Advocate General confirms: EU anti-discrimination law protects trans people

article, non-discrimination, health & depathologisation, youth & adolescents

On 5 June 2025, Advocate General ?apeta delivered her opinion in the case *Commission v. Hungary* (C-769/22), finding that Hungary's so-called "Child-Protection law" violates multiple provisions of EU law. Among its most important contributions, the opinion confirms that **gender identity is protected under the ground of sex in Article 21 of the EU Charter of Fundamental Rights**. This affirms the EU's legal commitment to protect trans people – including trans minors – against discrimination.

The Advocate General, in her opinion, discusses how, in particular 7 Hungarian Rules interact with EU law. The infringement case has been brought by the EU Commission in 2023. A record number of member states had joined the Commission in the case.

Yesterday's opinion also discusses how Hungary's law restricts the visibility of people with gender identities that do not correspond to their sex assigned at birth. Such a restriction, the Advocate General finds, constitutes **discrimination on the grounds of sex**, affirming TGEUs long-held interpretation that trans people are protected comprehensively under this provision. This matters on the ground: legal clarity strengthens the ability of trans people to challenge discriminatory treatment, censorship, or exclusion across areas like education, healthcare, and access to services. Courts but also public authorities across the EU **often** take into account this **authoritative** interpretation when designing gender equality and non-discrimination laws and policies

The Advocate General notes that Hungary's law prevents both children and adults from receiving or sharing information about LGBTI lives. For trans minors in particular, this denial can create lasting harm, contributing to stigma and isolation at a time when access to inclusive, affirming information is crucial to their wellbeing.

The opinion further clarifies that the **parental right** referenced in Article 14(3) of the Charter is **not a free-standing right** that would justify withholding LGBTI content from children.

Finally, the Advocate General concludes that Hungary's law breaches **Article 2 TEU**, which enshrines the EU's core values of human dignity, equality, and respect for human rights. Laws that stigmatise people on the basis of who they are undermine the legal foundations of the Union itself.

While the final judgment is still pending, the opinion sends a strong signal: **trans people—minors and adults—are protected under EU law**, and laws that deny their visibility or dignity cannot stand.

TGEU Comment on the Advocate General's Opinion

TGEU welcomes the opinion of Advocate General ?apeta in *Commission v. Hungary*, which reaffirms that **trans people are protected under the EU Charter's prohibition of sex discrimination**. The inclusion of gender identity within Article 21, while not being the centre of the case, is an important confirmation of settled law—and a reminder that trans people are within the scope of EU protection.

We also note the Advocate General's emphasis on how legal protections have advanced from being based on

medical transition (‘gender reassignment’) to a person’s gender identity. This aligns with the lived realities of many trans people and reflects current human rights standards that centre self-determination rather than medical status. Linking ‘gender identity’ firmly to the protected ground of sex means that trans people and non-binary people, alike, whether or not they have taken medical steps, are all protected.

This stands in welcome contrast to a recent judgment by the UK Supreme Court, which narrowed the legal interpretation of ‘sex’ in a way that risks excluding trans people from existing gender equality protections.

The opinion gives due weight to the harm caused when trans people, particularly minors, are excluded from educational materials and public discourse. It recognises that visibility is not a matter of preference but a matter of **dignity, equality, and personal development**. These rights are not abstract—they impact daily life, safety, and belonging for trans communities in Hungary and across Europe.

We further appreciate the clarification that **parental rights must not be a pretext for overriding children’s rights**, especially the right to receive inclusive, accurate information about diverse gender identities. **Children’s best interests, not ideology, must guide educational policy.**

Finally, we welcome the Advocate General’s view that violations of non-discrimination, privacy, and freedom of expression also constitute a breach of **human dignity**, protected under Article 1 of the Charter and Article 2 Treaty on the European Union (TEU). This reinforces that trans rights are not peripheral—they are central to the EU’s legal and constitutional order.

> “This opinion offers hope to trans people across Europe. It confirms that EU law protects our right to exist, to be visible, and to be treated with dignity—whether in a classroom, a bookshop, or on screen.”

We look forward to the Court of Justice’s ruling and hope it builds on this important step towards safeguarding the rights of trans people in Hungary and beyond.

The Advocate General at the Court of Justice of the European Union offers independent, expert legal opinions on cases to guide the judges in making their final decisions.

Background on the case: https://www.ilga-europe.org/news/eu-member-states-unite-against-hungarys-anti-lgbti-propaganda-law-at-infringement-hearing/

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