



ONE YEAR AFTER: IMPLEMENTATION OF ACT LXXIX OF 2021 AMENDING CERTAIN ACTS FOR THE PROTECTION OF CHILDREN

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Context

On June 15, 2021, the Hungarian Parliament adopted Act LXXIX of 2021 on taking more severe action against pedophile offenders and amending certain acts for the protection of children, which entered into force on July 8, 2021. The original objective of the bill was to make the prevention, detection and punishment of pedophile criminal offenses more effective, but with a last minute amendment MPs from the governing parties included anti-LGBTQI provisions as well. In particular, the act amended the Child Protection Act, the Family Protection Act, the National Public Education Act, the Advertisement Act and the Media Act to introduce a ban on access of minors to any content that “propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality.” On August 6, 2021, lower level implementing regulation was also adopted: Section 20/A of Government Decree 210/2009. (IX. 29.) on commercial activities as amended by Government Decree 473/2021. (VIII. 6.) limits the public display of such products and their sale within 200m of schools, children or youth institutions and churches.¹

The adoption of such legislation was part of a broader anti-LGBTQI campaign of the government that culminated in a referendum held on the same day as the national election (April 3, 2022). The referendum was announced shortly after passing of the above legislation in response to the strong critique voiced by the EU and other regional and international human rights bodies; its aim was to demonstrate the popular support behind the legislative changes. The four questions posed to the electorate broadly covered the same issues (access of minors to LGBTQI content), but were less overarching than the blanket ban included in the law. In spite of intensive campaigning from both the governing parties and public institutions, the referendum failed, as not enough people cast valid votes for the referendum to be legally valid. After the referendum the government announced that they will not revoke the legislation in spite of the failed referendum, furthermore, a state secretary of the Ministry of Justice recently communicated² that they will soon introduce further legislation to limit “LGBTQ propaganda”, enabled by an electoral victory resulting in supermajority in the Parliament.

Even though we are not aware of any legal case where a procedure was launched based on Act LXXIX of 2021, the law had a devastating impact on the rights of LGBTQI people in Hungary, as media service providers, bookshops, libraries, schools and other actors covered

¹ For an analysis of the main provisions of the law and its impact, see Háttér Society’s [briefing submitted to the Venice Commission](#). The analysis covers the problematic procedural aspects of the act’s adoption, the vagueness of the legal terms it uses, potential sanctions and its incompatibility with other Hungarian legislation.

² https://mandiner.hu/cikk/20220628_repassy_robert_szuloi_jogok_aldozatsegites_ugyelhuzodas_bortonbiznisz_varhato_torvenymodositasok_gyermekvedelmi_torveny_LMBTQ

by the law started to implement it voluntarily (at times in an overbroad manner) in fear of sanctions. The current report summarizes how legal proceedings initiated on other grounds in practice gave effect to the new provisions and how the considerable chilling effect on the affected actors caused by the impugned legislation impacts the daily life of the LGBTQ people.

Legal cases

While commenced prior to the adoption of the “child protection” law, the new provisions was referenced in a case launched by the Government Office of the Capital City Budapest against Labrisz Lesbian Association, the publisher of the storybook *A Fairytale for Everyone* in October 2020. The Government Office claimed³: selling the book as a children’s book without indicating that the tales depict behavioral patterns, which differ from traditional gender roles, the publisher used unfair commercial practices. Therefore it ordered Labrisz to include visible information on the book that it contains content on non-traditional gender roles. In February 2021, the association sought judicial review against the decision. The legal representative of the Government Office stated in a preparatory document dated on October 13, 2021 that the judicial review launched in February 2021 had become moot as the provisions of the Act LXXIX of 2021 are effective from July 2021. According to the Government Office the new legal provisions adopted five months after the administrative decision retrospectively “fully justify the correctness and legality of the defendant’s decision.” On February 28, 2022 the Mentrpolitican Court of Budapest annulled the decision of the Government Office on procedural grounds and ordered them to repeat the procedure.⁴

In June 2021, Eötvös Loránd University Faculty of Humanities posted an LGBTQ booklet on its official Instagram page, which was removed a few days later due to external pressure [signature collection and the public action of Egyetemi Ellenállás (University Resistance), an initiative of the extreme right wing Sixty-Four Counties Youth Movement]. Based on the request of Háttér Society, the Office of the Commissioner for Fundamental Rights initiated an equal treatment procedure against the university,⁵ in which the university argued that they would not be able to republish the LGBTQ booklet as it would be illegal under Act LXXIX of 2021. The Office of the Commissioner for Fundamental Rights found no violation of the principle of equal treatment in the procedure.

In November 2020 the local assembly of the city of Nagykáta adopted a resolution that “bans the spread and promotion of LGBTQ propaganda in any institution maintained by the municipality.” Háttér Society turned to the Office of the Commissioner for Fundamental Rights requesting an investigation into the violation of the principle of equal treatment, but the Office terminated the procedure⁶ arguing that the resolution is now in accordance with the measures of Act LXXIX of 2021. It completely disregarded the fact that the local ban is much broader than the invoked piece of legislation as they ban access not only for minors, but for any persons to such content. Háttér Society launched a judicial review of the decision, the procedure is pending.⁷

³ BP/2200/00868-2/2021.

⁴ 103.K.702.109/2021/15.

⁵ EBF-AJBH-32-1/2022.

⁶ EBF-AJBH-455/2021

⁷ 103.K.701.373/2022.

Media

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 Act LXXIX of 2021).⁸ The video⁹ 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 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.

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, 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 report was only published online.¹⁰

In Fall 2021, RTL 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 Act LXXIX of 2021 they requested that the Media Council of the National Media and Infocommunications Authority re-assess the categorization of the movie. Their fear was well founded: in November 2021, the Media Council categorized the movie as not suitable for minors under the age of 18 (category V).¹¹ 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.

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.¹² Meanwhile content discussing sexual practices openly (among different sex persons) do not receive this categorization.¹³

Advertisements

The company NYX Professional Makeup decided to restrict its Hungarian Instagram page for people under 18 years of age as they fear they might violate Act LXXIX of 2021 because occasionally they have Pride related challenges and feature rainbow colored makeups.

⁸ <https://magyarnemzet.hu/belfold/2022/06/a-gyermekvedelmi-torveny-mukodik-nem-adja-le-egy-kereskedelmi-teve-a-pride-idei-kampanyfilmjet>

⁹ <https://youtu.be/ViCKXly6Z6g>

¹⁰ <https://rtl.hu/fokusz/2022/02/14/azonos-nemu-parokvalentin-nap-lmtq>

¹¹ 1208/2021. (XI. 30.)

¹² <https://www.kamaszpanasz.hu/hirek/szex/244/szexualis-orientacio>

¹³ See e.g.: 20 facts about first sexual encounters (<https://www.kamaszpanasz.hu/hirek/szex/1412/20-teny-a-szexrol>), Onenight stands (<https://www.kamaszpanasz.hu/hirek/szex/3639/egyejszakas-kaland>), Sexual accidents (<https://www.kamaszpanasz.hu/hirek/szex/4582/szex-baleset>), Vagina rings (<https://www.kamaszpanasz.hu/hirek/szex/5917/huvelygyuru>)

While advertisements featuring same-sex couple, transgender people or rainbow colors have never been widespread in Hungary, there have been notable ads in the past that did include LGBTQI representation (Coca Cola, Sport szelet, H&M, Marionnaud, Levi's). Since the adoption of Act LXXIX of 2021, Háttér Society is not aware of any such mainstream advertising.

Bookshops

The sale of books with LGBTQI content has become much more difficult since the adoption of the law, and its implementation decree in particular. Labrisz, the publisher of *A Fairytale for Everyone*, reports that they needed to raise the suggested price of the book from 3000 HUF to 3500 HUF due to the requirement to sell books with LGBTQI content in separate packaging. While smaller bookshops were willing to do the packaging on their own, larger booksellers such as Libri and Lira are only willing to carry the title if the publisher does the packaging. The book is also not directly available in bookshops: one has to specifically ask for it from a shop assistant, in a major bookshop it is put on a shelf at 3 meters high only accessible for the shop assistant with a ladder. Meanwhile books about war criminals and mass murderers are accessible without any restriction placed at the eye height of children.

Rainbow Families Foundation, the publisher of *Micsoda család!* (the Hungarian translation of the books *Early One Morning* and *Bedtime, Not Playtime!* by Lawrence Schimel) featuring rainbow families reported similar experiences. Since the adoption of the implementation decree in September 2021 the sale of the book has collapsed, because the book is not available for browsing on the shelves of bookshops, they can only be asked from the shop assistant, and that is not how people shop for books.

Libraries

Access to LGBTQI content has become an issue for libraries as well. The Government Office for Pest County received a public notification regarding the availability of *A Fairytale for Everyone* on open shelves in the public library of Nagymaros (a city of c. 4,800 in Northern Hungary). The authority decided to act upon the notification, and held an inspection in the library, but the book was no longer available on an open shelf, so no official procedure was launched. Press reported that it was the mayor of the town who instructed the library to remove the book with reference to Act LXXIX of 2021. Had the book been available, the Government Office would likely have initiated proceedings against the library.

Háttér Society sent public information requests to a number of Hungarian public libraries with a known email address. 39 libraries indicated that they have introduced restrictions on access of minors to LGBTQI content. The public library in the municipality of Nógrádsáp, for example, responded that books for adults and books "not for kids" (including all books with LGBTQI content) are placed on shelves at the back of the library's reading area. The categorisation of these books is based on the content of book covers and reviews of the book from the Internet. The public library of Tabdi reported that it rejects serving any minor who inquires about LGBTQI content. The public library in Szentendre removed two books (*A Fairytale for Everyone* and *Micsoda család!*) from the open shelves and minors cannot borrow them. At Soltvadkert, the library interprets Act LXXIX of 2021 to require that no work of fiction featuring LGBTQI persons should be made available to minors.

Schools

According to Section 9/A (1) of the National Public Education Act (as amended by Act LXXIX of 2021) only those experts and civil society organisations may conduct sexual education activities in schools that are registered by the organ designated by legislation. However, for over 12 months now, no public body has been designated and there is no procedure for such registration. This means that currently teachers cannot invite any external programs to schools to talk about sexuality. This ban is implemented very broadly: an NGO with a human rights education program not specifically focusing on LGBTQI issues was also banned from schools they have been working with for years as they refused to promise not to talk about LGBTQI issues even if it is brought up by students.

Prior to the adoption of Act LXXIX of 2021 the National Public Health Center (NNK) maintained an accreditation of school programs covering issues of sexuality, physical and mental health, first aid, substance abuse and bullying. In November 2021 Háttér Society sent an official letter to NNK inquiring whether they are the public body designated to register, but NNK has not yet responded. Information on the accreditation that was still available when Háttér sent their letter of inquiry has since then been removed.

Due to the lack of a registration system currently no expert or civil society organization can hold such activities in schools, which jeopardize the livelihood of experts and sustainability of organizations that have been involved in such activities in the past. Some civil society organizations reported that schools mentioned a list of organizations that schools can still invite without being registered. The groups include only conservative NGOs with strong links to governing parties. Háttér Society was not able to acquire this rumored document.

While the new provisions in the National Public Education Act only concern the invitation of external experts and organizations, and teachers could still discuss LGBTQI issues with their students (if they are not “propagating divergence from self-identity corresponding to sex at birth, sex change or homosexuality”), nevertheless several teachers, school psychologists and nurses have reported that they were banned from having any discussion on these issues with their students. A report by the Child Rights NGO Coalition provides ample evidence for these difficulties.¹⁴

Professionals that try to maintain a supportive approach are put under immense pressure. A far right news portal compiled a list of teachers with name and photo who are – supposedly – supporting LGBTQI rights under the title: *Disgrace of Hungarian schools – they are teaching our children to LGBTQ propaganda*. The list was drawn up based on Facebook posts. 13 teachers represented by Háttér Society initiated a procedure at the National Authority for Data Protection and Freedom of Information for processing their personal data without their consent, the procedure is still pending.¹⁵

The pressure is not only put on school professionals that actively engage with the LGBTQI topic in the school environment, but also those that do so in their private life. For example, a school psychologist, who is also an LGBTQ rights activist, was asked to sign a document provided by the employer which confirms that she will not mix her work with activism in the

¹⁴ <https://gyermekjogicivilkoalicio.hu/aktualis/kirekesztes-megbelyegzes-felelem-es-bizonytalansag/>

¹⁵ NAIH-5353-2/2022

future and will never mention during his activism that she works as a school psychologist, even though she never mentioned by name the schools she works in. An openly lesbian teacher was put under so much pressure by the director of the school that she quit her job, even though she was very popular with students and parents as well.

Some educational institutions have become paranoid of any representation of rainbows: a parent complained in an Instagram post that the kindergarten did not let her child choose a rainbow as her kindergarten sign, because this runs against the propaganda law.

General anti-LGBTQI climate

Beside the impact of the law in the sectors it directly applies to, the law and the related hate campaign against LGBTQI people had a remarkably negative impact on social attitudes towards LGBTQI people. The number of anti-LGBTQI hate crimes and discrimination cases reported to Háttér Society has risen significantly. LGBTQI organizations submit that their activities have become much more difficult, the move of Labrisz Lesbian Association to a new office has been delayed as some claimed such an organization should not move with 100m of a pediatrics office. They also report that their website has been hacked many times in recent months making it unavailable for longer periods of time.

The law also raised questions about the legality of certain activities of NGOs and LGBTQI persons as well. An LGBTQI rights NGO has become uncertain whether they can work with volunteers under the age of 18 even with the consent of the parents. Same sex couples have inquired at the legal aid of Háttér Society about whether holding hands on the street would amount to promotion of homosexuality and whether they could be detained. Another same-sex couple raising their adoptive child inquired if the authorities could take away their child or if they break the law every day by being themselves in front of their child.

Even if these questions may seem exaggerated, the overbroad and vague language especially in the Child Protection Act and the Family Protection Act does potentially expose LGBTQI persons and their allies to arbitrary legal proceedings.