

New draft law in Hungary seeks to exculde trans women from pension benefits

[News](#), [Civil Rights and Freedom](#), [Legal Protection](#), [Hungary](#), [Trans](#)

Alongside the Hungarian LGBT organisation Háttér Society, we have written to the President of the EU, Ursula von der Leyen, alerting her to the recent introduction of a new bill to further curtail the rights of transgender people in Hungary and of the intensification of the enforcement of the so-called “child protection law”. Read the letter below.

Dear President of the European Commission,

We are writing concerning the recent introduction of a new bill in the Hungarian Parliament to further curtail the rights of transgender people in Hungary and of the intensification of the enforcement of the so-called “child protection law”.

On July 13, 2023 two Members of Parliament from the FIDESZ and KDNP parties (both Ministers in the Cabinet of PM Orbán) submitted a new bill in Parliament^[1] to exclude trans women from accessing pension benefits available only for women. The bill was a direct response to a court case in which the Veszprém Regional Court ruled that a transgender woman who had her gender legally recognized in 2013 is to be entered into the pension registration system as a woman and shall be entitled to the “Women 40” pension benefit.^[2] The “Women 40” pension benefit was introduced in 2011, and allows women to retire after 40 years of employment even if they have not reached the general pension age. The court decision relied on a case of the Court of Justice of the European Union from 2006^[3] which found that a transgender women – who in accordance with the conditions laid down by national law – have undergone male-to-female gender reassignment are entitled to retire under the same conditions as women whose gender identity corresponds to their sex at birth. The European Court of Human Rights arrived at the same conclusion.^[4]

The new provisions proposed in the bill would apply to pending and repeat procedures as well. The explanatory memorandum of the bill is not only blatantly transphobic, but it distorts the text of the Fundamental Law to support the legislative agenda: it claims that the Fundamental Law mandates the registration of the sex at birth (or the so-called “biological sex”) only, whereas this rule is actually contained in the Act on Registry Procedures, not in the Fundamental law. It goes further, arguing that such solutions – i.e. that trans women enjoy the pension benefits reserved for women – would be unimaginable even in the most liberal countries.

The new legislation would apply only to a few trans women, since the Hungarian Parliament banned legal gender recognition for trans and intersex people in May 2020. A preliminary ruling was requested by a Hungarian judge on the compatibility of the resulting lack of legal gender recognition with GDPR, the court case is currently pending.^[5]

The Hungarian Parliament is again reacting with brute force to a court decision that goes against their ideological narrative: instead of simply complying with it, the Parliament **overrides the judgment of a court by passing amendments** that will close the path for similar future decisions. This reactionary law-making defeats the principle of separation powers, and seriously violates the rule of law and the standards deriving from it. Furthermore, the new provision applies to trans women who had their gender legally recognized years, even decades ago in any

future pension procedures, as well as in any pension procedures currently pending or being repeated due to court decisions. This is retroactive legislation which also violates the rule of law. The bill would not only go against international human rights standards, but is a clear violation of the case law of the Court of Justice of the European Union.

We ask the Commission to call the attention of the Hungarian Government to the uncontested case law of the Court of Justice of the European Union, and warn the Hungarian Government that the adoption of such a legislation would have serious consequences with regards to the Commission's assessment of the Government's commitment to improve the rule of law in Hungary. We also ask the Commission to closely monitor the Parliamentary debate of the legislation, and in case the legislation is adopted, initiate promptly an infringement procedure.

We would also like to call your attention to the intensification of the enforcement of the so-called "child protection law"^[6] in recent months. Act no. LXXIX of 2021 amended several legislations with provisions to ban access of minors to content that "propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality". Its implementing legislation^[7] was also amended to require that "products intended for children that (...) propagate or portray divergence from self-identity corresponding to sex at birth, sex change or homosexuality shall be only sold separately from other products only in closed packaging." The Commission launched an infringement procedure concerning the legislation; the case is currently pending before the Court of Justice of the European Union.^[8]

In response to a freedom of information request, the Budapest Government County Office informed Háttér Society in February 2023 that there are 14 investigations pending regarding the enforcement of the above legislations.^[9] Based on media information, Libri-Bookline Zrt. was fined for 1 million HUF (c. 2,700 EUR), and on July 13, 2023 LÍRA Kiskereskedelmi Kft. was fined for 12 million HUF (c. 32,000 EUR).^[10] It is worth noting that Libri-Bookline Zrt. has recently been bought by Mathias Corvinus Collegium, a pro-government educational institution operating as a public interest asset management foundation receiving hundreds of billions of HUFs of public funding. Its president is Balázs Orbán, Political Director of PM Orbán. LÍRA Kft., which received a fine 12 times as high, is an independent chain of bookshops, whose leaders strongly criticized the adoption of the so-called "child protection law". The imposition of such high fines runs the risk of bankrupting bookshops already under immense market pressure from a government-backed competitor. In the specific case concerning LÍRA Kft. the fine amounts to 56% of the company's 2022 annual profit after taxation.

The intensified enforcement of the legislation is not limited to commercial activities, but is observable in the field of the media as well. Háttér Society is aware of at least 16 cases where the Media Council reached out to media authorities in other Member States concerning content that portrayed same-sex couples or transgender persons. Furthermore, upon request from the broadcaster M-RTL Zrt., the Media Council decided that a 30 second animated spot of the Budapest Pride Festival cannot be aired as social service advertisement as a substantial part of the spot features a lesbian couple, and thus depicts and propagates homosexuality. A regularly updated report about the enforcement of the so-called "child protection law" is available on the [website of Háttér Society](#). Háttér Society is happy to provide access to English translation of the relevant decisions.

We ask the Commission to continue closely monitoring the enforcement of the legislation, apply for an interim measure at the Court to suspend the enforcement of the law, clarify with the Hungarian government that the not only the so-called "child protection" law, but also its implementing government decree violates the Charter horizontal enabling conditions, and increase the rate of funding withheld with reference to these legal developments.

We look forward to hearing from you. Sincerely,

Evelyne Paradis, Executive Director, ILGA-Europe

Hella Zsirka, Executive Board Member, Háttér Society

^[1] Bill no. T/4659

^[2] Case no. 101.K.701.331/2022/7.

^[3] *Sarah Margaret Richards v Secretary of State for Work and Pensions*, Case no. C-423/04. The case is founded on the interpretation of Article 4(1) of Council Directive 79/7/EEC of 19 December 1978.

^[4] *Christine Goodwin v. the United Kingdom*, Application no. 28957/95.

^[5] Deldits-case, Case no. C-247/23

^[6] Act no. LXXIX of 2021

^[7] Government Decree 210/2009. (IX.29.) on the conditions governing commercial activities

^[8] Case no. 769/22

^[9] Letter no. BP/2200/01194-2/2023

^[10] Decision no. BP/2200/03940-5/2023
