



Abolishing the Equal Treatment Authority and transferring its tasks to the Ombudsperson may further weaken human rights protection in Hungary

Statement by the Hungarian NGO coalition "Civilizáció"

26 November 2020

On 10 November 2020, the Parliamentary Committee of Justice Affairs submitted Bill T/13631 to the Parliament, proposing to abolish Hungary's equality body, the Equal Treatment Authority,¹ and transferring its tasks and competences to the Commissioner for Fundamental Rights (Hungary's Ombudsperson)² as of 1 January 2021. Hungarian NGOs warn that this step is not only unnecessary and unjustified, but may also weaken the level of human rights protection in Hungary.

What does the Equal Treatment Authority do?

The Equal Treatment Authority was established by Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA)³ and began operation on 1 February 2005. It is an autonomous public administrative body with overall responsibility for ensuring compliance with the principle of equal treatment. The Equal Treatment Authority deals with **discrimination based on** any of the characteristics protected under the ETA, including **age, disability, gender, racial or ethnic origin, religion or belief, sex and sexual orientation**, etc. The Equal Treatment Authority may/shall:

- conduct complaint-based or ex officio investigations to establish whether the principle of equal treatment has been violated, and, if necessary, apply sanctions on the basis of the investigation;
- initiate lawsuits with a view to protecting the rights of persons and groups whose rights have been violated;
- review and comment on drafts of legal acts concerning equal treatment; and make proposals concerning governmental decisions and legislation pertaining to equal treatment;
- regularly inform the public about the situation concerning the enforcement of equal treatment; and
- provide information to those concerned and offer assistance in acting against the violation of the principle of equal treatment.

The Equal Treatment Authority currently fulfils the role of Hungary's "equality body" as referenced in the respective EU directives on equal treatment.

¹ <https://www.egyenlobanasmmod.hu/en>

² <https://www.ajbh.hu/en/web/ajbh-en>

³ The English translation of the ETA is available here:
http://njt.hu/translated/doc/J2003T0125P_20200101_FIN.PDF.

As far as the substantive rules on discrimination under the ETA are concerned, Bill T/13631⁴ on the Amendment of Certain Acts of Parliament Ensuring the More Effective Enforcement of the Requirement of Equal Treatment does not bring along any substantial changes or improvements. Instead, it dismantles the Equal Treatment Authority, and transfers its tasks and competences to the Commissioner for Fundamental Rights. The main concerns around this legislative step are the following:

1. The Parliamentary Committee of Justice Affairs submitted the bill to the Parliament **without any public consultation**. The reasons for the abolition or transformation of an important human rights body such as the Equal Treatment Authority should be public. If there is any problem with how a human rights body functions, that should be discussed with affected groups, civil society organisations, and human rights defenders, and solutions should be proposed accordingly. However, the Equal Treatment Authority's operations have not been publicly criticized by any stakeholders, and **there has been no open debate about its future**. The Equal Treatment Authority is a well-functioning rights protection body, which has been operating to the satisfaction of many civil society organisations defending the right to equal treatment of protected groups.⁵
2. The **haste of the process** gives rise to concerns as well. Bill T/13631 is envisaged to enter into force on 1 January 2021, and the speed of the transformation results that **ongoing procedures will have to be suspended** between 1 and 31 January 2021. (The suspension would affect both administrative procedures conducted by the Equal Treatment Authority, and the judicial procedures aimed at the review of its decisions.) The hastiness of the takeover also makes it questionable whether the Office of the Commissioner for Fundamental Rights will have the necessary **human resources** at its disposal in time, i.e. whether it can be ensured in such a short timeframe that there will be enough staff members in the Ombudsperson's Office with the adequate training and experience to fulfil the new tasks (e.g. if not all staff lawyers of the Equal Treatment Authority choose to be transferred to the Ombudsperson's Office). Instead of "ensuring the more effective enforcement of the requirement of equal treatment", as suggested by the title of Bill T/13631, the uncertainty brought along by the human resources issues and the suspension of the procedures threaten effective enforcement instead.
3. The proposed changes give rise to concerns from the point of view of the sociology of organisations as well. The Equal Treatment Authority has one single focus area: it concentrates exclusively on equal treatment issues. In contrast to that, the **Commissioner for Fundamental Rights has a wide mandate**, spanning from the monitoring of places of detention to environmental protection, and so its **resources and attention are split among the various human rights issues it has to cover**. Therefore, the abolishing of the Equal Treatment Authority and transferring its tasks to the Ombudsperson is certainly a "**dowgrading**" of the requirement of equal treatment, and it is almost certain that it **will result in a decrease in the level of protection** when it comes to discrimination.

⁴ Available here in Hungarian: <https://www.parlament.hu/irom41/13631/13631.pdf>.

⁵ See e.g. the statement of the National Federation of Organisations of People with a Physical Disability (MEOSZ) from 16 November 2020: <http://www.meosz.hu/blog/a-meosz-szerint-veszelybe-kerulhet-a-hatekony-jogervenesites-az-ebh-megszuntetesevel/>.

4. The **functions of the Equal Treatment Authority and the Ombudsperson differ significantly**, and they **use very different tools**, which are not necessarily compatible with each other. The Equal Treatment Authority operates as an administrative authority and issues binding decisions, and its quasi-judicial nature is definitely not compatible with the methods of the Ombudsperson, which issues non-binding recommendations, and whose impact is based primarily on the institution's prestige, the persuasiveness of the legal arguments it presents, and the power of publicity. Furthermore, it can also create problems that Bill T/13631 would explicitly allow the Commissioner for Fundamental Rights to proceed in a case on the basis of the current rules of Act CXI of 2011 on the Commissioner for Fundamental Rights⁶ (e.g. by establishing the violation of a fundamental right and issuing recommendations in a given case), and then, subsequently, also conduct a procedure based on the ETA as an administrative authority, even *ex officio*.⁷
5. The **performance of the current Commissioner for Fundamental Rights with regard to defending the rights of the vulnerable groups of society protected by the ETA gives rise to serious concerns** as well. According to the explanatory memorandum of Bill T/13631, the operation of the Commissioner for Fundamental Rights (the sole Commissioner replacing the former system of four Ombudspersons in 2012) is the guarantee that the "integration" of the Equal Treatment Authority's tasks will "strengthen the effectiveness of the protection of fundamental rights". However, the current Commissioner for Fundamental Rights, in charge since September 2019, has failed to act or act adequately with regard to a number of human rights violations in the past 12 months, and his activities leave much to be desired:⁸
 - The Deputy Ombudsperson stated in January that she "followed with concern" the turbulence around the Gyöngyöspata case, when high-ranking government party politicians launched a concerted public campaign against the court judgment granting non-pecuniary damages to Roma victims of educational segregation in the elementary school of Gyöngyöspata, questioning the court judgment's justness and legitimacy. The statement said the Ombudsperson's Office launched an investigation, but no conclusions have been issued to date. The Ombudsperson remained silent and failed to take any legal steps even when, as a reaction to the Gyöngyöspata case, the Parliament adopted a law that prevents courts from granting pecuniary compensation in similar segregation cases, even though the amendment amounts to indirect discrimination based on ethnicity, and is in violation of EU law.
 - The Ombudsperson has failed to speak up publicly or take any legal steps against a law adopted in May 2020 that prohibited legal gender recognition, violating the rights of intersex and transgender people.
 - Even though the Ombudsperson is the national preventive mechanism under the Optional Protocol to the Convention against Torture, he also has failed to speak up

⁶ Available in English at: <https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>.

⁷ Bill T/13631 would insert the following into Act CXI of 2011 on the Commissioner for Fundamental Rights as Article 39/M (5): "A procedure conducted on the basis of the present Act of Parliament does not exclude that after the closure of that procedure the Commissioner for Fundamental Rights proceeds in the same case, either on the basis of a request or *ex officio*, according to what is set out in the ETA."

⁸ For more details about the examples listed, see: Hungarian Helsinki Committee, *Information note on certain rule of law developments in Hungary between May-July 2020*, 13 August 2020, https://www.helsinki.hu/wp-content/uploads/HHC_Rule_of_Law_update_May-July2020.pdf, pp. 3-4, 8, and 13-14.

against the suspension of compensations to be paid to detainees held in inhuman or degrading conditions in penitentiaries.

Furthermore, it has to be recalled that, after assessing the performance of the previous Commissioner for Fundamental Rights, in October 2019 the Global Alliance of National Human Rights Institutions deferred the review of the Ombudsperson's status as a national human rights institution, partly because the **Commissioner had “not demonstrate[d] adequate efforts in addressing all human rights issues**, nor has it spoken out in a manner that promotes and protects all human rights”, in particular the rights of vulnerable ethnic minorities, including the Roma, migrants, refugees and asylum-seekers.⁹

In contrast to that, the **Equal Treatment Authority has issued important decisions regarding human rights violations that can be regarded as politically particularly sensitive in Hungary** today, such as rights violations affecting the Roma or the LGBTQI community. For example, it found the government-party led municipality of Miskolc in breach of the ETA when it eliminated the town's segregated Roma neighbourhood without taking any measures to protect the residents from homelessness;¹⁰ ruled that the Budapest Mayor's Office had committed discrimination when it blocked its employees' access to LGBTQI-themed webpages;¹¹ condemned the Ministry of Human Resources for declining to list the Rainbow Families Foundation on a website dedicated to family policy matters; and ruled that the municipality of Pécs discriminated against a news site critical of the municipality's work when they were not informed the news site of press events.

Due to the above reasons, the signatories of this statement are of the view that **abolishing the Equal Treatment Authority would be an unjustified and harmful step** by the governing majority, which may **undermine the effectiveness of enforcing the requirement of equal treatment in Hungary**.

The statement was drafted by the Háttér Society, the Hungarian Civil Liberties Union, and the Hungarian Helsinki Committee.

Signatories:

1. Amnesty International Hungary
2. Artemisszió
3. Autonómia Foundation
4. Eötvös Károly Institute
5. Haver Foundation
6. Háttér Society
7. Human Platform Association
8. Hungarian Civil Liberties Union
9. Hungarian Europe Society
10. Hungarian Helsinki Committee
11. Hungarian Women's Lobby
12. MASZK Association

⁹ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 14–18 October 2019, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20October%202019%20English.pdf>, pp. 23–26.

¹⁰ <https://www.equalitylaw.eu/downloads/3786-hungary-court-upholds-equal-treatment-authority-s-decision-on-failure-to-adequately-plan-and-prepare-the-winding-up-of-segregated-roma-neighbourhood-pdf-66-kb>

¹¹ <https://www.equalitylaw.eu/downloads/5086-hungary-budapest-mayor-s-office-unblocks-access-to-lgbtqi-websites-79-kb>

- 13. MENŐK
- 14. Ökotárs Foundation
- 15. Power of Humanity Foundation
- 16. School of Public Life
- 17. Utcáról Lakásba! Egyesület
- 18. Védegylet