statements of guests, and in the particular case not only did the host not warn the guests, but he himself delivered similar statements. EchoTV submitted a final 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), and agreed with Echo TV that if some of the earlier decisions against Echo TV that were referred to in the decision of ORTT to impose higher sanctions were to be annulled, the sanctions in the current case has to be lowered, but that it is not the task of the Supreme Court to decide on this, but that the case is to be reopened at the first instance. EchoTV did request the re-opening of the case, the Metropolitan Court found that since some of the decisions referred to by the Commission were indeed annulled later, the imposed sanctions were too high. A new procedure was carried out by the National Media and Infocommunications (which replaced the Commission in 2011), and imposed a significantly lower sanction of HUF 200,000.
Key issues (concepts, interpretations) clarified by the case	The case helps to clarify what kind of statements amount to hate speech in television and radio broadcasting and the special responsibility of the programme host.
Results (sanctions) and key consequences or implications of the case	At the end, a fine of HUF 200,000 was imposed.

Case title	**Desecration of the grave of Kertbeny**
Decision date	3 December 2010
Reference details	Budapest District VIII Prosecution Service, case no. 6266/2010/2
Key facts of the case	Károly Kertbeny was a 19th century gay rights activist of Hungarian origin, whose grave became a memorial place for LGBT people in Hungary. On 22 July 2010 an extreme right wing online news portal published an article with pictures about an action taken against the grave of Kertbeny. The grave was covered in black textile and a sentence calling for the killing of gays from the Bible was written on it. The article was entitled "The grave of the old fag covered", and several hateful comments were attached by readers.
Main reasoning/argumentation	The NGO Rainbow Mission Foundation reported the case to the police claiming it amounted to incitement to

	violence. The police refused to start an investigation claiming no crime were committed since the wider public was not involved, the sentence is a quote, and is not suitable to incite to active hatred (*tevékeny gyűlölet*). The decision was appealed, and while disagreeing with the police with regards to the involvement of the wider public, the prosecution service upheld the decision claiming that in order to establish the crime statements should call to violence and carry the concrete risks of violent acts. In the present case, the quote only implies violence, it does not incite to active violence, and thus it is not suitable to call others to commit violence.
Key issues (concepts, interpretations) clarified by the case	The case was the first one to apply the notion of (lack of) active hatred (*tevékeny gyűlölet*) in case of a sexual orientation hate speech case.
Results (sanctions) and key consequences or implications of the case	-

Case title	**Toroczkai's incitement against the Pride March**
Decision date	22 March 2011
Reference details	Central District Court of Pest, decision no. 17. B. 80.001/2011/6
Key facts of the case	On 5 September 2009 László Toroczkai, a well-known extremist, published an article under his own name on the extreme right wing news portal *kuruc.info*. In the article he called for disrupting the Pride March. The article contained statements such as "we have to show force", "we need more gunpowder", "we can drop down on them at several spots", "we have to put forward our fighting side once again", "we have already negotiated with activist and political wing of the national resistance", "we were heroic last year".
Main reasoning/argumentation	Háttér Society reported the case to the police claiming it amounted to incitement against a community, preparation to commit violence against a member of a community and preparation to commit violation of the right to assemble. The police started to investigate the case on all three charges, but the prosecution services only carried on with the latter crime. The court found the defendant guilty of preparation to commit violation of the right to freedom of

	association, freedom of assembly and to participate in election campaign events. While the defendant claimed he did not mean violence, the court found that the statements quoted above, and especially that the text referred back to the violent incidents a year earlier as an example to follow were enough to establish that the articles called to violence. The case was appealed, the Metropolitan Court of Appeal upheld the decision of the lower court.
Key issues (concepts, interpretations) clarified by the case	Not only a "grammatical interpretation" of the text is needed, but the context of the statements and their potential impact on the readers is to be taken into account. Referring back to violent acts as an example to follow amounts to calling to violence.
Results (sanctions) and key consequences or implications of the case	The defendant was found guilty but was put on a two year probation, no sanctions were imposed.

Case title	**Hateful signs at Pride 2012 case**
Decision date	29 November 2012
Reference details	Budapest District VI and VII Prosecution Service, decision no. B. VI-VII. 5303/2011/4.
Key facts of the case	The Budapest Pride March took place in Budapest on 18 June 2011. Several extreme right-wing groups officially organised counterdemonstrations with several hundred participants at Oktogon, a larger square on the route of the March. Based on the experience of violent attacks in the previous years the police decided to separate the participants of the March and the counter-demonstrators. At Oktogon, a group of activists affiliated with the extreme right-wing website mozgalom.org held up signs calling for the extermination of gays (the signs showed a rope, a pink triangle referring to the persecution of gays in Nazi Germany and the words: "New treatment for the gays"). Later, several participants of the Pride March leaving the premises were verbally harassed and violently attacked.
Main reasoning/argumentation	The NGO Háttér reported to the police claiming that the holding up such signs amounted to incitement to violence and disorderly conduct targeted at the participants due to their sexual orientation thus amounting to violence against a member of a community. The police started an investigation, but closed it by arguing no crime had been

	committed, since the posters were not suitable to incite to hatred. The prosecution service upheld the decision of the police arguing that while the poster were suitable to incite to hatred, they were not suitable to incite to active hatred (thus incitement against a community cannot be established). With regards to violence against a member of a community the prosecution claimed that holding up posters which show the opinion of the actors only indirectly, implying it via drawings and symbols is not a conscious, intentional refusal of societal norms, and thus does not amount to disorderly conduct.
Key issues (concepts, interpretations) clarified by the case	Another application of the lack of active hatred argument. Drawings and symbols are too indirect to incite hatred.
Results (sanctions) and key consequences or implications of the case	-

Case title	**Homophobic assault**
Decision date	2005[466]
Reference details	Central District Court of Pest (cited by Judit Utasi (2012): A gyűlölet-bűncselekmények elemzése – esettanulmányok I-II. [Analysing hate crimes – Case-studies I-II.] In *Belügyi szemle*, Issue no. 1-2.)
Key facts of the case	In June 2005 a women offered HUF 20,,000 (€65) for a 35 year old man if he beats up a 45 year old man perceived to be homosexual. The women said he had attempted sexual relations with her 15 year old son and offered him marijuana. The perpetrator went to the apartment of the victim, forced entry, kicked and punched him several times, pushed the victim to the bed, punched holes in the bed with a knife and put the knife to the throat of the victim and told him to leave town. During the attack, the perpetrator made degrading comments

[466] The author of the article was contacted on 1 May 2014, but she was not able to trace back the date of the decision.

	about the victim's (perceived) sexual orientation. The perpetrator admitted to the authorities of "not sympathising with these kinds of people". The women who offered the money was not identified during the investigation.
Main reasoning/argumentation	The court found that the behaviour of the defendant in court, his degrading comments on the true or perceived gender identity (sic!) of the victim convinced the court that this was the reason for his accepting the offer of the women and thus found the defendant guilty of severe bodily harm with a base motive combined with forcible entry and imposed a sanction of 10 months imprisonment. The appeals court found the bodily harm to be not severe, but otherwise upheld the decision.
Key issues (concepts, interpretations) clarified by the case	This is the first known case were a court recognised homophobic bias as a base motive. The case never made it to the higher courts, and was thus not widely known before a researcher found it.
Results (sanctions) and key consequences or implications of the case	Sanction of ten months imprisonment and two years restriction from participating in public affairs. Case not widely known.

Case title	**Lövölde tér homophobic assault**
Decision date	23 July 2012
Reference details	Budapest District VI. Prosecution Service, decision no. B. VI-VII. 3541/2012/2.
Key facts of the case	The victim was travelling home on a trolleybus when two young men under the influence of alcohol started calling the victim humiliating names ("little fagot", "cocksucker"). He got off the trolley at Lövölde tér and whispered to himself: "Come on!". The two men got off the trolleybus and followed him. They tried to kick him, but spilt beer over themselves instead. One of the guys started assaulting him and threatened to kill him. The victim fell to the ground and was kept being punched in the face. The victim's nose was broken.
Main reasoning/argumentation	The victim reported the case to the police detailing the name calling and the circumstances indicating a hate crime.

	On 8 May 2012 the police suspended the investigation qualifying it as bodily harm, disregarding the hate aspect. The victim submitted a complaint which was rejected by the prosecution claiming that the name calling does not constitute hate motivation, because such swearwords are commonly used by everyday people under alcoholic influence.
Key issues (concepts, interpretations) clarified by the case	Homophobic slur during an attack is not enough to substantiate a hate motivation.
Results (sanctions) and key consequences or implications of the case	-

Case title	**Homophobic murder**
Decision date	18 October 2013
Reference details	Debrecen City Court, decision No. 25.B.48/2013/23.
Key facts of the case	Sz.N., a 24 year old male killed an elderly gay male pharmacist whom he got to know via personal advertisements on 25 August 2012. Sz.N. 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. 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".
Main reasoning/argumentation	Since the defendant admitted the murder and talked openly about the motive, the court case was very fast. The defendant was convicted for homicide with a base motive, planned in advance, committed with special cruelty and received life imprisonment. Of particular interest to this study, is that the court was ready to evaluate the homophobic motive as "based motive", thus imposing a significantly higher sanction.

Key issues (concepts, interpretations) clarified by the case	Homophobic bias amounts to base motive.
Results (sanctions) and key consequences or implications of the case	Life imprisonment, with a minimum of 30 years before parole.

Case title	**Deres.tv case**
Decision date	25 October 2012
Reference details	Budapest District XIV and XVI Prosecution Service, case no. B. 8027/2012/3-I.
Key facts of the case	On June 27 – July 1, 2012 Budapest was to host the Eurogames, a European level LGBT sport event bringing several thousand LGBT contestants to Hungary from all around Europe. Prior to the event several news portals affiliated with extreme right wing political groups started publishing articles calling for the banning of the event and creating a hostile environment against the organisers and the participants. On 24 June 2012 the extreme right wing news portal *deres.tv* carried an article with the title *The Hunting Season Starts! List of the organisers of the faggot Olympics in one place, hotels where the queers stay soon to come*. The article contained the name and photo of 31 persons downloaded from Facebook, whom the authors claimed were the organisers of the event. The article called for "using whatever means necessary", "the highest form of resistance", the article also claimed that they publish the list of organisers to help "faggot hunters". The following day a list of hotels where the participants would stay was published referring to the participants as "game to hunt down" (game referring to wild animals).
Main reasoning/argumentation	Háttér Society reported the case to the police claiming it was preparation to commit violence against a member of a community. The police first stopped the investigation claiming that since no one attempted to attack anyone, thus no preparation was made. Calling attention to the difference between attempt and preparation the decision was appealed. The prosecution service found that the police's argumentation was indeed deficient and ordered the police to continue the investigation.

Key issues (concepts, interpretations) clarified by the case	Compiling a list of victims and specifying a time and place for attacks amounts to "facilitation" and thus preparation to commit a violence against a member of a community.
Results (sanctions) and key consequences or implications of the case	The investigation is still ongoing.

Case title	**Kisigmánd summer camp case**
Decision date	29 August 2012
Reference details	Komárom Prosecution Service, decision no. B. 1439/2012/1.
Key facts of the case	On July 25-29, 2012 a summer camp was held for LGBT people in a small village in Hungary. The local chapter of the extreme right wing Jobbik learned about the camp and organized a "press conference" in front of the camp to protest against the event. The "press conference" was more of a demonstration, than a conference as no members of the press came, but 14-15 local Jobbik supporters stayed around the camp and harassed the campers with statements like "my wife allowed me to come here only if I wore a chastity belt", "fucking faggots", etc. The "press conference" was secured by the police. After the event was over, everyone including the police left, but about 10 of the same people returned with cars and shouted threatening lines at the campers, one was explicitly referring to the risk of having one's house burnt down.
Main reasoning/argumentation	The Police argued the incident did not amount to stalking as it was not suitable to incite fear in the victims, and thus cannot be considered threats. The victim complained against the decision arguing that he asked for the investigation as violence against a member of a community, and not stalking, which the police did not even consider. The Prosecution Service rejected the complaint and argued that the threats did not amount to antisocial intimidating behaviour, and thus no crime was committed, the Prosecution Service labelled the incident as "a minor disruption of the public order", which did not reach the level of criminal sanction.
Key issues (concepts,	What counts as 'ostensively anti-communal conduct'.

interpretations) clarified by the case	
Results (sanctions) and key consequences or implications of the case	-

Freedom of assembly

Case title	**Pride Ban 2011**
Decision date	18 February 2011
Reference details	Metropolitan Court of Budapest, case no. 27.Kpk.45.188/2011/4
Key facts of the case	In 2011, the original notification to hold a Pride March – submitted on 30 September 2010 – was initially accepted by the police. Due to the EU Presidency that Hungary held in the first half of 2011 and in opposition to the at that-time only draft of the new Fundamental Law (passed in April 2011) the organisers wished to extend the route and march to the Parliament. The modification of the route was, however, rejected and the entire march was banned. The reasoning of the police was detailed: they 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.
Main reasoning /argumentation	The organisers appealed the ban, and the Metropolitan Court quashed the decision of the Budapest Police and gave way to the Pride March. The court found that the police acted unlawfully when considering the effects of the modification on the already acknowledged route. The police had no right to reconsider the already acknowledged route and should have treated the extension as a separate request and decide on it separately. The procedure of the police violated the principle of legal certainty and the protection of acquired rights. With regards to the content of the decision, the court called attention to a change in legislation in 2004 that replaced "disproportionate disruption of traffic" with "the traffic cannot be organised on another route" as the reason for banning a demonstration. The police was still referring to the old legislation in its decision. The court found that the police provided ample

	evidence the traffic will be impacted negatively, but not that it would be made impossible. Thus the decision was not in line with Article 8 (1) of the Assembly Act.
Key issues (concepts, interpretations) clarified by the case	Extension of an already acknowledged demonstration is a separate request which should be assessed separately, and this assessment cannot affect the already acknowledged demonstration. Difference between "disproportionate disruption of traffic" and "the traffic cannot be organised on another route" clarified.
Results (sanctions) and key consequences or implications of the case	The police ban was reversed, the Pride March could go on.

Case title	**Pride Ban 2012**
Decision date	13 April 2012
Reference details	Metropolitan Court of Budapest, case no. 27.Kpk.45.385/2012/2.
Key facts of the case	The notification of the Pride organisers submitted in time was rejected by the Buda Police. Similarly to the 2011 decision, 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.
Main reasoning /argumentation	The Metropolitan Court overturned the decision of the police. The court emphasised 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; 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. The court hinted at the police acting in a discriminative manner. The court emphasised that the police is bound by earlier court decisions and should respect decisions and not use the same arguments again.
Key issues (concepts,	Difference between "disproportionate disruption of traffic" and "the traffic cannot be organised on another route"

interpretations) clarified by the case	clarified.
Results (sanctions) and key consequences or implications of the case	The police ban was reversed, the Pride March could go on.

Case title	**Pride discrimination 2012 case**
Decision date	16 January 2014
Reference details	Metropolitan Court of Budapest, case No. 22.P.26.019/2012/10
Key facts of the case	In 2012 the police banned the Pride March using very similar arguments to what a year before the court had already found unlawful. The arguments were only used for the Pride March, several other freedom of assembly events on the same route could take place.
Main reasoning /argumentation	Háttér Society and an individual represented by the Hungarian Helsinki Committee sued the police claiming the police decision was discriminatory, as the reasons for issuing the ban was that the aim of the demonstration was related to sexual orientation and gender identity, and also claimed the decision amounted to harassment as it created an intimidating, hostile, degrading and humiliating environment for LGBT people. The Metropolitan Court of Budapest agreed with the claimant and found that the police infringed on the personality rights of the claimant and the whole LGBT community. An appeal by the police is pending.
Key issues (concepts, interpretations) clarified by the case	The fact that the police decision was already annulled does not mean that no separate case can be launched concerning the discriminatory aspect of it.
Results (sanctions) and key consequences or implications of the case	The Police was ordered to refrain from such practice in the future and issue a letter of apology. An appeal by the policy is still pending.

Transgender issues

Case title	**Cross-dresser photo shooting**
Decision date	24 November 2011
Reference details	Equal Treatment Authority, case No. 1007/2011
Key facts of the case	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 a colleague of the hotel dealing with sales realised after a phone call that it would be a photo-shoot involving cross-dressers, he rejected the request claiming that the management does not authorise "such" photo sessions and does 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.
Main reasoning /argumentation	The victim turned to the Equal Treatment Authority, but got an information letter in response that his case does not fall within the mandate of the Authority. The victim returned now represented by Háttér Society, and the Authority initiated a procedure. 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 emphasised that similar photo sessions with cross-dressers had already taken place in the garden, he acted in good faith and was cooperative from the first moment. The hotel apologised and confirmed that the photo-shoot can take place on an agreed date in the spring.
Key issues (concepts, interpretations) clarified by the case	This was the first case involving cross-dressers at the Equal Treatment Authority.
Results (sanctions) and key consequences or implications of the case	A settlement was reached, and the hotel offered its premise for the photo shoot at a later time.

Case title	**Naturist camping case**
Decision date	31 January 2012
Reference details	Equal Treatment Authority, case No. 915/2011
Key facts of the case	BA is a transgender person who has undergone some medical treatment to alter her body. In summer 2012, she visited a naturist camping. When she bought her ticket she was warned not to take off her towel. When she did she was asked to leave the premises. The operator of the property also threatened to call the police.
Main reasoning /argumentation	BA reported the case to the Equal Treatment Authority. The operator of the property maintained that they asked BA to leave because she was not a member, not because she was transgender. BA maintained the problems only arose when she undressed. The Authority suggested BA to apply for membership, which she refused. A settlement was reached in which the camping maintained that they did not commit a breach of equal treatment, but that they were sorry if their staff's handling of the case was humiliating.
Key issues (concepts, interpretations) clarified by the case	-
Results (sanctions) and key consequences or implications of the case	A settlement was reached, but the claimant did not want to return to the camping.

Case title	**Trans pharmacist**
Decision date	8 August 2011
Reference details	Office of Health Authorisation and Administrative Procedures, case No. 28326-004/2011/ELN

Key facts of the case	The applicant was born male, completed a degree in pharmaceutical sciences and became a head pharmacist in the Hungarian countryside while still being officially male. In 2011 she changed her gender and started replacing her documents to reflect her new name and gender. While she had no problem obtaining a new diploma, when requesting an amendment to her pharmacy license she met an obstacle. The Office of the Chief Medical Officer of State (*Állami Népegészségügyi és Tisztiorvosi Szolgálat Országos Tisztifőorvosi Hivatal*) would only issue a new license that contained both her birth name and her new name and thus the new license would have revealed to everyone that she had undergone gender reassignment.
Main reasoning /argumentation	She appealed the decision and argued that forcing a trans person to out herself every time she has to show her pharmacy license was an unacceptable breach of human dignity and privacy, and given the transphobic social attitudes in Hungary it would expose the applicant to a higher level of discrimination. In the appeal procedure the Hungarian Office of Health Authorisation and Administrative Procedures shared the applicants concerns that the amended license containing both her birth name and her new name was a breach of human dignity and ordered the Office of the Chief Medical Officer of State to issue a new pharmacy license that does not contain reference to the applicant's birth name.
Key issues (concepts, interpretations) clarified by the case	Forcing a transgender person to disclose his/her transgender history is a breach of human dignity.
Results (sanctions) and key consequences or implications of the case	The applicant received a new pharmacy license not containing information on her transgender history.

Miscellaneous cases

Case title	**Károli case**
Decision date	8 June 2005

Reference details	Supreme Court, decision No. Pfv. IV. 20.678/2005
Key facts of the case	After dismissing a theology student who had confessed his homosexuality to one of his professors, the Faculty Council of the Theological Faculty of the defendant published a general declaration on 10 October 2003, claiming that the church may not approve the education, recruitment and employment of pastors and teachers of religion who conduct a homosexual way of life. The plaintiff brought an *actio popularis* claim against the university requesting the court to declare that the defendant's published opinion violated the right of homosexuals as a social group to equal treatment, to withdraw its declaration as well as to pay punitive damages. Both the first and second instance courts rejected the claim of the plaintiff.
Main reasoning /argumentation	The Court accepted the claimant's argument that even the proving of an abstract disadvantage may be sufficient for the establishment of discrimination and the shifting of the burden of proof. However, it took the stance that the denominational university is exempted from the obligation to abide by the requirement of equal treatment by virtue of the general exempting rule of the ETA [Article 7 (2)], according to which an action based on a protected characteristic "shall not be taken to violate the requirement of equal treatment if it is found by objective consideration to have a reasonable ground directly related to the relevant legal relation."
Key issues (concepts, interpretations) clarified by the case	Requirements of the shifting of the burden of proof and those of objective justification of discrimination in the case of denominational universities were clarified.
Results (sanctions) and key consequences or implications of the case	No sanctions were imposed on the defendant. The decision expresses that in the case of a denominational university, it may objectively be considered to be reasonable to exclude homosexuals from theological education, taking in consideration the fact that later on they may become pastors (although this is not inevitable, as students with a degree in theology do not automatically become pastors).

Case title	**Hungary Pepsi Island case**
Decision date	11 March 2002
Reference details	II. and III. District Court Budapest (*Budapest II. és III. Kerületi Bíróság*), decision no. 17. P.III. 22 429/2001/19.

Key facts of the case	The plaintiff intended to participate in Pepsi Island, a cultural/musical event in Budapest in the framework of which it would have provided HIV/AIDS prevention services as well as awareness raising of LGBT rights. After successful negotiations the defendant organiser denied the request referring to an agreement that it concluded with the mayor and the leaders of the police in the relevant district. The agreement stated that the parties did not want any kind of events related to homosexuals appearing in Pepsi Island. The plaintiff asked the court to declare that the agreement is null.
Main reasoning/argumentation	The court entertained the claim of the plaintiff and declared the agreement null reasoning that it violated that anti-discrimination clause of the Constitution (Article 70/A) as it discriminated against gays and lesbians. However, the court refused to impose a public interest fine on the defendant.
Key issues (concepts, interpretations) clarified by the case	This case is the first and only documented case which established discrimination on the ground of sexual orientation. The judgment was delivered before the entering into force of the Equal Treatment Act thus the court had to refer to the relevant Article of the Constitution.
Results (sanctions) and key consequences or implications of the case	The court established discrimination on the ground of sexual orientation, but did not impose any sanction.

Case title	**Dance school case**
Decision date	11 March 2009
Reference details	Equal Treatment Authority , case No. 102/2009
Key facts of the case	The case concerned a person who intended to enrol in a dance school but was refused owing to the fact that he was a gay rights activist who also appeared in the media. The head of the school who rejected his enrolment referred to homosexuality as an aberration and told him that his activities would damage the reputation of the school.
Main reasoning/argumentation	The Authority stated that the defendant dance school failed to put forward any reasonable justification that would stand as a plausible explanation for the harm suffered by the applicant. Therefore, it established discrimination

	based on sexual orientation.
Key issues (concepts, interpretations) clarified by the case	What constitutes objective justification in a discrimination case.
Results (sanctions) and key consequences or implications of the case	It's the first case in which the Equal Treatment Authority established discrimination on the ground of sexual orientation. Sanctions: The Authority ordered to publish its decision on its website for six months. Furthermore, it imposed a fine of HUF 200,000 (approx.€740) on the defendant. The claimant also initiated a civil law case for compensation, an out of court settlement was reached providing compensation to the claimant.

Case title	**Király Thermal Bath case**
Decision date	23 May 2013
Reference details	Equal Treatment Authority, case No. 41/2013 8 (overruled)
Key facts of the case	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.
Main reasoning/argumentation	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 decision of the Authority, on the other hand found that – based on the case law of the Hungarian Constitutional Court and the European Court of Human Rights – the notion of public morality may not coincide with that of the majority, the purpose of the law is to protect minorities from the prejudices of the majority. On 14 November 2013 the Metropolitan Court of Budapest overruled the decision claiming the difference in treatment was not related to sexual orientation, but the behaviour of the couple.

Key issues (concepts, interpretations) clarified by the case	Views on public morality by the majority are not enough reason to restrict sexual minorities public display of affection.
Results (sanctions) and key consequences or implications of the case	The bath was ordered to refrain from similar practice in the future. Sanction abrogated in appeal procedure.

Case title	**MLSZ case**
Decision date	27 June 2013
Reference details	Equal Treatment Authority, case No. 88/15/2013
Key facts of the case	The Hungarian Football Federation (*Magyar Labdarúgó Szövetség*, MLSZ) 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". The regulation excluded same-sex couples. Háttér Society turned to MLSZ and asked an amendment of the policy, who confirmed that the provision does not allow same-sex couples and their children to enter, and that this is in line with the heterosexual definition of marriage in the new Fundamental Law.
Main reasoning/argumentation	Háttér Society reported the case to the Equal Treatment Authority, MLSZ offered to amend the regulation and wished to conclude a settlement agreement rather then proceed with the case.
Key issues (concepts, interpretations) clarified by the case	The issue at hand was whether the protection from sexual orientation discrimination is afforded to couples as well, not just to individuals, but since a settlement was reached, the Authority did not deliver its opinion.
Results (sanctions) and key consequences or implications of	A settlement was reached, the MLSZ amended their policy to use gender neutral language. The case received very high media attention, especially after the Christian Democratic Party issues a press release criticising the decision

the case	of MLSZ for going against the traditional notion of family.

Case title	**Lesbian libel**
Decision date	28 February 2013
Reference details	Court of Appeal of Pécs (*Pécsi Ítélőtábla*), case no. Pf.VI.20.175/2013/7.
Key facts of the case	The claimant works as a registrar and a newspaper published an interview with her. On the website of the newspaper a user wrote a comment charging the claimant with committing a crime and being a lesbian. A criminal procedure already found the user guilty of slander the current case concerned civil law compensation.
Main reasoning/argumentation	The first instance court found (among others) that the malicious comment concerning the sexual orientation of the claimant was suitable to diminish the social prestige and authority of the claimant and it was thus libellous. The second instance court while agreeing with the lower level court that the personality rights of the claiming were violated, rejected the argument that asserting someone's minority sexual orientation is libellous as this would imply homosexuality is a shameful, socially unacceptable phenomenon. The court rather argued that sexual orientation is part of a persons' most intimate private life, an open, offensive discussion of someone else's sexual orientation thus constitutes an unacceptable intrusion of privacy.
Key issues (concepts, interpretations) clarified by the case	Homosexuality is not a shameful, socially unacceptable phenomenon. Sexual orientation part of intimate private life deserving protection.
Results (sanctions) and key consequences or implications of the case	The defendant was ordered to pay HUF 300,000 (€10,000) to the claimant.

Annex 2 – Statistics

Implementation of Employment Directive 2000/78/EC
Statistics provided by the Equal Treatment Authority on the basis of the Senior Expert's request can be assessed as follows..

	2005	2006	2007	2008[467]	2009
Total complaints of discrimination on the ground of sexual orientation	2	2	2	5	9
Total finding of discrimination not confirmed	2	2	2	0	2
Total finding of discrimination confirmed	0	0	0	0	3

For the period 2010-2013 the Equal Treatment Authority refused to give data on the number of complaints, and provided data only on completed cases. Cases include discrimination and harassment both in employment and other fields. The Authority noted that if a case concerned both discrimination and harassment, they were counted in both categories. The data provided is the following: [468]

	2010		2011		2012		2013	
	sexual orientation	gender identity	sexual orientation	gender identity	sexual orientation	gender identity	sexual orientation	gender identity
Total finding of discrimination confirmed	2	0	0	0	0	0	1	0
Total finding of harassment confirmed	1	0	0	0	1	0	2	0
Total number of settlements concerning discrimination	0	0	0	1	0	1	2	0

[467] According to the information provided by the Equal Treatment Authority on 19 February 2010, no decisions were issued in the complaints of 2008 as the complainants either remained anonymous or requested only information.
[468] Hungary, Equal Treatment Authority (2014), Letter No. EBH/216/2014 in response to an information request by the Hungarian Helsinki Committee, 10 March 2014.

Total number of settlements concerning harassment	0	0	0	0	0	0	1	0
Total finding of discrimination not confirmed	1	0	0	0	0	0	0	0
Total finding of harassment not confirmed	0	0	0	0	1	0	0	0

Statistics on complaints received by the Commissioner for Fundamental Rights as provided for purpose of this report[469] are as follows. The statistics do not allow to separate employment related cases from other cases, although none of the examples provided by the Commissioner were employment related.

	2010	2011	2012	2013
Total complaints concerning sexual orientation	0	0	2	4
Total finding of violations	0	0	0	0

Transgender Issues

The Ministry of Justice and Law Enforcement (*Igazságügyi és Rendészeti Minisztérium, IRM*) provided the Senior Expert with the following statistics; however these figures only show how many persons had their name and sex changed in birth certificates.

	Number of sex and name changes in birth certificates
2000	0
2001	0
2002	1
2003	19
2004	16

[469] Hungary, Commissioner for Fundamental Rights (2014), Letter No. AJB-1098/2014 in response to an information request by the Hungarian Helsinki Committee, 26 February 2014.

2005	20
2006	17
2007	9

According to a response[470] to our request for data in 2010 the following number of sex and name changes were reported. The Ministry in their response cautioned that they can only report on requests sent to the Ministry directly, but that there might also be requests they do not know about.

	Number of sex and name changes in birth certificates
2008	12
2009	28

In 2014, the Ministry responded[471] that they do not have data on the actual number of sex and name changes in birth certificates, only about the requests they receive. They estimated that a permission is granted in 90 % of the cases.

	Number of requests received related to sex and name changes in birth certificates
2010	33
2011	49
2012	33
2013	30

The National Health Insurance Fund reported the following data on the use of health services by transgender persons. [472]

	Number of patients using transsexualism related treatments			
	2010	2011	2012	2013
in-patient services	30	30	18	16

[470] Hungary, Ministry of Justice and Law Enforcement, Letter 437-361-2/2010 in response to an information request by Otherness Foundation, 26 February 2010.

[471] Hungary, Ministry of Public Administration and Justice (2014), Letter No. XVII/102/3/(2014) in response to an information request by the Hungarian Helsinki Committee, 25 February 2014.

[472] Hungary, National Health Insurance Fund (2014), Letter No. 1021/41-3/2014 in response to an information request by the Hungarian Helsinki Committee, 3 March 2014.

out-patient services	105	127	116	128

The following table contains data concerning financial resources used for trans related healthcare:

Year	Number of patients using hormone treatment	Sum of support for hormone treatments by the public health insurance (HUF)	Number of patients using surgeries	Sum of support for surgeries by the public health insurance (HUF)
2010.	24	539,530	27	2,380,831
2011.	36	613,747	26	2,477,792
2012.	45	744,511	11	1,047,558
2013.	59	639,720	10	1,033,268

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Except for the divorce requirement, requirements derive from the consistent practice of the ministries responsible for health and registry affairs.
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case *Lydia Foy* (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from

										a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ×=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[473]	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	

[473] Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[473]	All areas of RED*		
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	**9**	**7**	**11**	**20**	

Note: ✓ = Applies; **?** = doubt; **x** = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or *travaux préparatoires*
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to 'gender identification'.
DE			✓	Constitutional amendment proposal by opposition ('sexual identity')
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to 'other issues related to gender'.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		Explicit provision *("nemi identitás")* in Equal Treatment Act. The earlier version of the official English translation of the act included the term "sexual identity"; the current version includes "gender identity".
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered 'sex' discrimination. The new ground 'transgender identity or expression' now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the 'gender reassignment' protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under "medical supervision" and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	**10**	**3**	**15**	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on 'incitement to hatred' and 'aggravating circumstances' covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category 'group of people', but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category 'comparable group'. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU	✓	✓	Both sexual orientation and gender identity are explicitly included in the new Criminal Code (Act C of 2012) that entered into force on 1 July 2013.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of 'family member' for the purposes of free movement, asylum and family reunification

Country Codes	Free movement[474]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of 'family member' includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of 'family member' includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the 'affective relationship' be 'duly attested' remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities' discretion, which may require additional conditions. No information available on refugees.
HU	?	✓	?	✓	?	✓	While there is no explicit restriction on recognizing same-sex spouses in immigration, since same-sex marriage is generally not recognized, it may (1) not be recognized at all or (2) it may be recognized as registered partnership, and thus treated the same way as marriage. There is no case law to support either option. Except for partners of Hungarian or EU citizens, only registered partners are recognized, *de facto* partners are not.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.

[474] In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a 'durable relationship' may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement[474]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	**8**	**15**	**8**	**13**	**8**	**12**	

Note: ✓= applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.