



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

**Country:** Hungary  
**Title:** Equal Treatment Authority unable to assess the contents and implementation of equal opportunity plans  
**Date:** 7 May 2020  
**Expert:** András Kádár

#### Context

**Issue at stake:** Whether the contents and implementation of equal opportunity plans adopted by certain employers can be examined and assessed by the Equal Treatment Authority  
**Grounds of discrimination:** Disability, All grounds

#### **Grounds of**

#### **discrimination:**

#### **Field of application:**

**Source:** Employment  
National equality body, decision no. EBH/115/20202, January 2020

**Applicable law:** Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA), Article 17

#### Content

**Case:** In terms of Article 63 of the ETA, so-called budgetary organisations (i.e. organisations funded from the state or municipal budget) and companies whose majority share is held by the state are obliged to adopt equal opportunity plans if they employ more than 50 persons. The complainant and his child both have a hearing impairment. The complainant had worked as a project manager at a budgetary organisation for two years before the organisation went through legal succession. He continued to be employed at the legal successor of the organisation. The predecessor organisation had an equal opportunity plan that was in force between 15 April 2017 and 14 April 2019. Based on the plan the complainant would have been entitled to two days off per month because of his and his child's hearing impairment. However, he was granted only one day off on this basis throughout the two years of his working career with the predecessor organisation (in April 2019). He also complained to the Equal Treatment Authority that in the course of the legal succession of the organisation, the equal opportunity plan was put out of force, and no new plan was adopted in its stead.

In response to the complaint, the employer sent the Equal Treatment Authority the new equal opportunity plan adopted (in response to the complaint) on 28 November 2019. The respondent did not in any way react to the part of the complaint that regarded the days off that would have been due to the complainant.

**Decision of the equality body:** In its decision no. EBH/115/2020 (January 2020) the Equal Treatment Authority concluded that the respondent had violated the complainant's right to equal treatment when it failed to adopt an equal opportunity plan between 14 April and 28 November 2019. The Authority ordered that its decision be published on the Authority's website.

However, regarding the employer's failure to allow the complainant in the course of 2 years altogether close to 50 days off that he would have been entitled to based on his and his child's impairment, the Authority concluded that it was not in the position to examine the matter. The reasoning is as follows. Article 63 of the ETA only prescribes the obligation to adopt an equal opportunity plan, but does not contain any provision regarding the required contents of such a plan, and nor does any other law or lower ranking norm. Therefore, the Authority can only examine whether an equal opportunity plan is in place, but not its content. For the same reason (the lack of any legal provisions on the required contents of equal opportunity plans), the Authority is barred from examining whether or not the employer is actually complying with the obligations it undertakes in the framework of the equal opportunity plan it has adopted.

**Key points of analysis:** The Authority's interpretation renders the obligation to adopt equal opportunity plans meaningless. If taken to the extreme, this approach will mean that any document that is named 'equal opportunity plan' shall be regarded as full compliance with the obligation irrespective of what it contains or whether it contains anything. But even if one accepts that without a proper legal basis, the assessment of the contents of any given plan is not possible for the Authority, the interpretation that compliance with the self-inflicted obligations of the employer cannot be examined either, seems to be highly problematic. Private parties are to a great extent free to determine the contents of their contracts (with only few mandatory elements prescribed by law). However, if one party breaches the contract, the court will be able to sanction that party even if the breached provision was determined by the parties themselves and not by the legislature. In an analogue manner, the Equal Treatment Authority should be able to conclude that a violation of the right to equal treatment was committed if an employer fails to meet the requirements it set for itself in the equality plan. If this is not the case, the equality plan cannot fulfil its function as envisaged by the ETA.

**Internet link source:** <https://www.egyenlobanasmod.hu/hu/jogeset/1152020>.