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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**OF THE COUNCIL OF EUROPE**  
**(VENICE COMMISSION)**

**HUNGARY**

**OPINION**

**ON THE COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS  
STANDARDS OF THE FIFTEENTH AMENDMENT TO THE  
FUNDAMENTAL LAW OF HUNGARY**

**Adopted by the Venice Commission  
at its 144<sup>th</sup> Plenary Session  
(Venice, 9-10 October 2025)**

**On the basis of comments by**

**Mr Iain CAMERON (Member, Sweden)  
Ms Adele MATHESON MESTAD (Substitute Member, Norway)  
Mr Timothy OTTY (Member, United Kingdom)**

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## I. Introduction

1. By letter of 26 May 2025, Ms Catia Polidori, President of the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe, requested an opinion of the Venice Commission on the compatibility with international human rights standards of the Fifteenth Amendment to the Fundamental Law of Hungary, *“particularly insofar as it has an impact on freedom of expression and other rights and freedoms of LGBTI persons and persons with dual nationality”*.

2. Mr Iain Cameron, Ms Adele Matheson Mestad and Mr Timothy Otty acted as rapporteurs for this opinion.

3. On 28 and 29 August 2025, a delegation of the Commission composed of Mr Iain Cameron and Ms Adele Matheson Mestad, accompanied by Mr Taras Pashuk and Mr Khagani Guliyev from the Secretariat, had meetings in Budapest with representatives of the Ministry of Justice, the Ministry of Culture and Innovation, with members of the Parliament from the majority and from the opposition, the Supreme Court (Kuria), and civil society organisations. The Commission is grateful to the Hungarian authorities for the excellent organisation of the meetings.

4. This opinion was prepared in reliance on the English translation of the relevant provisions of the Fifteenth Amendment to the Fundamental Law, as well as the accompanying explanatory report ([CDL-REF\(2025\)041](#)). The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 28 and 29 August 2025. Following an exchange of views with Mr Róbert Répássy, Secretary of State, Ministry of Justice of Hungary, it was adopted by the Venice Commission at its 144<sup>th</sup> Plenary Session (Venice, 9-10 October 2025).

## II. Background

6. On 11 March 2025 a group of members of the Hungarian Parliament submitted a bill (T/11152) proposing the Fifteenth Amendment to the Fundamental Law of Hungary. Although this is not a legislative initiative of the government, all the initiators/authors are members of the government coalition and that the group encompasses nearly all parliamentarians belonging to the parties in the government coalition, including the Speaker of the Parliament and the Prime Minister.<sup>1</sup> The Venice Commission is not aware whether any public consultation was held following the introduction of the bill proposing the Fifteenth Amendment to the Fundamental Law. The Fifteenth Amendment to the Fundamental Law was adopted by the Parliament on 14 April 2025 and took effect on 15 April 2025 (except the amendments concerning prosecuting authorities and emergency situations which shall enter into force on 1 January 2026).

7. In parallel, the Hungarian Parliament adopted a range of legislative amendments in connection with the Fifteenth Amendment to the Fundamental Law. In particular, on 17 March 2025 a bill (T/11201) on amending Act LV of 2018 “On the right of assembly” in relation to the protection of children and amending related acts of Parliament was submitted. This bill was adopted by the Parliament on 18 March 2025 and introduced to Act LV of 2018 a new Section 13/A entitled “Protection of the right of children to the protection and care necessary for their proper physical, mental and moral development”. The new Section prohibits holding “an assembly that is in violation of a prohibition specified in Section 6/A of Act XXXI of 1997 on the protection of children and guardianship administration (hereinafter the “Child Protection

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<sup>1</sup> The original Hungarian version of the draft with the list of the initiators/authors is available on the website of the Hungarian Parliament: [www.parlament.hu/irom42/11152/11152.pdf](http://www.parlament.hu/irom42/11152/11152.pdf)

Act”) or presents the core element of a prohibited content defined in Section 6/A of the Child Protection Act.”<sup>2</sup>

8. Another bill (T/11153) on amending certain Acts of Parliament in relation to the Fifteenth Amendment to the Fundamental law was submitted to the examination of the Parliament on 11 March 2025. This bill amended Act CXXV of 2003 “On equal treatment and the promotion of equal opportunities” by deleting Section 8 (n) “gender identity” from the list of protected grounds from discrimination and replacing in Section 8 (a) the term “sex” with the term “sex and corresponding identity” in the list. Section 8 (m) of this Act which provides “sexual orientation” as a protected ground was not amended and the list of protected grounds from discrimination provided for by Act CXXV of 2003 remains non-exhaustive (Section 8 (t) refers to any other status, characteristic, or attribute).<sup>3</sup>

9. A bill (T/11414) on amending Act LV of 1993 on Hungarian citizenship – in relation to the suspension of citizenship – was also submitted to the examination of the Parliament on 1 April 2025. The bill was adopted by the Parliament on 13 June 2025.<sup>4</sup> The bill introduced new Sections 9/A, 9/B, 9/C, 9/D and 9/E establishing the detailed rules as regards the conditions under which the citizenship may be suspended and the relevant procedural framework. In the meantime, Act XC of 2023 on general rules on the entry and the residence of third-country nationals was also amended providing for the possibility of the expulsion of a person from Hungary within 72 hours following the suspension of his or her citizenship.<sup>5</sup>

10. On 24 March 2025 the Commissioner for Human Rights of the Council of Europe expressed concern about the introduction of the above-mentioned draft constitutional and legislative amendments in a letter addressed to the Speaker of the Hungarian Parliament.<sup>6</sup> In particular, he expressed concern about the impact that these amendments may have on the enjoyment of the rights of LGBTI persons protected under Articles 8, 10, 11 and 14 of the European Convention on Human Rights (“the ECHR”) and drew attention to the relevant case-law of the European Court of Human Rights (“the ECtHR”).

### III. Analysis

#### A. Scope of the Opinion

11. The Venice Commission notes that although the Fifteenth Amendment to the Fundamental Law covers a variety of different areas (such as the payment in cash, the prohibition of the production, use and distribution of drugs, the age of retirement of prosecutors), the scope of the present Opinion – in view of the request (see paragraph 1 above) – is limited to the amendments which have “*an impact on freedom of expression and other rights and freedoms of LGBTI persons and persons with dual nationality*”. Accordingly, in addition to the process of adoption of the constitutional amendments, the present Opinion will essentially focus on the amendments concerning issues related to gender identity (Article L), issues related to the precedence of the right of the child to the protection and care necessary for his or her proper physical, mental and moral development over any other fundamental right other than the right to life (Article XVI) and issues related to the suspension of citizenship (Article G). In examining the compatibility of these

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<sup>2</sup> The English translation of Act LV of 2018 (as in force on 15 April 2025) is available in the Hungarian national legislative database: [www.njt.hu/translations/-/-/-/2/10](http://www.njt.hu/translations/-/-/-/2/10)

<sup>3</sup> The English translation of Act CXXV of 2003 (as in force on 25 April 2025) is available in the Hungarian national legislative database: [www.njt.hu/translations/-/-/2003:125/1/10](http://www.njt.hu/translations/-/-/2003:125/1/10)

<sup>4</sup> The English translation of Act LV of 1993 (as in force on 30 June 2025) is available in the Hungarian national legislative database: [www.njt.hu/translations/-/-/1993:55/1/10](http://www.njt.hu/translations/-/-/1993:55/1/10)

<sup>5</sup> Act XC of 2023 is available only in Hungarian in the Hungarian national legislative database: [www.njt.hu/jogszabaly/2023-90-00-00](http://www.njt.hu/jogszabaly/2023-90-00-00)

<sup>6</sup> The letter is available here: [www.coe.int/en/web/commissioner/-/hungary-should-reconsider-the-law-on-assemblies-and-refrain-from-adopting-legislative-proposals-which-threaten-the-human-rights-of-lgbti-people](http://www.coe.int/en/web/commissioner/-/hungary-should-reconsider-the-law-on-assemblies-and-refrain-from-adopting-legislative-proposals-which-threaten-the-human-rights-of-lgbti-people)

constitutional amendments with international human rights standards, the Opinion will also have regard, to the extent that it will be necessary, to the legislative amendments adopted by the Hungarian Parliament for the purposes of the implementation of these constitutional amendments.

12. Moreover, the Venice Commission will briefly address in a separate Section the amendments concerning right to freedom to choose one's residence and to emergency situations (Article XXVII (1), Article 53 (1) and Article 56 (1) of the Fundamental Law) which may possibly raise legal issues falling within the scope of the present Opinion.

13. The absence of comments on certain provisions should not be interpreted as their tacit approval.

## **B. The process of adoption of the constitutional amendments**

14. The Venice Commission observes that the Fifteenth Amendment to the Fundamental Law was submitted to Parliament by individual members of Parliaments (MPs) on 11 March 2025 and was adopted by Parliament a few weeks later, on 14 April 2025, apparently without public consultation or impact assessment. The Venice Commission is aware that under the Hungarian law public consultation and impact assessment are not required for legislative and constitutional amendments submitted by individual MPs<sup>7</sup> and has already expressed its concern about the practice of submitting constitutional and legislative amendments by individual MPs which results in avoiding the need of holding public consultations and impact assessments.

15. In particular, the Venice Commission has held in a recent opinion concerning Hungary<sup>8</sup> that regardless of the formal rules in place the process for enacting laws should be transparent, accountable, inclusive and democratic as it has underlined in its Rule of Law Checklist<sup>9</sup>, as well as in its Report on the Role of the opposition in a democratic Parliament.<sup>10</sup> The Venice Commission reiterates that the above-mentioned requirements concerning the procedural element for the quality of the legislative process should be even more stringent when it comes to constitutional amendments.<sup>11</sup> The Commission is of the view that the lack of mandatory prescription for public consultations does not rule out the desirability of holding such consultations, especially in crucial cases such as constitutional amendments. Formal rules should not be (mis)used to circumvent the need of holding public consultations. This is a remark that the Venice Commission has previously and repeatedly made in respect of Hungary, including when, like in the instant case, laws have been enacted on the motion of individual MPs.<sup>12</sup>

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<sup>7</sup> Venice Commission, [CDL-AD\(2021\)050](#), Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, para. 18.

<sup>8</sup> Venice Commission, [CDL-AD\(2025\)028](#), Opinion on the constitutional and legislative amendments concerning the requirements to be appointed Prosecutor General and Constitutional Court judge of Hungary, as well as the appointment and retirement of judges, para. 24.

<sup>9</sup> Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, section II.A.5.

<sup>10</sup> Venice Commission, [CDL-AD\(2010\)025](#), Report on the role of the opposition in a democratic Parliament, paras. 106-115.

<sup>11</sup> Venice Commission, [CDL-AD\(2024\)021](#), Georgia - Opinion on the draft constitutional law on protecting family values and minors, para. 23.

<sup>12</sup> Venice Commission, [CDL-AD\(2025\)028](#), Opinion on the constitutional and legislative amendments concerning the requirements to be appointed Prosecutor General and Constitutional Court judge of Hungary, as well as the appointment and retirement of judges, para. 24. Similar concerns relating to the legislative process in Hungary were also expressed by the UN Human Rights Committee and in the European Commission's 2025 Rule of Law Report (see, respectively, Human Rights Committee, Concluding observations on the sixth periodic report of Hungary, [CCPR/C/HUN/CO/6](#), para. 8, and 2025 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, [SWD\(2025\)917](#), pp. 23-24).

16. Accordingly, the Venice Commission regrets that the amendments in question were adopted without ensuring an inclusive public debate and in the absence of a genuine consultation of all the relevant stakeholders. Therefore, from the perspective of democratic standards for the legislative process, the legitimacy of the adopted constitutional amendments may be doubted. The Venice Commission urges the Hungarian authorities, in future law-making procedures, to ensure an inclusive debate and a meaningful participation of all the relevant stakeholders, involving all segments of society and especially those particularly affected by the proposed amendments.

### C. Gender identity

17. The first paragraph of Article L of the Fundamental Law was amended as follows (changes are indicated in bold):

*“(1) Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. **Human beings shall be male or female.** The mother shall be a woman; the father shall be a man.”*

18. The explanatory report of the Fifteenth Amendment to the Fundamental Law specifies that “the fifteenth amendment to Hungary’s Constitution confirms that the sex of a person at birth is a biological given, which can be either male or female. It is the duty of the state to ensure the legal protection of this natural order and to prevent efforts that suggest the possibility of changing the sex at birth. The fixed nature of biological sex ensures the healthy development of society and the maintenance of basic community norms”. The explanatory report further states that “the family as the basic unit of society is based on the natural relationship between man and woman, from which the new generation is born. In order to ensure the physical, mental and spiritual development of children, the state has a special responsibility to ensure that future generations grow up in a clear and predictable legal and moral environment. Accordingly, the Hungarian legal system does not recognise any change of sex at birth, thus preserving the stability of the institution of family and the security of the social order”.

19. The Venice Commission observes at the outset that this amendment appears to deny at the constitutional level the existence of people who are not born male or female. The adoption of this provision was contested in a statement by the Section of Biological Sciences of the Hungarian Academy of Sciences on the grounds that, the existence of persons who are neither male nor female is a scientific fact.<sup>13</sup>

20. The Venice Commission further observes that the constitutionalisation of a strict binary legal definition of gender will not only produce an effect in the hierarchy of norms in the Hungarian legal system, but by requiring the votes of two-thirds of the Members of the Hungarian Parliament (Article (S) of the Fundamental Law), it will also make it difficult to change this definition in the future should this become necessary in the light of evolving international human rights standards or should it become desirable by the Hungarian society.

21. As regards the legal consequences of the adoption of this provision, this amendment establishes at the constitutional level the existence of only two genders (male and female), excluding the possibility of the legal recognition of “intersex” or “neutral” gender in the Hungarian legal system. On its own, the absence of the legal recognition of a third gender (“intersex” or “neutral” gender) is not in direct breach of European human rights standards, notably, Article 8 of the ECHR. In particular, in *Y v France* the ECtHR held that having regard to the margin of

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<sup>13</sup> The statement in Hungarian is available on the website of the Hungarian Academy of Sciences: [https://mta.hu/data/dokumentumok/viii\\_osztaly/Allasfoglalas\\_biologiai\\_nemek\\_20250610.pdf](https://mta.hu/data/dokumentumok/viii_osztaly/Allasfoglalas_biologiai_nemek_20250610.pdf)



appreciation that the respondent State enjoyed there is no obligation for the respondent State to indicate “neutral” or “intersex” gender on a birth certificate.<sup>14</sup> Moreover, a comparative law study conducted by the ECtHR within the framework of the *Y v. France* case indicated the absence of a European consensus in this area since it is not possible to indicate anything other than “male” or “female” on birth certificates and other identity documents in 31 out of 37 States parties to the ECHR subject to this study.<sup>15</sup>

22. At the same time, although this amendment does not contain any express prohibition of the legal recognition of gender identity, it appears from the explanatory report that the adoption of this amendment also aims at strengthening the existing legislative legal basis for the prohibition of the legal recognition of gender identity in Hungary. The Venice Commission is aware that in May 2020 the Hungarian Parliament banned legal gender recognition and that any legal document reporting the sex of an individual, such as the ID or passport, is based on the sex identified in the birth certificate, which has to be established shortly after the birth of the child and can never be changed afterwards, not even in the case of change of sex by medical treatment.<sup>16</sup>

23. The Venice Commission notes that it has already had the opportunity to examine the previous constitutional and legislative amendments in Hungary concerning “the right of children to a self-identity corresponding to their sex at birth” and expressed its concerns about the effect of this amendment as regards the rights of transgender people to legal recognition of their acquired gender identity and the possible discrimination on the basis of sexual orientation and gender identity. In particular, it recommended repealing the amendment “*Hungary shall protect the right of children to a self-identity corresponding to their sex at birth*” or, at a minimum, to ensure that the amendment does not have the effect of denying the rights of transgender people to the legal recognition of their acquired gender identity.<sup>17</sup>

24. The Venice Commission has also reiterated in a recent opinion that “under international human rights law, individuals have a “right to a self-identity” based not only on their “sex at birth” but also on their “gender”. In this regard, many international human rights covenants have been interpreted as recognising that self-identity is also shaped by gender, the socially constructed characteristics and roles for women and men. Under the ECHR, gender identity is recognised as a component of personal identity, falling under the right to respect for private life.”<sup>18</sup>

25. In that connection, the Venice Commission notes that the ECtHR already had the opportunity to examine the question of the absence of the legal recognition of gender identity in Hungary. In particular, it reaffirmed the States’ positive obligation under Article 8 of the ECHR to provide quick, transparent and accessible procedures for changing the registered sex/gender marker of transgender people and found a violation of Article 8 in respect of Hungary on account of the fact

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<sup>14</sup> *Y v. France*, no. [76888/17](#), §§ 69-92, 31 January 2023.

<sup>15</sup> *Ibid.*, §§ 34-38. As to the recent developments in the domestic law of some Council of Europe member States in this area, see also, [First thematic report on legal gender recognition in Europe](#), CDADI, 2022, pp. 35-36. The Venice Commission would add that, in the extremely small number of cases each year where this is at issue, a system which totally excludes the possibility of leaving the sex of the child open, risks putting pressure on doctors to make medical interventions at birth on the new-born child. At the very least, it legitimizes a practice of medical interventions.

<sup>16</sup> Venice Commission, [CDL-AD\(2021\)029](#), Hungary - Opinion on the constitutional amendments adopted by the Hungarian Parliament in December 2020, para. 40; Venice Commission, [CDL-AD\(2021\)050](#), Hungary - Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, para. 35.

<sup>17</sup> Venice Commission, [CDL-AD\(2021\)029](#), Hungary - Opinion on the constitutional amendments adopted by the Hungarian Parliament in December 2020, para. 41; Venice Commission, [CDL-AD\(2021\)050](#), Hungary - Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, para. 36.

<sup>18</sup> Venice Commission, [CDL-AD\(2024\)021](#), Georgia - Opinion on the draft constitutional law on protecting family values and minors, para. 45.

that a transgender person was unable to have his “sex/gender marker” on the birth certificate changed to match his gender identity due to lack of a regulatory framework.<sup>19</sup>

26. Accordingly, in the Commission’s opinion the introduction of this amendment in order to strengthen the legal basis for the prohibition of the legal recognition of the gender identity is not compatible with the case-law of the ECtHR which recognises gender identity as a component of personal identity, falling under the right to respect for private life and requires the States to adopt quick, transparent and accessible procedures for changing the registered sex/gender marker of transgender people.<sup>20</sup> In that connection, the Venice Commission observes that the amendment made to Act CXXV of 2003 deleting “gender identity” from the list of protected grounds from discrimination and replacing the term “sex” with the term “sex and corresponding identity” in the list (see paragraph 8 above) leads to a comprehensive legal exclusion of transgender persons. When considered together with prior amendments, the first paragraph of Article L establishes a systemic framework that removes both constitutional recognition and statutory protection for transgender people.

27. The Venice Commission thus underlines, recalling the obligation to execute the judgments of the ECtHR, that the amendment “*Human beings shall be male or female*” should not serve as a legal basis for prohibiting the legal recognition of gender identity and that it is important to ensure that the amendment in question does not have the effect of denying the rights of transgender people to the legal recognition of their gender identity.

#### **D. Precedence of the right of the child to the protection and care necessary for his or her proper physical, mental and moral development over any other fundamental right other than the right to life**

28. The first paragraph of Article XVI of the Fundamental Law was amended as follows (changes are indicated in bold):

*“(1) Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. **This right shall prevail over any other fundamental right other than the right to life.** Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.”*

#### **1. Establishment of a hierarchy of fundamental rights at the constitutional level and its implications**

29. The explanatory report of the Fifteenth Amendment to the Fundamental Law provides that “the amendment to the Fundamental Law states that the right of the child to adequate physical, mental and moral development takes precedence over all other fundamental rights, except the right to life, in the event of a conflict of fundamental rights”.

30. During the discussions with the interlocutors, the Venice Commission delegation learned that the Kuria has already developed case-law concerning the applicability of this provision in case of conflict with another fundamental right, namely freedom of assembly. In a series of cases concerning the ban on the pride parade in Budapest, the Kuria applied the rule of the precedence of the right of the child to the protection and care necessary for his or her proper physical, mental and moral development (hereinafter “the right of the child to the protection and care”) over any other fundamental right, except the right to life, as a special rule (*lex specialis*) compared to the

<sup>19</sup> *R.K. v. Hungary*, no. [54006/20](#), §§ 51-77, 22 June 2023, and *E.G. and Others v. Hungary* [Committee], no. [12918/19](#), §§ 38-44, 21 November 2024.

<sup>20</sup> See, among many other authorities, *X v. the former Yugoslav Republic of Macedonia*, no. [29683/16](#), § 70, 17 January 2019; *A.D. and Others v. Georgia*, nos. [57864/17](#) and 2 others, § 76, 1 December 2022; and *T.H. v. The Czech Republic*, no. [33037/22](#), § 49, 12 June 2025.



general rule (*lex generalis*) provided by Article I (3) of the Fundamental Law requiring a balancing exercise in case of competing fundamental rights.<sup>21</sup> The Kuria did not carry out any balancing exercise in view of the special rule on precedence enshrined in Article XVI (1) and held that any action which conflicts with Article XVI (1), including the intention to assemble peacefully, falls outside the scope of protection by the Fundamental Law.<sup>22</sup> The Kuria examined the lawfulness of the ban on the pride parade solely on the evidentiary basis, requiring the police to provide evidence showing that the demonstration in question could potentially harm the right of the child to the protection and care. However, the basis for the Kuria's assessment of the lawfulness of the ban on the pride parade did not appear to require a scientific evaluation of actual harm.

31. The Venice Commission notes that this amendment creates an absolute hierarchy of fundamental rights, placing the right of the child to the protection and care above all other fundamental rights, with the exception of the right to life. The Venice Commission observes that the establishment of a constitutional provision ensuring the precedence of the right of the child to the protection and care over any other fundamental right other than the right to life has serious implications for the entire system of protection of fundamental rights in the Hungarian legal system.

32. The Venice Commission notes that "the content of fundamental rights is a constitutional matter par excellence"<sup>23</sup> and it is understandable that the people of a State "wish to have their own catalogue of human rights which would reflect a consensus within the country on human rights protection."<sup>24</sup> Moreover, "it must be emphasised that international human rights treaties are almost invariably intended to set out minimum standards."<sup>25</sup> States are permitted and even encouraged to provide more extensive rights in their constitutions, so long as these do not violate the minimum international standards. States are also entitled, within the margin of appreciation permitted to them by international bodies, to draw the balances between different competing rights which best suit their constitutional traditions and culture. For example, one state may emphasise freedom of information more heavily than another and the privacy of personal data correspondingly less – and still comply with its international obligations. Nonetheless, respect for international human rights obligations must be ensured."<sup>26</sup> In other words, as States may not invoke their domestic law as a justification for not complying with their obligations under international law<sup>27</sup>, the higher constitutional protection of one right in comparison with another right in a given national legal system may not result in the violation of the international guarantees for another right.

33. In this connection, the Venice Commission considers that while the protection of the rights of children is enshrined in the UN Convention on the Rights of the Child<sup>28</sup> and the ECtHR has

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<sup>21</sup> Article I (3) of the Fundamental Law reads as follows: "(3) *The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.*"

<sup>22</sup> See the following decisions of the Kuria available in Hungarian on its website: Kgyk.VII.39.057/2025/8 (31 May 2025): [www.kuria-birosag.hu/hu/gyulhat/kgykvi3905720258-szamu-hatarozat](http://www.kuria-birosag.hu/hu/gyulhat/kgykvi3905720258-szamu-hatarozat) ; Kgyk.VI.39.061/2025/7 (11 June 2025) [www.kuria-birosag.hu/hu/gyulhat/kgykvi3906120257-szamu-hatarozat](http://www.kuria-birosag.hu/hu/gyulhat/kgykvi3906120257-szamu-hatarozat) ; Kgyk.VI.39.069/2025/6 (27 June 2025), [www.kuria-birosag.hu/hu/gyulhat/kgykvi3906920256-szamu-hatarozat](http://www.kuria-birosag.hu/hu/gyulhat/kgykvi3906920256-szamu-hatarozat).

<sup>23</sup> Venice Commission, [CDL-AD\(2011\)016](#), Opinion on the new constitution of Hungary, para. 59.

<sup>24</sup> Venice Commission, [CDL-AD\(2006\)019](#), Opinion on the draft amendments to the constitution of Bosnia and Herzegovina, para. 77.

<sup>25</sup> For example, Article 53 of the Convention indicates that "*Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party*".

<sup>26</sup> Venice Commission, [CDL-AD\(2008\)010](#), Opinion on the constitution of Finland, paras. 9 and 10.

<sup>27</sup> This customary rule of international law was codified in Article 27 of the Vienna Convention on the Law of Treaties which provides that "a party may not invoke the provisions of its internal rule as justification for its failure to perform a treaty".

<sup>28</sup> In its general comment no. 14 on the right of the child to have his or her best interests taken as a primary consideration, the UN Committee on the Rights of the Children underlines that "*there is no hierarchy of rights in*

repeatedly underlined the importance of the principle of the best interest of the child in decisions concerning children<sup>29</sup> in addition to the child's right to development, the introduction of a rigid hierarchical construction of the precedence of the right of the child to the protection and care over any other fundamental rights can hardly be compatible with the international human rights standards.

34. Firstly, the Venice Commission observes that this hierarchical construction disregards the absolute nature of some fundamental rights, such as the prohibition of torture or slavery, protected under the ECHR.<sup>30</sup>

35. Secondly, the Venice Commission stresses that the ECtHR has constantly noted that, when competing fundamental rights are at stake, those rights deserve equal respect and that the balance to be struck by national authorities between those rights must seek to retain the essence of both.<sup>31</sup> The ECtHR also held that "it is precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a democratic society."<sup>32</sup> However, the failure to conduct any balancing exercise in case of conflict between the right of the child to the protection and care and other fundamental right, such as the freedom of assembly, may systematically lead to the deprivation of other fundamental right of its substance.

36. Accordingly, the Venice Commission considers that a provision establishing a constitutional framework which undermines balanced fundamental rights protection when the right of the child to the protection and care is involved can hardly be compatible with the international human rights standards. It runs a risk of a structural failure to comply with the obligation stemming from the ECtHR's case-law to conduct a balancing exercise in case of conflict between fundamental rights. Although the discussion below concentrates on the impact on the freedoms of assembly and expression, the establishment of this type of hierarchy of rights has a potential of a general impact, on all other rights.

## 2. Impact of the hierarchy of fundamental rights on the rights of LGBTI persons

37. The Venice Commission notes that children and LGBTI persons are both right-holders under the Convention which declares in its Article 1 that "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention", regardless of age or sexual orientation of the persons who are within their jurisdiction. One can certainly envisage situations in which freedom of expression can legitimately be limited to protect

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*the Convention; all the rights provided for therein are in the "child's best interests" and no right could be compromised by a negative interpretation of the child's best interests"* (Committee on the Rights of the Children, General comment no. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, § 4, [CRC/C/GC/14](#)).

<sup>29</sup> The ECtHR held that "there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount" (see, among many other authorities, *Neulinger and Shuruk v. Switzerland* [GC], no. [41615/07](#), § 135, ECHR 2010, and *X. v. Latvia* [GC], no. [27853/09](#), § 96, ECHR 2013). See also, Venice Commission, [CDL-AD\(2014\)005](#), Report on the Protection of Children's Rights: International Standards and Domestic Institutions, para. 145.

<sup>30</sup> The ECtHR held that "torture, inhuman or degrading treatment cannot be inflicted even in circumstances where the life of an individual is at risk. No derogation is allowed even in the event of a public emergency threatening the life of the nation. Article 3, which has been framed in unambiguous terms, recognises that every human being has an absolute, inalienable right not to be subjected to torture or to inhuman or degrading treatment under any circumstances, even the most difficult. The philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue" (see *Gäfgen v. Germany* [GC], no. [22978/05](#), § 107, ECHR 2010). Also see: *Labita v. Italy* [GC], no. [26772/95](#), § 119, ECHR 2000-IV, and *Saadi v. Italy* [GC], no. [37201/06](#), §§ 139-140, ECHR 2008.

<sup>31</sup> See, among many other authorities, *Delfi AS v. Estonia* [GC], no. [64569/09](#), § 110, ECHR 2015; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. [9311/13](#), § 123, 27 June 2017 *Aygün v. Belgium*, no. [28336/12](#), § 72, 8 November 2022.

<sup>32</sup> *Chassagnou and Others v. France* [GC], nos. [25088/94](#) and 2 others, § 113, ECHR 1999-III., and *S.A.S. v. France* [GC], no. [43835/11](#), § 128, ECHR 2014.

children, such as the criminalization of child pornography. However, the alleged conflict between the right of the child to the protection and care with the rights of LGBTI persons to the freedom of expression or freedom of assembly appears to be based on the assumption that the children would inevitably be harmed in some way by public<sup>33</sup> exercise of such rights by LGBTI persons. Moreover, it does not appear that any clear threshold at which the supposed conflict may arise has been established. However, as underlined by the ECtHR, “there is no scientific evidence or sociological data at the Court’s disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities’ social status, would adversely affect children or “vulnerable adults.”<sup>34</sup> Moreover, “there is no scientific evidence that such information, when presented in an objective and age-appropriate way, may cause any harm to children. On the contrary, the bodies in question have emphasised that it is the lack of such information and the continuing stigmatisation of LGBTI persons in society which is harmful to children.”<sup>35</sup> Furthermore, in practice, the way the provision has been interpreted also risks directly harming LGBTI children, by framing their existence or identity as something from which other children must be protected.

38. As to the possible use of this amendment for the purposes of restricting the freedom of expression and other rights of LGBTI persons, the Venice Commission is aware of the existing legislative framework in Hungary and already examined the Hungarian legislation prohibiting “propaganda and portrayal of divergence from self-identity corresponding to sex at birth, sex change or homosexuality” in a previous opinion. It concluded that the blanket nature of the prohibitions of “propaganda and portrayal of divergence from self-identity corresponding to sex at birth, sex change or homosexuality” in Act LXXIX cannot be deemed to be justified as necessary in a democratic society for the protection of the rights of minors.<sup>36</sup>

39. The Grand Chamber of the ECtHR reaffirmed that “a legislative ban on “promotion of homosexuality or non-traditional sexual relations” among minors does not serve to advance the legitimate aims of protection of morals, health or the rights of others, and that by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society – a conclusion which the Grand Chamber fully endorses.”<sup>37</sup>

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<sup>33</sup> Certain interlocutors expressed the view that it would still be possible for the pride parade organisers to have closed meeting. However, the obvious point of a demonstration is to be seen. The Venice Commission would refer in this respect to *Lashmankin and Others v. Russia* (nos. 57818/09 and 14 others, 7 February 2017), in which the applicants had faced different bureaucratic obstacles when they tried to organise peaceful assemblies. The Court found that while in the sphere of restrictions on the location, time or manner of conduct of an assembly states must be allowed a wider margin of appreciation the Russian practice whereby the authorities allow an assembly to take place, but *only* at a location which is not within sight and sound of its target audience and where its impact will be muted, was incompatible with the requirements of Article 11.

<sup>34</sup> *Alekseyev v. Russia*, nos. [4916/07](#) and 2 others, § 86, 21 October 2010.

<sup>35</sup> *Macaté v. Lithuania* [GC], no. [61435/19](#), § 211, 23 January 2023.

<sup>36</sup> Venice Commission, [CDL-AD\(2021\)050](#), Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, para. 61. See also, [CDL-AD\(2013\)022](#), Opinion on the issue of the prohibition of so-called “Propaganda of homosexuality” in the light of recent legislation in some Council of Europe Member States, paras. 59-68. The UN Human Rights Committee also asked Russia to repeal a law banning the “promotion of non-traditional sexual relations to minors” (Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, 28 April 2015, § 10, [CCPR/C/RUS/CO/7](#)).

<sup>37</sup> *Macaté v. Lithuania* [GC], no. [61435/19](#), § 202, 23 January 2023. The ECtHR has also recently held that “it is not justifiable to impose restrictions on children’s access to information about same-sex relationships, where such restrictions are based solely on considerations of sexual orientation – that is to say, where there is no basis in any other respect to consider such information to be inappropriate or harmful to children’s growth and development. Measures which restrict children’s access to information about same-sex relationships solely on the basis of sexual orientation, whether they are directly enshrined in the law or adopted in case-by-case decisions, demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society” (see *Klimova and others v. Russia*, nos. [33421/16](#) and 6 others, § 142, 4 February 2025).

40. The Venice Commission also cannot overlook the recent use of this amendment for the purposes of restricting the right to freedom of assembly of LGBTI persons on the occasion of Budapest pride parade (see paragraph 30 above) and the amendment made to Act LV of 2018 on the Freedom of Assembly containing a restriction on the right to freedom of assembly on the grounds of the protection of the right of the child to the protection and care (see paragraph 7 above).

41. The Venice Commission notes that the ECtHR had the opportunity to examine the question of the imposition of a ban on a pride march and picketing on similar grounds and found a breach of Article 11 of the Convention<sup>38</sup>. Furthermore, the UN Human Rights Committee observed in its general comment on the right of peaceful assembly that “States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status.”<sup>39</sup>

42. In this connection, the Venice Commission is particularly concerned about the manner in which this amendment was implemented by the relevant domestic authorities and interpreted by the Kuria which failed to carry out any balancing exercise in case of conflict between the right of the child to the protection and care and other fundamental right, concluding that in such a situation other fundamental right falls outside the scope of protection of the Fundamental Law and that Article I (3) of the Fundamental Law requiring a balancing exercise in case of competing fundamental rights is not applicable (see paragraph 30 above).

43. The Venice Commission stresses that domestic courts are, naturally, bound by the Constitution and that interpretation of Hungarian law is a matter for the Hungarian courts. Having said this, it is also important to reiterate that domestic courts are key actors in ensuring the protection of rights and freedoms under international law. The ECHR is incorporated into Hungarian law and is thus both Hungarian law and international law. In addition, for EU states, there is a particular duty on all domestic courts to ensure the effective protection of individuals’ EU rights, within the area of application of EU law.<sup>40</sup> Domestic courts might be confronted with cases involving a conflict between domestic law and an international human rights treaty. In some cases, they will be able to settle these conflicts by interpreting domestic legislation in such a way as to minimize tension between this and international law and to bring it into conformity with the provision of international law (the so-called ‘harmonising interpretation’). They may do so on the presumption that the legislator or the executive intended to implement the State’s relevant international legal obligation correctly. In other cases, domestic courts may decide to settle the conflict by not applying the domestic legal act (in situations where this is possible under constitutional law) or by favouring an interpretation of the provision which is the most favourable to the protection of human rights.<sup>41</sup>

44. The Venice Commission considers it necessary to remind the particular significance of the interpretation of constitutional provisions on fundamental rights and freedoms in the light of human rights treaties binding on Hungary and related case-law<sup>42</sup> in accordance with Article Q (2)

<sup>38</sup> *Alekseyev v. Russia*, nos. [4916/07](#) and 2 others, § 86, 21 October 2010.

<sup>39</sup> Human Rights Committee, General comment No. 37 on the right of peaceful assembly (article 21), 17 September 2020, § 25, [CCPR/C/GC/37](#).

<sup>40</sup> In particular, any limitation on the exercise of fundamental rights must respect the criteria laid down in Article 52(1) of the Charter of Fundamental Rights of the European Union, including the principle of proportionality. Accordingly, there would be a risk of breach of the Charter, if the provision establishing a hierarchy between the right of the child to the protection and care and other fundamental rights is applied when implementing EU law, and those rights were disproportionately restricted (Charter of Fundamental Rights of the European Union ([2007/C 303/01](#)) and Explanations relating to the Charter of Fundamental Rights ([2007/C 303/2](#))).

<sup>41</sup> Venice Commission, [CDL-AD\(2014\)036](#), Report on the implementation of international human rights treaties in domestic law and the role of courts, para. 113.

<sup>42</sup> Venice Commission, [CDL-AD\(2011\)016](#), Opinion on the new constitution of Hungary, paras. 33 and 70.



of the Fundamental Law which provides that *“in order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law”*.

45. The authorities pointed out that it is misleading to interpret this amendment as an attempt to deprive other fundamental rights of their substance and its purpose is not to establish a rigid hierarchy of rights, but to provide a more effective guarantee of the protection of children. They also noted that it should further be underlined that the declaration of precedence does not abolish the requirement of necessity and proportionality, which continues to follow unequivocally from Article I (3) of the Fundamental Law. This means that the authorities and courts, even while taking into account the precedence of children’s rights, remain obliged to assess the justification and proportionality of any restriction. Nonetheless, having regard to the above observations, the Venice Commission notes that the text of the amendment as it stands creates an absolute hierarchy of fundamental rights and the case-law developed by the Kuria clearly excluded the application of Article I (3) of the Fundamental Law in the cases concerning the applicability of this provision in case of conflict with another fundamental right.

46. Where a conflict arises between national law, including national constitutional law, and a state’s international obligations, and that conflict cannot be solved by the national courts, then it is incumbent on the national legislator to solve it.<sup>43</sup> The Venice Commission concludes that the amendment *“this right shall prevail over any other fundamental right other than the right to life”* should be repealed or modified in order to avoid the risk of systemic violation of other fundamental rights on account of the failure to conduct a balancing exercise between competing fundamental rights. The Venice Commission also considers that this amendment should not serve as a legal basis for unduly restricting the freedom of expression and other rights of LGBTI persons, including children.

## E. Suspension of citizenship

47. The third paragraph of Article G of the Fundamental Law was amended as follows (changes are indicated in bold):

*“(3) No one shall be deprived of Hungarian citizenship established by birth or acquired in a lawful manner. **The citizenship of a Hungarian citizen who also holds the citizenship of another State may be suspended for a definite period of time in accordance with the provisions of a cardinal Act. For the period of suspension, the person subject to suspension shall forfeit citizenship. Collective suspension shall be prohibited.**”*

### 1. Rationale and applicable standards

48. The explanatory report of the Fifteenth Amendment to the Fundamental Law provides that “the amendment to the Fundamental Law creates the possibility that the Hungarian citizenship of Hungarian citizens who are also citizens of another state, not including citizens of states with the right of free movement and residence, is suspended in accordance with the provisions of a cardinal Act”.

49. Following the adoption of the Fifteenth Amendment to the Fundamental Law, new Sections 9/A, 9/B, 9/C, 9/D and 9/E establishing the detailed rules as regards the cases in which the citizenship may be suspended and the procedural framework in that connection were added to Act LV of 1993 on Hungarian citizenship (see paragraph 9 above). In particular, Section 9/A defines the scope of persons in respect of whom the suspension of citizenship is applicable,

<sup>43</sup> See, for example, Venice Commission, [CDL-AD\(2016\)016](#), Final Opinion on the amendments to the federal constitutional law on the Constitutional Court, para. 143, and Venice Commission, [CDL-AD\(2020\)009](#), Opinion on the draft amendments to the constitution (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of decisions by the European Court of Human Rights, paras 56-57.

Section 9/B indicates the circumstances in which the citizenship may be suspended, Section 9/C defines the procedure of the suspension, Section 9/D deals with the restoration of citizenship and Section 9/E regulates the reversion of the suspension of citizenship.

50. The Venice Commission observes at the outset that unlike the concepts of loss of nationality or deprivation of nationality, the suspension of citizenship is an unknown concept under the relevant international treaties (Convention on the Reduction of Statelessness of 30 August 1961 and European Convention on Nationality of 6 November 1997). It appears from the text of Article G (3) of the Fundamental Law that the suspension of citizenship is not considered as a deprivation of nationality since the first sentence of this article indicates that “no one shall be deprived of Hungarian citizenship established by birth or acquired in a lawful manner.”

51. During the discussions that the Venice Commission delegation had with the Hungarian authorities, they characterised this concept as a temporary deprivation of nationality emphasising that it constitutes a less serious measure compared to deprivation of nationality. The Venice Commission considers that albeit limited in time (which is still quite considerable as the period of suspension may extend up to ten years (Section 9/C (2)) the suspension of citizenship as defined by the Hungarian law is tantamount to a deprivation of nationality in its effect, resulting in the loss of all the rights attached to the Hungarian citizenship during the suspension period. Accordingly, regardless of the terminology or legal construction in domestic law, measures that result in the loss or deprivation of nationality should be qualified as such and are subject to relevant international norms and standards.<sup>44</sup>

52. In this connection, the Venice Commission has previously summarised the rules and principles of international law and the legal principles generally recognised in the sphere of nationality in the following way:

“- There may be provision for loss of nationality in domestic law in cases of conduct seriously prejudicial to the vital interests of the State Party;  
- Statelessness must be avoided;  
- No one may be arbitrarily deprived of their nationality;  
- This latter principle has a number of consequences. Deprivation of nationality must be founded on an implementing act clearly and unequivocally setting out the grounds on which nationality may be withdrawn; the rules governing deprivation must not have retrospective effect, which means that deprivation of nationality is admissible only for actions governed by a law expressly providing for it. As a punitive sanction, deprivation of nationality must be proportionate to the seriousness of the crime for which it has been imposed. Legal provisions aside, any individual decision relating to deprivation of nationality must respect the principle of proportionality. In practice, this means that deprivation is never an automatic measure; on the contrary, this step is acceptable only if it is the result of a meticulous examination on a case-by-case basis, including analysis of the family circumstances of the person concerned.  
- The rules governing nationality must not contain any distinctions or include practices amounting to discrimination based on gender, religion, race, skin colour or national or ethnic origin;  
- The rules governing nationality must respect the principle of non-discrimination between nationals, whether they are nationals by birth or have acquired its nationality subsequently;  
- The rules governing procedure must be strictly followed, particularly those protecting the right of the person concerned to be heard, the right to a written, reasoned decision and the right to judicial review.”<sup>45</sup>

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<sup>44</sup> UN Human Rights Council, Human rights and arbitrary deprivation of nationality, report of the Secretary-General (19 December 2013), UN Doc. [A/HRC/25/28](#), p. 4, § 3. See, also, *Ahmadov v. Azerbaijan*, no. [32538/10](#), § 45, 30 January 2020.

<sup>45</sup> Venice Commission, [CDL-AD\(2016\)006](#), France - Opinion on the draft constitutional law on “protection of the nation”, para. 47.



53. Furthermore, such a measure must be in compliance with the ECtHR's case-law under Article 8 of the ECHR. Although the ECHR does not grant a right to a nationality unlike Article 15 of the Universal Declaration of Human Rights or Article 20 of the American Convention on Human Rights and the deprivation of nationality as such is not incompatible with the ECHR<sup>46</sup>, the ECtHR held that arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the ECHR because of the impact of such a denial on the private life of the individual and examined various situations raising an issue under Article 8 of the Convention developing relevant applicable principles in that regard<sup>47</sup>.

54. In addition, the suspension of Hungarian citizenship of a person, who is not also national of another EU member State, will result in the loss of EU citizenship and the rights attaching thereto during the suspension period. In this regard, the suspension measure must be in compliance with the EU law principle of proportionality as developed in the relevant case-law of the Court of Justice of the European Union.<sup>48</sup>

## 2. Scope of application

55. The Venice Commission observes that the scope of the application of the suspension of citizenship is limited to Hungarian citizens who also hold the citizenship of another State. Therefore, no issue arises as regards Hungary's obligations under the Convention on the Reduction of Statelessness of 30 August 1961 (to which Hungary is a State party) that loss or deprivation of nationality shall not result in statelessness. The Venice Commission also notes that there is a provision providing for a possibility of the reversion of the Hungarian citizenship of a person if the person concerned becomes stateless during the period of suspension of Hungarian citizenship (Section 9/E (1) (a)).

56. It further appears from Sections 9/A and 9/B that the suspension of citizenship is applicable only in respect of a Hungarian citizen holding another State citizenship, other than the citizenship of a member State of the European Union, the European Economic Area or a candidate State of the European Union. This exclusion limits the scope of the Hungarian citizens with dual nationality which are concerned by a possible suspension of citizenship. Accordingly, in practice limited number of persons may potentially be affected by this measure.

57. The Venice Commission further observes that the rules governing suspension of citizenship do not make any distinction between Hungarian citizens by birth or subsequently acquired. This aspect complies with the principle of non-discrimination set out in Article 5 § 2 of the European Convention on Nationality (to which Hungary is a State party). The provision prohibiting collective suspension is also in line with Article 9 of the Convention on the Reduction of Statelessness.

## 3. Grounds for suspension

58. Paragraph (1) of Section 9/B provides that citizenship may be suspended if (a) the person engages in conduct which poses a threat to the public order, public safety or national security in Hungary; and (b) the suspension of citizenship constitutes a measure proportionate to the gravity of the threat and to the legal and social position of the person concerned. Paragraph (2) of Section 9/B provides that the threat referred to in paragraph (1) (a) may, in particular, be established where the person concerned: (a) serves in the armed forces or public service of a third State; (b) engages, on behalf of, for, or in the interests of, a foreign power or

<sup>46</sup> *Usmanov v. Russia*, no. [43936/18](#), § 65, 22 December 2020.

<sup>47</sup> See, among many other authorities, *Ahmadov v. Azerbaijan*, no. [32538/10](#), §§ 42-44, 30 January 2020, *Usmanov v. Russia*, no. [43936/18](#), §§ 52-56, 22 December 2020, *Johansen v. Denmark* (dec.), no. [27801/19](#), §§ 44-45, 1 February 2022, and *Emin Huseynov v. Azerbaijan* (no. 2), no. [1/16](#), § 50-51, 13 July 2023.

<sup>48</sup> See, in particular, C-135/08, *Rottmann*, EU:C:2010:104; C-221/17, *Tjebbes and Others*, EU:C:2019:189; C-118/20, *Wiener Landesregierung*, EU:C:2022:34; C-689/21, *Udlændinge- og Integrationsministeriet*, EU:C:2023:626; and C-684/22, C-685/22, C-686/22, *Stadt Duisburg*, EU:C:2024:345.

organisation, in activities which infringe the sovereignty, constitutional order or national security of Hungary; (c) maintains relations with, or is a member of, an organisation which is regarded as a terrorist organisation under international law; (d) has been convicted with final and binding effect of a number of specified criminal offences<sup>49</sup>, and where, in view of the judgment and the nature of the criminal offence, the threat to public order, public safety or national security persists.

59. Moreover, paragraph 3 of Section 9/B provides that when assessing the conducts referred to in paragraphs (1) and (2), the examination shall cover their gravity, frequency and the degree of awareness and intent, as well as the necessity and proportionality of suspending Hungarian citizenship. In this context, particular account shall be taken of: (a) the actual ties of the person concerned to Hungary and the impact on the personal and family life; (b) the time elapsed since the conviction or the conduct representing a threat, and the current circumstances of the person concerned, where the suspension of citizenship is based on a conviction or a conduct representing a threat.

60. The Venice Commission observes at the outset that the notion of “threat to the public order, public safety or national security in Hungary” provided by paragraph (1) of Section 9/B is vague. Moreover, paragraph (2) of Section 9/B which establishes specific grounds for suspension of citizenship is worded in a non-exhaustive way, using “in particular”. The formulation of the provision “maintains relations with” (c) a terrorist organisation is also very broad.

61. The Venice Commission draws attention to Article 7 of the European Convention on Nationality which provides an exhaustive list of cases in which a State party may provide in its domestic law the loss of its nationality.<sup>50</sup> The explanatory report to the European Convention on Nationality also specifies that “the wording “conduct seriously prejudicial to the vital interests of the State Party” is drawn from Article 8, paragraph 3.a.ii of the 1961 Convention on the Reduction of Statelessness. Such conduct notably includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.”<sup>51</sup> The United Nations High Commissioner for Refugees (UNHCR) Guidelines on Statelessness No. 5 further clarifies that “the term “vital interests” is to be interpreted as imposing a higher threshold than offences against “national interests”. The essential function of the State is to safeguard its integrity and external security and protect its constitutional foundations. Only acts which are seriously prejudicial to that function and other vital interests warrant deprivation of nationality under Article 8(3)(a)(ii). Deprivation of nationality of an individual who commits such

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<sup>49</sup> The list includes the following criminal offences: genocide (section 142 of the Criminal Code), crimes against humanity (section 143 of the Criminal Code), apartheid (section 144 of the Criminal Code), changing the constitutional order by force (section 254 of the Criminal Code), conspiracy against the constitutional order (section 255 of the Criminal Code), treason (section 258 of the Criminal Code), treachery (section 259 of the Criminal Code), aiding the enemy (section 260 of the Criminal Code), espionage (section 261 of the Criminal Code), terrorist act (section 314 of the Criminal Code) or terrorism financing (sections 318 and 318/A of the Criminal Code).

<sup>50</sup> Article 7 of the European Convention on Nationality reads as follows: “A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:

- a) voluntary acquisition of another nationality;
- b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
- c) voluntary service in a foreign military force;
- d) conduct seriously prejudicial to the vital interests of the State Party;
- e) lack of a genuine link between the State Party and a national habitually residing abroad;
- f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
- g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.”

<sup>51</sup> Explanatory Report to the European Convention on Nationality, 6 November 1997, p. 11, § 67.

acts should only be used where protecting a Contracting State's vital interests cannot be achieved through other less intrusive means."<sup>52</sup>

62. The Venice Commission notes that the possibility of the deprivation of nationality in case of the service in a foreign military force, the membership of a terrorist organisation or commission of terrorism related criminal offences, or conduct seriously prejudicial to the vital interests of the State Party, such as espionage, appears to be in line with the above-mentioned international standards and constitutes common grounds for deprivation of nationality in the national legislation of a number of Council of Europe member States.<sup>53</sup>

63. The Venice Commission observes that the grounds for suspension of citizenship listed in (a), (b) and (c) allow the suspension of citizenship in the absence of a conviction for criminal offences listed in (d). During the exchanges that the Venice Commission delegation had with the Hungarian authorities, the latter justified the possibility of the suspension of citizenship in the absence of a criminal conviction by the impossibility to prosecute the persons who are abroad. However, the Venice Commission notes that the law is not framed so as to allow suspension of citizenship in that narrow situation. Instead, the law is broadly framed, providing independent grounds in (a), (b) and (c) and thus making it possible to suspend citizenship in the absence of a criminal conviction for the listed security offences in (d). In that connection, the Venice Commission notes that under international law "a State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her."<sup>54</sup>

64. The grounds for suspension as formulated provide for too great a potential for the arbitrary use of the power. The Venice Commission therefore recommends that the Act LV should be modified to limit the possibility of suspending citizenship in the absence of a conviction to the specific situations where it is not possible to prosecute the person concerned. Furthermore, Section 9/B (2) (b) (establishing that the citizenship may be suspended if a person "engages, on behalf of, for, or in the interests of, a foreign power or organisation, in activities which infringe the sovereignty, constitutional order or national security of Hungary") should be modified to ensure that its wording aligns with the notion of "conduct seriously prejudicial to the vital interests of the State Party" as defined by the European Convention on Nationality and the Convention on the Reduction of Statelessness.

#### 4. Procedural framework

65. As regards the necessary procedural safeguards in case of deprivation of nationality, the ECtHR examined "whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly."<sup>55</sup>

66. The Venice Commission observes that the power to suspend citizenship belongs to the minister designated (Minister of Justice) by government decree and the person concerned has an opportunity to contest the decision suspending his or her citizenship before the Kuria. Although the person concerned shall be notified of the institution of a procedure concerning suspension of citizenship, Section 9/C (4) also provides that the designated minister shall dispense with the

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<sup>52</sup> UNHCR, Guidelines on Statelessness No. 5 (Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness) ([HCR/GS/20/05](#)), p. 19, § 62.

<sup>53</sup> For a review of the domestic legislation of member States of the Council of Europe: *Withdrawing nationality as a measure to combat terrorism: a human-rights compatible approach?*, Parliamentary Assembly of the Council of Europe, Report, Doc. 14790, 7 January 2019, §§ 20-42 (available on: [www.pace.coe.int/en/files/25241/html#\\_TOC\\_d172e384](http://www.pace.coe.int/en/files/25241/html#_TOC_d172e384)).

<sup>54</sup> International Law Commission, [Draft articles on the expulsion of aliens](#), 2014, Article 8.

<sup>55</sup> *K2 v. the United Kingdom* (dec.), no. [42387/13](#), § 50, 7 February 2017, and *Johansen v. Denmark* (dec.), no. [27801/19](#), § 46.

notice of the initiation of the procedure if, on the basis of the available data, it is reasonable to assume that the communication represents a threat to national security or public safety. Moreover, where the decision of the designated minister is based on classified data, the reasoning shall contain a reference to the filing number of the classified data (Section 9/C (11) and, in such a case, the Kuria shall, transmitting the statement of claim, the statement of defence and the documents of the case, call upon the prosecution service to join the action for the protection of the plaintiff's interests; such joining the action by the prosecution service shall be mandatory (Section 9/C (15)).

67. The Venice Commission notes that involvement of the prosecutor is insufficient to compensate for the procedural disadvantages experienced by the object of the proposed sanction and his/her lawyer. Other procedural safeguards must be ensured where a decision concerning deprivation of nationality is taken based on classified data to which the person concerned had no access. In cases concerning similar issues, the ECtHR had regard to the fact whether the nature of the case was known to the person concerned and he was represented in his appeal by counsel and Special Advocates who were appointed in order to address the evidence contained in the closed material.<sup>56</sup> The Venice Commission also draws attention to the UN Human Rights Committee's observations on the Dutch Nationality Act in which the Committee noted that "it is particularly concerned about the barriers faced by affected persons who are outside the country to appeal such a decision, which is based on classified information to which they or their legal representatives have no access."<sup>57</sup> Accordingly, the failure to inform the person concerned of the relevant factual elements which have led the competent domestic authorities to suspend his or her citizenship and to provide the person concerned with the possibility of accessing classified data through his lawyer or a specialised lawyer appears problematic in the light of the relevant case-law of the ECtHR.<sup>58</sup>

68. The Venice Commission further notes that it does not appear from the relevant provisions of ACT LV whether the appeal with the Kuria against the decision on suspension of citizenship has a suspensive effect and the person concerned may continue enjoy his or her Hungarian citizenship until the end of the court proceedings. The absence of a suspensive effect in that regard, combined with a risk of expulsion following the suspension of citizenship, may adversely affect the effective exercise of the right to judicial review by the person concerned.<sup>59</sup>

69. The Venice Commission also notes that Section 9/C (13) provides that no application for excuse shall be accepted for failing to meet the time-limit (30 days) for contesting the decision on suspension of citizenship before the Kuria. However, a rigid procedural rule which does not allow any exception to compliance with relevant time-limit for a valid reason, such as a serious illness of the person concerned, may hinder the effective exercise of the right to judicial review.

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<sup>56</sup> *K2 v. the United Kingdom* (dec.), no. [42387/13](#), § 55, 7 February 2017.

<sup>57</sup> Human Rights Committee, Concluding observations on the fifth periodic report of the Netherlands, 22 August 2019, § 50, [CCPR/C/NLD/CO/5](#).

<sup>58</sup> See, *mutatis mutandis*, *Muhammad and Muhammad v. Romania* ([GC], no. [80982/12](#), §§ 114-207, 15 October 2020 (the general principles developed in the ECHR's case-law concerning access to classified information in the context of Article 1 of Protocol No. 7 to the Convention). See also the ECtHR's findings in the cases of *Trapitsyna and Isaeva v. Hungary*, no. [5488/22](#), §§ 53-85, 19 September 2024 and *Demirci v. Hungary*, no. [48302/21](#), §§ 37-62, 6 August 2025, in which the ECtHR examined the question of absence of access to classified information in the context of expulsion of aliens in Hungary and found a breach of the Convention, respectively, under Article 8 of the Convention and Article 1 of Protocol No. 7 to the Convention.

<sup>59</sup> The report of the UN Secretary-General observes that "*where a person is subject to loss or deprivation of nationality and a review process is available, lodging an appeal should suspend the effects of the decision, such that the individual continues to enjoy nationality — and related rights — until such time as the appeal has been settled. Access to the appeals process may become problematic and related due process guarantees nullified if the loss or deprivation of nationality is not suspended and the former national, now alien, is expelled*" (UN Human Rights Council, Human rights and arbitrary deprivation of nationality, report of the Secretary-General (19 December 2013), UN Doc. [A/HRC/25/28](#), p. 14, § 33).

70. Moreover, although Section 9/D (1) provides for a possibility of the restoration of the Hungarian citizenship of a person, during the period of suspension, upon application on the basis of credible proof that the restoration of his Hungarian citizenship does not pose a threat to the public order, public safety or national security of Hungary, the same provision stipulates that a restoration request may be applied for only once during the period of suspension of Hungarian citizenship. This limitation may deprive a person of the possibility of the restoration of his or her Hungarian citizenship after the refusal of his or her initial request despite the fact that the person in question does no longer pose a threat to the public order, public safety or national security of Hungary.

71. Therefore, the Venice Commission considers that procedural safeguards related to suspension of citizenship should be improved. Firstly, where a decision concerning deprivation of nationality is taken based on classified data to which the person concerned had no access, there should be legal framework in place ensuring that the nature of the case is known to the person concerned and he is represented by his lawyer or a special lawyer who was appointed in order to address the evidence contained in the closed material. Secondly, the Commission recommends introducing a rule providing that the appeal with the Kuria against the decision on suspension of citizenship has a suspensive effect and the person concerned may continue enjoy his or her Hungarian citizenship until the end of the court proceedings. Thirdly, the relevant provision of Act LV should be reviewed in order to allow a possibility for some exception to compliance with the time-limit for a valid reason to contest the decision on suspension of citizenship before the Kuria. Fourthly, Act LV should envisage a possibility for the person concerned to apply again for the restoration of the Hungarian citizenship after the refusal of an initial request.

## **F. The amendments concerning the right to freedom to choose one's residence and the emergency situations**

### **1. Freedom to choose one's residence**

72. The first paragraph of Article XXVII of the Fundamental Law was amended as follows (changes are indicated in bold):

*“(1) Everyone residing lawfully in the territory of Hungary shall have the right to move freely and to choose his or her place of residence freely. **The exercise of the right to choose place of residence freely shall be without prejudice to the fundamental right to self-identity of local communities in Hungary**”.*

73. The explanatory report of the Fifteenth Amendment to the Fundamental Law does not contain any explanation for the adoption of this amendment. The implementing Act XLVIII of 2025 on protection of local identity was adopted by the Parliament and entered into force on 1 July 2025.<sup>60</sup>

74. During the exchanges with some interlocutors, the Venice Commission delegation were informed that following the adoption of this amendment and the relevant implementing act some municipalities issued decrees setting demanding requirements (e.g. having a clean criminal record, having at least a secondary school diploma, proof of knowledge of Hungarian language, not being unemployed) for allowing in connection with people wanting to acquire property in the local authority. The Venice Commission delegation also learned that Act XLVIII of 2025 provides for a non-discrimination clause (the legal protection measure shall be applied without violating human dignity and without unjustified discrimination, in accordance with the requirement of equal treatment) and that the person affected by the impugned measure or the relevant administrative authority has the possibility to contest the measures adopted by the

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<sup>60</sup> Act XLIII of 2025 is available only in Hungarian in the Hungarian national legislative database: [www.njt.hu/jogszabaly/2025-48-00-00](http://www.njt.hu/jogszabaly/2025-48-00-00)



municipalities before the administrative courts. Administrative cases challenging such local authority rules can come before the Kuria in a number of different ways. However, the Kuria informed the Venice Commission that it has not yet received any case concerning this part of the Amendment, and the Commission has no information that there are any other ongoing court proceedings concerning this issue.

75. A number of states have statutory rules providing for local authorities, under certain circumstances and for certain specified goals, to limit the acquisition of property, including, e.g. zoning requirements, minimum residence periods or rules allowing a local authority to pre-empt the acquisition of property. Such rules obviously raise a number of public policy issues, including how best to ensure a satisfactory balancing of local and national interests. There are also, potentially, human rights issues where a regulation has a discriminatory purpose (e.g. to exclude an ethnic minority) or when it can have a discriminatory effect. The Venice Commission observes that the right to freedom to choose one's residence is enshrined in Article 2 of Protocol No. 4 to the ECHR and Article 12 of ICCPR. The ECtHR also accepted that a denial of permission to settle in certain areas for failure to meet statutory requirements concerning length of residence and type of income amounts to an interference with the right to freedom to choose one's residence under Article 2 of Protocol No. 4 to the ECHR. According to the ECtHR's case-law, any such measure must be in accordance with law, pursue one of the legitimate aims referred to in that paragraph and strike a fair balance between the public interest and the individual's rights.<sup>61</sup>

76. The Venice Commission considers that the application of this amendment may potentially raise some legal issues falling within the scope of the present Opinion if measures taken by a local community have a discriminatory purpose or a discriminatory effect. However, it is too early to assess its impact and implications without knowing how it will be applied.

## 2. Emergency situations

77. The first paragraph of Article 53 and the first paragraph of Article 56 of the Fundamental Law were also amended as follows (changes are indicated in bold):

### Article 53(1)

*“(1) During the period of special legal order, the Government may adopt decrees by means of which it may take extraordinary measures as provided for by a cardinal Act, and may suspend the application of certain Acts and derogate from the provisions of Acts*

***a) without specific authorisation by the National Assembly during a state of war or a state of emergency;***

***b) on the basis of authorisation granted for a definite period by the National Assembly with the votes of two thirds of the Members of the National Assembly present during a state of danger.”***

### Article 56(1)

*“(1) If the National Assembly is prevented from making such decisions, the President of the Republic shall have the right to declare a state of war, to declare and extend a state of emergency, and to authorise the Government to extend a state of danger, **as well as to suspend the application of certain Acts and to derogate from the provisions of Acts during a state of emergency.**”*

78. The explanatory report of the Fifteenth Amendment to the Fundamental Law does not provide any explanation for the adoption of those provisions which shall enter into force on 1 January 2026. Under the current rules, the Government may adopt decrees suspending the application of certain Acts and derogating from the provisions of Acts during the special legal order in all the

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<sup>61</sup> *Garib v. the Netherlands* [GC], no. [43494/09](#), §§ 103-167, 6 November 2017.



three situations (state of war, state of emergency and state of danger) provided for by the Fundamental law. The amendment to Article 53 (1) introduces a distinction between the situation of a state of danger and two other situations, requiring an authorisation from the Parliament by a two-third majority of MPs present for suspension of the application of certain Acts and derogation from the provisions of Acts in the situation of a state of danger. Moreover, the amendment to Article 56 (1) extends the powers of the President of the Republic to suspend the application of certain Acts and derogate from the provisions of Acts in case the Parliament is prevented from making such decisions.

79. The amendment provides for the authorisation of the Parliament for derogating the existing provisions in the case of a state of danger which is a less serious case of emergency situation than the state of war or state of emergency. During the discussions with the relevant stakeholders, the Venice Commission did not receive any justification for not introducing the same requirement (parliamentary authorisation) in the case of state of war or state of emergency.

80. The Venice Commission also does not overlook the fact that since November 2020 a state of danger has been continuously in place in Hungary, initially, on the ground of Covid 19 pandemic and, subsequently, on the ground of a war situation in a neighbouring country. During the exchanges that the Venice Commission delegation had in Budapest some interlocutors also expressed their concern about the extensive use of emergency powers by the Government, underlining that some of the adopted emergency measures were not related to the emergency situations and may result in groundless restrictions of human rights.

81. The Venice Commission has previously set out general standards and best practices relating to emergency powers.<sup>62</sup> In particular, there must be compliance with the principles of necessity, proportionality, temporariness and effective judicial and parliamentary scrutiny of decrees issued during a state of emergency. The Commission considers that the proper assessment of the amendments concerning emergency situations requires a holistic approach to the assessment of the entire emergency powers framework in Hungary which falls outside the scope of this Opinion. Therefore, the Venice Commission cannot examine this amendment within the framework of this Opinion and remains at the disposal of the Hungarian authorities in that connection.

#### **IV. Conclusions**

82. By letter of 26 May 2025, the Venice Commission has been asked by the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe to assess the compatibility with international human rights standards of the Fifteenth Amendment to the Fundamental Law of Hungary, *“particularly insofar as it has an impact on freedom of expression and other rights and freedoms of LGBTI persons and persons with dual nationality”*.

83. The scope of this Opinion is limited to the amendments which are of particular interest for the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe. Therefore, this Opinion essentially focuses on the amendments concerning issues related to gender identity (Article L), issues related to the precedence of the right of the child to the protection and care necessary for his or her proper physical, mental and moral development over any other fundamental right other than the right to life (Article XVI) and issues related to the suspension of citizenship (Article G).

84. The Venice Commission regrets at the outset that the amendments in question were adopted without ensuring an inclusive public debate and in the absence of a genuine consultation of all the relevant stakeholders. From the perspective of democratic standards for the legislative

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<sup>62</sup> See in particular, Venice Commission, [CDL-AD\(2020\)014](#), Respect For Democracy, Human Rights and the Rule of Law During States of Emergency: Reflections.

process, the legitimacy of the adopted constitutional amendments may be doubted. The Venice Commission urges the Hungarian authorities, in future law-making procedures, to ensure an inclusive debate and a meaningful participation of all the relevant stakeholders, involving all segments of society and especially those particularly affected by the proposed amendments.

85. The Venice Commission makes the following observations and recommendations:

- A. The amendment to the first paragraph of Article L of the Fundamental Law (*Human beings shall be male or female*) should not serve as a legal basis for prohibiting the legal recognition of gender identity and it is important to ensure that the amendment in question does not have the effect of denying the rights of transgender people to the legal recognition of their gender identity.
- B. The amendment to the first paragraph of Article XVI of the Fundamental Law (*“This right shall prevail over any other fundamental right other than the right to life”*) is not compatible with the international human rights standards. This amendment should be repealed or modified to avoid the risk of systemic violation of other fundamental rights on account of the failure to conduct a balancing exercise between competing fundamental rights, including the rights of LGBTI persons.
- C. The relevant provisions of Act LV concerning suspension of citizenship should be modified:
  - (1) As regards the grounds for suspension:
    - i. The possibility of the suspension of citizenship in the absence of a conviction should be limited to specific situations where it is not possible to prosecute the person concerned.
    - ii. The wording of Section 9/B (2) (b) should be modified to align it with “the conduct seriously prejudicial to the vital interests of the State Party” standard under the European Convention on Nationality and the Convention on the Reduction of Statelessness.
  - (2) As regards the procedural framework:
    - i. There should be provision for relevant guarantees of access to classified data on the basis of which the decision on suspension of citizenship was taken.
    - ii. There should be provision for the suspensive effect of the appeal against the decision on suspension of citizenship.
    - iii. There should be the possibility of extension or disapplication of the time-limit for a valid reason to contest the decision on suspension of citizenship before the Kuria.
    - iv. There should be the possibility of the restoration of the Hungarian citizenship after the refusal of the initial request in that regard.

86. The Venice Commission remains at the disposal of the Hungarian authorities and of the Parliamentary Assembly of the Council of Europe for further assistance in this matter.