



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

The social situation concerning homophobia and discrimination on grounds of sexual orientation in Hungary

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. LGBT issues have been, and still are, strongly taboo in Hungary. According to a 2003 survey, more than one-third of Hungarian respondents still regard homosexuality as an illness.
- [2]. However the process of gradually eliminating legal discrimination against LGBT persons accelerated in the process of preparation for joining the EU. In 2002 the age of consent for heterosexual and homosexual relationships was equalised, and the Act on Equal Treatment and the Promotion of Equal Opportunities was introduced in 2003, including both sexual orientation and gender identity in the areas of employment, education, housing, access to goods and services, healthcare and social security. An act on registered partnership including same-sex couples will enter into force in 2009, but will not include the right to adoption. Similarly, lesbian couples are not allowed to receive assisted insemination.
- [3]. According to a recent survey, more than one-third of LGBT respondents experienced discrimination in the labour market, and about 50 per cent experienced prejudice and discrimination in school.
- [4]. For the past 12 years there have been annual LGBT festivals without problems. 2007 was an exception, with organised attacks on participants.

B. The Collection of Data

- [5]. The material for this report has been collected from four sources:
 - A legal country report carried out for this study, by Lilla Farkas, President of the Equal Treatment Advisory Board.¹
 - A sociological country report carried out for this study, written by Judit Takács, Ph.D., Hungarian Academy of Sciences.²
 - Data collected through interviews held in Hungary with the LGBT NGO *Háttér Társaság a Melegekért* [Háttér Support Society]; *The Ministry of Justice and Law Enforcement* and *The Ministry of Social Affairs*; and *The Equal Treatment Authority*.

¹ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

² J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

- Data collected through an online questionnaire sent out to the stakeholders mentioned above.

C. Key Findings

C.1. Attitudes Toward LGBT persons

- [6]. Surveys examining acceptance and attitudes toward homosexuality were carried out on a European level in 2008 and 2006.
- [7]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Hungary was 6.2, with an EU average of 7.9. Romania was the lowest with 4.8.³
- [8]. In the 2006 Eurobarometer, attitudes toward same-sex marriage were examined in every Member State. Forty-two per cent of EU citizens agreed that such marriages should be allowed throughout Europe; the figure was 18 per cent in Hungary (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Hungary. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; in Hungary the figure was 13 per cent (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).⁴
- [9]. According to Hungarian research findings in 2003, more than one-third (34.3 per cent) of Hungarian respondents viewed homosexuality as an illness and 3.5 per cent as a crime; almost one-third (29.8 per cent) thought homosexuality was a private matter of the individual; and 14.1 per cent considered homosexuality to be a form of deviant behaviour. About one tenth (10.5 per cent) of respondents thought that choosing a same-sex partner was a basic right.⁵

C.2. Criminal Law - Hate Crime

- [10]. In Hungarian criminal law hate crimes are only covered for national, ethnic or religious minorities.⁶ Homophobic crime is therefore dealt

³ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁴ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

⁵ The Omnibus representative survey was conducted by the Medián Opinion and Market Research in 2003.

⁶ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

with the same as any other crime, and homophobic motivation is not seen as an aggravating circumstance.

- [11]. As instances of anti-gay violence and gay bashing are rarely recorded, there is little data on this phenomenon. However, the aftermath of the July 2007 Pride march was marked by anti-gay attacks—for the first time in the 12-year history of Hungarian LGBT festivals. Given that anti-gay violence is typically socially invisible, the violence during and after the 2007 Pride is seen as shocking.⁷
- [12]. The attacks and violence should be seen in context: Demonstrations and riots against the state and politicians occurred before the 2007 Pride, and just before the event the Secretary of State came out in public. After his coming out, he participated in the Pride, giving the impression of linking Pride to the state. The violence might thus have been directed more against the system than against LGBT persons as such.⁸
- [13]. Hate speech is covered by the law when it amounts to incitement to hatred against a community. Court practice finds incitement against a community only if ‘stirring up hatred’ prompts direct and immediate violent action. General homophobic comments that do not reach this level of severity are not prohibited by Hungarian criminal law. There is no case law known concerning homophobic hate speech.⁹
- [14]. A bill aimed at modifying the Civil Code to sanction hate speech was passed in parliament in September 2007. However, the President of Hungary has submitted this bill to the Constitutional Court for a preliminary constitutional review, which is still pending. The Constitutional Court has previously decided that a bill concerning hate speech (in that instance, introducing it into the Criminal Code) was unconstitutional, as it infringed upon the freedom of speech.¹⁰

C.3. Freedom of Assembly

- [15]. The Hungarian Constitution and the Act on the freedom of assembly ensures the freedom of assembly. The Hungarian LGBT community has been able to practice freedom of assembly, as no demonstrations have been banned or dispersed since the beginning of the 1990s. The LGBT community has been organizing Gay Pride parades since 1995, and until 2007 these events had been sufficiently secured by the police.¹¹

⁷ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

⁸ Field trip meeting with *Háttér* (Hungary, 17 April 2008).

⁹ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

¹⁰ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

¹¹ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

- [16]. Regarding freedom of association, there is a significant lack of public funding for LGBT social and political activities. Hungarian LGBT NGOs generally lack regular state support since there is no public funding provided by the state or local governments for any social programmes specifically targeting or involving LGBT persons.¹²

C.4. Family and Other Social Issues

- [17]. Due to a 1996 decision by the Constitutional Court, a legal framework similar to common law marriage exists for same-sex partners. However, same-sex couples (and opposite-sex de facto couples), must make extra efforts, typically in the form of private legal contracts, if they want to establish a level of family security similar to that enjoyed by married couples.¹³
- [18]. The act on registered partnerships will enter into force in January 2009, introducing the possibility of a registered partnership for both opposite- and same-sex couples. This is a significant development for LGBT couples, although the partnership does not grant full equality of rights in comparison to marriage.¹⁴
- [19]. The most important exception in relation to marriage is that registered (same-sex) couples cannot adopt children together and lesbian couples are not entitled to assisted insemination. As Hungarian law permits adoption by single persons as well as married couples, there seems to be no reasonable explanation for excluding same-sex couples from adopting children.¹⁵

C.5. The Labour Market

- [20]. The Equal Treatment Act adequately covers discrimination on grounds of sexual orientation on the labour market. However, it is very difficult to prove discrimination, even though the burden of proof is reversed in procedures before the *Equal Treatment Authority*. A large proportion of the population works without a labour contract or are self-employed. Employers often do not give a reason when they fire employees, and it is very difficult to file a complaint in the absence of an official labour contract.¹⁶
- [21]. Another authority capable of combating discrimination on the labour market is *The Labour Inspectorate*. Under the Act on Labour Supervision, labour inspectorates may examine compliance with non-

¹² J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

¹³ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

¹⁴ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

¹⁵ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

¹⁶ Field trip meeting with *Háttér* (Hungary, 17 April 2008).

discrimination provisions, and impose fines on employers who violate the principle of non-discrimination.¹⁷

- [22]. According to a recent survey, more than one-third of Hungarian LGBT respondents experience discrimination and prejudice at work.¹⁸ Most people are afraid to come out at work.¹⁹

C.6. Education

- [23]. According to a recent survey, half of Hungarian LGBT students experienced discrimination and prejudice in school, especially in secondary school. Representations of LGBT issues in school curricula tend to be either absent or negative.²⁰

C.7. Health Service

- [24]. The health needs of LGBT persons are not recognised in Hungary. Safe-sex campaigns for LGBT audiences are only conducted by LGBT organisations. According to a recent national survey, 28 per cent of LGBT respondents said they had encountered discrimination in the healthcare system, including rejection of blood donations from those identifying as homosexual. Homophobic and transphobic reactions of medical personnel were also common.²¹
- [25]. It is common practice that before donating blood, donors are asked whether they have previously had homosexual relationships, placing emphasis on a person's sexual orientation, instead of on his/her sexual behaviour.²²

C.8. Religion

- [26]. In Hungary almost 75 per cent of the population identifies as religious; 55 per cent belong to the Catholic Church and 16 per cent to the Reformed Church.²³ Most churches are openly homophobic and

¹⁷ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

¹⁸ J. Takács, L. Mocsonaki, and T. P. Tóth (2007) 'A leszbikus, meleg, biszexuális és transznemű (LMBT) emberek társadalmi kirekesztettségé Magyarországon' (Social Exclusion of LGBT People in Hungary), Budapest: MTA SZKI.

¹⁹ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

²⁰ J. Takács, L. Mocsonaki, and T. P. Tóth (2007) 'A leszbikus, meleg, biszexuális és transznemű (LMBT) emberek társadalmi kirekesztettségé Magyarországon' (Social Exclusion of LGBT People in Hungary), Budapest: MTA SZKI.

²¹ J. Takács, L. Mocsonaki, and T. P. Tóth (2007) 'A leszbikus, meleg, biszexuális és transznemű (LMBT) emberek társadalmi kirekesztettségé Magyarországon' (Social Exclusion of LGBT People in Hungary), Budapest: MTA SZKI.

²² L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

²³ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

the Catholic Church has significant influence on right-wing political parties.²⁴

- [27]. In one case, a student at a theology faculty was denied education, as his homosexual orientation could not be reconciled with becoming a priest. This incident led to a general announcement by the Church stating that persons conducting ‘a homosexual way of life’ should not be allowed to receive education or become priests. The LGBT NGO *Háttér* took up this case in an *action popularis*, stating that this announcement constituted discrimination against LGBT persons.²⁵ Though the case was rejected by the court, in the context of freedom of expression and church autonomy, it was implicitly acknowledged that equal treatment legislation also applies to universities that are maintained by a church and financially supported by the state.²⁶

C.9. Sports

- [28]. No athletes are openly homosexual in Hungary and hardly any data is available on this issue. *Atlasz*, the first and only Hungarian LGBT sports organisation, was officially registered in 2004.²⁷

C.10. Media

- [29]. LGBT persons share a common media fate with other relatively powerless social minorities: Being characterised by low visibility and stereotypical representation.²⁸ On most broadcast and printed media, LGBT persons and issues are basically ignored.²⁹
- [30]. There is a well-functioning LGBT press, and some commercial TV channels are LGBT-friendly.³⁰

C.11. Asylum and Subsidiary Protection

- [31]. Under Office of Immigration practice, sexual orientation can be accepted as a ground for asylum or subsidiary protection. Asylum seekers—mostly from Islamic countries such as Algeria and Iran—have successfully argued that their sexual orientation was the reason

²⁴ Field trip meeting with *Háttér* (Hungary, 17 April 2008).

²⁵ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

²⁶ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

²⁷ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

²⁸ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.

²⁹ Field trip meeting with *Háttér* (Hungary, 17 April 2008).

³⁰ Field trip meeting with *Háttér* (Hungary, 17 April 2008).

for persecution.³¹ It is, however, unclear how many cases there have been.

- [32]. Between 2004 and 2007, the Immigration Office requested a psychiatric expert's opinion on asylum seekers' sexual orientation. In other asylum cases, for example those based on religious or political persecution, no such expert opinion is requested. This may be considered discrimination against LGBT asylum seekers.³²
- [33]. According to Article 2 of the Asylum Act, same-sex partners are not recognised as family members in family reunification procedures.³³ However, following the entry into force of the Act on Registered Partnerships in January 2009, registered partners of asylum seekers, refugees and beneficiaries of subsidiary protection will have the same rights to family reunification as spouses.

C.12. Family Reunification

- [34]. EU citizens have a right to freedom of movement and can bring their partners with them provided that they are married or have been living together for at least a year. The law is, however, not entirely clear, as registered partnerships are not mentioned in Hungarian law.
- [35]. As for third-country nationals, only spouses and children have a right to family reunification. As same-sex marriages are not recognised by the Marriage and Family Act, the word 'spouse' can only refer to heterosexual partners.³⁴ However, following the entry into force of the Act on Registered Partnerships in January 2009, registered partners of persons having the right of free movement in the EU will have the same rights as spouses with regards to freedom of movement and family reunification.

C.13. Transgender Issues

- [36]. The Equal Treatment Act also covers discrimination on the ground of sexual identity in all fields.³⁵
- [37]. As for the possibility to change one's birth certificate or civic registration, the Birth Registration Office has developed a sustainable and progressive practice.

³¹ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

³² L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

³³ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

³⁴ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

³⁵ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

- [38]. Transgender persons must provide a certificate from a psychiatrist, confirming their gender identity. The Ministry of Health will then process an expert opinion, which will be sent to the birth registry. After this, the person involved can have his/her gender and name changed in the birth registry. Once the registry has been changed, it will appear as though the person always had this gender, and it will be almost impossible to track the change of the gender in the registry. As the provision of other documents is based on the birth registry, transgender persons can apply for a passport or driver's license without problems once their gender has been adjusted.³⁶
- [39]. It may be recommended, though, to have consistent guidelines and legal regulation regarding the process of obtaining the necessary documents (forensic expert opinion, medical records) needed by the Ministry of Health before they can issue their expert opinion.³⁷
- [40]. As for sex reassignment surgery, the patient must pay 90 per cent of the cost. This is problematic, as the aim of sex reassignment surgery is to alter one's sex so as to correspond to his/her true sexual identity.³⁸
- [41]. Another problem is that the new Civil Code, entering into force in 2009, states that a marriage or registered partnership automatically terminates if one of the partners changes sex. This idea has been criticised, as it would circumscribe the parties' right to self-determination.³⁹

C.14. Multiple Discrimination

- [42]. Multiple discrimination of LGBT persons is an under-researched topic in Hungary. However, according to the findings of a national LGBT discrimination research project, 23 per cent of respondents who had experienced multiple forms of discrimination listed age and gender as the main grounds.⁴⁰

D. Good Practice

- [43]. No good practices have been identified in Hungary.

³⁶ Field trip meeting with *Ministry of Justice* (Hungary, 17 April 2008).

³⁷ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

³⁸ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

³⁹ L. Farkas (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Hungary*. FRALEX.

⁴⁰ J. Takács (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation and gender identity in Hungary*. Sociological Country Report.