

# 2024 Rule of Law Report - targeted stakeholder consultation

Submission by ILGA-Europe and organisations Deystvie (Bulgaria), Háttér Társaság (Hungary), Gruppo Trans & Certi Diritti (Italy), KPH (Poland), ACCEPT Romania (Romania), Legebitra (Slovenia), and FELGTBI+ (Spain).

ILGA-Europe are an independent, international LGBTI rights non-governmental umbrella organisation bringing together over 700 organisations from 54 countries in Europe and Central Asia. We are part of the wider international ILGA organisation, but ILGA-Europe were established as a separate region of ILGA and an independent legal entity in 1996. ILGA itself was created in 1978.

<https://www.ilga-europe.org/who-we-are/what-ilga-europe>

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## Horizontal developments

This submission brings together 7 country submissions compiled by ILGA-Europe, with the expert input of its member organisations in the Member States, namely - 1. Bulgaria (Deystvie), 2. Hungary (Háttér Társaság), 3. Italy (Gruppo Trans and Certi Diritti), 4. Poland (KPH), 5. Romania (ACCEPT Romania), 6. Slovenia (Legebitra), and 7. Spain (FELGTBI+). Recommendations are included in the chapters where organisations chose to issue them.

The developments encompassed in this submission point to systematic attacks on the fundamental rights of LGBTI people enabled by the weakening of rule of law and democratic structures. This contribution focuses on rule of law violations which impact the rights of LGBTI people and therefore does not include all fundamental rights violations against LGBTI people, or all restrictions experienced by LGBTI civil society in the respective countries.

Throughout 2023 we continued to see the manipulation of judicial processes to attempt to erode the human rights of LGBTI people and their access to justice, in particular in Poland and Hungary, but also increasing in Italy too. In Poland the Prosecutor General being also the Minister of Justice continued to result in the misuse of the prosecutor's office to repeatedly appeal verdicts in favour of LGBTI defendants. Prosecutors also intimidated LGBTI people undergoing judicial processes, and attended cases seemingly for the purpose of creating a chilling effect both on judges and parties involved for the most part of 2023, while Zbigniew Ziobro remained the Minister of Justice. Despite a change of power later in the year, the issue of the separation of powers remains to be addressed.

Particularly stark among this year's submissions is the continual problem of non-implementation of European court judgments, especially around the right of LGBTI people to respect for their private and family life, and the best interests of their children. This was an issue in five of the seven countries responding to the survey this year. In Hungary, despite the anti-LGBT amendments to the Child Protection Act being subject to an EU infringement procedure due to breaching EU law, the implementation and chilling effect of this law only increased this year, spreading further into media, as well as the cultural sector. In Italy, new legal attacks on LGBTI people include proposed amendments to the asylum law that would breach EU law.

LGBTI civil society from four of the seven countries have highlighted the fact that their countries' legal gender recognition (LGR) procedures are not in line with international standards, including case law of the European Court of Human Rights which states that LGR should be quick, transparent, and accessible, without abusive requirements. LGR procedures in these countries expose trans people to inconsistent measures and decisions depending on the requirements and functioning of the courts.

In five of the seven countries LGBTI civil society reported inadequate or insufficient consultation processes for the preparation of laws, and legal restrictions to the functioning of civil society. In Romania a proposal limiting the conditions under which CSOs could challenge administrative acts/documents was dropped after significant protest from civil society, and Hungary's new sovereignty law opens the door to arbitrary governmental investigation of civil society organisations, with as of yet unclear repercussions.

Across the board issues with smear campaigns and hate speech in the media were reported, with lack of follow-up from relevant authorities in particular when it comes to perpetrators who are politicians or religious leaders. In Poland the authors of the Atlas of Hate are still facing three SLAPP cases, the rest having been dismissed by courts or won by the defendants. LGBTI human rights defenders in Bulgaria have started to become the target of SLAPPs also for denouncing discrimination against LGBTI

people. In a number of countries LGBTI civil society reported inadequate follow-up to hate crime and discrimination cases, showing systemic inadequate implementation of anti-discrimination and hate crime laws. In some cases, the police even discourage reporting.

## Bulgaria

### I. Justice System

#### A. Independence

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

Over a 5 year period the Commission Against Discrimination in Bulgaria received over 2500 court cases on discrimination and of these only 400 were based on sexual orientation and no case was opened on gender identity and/or expression. Of these 400 cases the Commission did not find discrimination in any of them.

#### B. Quality of justice

Accessibility of courts (e.g. court/legal fees, legal aid, language)

Due to the February 2023 interpretive decision of the General Assembly of the Civil College (SC) of the Supreme Court of Cassation (SCC), which [stated](#) that since gender is an unchangeable biological factor, legal gender recognition should not be possible in Bulgaria, the access of trans people to justice has been limited and denied in many cases. (See more under *C. Accessibility and judicial review of administrative decisions.*)

#### C. Efficiency of the justice system

Length of proceedings

Proceedings before the Commission Against Discrimination take more than 3 years. Currently, Deystvie is the lead on two court cases against political leaders and a political party which were submitted to the Commission in 2019 and still are pending.

### IV. Other institutional issues related to checks and balances

#### C. Accessibility and judicial review of administrative decisions

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

On 1 March 2023 the Supreme Administrative Court disregarded the judgement of the Court of Justice of the EU on [C-490/2020 V.M.A. v. Pancharevo municipality](#), Bulgaria on the recognition of birth certificates of children born in same-sex families, leaving the child born to a Bulgarian mother and Spanish mother stateless. The CJEU had found in December 2021 that it is contrary to the fundamental rights guaranteed by Articles 7 and 24 of the EU's Charter of Fundamental Rights for the baby of same-sex parents to be deprived of the relationship with one of her parents when exercising her right of free movement or for her exercise of that right to be made impossible or excessively difficult on the ground that her parents are of the same sex. The ruling effectively said that if one EU country recognises a child's parental relationship, then all EU countries should do the same to guarantee the child's right to freedom of movement across the region, a right granted to all EU citizens. In its judgement, the Supreme Administrative Court claimed that the child is not a Bulgarian citizen because

she has no proven biological relationship with her Bulgarian mother. The court incorrectly asserted that a written defence submitted to the second instance court contained a statement that the child was born to a British mother. In fact, nowhere is such information provided. Nowhere in the CJEU's judgement is the condition of a biological link to the parent in order to establish a legal one addressed. As the refusal of the Supreme Administrative Court was final and contradicts the EU law and the CJEU case-law, an application for violation of Articles 8, 12 and 14 of the ECHR has been filed before the ECtHR. Additionally, a complaint before the European Commission has been submitted for the violation of EU law.

In February 2023 the Supreme Court of Cassation closed the way to trans and intersex people to change their legal gender. Due to previously conflicting judgments from the Supreme Court on legal gender recognition (LGR) requirements, the General Assembly of the Civil College (SC) of the Supreme Court of Cassation (SCC) [issued](#) an interpretative decision in late February 2023. The decision [stated](#) that since gender is an unchangeable biological factor, legal gender recognition should not be possible in Bulgaria. This is despite a significant body of ECtHR cases ruling that lack of access to legal gender recognition is a violation of Article 8 ECHR. The most recent is from December 2022 against Georgia (*A.D and others v. Georgia*). The court found violation of Article 8 ECHR because of not having a fast, accessible and transparent legal gender recognition procedure in place. Seemingly other courts in Bulgaria are indeed following ECtHR case law, as in early March, the Supreme Court of Cassation [ruled](#) that the European Convention on Human Rights is the legal basis for LGR in Bulgaria. In May, the Sofia City Court also [decided](#) to process a trans person's LGR case.

#### **D. The enabling framework for civil society**

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

On 10 June, a group of far-right extremists held up hateful banners outside the screening of *Close* during the Sofia Pride Film Fest and allegedly [assaulted](#) a woman. The group then went inside to [disrupt](#) the event, took photos of the attendees, called them “paedophiles”, and chanted “LGBT virus”. The event was cancelled. The police were present, but allegedly shook hands and saluted protesters. Civil society [called](#) on Sofia's mayor to prohibit hateful actions and ensure that future screenings can go ahead and enjoy police protection.

According to LGBTI organization Deystvie of 23 court cases which were filed to the Commission against discrimination, to Police, Prosecution and Courts in Bulgaria concerning hate speech, none of these court cases finished with a judgment sanctioning hate speech. This hostile environment is supported by political dependence and corruption in Bulgarian courts.

Deystvie has observed a persistent pattern of decisions and actions that negatively target the LGBTQ community. In 2023 there were several judgments by Supreme courts in Bulgaria which target and restrict the rights of the LGBTI community, these include the two aforementioned judgements running contrary to CJEU and ECtHR decisions. Other examples include:

- In October 2023 the Supreme Administrative Court [dismissed](#) the discrimination claim filed by Deystvie against a famous Bulgarian rock singer stating that freedom of expression is more important.
- Two of the most prominent LGBTI activists in Bulgaria were sentenced to pay 1500EUR fine for suing the leader of a neo-nazi party who was requesting to ban Sofia Pride in his election campaign in 2019. The activists have filed a complaint to the Supreme Administrative Court. In case the latter confirms this judgment they will be sanctioned to an even higher fee.

Human rights defender Denitsa Lyubenova (Deystvie) has had two SLAPP cases levied against her. Criminal complaints were filed against Lyubenova at the Regional Police Department and the General Directorate for Organized Crime and at the Supreme Bar Council by far-right groups with close ties to far-right political parties including the groups who organized the protest during the movie screening of the movie "Close" and the groups which gathered in support of the ex-punk singer Milena Slavova who Deystvie were suing for discrimination.

## Hungary

### I. Justice System

#### A. Independence

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

Civil society organizations litigating before Hungarian courts constantly fear that the governing parties – having constitutional majority in the Parliament – will overlegislate positive court judgments and simply eliminate the results of strategic litigation through enacting legislation overwriting court decisions.

On April 21, 2023, in judgment no. 101.K.701.331/2022/7, the Veszprém Regional Court quashed the government office’s decision and obliged the government office to carry out a new assessment: the judgment argued that trans women are entitled to the ‘Women 40’ preferential pension scheme. The plaintiff, represented by Háttér Society, obtained her legal gender recognition in 2013, but when she inquired about her eligibility for early pension in 2021, she learned that the pension provider continued to record her as man. She challenged the decision in court, where the government office argued that the ‘Women 40’ benefit was intended to compensate women for their role in raising children and maintaining a family. The court ruled that the government office had unlawfully narrowed the definition of "sex" in the legislation to sex at birth. In compliance with the court's ruling, the government office initially amended the plaintiff’s data in the register allowing her to retire after 40 years of employment.

Háttér Society communicated about the legal victory, which attracted significant attention from the press. In response to that, in mid-July 2023, government MPs submitted an [amendment](#) to Act no. LXXX of 1997 on social security pension benefits: only the insurance period corresponding to gainful activities performed as a woman could count towards the eligibility period (Bill no. T/4659). The proposal was eventually [withdrawn](#) in October 2023 without further explanation. Although the government office whose decision was quashed by the court, initially recognized the plaintiff’s eligibility for the ‘Women 40’ pension benefit, the Hungarian State Treasury withdrew the government office’s decision (Decision no. EFMÉLTF/49-2/2023), and the latter passed a new decision holding that only the period after 2013 counts towards the qualifying period (Decision no. FEL/L100/1338/2021). The petition for judicial review is currently pending at the Veszprém Regional Court. Although in the case, the legislative proposal was dropped, actions of political actors unequivocally interfered with the administration of justice, and state authorities sought to circumvent the judgment of the Veszprém Regional Court. It is important to note that the Veszprém Regional Court’s decision relied on a [CJEU case from 2006](#) which found that 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](#).

#### **Recommendation**

- Refrain from passing ad hominem and case-by-case legislation.

### C. Efficiency of the justice system

#### Length of proceedings

The Hungarian Parliament in an omnibus bill passed during the emergency situation in May 2020 (Act no. XXX of 2020, Section 33), banned legal gender recognition for trans people by introducing the

concept of the ‘sex at birth’ to the Act on Registry Procedures (ARP). The original version of the amendment mandated the application of the ban retroactively to pending cases; this rule was found unconstitutional by the Constitutional Court (Decision no. 11/2021. (IV. 7.)). Háltér Society represented a client who submitted his request for legal gender recognition after the new rule was introduced in May 2020. The request was rejected by the Budapest Capital Government Office (BCGO) and a petition for judicial review was filed. The preceding judge at the Budapest Regional Court requested – while suspending the case at hand – the Constitutional Court to review whether the impugned provision of the ARP is in compliance with the Fundamental Law (concrete constitutional review). In line with Article 24 (2) b) of the Fundamental Law, the Constitutional Court in such cases, *i.e.* when a judge seeks the review of the constitutionality of any law applicable in a particular case, shall deliver a decision “as a priority but within no more than ninety days”. The judge’s petition for constitutional review arrived on July 25, 2021, and it was only dealt with in Decision no. 3058/2023. (II. 16.), significantly exceeding the time limit for the decision.

Not only did the Constitutional Court fail to keep the deadline set out in the Fundamental Law, but the concrete case in the context of which the petition had been filed remained suspended for over a year and a half. The Constitutional Court rejected the petition and found that the challenged provision, *i.e.* the unamendable registration of the ‘sex at birth’ does not violate the Fundamental Law.<sup>1</sup>

The Budapest Regional Court following the decision of the Constitutional Court had no other option but to reject the petition (Budapest-Capital Regional Court, Judgment no. 49.K.700.621/2023/11). Between July 1 and November 30, 2020 three constitutional complaints were submitted directly against the modified provision of the ARP under Article 26 (2) of the Act CLI of 2011 on the Constitutional Court. These constitutional complaints were only decided (and rejected) after the decision in the concrete review case had been rendered, *i.e.* in May 2023 (Constitutional Court Order no. 3235/2023. (VII. 2.)), some almost 3 years after the submission of the petition.

The standing rules of the Constitutional Court indicate that in case of constitutional complaints the decision on admissibility has to be taken within 120 days after receiving the complaint. Although the standing rules have no normative value and are thus not enforceable, the deadline is not even remotely respected by the Constitutional Court. Háltér Society represented a client seeking to get her foreign same-sex marriage recognized in Hungary as registered partnership. After exhausting all the remedies, she submitted a constitutional complaint against the rejection of the Curia (Supreme Court). The complaint was registered on January 12, 2023 (after the Constitutional Court had requested supplementing arguments), and the decision on admissibility was communicated almost a year after the initial submission, on November 21, 2023 (Case no. IV/2589/2022). No decision has been taken so far.

Similarly, in a case concerning the recognition of a foreign name change for a trans person with double citizenship the constitutional complaint was registered by the Constitutional Court on July 5, 2022, and the decision on rejection was only communicated on November 28, 2023 (Case number: IV/1551-1/2022). No separate decision on admissibility was taken.

As the constitutional complaint is deemed an effective remedy for the purposes of applying to the European Court of Human Rights (*i.e.* it needs to be exhausted), victims of human rights violations are put on hold for an excessive period of time awaiting the decision of the Constitutional Court – which due to being politically loyal to the government – rarely rules in their favour in LGBTQI rights cases before they can submit a complaint under Article 34 of the European Convention on Human Rights.

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<sup>1</sup> For an analysis of the decision see: Polgári, Eszter; Dombos, Tamás: *Ignorance and Evil: The Hungarian Constitutional Court on Legal Gender Recognition for Trans People*, *VerfBlog*, 2023/2/21, <https://verfassungsblog.de/ignorance-and-evil/>



### Recommendation

- Ensure that the deadlines set out in the Fundamental Law and the Standing Rules of the Constitutional Court are respected to avoid undue delays in the exhaustion of domestic remedies.

### III. Media Freedom and Pluralism

#### **B. Safeguards against government or political interference and transparency and concentration of media ownership**

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

Since the adoption of the anti-LGBTQI provisions contained in Act LXXIX of 2021 on stricter actions against paedophile offenders (the so-called ‘child protection’ law), the Media Council of the National Media and infocommunications Authority updated its “recommendation on classification (ratings)” in line with new provisions of the Media Act. Until mid-June 2023 the Hungarian media authority received 136 reports alleging incompliance with Section 9 (6) of the Media Act outlawing content depicting or promoting homosexuality, divergence from the sex at birth or gender reassignment for minors.

- 22 reports concerned content aired by a service provider registered in Hungary (thus within the jurisdiction of the Media Council): no procedure was initiated against such service providers, and hence no sanction was imposed.
- 58 reports were submitted against foreign service providers: 36 related to content aired in linear media services, while 22 targeted streaming services registered outside Hungary.

The Media Council reached out to its foreign counterparts with requests to proceed against service providers registered in another EU member state in 24 cases.

The low numbers of procedures do not reflect the real impact of the anti-LGBTQI law in media: between June 8, 2021 and December 31, 2022, the Hungarian media authority received 169 reports alleging the violation of Section 9 of the Media Act – this marks a significant increase compared to the period of January 1, 2018-June 7, 2021 where 198 reports were submitted.<sup>2</sup> The Media Council’s practice is unpredictable in implementing the anti-LGBTQI law: in several cases the content was reclassified (*i.e.* in case of cartoons, but no 18+ rating was required).

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<sup>2</sup> Response of the National Media and Infocommunications Authority to Háttér Society’s freedom of information request on February 8, 2023. The FoI request was only partially complied with, Háttér is currently litigating for full compliance.

The case files Háttér has access to indicate that the media authority selectively refers explicitly to the anti-LGBTQI law, but it follows the spirit of the law and seeks to sanction LGBTQI content not rated – in its view – adequately. While the foreign media authorities have so far refrained from imposing sanctions upon the request of the Media Council, these proceedings contribute to the chilling effect of the law. The Media Council’s reasoning in these cases is inconsistent: at times they take action against content touching upon sexual orientation and gender identity, yet they do not refer to the specific provisions introduced by the anti-LGBTQI law. It is, thus, unforeseeable what content will trigger the application of the law and will result in an 18+ rating.

### Cases from 2023

Following a complaint, the Media Council investigated the children's film *Strange World*, available on the Disney+ streaming service due to the protagonist being gay. The Media Council disputed the 6+ rating given by the service provider, and found that the programme falls into the category of "not recommended for children under 12". In addition to the incorrect age rating, Disney+ did not prominently display the age rating of media content, which also constitutes an infringement. On March 6, 2023 the Dutch Media Authority was notified. The Dutch Media Authority – in an email sent on April 13, 2023 – informed the Media Council that in their assessment, also supported by the re-assessment of NICAM, the contested movie is suitable for children above the age of 6.<sup>3</sup>

In June, 2023 Rtl Klub requested the a priori classification of "*The official campaign film of the 28th Pride Festival*" from the Media Council. Prior to the adoption of the anti-LGBTQI law, the promotional video of the yearly Pride festival was aired as a social service advertisement by the service provider. In Decision No 496/2023 (VII. 4.) the Media Council [found](#) that the video is not in line with the requirements set for social service advertisement, and it may be aired only between 10 p.m. and 5 a.m. In addition, they invoked the anti-LGBTQI provision amending the Media Law which led to the video being classified as 18+.

Both RTL Klub and Budapest Pride (represented by Háttér Society) sought judicial review of the Media Council’s decision. Budapest Pride’s petition was rejected for alleged lack of standing in the case (Judgment of the Budapest-Capital Regional Court no. 105.K.702.786/2023.4), an appeal was submitted against the judgment. Both procedures are pending.

### **Recommendations**

- Revoke the Anti-LGBTQI law, and refrain from interpreting other child protection provisions in an arbitrary and discriminatory manner.
- Ensure that minors have access to scientifically sound and objective information on sexuality and gender diversity in age appropriate forms.

## **IV. Other institutional issues related to checks and balances**

### **A. The process for preparing and enacting laws**

Framework, policy and use of impact assessments and evidence-based policy-making, stakeholders'[1]/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process [1] This includes also the consultation of social partners

The legislative procedure – as evidenced, for instance, by the adoption of the Anti-LGBTQI law or the later discussed Regime Defense Act – in the majority of the cases offers no room for civil society

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<sup>3</sup> Documents on file with Háttér Society.

organizations to formally intervene, submit opinions, or in any way provide input to the decision-making procedure. According to Act no. CXXXI of 2010 on public participation in the preparation of laws public consultation on bills is only mandatory if the bill is tabled by a member of the government, therefore the duty to consult is easily circumvented if MPs submit legislative proposals. Furthermore, consultations are not mandatory under special situations such as states of emergency. Since currently there is a ‘state preventive defense’ in Hungary in line with Article 51 of the Fundamental Law, the obligation to consult civil society organizations may be justifiably [ignored](#).

Civil society organizations – in particular those that have been critical of the human rights record of the Government – are not provided with a forum to discuss or propose policy decisions and measures, and are not formally involved in the adoption of such instruments. The Human Rights Working Group theoretically operating within the auspices of the Ministry of Justice has not been convened in 2023 (and in previous years either). On June 21, 2023 Háttér Society did receive an invitation to the meeting of the Family Affairs Civil Working Groups meeting that forms part of the Legal Equality Working Group (which supposedly took over the role of the Human Rights Working Group). Háttér proposed the following agenda items in response to the invitation: recognition of same-sex marriages concluded abroad, the situation of LGBTQI persons in the adoption procedures, and expanding family support schemes to rainbow families. The State Secretary of the Ministry of Justice proposed that given the time constraints of the meeting, these agenda points will be discussed in the next session of the Legal Equality Working Group.<sup>4</sup> No such meeting has been convened since then.

### Recommendations

- Comply with the rules set out in Act no. CXXXI of 2010 on public participation in the preparation of laws, stop circumventing the law by introducing bills through individual members of the Parliament.
- Provide structured and regular fora for civil society organizations for consultation with the relevant state actors in policy- and law-making. Regularly convene the Human Rights Working Group.

## B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions (‘NHRIs’), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

In 2020 the former Equal Treatment Authority was subordinated to the Commissioner for Fundamental Rights (CFR). The ombudsperson is known to be inactive in the field of LGBTQI rights, he has not responded to any call for action in this field. In 2022, the Commissioner for Fundamental Rights (CFR) was downgraded by GANHRI from an A to a B status as Hungary’s national human rights institution, since it failed to effectively carry out its mandate in relation to vulnerable groups such as ethnic minorities, LGBTQI people, human rights defenders, refugees and migrants, or human rights issues such as media pluralism, civic space and judicial independence, evidencing a lack of independence. In addition, the CFR’s selection and appointment process was considered not sufficiently broad and transparent. The operation of the Equal Treatment Directorate (ETD) – whose predecessor was an active and progressive defender of LGBTQI rights – has been subject of serious criticism. In 2022, out of the 37 cases [published](#) on their website only one concerned discrimination based on sexual orientation and none gender identity. The only [case](#) on sexual orientation ended with

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<sup>4</sup> Email received on June 26, 2023.

an amicable agreement between the parties (Case no. EBF-AJBH-34/2022). In 2023, the ETD so far published information on [17 cases](#), out of which 15 concerned discrimination based on disability, one on motherhood and one on belonging to an ethnic minority. Háttér Society represented a client who alleged having been discriminated against based on sexual orientation at the workplace; his petition was rejected. This case does not appear on the list. Additionally, the decisions of the ETD may be appealed before courts, and in the experience of the litigating lawyers – contrary to its former practice – it seeks to enforce higher legal fees in case of a judgment in its favour.

### Recommendations

- Establish a sufficiently broad and transparent selection process for the Commissioner for Fundamental Rights, in line with the recommendations of GANHRI, and include civil society organizations in the selection process.
- Re-establish the Equal Treatment Authority, and include civil society organizations in the selection of the president of the Equal Treatment Authority.

## C. Accessibility and judicial review of administrative decisions

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

### Failure to implement the judgments of the European Court of Human Rights

The European Court of Human Rights (ECtHR) delivered a judgment in *Rana v. Hungary* on July 16, 2020. The decision found a violation for non-compliance with Hungary's positive obligation to provide an accessible and foreseeable procedure for non-Hungarians lawfully resident in the country to get their gender legally recognized. The applicant in the case – in line with standards set out in the case-law of the ECtHR concerning Hungary – submitted a constitutional complaint to exhaust the domestic remedies (while parallel turning to the ECtHR). The Constitutional Court rejected the constitutional complaint, but ex officio proceeded to examine if the case presents any unconstitutional omission. In Decision no. 6/2018. (VI. 27.), it found that the Parliament failed in fulfilling its legislative obligations and called on them to rectify the situation, *i.e.* enact rules that allow legal gender recognition for refugees in Hungary, by December 31, 2018. No such legislative proposal has been tabled so far, and since May 29, 2020 legal gender recognition is not available for Hungarian citizens either.

### Failure to comply with the judgment of the Court of Justice of the European Union in the Coman case (C-673/16)

The Hungarian authorities have consistently rejected the recognition of foreign same-sex marriages in Hungary, even if one of the partners is a Hungarian citizen. Háttér Society litigated several cases where the plaintiffs requested the recognition of their same-sex marriage concluded abroad. While the Budapest Capital Regional Court delivered a [judgment](#) that mandated the recognition of a marriage as registered partnership (no. 9.K.700.491/2022/12), in the review procedure the Curia overturned it. The [judgment](#) – having precedential status now – stated the Hungarian legal framework offers no such possibility (Judgment no. Kfv.V.37.135/2023.6).

Háttér Society sent a public interest submission to the Ministry of Justice containing a legislative proposal for the amendment of Act no. XXVIII of 2017 on private international law. With reference to prior – later overturned – Hungarian court judgments and the *Coman* judgment of the CJEU, the

submission contained a proposal that would have allowed for the automatic recognition of foreign same-sex marriages as registered partnerships in Hungary.<sup>5</sup>

In its response dated October 20, 2023, the Ministry of Justice explained in great detail why the submitted legislative proposal cannot be endorsed. The Article L (1) of the Fundamental Law defines the institution of marriage as the union of a man and a woman, same-sex couples may benefit from concluding a registered partnership, which is designated to give them legal recognition. The Ministry emphasized that “same-sex marriages concluded abroad where the personal law of one of the partners is the Hungarian law, must be deemed non-existent in Hungary”. The legal evaluation is the same if none of the partners has Hungarian law as their personal law, but one of their countries of citizenship does not recognize same-sex marriages. If the countries of both spouses recognize same-sex marriages, then their recognition would violate the Hungarian public order.<sup>6</sup>

### Recommendations

- Comply with the judgment of the CJEU in the *Coman* case and stop using the public order clause as a justification for avoiding compliance.
- Ensure complying promptly and fully with all relevant CJEU judgments.
- Fully and timely execute the judgments of the European Court of Human Rights, including taking the general measures required for full compliance.

## D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

On December 12, 2023 the Hungarian Parliament passed the [Act on the protection of national sovereignty](#). According to the governmental narrative the law is meant to protect against foreign interference in domestic affairs and ultimately to protect national sovereignty, yet in effect it serves to conserve their power based on arbitrariness and scapegoating. Thus, civil society organizations – Háttér Society among them – find it more appropriate to label it as Regime Defence Law. Apart from taking actions against political candidates who accept foreign funding, the law contains deliberately vague and undefined rules on who and how one can endanger Hungary’s sovereignty. The law creates the Office for the Defense of Sovereignty with overbroad and arbitrary powers to investigate any person or organization they deem to be serving a foreign interest carrying the risk of jeopardizing Hungary’s sovereignty. According to Section 3,

- (i) in the context of its investigative function, the Office
- a) detects and investigates the following activities carried out in the interests of another State or, regardless of its legal status, of a foreign body or organization or natural person:
    - (aa) advocacy activities, excluding activities carried out by diplomatic missions, consular posts and professional representative organizations,
    - (ab) information manipulation and disinformation activities,
    - (ac) activities aimed at influencing democratic debate and the decision-making processes of the State and society, including activities influencing the decision-making process of persons exercising public authority, if they could harm or threaten the sovereignty of Hungary;
  - b) identifies and investigates organizations whose activities using foreign funding may influence the outcome of elections;

<sup>5</sup> The letter, sent on August 10, 2023, is on file with Háttér Society.

<sup>6</sup> Response of the Ministry of Justice, dated on October 20, 2023, on file with Háttér Society.

c) identifies and investigates organizations that use foreign funding to influence the will of voters, or support such activities.

It will have wide investigative powers allowing it to “have access to all data in the possession of the organization under investigation” (Section 8). The Government yearly - based on the report of the Office - will assess what legislative measures are needed (so can adopt tailored legislation, or even ad hominem laws). There is no remedy against the report published. Hard sanctions will be applied in relation to elections, which will be applicable to CSOs involved with elections. At this early stage it is unknown exactly how the law will be implemented. Apart from the sweeping powers the Office will have, investigations are stigmatizing and capable of hindering the daily operation of the affected organizations.

#### Missing procedure for registering for sexual education in schools

The National Public Education Act authorizes the minister responsible for education<sup>7</sup> to issue a decree which designates the state organ maintaining the registry of experts and civil society organizations that may hold sex education classes in institutions of public education. Further, it authorizes the minister to regulate in a decree the exact conditions of registration. However, no such decree has been issued as of December 22, 2023. As a result, currently no civil society organization or external expert may hold sex education classes in institutions of public education.<sup>8</sup>

#### **Recommendations**

- Revoke the Regime Defense Law, and ensure that civil society organizations are not subjected to arbitrary investigations, harassment and stigmatization from the Office for the Defense of Sovereignty.
- Allow civil society organizations working on LGBTQI rights to access schools, hold classes on sexuality and gender diversity, and stop excluding them merely because their activities touch upon sexual orientation and gender identity.

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

CSOs and human rights defenders continued to be subject to smear campaigns and negative narratives in 2023. Some of the attacks remained at the level of an accusatory [article](#) published providing detailed personal information, while other reactions necessitated reporting to the police, as a result of which criminal investigations were started (see [1](#) and [2](#), for example).

The extreme-right Sixty-Four Counties Youth Movement (SFCYM, Hatvannégy Vármegye Ifjúsági Mozgalom) [stated](#) during Pride march: “organizations such as Háttér Society – which is funded by hundreds of millions of dollars in foreign donations – are laying down the foundations of the deep state”.

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<sup>7</sup> Currently, the Minister for Interior.

<sup>8</sup> Informally, there is information on the existence of a ‘white list’ of organizations that have access to schools, but the content of the list is not known to Háttér Society.

The labelling of LGBTQI organizations as LGBTQP – P standing for paedophilia – is widespread in the extreme right-wing media: on July 25, 2023 SFCYM published a [document](#) titled ‘Proposals to curb the harmful activities of foreign-funded LGBTQP lobbying organisations’. SFCYM claimed that LGBTQI organizations constitute “national security threats” and called for establishing a “special monitoring body” to scrutinize their work, funding and networks. The proposal maps instances of collaboration and cooperation between LGBTQI NGOs and public bodies, *e.g.* the police, the prosecution service or the Ministry of Justice, and suggests that these NGOs have already “infiltrated” state organs.

Háttér Society learned from an article published in July, 2023 that a 2021 petition to dissolve the organization addressed to the prosecution service by SFCYM and other extreme-right actors had been rejected by the Chief Prosecution Service, however, no further information was provided; Háttér had not been notified either of the petition, nor the rejection.

Budapest Pride organizers were harassed and insulted by SFCYM members in July 2023: a [video](#) taken of an argument between SFCYM and Pride organizers was released on a Youtube channel affiliated with SFCYM, which constitutes a violation of GDPR, in particular the use and publication of their personal data. The investigation into the harassment and insult was closed due to lack of evidence on December 11, 2023, the data protection case is still pending.

In 2023 Háttér Society was heavily criticized for its advocacy work at the European level, especially in relation to the infringement procedure brought by the EC against the anti-LGBTQI law. Government officials used the same smears as in previous years: that the case shows lack of respect for Hungary and is a coordinated effort by George Soros whose interest those opposing the anti-LGBTQI law serve (see *e.g.* [1](#) and [2](#)).

On November 17, 2023 the government launched a [national consultation](#) revolving around issues where the government disagrees with “Brussels”, including the EU’s infringement procedure. It states:

**“10. Brussels wants to abolish the Child Protection Act.**

Brussels is constantly attacking the Hungarian Child Protection Act. The European Commission has also challenged the Act in court. Meanwhile, news of aggressive LGBTQ propaganda targeting children is on the rise.

**What do you think?**

- Child protection legislation needs to be tightened further.
- The Child Protection Act must be relaxed in line with the proposal from Brussels.”

**Recommendations**

- Stop smear campaigns against CSOs working for sexual and gender minorities, publicly condemn all attempts by public actors to harass, stigmatize and defame human rights defenders working on LGBTQI rights.
- Ensure an enabling environment for LGBTQI CSOs by avoiding stigmatizing statements and providing appropriate funding for their work.

[Organisation of financial support for civil society organisations and human rights defenders \(e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding\)](#)

In compliance with the expectations set by the European Union, the Hungarian state set up a number of monitoring committees whose task is to oversee the use of public funds. Háttér Society – among

others – applied, by the deadline set out in the call, for membership in the Monitoring Committee for Hungary’s Recovery and Resilience Plan. The results of the selection process were communicated on May 22, 2023: Háttér Society received maximum points in the evaluation, but because in the given policy area, there was another organization with the same score, the criterion prescribed for a tie was applied: the organization with longer existence was chosen. Through a freedom of information request, Háttér Society got access to the list of chosen organizations, and the one selected in the policy area it applied for was established 16 years after Háttér. For non-compliance with the rules on selection, Háttér submitted a complaint on June 19, 2023. The Prime Minister’s Office in a decision containing contradictory arguments again rejected Háttér’s submission (Decision no. RRF/819/3). It failed to reflect on the fact that the chosen organization received only 11 points in the evaluation process, in contrast with Háttér’s 17 points (apart from having been founded much earlier). The decision argued that the selected organization has a much broader scope of operation in the field of health care than Háttér – this was not an aspect that could have been evaluated as long as both operate in the given field. On October 27, 2023 Háttér Society submitted another complaint, which was rejected by the Prime Minister’s Office on November 21, 2023 (Decision no. RRF/819/9. (2023)). The controversy has been communicated to the European Commission, Háttér has not taken further action.

#### Recommendation

- Stop introducing *ex post facto* arbitrary and discriminatory criteria in selection processes for membership in EU mandated public bodies. Provide effective remedies against grievances in such procedures.

## E. Initiatives to foster a rule of law culture

### Other

The enforcement of the anti-LGBTQI law intensified since the beginning of 2023. On August 6, 2021, lower level regulation implementing the anti-LGBTQI law was published in the Official Gazette. According to Section 20/A of Government Decree 210/2009. (IX. 29.) on commercial activities as amended by Government Decree 473/2021. (VIII. 6.) products targeting children depicting or propagating divergence from self-identity corresponding to sex at birth, sex change and homosexuality cannot be placed in a shopping window and can only be sold in special packaging separate from other products. Products depicting or propagating divergence from self-identity corresponding to sex at birth, sex change and homosexuality (not limited to those targeting children) cannot be sold within 200 meters of schools, children or youth institutions, and churches. Until 2023 this regulation was unenforced.

In February, 2023 Háttér Society discovered that of 20 government offices, only the Budapest Capital Government Office reported pending procedures (14 in total).<sup>9</sup> While there have been reports in the press about [shelving books](#) targeted at young people (14-18) to adult literature on account of their content (e.g. for having gay or lesbian characters), there was no further information available on sanctions. In late May - June, two procedures received significant media attention:

The bookstore chain Libri was fined 1.000.000 HUF (~2.700 EUR). Libri then started to review the books in its stores and re-shelved those that could fall within the scope of the anti-LGBTQI law. As a result, a number of books have been wrapped (in transparent foil that prevents browsing), and [moved](#) to entertaining adult literature. Libri stated that they "operate as a responsible company, in compliance

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<sup>9</sup> On file with Háttér Society.



with the law and legislations". It is very rare that Libri stores sell wrapped copies of books containing LGBTQI characters or storylines: these items have been moved to online sale where these restrictions are not applied.

On July 13, 2023 the Líra bookstore chain received a 12.000.000 HUF fine (~32.000 EUR) for selling the Heartstopper series without wrapping and among literature accessible to youth<sup>10</sup> and were ordered to sell the books "in close wrapping and separated from the other products". The Heartstopper series is published by Könyvmolyképző, a publisher specialized in youth literature, and the books were recommended from the age of 14. Líra will challenge the decision before court. At least two other Líra stores were subject to consumer rights inspections by the competent government offices in autumn 2023. Following the fine, Líra has moved the books that may fall within the prohibition set out in the anti-LGBTQI law to the adult section, the recent proceedings have focused on compliance with the 200 meter-rule, however, it is inconsistent how the 200 meters are counted from schools or churches. The proceedings are pending.

Other bookstores, such as Alexandra in Budapest chose to comply with the regulation in a third – extremely overbroad – way: they simply [banned](#) access for minors to the parts of the store where adult books were sold.

In October 2023, an MP complained that the law was not enforced in the National Museum, which hosted the World Press Photo exhibition containing a photo series on an elderly home for LGBTQI people and photos on violence against LGBTQI people. In response, the Minister for Culture and Innovation called on the museum to follow the rules. The museum's response was that they are not authorized to ask visitors to present their identity cards, however, warning signs were put up throughout the exhibition informing the public about the age limit. In a few days, the director of the National Museum was [dismissed](#).

The Museum of Ethnography also [put up cordons](#) in Claudia Andujar's exhibition blocking photos of same-sex couples: only people above the age of 18 can directly access them. No procedures have been started yet against the museum's restrictive policy.

### **Recommendation**

- Repeal the Anti-LGBTQI law and refrain from censoring cultural and literary content based on sexual orientation and gender identity.

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<sup>10</sup> Case file: BP/2200/03940-5/2023. On file with Háttér Society.

## Italy

### I. Justice System

#### A. Independence

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

In January 2023, the government issued a Directive instructing local authorities to discontinue the automatic transcription of foreign birth certificates of children born through surrogacy and inviting them to register only the biological parent. A second Directive was later issued, clarifying that these guidelines should also be followed in cases of children born following other artificial reproduction technology.

Some prosecutors began to retroactively challenge the transcription of foreign birth certificates of children born to same-sex parents. In Padua at least 33 mothers of 37 children received notification that their child(ren)'s birth certificates, in which two women's names appeared, were illegitimate. In many cases, the deregistration comes after many years, and the children thus 'lose' one mother, and sometimes their family name, from one day to the other.

While the government claims that parents have a legal route to establish parentage of the second parent, namely via a special adoption procedure ("adozione in casi particolari"), LGBTI organisations have long pointed out that these procedures can take up to years, are very costly and depend on the courts, which vary from region to region.

The European Court of Human Rights clearly ruled that states need to establish a mechanism to allow for recognition of the parent-child relationship for non-genetic parents, such as through adoption, and that children should not be blamed for their parents' decisions, including about conception. In her recent country report, the Council of Europe Commissioner for Human Rights [confirms](#) that the Italian procedure does not comply with the best interests of the child and reminds that even Italy's Constitutional Court recommended the legislation be amended accordingly to ensure adoption rights for all families without discrimination. In the absence of legally ensured adoption for all, the Commissioner called on Italy to stop deregistering parents, as some prosecutors have started to do in a response to the governmental Decree.

In July, several politicians and government representatives spoke at the hearing in Padua of a lesbian couple, defending the government's call for the deregistration of one of the mothers from their child's birth certificate. The Minister of Interior, Matteo Piantedosi, is one [example](#).

#### C. Efficiency of the justice system

##### Length of proceedings

For trans people, legislative obstacles result in lengthy court procedures for accessing legal gender recognition. In Italy, this process is regulated by law 164/1982, which stipulates that an applicant needs to go to court to access this change.

Courts differ with respect to the fees to be paid for the lawsuit as well as the change of documents. The procedure is considered by most courts to be free of charge, but some courts still charge up to over 500 euros, which creates an additional barrier to accessing legal gender recognition.

Regarding documentation, some courts are very restrictive and ask for documentation coming from public bodies (hospitals) and do not accept documents from private doctors or psychologists. In some courts, such as in Bologna, the summons for the change of personal data accompanied by documents from private professionals entails a request for an expert witness (official technical consultant) by the Judge, which further increases costs of the process borne by the requesting person.

According to case law of the European Court of Human Rights, LGR procedures should be "quick, transparent, and accessible". The most recent ECtHR LGR ruling was in December 2022 against Georgia (A.D and others v. Georgia). The court [found](#) violation of Article 8 ECHR because of not having a fast, accessible and transparent legal gender recognition procedure in place. Therefore Italy should remove the court requirement in order to make the procedure accessible in line with ECtHR case law.

#### **IV. Other institutional issues related to checks and balances**

##### **B. Independent authorities**

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

In Italy there is no independent human rights body. The institution responsible for equality for LGBTI people is UNAR, which also manages government funding for anti-discrimination projects. UNAR is an office of the Prime Minister, which means that it reports directly to their office, and therefore does not have political independence from the government. In addition, in a [report from June 2023](#) of the Council of Europe's Commissioner for Human Rights, the Commissioner notes that Italy is one of the few Council of Europe member states that have not established an accredited National Human Rights Institution (NHRI) in compliance with the United Nations Paris Principles.

##### **E. Initiatives to foster a rule of law culture**

###### **Other**

Since the new Italian government came into power in 2022, it has been toying with the rights of LGBTI people. Draft legislation that would do away with the internationally agreed protection of asylum seekers based on their sexual orientation and/or gender identity has been put forward, as well as the drafting of a law to penalise surrogacy conducted abroad with criminal sanctions, and attempts to intimidate teachers supporting trans children in schools.

The Italian government's plans to remove SOGI as protected grounds in the asylum law, would mean that LGBT refugees are no longer protected based on their SOGI status.

On March 25, 2023, the list of so-called "safe countries of origin" was updated with the addition of two more countries where homosexuality is criminalized, Nigeria and The Gambia, and without providing any exceptions for at-risk categories, such as LGBTI people. These are in addition to Tunisia, Algeria, Morocco, Senegal, and Ghana.

Under EU law, Italy has several obligations to provide protection to vulnerable groups, including those based on sexual orientation and gender identity. Here are some of the key obligations:

- The Qualification Directive (Directive 2011/95/EU) requires member states to provide protection to refugees and persons eligible for subsidiary protection on the basis of, among other things, their sexual orientation and gender identity. Italy is obliged to implement the Directive into its national law.
- The EU's asylum system is based on the principle of non-refoulement, which means that individuals cannot be returned to a country where they would face persecution or serious harm. This includes individuals who are at risk of persecution or serious harm based on their sexual orientation or gender identity.
- The EU's Reception Conditions Directive (Directive 2013/33/EU) requires member states to ensure that asylum seekers have access to appropriate medical and psychological care, including care related to sexual orientation and gender identity. Italy is obliged to implement the Directive into its national law.

## Poland

### I. Justice System

#### A. Independence

##### Allocation of cases in courts

LGBTI civil society has observed that the presence of neo-judges<sup>11</sup> affects their cases. For example, in the case of KPH versus TVP on violation of personal rights because of the airing on prime time TV of a homophobic show called “Inwazja”, the chosen judge in the second instance was neo-judge Adam Jaworski. Jaworski was removed by the Court of Appeal, but has appealed this decision to the Supreme Court.

In another case, which is currently in the Supreme Court, a neo-judge was also chosen and KPH submitted a claim to remove her. The judge was removed by the Supreme Court, but then the Court chose another neo-judge to replace her. Another claim for removal is still pending.

##### Independence/autonomy of the prosecution service

Throughout 2023, the Minister of Justice, Zbigniew Ziobro, continued to also fulfil the function of Prosecutor General, which greatly undermined the independence of the prosecution service from the government.

As such, Zbigniew Ziobro continued to abuse his power by specifically intervening in LGBTI+ related cases.

In July 2023 Ziobro [granted](#) Marika an interruption in imprisonment, which was not justified by any circumstances. Marika had been found guilty of a robbery and of attacking a woman with a rainbow handbag. In December 2023, President Andrzej Duda, due to pressure from fellow politicians and far-right organisation Ordo Iuris, pardoned her. By this act of clemency/pardon, the President removed the criminal effects of the court decision, i.e. he removed the penalty and any criminal measures.

On 5 October 2023, the Supreme Court dismissed cassation appeals submitted by the prosecutor’s office and supported by Ordo Iuris in the [case](#) of an IKEA manager who fired a worker after their homophobic statement. The manager has been found innocent when prosecuted for religious discrimination in the first instance in February 2022. After the appeal case upheld this judgment in November 2022, the prosecutor’s office overused its power by submitting a cassation appeal to the Supreme Court which the Supreme Court judged as groundless and incorrectly formulated.

The then-Prosecutor General also overused his power by submitting extraordinary complaints to the Supreme Court in LGBTI+ related judicial proceedings, e.g. he [submitted](#) an extraordinary complaint in the lawfully finished case of an activist alleged to offend religious belief by presenting a portrait of Saint Mary with rainbow halo. The Supreme Court’s verdict has not been delivered yet.

As corroborated by other civil society organisations, in many cases on legal gender recognition, prosecutors continue to be unnecessarily involved, which is traumatising for the people undergoing the process and can have a chilling effect both on judges and parties involved.

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<sup>11</sup> Judges appointed to the Supreme Court by the National Council of the Judiciary – a body whose [independence was severely undermined](#) by the former government’s amendments to its functioning.

## B. Quality of justice

### Accessibility of courts (e.g. court/legal fees, legal aid, language)

The lack of legal protection of hate crimes and hate speech based on sexual orientation, gender identity/expression or sex characteristics (SOGIESC) results in difficulties in access to justice. The prosecutor's offices very often dismiss these cases or the investigation procedure is extremely long. For example, in one case of online homophobic hate speech, which started in 2017, the investigation has not ended yet, even though the court has stated the excessive length of procedures.

In addition, the legal gender recognition procedure in Poland is unregulated, is based only on Supreme Court judgements, and trans people are obliged to sue their parents. Therefore legal gender recognition cases can be decided differently depending on the court and region in Poland. Often the courts request many psychological, psychiatric or sexological opinions, and in a number of cases prosecution delegates are present, which LGBTI civil society interprets as being politically motivated and having a chilling effect both on judges and parties involved.

This results in many of the legal gender recognition cases becoming lengthy, multi-year proceedings. This is despite a significant body of ECtHR cases ruling that lack of access to legal gender recognition is a violation of Article 8 ECHR. The most recent is from December 2022 against Georgia (*A.D and others v. Georgia*). The court [found](#) violation of Article 8 ECHR because of not having a fast, accessible and transparent legal gender recognition procedure in place. In 2023, we did not observe any positive change in this aspect.

## III. Media Freedom and Pluralism

### B. Safeguards against government or political interference and transparency and concentration of media ownership

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

Under the ruling of the Law and Justice party (PiS), the public media - as well as a state-controlled Polska Press Consortium, the largest regional media publisher in Poland that reaches 19 mln users every month - were used as a propaganda machine for mobilising PiS voters for the election campaign. They were actively attacking political opponents, monopolising the broadcasting time and marginalising the visibility of other parties.

Until the autumn elections won by the democratic opposition, the PiS government was making appointments of public media staff and Polska Press staff, that later had to follow specific top-down

guidance e.g. concerning LGBTI+ related issues, having e.g. a clear command not to talk about or “promote LGBT” as stated in [Helsinki Foundation’s report](#).

In the media the [number of negative mentions](#) of the LGBTI+ community is significantly higher than positive ones, most of which was presented on public television. The LGBTI+ community was smeared as being related to pedophilia and misinformation was spread claiming that LGBTI+ people are a threat to children, christianity and traditional Polish values. The LGBTI+ community is not protected from hate speech, therefore the hate speech in the media was not investigated (at all).

As previously, TVP (public television) played an important role in this year’s national election campaign and was used to spread hate speech against migrants and other minorities, including LGBTI+ people (although significantly less than in previous years).

### **C. Framework for journalists’ protection**

[Lawsuits \(incl. SLAPPs - strategic lawsuits against public participation\) and convictions against journalists \(incl. defamation cases\) and measures taken to safeguard against manifestly unfounded and abusive lawsuits](#)

The SLAPP cases against the creators of the Atlas of Hate, an online map tracking anti-LGBT resolutions, continued again this year. Following the withdrawal of the case of Przysuski powiat, and the defendants’ win in the case of Przasnysz powiat, only three SLAPP lawsuits remain: those of Tatra, Tarnów and Łowicz counties.

As regards so-called “LGBT-free zones” (anti-LGBT resolutions and Family Charters), 58 have been withdrawn. This is more than half of the total number of zones. 13 remain, encompassing 0.9% of Poland’s territory.

## **IV. Other institutional issues related to checks and balances**

### **A. The process for preparing and enacting laws**

[Framework, policy and use of impact assessments and evidence based policy-making, stakeholders’ /public consultations \(including consultation of judiciary and other relevant stakeholders on judicial reforms\), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase](#)

Civil society organisations are not informed well-enough about public consultations, and their timeframe is usually too short. CSOs experienced difficulties with access to recruitment processes to the Monitoring Committees for the EU funds both on local and national level, and the calendars of these processes were often not updated resulting in many formal problems for CSOs.

Until the autumn elections won by the democratic opposition, LGBTI+ organisations did not have access to the authorities nor could establish dialogue with them. The only area that the CSOs had opportunity to talk to higher-ranking government officials was via the framework for EU funds.

The new Minister of Equality, Katarzyna Kotula, has already informed that the draft bill on civil unions for same-sex couples will be consulted with CSOs: a declaration which constitutes both a symbolic and practical qualitative change in the attitude and accessibility for LGBTI+ activists to the decision-making processes.

## B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

The Commissioner for Human Rights kept working with SOGIESC issues this year and sued several new local governments for their anti-LGBT resolutions, but leaving without answer a specific demand of CSOs to sue the ones with the discriminatory Family Rights Charter.

## C. Accessibility and judicial review of administrative decisions

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

The Law and Justice government has not implemented the judgments of the CJEU, e.g. the [judgment](#) of December 2021 in the case [STOLICHNA OBSHTINA, RAYON 'PANCHAREVO'](#) in which the CJEU found that it is contrary to the fundamental rights guaranteed by Articles 7 and 24 of the EU's Charter of Fundamental Rights for the baby of same-sex parents to be deprived of the relationship with one of her parents when exercising her right of free movement or for her exercise of that right to be made impossible or excessively difficult on the ground that her parents are of the same sex. The ruling effectively said that if one EU country recognises a child's parental relationship, then all EU countries should do the same to guarantee the child its freedom of movement across the region, a right enjoyed by all EU citizens. Cases have been initiated at the local level (complaints to regional authorities) but the previous Ministry of Internal Affairs and Administration recommended local authorities not to reveal both parents in a child's documents (contrary to the CJEU case law). Three complaints have also been lodged at the European Commission this year.

## D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

Around 13 discriminatory resolutions targeting the LGBTI+ community still remain in force.

For the most part of 2023, leaders of the former government continued to target LGBTI+ people with smear campaigns and discriminatory speech. In January, Deputy Minister of Justice, Marcin Warchoń, [said](#) that the TVP2's New Year celebration, which featured the Black Eyed Peas with rainbow armbands, was the "New Year's Eve of Abnormalities". In May, PiS leader Jarosław Kaczyński [said](#) that information on LGBTQI+ issues in schools exposes them to "practices that are certainly harmful to them and may cause serious damage to their psyche". Also in May, Ombudsman for Children Mikołaj Pawlak [said](#) his inspection of LGBTQI-friendly schools is to protect children from "criminals" and "paedophiles". In a statement in May, Education Minister Czarnek [blamed](#) the spread of "LGBTQ+ ideology" and "brainwashing" for the rise of suicide among minors.



Several groups organising Pride marches received violent [threats](#) this year.

## E. Initiatives to foster a rule of law culture

### Other

#### **In the Poland chapter of the 2024 Rule of Law Report, we urge the European Commission to:**

- Call on Poland to revoke all rulings of the politicised Constitutional Tribunal that have a negative impact on human rights
- Call on Poland to Separate the function of the Minister of Justice from that of the Prosecutor-General and continue efforts to ensure functional independence of the prosecution service from the Government; as well as to ensure independent investigations and prosecutions.
- Call on the new Polish government to reform the country's legislation in order to create a proper legal framework for the formalisation of same-sex relations so as to ensure full compliance with European Court of Human Rights judgments.
- Call on the new Polish government to repeal all the remaining so-called "LGBT-free zones" (Resolutions against LGBT Ideology or Family Rights Charters).
- Call on Poland to take necessary steps to amend the Criminal Code in order to adequately protect LGBTI+ people from hate speech and hate crimes.

## Romania

### I. Justice System

#### A. Independence

##### Promotion of judges and prosecutors (incl. judicial review)

The independence of the Constitutional Court is a legal presumption based on the requirements in order to be eligible for appointment (at least 20 years in the legal profession, good reputation etc.). In practice, the Constitutional Court is composed by 9 judges, each Chamber of the Parliament and the President appointing 3 of them at certain predetermined cycles. However, in recent years the Constitutional Court has ruled mostly in favour of bills of law drafted from the political parties which supported and/or appointed them through the majorities formed in the chambers of the Parliament.

#### C. Efficiency of the Justice System

##### Length of proceedings

Court proceedings take excessively long, which further discourages members of the LGBTI community to seek justice. For example, a case in which ACCEPT is involved regarding health insurance for a member of the LGBTI community has not been analysed by the court since 2018, another constitutionality exception brought before the Constitutional Court is pending since 2019 and in another one the court has not motivated its decision in writing for over 1.5 years. Multiple times, cases brought in front of the courts do not reach the procedural stage of having the specific claim analysed by the court, being rejected on unclear procedural grounds which leads to rejecting the case entirely.

##### Other

There have been multiple cases involving members of the LGBTI community seeking justice or wishing to file criminal complaints and have been discouraged by the Romanian Police.

### III. Media Freedom and Pluralism

#### B. Safeguards against government or political interference and transparency and concentration of media ownership

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

With the exception of some small-medium news outlets, all the mainstream media outlets have private ownership which have legal contracts in place with political parties, displaying information and covering comfortable topics for the latter. These are contracts that most parliamentary political parties have or parties who have obtained a certain number of local seats in the elections (for mayors, local or county councillors), as these parties receive state subsidies which they can spend this way. So the major Romanian political parties receive a certain amount of money annually from the state budget (see [1](#), [2](#), [3](#)).

#### **IV. Other institutional issues related to checks and balances**

##### **A. The process for preparing and enacting laws**

Framework, policy and use of impact assessments and evidence-based policy-making, stakeholders'/public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

Although national legislation requires public consultations prior to adopting legislation, public access to the works of the parliamentary commissions and plenary sessions are very difficult to obtain without support from elected representatives. In addition to that, in order to bypass the aforementioned requirement for public consultation, the Government adopts national legislation by emergency ordinances, a legislative tool meant for emergency situations only. A review of the number of laws adopted in recent years clearly shows that an overwhelming majority has been adopted by the government through emergency ordinances, without public consultation and feedback from civil society.

While ACCEPT's amendments and request to be invited to a public debate on the Government's legislative proposal on the execution measures required by CJEU judgement in the Coman case (C-637/16) were ignored, the Internal Affairs Ministry organised such a public debate inviting only the Christian Office for Rights and Liberties. At the request of the latter, the Internal Affairs Ministry removed mentions that were covering civil unions from the initial legislative proposal. After adoption by the Government in September, the proposal is currently in parliamentary procedure. ACCEPT communicated a set of amendments which were so far ignored by MPs.

##### **D. The enabling framework for civil society**

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

This year an initiative aimed generally at CSOs could have had a serious impact on LGBT NGOs' access to justice. Several Romanian MPs, led by a member of the National Liberal Party (EPP affiliated), proposed a bill that would have severely restricted conditions under which CSOs could challenge administrative acts/documents. The bill required CSOs to be at least 2 years old, and to make a financial deposit at the beginning of an action against an administrative act. In case the decision of the action in court against the administrative act was not favourable to the CSOs, the members of the CSOs' boards would have been patrimonial liable. After significant protest by civil society, the bill was [withdrawn](#).

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from

attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

The mural on the exterior wall of ACCEPT’s headquarters has been vandalised multiple times, the latest offence happening a few months ago. To date, the Romanian police failed to identify any perpetrators, despite the fact that recordings of the security cameras of ACCEPT have been diligently submitted to them.

Although freedom of assembly is a constitutionally guaranteed right, there are difficulties in organising Pride events in most cities in Romania. At times, even if the organisation of such events is possible, public institutions appear to perform various control activities and issue questionable fines for unverifiable acts such as the level of noise, without a certified device. Difficulties in obtaining legal permits to organise Pride marches are a recurring issue in most cities.

For the second year in a row, unknown irritant substances were thrown by unknown and to date unidentified persons into the Bucharest Pride march to disrupt the event. During the same period, one of ACCEPT’s volunteers was assaulted by a far-right group. With regards to this latter incident, the public authorities have properly and swiftly identified the offenders and have effectively and efficiently investigated the matter. Improvements in how public authorities handle such cases and in their level of understanding are noticeable following ACCEPT’s efforts to provide training on hate crime investigation in collaboration with public institutions and authorities (training 320 prosecutors and police officers/agents in 2023). However, there have still been cases in which members of the LGBTI community requested support from public authorities and their cases have been improperly handled.

Hate speech remained a serious issue. In July, for instance, MP George Simion from far right party AUR (Alliance for the Union of Romanians) [shared](#) a social media post to say that LGBTQI people are to blame for the weather conditions, which are divine punishment. In July 2023, the head of the Romanian Orthodox Church [said](#) that “homosexuality was, is and will remain unnatural”. A number of other political and religious figures made hostile statements this year. In moments of peaks of visibility of LGBTI community, such as Bucharest Pride and the publication of the ECtHR judgement in the case Buhuceanu, Ciobotaru and 20 other families against Romania, ACCEPT Association submitted 8 petitions to the National Audiovisual Council of Romania. So far, the Council has sanctioned one of the TV stations with a fine of 20,000 lei and another with a fine of 10,000 lei, for their improper conduct.

In March, the Ministry of Education [presented](#) proposals for two new Education Laws (to replace the National Education Law), which set out an obligation to promote diversity, inclusion, and tolerance and banning discrimination based on sexual orientation. 13 religious groups called for the withdrawal of provisions. As a response, [over 50](#) civil society organisations, student unions and hundreds of teachers, parents and students [joined](#) a [petition](#) to the Ministry of Education to [call](#) for inclusion, diversity, and non-discrimination in education.

A protest against these changes to the Education Laws was organised by ACCEPT together with other NGOs in front of the Government. Following efforts of civil society and European partners called upon by the civil society, the majority parliamentary groups decided to cover non-discrimination based on sexual orientation by removing the explicit mentions about sexual orientation and replacing them with the reference to the non-discrimination legislation (Government Ordinance 137/2000) covering this criterion.

The National Audiovisual Council of Romania, the only regulator for the audiovisual sector in Romania has fined multiple news outlets following complaints by ACCEPT for statements that incite to hatred, violence or discrimination. The National Council for Combating Discrimination generally refers to such cases as within the limits of the constitutionally granted freedom of speech, which leads to ACCEPT challenging its decisions in court, further delaying the sanctions and/or remedial measures. Lastly, it is important to note that controversial statements from conservative political and religious leaders that may amount to or instigate hate-speech are not followed-up diligently by the responsible authorities, mostly because of statute of limitations and or various legal immunities that benefit the perpetrators.

## Slovenia

### III. Media Freedom and Pluralism

#### **C. Framework for journalists' protection, transparency and access to documents**

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

Law enforcement protection is usually not needed for journalists covering LGBTI-related protests/demonstrations. If it were, it would be adequate.

Other - please specify

The media in Slovenia has a plurality of information and opinions and state owned media are usually inclusive and non-discriminatory in their reporting. Slovenia has a fair amount of independent media. The problematic media that incites hate speech and violence against LGBTIQ+ persons is the right-wing media that does not shy from demonizing the LGBTIQ+ community, but there are also some cases of more mainstream media not reporting objectively. One case this year was of the far right media targeting the former president of an LGBTIQ+ NGO, who is now the Minister of Solidarity-Based Future, for being an author of a brochure on safe sex for men who have sex with men (MSM).

### IV. Other institutional issues related to checks and balances

#### **A. The process for preparing and enacting laws**

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1]/public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

In 2023 LGBTI organisations were not included in policy making regarding LGBTI issues. They were however in contact with decision makers – they have a dialogue with the authorities, but the authorities did not include them in decision making regarding preparation of specific laws and regulations.

#### **B. Independent authorities**

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

National human rights institutions/ombudsperson/equality bodies acted independently as regards LGBTI rights, they however do not have a separate mandate covering the grounds of sexual orientation, gender identity, gender expression or sex characteristics (SOGIGESC).

#### **C. Accessibility and judicial review of administrative decisions**

Follow-up by the public administration and State institutions to final (national/supranational, including the European Court of Human Rights) court decisions, as well as available remedies in case of non-implementation

This year the Slovenian government implemented two decisions of the Constitutional Court from 2022, the first regarding the possibility of marriage for all and the second regarding access to joint adoption for same-sex couples in the necessary timeframe.

#### D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online–, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services

When it comes to hate speech against LGBTI people in the media, upon submitting reports authorities follow-up on the cases, which is positive. However LGBTI people and human rights defenders are still targeted by smear campaigns and negative narratives, especially from far-right groups. In 2023 Slovenian right-wing media (such as Demokracija and Nova24) published a series of articles smearing LGBTI people by presenting them as a threat to children, as partaking in so-called “LGBT ideology” and as promoting paedophilia. The Slovenian Democratic Youth (SDM) party [launched](#) the ‘Two Sexes, One Truth’ campaign which [states](#) that there are “only men and women” and strongly opposes legal gender recognition law reform. The SDM’s press statement [alleges](#) that LGBT+ communities prioritise “the indoctrination of children based on gender theory” and equates this with “psychological abuse”. The statement also reads that defying the gender binary “harms society as a whole”. They brought this campaign to the Pride march.

In the period before and after the pride parade in Ljubljana (June 2023), according to our information, employees from the Ljubljana Pride Association were verbally attacked and threatened via social media by individuals. Pride organisers [expressed](#) serious concern that at the Ljubljana march, the police failed to intervene in any of the attacks, failed to identify, detain, or stop the perpetrators, and discouraged the victims from reporting saying such attacks are “just the way it is” on the day of the Pride. Several civil society organisations condemned the police’s lack of action, called for hate crimes to be recorded, investigated, and perpetrators held to account, and [demanded](#) firmer responses from the Prime Minister and the Minister of Interior, the former taking three days to react and the latter not making any statements. A few days after Pride, LGBTIQ+ organisations [held](#) a press conference about the attacks, warning about the increase in hate.

## Spain

### I. Justice System

#### A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

LGBTI civil society are pleased that there are specialized prosecutors against hate crimes.

As mentioned in last year's report, the Spanish General Council of the Judiciary is still pending on its renewal, as [its last mandate expired 5 years ago](#). This means that all its current members, 16, have been named 10 years ago under a conservative government. One of the main consequences of this blockage is that the most important courts of the country, either at a national or regional level, cannot appoint new members and this has been causing significant delays on different court proceedings. The blockage is also affecting the law-making process, since this council must issue reports on certain legislation, e.g. this was the case regarding the national LGBTI Law passed in February 2023. In addition, the conservative and political nature of the current Council tends to permeate all the judiciary, making it more conservative or right aligned than usual. This is a very serious problem, that pushes the judiciary towards positions that are less sensitive to LGBTI rights.

### III. Media Freedom and Pluralism

#### B. Safeguards against government or political interference and transparency and concentration of media ownership

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

In Spain some public regional TV channels are run by regional governments such as *Telemadrid* in Madrid or *TVG* in Galicia. In December Telemadrid's news outlet [claimed](#) that with the Spanish LGBTI Law, minors under 12 are allowed to undergo gender reaffirming surgery, using fake news to justify the intention of Madrid's regional government to undermine the regional trans and LGBTI laws. On the other hand, the TVG workers have been [demonstrating](#) against political interference since 2018, in the so called *Venres negros* (Black Fridays).

### IV. Other institutional issues related to checks and balances

#### A. The process for preparing and enacting laws



Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'/public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

At the national level the LGBTI Council ([Consejo de Participación de las Personas LGTBI](#)) exists for consultations with LGBTI civil society but there is still room for improvement in its mechanisms. At a regional level, there are big differences between territories. For example, Asturias and Castilla y León still have no regional LGBTI law, and some regions have an LGBTI Council akin to the national one whereas other do not.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

The partial repeal of the LGBTI and Trans Law of the Autonomous Region of Madrid has been promoted through the quickest parliamentary procedure and it is going to be approved in just a month.

#### **D. The enabling framework for civil society**

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

The targeting of LGBTI people and civil society by far-right forces continued in 2023. The VOX party (second biggest party of the opposition) and some members of Partido Popular (PP) (leading the opposition), regularly target LGBTI people with smear campaigns and negative narratives under the guise of combating so-called “gender ideology” or “LGBT ideology”. In June 2023 the far-right party VOX placed a big [banner on the façade](#) of a centric building in Madrid, which showed an LGBTI flag, and a feminist icon being thrown into a bin. The Electoral Commission promptly forced them to remove it on legal grounds. PP and VOX [banned the display of the rainbow flag](#) in different public buildings such as the Parliament of the Balearic Islands.

There have been several public speeches at political institutions against LGBTI+ people, coming mainly from VOX, but also from PP. For example, María de la Cabeza, a Vox MP [stated at the lower chamber](#): "her concerns about the high increase of homosexuality and trans cases among minors". PP have [voted in several regions against LGBTI rights](#), including backing the parental veto in education and decreasing the funding of LGBTI organisations. They [produce fake-news](#) such as affirming that thanks to PP in Spain we have equal marriage (in fact, PP claimed that the change of the civil code made by the left government led by PM Zapatero, which allowed same-sex marriage in Spain, was unconstitutional and they consequently challenged the reform at the Constitutional Court with no success). Both [PP](#) and [VOX](#) have successfully submitted an appeal on the basis of the unconstitutionality of the LGBTI Law. Exactly which articles of the Constitution they claim the law breaches is not publicly available information.

Cases of LGBTI-phobic hate speech in the media are not sufficiently followed up by authorities. For this reason FELGTBI+ launched the idea of a [Social Pact against hate speech](#) in February 2022, which finished in November 2023 when over 20 NGOs ratified the pact. The next goal is to turn this compromise into a [national State Pact](#).

Hate crimes against LGBTI people are prosecuted, but the state has recorded only 1551 hate crimes in the last five years. According to the survey, [Estado del odio: Estado LGTBI+ 2023](#), conducted by FELGTBI+ in cooperation with the social research and polling company 40dB, we know that the real number of complaints filed are around 50.000 in the same period. There is a clear issue with underreporting and under-detection of hate crimes. According to the report, 26.1% of respondents did not report due to lack of trust in police or lack of belief that the reporting would lead to the police taking action.

[Organisation of financial support for civil society organisations and human rights defenders \(e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding\)](#)

There is insufficient financial support for LGBTI civil society, even for the larger organisations. Due to a general lack of distinction between gender equality and SOGIESC diversity, funding for these two causes is often merged, so that funding must be shared between LGBTI and feminist organisations. Moreover, public administrations tend to hire the services of consulting firms through call for tenders, which in Spain are tailored to suit private companies instead of civil society. The outcome is less funding for civil society and lack of expertise in the services provided.