

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right to privacy

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(Please use this reference in your reply)

14 October 2024

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 50/10, 53/7, 52/9, 50/17, 51/21, 52/4 and 55/3.

In this connection, we would like to bring to the attention of your Excellency's Government some observations concerning the *Law on Amendments and Supplements to the Law on Preschool and School Education*, adopted by the 50th National Assembly on 7 August 2024 ([Decree No. 199](#)) by a large majority, with 159 votes in favour, 22 against, and 12 abstentions.

The Amendment prohibits “carrying out propaganda, promoting or inciting in any way, directly or indirectly, ideas and views related to non-traditional sexual orientation and/or determination of gender identity other than biological”, which could lead to infringements of the rights to education for lesbian, gay, bisexual and transgender (LGBT) individuals, specifically children and adolescents, further contributing to an already difficult environment and risks that LGBT students may face: bullying, stigma, harassment, increased health-related risks, discrimination, and violence.

The broad definitions promulgated in this Amendment, and its discriminatory premise, may have a further harmful impact beyond the school environment. The Amendment risks significantly restricting fundamental freedoms, such as the rights to freedom of expression, peaceful assembly and association. It may also exacerbate already existing stigmatization and related intimidation directed against individuals and groups promoting gender equality and sexual and reproductive rights, thereby potentially having a broader chilling effect.

The Amendment to the Preschool and School Education Act, as initiated by the country's Revival party (Vazrazhdane party), prohibits “carrying out propaganda, promoting or inciting in any way, directly or indirectly, ideas and views related to non-traditional sexual orientation and/or determination of gender identity other than biological” and introduces a stigmatizing definition of “non-traditional sexual orientation” — “different from the generally accepted and embedded in the Bulgarian

legal tradition concepts of emotional, romantic, sexual or sensual attraction between persons of opposite sexes.” This amendment could put vulnerable children and adolescents at a heightened risk of being exposed to multiple human rights violations such as bullying and harassment at school, infringing their right to education and having potentially negative effects on their academic performance and attendance, mental and physical health, and overall wellbeing. The proposed regulation would entail a serious restriction of the freedom of expression on the diversity of sexual orientations, gender identity and issues related to LGBT people, gravely hindering the right of freedom of expression for LGBT people as well as of other citizens willing to express themselves on these matters. In this regard, the Amendment could lead to restrictions and stigmatisation of human rights defenders’ activities in schools, placing constraints on their advocacy and human rights education work, and creating a hostile environment for LGBT organisations and human rights defenders.

According to the information received, in its formulation, the Amendment would appear to misalign with Bulgaria’s international human rights obligations, obligations under the EU treaties, domestic provisions on non-discrimination and inclusivity in education, and regional political commitments. The newly passed Amendment seems to further deviate from the core values of equality and non-discrimination as identified in the original Law on Preschool and School Education and put additional pressure on the LBGT community in the country.

The Law on Preschool and School Education is claimed to be based on the principles of ([article 3.2](#)):

[...]

3. equal access to quality education and inclusion of every child and every student;
4. equality and non-discrimination in preschool and school education;[...]
6. humanism and tolerance;
7. preservation of cultural diversity and inclusion through the Bulgarian language;
8. innovativeness and effectiveness in pedagogical practices and in the organization of the educational process based on scientific validity and forecasting of the results of innovations.

In addition, the Law identifies the main goals of preschool and school education ([article 5](#)):

1. intellectual, emotional, social, spiritual-moral and physical development and support of each child and each student in accordance with his age, needs, abilities and interests [...];
10. knowledge of national, European and world cultural values and traditions [...];

12. acquisition of competences for understanding and applying the principles, rules, responsibilities and rights that arise from membership in the European Union. (2) The state implements policies to increase the quality of education and prevent the early dropout of students from school.

This Amendment puts at notable risk the goals set in the Law on Preschool and School Education, including to “prevent the early dropout of students from school; intellectual, emotional, social, spiritual-moral and physical development”, as LGBT are prone to find themselves excluded from as well as the goal related to the “acquisition of competencies for understanding and applying the principles, rules, responsibilities and rights that arise from membership in the European Union” ([article 5.12](#)).

Despite this, the newly adopted Amendment seems to be focused on prohibiting the equal enjoyment of human rights by LGBT children at school and preschool, thereby going against the values, principles, and goals outlined in the original law itself. In particular, the Amendment may provide for discriminatory restrictions on the enjoyment of the right to freedom of expression, of peaceful assembly and of association, the right to the highest attainable standard of physical and mental health, the right to privacy, the right to education for LGBT children and adolescents, and may hinder the legitimate work of LGBT organisations and human rights defenders.

The Amendment is neither in conformity with international human rights law, nor in compliance with Bulgaria’s own national legislation on non-discrimination, namely the [Protection from Discrimination Act](#). Article 4(1) (Supplement - SG No. 70 of 2004, in force from 1 January 2005) of Protection from Discrimination Act states that every individual is protected from “any direct or indirect discrimination based on gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status or any other signs established by law or in an international treaty by which the Republic of Bulgaria is a country.”

Protections on the basis of sexual orientation and gender identity have been broadly supported in international and European law. In the request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 2 October 2020 — V.M.A. v Stolichna Obsthina, Rayon ‘Pancharevo’, the court has stated that “the best interests of the child” must prevail. This decision is partially based on article 2 of the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989 (United Nations Treaty Series, Vol. 1577, p. 3), which provides:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

In *Toonen vs. Australia*, (1994), the Human Rights Committee found that “the reference to ‘sex’ in articles 2, paragraph 1, and 26 of the ICCPR is to be taken as including sexual orientation.” In numerous subsequent Concluding Observations, the Committee has urged State parties to guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation.

Further, the Human Rights Committee reiterated that the right to privacy covers gender identity (CCPR/C119/D/2172/2012). The Government has a duty to uphold the right to privacy in relation to gender identity (A/HRC/RES/34/7, para. 5(g)). See also recommendations on gender identity A/HRC/43/52, paras. 35 and 36) and legal recognition including for children (A/HRC/46/37). The right to freedom from discrimination on grounds of sex and sexual orientation is also safeguarded by the EU Treaties (e.g. article 8, 10, 18, 21) of the Treaty on the Functioning of the European Union ([TFEU](#)), and articles 2 and 3 of the Treaty on European Union ([TEU](#)), and Charter of Fundamental Rights of the European Union (the Charter), in particular articles 7, 9, 21, 24(2), 24(3) and 45.

In their implementation of the Convention on the Rights of the Child (CRC), which Bulgaria ratified on 3 June 1991, the Committee on the Rights of the Child has also urged States to “repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds” (CRC/C/GC/20, para. 34). Article 28(e) of the CRC urges all signatories to “take measures to encourage regular attendance at schools and the reduction of drop-out rates”.

Furthermore, the Committee has decried “exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information,” and noted that it: “urges States to eliminate such practices, repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, gender identity or intersex status and adopt laws prohibiting discrimination on those grounds. States should also take effective action to protect all lesbian, gay, bisexual, transgender and intersex adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures.” (CRC/C/GC/20, para. 33).

In a joint [statement](#) marking the International Day against Homophobia, Biphobia and Transphobia on 17 May 2015, UN Special Procedures mandate holders, the UN Committee on the Rights of the Child, the Special Representative of the UN Secretary-General on Violence against Children, the Council of Europe Commissioner on Human Rights, and regional human rights institutions called for an end to discrimination and violence against LGBT young people and children, including in educational institutions: “States must act to overcome prejudice and stereotypes through anti-discrimination initiatives in schools and public education campaigns. [...] The health and well-being of all children and young adults must be protected, including through ensuring access to non-discriminatory health services and comprehensive sexuality education, and by protecting the rights of all children and young adults to their identity, autonomy, and physical and psychological

integrity.”

In March 2023, a group of Special Procedures mandate holders jointly published a [Compendium on Comprehensive Sexuality Education](#) emphasizing the need to protect the rights to education, freedom of expression and access to information of all young persons, regardless of their sexual orientation and gender identity. As recommended in the Compendium, states must “ensure that comprehensive sexuality education curricula are non-discriminatory, non-biased, and based on scientific evidence and human rights. They should be inclusive and accessible to all individuals, especially to the most marginalized, including adolescent girls, LGBTIQ+ youth, out-of-school adolescents and young people living with disabilities.” The Committee on the Rights of the Child has stated that comprehensive sexuality education “should be part of the mandatory school curriculum and reach out-of-school adolescents and urged States to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for youth, emphasizing that unequal access to such information, commodities and services amounts to discrimination”.¹

The International Covenant on Economic, Social and Cultural Rights (ICESCR) obligates States parties to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (article 12), without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2). The other status includes sexual orientation or gender identity, as the Committee on Economic, Social and Cultural Rights has elaborated upon in general comments on ICESCR obligations.² The Committee on Economic, Social and Cultural Rights has also included sexual orientation and gender identity among the grounds of discrimination prohibited under article 2(2) of the Covenant (E/C.12/GC/20, para. 32), in relation to the right to education and other rights recognized by the ICESCR.

We are further concerned of the impact this Amendment would have on the State’s obligations to ensure enabling and safe environment for the exercise without discrimination of fundamental freedoms, and for ensuring inclusive and participatory society. This Amendment has the potential to add to an existing political discourse which has been highly stigmatizing of LGBT people, and has attempted to discredit civil society groups promoting respect and protection of the rights of LGBT people and gender equality more broadly. Such political discourse generated and spread by high-level political actors has further created hostile public environment for the protection of the rights of LGBT people and would empower and strengthen anti-rights narratives.

The broad provisions inserted in the Amendment are opened for arbitrary interpretation, and as such would risk exposing to legislative and judicial repression anyone, including civil society organisation, seen as violating it for conducting legitimate human rights work, that may be portrayed as a “carrying out propaganda” of “promoting or inciting in any way, directly or indirectly,

¹ Committee on the Rights of the Child, General Comment No20 (2016), paras.61 and 59.

² E/C.12/GC/20, E/C.12/2000/4.

ideas and views related to non-traditional sexual orientation and/or determination of gender identity other than biological”. This would have a broad chilling effect on the exercise of fundamental freedoms and would lead to increased self-censorship of anyone speaking in defence of the rights and freedoms of LGBT people. The broad reach aimed by this Amendment is also expressed by politicians promoting and supporting it as they stated that the main message of the provisions in this Amendment is “to protect the society at large [from spreading of “views related to non-traditional sexual orientation”].

It is also concerning that there does not seem to have been broad public consultation and assessment of how the provisions of this Amendment would impact human rights and freedoms in the country.

Furthermore, this Amendment seems to be part of, and contribute to a string of recent legislative initiatives aimed at silencing civil society and restricting fundamental freedoms in Bulgaria.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association in her next report to the UN General Assembly, on *Protecting the rights to freedom of peaceful assembly and of association from stigmatization (A/79/263)*, found that there is a “mutually reinforcing harmful cycle” between on one hand, stigmatizing narratives against civic freedoms and the adoption of restrictive laws, and between laws promoting stigmatizing narratives that lead to restrictions of fundamental freedoms. The Special Rapporteur stated that “Although some laws may not be created with an intent to restrict or stigmatize civil society and may have legitimate objectives, their deficiency or broad definitions create space for misinterpretation and abuse by political actors, law enforcement, the media, companies or judicial institutions. Thorough impact assessments with the meaningful and inclusive participation of civil society are required prior to the adoption of legislation, especially affecting the rights of associations and peaceful assemblies, to prevent potential stigmatization.” (A/79/263) In addition, the (former) UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report to the Human Rights Council in 2024 on *Preserving the gains and pushing back against the global attack on civic space and growing authoritarianism*, found that “hateful rhetoric, including by public officials, to scapegoat and endanger those who are at particular risk, including LGBTIQ+ persons”, “creates a chilling effect and hostile environment for activists representing these groups and civil society advocating to protect their rights. Such attacks, justified in the name of defence of “morals” or “family values”, are part of the broader attack on human rights and closing of civic space and participation.” (A/HRC/56/50).

We reiterate the legal obligation of your Excellency’s Government to ensure the development, adoption and implementation of all legislation without discrimination based on any prohibited ground, including based on sexual orientation or gender identity.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the Law on Amendments and Supplements to the Law on Preschool and School Education, adopted by the 50th National Assembly on 7 August 2024 (the Amendment), including your Government's views on the above analysis.
2. Please provide details of the process by which the Amendment was developed, including of any consultation held with civil society, educational community and affected groups, and any prior impact assessment undertaken to ensure that the provisions contained in the Law comply with Bulgaria's obligations under international human rights law, including ensuring enabling and safe environment for the exercise of fundamental freedoms without discrimination.
3. Please provide details of how the domestic legal framework safeguards the rights of children and adolescents of diverse sexual orientations and gender identities, including the right to physical and mental health, as well as education, and how this Amendment is consistent with those legal requirements implementing Bulgaria's international human rights obligations.
4. Please provide information of how the domestic legal framework protects the rights of human rights defenders and those advocating for the rights of LGBT persons in Bulgaria, so that they can freely carry out their legitimate work in a safe and enabling environment.
5. Please provide information about whether the impact of the Amendment on the exercise of the right to freedom of expression, and the right to protect and promote human rights has been analysed during the drafting process. Please further indicate whether members of the LGBT community will be able to express themselves freely, including on the matter of their own or others' sexual orientation or gender identity in a safe environment, as well as whether human rights defenders and organizations working on the rights of LGBT communities will be able to carry out their work in an enabling environment, free from intimidation, harassment or legal repercussions.
6. Please indicate the steps that your Excellency's Government intends to take in order to review the analysed legislation in view of the observations shared in this communication and the applicable legal rules and standards.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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