



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Ombudsman challenges before the Constitutional Court a local decree banning the wearing of burqas, chadris, niqabs and other similar clothing as well as any activity questioning that marriage is only possible between a woman and a man
<b>Date:</b>	4 January 2017
<b>Expert:</b>	Kádár, András
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Whether a ban on religious clothing and on expressing support for homosexual marriage is constitutional in Hungary
<b>Ground of discrimination:</b>	religion/belief and sexual orientation
<b>Source:</b>	miscellaneous
<b>Field:</b>	other
<b>Applicable law:</b>	Article 24 of Act 151 of 2011 on the Constitutional Court, Article 34 of Act CXI of 2011 on the Commissioner for Fundamental Rights, Article 143 of Act CLXXXIX of 2011 on the Municipal Councils of Hungary

### Content

**Development:** The mayor of Ásotthalom (a village on the Southern border of Hungary with a population of 5,000) is a well-known right-wing extremist. On 23 November 2016, the municipal council adopted Decree 25/2016 (XI.23.) on Amending Decree 12/2014 (IV. 30.) on the Rules of Communal Cohabitation. (Under Article 143 of Act CLXXXIX of 2011 on the Municipal Councils of Hungary, municipal councils are entitled to adopt decrees on the fundamental norms of communal cohabitation and the sanctions of behaviours breaching such norms.) The amendment introduced into the 2014 decree a new Article 7/B, which runs as follows:

*It is forbidden in public premises to*

- a) perform calls for muezzin, because it is capable of disturbing public peace and causing fear, alarm and indignation among local residents;*
- b) wear burqas, chadris, niqabs covering the whole body, head and the whole face or a part of it as well as bathing suits covering the whole body, including the so-called burkini;*
- c) carry out any type of propaganda activity that presents marriage as anything different from a life partnership between a man and a woman as stipulated in the Fundamental Law, including any type of activity in public premises, with special regard to performances, demonstrations, billboards, leaflets and audio-advertisements;*
- d) carry out any type of propaganda activity that violates the Fundamental Law by acknowledging as the basis of a family, any relation other than marriage or the relationship between parent and child, including any type of activity in public*

*premises, with special regard to performances, demonstrations, billboards, leaflets and audio-advertisements.*

The mayor said to the press that the reason for the amendment was that “from the South it is migration, from the West it is the excesses of extreme liberalism that threaten our society and traditions”, making it clear that while the ban on the muezzin and burqas serves the purpose of deterring migrants – most of whom are Muslims –, the second part of the decree is aimed against “homosexual propaganda” and is based on the Russian example.

On 20 December, the Commissioner for Fundamental Rights (the Ombudsman) filed a petition with the Constitutional Court (CC), asking the CC to abolish the unconstitutional amendment (the CC has the right to declare a legal provision null and void if it contradicts the Fundamental Law). The arguments of the Ombudsman are the following. The amendment severely restricts fundamental rights (freedoms of religion and expression) although, according to the Fundamental Law, fundamental rights may only be restricted in an Act of Parliament and not in a municipal decree. Furthermore, the contents of the regulation would be unconstitutional even if they were adopted in an appropriate normative form, since they violate the requirement of equal treatment by only banning the external manifestations of one particular religion, whereas no similar ban is prescribed for any other religion. The Ombudsman also emphasises that the bans on religious manifestations amount to such a severe limitation of the freedom of religion that they could even in principle only be allowed under very extreme circumstances.

As to the ban on “propaganda activities”, the Ombudsman is of the view that it violates the freedom of expression on issues (the concept of marriage and the family) that are subjects of intensive societal discussions. Furthermore, the ban is targeted against one particular view in this debate, so it interferes with the freedom of expression on a content-basis, which is clearly unconstitutional, especially, because the concerned views are closely related to human dignity, the requirement of equal treatment and the right to private and family life.

**Key points of analysis:** The most interesting question with regard to the case is whether the CC will use this opportunity to form a general stance on bans of wearing religious symbols (which – due to the small number of Muslims in Hungary – has not been an issue so far), or will simply decide upon the Ombudsman’s petition on a formal basis postponing the formulation of a view on the substantive matter.

**Internet link source:**

<http://www.njt.hu/njtonkorm.php?njtcp=eh2eg7ed8dr1eo8dt9ee4em3cj2bx1cf8cb3bz2bw7ca8d;>

[http://index.hu/belfold/2016/11/24/betiltottak\\_a\\_muszlim\\_vallast\\_es\\_a\\_melegseget\\_eg\\_y\\_magyar\\_kozsegben/;](http://index.hu/belfold/2016/11/24/betiltottak_a_muszlim_vallast_es_a_melegseget_eg_y_magyar_kozsegben/)

<http://www.ajbh.hu/kozlemenyek/-/content/10180/1/az-ombudsman-az-alkotmanybirosagtol-keri-az-asotthalmi-onkormanyzat-alapjogserto-rendeletenek-megsemmisiteset>.