

Ref: CommHR/MOF/sf 050-2025

**Mr László KÖVÉR**

Speaker of the National Assembly of Hungary

Strasbourg, 24 March 2025

Dear Speaker,

My mandate is to foster the effective observance of human rights in all member states of the Council of Europe. An important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws and practices. In this context, I am writing in relation to two draft amendments, one to the Fundamental Law and one omnibus bill proposing changes to a range of laws, that were submitted to the National Assembly on 12 March and are currently being discussed by the Assembly, as well as the recently-adopted amendment to the law on the right to assembly.

As regards the draft bill on the fifteenth amendment of the Fundamental Law of Hungary, I understand that it contains several proposals, which raise concerns about their compatibility with Council of Europe and international human rights standards.

I note firstly the proposal to add into Article XVI of the Fundamental Law – which stipulates the right of every child to the protection and care necessary for his or her proper physical, mental and moral development – the phrase “This right shall take precedence over all other fundamental rights, with the exception of the right to life.” I am concerned about the impact that the proposed supremacy of one set of rights may have on the enjoyment of other human rights.

I also understand that this amendment would purportedly provide a constitutional basis for the law “on the amendment of Act LV of 2018 on the right to assembly, related to the protection of children, and related laws”, which was adopted on 18 March 2025 in an expedited procedure and subsequently signed into law. That law prohibits any assembly which contravenes Section 6.A. of the Child Protection Act, and effectively bans all public gatherings of LGBTI people or on matters related to them, including Pride marches. In that connection, I am concerned about preceding announcements from the Prime Minister and other political leaders about their intention to ban Budapest Pride 2025.

The right of peaceful assembly as enshrined in Article 11 of the European Convention on Human Rights (the Convention) is key in any democratic society. Any restrictions on this right must be prescribed by law, necessary, proportionate, non-discriminatory, and subject to independent judicial review. They must be interpreted narrowly and must not be used to undermine the essence of the right to protest, or to criminalise peaceful demonstrators.

The European Court of Human Rights (the Court) has found, in a number of judgments, that banning or refusing to authorise public events for the promotion of the human rights and equality of LGBTI people was not necessary in a democratic society, and was therefore contrary to Article 11 of the Convention. Rather, the Court has found that authorities must take positive measures to ensure that such demonstrations and gatherings can be held peacefully and that demonstrators are protected from violence (e.g. *Alekseyev and Others v. Russia*, *Identoba and Others v. Georgia*).

Furthermore, concerning the law’s aims to protect children from exposure to diversity in gender identity and sexual orientation, the Court has held that it is the lack of information relating to same-sex relationships and gender identity, and the continuing stigmatisation of LGBTI people in society, that is harmful to children, and that such restrictions may violate Articles 10 and 14 of the Convention (*Bayev and Others v. Russia*, *Macaté v. Lithuania* [GC]). With respect to the best interests of the child, the Court has held on several occasions, including within the Grand Chamber, that there is no scientific evidence or sociological data suggesting that the mere mention of homosexuality, or open public debate about “sexual minorities’ social status”, would adversely affect children. Rather, it has held that, to the extent

that children who witness demonstrations in favour of the rights of LGBTI people are exposed to ideas of diversity, equality and tolerance, the adoption of those views can only be conducive to social cohesion.

The law further provides authorisation for the police to use facial recognition software to identify those attending assemblies. In this regard, I draw your attention to the recent judgment of the Court in *Glukhin v. Russia*, which underlined the importance of procedural safeguards accompanying the use of facial recognition technology. In the circumstances of the case, the Court found that the use of highly intrusive recognition technology, to identify and arrest participants for taking part in peaceful protest actions and for the purpose of pursuing a misdemeanour, was a violation of Article 8. It concluded that the use of such technology in that context could have a chilling effect in relation to the rights to freedom of expression and assembly and was incompatible with the ideals and values of democratic society governed by the rule of law.

Turning to another set of issues, I note the proposal in the fifteenth amendment of the Fundamental Law to add the phrase “The person is a man or a woman” in Article L. According to the explanatory memorandum, the proposed amendment seeks to “confirm that the sex of a person at birth is biologically given, which – in accordance with the order of creation – can either be male or female”, and reflects the “duty of the state to prevent efforts that suggest the possibility of changing sex at birth”. The memorandum further explains that the proposed amendment does not constitute an attack on those whose gender identity does not correspond to their sex at birth, a situation which the drafters consider a private matter for the person concerned. This amendment appears to deny the reality of intersex people and the diversity of gender identity.


Gender identity is recognised by the Court as a protected characteristic, and authorities have both negative and positive obligations to ensure that it is respected as an aspect of private life under Article 8 of the Convention. I note that legal gender recognition has already been banned in Hungary since May 2020, and that the proposed constitutional amendment appears to seek to place that ban on a constitutional footing. Under the well-established case-law of the Court, member states have a positive obligation to provide quick, transparent and accessible procedures to legal gender recognition. The Court has repeatedly found Hungary to be in violation of Article 8 for a failure to provide a framework for such procedures (*Rana v. Hungary*, *R.K. v. Hungary*, *E.G. and Others v. Hungary*).

I further note that there is a draft amendment to the 2003 Equal Treatment Act contained in the omnibus bill, which proposes to remove gender identity from the explicit list of protected characteristics and to insert “identity in line with sex”. While I understand that the list of protected characteristics within the Act would remain non-exhaustive, this proposed amendment appears to be unnecessary and regrettable.

In the light of the above, I respectfully ask members of the National Assembly of Hungary to initiate a reconsideration of the recently-adopted amendment to the law on the right to assembly, and to refrain from adopting the proposed constitutional and other amendments addressed in this letter. I recommend engaging with national and international partners, including the Council of Europe, on how best to protect children’s rights while in full compliance with international human rights standards, including with respect to the human rights of LGBTI people.

I would be grateful if you could ensure that all members of the National Assembly receive a copy of this letter. I stand ready to continue our dialogue on this and other human rights issues in Hungary.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Flaherty". The signature is fluid and cursive, with a prominent loop at the end.

Michael O'Flaherty