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HUMAN RIGHTS
PROGRAM

Hungary

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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1. Treatment of Homosexuals

Governmental Reports

1. Lilla Farkas, *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation—Hungary*, online: <http://fra.europa.eu/fraWebsite/attachments/FRA-hdgs0-NR_HU.pdf>

- **Conformity with ETA not complete, and allows for many exceptions**
- **discrimination concerning freedom of movement, asylum and subsidiary protection, and family reunification of LGBT people**
- **legal possibility of marriage not provided for same-sex couples**
- **Hungarian LGBT community has been able to practice freedom of assembly, and can even have police protection**
- **Participants in the 2007 Gay Pride Parade were verbally and physically attacked by an extremist political group**

Although Hungary has adopted the Equal Treatment and the Promotion of Equal Opportunities code, conformity is not complete, and it still provides for many exceptions. Homosexuals still face discrimination concerning the freedom of movement, asylum and subsidiary protection and family reunification. Although same-sex partnerships can now be registered in Hungary, the legal possibility of marriage, and benefits associated with it, remain unavailable. Since 1990 the LGBT community has been able to practice freedom of assembly, and no meetings or demonstrations have been officially banned or dispersed, and events like the Gay Pride parades have involved police protection. However, homophobia is still prevalent, as shown by attacks and homophobic comments directed at participants of the 2007 Gay Pride Parade. The current criminal legislation against hate speech offers limited protection. Though proposals have been made to improve the laws to protect LGTB people, none have been implemented. The main issues for transgender persons are the need to change their sexual identity on birth certificates, and costs of sex change operations mostly fall on the individual. Although same sex couples can now register their partnerships, they are not granted the same rights as heterosexual couples: they cannot marry or adopt children.

2. U.S., U.S. Department of State, *2008 Human Rights Report: Hungary*, online: <<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119083.htm>>.

- **Homosexuality is legal, but extremist groups continue to subject homosexuals to physical abuse and attacks**
- **A gay bar and gay bathhouse were attacked in 2008, but no suspects were identified**
- **Annual gay pride parade was violently disrupted for the second year in a row (verbal abuse, throwing items, gas grenades, etc.) and police required tear gas and water cannons to disperse protestors)**

Although homosexuality is legal, there are still examples of homophobic violence including attacks on gay bars, bathhouses, and during the Gay Pride Parade. There were no reports of societal violence or discrimination against persons with HIV/AIDS.

3. Immigration and Refugee Board of Canada, *Hungary: Situation and treatment of homosexuals; legislation, state protection and support services* (18 September 2009) HUN103234.E, online: <<http://www.unhcr.org/refworld/docid/4b20f03e2d.html>>.

- **While legislation concerning gay and lesbian people underwent positive development, public attitudes have not**
- **As political and social visibility of LGBT people increases, attitudes towards homosexuality have become more polarized**
- **Fearing discrimination, many LGBT people may be hiding their sexual orientation at schools, workplaces, hospitals and from their families**
- **Hate speech has increased significantly in the last two years**
- **Mistreatment is primarily by non-state actors; there is no systematic persecution of LGBT people by the state**
- **Though previously uneventful, gay pride marches during 2007 and 2008 involved violent protests**
- **There are few examples of people relying on government organizations for assistance, potentially because of fear of secondary victimization or distrust**

This IRB report considers homosexuality and societal treatment, violence, legislation, and the use of government and non-government organizations by the LGBT community. Much of the information is from a representative of the Budapest-based organization, Háttér Support Society for LGBT People. Although legislation concerning LGBT people is improving, corresponding public attitudes are not, and many people may still be hiding their sexual orientation in schools, workplaces, family, religious communities, etc. for fear of discrimination. According to the representative, hate speech and attacks against LGBT people have increased over the past two years, as demonstrated by the violence of the 2007 and 2008 pride parades and attacks on a gay bar and bathhouse. Legislation is improving, but same-sex couples still do not have the same rights as married couples. They currently cannot take a partner's name or adopt—though they are required to care for a partner's children. The representative explained that while the government is politically committed to equal rights, that funding for LGBT organizations is sparse, and that the community is often hesitant to or fear discrimination from government resources.

Reports by Non-Governmental Organizations

1. “Hungary. Amnesty International Report 2009” *Amnesty International (AI)*, online: <<http://thereport.amnesty.org/en/regions/europe-central-asia/hungary>>.

- **Budapest Chief of Police tried to ban the 2008 LGBT pride parade because of the 2007 violence, but the decision was reversed due to national and international pressure**
- **Prime Minister Ferenc Gyurcsány condemned violence against LGBT rights marchers**

The Budapest Chief of Police decided to ban the lesbian, gay, bisexual and transgender (LGBT) pride parade scheduled for the beginning of July, alleging security concerns after violent incidents with counter-demonstrators in 2007, but reversed the decision because of national and international pressure. 450 people took part in the parade. Explosive devices were thrown at police by hundreds of violent far-right demonstrators chanting threatening slogans. The following day, Prime Minister Ferenc Gyurcsány condemned violence against LGBT rights marchers and called for decisive action against extremism and intolerance. Some of the protesters were taken into custody and charged with minor offences.

2. Danish Centre for Human Rights, “The social situation concerning homophobia and discrimination on grounds of sexual orientation in Hungary” *Fundamental Rights Agency* (March 2009), online: <http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_HU.pdf>.

- **In 2003, more than one-third of Hungarians regarded homosexuality as an illness**
- **One-third of LGBT survey respondents experienced discrimination in labour market**
- **One-half of LGBT survey respondents experienced prejudice and discrimination in school**
- **Crime motivated by homophobia is legally characterized as hate crime**
- **Aftermath of 2007 gay pride parade marked by anti-gay attacks**
- **Registered partnerships are a significant development, yet still do not grant full equality rights**
- **more than one-third of LGBT persons experience discrimination and prejudice in the labour market, and most are afraid to come out at work**
- **50% of LGBT students face discrimination in school and LGBT issues in curriculum are negative or absent**

Legal discrimination against LGBT persons is in the process of being eliminated, and has been accelerated by joining the EU. Nevertheless, there is still prevalent prejudice and discrimination

towards the LGBT community in Hungary. Attitudes towards LGBT persons in Hungary still show that homosexuality is still considered an illness or deviant behaviour, and resistance to marriages and adoption remains strong. There is little criminal recognition or protection for homophobia-motivated crime. Registering same-sex partnerships has become possible, but exceptions remain regarding adoption, artificial insemination. Despite the *Equal Treatment Act*, there is still considerable discrimination in the labour market and most LGBT persons are afraid to come out in work environments. There are also problems in religious communities, athletics, the media, etc.

3. “Hungarian Police Start Investigating Homophobic Hate Crime for the First Time” *Hatter Support Society for the LGBT People* (8 September 2009), online: < http://www.ilga-europe.org/europe/guide/country_by_country/hungary/hungarian_police_start_investigating_homophobic_hate_crime_for_the_first_time>.

- **Budapest Police Department has started to investigate the violence during the pride parades as “violence against a member of a social group”**
- **In February 2009 “violence against a social group” was introduced as a new crime to cover homophobic incidents**
- **Female student waiting near pride parade attacked by a group of anti-gay protesters**

After the violence of the 2007 and 2008 pride parades, provisions on “violence against a member of a social group” were recognized by the Hungarian Parliament. The new provisions, coming into effect in February 2009, will be the first time that homophobic incidents will be criminally covered as more than just regular crimes, allowing for more severe punishments. The new legislation still does not list sexual orientation and gender identity as a specific ground, but allows for it to be encompassed under “other social group”. This may reflect that there is still hesitation to give due attention to the discrimination against LGBT people.

Media Reports

1. Chiara Sassoli, “Is Hungary ready for same-sex unions?” *CafeBabel The European Magazine* (14 April 2009), online: <<http://www.cafebabel.co.uk/article/29815/hungary-same-sex-marriage-european-elections.html>>.

- **Proposed legislation will give same sex couples some recognition, but not grant them marriage, adoption or inheritance rights**

In 2004 proposals were made to legally register same-sex couples in order to grant them equivalent rights to married couples. These proposals were accepted after the 2007 Gay Pride Parade attacks in Budapest. However, two weeks before it was to be enforced the Supreme Court deemed it unconstitutional on the basis that it was too similar to sacrosanct convention of

marriage. In March 2009, a modified bill was proposed that left out certain rights, such as adoption, assuming a partner's surname, and inheritance rights.

2. "Out of the Closet and into the Streets (Sort of)" *International Gay and Lesbian Human Rights Commission Blog* (8 September 2009), online: <
<http://iglhrc.wordpress.com/2009/09/08/out-of-the-closets-and-into-the-streets-sort-of/>>.

- **Although there have been over 14 LGBT Pride festivals, those held in 2007 and 2008 attracted violent verbal and physical assault**
- **Police seemed committed to preventing violence of previous years**

This is an article about experiencing the 2009 Gay Pride Parade in Hungary. In light of the attacks during the parade in 2007 and 2008, there was heavy police involvement in the 2009 parade. However, the police strategy resulted in isolating the marchers from not only protesters, but also the city, and thus allowing for greater visibility of the LGBT support community and their message.

3. "Rioters rampage in Budapest's Jewish district" *Jewish Telegraphic Agency* (6 September 2009), online: <
<http://jta.org/news/article/2009/09/06/1007658/rioters-rampage-in-budapests-jewish-district>>.

- **Rioters disrupted Hungary's 2009 Annual Gay Pride Parade in Budapest's Jewish district**

Rioters tried to disrupt Hungary's Annual Gay Pride Parade in Budapest's Jewish district. More than 30 arrests were made, and there was heightened surveillance to avoid the type of violence that had ensued during previous parades. Rioters started fires, tore down signs, shouted threats and physically attacked participants.

4. "Hungary to allow domestic partnerships for gays" *Associated Press* (8 May 2009), online: <
<http://www.aol.com.au/celebrity/story/Hungary-to-allow-domestic-partnerships-for-gays/2032701/index.html>>.

- **starting July 2009 same sex couples will be able to register domestic partnerships**

Same-sex couples will be able to register domestic partnerships beginning July 1, and long as both partners are 18 years old. These couples will still be prohibited from adoption, but require care for children of other partner. In December, Hungary's Constitutional Court annulled a similar law because it applied to heterosexual couples as well, thereby "downgrading" the institution of marriage.

Scholarship

1. Judit Takács, László Mocsonaki and Tamás Toth, *Social Exclusion of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Hungary*, online: <www.ilga-europe.org/content/download/12503/74689/file/LGBT-SE-FinalReport08F.pdf>.

- **36% of respondents experienced prejudice or discrimination within their families**
- **42% experienced discrimination from friends, most often because of homophobia and fear of social stigma affecting those associated with LGBT people**
- **high prevalence of negative experiences at school, both from peers and teachers, including bullying, having LGBT issues raised negatively in academic materials, etc.**
- **59% of respondents found the media expressed prejudice against LGBT people, spreading stereotypes and homophobia**
- **36% reported discrimination at their workplace, including not getting hired or promoted, being dismissed; many people prefer not to come out at workplace**
- **28% experience discrimination in healthcare system, especially open discrimination related to HIV testing and blood donation, as a result of homophobia**
- **47% reported experiences of discrimination in the legal system, including inability to marry or adopt**
- **many respondents do not feel safe in public spaces, and are constantly wary of potential attacks, abuse and other hostility**

A survey was conducted in LGBT communities about topics such as experiences of prejudice, discrimination, humiliation, violence, marriage and adoption. This survey was compared to one conducted with a group statistically representative of the Hungarian population. The findings showed that LGBT respondents often suffered from manifestations of social exclusion in the most important areas, such as their families, school, workplace, media, healthcare system, religious community, legal system and public spaces.

Lack of social recognition affects the capacity of LGBT people to access and enjoy their rights as citizens, but the sexual minority concept has only recently been recognized in Hungarian social and political discourse. Although in Europe decriminalisation and efforts to decrease discrimination against LGBT people has been occurring, there are still many legal problem areas, such as limited parenting rights. The use of the minority concept can be used as a political strategy in Hungary to gain equality rights. A major step towards improving LGBT rights and acceptance would be achieving higher levels of social visibility.

2. Hadly Z. Renkin, "Homophobia and queer belonging in Hungary" (2009) 53 *European Journal of Anthropology* 20-37.

- **Violent, public homophobia is increasing in Eastern Europe**
- **Public nature of homophobia is not new, but is growing**
- **There is concern about and disapproval of LGBT presence in public spaces, especially by right wing politicians**

As demonstrated by the attacks on the 2007 and 2008 gay pride parades, violent, public homophobia has recently appeared in Eastern Europe. In the last few years, right wing Hungarian politicians have also become more outspoken against homosexuality. This article explores explanations of the current trend of increasing homophobia. Drawing on ethnographic fieldwork on LGBT activism in Hungary, this article argues that by undertaking public projects that assert multiple forms of identity and community, LGBT people, although often portrayed as passive objects of the changing configurations of power of Hungary's transition, have raised a radical challenge to traditional imaginings of the boundaries between national and trans-national meanings. It is this challenge—the proposal of a “queering” of belonging—to which right-wing, nationalist actors have responded with public violence.

2. State Protection of Homosexuals

The Development and Implementation of the Hungarian Equal Treatment Act

Sexual activity between consenting men or women was decriminalized in Hungary in 1962. Since 1996, same-sex couples living together have had various rights in the fields of health care, criminal proceedings, social benefits and pensions.¹ One of the most notable achievements of legislative protection towards LGBT individuals occurred when Hungary passed its general anti-discrimination act, the Hungarian Equal Treatment Act (ETA), in December 2003. The bill prohibits discrimination in employment, as well as in education, housing, health, social services and access to goods and services.²

The bill came into effect on January 27, 2004, and included a reference to the 2000/78 Employment Equality Council Directive, which was the first time sexual orientation was mentioned as a protected category in Hungarian law.³ The Hungarian ETA originally mentioned fourteen protected categories, which included sexual orientation. Gender identity was later added.⁴ Within a year of the bill's passing, an administrative body, the Equal Treatment Authority, was created with the ability to impose remedies for infringing the prohibitions, ranging from fines to ordering the cessation of the discriminatory practice.⁵ Nevertheless, there are exemptions to the ETA whereby “differentiation [that] is proportionate, justified by the characteristics or nature of the job and is based on all relevant and legitimate terms and conditions . . .” may be permissible.⁶

Although the ETA prohibits “any discrimination in the public sector,” only four types of actors in the private sector are within the ambit of the law: 1) those making a public proposal for

¹ Immigration and Refugee Board of Canada, *Hungary: Situation and treatment of homosexuals; legislation, state protection and support services*, 18 September 2009, HUN103234.E, available at: <http://www.unhcr.org/refworld/docid/4b20f03e2d.html> [accessed 2 February 2010] [hereafter IRB Canada, *Hungary: Situation and treatment of homosexuals*].

² *Ibid.*

³ Judit Takács, “Curriculum Vitae of Judit Takács, Ph.D.,” Homepage of Judit Takács, online: <<http://www.policy.hu/takacs/pdf-lib/cv.pdf>> [hereafter Judit Takács, CV of Judit Takács, online].

⁴ *Ibid.*

⁵ IRB Canada, *Hungary: Situation and treatment of homosexuals*, *supra* note 1.

⁶ Lilla Farkas, *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation—Hungary*, online: <http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-NR_HU.pdf> at 10.

contracting, 2) those providing services or selling goods at premises open to customers, 3) self-employed persons or legal entities and organizations without a legal entity “receiving state funding in respect of their legal relations established in relation to the funding” and 4) “employers with respect to employment (interpreted broadly).”⁷

Controversy During Parliamentary Debates

The sexual orientation and gender identity components were among the most controversial elements of the bill and many commentators, both inside and outside the National Assembly of Hungary, objected to treating LGBT individuals identically to other protected categories, such as racial and ethnic minorities. For example, member of the National Assembly of Hungary, Flórián Farkas stated that, “being a gipsy is not an illness, neither a birth defect, nor the result of an accident; it cannot be compared with problems of sexual orientation or gender identity.”⁸

Another member of the National Assembly, Sándor Lezsák, said:

According to the draft sexual orientation cannot be the motive of disadvantageous discrimination either....According to this law it would be completely normal to have necrophiliac pathologists or paedophile teachers, and their discrimination would be prohibited....For example, does it qualify as disadvantageous treatment if parents or teachers want to change the sexual orientation of young people with medical treatment, while those with usual orientation wouldn't be urged to have such an intervention? According to medical opinion on this issue, male homosexuality can be cured with a good chance until the end of puberty, while lawyers – who are not physicians! – find posing this question about the necessity of treatment in itself humiliating and discriminative.”⁹

This view seems to be reflective of wider Hungarian attitudes towards homosexuals, where only 18% of Hungarians support same-sex marriage, as compared to approximately 44% across the European Union.¹⁰ Only 12% of Hungarians consider homosexuality normal, while 59% consider it unnatural.¹¹ The most illustrative statistic about the fact that many Hungarians feel that they must keep their sexuality hidden is that only 6% of Hungarians report having a gay or lesbian acquaintance compared to 34% across the EU.¹²

Complaints to the Equal Treatment Authority

⁷ *Ibid.* at 13-14.

⁸ Judit Takács, CV of Judit Takács, online, *supra* note 4.

⁹ *Ibid.*

¹⁰ IRB Canada, *Hungary: Situation and treatment of homosexuals*, *supra* note 1.

¹¹ *Ibid.*

¹² *Ibid.*

The Equal Treatment Authority investigates allegations of discrimination against public bodies in all fields and has the power to impose various sanctions, ranging from fines to ordering the cessation of the discriminatory practice.¹³ It receives approximately 1,000 complaints annually, but only one or two relate to sexual orientation and gender identity discrimination.¹⁴ Only one complaint has ever been upheld, which seems to indicate that LGBT individuals are hesitant to bring their claims to the Equal Treatment Authority and that the body rarely finds there has been discrimination.¹⁵

A partial explanation for the low number of complaints report to the ETA may be underreporting. According to the Danish Centre for Human Rights, “It is very difficult to prove discrimination, even though the burden of proof is reversed in procedures before the Equal Treatment Authority.”¹⁶ It is not unrealistic to think that some LGBT Hungarians may not bother filing a complaint that they believe is nearly unwinnable, that will result in costs and that will take up a significant portion of time. A significant number of Hungarians are without labour contracts and employers do not often give a reason for firing employees; without a labour contract, filing complaints becomes very difficult.¹⁷ Patriarchátust Ellenzog Társasága (PATENT), or the Association of People Challenging Patriarchy, is a Hungarian NGO. It has found that participants in its research who experienced rights violations at the hands of employer “concentrated on maintaining their finances and health and [on] find[ing] new employment [instead of] sue[ing] the employer discriminating against them.”¹⁸

Other Avenues for Complaints

Besides the Equal Treatment Authority, there are a few other avenues for recourse for LGBT individuals. There is an Independent Police Complaints Commission created in 2008 to investigate allegations of police abuse. However, it has reportedly not received any complaints related to sexual orientation or gender identity.¹⁹ Complainants can also go to the Hungarian Labour Inspectorate, the National Consumer Protection Authority, the Commissioner for Educational Rights, the Health Insurance Supervisory Authority, the Patients' Rights Representatives and the Central Office of Justice with various complaints about discrimination related to sexual orientation.

Complainants are free to “forum shop” and can go to the Labour Court in employment cases. Unfortunately, while courts may offer damages to victims, the procedures are reportedly “very long and the willingness of courts to acknowledge non-material damage is very low.”²⁰ Also, while the *Criminal Code* criminalizes homophobic hate speech, Háltér, the Budapest-based Háltér Support Society for LGBT People (Háltér), Hungary's largest LGBT society, was not

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Danish Centre for Human Rights, The social situation concerning homophobia and discrimination on grounds of sexual orientation in Hungary*, online: <http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_HU.pdf> at 6.

¹⁷ *Ibid.*

¹⁸ *Gábor Kuszing, Cold Treatment: Case Studies in Violence and Discrimination against Lesbian, Gay, Bisexual and Transgender People Hungary 2002 to 2007* (Budapest: PATENT, 2008) at 38.

¹⁹ IRB Canada, *Hungary: Situation and treatment of homosexuals*, *supra* note 1.

²⁰ *Ibid.*

aware of any court cases involving hate speech or hate crimes targeting LGBT people, which might be due to "a very low level of hate crime investigations by the police."²¹

Háttér summarized its view of governmental assistance as follows:

The Hungarian government operates a relatively advanced system of institutions to offer protection and recourse to victims of mistreatment, however, LGBT people often refrain from using available complaint procedures in fear of secondary victimization and because of distrust in the efficacy of complaint mechanisms. Government organizations often lack the expertise to deal with the specific needs of LGBT victims and fail to consider LGBT people as a target group in their awareness-raising efforts. Law enforcement agencies and courts are reluctant to take hate speech and hate crimes seriously."²²

Criminal Laws Against Hate Speech

The Hungarian LGBT community is only protected from hate speech, under Article 269 of the Penal Code, when it reaches the level of incitement.²³ There is no blanket protection from hate speech.²⁴ There is no documentation, however, of an indictment or judgment under this prohibition in relation to homosexuals.²⁵ Article 174/B of the Hungarian penal code prohibits violence against a member of a national, ethnic or religious minority; calls to extend the protection to the LGBT community have not received response from the government.²⁶ Without this protection, "perpetrators of homophobic violence thus can only be held liable for less serious conduct such as disorderly conduct or causing bodily harm."²⁷ The aggressors at the 2007 Pride March (detailed below) were only accused of disorderly conduct.²⁸

The Adequacy of Protection from Hungarian Police Forces

According to the European Union Agency for Fundamental Rights, there have been reports by Hungarian LGBT NGOs regarding "security problems" at LGBT events: "The police have reportedly been unable or unwilling to protect the participants from attacks."²⁹ In terms of the domestic violence that often confronts LGBT persons, PATENT states, "the legal system in Hungary does not provide adequate protection against domestic violence."³⁰

²¹ *Ibid.*

²² *Ibid.*

²³ Lilla Farkas, *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation—Hungary*, online: <http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-NR_HU.pdf> at 5.

²⁴ *Ibid.* at 32.

²⁵ *Ibid.*

²⁶ *Ibid.* at 35.

²⁷ *Ibid.*

²⁸ *Ibid.* at 36.

²⁹ European Union Agency for Fundamental Rights, *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States: Part II –The Social Situation*, online: <http://fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report-part2_en.pdf> at 57.

³⁰ *Cold Treatment*, *supra* note 18 at 12.

The most famous recent incident occurred at the 12th annual LGBT Cultural Festival in 2007, where there were widespread counter-protests and violent incidents against those marching or participating in the festival. In its assessment of the attacks, PATENT states that police were “not present in due numbers to dare to intervene.”³¹ Police were only effective in protecting the front section of the pride march “where the politicians were marching” and, according to the report, “repeatedly failed to act although counter demonstrators were throwing eggs and bottles at marchers from an arm’s length.”³² Háttér reports indicate that when marchers who decided to leave were attacked by smaller groups of protesters, “the police refused to act on calls asking for help.”³³

Police, moreover, failed to “disperse the group of counter demonstrators.”³⁴ When the march reached the site of the after-party, police still did not disperse the demonstrators “but waited until [they] left themselves.”³⁵ When one member of PATENT called the police to ask how long the “siege” would last and complained at the failure of the police to quell the demonstration, she “was told that be taking part in the march she had also undertaken the risks associated with it.”³⁶ Police also failed to ensure the security of the after-party and told march organizers “that their task included only the protection of the march and they left the area at 10 p.m.”³⁷ Several individuals were victims of homophobic violence in the area that night.³⁸ While the police presence was improved for the 2008 parade, there were incidents over the summer where Molotov cocktails were thrown into a gay bar and a gay bathhouse.³⁹ Although nobody was injury, the bar was destroyed and the events caused fear in the gay community. No culprits have been identified or arrested.

3. Jurisprudence

Federal Court

1. Laszlo v. Canada (Minister of Citizenship and Immigration)

2005 FC 456

Application by Laszlo for judicial review of a decision dismissing his claim for refugee status. Laszlo was a Romanian citizen who claimed to fear persecution due to his homosexuality. He claimed to have been beaten repeatedly. The Refugee Board found Laszlo's claim that he was a homosexual not credible, because he had no knowledge of any gay group in Romania and was not involved in the gay community in Canada. The Board also found his other evidence untrustworthy.

³¹ *Ibid.* at 46.

³² *Ibid.* at 47

³³ IRB Canada, *Hungary: Situation and treatment of homosexuals*, *supra* note 1.

³⁴ *Cold Treatment*, *supra* note 18 at 47.

³⁵ *Ibid.* at 48.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ IRB Canada, *Hungary: Situation and treatment of homosexuals*, *supra* note 1.

HELD: Application dismissed. The Board made no patently unreasonable findings regarding Laszlo's credibility with respect to his sexuality. Laszlo failed to establish his homosexuality with credible evidence. His failure to know about a homosexual support group in Romania, the documentation of which he submitted as evidence, could be held against him.

2. Szorenyi v. Canada (Minister of Citizenship and Immigration)

2003 FC 1382

Application by Szorenyi for judicial review of a determination by the Immigration and Refugee Board that he was not a Convention refugee. Szorenyi was a citizen of Hungary. He claimed to have a fear of persecution on the ground that he was a homosexual. He was beaten and harassed, and he sought police help on several occasions, but the police ignored him. Other homosexuals whom Szorenyi did not identify had similar experiences, and so he gave up seeking police protection. He did not know where else to seek support or protection, and so he did not search for gay rights organizations for help in obtaining government protection. Documentary evidence showed that homosexuals faced discrimination but not persecution in Hungary, that protection was usually available from the police and other organizations, and that repetitive and persistent denials of core human rights did not happen. The Board held that Szorenyi was harassed but not persecuted, and that he did not take all reasonable steps to seek state protection by failing to seek out gay rights organizations or government protection. Szorenyi argued that the Board erred in finding that state protection was available and in finding that homosexuals were not a persecuted class.

HELD: Application dismissed. Szorenyi failed to prove that he had exhausted all avenues of protection and redress, as he gave up seeking police protection because of the experience of others whom he did not identify, and he did not seek the help of gay rights organizations. Therefore the finding by the Board that Szorenyi failed to establish that state protection was unavailable could not be interfered with. Similarly, the Board's finding that homosexuals in Hungary faced discrimination but not persecution was supported by the evidence and could not be interfered with.

3. Gorzsas v. Canada (Minister of Citizenship and Immigration)

2009 FC 458

Application seeking judicial review of a pre-removal risk assessment officer's decision of Oct. 10, 2008 rejecting a PRRA application. The officer found there was less than a mere possibility that the applicant faced persecution if he were returned to Hungary, his country of origin, and that it was not likely he would face a risk of torture, risk to life, or a risk of cruel and unusual punishment. The applicant arrived in Canada in 2000. His claim for refugee protection was dismissed in 2003. The board found he was not a homosexual and that he had failed to prove his Roma ethnicity put him at risk in accordance with the Immigration and Refugee Protection Act. The first PRRA application was rejected on the finding that there was no breakdown of state

apparatus in Hungary and that certain organizations could be approached for assistance. Since that decision, the applicant learned he had HIV. Another PRRA application was rejected on Oct. 10, 2008. The issues were: (1) whether the officer erred in his finding of fact regarding discrimination against HIV positive persons in Hungary; and (2) whether the officer erred in failing to address the cumulative factors of being gay, HIV positive and Roma.

HELD: Application allowed. The matter was referred back to a different officer for further assessment. The officer's finding of fact on issue (1) was unreasonable and did not adequately focus on the issue of personal risk for the applicant in returning to Hungary with this very serious medical condition. The applicant's evidence pointed to a personal risk based on discrimination documented in various sources. A sustained or systemic denial of core human rights was not essential in proving personal risk under the Act. As for (2), the jurisprudence pointed to a finding of error by the officer. The cumulative effects of discrimination ought to have been considered. This required an analysis beyond a bare acknowledgement that the individual had these risk factors. It required canvassing what risks would face a gay, HIV positive Roma returning to Hungary. The officer's reasons failed to address the interstitialities of the evidence and failed to treat the applicant as a sum of his parts. The officer failed to truly gauge the cumulative effects of the discrimination faced by the applicant. The officer's conclusion that his own research did not indicate sustained or systemic denial of core human rights and that there was insufficient evidence before him that the applicant, being a gay, HIV-positive Roma, would be denied the required medical treatment in Hungary was an insufficient analysis to the extent of being unreasonable and was in error.

4. A.J.M. v. Canada (Minister of Citizenship and Immigration)

2005 FC 98

Application by the applicant AJM for judicial review of a decision of the Immigration and Refugee Board that determined AJM was not a Convention refugee. AJM, a citizen of Hungary, claimed a well-founded fear of persecution on the basis of membership in a particular social group, namely as a homosexual. He described four events of discrimination, including physical assaults, in his personal information form that led to his departure from Hungary in 2000. The Board accepted AJM was a homosexual and that the four incidents occurred. However, it found, based on documentary evidence regarding the experience of homosexuals in Hungary, that AJM's claim was not objectively well-founded as there was not a serious possibility he would be persecuted if he were to return to Hungary. Two Board members heard AJM's application but only one member participated in the decision as the other member ceased to hold office as a member of the Refugee Division. There were 11 months between the completion of the hearing and the Board's decision.

HELD: Application dismissed. It was proper for a single member of the panel of the Board to decide AJM's claim. To have one member decide the matter was not, per se, unfair. There was no mandatory requirement for the Chairperson to request that the second member participate in the decision. There was no breach of the duty of fairness by one member making the decision or in

the time delay between the hearing and the decision. The decision that there was not a serious possibility of persecution was reasonably open to the Board.

5. Szabados v. Canada (Minister of Citizenship and Immigration)

2004 FC 719

Application for judicial review of a decision of the Immigration and Refugee Board determining the claimant not to be a Convention refugee or a person in need of protection. The Board found that the claimant had not established a well-founded fear of persecution on an objective basis. The claimant alleged that the Board did not consider the cumulative impact of the evidence.

Application dismissed. The standard of review was patent unreasonableness. The Board was not required to explicitly state that it had considered the cumulative impact of the evidence. The Board did not make a patently unreasonable error in its review of the evidence or in making its decision.

6. Harsanyi v. Canada (Minister of Citizenship and Immigration)

2004 FC 358

The claimant came to Canada from Hungary in April 2000. He claimed refugee status on the basis of the mistreatment he received in Hungary as a gay male. He recounted numerous incidents of threats and violence. A panel of the Immigration and Refugee Board dismissed Mr. Harsanyi's claim because it was not satisfied that the treatment of homosexuals in Hungary amounted to persecution, as opposed to simple discrimination. Mr. Harsanyi argues that the Board made serious errors in its analysis of the circumstances of gays in Hungary. He asks me to order a new hearing.

The court found that the Board erred in its treatment of the evidence and will allow this application for judicial review.

7. Canada (Minister of Citizenship and Immigration) v. Balogh

2001 FCT 1210

Application by the Minister of Citizenship and Immigration for judicial review of a decision that the respondent, Balogh, was a Convention refugee. Balogh was a citizen of Hungary. He claimed a fear of persecution on the basis of his Roma ancestry and his homosexuality. The Convention Refugee Determination Division of the Immigration and Refugee Board rejected his claim that he was Roma, but accepted that he was homosexual. The Board found no reasonable or serious possibility of persecution on the basis of his sexual orientation. However, the Board went on to

find that Balogh was justified in having a well-founded fear of the police, and concluded that the state would not offer him protection. On that basis, his claim was allowed.

HELD: Application allowed. Having found that Balogh would not suffer more than a mere possibility of facing serious harm if returned to Hungary, the Board decided the question before it and concluded that Balogh was not in danger of persecution. The issue of state protection did not exist independently. The Board had made contradictory statements and as such its decision was patently unreasonable.

8. Varga v. Canada (Minister of Citizenship and Immigration)

2001 FCT 508

This was an application by Varga and Busi for judicial review of the decision wherein they were found not to be Convention refugees. Varga and Busi, who were citizens of Hungary, based their claims on their membership in a particular social group: sexual orientation. Varga and Busi relied on two particular incidents to support of their claims. The first was that when they went to the police to complain about beatings and threats they had been subjected to, they were told that the police could not watch them all the time. The second incident involved a brutal attack and being told by a passing police officer that they gotten what they deserved. The board reviewed several of the incidents and beatings suffered by Varga and Busi. It found both applicants to be credible and found that they had suffered societal discrimination. However, the board found that the state itself had not been complicit in the discriminatory experiences and that Varga and Busi had failed to seek the protection of their country of origin in order to address the alleged issues of discrimination. Since it found that the discrimination could not be categorized as persecution, the board did not analyze the evidence in light of the definition of persecution.

HELD: Application dismissed. The board did not base its decision on persecution but rather based it on the fact that state protection was available to Varga and Busi. Therefore, although the board erred in its review of persecution, it was not a reviewable error since state protection was only relevant in cases where the applicants had been persecuted. With respect to the alleged lack of police assistance, one incident was not sufficient to show clear and convincing evidence that there was a lack of state protection. Further, full time body guard type protection was not available to persons living in Canada either.

9. Varga v. Canada (Minister of Citizenship and Immigration)

2005 FC 617

Application by the 22-year-old applicant Varga for judicial review of a decision of the Immigration and Refugee Board that found she was not a Convention refugee. Varga was a Roma and a lesbian. After she came to Canada to join her girlfriend, her girlfriend's family forced her to work in the sex trade. The family had since been deported to Hungary. Varga

feared they would force her back into the sex trade if she was returned to Hungary. The Board rejected Varga's claim on the basis that she had not provided clear and convincing proof that she would be unable to obtain state protection if she were to return to Hungary. It considered Hungary's efforts to protect Roma, lesbians and women forced into prostitution. Varga's doctor indicated she was suffering from post-traumatic stress disorder and would suffer a complete psychological breakdown if she were returned to Hungary.

HELD: Application dismissed. The Board properly addressed the state protection issue. It considered not only the steps being taken by the Hungarian authorities to address the problems faced by Roma, lesbians and women forced into the sex trade but also examined the efficacy of those steps. The doctor's report was not relevant to the inquiry of whether Varga's fear of persecution was objectively well founded.

10. Valoczki v. Canada (Minister of Citizenship and Immigration)

2004 FC 492

Application for judicial review of a decision by the Immigration and Refugee Board determining the claimant not to be a Convention refugee or a person in need of protection. The claimant alleged that the Board's findings on the issues of state protection and credibility were patently unreasonable.

Application dismissed. As the trier of fact, the Board was entitled to make reasonable findings regarding the credibility of a claimant's story based on implausibilities, common sense and rationality. The Board's conclusion that state protection was available to the claimant was not patently unreasonable.

11. Egeresi v. Canada (Minister of Citizenship and Immigration)

2003 FC 1133

Application by Egeresi for judicial review of a decision by the Refugee Protection division that he was not a Convention refugee. Egeresi was a homosexual Hungarian citizen who claimed a well-founded fear of persecution based on his sexual orientation. The Board found that Egeresi was not credible, and that the discrimination and mistreatment did not constitute persecution. It further found that Egeresi's life would not be at risk, and that he would not face cruel and unusual treatment or punishment or torture if returned to Hungary. Egeresi argued that the Board failed to consider whether the cumulative acts of harassment constituted persecution.

HELD: Application allowed. The Board's negative credibility findings were not expressed in clear and unmistakable terms and were not supported by the evidence. The analysis regarding state protection was insufficient.

4. Budapest as an Internal Flight Alternative

Budapest is the most likely candidate as an Internal Flight Alternative (IFA) for a homosexual refugee claimant. It has an established gay culture, including several advocacy organizations.⁴⁰ It has hosted a gay pride parade since 1997, and local organizations have played an active role in fostering a strong sense of community.

The Board has not addressed the question of whether Budapest would be a valid IFA. As such, it is important to evaluate why the Board might designate this city as a safe place where state protection is sufficient to prevent the persecution of homosexuals.

As outlined above, state protection is available through a variety of legal instruments. Whether or not this protection is exercised will determine where a homosexual is safe from persecution. It is unclear whether protection from *discrimination* is more pronounced in Budapest as opposed to other areas of Hungary. *Persecution*, however, does exist, and has increased in Budapest over the past several years. State reaction to these acts has been generally swift and condemnatory, but inconsistencies may demonstrate the state's inability to protect from persecution.

The threat of violence or persecution in Budapest is difficult to ascertain. Advocacy groups and observers have noted an increase in hostility because of a shift to right-wing extremist politics (see U.S. Department of State, *Hadly V. Rankin, Judit Takács* section 1). This shift has prompted some displays of violence, and the state has not responded uniformly. It is important to note that the IRB has been sceptical of the existence of persecution in Hungary (see section 3) and so state protection becomes a moot point. Where there exists persecution in Budapest, it is relevant to examine how the state has responded to determine if adequate protection is available.

A statement from advocacy group Háttér confirms an increase in violence with the possibility of state failure to protect: “[h]ate speech and violent attacks against LGBT people has increased significantly in the past two years. Mistreatment can be primarily attributed to non-state actors, there is no systematic persecution of LGBT people by the state. (18 Aug. 2009)”⁴¹

Incidents of violence against homosexuals

Pride Parade 2007

The July 2007 pride parade in Budapest was marred by attacks by right-wing protestors who overtly opposed and threatened homosexuals. These attacks marked a shift in the social atmosphere in Budapest, and began a worrisome trend of organized opposition to gay rights.⁴² While the Prime Minister condemned these attacks, the police were widely criticized for a failure

⁴⁰ Gay Guide.net, *Budapest Gay Guide*, (2009), online < http://budapest.gayguide.net/Gay_Guide/>

⁴¹ Immigration and Refugee Board, *Hungary: Situation and treatment of homosexuals; legislation, state protection and support services*, (18 September 2009), online <<http://www.unhcr.org/refworld/country,,,HUN,4562d8b62,4b20f03e2d,0.html>>

⁴² http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-NR_HU.pdf

to adequately protect pride-parade marchers.⁴³ According to Háttér, "the police refused to act on calls asking for help" (18 Aug. 2009).⁴⁴

Since the attack, several counter-demonstrators have been tried and convicted for throwing stones and disobeying police orders.⁴⁵

Pride parade 2008

After originally cancelling the parade due to fears of violent protest, the police allowed the parade under a revised and more rigorous plan of protection. Despite the police's best efforts, between 12 and 25 people were injured and protesters threw gas grenades and Molotov cocktails into the crowd.⁴⁶

Additional acts of violence

- A gay bar and bathhouse were attacked with Molotov cocktails in June and July 2008. No one was injured. Police investigated, but did not identify suspects.
- A woman was attacked after the 2009 Pride March by a group of anti-gay protestors. This crime is the first prosecuted under Feb. 2009 hate crime legislation.⁴⁷

By all accounts, it appears that the state is willing to protect homosexuals from persecution. The state *may fail* to protect homosexuals from organized attacks by anti-gay groups, or even hate-based, random attacks. While the will of the state is present, the unpredictable and volatile actions of anti-gay groups may be beyond the control and protection capabilities of the state. Should anti-gay sentiment continue to risk Hungary, it is possible that the state will be unable to protect homosexuals from personal violence.

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⁴⁴ *Supra* note 41.

⁴⁵ Amnesty International, *Human Rights in the Republic of Hungary*, (2008), online: <<http://www.amnesty.org/en/region/hungary/report-2009>>

⁴⁶ *Supra* note 41.

⁴⁷ Hatter Support Society for LGBT People, *Hungarian Police Start Investigating Homophobic Hate Crime for the First Time*, (9 September 2009), online: <http://www.ilga-europe.org/europe/guide/country_by_country/hungary/hungarian_police_start_investigating_homophobic_hate_crime_for_the_first_time>