



REPORT ON ACT LXXIX OF 2021 AMENDING CERTAIN ACTS FOR THE PROTECTION OF CHILDREN AND ITS IMPLEMENTATION¹

by Háttér Society, updated in January, 2023

I. Introduction

About Háttér Society

Háttér Society, founded in 1995, is the oldest and largest LGBTQI organization in Hungary. It works for a society in which no one is discriminated against because of their sexual orientation or gender identity, where all members of the LGBTQI community are free to live according to their identity, and receive the help they need to resolve the problems they might face. To achieve these goals Háttér operates various support services including a legal aid service; monitors and documents human rights violations against LGBTQI people; offers training for professionals among them legal practitioners; and advocates for the adoption of laws and policies respecting the human rights of LGBTQI people. During the past two decades we have provided legal advice to thousands and legal representation to hundreds of LGBTQI people who became victims of violence, harassment or discrimination.

Context

The Hungarian Government had been advocating for a conservative and restrictive notion of families for over a decade, however, in 2020 their anti-LGBTQI agenda changed gear and rapidly started to repeal rights and benefits that had been available for decades. The legal rampage began with banning legal gender recognition in May 2020² and continued in the Fall with the LGBTQI-exclusionary reform of the adoption process, from which only a minister – not a childcare professional – can grant exemption.³ The Ninth Amendment to the [Fundamental Law](#) passed in November 2020 contained two provisions that had particular relevance for the LGBTQI community. First, a new sentence was added to Article L declaring that “(t)he mother is a woman, the father is a man”. Second, Article XVI (1) was complemented with the following provision: “Hungary protects children’s right to their identity in line with their birth sex, and their right to education according to our country’s constitutional identity and system of values based on Christian culture”.⁴ These amendments, as predicted, paved the way for a neatly tailored large-scale attack on sexual and gender minorities: they led to the adoption of the so-called ‘child protection’ law in June 2021, which continues to give basis for fear-mongering against the LGBTQI community, and justifies the suppression of speech on and display of non-mainstream sexual orientations and gender identities.

¹ The original version of this document was submitted to the Venice Commission on November 18, 2021, and it was prepared with input from Amnesty International Hungary, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee.

² For an overview of the cases on Section 33 see: <https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>.

³ For an assessment of the recent changes in the adoption process see: <https://hatter.hu/kiadvanyaink/orokbefogadas-jelentes-2022>.

⁴ For a detailed analysis of the Ninth Amendment’s – that time potential – impact on sexual and gender minorities see Polgári, Eszter; Dombos, Tamás: *A New Chapter in the Hungarian Government’s Crusade Against LGBTQI People*, *VerfBlog*, 2020/11/18, <https://verfassungsblog.de/a-new-chapter-in-the-hungarian-governments-crusade-against-lgbtqi-people/>, DOI: [10.17176/20201118-190446-0](https://doi.org/10.17176/20201118-190446-0).

In response to the wide criticism, in particular from the European Union, the government on July 21, 2021 announced that it would hold a ‘child protection’ referendum to confirm the so-called ‘child protection’ law. The referendum took place on April 3, 2022 together with the parliamentary elections.⁵

A year and a half after the adoption of the law, its far-reaching and devastating impact is apparent. The present report aims to give a comprehensive overview of both the state-controlled and voluntary implementation of the impugned provisions; in addition to the implementation of the so-called ‘child protection’ law, it takes account of the attempts to censor LGBTQI content prior to the adoption of the law, which impacts the way the law itself is implemented. To comprehensively map the impact of the law, Háttér Society submitted freedom of information requests to the relevant public authorities, i.e. the Budapest-Capital Government Office, the police (in each county) and the National Media and Infocommunications Authority.⁶ The current report updates and expands on two earlier reports prepared by Háttér Society on the so-called ‘child protection’ law.⁷

II. Act LXXIX of 2021 – the so-called ‘child protection’ law

Adoption of the law

Anti-LGBTQI provisions contained in Sections 1, 3, 9, 10, 11 of Act LXXIX of 2021 on stricter actions against pedophile offenders, and the amendment of certain laws for the protection of children (hereinafter: the so-called ‘child protection’ law) were introduced in Parliament by pro-government members of the Legislative Committee. The amendments were tabled in the last stage of the parliamentary debate, only five days before the final vote of the law, after the bill had been debated in depth by the Justice Committee, the Social Welfare Committee and the plenary session. This short time frame did not allow for any meaningful discussion of the bill by parliamentarians or proper input by civil society or professional organizations.⁸

Main provisions of the law

Outlawed content:

Anti-LGBTQI provisions of the so-called ‘child protection’ law include amendments to five Acts of Parliament:

1. Act XXXI of 1997 on the protection of children and guardianship administration (hereinafter: Act on Child Protection);
2. Act CCXI of 2011 on the protection of families (hereinafter: Family Protection Act);
3. Act XLVIII of 2008 on the basic conditions of and certain restrictions on economic advertising activities (hereinafter: Advertisement Act);
4. Act CLXXXV of 2010 on media services and mass communication (hereinafter: Media Act); and
5. Act CXC of 2011 on national public education (hereinafter: National Public Education Act).

These amendments introduced similar provisions to all these acts restricting access of minors to

⁵ For more details see Section III below.

⁶ The report is continuously updated along the information gained from these freedom of information requests.

⁷ These reports are available at: <https://en.hatter.hu/publications/childprotectionlaw-report-2021> and <https://en.hatter.hu/publications/childprotectionlaw-report-2022>

⁸ The failure to provide space and opportunity for civil society actors and other relevant stakeholders to give input on a proposed legislative amendment as the one in question unequivocally runs counter to the *Rule of Law Check List* of the Venice Commission [CDL-AD(2016)007, point 5.]

content that is pornographic or that depicts sexuality as having a purpose in itself or that depicts or propagates divergence from self-identity corresponding to sex at birth, sex change or homosexuality.

The National Public Education Act only bans propagation, but not depiction.

Duty bearers:

While the amendments to the National Public Education Act, the Advertisement Act and the Media Act apply only the specific institutions and actors (namely: schools and teachers, businesses and media service providers), the Act on Child Protection has a much broader scope that applies not only to child protection services, but also to all children and their parents [cf. Section 4 (1)]. The Family Protection Act does not contain any limitation on its scope, and thus its provisions apply to all natural persons, public bodies and private entities in Hungary.⁹

Besides the general restrictions, two acts contain additional, more specific provisions. According to Section 9 (6) of the Media Act, media content defined above shall be classified as category V (unsuitable for minors), which can be broadcasted only after 10 p.m. and before 5 a.m. According to Section 32 (4a) of the Media Act, such content cannot be broadcasted as public service advertisement.

According Section 9/A of the National Public Education Act besides teachers and professionals providing school health services, only those experts and civil society organizations may conduct sexual education activities in schools that are registered by the organ designated by legislation. Sexual education activities are defined broadly to include any discussions on sexual culture, sex life, sexual orientation and sexual development.

Implementing legislation

Government Decree 473/2021. (VIII. 6.):

On August 6, 2021, lower level regulation implementing the so-called 'child protection' law was published in the Official Gazette. According to Section 20/A of Government Decree 210/2009. (IX. 29.) on commercial activities as amended by Government Decree 473/2021. (VIII. 6.) products targeting children depicting or propagating divergence from self-identity corresponding to sex at birth, sex change and homosexuality cannot be placed in a shopping window and can only be sold in special packaging separate from other products. Products depicting or propagating divergence from self-identity corresponding to sex at birth, sex change and homosexuality (not limited to those targeting children) cannot be sold within 200 meters of schools, children or youth institutions, and churches.

Education – missing decree on implementation:

The National Public Education Act authorizes the minister responsible for education¹⁰ to issue a decree which designates the state organ maintaining the registry of experts and civil society organizations that may hold sex education classes in institutions of public education. Further, it authorizes the minister to regulate in a decree the exact conditions of registration. However, no

⁹ See Opinion No. 1059/2021 (13 December 2021) of the European Commission for Democracy Through Law (Venice Commission), available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)050-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)050-e), par. 12-13 (hereinafter: VC opinion).

¹⁰ Currently, the Minister for Interior.

such decree has been issued as of January 22, 2023. As a result, currently no civil society organization or external expert may hold sex education classes in institutions of public education.¹¹

Potential sanctions

Newly introduced sanction – education:

The only new sanction introduced by the so-called ‘child protection’ law relates to the field of education. According to the amended Section 248 (3) d) of Act II of 2012 on misdemeanors (hereinafter: Misdemeanors Act) violating the legal provisions on holding classes / sessions in institutions of public education is a punishable misdemeanor. According to Section 7, violations of the Misdemeanors Act may result in deprivation of liberty for a maximum of 60 days, a fine of maximum of HUF 150,000 or community service (labor). The fine or community service may be converted into deprivation of liberty if the person is unable to fulfill those. According to Section 79 (8) of the National Public Education Act, the misdemeanor procedure shall be launched against the head of the institution of public education where the violation took place, as well as against the expert or members of the civil society organization who held sexual education classes in school without registration.

Existing sanctions:

The amendments introduced by the so-called ‘child protection’ law left the existing sanctions in sectoral laws untouched, thus these as well as criminal and misdemeanor law could also apply to those violating the provisions of the ban.

→ **Advertisement and commercial activities:**

According Section 24-26 of the Advertisement Act, in case an advertisement violates the rules on advertising, sanctions in Act CLV of 1997 on consumer protection (hereinafter: Consumer Protection Act) shall be applied. Under Section 47 of the Consumer Protection Act, if consumers’ rights are violated, the consumer protection authority may apply several sanctions, including: immediate removal of online content, confiscation of goods, or closing down of shops/establishments of service and imposing a fine. The fine is determined by the annual net revenue of the company (service provider), and may be up to HUF 500 million (EUR 1.25 million) in case of companies with a net revenue above HUF 100 million and up to HUF 5 million (EUR 12,500) in case of companies with a net revenue below HUF 100 million (EUR 250,000).

Under Section 26 (1) of Government Decree 210/2009. (IX. 29.) on commercial activities, if the provisions relating to the sale of goods are violated, sanctions defined in the Consumer Protection Act (see above) can be applied. Furthermore, according to Section 27 (1) the chief clerk (*jegyző*) of the local government can suspend certain commercial activities or close the shop for a maximum of 90 days if such rules are violated. According to Section 27 (2) in case the owner does not comply with the requirements imposed by the chief clerk, they can permanently close down the shop.

¹¹ Informally, there is information on the existence of a ‘white list’ of organizations that have access to schools, but the content of the list is known to Háltér Society.

→ Media:

In case of violations of the Media Act, the Media Council may apply sanctions.¹² In case of first breach, the sanction is lenient, yet, in case of severe violations, sanctions may be harsher. According to Section 187, the Media Council can suspend the right to provide media services for a time period ranging from 15 minutes to seven days; it may terminate the service contract with the service provider or order that the service provider be deleted from the media registry (as a result of which its media services will not be available for the public). A fine between HUF 3 million (EUR 7,500) and HUF 200 million (EUR 500,000) depending on the type of media service provider may be imposed. It may also impose a fine (up to HUF 2 million – or EUR 5,000) on persons fulfilling a management role at the service provider.

→ Child protection:

Section 208 of the Criminal Code on abuse of minor (*kiskorú veszélyeztetése*) stipulates that

a person who is given custody of a minor to maintain and care for the person in his charge – including the domestic partner of the parent or guardian exercising parental custody, as well as any parent who has been deprived of the right of parental custody, if living in the same household or in the same home with the minor – and who seriously violates the obligations arising from such duty and thereby endangers the physical, intellectual, moral or mental development of the minor, is guilty of a felony punishable by imprisonment between one to five years.

The language of this provision is very close to the broad child protection provisions that have been interpreted in the past three years to apply to any content featuring LGBTQI characters. In fact, Gergely Gulyás, Minister heading the Prime Minister's Office told journalists at a press conference that if a teacher uses *Fairyland is for Everyone* (see Section IV) as part of school education, they should be investigated for the crime of abuse of minors.¹³ Since the general provisions in the Family Protection Act and the Act on Child Protection apply also to parents, it is not only teachers, but also parents who could face criminal sanctions for providing access to LGBTQI content to their children.

Even if criminal sanctions are not applied, Section 67 of the Act on Child Protection stipulates that in case of the development of the child is endangered, the child protection authority shall take measures prescribed by Section 15 (4) including putting the child under protection (ordering parents to follow an education plan imposed by a social worker), or temporarily or permanently removing the child from the home. According to Section 72 (2) it is considered to be seriously endangering if the child is abused or neglected in a way that their life is threatened or their physical, psychical, emotional or moral development may be significantly and irreversibly harmed. Again, the language of this provision is very close to the broad child protection provisions that have been interpreted in the past three years to apply to any content featuring LGBTQI characters.¹⁴ Even though it is quite unlikely that the child protection authorities would make the decision of taking the child in public care, this cannot be excluded and the new legislation does open legal avenues for such decisions.

¹² The Media Council of a body operating within the National Media and Infocommunications Authority (NMHH, for more information see: <https://english.nmhh.hu/the-nmhh>). The Media Council monitors the lawful operation of Hungarian media service providers, i.e. their compliance - among others - with the Media Act.

¹³ <https://telex.hu/belfold/2020/10/08/meseország-mindenkie-ovoda-gulyas-gergely-kiskoruak-veszelyeztetese>.

¹⁴ For an overview of these provisions see Section IV of the report.

According to Section 33/A (1) of Act XXXIII of 1992 on the legal status of public servants, in case a public servant (such as a teacher, school psychologist, or social worker in childcare etc.) intentionally or negligently violates substantive obligations arising from their public service contract, their contract can be terminated. For less severe violations, the rules of Act I of 2012 of the Labor Code apply, Section 56 of which allows the employer to impose sanctions on employees if they violate obligations arising from the employment contract; a financial sanction cannot be higher than one month salary.

→ **Public education:**

According to Section 79 of the National Public Education Act, government county offices (local branches of the central government) may inspect schools, and if they find schools in violation any legal provisions on education including the new provisions, sanctions according to Section 2 (3) of Act CXXV of 2017 on sanctions of administrative violations may be imposed, which include a warning, prohibition of an activity, and fines up to HUF 2 million (EUR 5,000) for individuals and HUF 10 million (EUR 25,000) for organizations. Finally, as a result of an anti-LGBTQI push¹⁵ from extreme right wing MPs (now with a parliamentary fraction) a new sanction was introduced to the National Public Education Act [Section 3 (9a)] in 2019 against the headmaster of a publicly funded educational institution (with the exception of kindergartens). If in the educational institution educational or informational activities that seriously violate legislation on public education, or infringe the rights of children enshrined in the Fundamental Law are carried out, and the “legal tools” contained in the National Public Education Act lead to no result or are not available, the minister responsible for public education may terminate the mandate of the headmaster.

III. Domestic and international critique and actions, public opinion

The law from the moment it was first introduced in the Parliament attracted significant attention and substantial criticism not only from the domestic stakeholders, but also from international actors. Háttér Society presented a detailed assessment of the law, its inconsistency with other laws, and of its incomprehensible nature in November 2021 in the brief submitted to the Venice Commission.

Council of Europe and the United Nations

The European Commission for Democracy Through Law (Venice Commission, hereafter: VC) in Opinion No. 1059/2021 (13 December 2021) recommended Hungary to repeal or at least amend the key provisions of the amendments introduced by the so-called ‘child protection’ law. The VC found that the impugned provisions are not formulated with sufficient precision to meet the requirement of ‘prescribed by law’ set out in Article 10 (2) of the European Convention on Human Rights (ECHR). The terms used – such as ‘propagation’ or ‘portrayal’ – are vague and thus fall short of the standard of ‘foreseeability’. As regards the legitimate aim for the restriction of freedom of expression guaranteed in Article 10 of the ECHR, the VC reiterated that the protection of public morals or the rights of others cannot justify a blanket prohibition on the speech in question (*i.e.* legitimate expressions of sexual orientation and gender identity). The VC emphasized:

gender as a component of personal identity and homosexuality as a variation of sexual orientation, are protected under the ECHR and as such, cannot be deemed contrary to morals by public authorities (...).

¹⁵ See proposal for a Parliamentary resolution on [H/5469](#).

As the European Court of Human Rights (ECtHR) previously underlined, there is no evidence that expressions on sexual orientation or gender identity would corrupt minors; such assumption rests on predisposed bias.¹⁶ The VC not only considered the legislation in question in violation of Article 10 of the ECHR, but added that

(t)aking also into account the democratic requirement of a fair and proper treatment of minorities, the lack of any reasonable and objective criteria to justify the difference of treatment in the application of the right to freedom of expression, such prohibition amounts to discrimination on the basis of sexual orientation and gender identity.

Furthermore, the amendments to the National Public Education Act are also in breach of Article 8 of the ECHR (right to family life), Article 2 of Protocol no. 1 of the ECHR and Article 13(3) of the International Covenant on Economic, Social and Cultural Rights, Article 18 (4) of the International Covenant on Civil and Political Rights, and Article 14 (2) of the Convention on the Rights of the Child, which all guarantee the right of the parents to educate and teach their children in conformity with their own convictions.

The CoE Commissioner for Human Rights, Dunja Mijatović used the Hungarian example in her comment to demonstrate how “homo- and transphobia has proven a convenient way to divert public attention away from government failures” and the anti-LGBTQI measures, including the so-called ‘child protection’ law had “a severe impact on democracy and human rights”.¹⁷

Hungary received several UPR recommendations to revoke the law, but the Hungarian government did not accept these.¹⁸ The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,¹⁹ and the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity also condemned the law.²⁰

European Union

On the first anniversary of the passing of the law on June 15, 2022, the European Commission announced its decision to refer Hungary to the European Court of Justice over the so-called ‘child protection’ law. According to the [press release](#), the Commission believes that the law violates internal market rules, fundamental rights and EU values. The [Commission v. Hungary](#) case (C-769/22) is currently pending before the CJEU, the Commission’s submission is expected to become public in mid-February 2023.²¹

Furthermore, for the implementation of cohesion policy and home affairs programs, Member States must comply with ‘enabling conditions’. In a [press release](#) on December 22, 2022 the Commission considered that

the provisions of Hungary's so-called child-protection law, and serious risks to academic freedom and the right to asylum have a concrete and direct impact on the compliance with the Charter in the implementation of certain specific objectives of three cohesion programmes and of the Asylum Migration and Integration Fund respectively.

¹⁶ See for instance [Bayev and Others v. Russia](#) 67667/09; 44092/12; 56717/12 (20/06/2017), par. 79.

¹⁷ See: <https://www.coe.int/en/web/commissioner/-/pride-vs-indignity-political-manipulation-of-homophobia-and-transphobia-in-europe>.

¹⁸ A/HRC/49/8, Recommendations 128.44, 128.45, 128.50, 128.51, 128.54, 128.56, 128.84, 128.87, 128.226.

¹⁹ A/HRC/50/29/Add.1, Para 65.

²⁰ See: <https://www.reuters.com/world/europe/un-rights-expert-decries-hungarys-new-anti-lgbt-law-2021-06-25/>.

²¹ For a legal opinion on the EU law compliance of the Hungarian so-called ‘child protection’ law see, for instance, RECLAIM’s memo available at: https://www.reclaiming.eu/files/uqd/9e86a1_5886e4a11f3b43aa815145e77e55b450.pdf.

For these parts of those programmes Hungary is therefore currently not fulfilling the horizontal enabling condition on the EU Charter of Fundamental Rights.

Listing the so-called ‘child protection’ law among the obstacles to the fulfillment of the horizontal enabling conditions, the Commission has made it possible to withhold funding from Hungary beyond the Rule of Law Conditionality Process as long as the so-called ‘child protection’ law is not repealed.²² It particularly impacts the implementation of programs supported by the European Social Fund Plus (ESP+) in the field of education.

Domestic civil society critical of the law

The Child Rights NGO Coalition, an umbrella organization of Hungarian civil society actors and individual experts on the rights of children initiated by UNICEF Hungary,²³ issued a statement on June 15, 2021 condemning the bill’s homophobic and transphobic elements.²⁴ The Coalition, relying on the findings of the UN Committee on the Rights of the Child in its Concluding Observations of the 6th Period Review of Hungary,²⁵ stressed the importance of ensuring that LGBTQI children are free from all forms of violence and discrimination. The Coalition called upon all politicians to work towards ending discrimination of children who belong to a vulnerable social group.

Hintalovon Foundation, (a member of the Child Rights NGO Coalition) an NGO providing legal aid and support for children endorsed the statement of Eurochild,²⁶ a network of almost 200 members in 35 European countries, representing over 2000 children’s rights organizations, saying that the new legislation does not protect children but puts them at greater risk of harm. Hintalovon had already reported in its Child Rights Report 2020 that LGBTQI children had become targets of the Government.²⁷ Commenting on the announcement of the transphobic and homophobic referendum, Hintalovon issued a statement emphasizing that

*the homophobic law violates the UN Convention on the Rights of the Child and is severely discriminatory. The proposed referendum thematises a non-existent problem instead of focusing on the real issues concerning Hungarian children.*²⁸

Since the introduction of the bill in Parliament over 160 civil society organizations and companies came out publicly against the law,²⁹ including – besides the above – child rights organizations [Család, Gyermekek, Ifjúság Közhasznú Egyesület (CSAGYI), Egyesület az Inklúzióért, Együtt az Eltűnt Gyermekekért Alapítvány, Esélyt a Hátrányos Helyzetű Gyerekeknek (CFCF), Fortély-sátor Alapítvány, Gyerekesély Egyesület (GYERE), Igazgyöngy Alapítvány, Kék Vonal Gyermekkrízis Alapítvány, Magyarországi Terre des hommes Alapítvány, Rosa Parks Alapítvány, Világszép Alapítvány], student and youth organizations (ADOM Diákmozgalom, Fridays For Future – Miskolc, Haver Alapítvány, Tudatos Ifjúságért Alapítvány), parents’ organizations [Apapara, Európai Szülők

²² Also, the European Parliament also condemned the so-called ‘child protection’ law few weeks after the law had been passed: European Parliament resolution of 8 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament (2021/2780(RSP)).

²³ For an overview, see: <https://unicef.hu/ezt-tesszuk-itthon/gyermekeiogi-koalicio>.

²⁴ Available at: https://gyermekjogicivilkoalicio.hu/wp-content/uploads/2021/06/GyCK-NYILATKOZATA_2021_junius_15_modosito_javaslat_hoz_szavazas_utan.pdf.

²⁵ Available at: https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnHFwMhaZ6_UbkZijXRImqYC1HmMfZ3Q4LpGEGHsqvNnxAD%2f7hdJskKIUqejiIvzA%2fVXQV1b22Adqbb5IpeZ1OmLCdXTkkzAEJiyMIDj4cekL.

²⁶ Available at: <https://www.eurochild.org/news/new-hungarian-legislation-not-only-fails-to-protect-children-it-puts-them-at-greater-risk-of-harm/>.

²⁷ Available at: <https://hintalovon.hu/2021/06/01/3-k-uralta-a-gyerekek-eletet-2020-ban-kirekesztes-kizsakmanynolas-koronavirus>.

²⁸ See: <https://www.facebook.com/hintalovon/posts/2889106948004355>.

²⁹ Available at: <https://hatter.hu/hirek/nemvagyevgedul-tiltakozok>.

Magyarországi Egyesülete (ESZME), Gyerekekkel Vagyunk, Magyar Anyák], professional organizations and trade unions of teachers, psychologists and social workers [Magyar Pedagógiai Társaság Gyermekekérdekek Szakosztálya- Korczak Munkabizottság, Pedagógusok Demokratikus Szakszervezete, Pedagógusok Szakszervezete, Magyar Köztisztviselők, Közalkalmazottak és Közszolgálati Dolgozók Szakszervezete, Magyar Pszichológiai Társaság LMBTQ Szekciója, Esély Labor Egyesület, Alapítvány Szociális Munkások Magyarországi Egyesülete (SZMME), Új Szemlélet szociális szakmai műhely és akciócsoport], as well as trade associations of affected industries (Magyar Könyvkiadók és Könyvterjesztők Egyesülése, Magyar Reklámszövetség, Magyar Újságírók Országos Szövetsége, Music Hungary Szövetség, Nyitottak Vagyunk, Open For Business).

On April 3, 2022 the Hungarian government in response to the European Commission's announcement on launching an infringement procedure organized a referendum addressing the criticized points of the so-called 'child protection' law. Through an amendment of the relevant legislation, it was made possible to hold the referendum on the same day as the parliamentary elections. Háttér Society and Amnesty International Hungary along with 12 NGOs organized a nation-wide campaign to invalidate the discriminatory and exclusionist referendum, whose biased and manipulative questions enticed fear and hatred towards LGBTQI people. The campaign highlighted the personal stories and testimonies of allies; the friends and families of LGBTQI people and how the referendum impacts their lives. With over 400 volunteers all over the country, the participating NGOs delivered the message everywhere from Budapest to the smallest settlements: if we want to live in a safe and free Hungary, we must reject the referendum and cast an invalid vote. The referendum turned out to be invalid: more than 1.6 million people cast an invalid vote, thus the threshold for validity was not passed. On April 8, 2022 the National Election Commission (NEC) delivered a series of decisions declaring the campaign calling for invalid votes on the referendum ballots illegal and imposing high fines on 16 CSOs. The decisions argue that while voters do have the option to consciously cast an invalid vote, campaigning for such an invalid vote is an abuse of rights. In decision no 324/2022 NEC imposed a fine of 3 million HUF (c. 7,500 EUR) on Háttér Society and in decision no. 325/2022 a fine also of 3 million HUF (c. 7.500 EUR) on Amnesty International Hungary. In decision no. 327/2022. NEC imposed a fine of 176,400 HUF (c. 441 EUR) on 16 CSOs each who – allegedly – also campaigned for an invalid vote. The list of CSOs fined: Amnesty International Hungary, Háttér Society, Artemisszió Foundation, Rainbow Mission Foundation / Budapest Pride, Labrisz Lesbian Association, Hungarian Asexual Community, Hungarian Helsinki Committee, Atlasz LGBTQ Sports Association, PATENT Association, Ökotárs Foundation, noÁr mi vagyunk!, Prizma Transgender Association, Szimpozion LGBT Youth Association, Rainbow Families Foundation, Hungarian Civil Liberties Union, and Transvanilla Transgender Association. Three of the fined CSOs (Patent, Atlasz, Artemisszió) did not in fact join the campaign. In decision no. 328/2022. NEC also found the campaign website to be unlawful on the same grounds, but no fine was imposed. In decision no 329/2022. NEC also found a post on the website of the Hungarian Civil Liberties Union calling for an invalid vote illegal on the same grounds. On April 11, 2022 all affected organizations challenged the decisions at the Curia (highest ordinary court). On April 13, 2022 the Curia rejected to review the appeal brought by Háttér Society and Amnesty International Hungary, based on a legal technicality, and on April 15, 2022 the Curia ruled the other fines unlawful. Háttér Society and Amnesty International Hungary submitted a constitutional complaint to the Constitutional Court, which on April 19, 2022 declared the complaints inadmissible. The case is currently pending before the European Court of Human Rights (case no. 43901/22).

The campaign was shortlisted for the [Vaclav Havel Human Rights Prize](#) awarded by the Parliamentary Assembly of the Council of Europe.

Public opinion

In August 2021, a representative poll by polling agency Medián³⁰ found that 66% agree that the topic of homosexuality should be covered in school education. 86% agree that it should not be the state, but teachers and parents who decide on what is taught in schools as part of sexuality education. 90% agree that age-appropriate sexuality education should be part of the school curricula. 85% think teachers should be free to decide on what professionals and organizations they rely on to tackle school bullying. 55% disagree with banning LGBTI content in films and on TV during the day.

Another representative poll by polling agency Publicus³¹ in July 2021 found that only 25% believes that the referendum on the protection of children corresponds to real problems and is really about the protection of children, while 48% says it has political aims related to the election, and 17% opine it is both. A public opinion poll conducted in September 2022 found that only 6% of Hungarians put “homosexual propaganda” among the three most important problems; the results clearly indicate that threatening with such propaganda fails to reach the threshold of the vast majority of people. The numbers do not significantly differ when linked to education: “homosexual propaganda” in education is considered among the three most pressing issues only by 8% of government supporting voters and 3% of those in opposition.³²

In December 2022, polling agency Medián – commissioned by Háttér Society – conducted a representative poll among Hungarians, which is comparable with the poll in August 2021. The number of people who reported knowing an LGBTQI people slightly increased. Support for legal and policy measures protecting the rights of LGBTQI people (same-sex marriage, parenting, legal gender recognition, school education of homosexuality, LGBTQI visibility in the media) has not significantly changed in comparison with the previous year: homo- and transphobic campaigning of the government thus has not led to substantial changes within society. It is undeniable that in areas where the government focused its fear-mongering (topics that may be framed within the child protection narrative) the number of those opposing LGBTQI rights slightly increased. However, in all of the topics mentioned above, the supporters are at least in slim majority. In particular 51% agrees that a youth aged 14-18 should learn about homosexuality in schools, and 60% opposes banning the portrayal of LGBTQI people in daytime media.

Impact of the law

The so-called ‘child protection’ law had a devastating impact on the rights of LGBTQI people in Hungary, service providers and other actors covered by the law started to implement it voluntarily (at times in an overbroad manner) in fear of sanctions. The adoption of the law further contributed to the politically initiated, increasingly hostile public discourse against LGBTQI in Hungary.³³ The number of hate crime incidents against LGBTQI people reported to Háttér Society have increased

³⁰ See: <https://www.amnesty.hu/the-acceptance-of-the-lgbtqi-community-is-at-a-historical-high-in-hungary/>

³¹ See: <https://publicus.hu/blog/tizbol-negy-valaszado-szerint-valos-veszely-hogy-lmbtq-propaganda-jelenik-meg-az-ovodakban>

³² Policy Solutions: *Mérlegen az Állam. A közszolgáltatások helyzete és jövője a magyarok szemében* [The State on Balance. The situation and future of public services in the eyes of Hungarians], Budapest, 2022, p. 18. Available at: https://www.policysolutions.hu/hu/hirek/583/merlegen_az_allam_kutatas.

³³ See our opinion *Information on Legislative Changes in 2020 Violating the Equality and the Acquired Rights of LGBTI people in Hungary. A Briefing Written for the Experts of the Venice Commission on 21 May 2021*, available at: <https://hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-actlxxix.pdf>.

compared with the period prior to the law. For example, on July 13, 2021 three men tried to forcefully enter an apartment that had a rainbow flag in the window, they left homophobic stickers on the door when they could not enter. On July 27, 2021 a lesbian couple was verbally abused and pushed in front of cars for holding hands on a major street in Budapest. On October 9, 2021 a lesbian couple was verbally abused and thrown an egg at in Budapest when leaving their apartment. On October 23, 2021 a gay couple was harassed and followed by a person, who later punched one of them in the face. On November 14, 2021 a gay couple was verbally harassed as they passed by a bar in Budapest, they were followed by three men to the bus stop where they were kicked and punched several times. The number of hate crimes reported to Háltér's legal aid service stagnated in 2022, all the attacks took place in busy public places, e.g. on June 11, 2022 a lesbian couple was verbally and physically harassed at a metro stop, or on November 5, 2022 a trans woman was threatened in the metro.

Civil society organizations that have been working with schools on human rights and civic education have been denied access to schools unless they promised they will not touch upon LGBTQI questions, even if the students themselves bring up such issues. Several teachers and school psychologists reported that they were put under pressure to stop speaking about LGBTQI issues to their students, and in one case even to stop posting on social media on such topics. The law had a strong chilling effect on the discussion of LGBTQI topics in many segments of the society, especially those that deal with children and youth.³⁴

One of the largest commercial TV channels, RTL Klub refused to air the promotional video of the 2022 Budapest Pride Festival as a public service advertisement. It argued that airing such content as public service advertisement is banned by Section 32(4a) of the Media Law (as amended by the so-called 'child protection' law). The video features two young men lost in the woods; one with a map, the other with a compass. They are able to find their way out of the woods only when cooperating. The video ends in the two men holding hands. In previous years, the same TV channel aired the promotional videos of Budapest Pride as public service advertisements.

It is impossible to fully understand and estimate the chilling effect of the so-called 'child protection' law as only a fraction of the cases become public or reach the legal aid service of Háltér Society, thus the examples below offer merely a limited description of the phenomenon. On February 14, 2022 LGBTQI NGOs, a communication agency and over three dozen restaurants ran a campaign where the restaurants left a table empty during the whole evening of Valentines Day to call attention to the fact that many same-sex couples are regularly discriminated against, and they are afraid to appear in public as a couple. The program Fókusz of the commercial TV channel RTL Klub shot a report about the award-winning campaign, but decided that they would not be able to air it at the regular broadcast hour of the program as it "portrayed homosexuality". The footage was only published online.

In Fall 2021, RTL Klub wanted to air the movie titled *Jenny's wedding*. The 2015 movie about a lesbian relationship was categorized as not suitable for minors under the age of 12 (category III) when it appeared in Hungary in 2015. Afraid that the movie would fall under the ban of the so-called 'child protection' law, they requested that the Media Council of the National Media and Infocommunications Authority re-assess the categorization of the movie. RTL Klub's fear was well

³⁴ For a questionnaire-based overview of the situation of LGBTQI students in Hungarian public education see Háltér's research: <https://hatter.hu/kiadvanyaink/befogado-terek-lmbtqi-diakok-helyzete-a-magyar-kozoktatásban>. For an impact assessment of the government's anti-LGBTQI campaigning see: <https://hintalovon.hu/2022/03/29/kirekesztes-megbelyegzes-felelem-es-bizonytalansag-ez-maradt-a-kormanyzati-lmbtqi-ellenes-kampany-nyomaban/>.

founded: in November 2021, the Media Council categorized the movie as not suitable for minors under the age of 18 (category V). The movie has no nudity or sex, only kissing and hugging, and has received a PG-13 categorization in the US, 12 in the UK and 7 in Spain.

Finally, the youth health website *Kamaszpanasz* deleted LGBTQI content (for example, the article *Signs of being a lesbian*), and recategorized any content touching upon LGBTQI issues as not suitable for minors under 18 – including content that simply explains what sexual orientation means. Meanwhile content discussing sexual practices openly (among different sex persons) do not receive this categorization.

IV. Implementation of the so-called ‘child protection’ law in media

Earlier case law

Before turning to the overview of the Media Council’s practice since the passing of the so-called ‘child protection’ law, the following section recalls the cases where anti-LGBTQI measures and sanctions had been applied by the Hungarian authorities based on more neutrally formulated provisions in force at the material time. These earlier cases relate to broad child protection provisions that have long existed in Hungarian law, but have not been used against LGBTQI content until Fall 2019. These broad provisions include:

1. Fundamental Law, Article XVI (1): *“Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development.”*;
2. Act CIV of 2010 on the freedom of the press and the fundamental rules on media content (Media Act), Section 19(1): *“Access to media content that could damage the intellectual, psychological, moral and physical development of minors shall only be granted to the general public in a manner that prevents minors – especially via choosing a time of broadcast, checking the age, or via other technical measures – from accessing such content in ordinary circumstances.”*; and
3. Act XLVIII of 2008 on the basic conditions of and certain restrictions on economic advertising activities (Advertisement Act), Section 8 (1): *“No advertisement may be disseminated if it is capable of harming the physical, intellectual or moral development of children and young persons.”*

→ [#loveislove campaign](#)

With reference to the Advertisement Act, in October 2019 the consumer protection authority imposed a fine of HUF 500,000 (EUR 1,250) on Coca Cola for featuring same-sex couples in a billboard campaign.³⁵ The campaign entitled *#loveislove* featured a gay male couple hugging each other, a lesbian couple looking into each other’s eyes and a heterosexual couple kissing each other.³⁶ The third poster featuring a heterosexual couples was not reproached. The authority argued that

it should be taken into account that many children in Hungary come from a broken home, which is why it is important for children to see as many positive examples as possible that put whole/intact families first. The impugned poster does not convey this

³⁵ [Decision no. PE-06/01/01076-10/2019.](#)

³⁶ See: <https://www.coca-cola.hu/rolunk/hirek/love-is-love-egyenlo-jog-a-szeretethez>.

example to children and juveniles. (...) In light of all the above, my Authority is of the opinion that the content showing same-sex couples on the posters of Coca Cola Company's "#loveislove" campaign may have particularly adverse effects, as it is capable of seriously harming the intellectual, emotional, or moral development of children and young persons.

The company - "well before the decision" of the consumer protection authority - requested an opinion on the lawfulness of the campaign from the Ad Hoc Ethical Committee of the Hungarian Advertising Self-Regulatory Board: "the Committee unanimously held that the advertisements in question do not violate the legal provisions in force or the Hungarian Code of Advertising Ethics". However, the conclusions of the Board failed to convince the consumer protection authority.³⁷ The company did not challenge the decision in court. Háttér Society initiated an *actio popularis* review of the decision at the that time still operating Equal Treatment Authority,³⁸ the Commissioner for Fundamental Rights³⁹ and the public prosecution service,⁴⁰ but all public bodies refused to investigate whether the decision was discriminatory and / or in violation of freedom of expression.

→ 'Family is family' (March 2021)

Based on viewers' reporting, on March 2, 2021 (prior to the entry into force of the so-called 'child protection' law), the Media Council commenced a procedure against RTL Klub for airing a public service advertisement without viewer restrictions on rainbow families (the public service advertisement was part of the campaign "The family is family"). In a one-minute awareness raising program prepared as part of the campaign on the acceptance of rainbow families, psychologist and sociologist experts, as well as a teacher and a nursery school teacher responded to the opinions / questions posted anonymously online. The posts were read aloud, e.g.: "*A child growing up in such an estranged family will never have a healthy family image*", "*To what extent will such a child be favored?, I think they should be kept under constant watch*". The short speeches of the participants were introduced by an introduction stating that "*hundreds of same-sex parents are raising children in Hungary. They are the rainbow families*". In response to the Internet posts read out, the experts present in the spot essentially confirmed that the perception of a family will not depend on whether the parents are gay, but whether their relationship is loving, and whether they accept the child. Parenthood is based on care; it is not being raised in a rainbow family that determines the child's behavior, but the family circumstances; children brought up in a rainbow family need the attention of their peers, equal treatment and not discrimination. The background was a set of telecommunications devices (screens) crammed into a dimly lit room.

In its decision, the Media Council held: while public service advertisements do not need to be classified based on age, however, they cannot be shown if – in case of subject to rating – they would fall into a category that cannot be made available to children in a given period of the day. Children – though the system of age classification – are protected against programs that threaten the development of an independent, responsible and social personality. In particular, content harmful for children – argued the Media Council – encompasses the so-called "*sensitive topics*", such as the depiction of death, the presentation of abuse, conflicts, tension within the family, and within all of this the situation of children, which also includes adoption. Same-sex relationships can be considered a sensitive topic, so does the issue of parenting by such couples. For younger children it can cause difficulty in understanding, and it can cause uncertainty, tension, and

³⁷ 1913F-00215. (October 28, 2019).

³⁸ EBH/225/2020. (May 13, 2020).

³⁹ AJB-1407/2021. (June 17, 2021).

⁴⁰ T.KvFK.4634/2020/3-I. (September 15, 2020).

confusion in older people if they encounter homosexuality together with the family and raising children, since "any harm can damage the physical, mental or moral development of minors in other ways".⁴¹ On judicial review the Budapest-Capital Regional Court quashed the Media Council's decision in a judgment invoking not only the domestic anti-discrimination framework but also the relevant case-law of the European Court of Human Rights (*Alekseyev v. Russia, Bayev and Others v. Russia*). Importantly, the Regional Court emphasized that the limited public knowledge on rainbow families makes it even more important to impart objective, scientifically solid and unbiased information. The Media Council failed to strike a fair balance between freedom of information and the right to receive information on the one hand, and the need to protect children on the other.⁴² The Budapest-Capital Regional Court of Appeal upheld the contested judgment: it disagreed with the first instance court on how the scope of the review was defined and whether the court performing the review of administrative decisions is entitled to consider the possible impact to such extent.⁴³ The Kúria (the supreme court in Hungary) refused to declare admissible the Media Council's petition for review.⁴⁴

→ 'A Fairytale for Everyone'

In September 2020, Labrisz Lesbian Association published a fairytale collection entitled *A Fairytale for Everyone* with diverse (including LGBT+) characters. Shortly after the publication of the book a smear campaign was launched against it and Labrisz: an extreme-right wing member of the Parliament shredded the book publicly,⁴⁵ and her party organized a demonstration in front of the office of Labrisz.⁴⁶ Posters and stickers were placed on bookshops saying "Homosexual propaganda literature harming children is sold here".⁴⁷ In January 2021 the consumer protection authority ordered Labrisz to change the cover of the book in order to clearly state that it includes "patterns of behavior deviating from traditional gender roles."⁴⁸ According to the authority the publisher

*did not provide preliminary information about the fact that the tales included in the book feature 'patterns of behavior deviating from traditional gender roles', and by this they committed an omission that could impact the decision of the consumer to buy or not to buy the book, and thus conducted an unfair business practice.*⁴⁹

On judicial review, the Budapest-Capital Regional Court quashed the consumer authority's decision and ordered a new procedure. Before the court, the consumer protection authority argued that the adoption of Act LXXIX of 2021 retroactively justifies the decision the authority issued six months prior to its entry into force. The judgment found that the defendant had not fully complied with its obligation to state the facts and the reasons on which its decision was based. The court criticized the authority for not making any of the editions of the storybook part of the proceedings. This was of relevance as some editions already contained reference to the LGBTQI content of the book. The court held:

⁴¹ Decision no. 104/2022. (II. 1.). The Media Council rejected the participation of Háltér Society in the procedure as third-party intervener; this position was only reversed after the Curia ordered a new procedure.

⁴² Judgment no. 109.K.701.081/2022/14.

⁴³ Judgment no. 1.Kf.700.069/2022/7.

⁴⁴ Judgment no. Kfv.II.37.742/2022/2.

⁴⁵ See: <https://hirado.hu/belfold/cikk/2020/09/30/duro-dora-nyilvanosan-ledaralta-az-lmbtg-mesekonyvet>.

⁴⁶ <https://mandiner.hu/cikk/20201004/demonstraciot-tartott-a-labrisz-leszbikus-egyesulet-szekhaza-elott-a-mi-hazank-mozgalom>.

⁴⁷ The related petition is available at:

<https://citizengo.org/hu/fm/182339-vegve-le-kinalatabol-az-lmbtg-mesekonyvet-pagony-gyerekkonyvesbolt-tobbi-arusitohely>

⁴⁸ Decision no. BP/2200/00868-2/2021.

⁴⁹ Case no. BP/2200/00868-2/2021.

*(i) it is unclear what specific information in the book was taken into account and whether, in addition to the title and graphic illustrations mentioned in the grounds of its decision, the relevant content of the blurb was made subject to examination.*⁵⁰

The consumer protection procedure has not been repeated, Labrisz received no information about whether the case is closed or a procedure is still pending.

The daily newspaper *Magyar Nemzet* published an opinion piece calling for “*evaluating the book and the activities of Labrisz similarly to pedophilia*”. The first instance court (Budapest-Capital Regional Court) held that the newspaper violated the personality rights of Labrisz and ordered an apology.⁵¹ On 1 February, 2022 the Budapest-Capital Regional Court of Appeal changed the first instance verdict in the case between Labrisz Lesbian Association and *Magyar Nemzet*, and it ruled that the newspaper did not damage the reputation of Labrisz when it labeled them pedophiles.⁵² Press reported of the hearing that in its oral reasoning the court referred to the speech of Prime Minister Viktor Orbán, as justification, namely that the Prime Minister also sees a connection between homosexuality and pedophilia, and the author of the impugned article only supported that with “*scientific evidence*”. However, this has been disputed by the court.⁵³ Labrisz launched a review before the Curia, which upheld the second instance’s court decision.⁵⁴ Labrisz submitted a constitutional complaint against the judgment.

→ ‘What a family!’

On July 6, 2021, two days before the entry into force of the Act, the bookshop Lira was fined HUF 250,000 (EUR 625) for selling another children’s book *What a family!* (the Hungarian translation of the books *Early One Morning* and *Bedtime, Not Playtime!* by Lawrence Schimel) featuring rainbow families among other children’s books. According to the authority

*based on the description on the back cover and its board book design, the consumer could draw the conclusion that the book is aimed at young children, with a known or familiar situation”. By placing the book among other children’s books, “the bookshop deceived the consumer regarding the secondary content of the book (...) the reader of the book and the child will face an unexpected situation both from an emotional and a moral point of view – that might not have been known at the time of making the purchase.*⁵⁵

The authority’s decision has been challenged in court. In November 2021, the Budapest Environs Regional Court quashed the contested decision. The judgment found that at the material time, the publisher was under no legal obligation to provide further information on the content of the book. The court reviewed whether the duty of fair commercial practice entails the duty to add further information to the book or place it elsewhere within the store, and it concluded that Lira had not violated any of its obligations.⁵⁶

⁵⁰ Judgment no. 103.K.702.109/2021/15.

⁵¹ Judgment no. 35.P.23.664/2020/16.

⁵² Judgment no. 2.Pf.20.897/2021/5/II.

⁵³ See:

<https://telex.hu/belfold/2022/02/02/orban-pedofilialt-es-homoszexualitast-osszemoso-mondatat-is-hasznalta-iteleteben-a-birosag-megi-s-pedofilozhatja-a-meseország-mindenkie-kiadojat-a-kormánylap>.

⁵⁴ Judgment no. Case no. Pfv.IV.20.448/2022/16.

⁵⁵ [Decision no. PE/002/01974-8/2021](#).

⁵⁶ Judgment no. 104.K.701.704/2021/8.

Media Council guidelines revised after the adoption of the anti-LGBTQI law

The Media Council of the National Media and infocommunication Authority (*Nemzeti Média és Hírközlési Hatóság*) updated its *“recommendation on classification (ratings)”* on September 15, 2021,⁵⁷ in line with new provisions of the Media Act [Section 9 (6) as amended by the so-called ‘child protection’ law]. This document describes the classification of media content as not recommended for viewers under 18 if its *“defining element”* is the propagation or depiction of deviation from the self-identity in line with the birth sex, sex change or homosexuality. The recommendation states that it is not generally the depiction of deviation from the self-identity in line with the birth sex, sex change or homosexuality that is banned, but only if it is a defining element of the media content at hand. In other words, if it is the *“message”* of the media content, or *“this is what the content is about”* (see p. 17 of the recommendation). Further, *“topics concerning sex change and homosexuality are defining elements if the media content focuses on emphasizing the values, advantages, specialty, individuality; that is, these topics constitute a central, essential, indispensable part of the content”* (p. 17). The recommendation also offers an interpretation of *“propagation”*: *“presenting homosexuality or the change of sex at birth as social norms, as lifestyles that are more appealing than traditional forms of life; or lifestyles that set an example.”* Moreover, *“all propagandistic activities related to these topics that appear in media content, if their aim is to spread these ideologies and views, or to exert emotional influence on the underaged, or to persuade them with communicative means,”* also constitute propagation (p. 17).

However, the recommendation suggests extreme caution. Whenever a media content *“depicts the deviation from the self-identity in line with the birth sex, sex change or homosexuality, or its propagation [!], the media service provider shall take into consideration if this depiction requires class V classification [not recommended for viewers under 18] due to its suitability to adversely impact the physical, intellectual and moral development of the underaged”* (p. 18).

The recommendation of the Media Council includes some alarming examples of classification based on the new provisions. It includes highly acclaimed works of cinematographic art such as *All about my mother*, as well as politically and historically subtle depictions of the HIV/AIDS epidemic and homophobia in the 1980s such as the series *It’s a Sin* – both mentioned in the recommendation as unambiguous examples of *“propagating”* homosexuality or sex change (p. 18). Note that the latter example, just as the TV series *Queer as Folk* (also listed as an example of this category) explicitly contradict a further piece of guidance in the recommendation: to wit, that series should not be classified in their entirety – the same classification applied to each episode –, but each episode of a series should be classified in itself (p. 2). At any rate, the examples provided in the recommendation make it clear that the Media Council cannot be expected to interpret the new legal provisions with any regard for the value of the works classified as vehicles of artistic or political expression, or with due regard for the context of the objectionable content element in the works at hand that should guide and inform the interpretation of these works.

While the guidance seems to offer a narrower interpretation of the restrictions, it has to be emphasized that the recommendation of the Media Council does not have the quality of law. It is not a source of law at all; it does not bind either the addressees of the legal provisions it interprets, or the Media Council itself that is supposed to apply the critical provisions. Second, the recommendation emphasizes that *“it does not aim to lay down strict, rigidly interpreted rules for each classification [rating]”, and that the list of considerations it recommends to take into account “is not at all comprehensive or final, as professional practice requires the continuous review and*

⁵⁷ The document is available at: https://nmhh.hu/dokumentum/214969/klasszifikacios_ajanlas.pdf.

amendment of these considerations” (p. 2). Third, note that although similar terms appear in the Media Act as in the other acts amended, there is no reason to take guidance from the Media Council’s recommendation on media content classification to apply to similarly worded provisions in the National Public Education Act or the Family Protection Act, and so forth. These acts are interpreted and applied by different bodies, and hence relying on guidance in one domain (e.g., media services) may actually mislead addressees about how similar provisions are applied in another domain (e.g., public education). Also, for instance, propagation may have entirely different meanings in media service provision than in public education: these terms should be interpreted with due regard for the context to which they are applied. Yet no guidance exists in other domains but for media service provision – apart from the substantive concerns Háltér has voiced repeatedly, it is insufficient to guarantee foreseeability by guide addressees about how they should interpret the new legal provisions and adapt their conduct accordingly.

Proceedings after the entry into force of the so-call ‘child protection’ law:

Since July, 2021, the Media Council – to Háltér Society’s knowledge – has not initiated proceedings against a media service provider registered in Hungary and thus within its jurisdiction. This may be explained by the immense chilling effect the law has on those who need to comply with it (see examples above). However, the Media Council in several cases reached out to its foreign counterparts with requests to proceed against service providers registered in another EU member state. Háltér Society has knowledge of six procedures and continues to monitor the practice with the periodical use of freedom of information requests. The files of the four closed cases were received as a result of a freedom of information request submitted by Lakmusz, a fact-checking website, which shared them with Háltér.⁵⁸ The procedures discussed below are in sharp contrast with the Media Council’s approach prior to the so-called ‘child protection’ law: it did not take any action against media content providers, newspapers, etc. for contents touching upon similar questions that had been brought to its attention, not even in cases where the duty-bearers were within its jurisdiction. For instance, the Media Council did not initiate proceedings against an advertisement featuring same-sex couples on the cover of a magazine published in a daily paper.⁵⁹ It only refrained from applying the stricter child protection rules (i.e. the so-called ‘child protection’ law) because a contested program discussing homosexuality had been aired before the law entered into force.⁶⁰

→ Der Bergdokter

On September 22, 2021 the Media Council contacted the Romanian media authority (Consiliul National Al Audiovizualului, CNA) based on complaints submitted against an episode of *Hegyi Doktor* (Der Bergdokter) aired on August 23, 2021 (Zweispalt 2). The episode told the story of a 17-year professional female football player. She is diagnosed with a heart problem and when she admits that she is transgender, she needs to make a difficult decision: a risky heart surgery in order to be fit for hormone therapy. The German rating was 12+ for the entire season except for one episode which was rated lower. The contested scenes appear in this lower rated episode. Without invoking the so-called ‘child protection’ law, the Media Council argued: “*children under the age of*

⁵⁸ The analysis of Lakmusz is available here:

<https://www.lakmusz.hu/lepattan-a-kulfoldi-hatosagokrol-a-mediatanacs-amikor-meleg-szexjelenetre-es-mas-lmbtg-tartalmakra-pana-szkodik/>.

⁵⁹ See:

https://english.nmhh.hu/article/224896/Media_service_providers_to_receive_nearly_HUF_15_billion_in_Media_Council_funding_next_year.

⁶⁰ The program was called *Family Secrets* (*Családi titkok*) addressing problems, difficulties, etc. that may arise in a family. See: https://english.nmhh.hu/article/224124/Five_hundred_new_TV_adverts_every_month_in_first_half_of_year.

16 cannot yet understand or may misunderstand” topics, such as transgender issues or sex reaffirming treatment. The report on investigation goes further:

(s)exual orientation is often associated with anxiety and negative attitudes in this age group [children under the age of 12]. Gender-related influences from the media may adversely affect children’s psychosexual development. In addition, adolescent age is characterized by the search for role models that help learn gender roles, which the media can play a crucial role.

For these reasons, in the view of the Hungarian Media Council the program should have been classified as for viewers of 16 and above.⁶¹

The Romanian media authority summarily rejected the request for sanctions: it checked the IMDb rating of the series, and analyzed the images, but could not assess the text as the sample sent by the Hungarian Media Council was in Hungarian. It informed the Media Council that *“the [Romanian] Council has not found circumstances that would indicate violations of the relevant provisions of the Romanian audiovisual legislation regarding the issues raised in [the] complaint”*.⁶²

→ Designated Survivor

On December 8, 2021 the Media Council approached the Spanish media authority (Comisión Nacional de los Mercados y la Competencia, CNMC) because AXN operated by Sony Pictures showed an episode of “Designated Survivor” (S3, Ep4) with the age rating 16+ while it contained – not as the dominant part – two male character in a relationship, which *“could have endangered the physical, intellectual or moral development of minors”*. The two men kiss and there is a sexual scene (which is not visible, only the body movements and sound effects suggest what happens). The classification recommended by the Hungarian Media Council is 18+ but the request did not include any reference to specific provisions of the law, and did not engage in a discussion how intimate scenes between same-sex partners may constitute a *“sensitive topic”*.⁶³ The Spanish Media Authority found the 16+ rating in compliance with its domestic framework and refused to sanction AXN or Sony Pictures in this case.⁶⁴

→ Body Fixers

On February 19, 2022 FEM3 broadcasted the first episode of Body Fixers (S1 Ep1). It featured a drag queen who wanted to become more masculine again and another man who had a serious lip infection due to his obsession with lip augmentation. The report concluded after the regulatory investigation cites several parts of the recommendation on rating: the need for caution *“in terms of unusual sexual practices and aberrations and atypical and extreme forms of sex life”* or why the public presentation of plastic surgery may be problematic. Bearing in mind the guidelines of the Media Council, it recommended a rating of 16+ without invoking the relevant provisions of the law.⁶⁵ The Romanian authority checked the contested parts of the program, heard the broadcaster’s representatives and closed the case without proposing sanctions.⁶⁶

⁶¹ Case number: MN/19356-4/2021.

⁶² Case number: 9556/04.20.2021.

⁶³ Case number: MN21523-4/2021.

⁶⁴ Letter dated in Madrid on March 10, 2021.

⁶⁵ No case number is identified, only the investigation report is available (on file with Hättér Society).

⁶⁶ Case number: 4510/12.04.2022.

→ 'The Family is Family' (November 2021)

On February 28, 2022 the Media Council reached out its Czech counterpart (Rada pro rozhlasové a televizní vysílání, RRTV) with respect to a media content which also formed part of the above mentioned 'The family is family' campaign, although these were different spots from the one aired on RTL.⁶⁷ The spot aired on Paramount Network on November 20, 2021 and on Comedy Central on November 22, 2021. Similarly to the decision rendered in the case of RTL's public service advertisement discussed above, the Media Council found that

the sensitive subject (homosexuality) appearing in the media content may have a harmful impact on viewers under the age of 18, they may endanger the physical, mental or moral development of minors.

The Media Council argued that this media content would be in violation of Section 9 (6) and Section 32 (4a) of the Media Act, if the service provider were within Hungarian jurisdiction. Both provisions ban the display or promotion of homosexuality and were inserted by the so-called 'child protection' law.⁶⁸ The investigation report offers a detailed description of the contested contents.

The first version of the spot shown on Paramount Network – titled in the report as 'For the things that matter, there's no difference: in the surgery' – two men sit anxiously in the waiting room of the surgery waiting for their children's examination to be over. The two plush figures sit side by side on chairs between the two male characters. The characters are first seen only from the knees down, from the perspective of the figures. A male figure appears on the left and a female figure on the right, next to the waiting men. Eventually, the camera moves away, revealing that the child on the left is surrounded by two men, while the child on the right is embraced by a woman and a man.

The conversation between the two plush figure characters:

*Sore throat?
No, high temperature, but we came in to make sure that it's nothing serious.
Does your family worry too?
Of course, they do. Their legs keep shaking all the time.
Same. And they're wringing their hands.
And they keep pacing up and down.
Seems like we're alike in this.
Indeed, in this too.*

The content aired on Comedy Central revolves around the same idea ('For the things that matter, there's no difference: in the gym'). The plush figures are talking on the bench during a match. Next to them, on the left, sits a figure wearing man's trainers, while on the right a female figure appears. When a goal is scored, both feet move up and leap enthusiastically in the air. Following the celebration for the goal, the camera pulls away and shows the child characters running to the bench and hugging the adults. The child on the left is surrounded by two men, while the child on the right is hugged by a woman and a man.

The conversation between the two plush figure characters:

*I wish we scored.
I wish we did.
Does your family get so excited at every match?*

⁶⁷ Case number: MN/27261-8/2021.

⁶⁸ No case number is identified, only the investigation report is available (on file with Háltér Society).

*Every single time.
(both at the same time): Goal!
I see they're also jumping with joy.
They're always jumping. We're so much alike in this.
Yes. In this too.*

The report on the regulatory investigation claimed that the spots in question touched upon “sensitive subjects”, they “clearly conveyed a message in relation to same-sex parents: same-sex parents share the same joys and face the same challenges, so in essence, a family of heterosexual parents and children is the same as a family of non-heterosexual couples and children”. It notes that “the clips did not include ‘classic category-raising elements (violence, sexuality), but the issue of raising children of same-sex couples, the processing of which affects all children’s age groups, can be considered as a sensitive topic for the developing personality”. The report continues in the spirit of patronizing:

Adolescents, who are in a period of identity formation and first sexual experiences, and young children do not yet have a good understanding of the issue of same-sex couples having children and cannot interpret it with sufficient certainty.

The Media Council held that homosexuality was a dominant element in the spots:

(t)he central element and message of the spots was to emphasize that homosexuality and heterosexuality are no different in terms of core values (love, care, etc.), and that this can be seen as an emphasis on the values of homosexuality and heterosexuality as an essential part of the content presented.

Due to their content, the spots may not be aired as public service advertisements, and if aired as ‘simple’ advertisements, then they may be rated as suitable only for adults.

In its response the Czech Media Authority (RRTV) refused to proceed in the case.⁶⁹ It argued:

(t)he spots do not explicitly claim that the adults are a same-sex couple (in theory, they could also be two adults who are not partners). Not containing any sign of sexuality, the scenes merely show completely smooth relationships between adults in a parental role and children. Complementing the core content of the spots are the words same, love, trust, care or family.

Neither content was found in violation with the Czech Broadcasting Act.

In September, 2022 Háttér requested access to the documents (request to the Dutch authority and investigation report) in the case started against an animated series running on Netflix (Jurassic world: Camp cretaceous) in which two girl characters express their love for each other and then kiss (aired on September 8, 2022).⁷⁰ The piece was rated as recommended above the age of 7. In response to the request, only the decision on the need to approach the Dutch media authority was shared, but not the report on the regulatory investigation carried out by the Media Council. In the other pending case – commenced on September 29, 2022 – the Media Council found a scene in Baymax! aired on Disney+ objectionable for the targeted audience (9+ years old): the protagonist robot encourages a boy to ask out another boy. Both cases are pending now with the Dutch media authority which refused to comment on the cases when the journalists for the above article

⁶⁹ File number: RRTV/2022/238/vis.

⁷⁰ Decision no. 756/2022. (IX. 6.).

approached them. In the Fall of 2022, further proceedings against content featuring sexual and gender minorities received media attention;⁷¹ to date no access has been granted to the case files.

V. Conclusion

The so-called ‘child protection’ law has been in force since July 2021 and while few legal procedures have started to explicitly enforce the ban contained in it, its overall impact shall not be underestimated. The vague formulation of the provisions, the fact that even government officials cannot define what constitutes propagation results in extensive caution and self-censorship from those who come within the scope of the ban. The amendment to the National Public Education Act practically made every discussion on sexuality, sexual orientation and gender diversity disappear from schools: it is unclear for teachers, school psychologist and other professionals working with children what they can openly share, teach or discuss in schools, and thus they rather refrain from touching upon anything that could potentially within the scope of the so-called ‘child protection’ law. Remaining silent may protect them from sanctions, however, puts children belonging to a sexual or gender minority in a precarious position. The prevailing and wide-spread anti-LGBTQI rhetoric and campaigning normalized homophobia and transphobia in the public discourse, while it left LGBTQI children, who are often subject to bullying, stigmatization and even violence, on their own.

The government's anti-LGBTQI stance has a noticeable impact on the numbers of hate incidents: homo- and transphobes feel entitled to take action in order to enforce the prohibition of the law. These – often violent – attacks use the child protection narrative to justify actions against LGBTQI persons who do not engage in any illegal activity.

The amended provisions of the Media Act have undoubtedly encouraged self-appointed censors to report any content that remotely relates to LGBTQI topics to the Media Council. The procedures described above indicate that the media authority selectively refers explicitly to the so-called ‘child protection’ law, but it follows the spirit of the law and seeks to sanction LGBTQI content not rated – in its view – adequately. While the foreign media authorities have so far refrained from imposing sanctions upon the request of the Media Council, these proceedings contribute to the chilling effect of the law. The Media Council's reasoning in these cases is inconsistent: at times they take action against content touching upon sexual orientation and gender identity, yet they do not refer to the specific provisions introduced by the so-called ‘child-protection’ law. It is, thus, unpredictable what content will trigger the application of the law and will result in an 18+ rating.

The law does not protect children, it shields them from information that is vital for their development as well-informed, open-minded human beings who respect sexual and gender diversity, and ultimately equal human dignity. The pretense of protecting children shall not be the basis of a legal framework that encourages discrimination, stigmatizes sexual and gender minorities, and above all, violates children's right to education that entails the right to receive objective, unbiased and comprehensive information on sexual and gender diversity.

⁷¹ See for instance: <https://index.hu/kultur/2022/11/18/hbo-disney-mediatanacs-nmhh-internet-streaming/>, or <https://index.hu/belfold/2022/12/16/nmhh-mediahatosag-buntetes-hbo-max-feher-lotusz-televizio-sorozat/>.