



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

FLASH REPORT

Country:	Hungary
Title:	Amendment of the provisions on legal recognition of gender
Date:	30 June 2020
Expert:	Lídia Hermina Balogh
Context	
Issue at stake:	By introducing the concept of 'birth sex', the amendment of the Registry Act makes the legal recognition of gender change impossible in Hungary
Grounds of discrimination:	Transgender
Field of application:	Other field
Source:	National legislation
Applicable law:	Act XXX of 2020 on the amendment of certain laws related to public administration and on donating property (<i>2020. évi XXX. törvény egyes közigazgatási tárgyú törvények módosításáról, valamint ingyenes vagyonszármazásáról</i>), Article 33, amending Act I of 2010 on civil registration procedure (<i>2010. évi I. törvény az anyakönyvi eljárásról</i>)

Content

Legislation development: On 31 March 2020, a draft omnibus bill¹ was filed on behalf of the Hungarian Government, by Deputy Prime Minister Mr. Zsolt Semjén² (delegated by the Christian Democratic People's Party, the junior coalition partner of Fidesz). Some provisions of the bill, aimed at amending the Registry Act,³ relate to the issue of legal recognition of gender, thus affecting the rights of transgender people in Hungary.

As for the direct context of the proposal: amidst the COVID-19 crisis, the Hungarian Parliament just passed the 'State of Emergency law'⁴ the day before filing of the omnibus bill, on 30 March 2020 (the State of Emergency Law entered into force several hours later, at midnight) which allowed the Prime Minister, Mr. Viktor Orbán to rule by decree for an undefined period of time. Then, the omnibus bill was considered by the Parliament in the normal way of legislation, however, in the forefront of this special political situation.

On 6 April 2020, Mr. Olivio Kocsis-Cake, MP of the Dialogue for Hungary Party (*Párbeszéd Magyarorszáért*) filed a motion to amend the bill, rejecting the relevant proposal by claiming that no prior public consultation took place with LGBT organisations regarding the plan to amend the Registry Act. On 9 April 2020, Ms. Bernadett Szél, independent MP, filed

¹ Hungary, Bill no. T/9934., see the draft (in Hungarian): <https://www.parlament.hu/irom41/09934/09934.pdf>.

² See: <https://www.kormany.hu/en/deputy-prime-minister>.

³ Hungary, Act I of 2010 on civil registration procedure (*2010. évi I. törvény az anyakönyvi eljárásról*), 14 December 2009.

⁴ Hungary, Act XII of 2020 on Protection against the Coronavirus (*2020. évi XII. törvény a koronavírus elleni védekezéséről*).

a motion to amend, rejecting the relevant proposal by claiming that it would violate transgender people's right to identity. Eventually, on 19 May 2020 the Parliament voted by 133 to 57 to pass the bill, with the two-thirds majority of the governing coalition. The President of the Republic, Mr. János Áder signed the act on 28 May 2020, which came into force the next day.

The relevant part of the Act:

Article 33 (1)-(3)

(1) Article 3 of the Act I of 2010 on Civil Registration Procedure (*Az anyakönyvi eljárásról szóló 2010. évi I. törvény*, the Registry Act) will be amended by the following point (x):

(Within the scope of application of this law)

'x) sex assigned at birth:⁵ biological sex, defined by primary sex characteristics and chromosomes'

(2) Article 69/B Paragraph (1) point b) sub-point be) of the Registry Act will be replaced by the following provision:

The registry of personal identification data includes

b) the person's

'be) sex assigned at birth'

(3) Article 69/B Paragraph (3) of the Registry Act will be replaced by the following provision:

'(3) The data specified in Article 69/B Paragraph (1) point b) sub-point be) of the Registry Act cannot be changed.'

The relevant part (relating to Article 33) of the Detailed Reasoning (*Részletes indokolás*) of the Bill:

'Sex is not conceptualised in the current legislation, given that the determination of sex is based on biological facts. It can be determined based on primary sex characteristics and chromosomes.

Sex included in the civil registry is based on facts determined by a doctor, declared by the registry. The registry certifies the facts and rights which are included in it, until proven otherwise, thus the registry does not create rights. However, the sex declared by the registry could create rights or obligations, and therefore it is necessary to define the concept of birth sex.

Given that it is impossible to completely change one's biological sex, it is necessary to ascertain by law that it cannot be changed in the civil registry either.'

The provisions in Article 33 of the omnibus bill were opposed by numerous actors, on national, European and international levels, including;

- a group Hungarian LGBT and human rights organizations, including the Amnesty International Hungary, the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union;⁶
- the LMBTQ section of the Hungarian Psychological Association;⁷
- the Equal Treatment Authority,⁸

⁵ Literally: 'birth sex' (*születési nem*).

⁶ See (in Hungarian): <https://lmbtszovetseg.hu/hirek/vonjak-vissza-a-transznemueket-ellehetetlenito-torvenyjavaslatot>.

⁷ See (in Hungarian): https://www.facebook.com/permalink.php?story_fbid=659477707948832&id=230520050844602.

⁸ The summary of the opinion of the Authority is available (in Hungarian): <https://www.facebook.com/lmbtszovetseg/photos/a.10151500607922055/10157478266457055/?type=3&theatre>.

- the ILGA-Europe and the Transgender Europe (TGEU);⁹
- 63 MPs, in an open letter to the Hungarian government;¹⁰ the LGBTI Intergroup of the EP, in a press release;¹¹ and the majority of the EP in a resolution;¹²
- the Council of Europe's Commissioner for Human Rights;¹³ the Conference of INGOs of the Council of Europe;¹⁴
- the UN High Commissioner for Human Rights,¹⁵ the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to privacy and the Special Rapporteur on violence against women, its causes and consequences;¹⁶ the UNAIDS;¹⁷ the UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity;¹⁸
- the Human Rights Commissioner of Germany.¹⁹

When the President of the Republic signed the act, Hungarian LGBT organisations declared that:

'We will not give up fighting this law. We call on the Ombuds, Ákos Kozma, to initiate the nullification of the law via the Constitutional Court due to its unconstitutional nature. We expect the Constitutional Court to affirm its consistent verdict: legal gender recognition is the constitutional right of transgender and intersex people.'²⁰

The next day, a group of transgender rights activists held a demonstration in Budapest (on Heroes Square), legislation, burning their birth certificates as a symbolic act to protest the new legislation.

Key points of analysis: As a consequence of the legislation, the 'birth sex', included in the birth certificate and in the registry, would be included in all identification documents (e.g. passports, ID cards), and this arrangement may make the change of the first name in official documents impossible as well.²¹ Practically, according to the Háttér Society

⁹ See: <https://ilga.org/hungary-drop33-legal-gender-recognition-ILGA-Europe-TGEU>.

¹⁰ See: <https://lgbti-ep.eu/2020/04/15/63-meps-call-on-hungarian-government-to-revoke-article-33-restricting-the-rights-of-trans-and-intersex-persons/>.

¹¹ See: <https://lgbti-ep.eu/2020/04/02/latest-move-by-fidesz-is-a-deliberate-attack-against-the-hungarian-trans-community/>.

¹² See: European Parliament resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences (2020/2616(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.html.

¹³ See: https://www.facebook.com/CommissionerHR/posts/1552971991545372?_xts=%5B0%5D=68.ARAMmwUonNxGcEcChP7ZyQzLYvYtVMah2hwhVOBPw-A7FJ0S66delkt4mwUjvyIRvyZuTEvV6Y0xZLWUWCNIHnZFIK68k44yPPBQvr0tYOKREOm2gbEni-7HTbfFYKR5JzqwEf0rzRXGIzgZ9YK8gg0rJ4FDT7ow0q1eeAoBHwkEgRRFLHH5K-R7Euax0FRsIPPxS382E7saXEc1NCilexhoFO-iPSto_jKWeNZkQDjMjYrYG34Sjdy_TbfiQAOALI5sMRhOKKPFi51Amnil0vOguGSFY4A7hy2tu4V_QBsLUaiGK2cfqFYTjclUREH6upcysfnezdIVqxLMaYaGtIA&_tn=-R.

¹⁴ See: https://www.coe.int/en/web/ingco/newsroom/-/asset_publisher/BR9aikJBXnwX/content/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards.

¹⁵ See: <https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>.

¹⁶ See: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=25172>

¹⁷ See: https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/may/20200508_hungary.

¹⁸ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25844>.

¹⁹ See: <https://www.auswaertiges-amt.de/en/newsroom/news/kofler-hungary-transgender/2340742>.

²⁰ Háttér Association: 'Despite human rights concerns, Hungarian President signs the law that bans legal gender recognition', 28 May 2020, <https://en.hatter.hu/news/president-signs>.

²¹ See an assessment in English: Milieu Consulting SPRL (2020) 'Coronavirus pandemic in the EU – Fundamental Rights Implications. Country: Hungary, 4 May 2020, pp. 4-5, https://fra.europa.eu/sites/default/files/fra_uploads/hu_report_on_coronavirus_pandemic_may_2020.pdf.

(Háttér Társaság)²² the new legislation 'would make legal gender recognition in Hungary impossible', and may 'also impact those who had their gender recognised in the last two decades; possibly resulting in the reversal of previously issued documents including new birth certificate'.²³ According to a representative of the Prizma Transgender Community (Prizma Transznemű Közösség), if 'the proposed bill is adopted, a transgender person will risk discrimination every time they are required to present their identity documents' in Hungary.²⁴

The Háttér Society summarised the background of the proposed regulation as follows:

'Hungary had a relatively progressive practice on legal gender recognition since the late 1990s requiring only medical diagnosis, but no medical interventions or real life experience, but this was never codified in law. In 2014, some aspects of the procedure were regulated in the ministerial decree on registry procedures, but it left most of the key questions (Who can apply for legal gender recognition? What kind of medical opinions are needed? Who makes the final decision?) unanswered. In 2016, the ombuds (the Parliamentary Commissioner for Fundamental Rights) issued a report requiring the procedure to be regulated properly in law. The government promised to come up with new legislation, but instead suspended processing all LGR requests. For a few months before the elections in 2018 the processing of LGR (legal gender recognition) requests were resumed according to the old procedure, to be suspended yet again in May 2018. In recent months several courts declared the suspension unlawful, and ordered the authorities to resume processing the requests. Instead of abiding by the courts' decisions, the government proposed a bill to ban legal gender recognition altogether.'²⁵

The Háttér Society claimed in another communication (when the President of the Republic signed the act) that the prohibition of legal gender recognition clearly violated international human rights norms, and the consistent case law of the European Court of Human Rights; moreover, that it contradicted the relevant rulings of the Hungarian Constitutional Court.²⁶

Internet link source: Act XXX of 2020 on the amendment of certain laws related to public administration and on donating property (amending, among others, the Registry Act) was published in the Official Journal of Hungary (*Magyar Közlöny*), Issue No. 125, 28 May 2020, p. 2901,
<https://magyarkozlony.hu/dokumentumok/2473fb7525bcb68f41e2b0d2a1bb60e718fa4ef/megtekintes>.

²² A prominent LGBTQI organization in Hungary, see: <https://en.hatter.hu/about-us>.

²³ Háttér Association: 'Hungarian government proposes bill to ban legal gender recognition amid COVID chaos', 2 April 2020, <http://en.hatter.hu/news/hungarian-government-proposes-bill-to-ban-legal-gender-recognition-amid-covid-chaos>.

²⁴ Ibid.

²⁵ Ibid. A detailed assessment was published (in Hungarian) by the Hungarian LGBT Association: 'A Magyar LMBT Szövetség véleménye az egyes közigazgatási tárgyú törvények módosításáról, valamint ingyenes vagyonjuttatásról szóló T/9934. számú törvényjavaslatról', 28 April 2020, https://lmbtszovetseg.hu/sites/default/files/mezo/file/lmbtszov_ogytransz_2020apr.pdf.

²⁶ Háttér Association: 'Despite human rights concerns, Hungarian President signs the law that bans legal gender recognition', 28 May 2020, <https://en.hatter.hu/news/president-signs>.