



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

### FLASH REPORT

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| <b>Country:</b>                   | Hungary  |
| <b>Title:</b>                     | Draft Bill submitted on abolishing the Equal Treatment Authority and transferring its tasks to the Ombudsman   |
| <b>Date:</b>                      | 26 November 2020   |
| <b>Expert:</b>                    | András Kádár   |
| <b><u>Context</u></b>             |  |
| <b>Issue at stake:</b>            | Whether abolishing the Equal Treatment Authority and transferring its tasks to the Ombudsman decreases the level of protection against discrimination            |
| <b>Grounds of discrimination:</b> | All grounds  |
| <b>Field of application:</b>      | All fields   |
| <b>Source:</b>                    | National legislation   |
| <b>Applicable law:</b>            | Draft Bill No. T/13631, Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Act CXI of 2011 on the Commissioner for Fundamental Rights |

### Content

**Law:** On 10 November 2020, Imre Vejkey, MP of the incumbent Fidesz Party and president of the Parliamentary Committee of Justice Affairs, submitted on behalf of his Committee a Bill (Bill No. T/13631) proposing to abolish Hungary's equality body, the Equal Treatment Authority (Authority), and transferring its tasks and competences to the Commissioner for Fundamental Rights (Hungary's Ombudsman) as of 1 January 2021. The bill was put on the Parliament's agenda on the next day.

The Equal Treatment Authority was established by Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA) 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. The Authority is entrusted with all the powers required by the Racial Equality Directive. The Authority may/shall: (i) 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; (ii) initiate lawsuits with a view to protecting the rights of persons and groups whose rights have been violated; (iii) review and comment on drafts of legal acts concerning equal treatment; (iv) make proposals concerning governmental decisions and legislation pertaining to equal treatment; (v) regularly inform the public about the situation concerning the enforcement of equal treatment; (vi) provide information to those concerned and offer assistance in acting against the violation of the principle of equal treatment; (vii) prepare an annual report for Parliament on its activities and its experiences in applying the ETA.

The Authority has conducted a significant amount of work since its inception. Most importantly, it has handed down in politically sensitive cases some very important decisions protecting groups that can be regarded as particularly sensitive in Hungary today, such as the Roma or the LGBTQI community. By way of example, it ruled that the Budapest Mayor's Office had committed discrimination when it blocked its employees' access to LGBTQI-themed webpages,<sup>1</sup> or 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.<sup>2</sup>

The Bill envisages the transfer of all the tasks and competences of the Authority to Hungary's Ombudsman, the Commissioner for Fundamental Rights. The Ombudsman investigates violations of fundamental rights of all types upon a complaint or *ex officio*. Unlike the Authority, the Ombudsman's decisions are not binding. On finding a violation, the Ombudsman issues recommendations to the concerned authority or its supervisory body.

The submission of the Bill was not preceded by any consultation: neither the general public, nor the concerned institutions or other stakeholders (such as organisations representing the interests of people with the protected grounds) were consulted on the planned reorganisation. Several actors, including domestic NGOs<sup>3</sup> and ILGA Europe<sup>4</sup> criticised the plan.

The final vote on the Bill is scheduled for 14 December 2020.<sup>5</sup>

**Key points of analysis:** Whereas the Ombudsman would take over all the tasks and competences of the Authority (including the right to hand down binding decisions and impose sanctions) and the legal staff of the Authority would have the option to continue to work at the Ombudsman's Office, there are several problems with the proposed change. The most important ones are the following:

- The Equal Treatment Authority has been one of the best functioning rights protection bodies in Hungary, not shying away from delivering decisions in sensitive, complex cases to protect vulnerable minority groups. The explanatory memorandum of the Bill does not provide any convincing argument why a well-functioning body that has gained the respect of a wide range of stakeholders, including civil society organisations representing the interests of the protected groups needs to be dismantled.
- The Ombudsman is Hungary's National Human Rights Institution. In October 2019, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) deferred the review of the Ombudsman's A-status because the Ombudsman did 'not demonstrate adequate efforts in addressing all human rights issues, nor has it spoken out in a manner that promotes and protects all human rights'. Also, the CFR [Commissioner for Fundamental Rights, i.e. the Ombudsman] has made limited use of international human rights mechanisms 'in relation to sensitive issues'.<sup>6</sup> Originally, the review was planned to be deferred for one year to

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<sup>1</sup> <https://www.equalitylaw.eu/downloads/5086-hungary-budapest-mayor-s-office-unblocks-access-to-lgbtqi-websites-79-kb>.

<sup>2</sup> <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>.

<sup>3</sup> <http://www.meosz.hu/blog/a-meosz-szerint-veszelybe-kerulhet-a-hatekony-jogervenyesites-az-ebh-megszuntetesevel/> and <https://civilizacio.net/hu/hirek-iejgyzetek/naqyon-rossz-lps-az-egyenl-bnsmd-hatsq-beolvasztsa-az-alapvet-jogok-biztosnak-hivatalba>.

<sup>4</sup> <https://www.ilga-europe.org/resources/news/latest-news/ilga-europe-alarmed-hungarian-parliaments-moves-abolish-national-equal>.

<sup>5</sup> [https://www.parlament.hu/documents/10181/87979/UT\\_20201116\\_elfogadott.pdf/c7a2f5e0-e3a9-a863-5e16-f16f3b6093ef?t=1605537062265](https://www.parlament.hu/documents/10181/87979/UT_20201116_elfogadott.pdf/c7a2f5e0-e3a9-a863-5e16-f16f3b6093ef?t=1605537062265).

<sup>6</sup> 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,

allow the Ombudsman's Office to achieve and present improvements, however, the process has been delayed due to the epidemic, therefore, the Ombudsman's reaccreditation as a fully independent NHRI is pending at the moment, which makes it even more problematic to transfer the widely respected Authority's mandate to him at this point in time.

- Probably linked to this, there was no consultation on the proposed change: neither the concerned bodies, nor stakeholders, including representatives of the protected groups were provided with an opportunity to form and express their opinion on the matter.
- The transition is envisaged to be carried out with unexplainable haste, in less than two months from now (and probably about a month from the coming into effect of the law that is still to be discussed and passed by the Parliament). This will inevitably cause problems and delays in the procedures that are in progress before the Authority and the court reviewing the Authority's decisions. E.g. if not all staff lawyers choose to be transferred to the Ombudsman's Office, the cases need to be redistributed or handed over to employees of the Ombudsman's Office without expertise in the area and prior knowledge of the case. The Bill therefore envisages a suspension of all the cases before the Authority and the court for a month (between 1 and 31 January 2021), but that is unlikely to be sufficient for a smooth transition.
- From the point of view of the sociology of organisations, the proposed change is definitely a 'downgrading' of the issue of non-discrimination, in the sense that this has been the single focus and mandate for the Authority, whereas the Ombudsman's Office is a large organisation with a wide mandate spanning from environmental protection through children's rights to the monitoring of prisons. Consequently, it is almost certain that much less attention will be paid, and most probably much fewer resources will be available for the issue of non-discrimination within the Ombudsman's Office than in the Authority.
- The quasi-judicial nature of the Authority is completely alien to the Ombudsman who relies on recommendations and publicity. This may cause – temporary – problems if some of the Authority's cases need to be taken over by staff members of the Ombudsman's Office, but it also creates a more lasting tension. The Bill recognises and tries to resolve this tension, however, it is doubtful that its approach is sustainable. The problem is the following: since non-discrimination is a fundamental right enshrined in the Fundamental Law (Hungary's constitution), the Ombudsman is already authorised to examine discrimination complaints in his current capacity. If the examination based on the procedural rules of the law on the Ombudsman (Act CXI of 2011) concludes that there was a violation, the Ombudsman may – as described above – issue non-binding recommendations. Under the Bill, after the transition, the complainant would have a choice whether he/she wants the Ombudsman to act in his original capacity or in his capacity as successor of the Authority. In the latter case, the Ombudsman must proceed on the basis of the code of administrative procedure which prescribes much stricter rules regarding a number of issues (such as deadlines, discovery, the warning of witnesses before hearings, etc.) than Act CXI of 2011. Therefore, the same institution will have to address complaints regarding the same right (the right to non-discrimination) on the basis of two different sets of rules with different outcomes (non-binding recommendation versus binding decision including sanctions) depending on the complainant's choice. Furthermore, the Bill proposes that it would also be possible for the Ombudsman to investigate a complaint in his capacity as Ombudsman first, and then, after that examination is completed (e.g. with a recommendation) also as the successor of the Authority if the complainant requests so or the Ombudsman decides so *ex officio* on the basis of the results of the first investigation. However, the quasi-judicial role that the Ombudsman would play (if the Bill is passed) in the second type of procedure requires qualities (such as impartiality) that are impossible to guarantee if he has already investigated the case and concluded that there has been discrimination.

Procedural requirements regarding quasi-judicial procedures would also be compromised. By way of example, under Act CXI of 2011, the Ombudsman may hear any employee of the authority that he is investigating, the Act however does not prescribe the types of warning that the code of administrative procedure requires when an administrative authority hears a witness. This can cause significant problems if the Ombudsman would hear a witness in the quasi-judicial follow-up procedure who was already heard in the first examination and was not duly warned (even if his earlier hearing could not formally be taken into account during the hearing in the follow-up procedure).

**Internet link source:** <https://www.parlament.hu/irom41/13631/13631.pdf>.