



DECLARATION OF THE HUNGARIAN LGBT ALLIANCE AND TRANSVANILLA TRANSGENDER ASSOCIATION

UPR PRE-SESSION ON HUNGARY

GENEVA, 30 MARCH 2016

CALLING FOR CONCRETE AND TANGIBLE RECOMMENDATIONS ON WHAT THE HUNGARIAN GOVERNMENT SHOULD DO TO ENHANCE THE EQUALITY OF LGBTQI PEOPLE

Plan of the Statement:

The statement addresses the following issues:

- (1) Assessment of the follow-up on the first review,
- (2) The recommendations we would like States to make to Hungary in May, especially on
 - a. Hate crimes,
 - b. Right to family,
 - c. Legal gender recognition,
 - d. Right to employment,
 - e. Right to freedom of expression, association and peaceful assembly,
 - f. Right to education,
 - g. Right to health,
 - h. Right to asylum

(1) Assessment of the follow-up on the first review

It is positive that following the first UPR cycle, the Human Rights Working Group (an interministerial working group) was set up, along with a Human Rights Roundtable consisting of NGOs as a consultative body for the Working Group. The Roundtable has a thematic working group on LGBTQI rights – a remarkable development as this is the first formalized consultative forum with LGBTQI NGOs in Hungary. This is what the Hungarian Government's report focuses on.

But if we turn our attention to the actual deeds beyond formal dialogue, we see less result. Following the first review, two recommendations called on the government to combat

discrimination based on sexual orientation and/or gender identity. Unfortunately, **no progress** has been made in this regard: there are still no state-sponsored campaigns or comprehensive efforts to address prejudices and discrimination against LGBTQI people, and transphobic and homophobic speech by public figures is on the rise.

Those who look into government reports and NGOs' parallel submissions are used to noticing that governments paint a much brighter picture than human rights defenders. This is particularly true in the case of Hungary and in the case of the rights of LGBTQI people.

We ask States to use the stakeholders' Report submitted jointly by Hungarian LGBT NGOs for Hungary's second UPR cycle: both the background information it contains and the recommendations it lists, to make the Hungarian government do more for the equality of LGBTQI people; to promote our recommendations collected in the Parallel Report; and come up with recommendations that contain concrete and measurable steps, so that the Hungarian Government can see clearly what is expected and so that its actions (or the lack of these) can be monitored adequately.

We shall now summarize our recommendations on what might be done for striving towards equality, outlining practical steps instead of formal "developments."

(2) Recommendations we would like States to make to Hungary in May

a. Hate crimes

In its UPR Implementation Report, the government of Hungary deals with sexual orientation and gender identity almost exclusively in the context of hate crimes. The Report basically contains one paragraph on the Government's efforts in this field: one paragraph about the reformed Criminal Code and how it includes sexual orientation and gender identity in its hate speech and hate crimes provisions.

The rights of LGBTQI people, however, are curtailed in several other spheres of life, too, and even if we consider hate crimes, we must stress that although homophobic and transphobic hate crimes are widespread in Hungary, a very small number of those attacked report the attack to the authorities; law enforcement agencies often disregard the hate motivation; and data collection is not adequate. Therefore we ask State representatives to put forward the concrete recommendations we outlined on adopting guidelines for law enforcement agencies on their response to hate crimes; on training police officers, prosecutors and judges; and on taking comprehensive measures to prevent hate crimes and encourage victims to report incidents.

b. Right to family

The Annex to the Hungarian government's report states that although the Fundamental Law added the definition of the basis for family relationships to its Article L), "this provision defines the basis of family relationships, but not the family itself." In fact, this provision contains that *marriage can only exist between a man and a woman*, and that *the basis of family relationships is marriage and the relationship between a parent and a child*. It is obvious that the government has the clear intention of defining "*the family*" as an *exclusively heteronormative institution*. The lack of recognition for same-sex parents creates legal and

practical problems for the growing number of children living with same-sex parents. The Committee on the Rights of the Child specifically called on the Government to take steps against discrimination faced by children raised by same-sex parents.¹

The person applying for legal gender recognition has to be unmarried; this entails mandatory divorce if the person is married or is in a registered partnership. We propose that Hungary should remove the requirement to be single as a prerequisite for legal gender recognition.

c. Legal gender recognition

Although transgender persons are able to have their legal gender recognized by means of an administrative procedure, this practice is not supported by any legislation. Thus the recommendation we propose is that the government should develop a quick, transparent and accessible legal process based on self-determination for legal gender recognition.

d. Right to employment

Although research shows that many LGBTQI persons have suffered from discrimination at their workplace or were rejected when applying for work, and trans people are twice as likely to experience discrimination at work than non-trans gays and lesbians, reporting discrimination remains alarmingly low. It would be essential that more emphasis is placed on prevention as well as the dissemination of good practices with regard to creating diverse work environments. Although employers can put in place so-called equal opportunity plans, only the public sector and state bodies are obliged to do so, and state support for employers to do this is lacking.

e. Right to freedom of expression, association and peaceful assembly

After refusing to grant a permit to the Budapest Pride March in 2011 and 2012, the Police now uses barriers and fences to hermetically separate the March from the city, making the whole event quite invisible, thus undermining the effective realization of the right to peaceful assembly. Despite ample police force being present, they failed to effectively protect participants particularly after the march was concluded. Our recommendations focus on the right to peaceful assembly and safety.

f. Right to education

As many LGBTQI people have experienced discrimination and physical abuse in educational institutions, mostly in high schools, and trans students are routinely harassed because of their gender identity and expression, and there is currently no obligation for educational institutions to put in place policies against bullying, and as the school curriculum lacks LGBTQI topics that could be fostering an inclusive school environment, and indeed, there has also been a rise in homophobic and transphobic materials in books that schools can choose to use, we put together recommendations concerning the National Basic Curriculum, textbooks and other educational materials, as well as anti-bullying policies.

¹ Committee on the Rights of the Child, *Concluding observations on the combined third, fourth and fifth periodic reports of Hungary* (2014) CRC/C/HUN/CO/3-5, III. Main areas of concern and recommendations, 19., 20.

g. Right to health

As very few LGBTQ people come out to their doctors, but research shows that the respondents who did so were three times as likely to report being mistreated, and a recent trans specific study showed that an even greater proportion of trans respondents felt discriminated in health care because of their gender identity or expression, and public health insurance only covers 10% of the costs of gender affirmative surgeries, we ask States to accept recommendations on trainings for doctors and other medical staff and on ensuring that costs of gender affirmation procedures are reimbursed by public health insurance.

As medical treatments including surgery on intersex children are very common, we outlined a recommendation about stopping the unnecessary medical treatment and surgery of intersex people without their consent and improve law and policy to facilitate the legal recognition of intersex individuals on official documents, respecting their right to self determination.

h. Right to asylum

Act LXXX of 2007 on asylum fails to mention gender identity and expression as grounds for persecution. Information materials and the website of the Office of Immigration and Nationality (BÁH) fail to mention sexual orientation, gender identity and expression as recognized grounds of persecution. Thus the government should ensure that the act on asylum explicitly states gender identity and expression as grounds of persecution; explicitly include sexual orientation, gender identity and expression in information materials as grounds for persecution that LGBTQI asylum seekers can base their claims on; and ensure that asylum procedures are conducted in line with UNHCR Guideline no. 9 and consider the special situation and needs of LGBTQI claimants.

As LGBTQI asylum seekers routinely face homophobic and transphobic abuse by others living in the camp, guards and staff, Hungary should ensure that LGBTQI asylum seekers are safe in the camps and if necessary, provide alternative housing, medical, and social services for them elsewhere.

Improving the situation and solving problems in all of these areas is the responsibility of the state, so that the human rights of LGBTQI people in Hungary are respected, protected and fulfilled.