



Hungarian Commissioner for Fundamental Rights
Ákos Kozma

H-1051 Budapest Nádor u. 22.
Hungary

Brussels, 8 June 2020

Subject: Request to submit omnibus Bill T/9934, particularly article 33, which hinders the rights of transgender and intersex persons in Hungary, to the Constitutional Court for preliminary norm review

Dear Hungarian Commissioner for Fundamental Rights, Ákos Kozma,

As Members of the European Parliament, we are gravely concerned about the adoption of article 33 of the omnibus bill T/9934 by the Hungarian parliament on Tuesday 19 May 2020 and its promulgation by President János Áder on 28 May 2020. The before-mentioned article 33 will make it impossible to change a person's sex in legal documents by requiring that documents such as birth, marriage and death certificates be changed to designate "sex at birth" instead of "sex". This law will effectively deny access to legal gender recognition procedures to transgender and intersex persons in Hungary.

These developments raise concerns relating to transgender and intersex person's right to be free from discrimination and right to privacy, running counter to European and international human rights obligations. Depriving transgender and intersex persons of having public documents (e.g. an ID card) that match their gender identity and expression will potentially expose them to further discrimination and create unnecessary difficulties and fear surrounding everyday tasks.

On 15 April 2020, 63 MEPs wrote to the Minister of the Prime Minister's Office, Gergely Gulyás, and Minister of Justice, Judit Varga, to express our concerns and request the government to revoke article 33.¹ In this letter, we addressed the applicable European human rights standards from different bodies: Council of Europe's Committee of Ministers,² Parliamentary Assembly of the Council of Europe,³ European Parliament⁴ and case-law of the European Court of Human Rights,⁵ which cumulatively require

¹ European Parliament's LGBTI Rights Intergroup (15 April 2020), "63 MEPs call on Hungarian government to revoke Article 33 restricting the rights of trans and intersex persons", accessible on <http://lgbti-ep.eu/2020/04/15/63-meps-call-on-hungarian-government-to-revoke-article-33-restricting-the-rights-of-trans-and-intersex-persons/> (retrieved on 26 May 2020).

² Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies), accessible on https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a.

³ Parliamentary Assembly of the Council of Europe, Resolution 2048 (2015), "Discrimination against transgender people in Europe", accessible on <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>.

⁴ European Parliament resolution on the rights of intersex people (14 February 2019), accessible on https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.html.

⁵ Case of Christine Goodwin v United Kingdom (2002), Application no. 28957/95, accessible on <http://hudoc.echr.coe.int/eng-press?i=001-60596>; Case of Case of X v. the former Yugoslav Republic of Macedonia, Application no. 29683/16, accessible on <http://hudoc.echr.coe.int/eng?i=001-189096>.

that Member States have a positive obligation to provide clear regulatory frameworks for legal gender recognition.

In addition, the Hungarian Constitutional Court recognised:

1. the right to legal gender recognition in 2001;⁶
2. that transgender people and their potential name change relates to the fundamental right to dignity in 2018.⁷

Nonetheless, the response from Minister Gulyás failed to take our concerns into account.

In spite of the Hungarian Parliament's adoption of the omnibus bill and the President's promulgation, our concerns were widely shared by institutional and civil society actors which highlighted the applicable European and international standards (e.g. the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity,⁸ a joint letter by four UN special rapporteurs,⁹ the Commissioner for Human Rights of the Council of Europe,¹⁰ international and national civil society organisations¹¹). These statements build a case against the ratification of this law at present, given its lack of compliance with the applicable standards.

In addition, the General Rapporteur on the rights of LGBTI persons of the Parliamentary Assembly of the Council of Europe noted that "Hungary's new law is deeply harmful, stands in breach of the European Convention on Human Rights, and must not be allowed to come into effect. The relevant provisions must urgently be referred to the Constitutional Court for review, before they enter into force. I also call on the Hungarian Commissioner for Fundamental Rights to take all the steps within their power to protect trans and intersex people from the devastating impact this law may have on their rights and lives."¹²

Taking the former into consideration, we urge you, in your capacity as Commissioner for Fundamental Rights, to submit the bill to the Constitutional Court for preliminary norm revision, in order to ensure its compliance with European and international human rights standards.

Yours sincerely,

Heidi HAUTALA, *EP Vice-President*

Fabio Massimo CASTALDO, *EP Vice-President*

⁶ Hungarian Constitutional Court Case 58/2001. (XII. 7.), accessible on <http://public.mkab.hu/dev/dontesek.nsf/0/645F7E824CC1CE49C1257ADA0052A748?OpenDocument>.

⁷ Hungarian Constitutional Court Case 6/2018. (VI. 27.), accessible on <http://public.mkab.hu/dev/dontesek.nsf/0/C69D7F599B3CE25DC12580E3005E784B?OpenDocument>.

⁸ United Nations Office of the High Commissioner for Human Rights (OHCHR) (29 April 2020), "Hungary / LGBT: New law proposal endangers rights of the trans and gender diverse persons, warns UN expert", accessible on <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25844> (retrieved on 26 May 2020).

⁹ Letter by United Nations Special rapporteurs (14 April 2020), accessible on <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25172> (retrieved on 26 May 2020).

¹⁰ Comment of the Commissioner for Human Rights of the Council of Europe, accessible on <https://www.facebook.com/CommissionerHR/posts/1512688642240374> (retrieved on 26 May 2020).

¹¹ ILGA-Europe (19 May 2020), "Hungary rolls back legal protections, puts trans and intersex people at risk", accessible on <https://www.ilga-europe.org/resources/news/latest-news/hungary-rolls-back-legal-protections-puts-trans-and-intersex-people-risk>; Transgender Europe (19 May 2020), "Hungarian parliament votes against LGR", accessible on <https://tgeu.org/hungarian-parliament-votes-against-lgr/> (retrieved on 26 May 2020).

¹² PACE (22 May 2020), "Depriving trans and intersex people of legal gender recognition in Hungary is intolerable", says General Rapporteur", accessible on <https://pace.coe.int/en/news/7900/-depriving-trans-and-intersex-people-of-legal-gender-recognition-in-hungary-is-intolerable-says-general-rapporteur-> (retrieved on 2 June 2020).

Frederick FEDERLEY, *Vice-President, Renew Europe*
Alice KUHNKE, *Vice-President, Greens/European Free Alliance*
Ernest URTASUN, *Vice-President, Greens/European Free Alliance*
Gwendoline DELBOS-CORFIELD, *Vice-President, Greens/European Free Alliance*
Terry REINTKE, *Vice-President, Greens/European Free Alliance*
Marisa MATIAS, *Vice-President, European United Left/Nordic Green Left*

Marc ANGEL, *Co-Chair, LGBTI Intergroup*
Malin BJÖRK, *Vice-Chair, LGBTI Intergroup and LIBE Committee Substitute*
Maria WALSH, *Vice-Chair, LGBTI Intergroup and LIBE Committee Substitute*
Sophie IN'T VELD, *Vice-Chair, LGBTI Intergroup and Renew Europe LIBE Committee Coordinator*

Birgit SIPPEL, *LIBE Committee Coordinator for the Socialists and Democrats Group*
Cornelia ERNST, *LIBE Committee Coordinator for the European United Left/Nordic Green Left Group*
Abir AL-SAHLANI, *LIBE Committee Substitute*
Anne-Sophie PELLETIER, *LIBE Committee Substitute*
Delara BURKHARDT, *LIBE Committee Substitute*
Dietmar KÖSTER, *LIBE Committee Substitute*
Erik MARQUARDT, *LIBE Committee Substitute*
Hilde VAUTMANS, *LIBE Committee Substitute*
Isabel SANTOS, *LIBE Committee Substitute*
Olivier CHASTEL, *LIBE Committee Substitute*

Andreas SCHIEDER
Antoni COMÍN I OLIVERES
Arba KOKALARI
Aurore LALUCQ
Billy KELLEHER
Brando BENIFEI
Chrysoula ZACHAROPOULOU
Daniel FREUND
Eleonora EVI
Evelyne GEBHARDT
Francisco GUERREIRO
Irene TOLLERET
José GUSMÃO
Josianne CUTAJAR
Karin KARLSBRO
Kira PETER-HANSEN
Liesje SCHREINEMACHER
Łukasz KOHUT

Manuel BOMPARD
Margrete AUKEN
Maria NOICHL
Marianne VIND
Martin HOJSÍK
Milan BRGLEZ
Nicolae ȘTEFĂNUȚĂ
Petra DE SUTTER
Pierre KARLESKIND
Radka MAXOVÁ
Rasmus ANDRESEN
Rosa D'AMATO
Sándor RÓNAI
Sandro GOZI
Silvia MODIG
Sirpa PIETIKÄINEN
Svenja HAHN