



## INFORMATION ON THE ABOLISHMENT OF THE EQUAL TREATMENT AUTHORITY IN HUNGARY

A Briefing Written for the Experts of the Venice Commission on September 15, 2021

### About Háttér Society

Háttér Society, founded in 1995, is the oldest and largest LGBTQI organization in Hungary. It works for a society in which no-one is discriminated against because of their sexual orientation or gender identity, where all members of the LGBTQI community are free to live according to their identity, and receive the help they need to resolve the problems they might face. To achieve these goals Háttér operates various support services including a legal aid service; monitors and documents human rights violations against LGBTQI people; offers training for professionals among them legal practitioners; and advocates for the adoption of laws and policies respecting the human rights of LGBTQI people. During past two decades we provided legal advice to thousands and legal representation to hundreds of LGBTQI people who have become victims of violence, harassment of discrimination.

### Sources of information

Information contained in this material is based on the analysis of relevant legislation, especially Act CXXVII of 2020 on the amendment of certain acts to support the effectiveness of the principle of equal treatment, as well as annual reports of the Equal Treatment Authority, the website of the Commissioner for Fundamental Rights (CFR), response no. AJB-4945-2/2021 of CFR to a freedom of information request submitted by Háttér Society on August 26, 2021, and interviews with former staff members of the Equal Treatment Authority some of whom also continued to work at the Office of the Commissioner for Fundamental Rights (OCFR) after the merger.

### Background on the Equal Treatment Authority

The Equal Treatment Authority (ETA) was an independent public body set up in 2005 to investigate cases of discrimination and harassment on all grounds of discrimination prohibited by Act no. CXXV of 2003 on equal treatment and the promotion of equal opportunities including sexual orientation and gender identity. ETA had the mandate among others to investigate cases of discrimination primarily upon complaint by the victims or *ex officio* in certain cases; initiate lawsuits protecting the rights of persons and groups whose rights have been violated; review and comment on drafts of legal acts concerning equal treatment; make proposals concerning governmental decisions and legislation pertaining to equal treatment; and inform the public and victims of discrimination about equal treatment. ETA received 491 to 2738 complaints every year in the period of 2005-2018. ETA maintained a network of equal treatment officers (*egyenlő bánásmód referensek*) in every county who

received complaints and promoted the principle of equal treatment at both professional and public events. ETA issued guidance on how to comply with the law with regard to school and workplace harassment, educational discrimination, health discrimination and multiple discrimination. As part of a major project funded by European Union sources between 2008-2014 ETA conducted 80 multi-day training sessions on the implementation of the Equal Treatment Act, conducted multiple representative surveys on rights awareness and social attitudes towards various minority groups, and ran a campaign consisting of billboard, radio and TV broadcast to make ETA more known. ETA also maintained a very informative website with the possibility to report cases of discrimination online and with a well-structured searchable database of anonymized case descriptions.

ETA had a very autonomous and principled approach to discrimination and harassment against LGBTQI people not only in cases of discrimination committed by employers, educational institutions, healthcare and other service providers, but also public bodies. For example in 2016 ETA fined the city of Miskolc with a mayor of the governing FIDESZ party for rejecting the application of a local gay group to use the name of the city in the official name of their organization (EBH/420/2016). In 2017 ETA fined a large public university for banning a discussion on LGBTQI topics on campus (EBH/322/2017). In 2017 ETA found that the Ministry of Human Capacities and related companies discriminated against same-sex couples by not including information on family benefits also being available to registered (same-sex) partners on equal footing with spouses and for not including the Rainbow Families Foundation in a public list of family organizations (EBH/450/2017, EBH/456/2017). In 2019 ETA fined the Budapest Mayor's Office for banning access to websites of LGBTQI organizations in the local network of the Office (EBH/157/2019). In Spring 2020, ETA was the only public body that criticized the Government's proposal to ban legal gender recognition for trans persons (Memo no. VII/37/7/2020 of the LGBT Working Group of the Government's Human Rights Roundtable).

### **Adoption of the reform**

The abolishment of ETA took place without any public consultation in a quick parliamentary procedure in the form of a bill put forward by the Justice Committee. This way the Government could avoid the legal duty to organize a public consultation as required by Act CXXI of 2010 on public participation in the preparation of legislation, as the law applies only to bills prepared by ministers. Adopting laws that are initiated by the Government, but submitted to Parliament as private motions of MPs is a common practice of the Government for topics that are highly contested.<sup>1</sup>

Former staff members of ETA interviewed all confirmed that they only heard about the proposal to abolish ETA in the media or on the website of the Parliament. ETA was not consulted in any way of the plans. Prior to the adoption of the law 18 civil society

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<sup>1</sup> For an analysis of this problematic practice see: Hungarian Helsinki Committee - Hungarian Civil Liberties Union - Standards Media Monitor: *Comments of Hungarian NGOs on the Draft Report on the situation of fundamental rights: standards and practices in Hungary and on the Position of the Hungarian Government* May 23, 2013. [https://helsinki.hu/wp-content/uploads/HUN\\_Draft-report\\_Gov\\_NGOs\\_comments\\_20130523.pdf](https://helsinki.hu/wp-content/uploads/HUN_Draft-report_Gov_NGOs_comments_20130523.pdf)

organizations among them several that actively work in the field of equal treatment expressed their opposition to the reform,<sup>2</sup> but their concerns were disregarded.

### **Justification of the reform**

The law abolishing ETA was adopted with the title of “amendment of certain acts of Parliament ensuring the more effective enforcement of the principle of equal treatment”, but the justification of the bill contained no information about how the merger of the two bodies would improve the enforcement of equal treatment. It only makes vague references to other “successful” integrations of rights protection mechanisms, such as the merger of the various parliamentary commissioners to the position of CFR as well as the merger of the Independent Police Complaint Board to CFR. Painting a picture of these mergers as “success stories” is highly problematic, as all of these mergers resulted in lower levels of protection, and have been strongly criticized by civil society organizations working in these fields.

In August 2021, a news item was published on the website of CFR stating that the restructuring of ETA was needed for the efficient spending of public money quoting a report by the State Audit Office (SAO). However, the audit by SAO only found minor deviations from rules and the whole investigation was launched only in March 2021, months after ETA was abolished, so the findings of the report could not have served as the basis for the abolishment of ETA, only its *ex post facto* justification.

We are fully convinced that the abolishment of ETA was not motivated by the will to improve the institutional framework of equal treatment or save public money, but by the Government’s wish to dispose of one of the last autonomous, well-functioning public bodies that was not willing to subject itself to political pressures and acted independently even in cases where its opinions were not in line with the political expectations of the Government. Our interviewees with former staff members confirmed this: they all opined that the activities of ETA especially in the field of LGBTQI rights and Roma school segregation cases were at odds with the political orientation of the Government, and the Government was no longer willing to support the existence of such an independent body.

We are also convinced that the abolishment of ETA cannot be interpreted without taking into consideration the broader political developments in the country in the past two years, namely a concerted political campaign against LGBTQI people by government politicians and pro-government media, the adoption of laws restricting the rights of LGBTQI people (banning legal gender recognition, restricting adoption by non-married persons,<sup>3</sup> banning access to content “portraying or promoting” homosexuality and transgender identities to minors). This hate campaign is part of the Government’s political strategy to polarize the Hungarian society, draw public attention away from systematic corruption, and failures to address the devastating impact of the COVID crises in Hungary in preparation for the next general elections to be held in spring 2022. Having a public body that stands up for the rights of LGBTQI people when those very rights are systematically under attack as part of an electoral

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<sup>2</sup> Statement by Civilizáció in relation to abolishing the Equal Treatment Authority: [https://helsinki.hu/wp-content/uploads/Equal-Treatment-Authority\\_Civilizacio-statement\\_26112020.pdf](https://helsinki.hu/wp-content/uploads/Equal-Treatment-Authority_Civilizacio-statement_26112020.pdf)

<sup>3</sup> See our opinion *Information on Legislative Changes in 2020 Violating the Equality and the Acquired Rights of LGBTI people in Hungary. A Briefing Written for the Experts of the Venice Commission on 21 May 2021*

campaign poses significant political risks for the governing parties. Two of our interviewees also confirmed that LGBTQI rights played a major role in the abolishment of ETA: “The government does not want independent bodies to exist. LGBT and Roma segregation cases were directly going against the direction of recent government action.” One of them also described how the CFR specifically asked her questions on the number of pending sexual orientation and gender identity cases, while not going into details about any other ground showing that LGBTQI issues were a major concern during the merger.

### **Commissioner for Fundamental Rights**

With the abolishment of ETA the tasks and powers of ETA were taken over by the Commissioner for Fundamental Rights (CFR), the impact of that change cannot be assessed without looking at the track record of the current CFR on issues of equal treatment and vulnerable groups. While the institutional position of CFR guarantees its independence, the current CFR does not make use of its powers when it comes to the protection of the rights of vulnerable groups, especially in politically sensitive questions. For example the current CFR has not commented on any of the laws mentioned above restricting the rights of LGBTQI people, and even though several complaints have been submitted by transgender individuals regarding the ban on legal gender recognition, those complaints have not been adjudicated for over a year now, and the only report CFR published on transgender rights came out after the Constitutional Court has already found parts of the law to be unconstitutional, and the report merely repeats the findings of the Court. CFR is similarly inactive in other politically sensitive issues such as the human rights of migrants and asylum seekers. As one of our interviewees told us: “As for migrants, there are reports ready, but left unpublished.”

Civil society organizations are very critical of the inactivity of CFR in these areas. These concerns are shared by the Global Alliance of National Human Rights Institutions (GANHRI), whose Sub-Committee on Accreditation recommended that the CFR be downgraded to B status, as the CFR “has not spoken out in a manner that promotes protection of all human rights.”<sup>4</sup> The tasks and powers of ETA were thus handed over to a public body whose current leadership fails to protect and promote the human rights of all. As one of our interviewees said: “The ombudsman is only independent according to the legislation, but not in reality.”

### **Organizational position of the Equal Treatment Directorate**

Act CXXVII of 2020 envisaged that the equal opportunity related tasks of CFR would be carried out by a separate directorate (Equal Treatment Directorate, ETD) within OCFR. This would have guaranteed a high level of autonomy within OCFR with a publicly visible director appointed by CFR to oversee the work of ETD. However, no director or deputy director have been appointed for over eight months now, even though the positions appear on the organogram of the OCFR.<sup>5</sup> This deviates from earlier practice: when the independent commissioners of national and ethnic minorities and of future generations were integrated or when the Independent Police Complaint Board was integrated, the respective deputy commissioners and director were appointed without delay. As one of our interviewees said: “There is no Director. There is not even information on the search for one. This whole

<sup>4</sup> Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) 14-24 June 2021 <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>

<sup>5</sup> <https://www.ajbh.hu/en/a-hivatal-szervezete>

'directorate' idea was put in place to pretend that there would be more autonomy, and to sell the integration better. But there is no organizational autonomy, it is a department like any other." Another interviewee also confirmed that there was never a will to have a director: "They stated it clearly. There will be no director, this is only a possibility in the law" [ie. not a requirement].

The network of equal treatment officers was abandoned: while the question of whether to maintain the network was open during the discussions about the integration, since no final decision was made, ETA withdrew from the contracts with lawyers after the law was adopted, and no new contracts have been established since the merger. It is not clear whether the network will be reestablished in the future.

The integration of ETA means that there will no longer be a separate budget line in the central budget for tasks related to equal treatment; funds spent in this area could be radically reduced by the CFR.

### **Handling of complaints**

Since the integration, CFR conducts two types of procedures that are very different from each other. Under the Equal Treatment Act the complaints are investigated as part of an administrative procedure with clear deadlines, the possibility to impose fines and other sanctions, and the possibility to seek judicial review if the complainant is not happy with the outcome of the procedure. In case of the procedures under the Act on the Commissioner for Fundamental Rights, CFR only issues recommendations and no binding decisions, and there are no deadlines set for the procedures. In case a complainant does not specify whether they want one or the other procedure, it is up to the OCFR to decide which procedure to start, which allows OCFR to steer complaints away from the more closely regulated administrative procedure to the 'softer' CFR procedure. Internal disputes about which procedure to launch abide, our interviewees reported cases where the complaint clearly fell within the powers of ETD, "but they opted for an ombudsman's office procedure, thus there will be no enforceable decision, and the procedure can be lengthy."

The interviewees also reported other incidents showing that CFR is less likely to take all measures possible to enforce equal treatment. For example if a judicial review finds a decision of ETD unlawful, ETD can turn to the Curia (highest court) for a judicial review. At least in one case concerning a Roma discrimination case launched *ex officio* by ETA, CFR decided not to pursue the case at the Curia: "we would have surely appealed that case in front of the Curia in the previous era, but now it was not appealed."

### **Staff of ETD**

The ability of CFR to carry out its tasks properly is largely dependent on the employment of competent and motivated staff. Several former staff members of ETA left the body as part of the integration procedure, and several others since the integration. According to the response of the OCFR to our freedom of information request, the status of six persons was terminated during the merge. Two of these were related to the reorganization of tasks, both pertaining to administrative tasks; four persons did not accept the new position offered to them. Two more staff members directly involved in investigating complaints have since then also left ETD. All of the current staff of ETD used to work at ETA. Because of people leaving, ETD is currently understaffed. As one interviewee told: "There was a job advertisement

because of the empty positions, but it ended without a result. This is highly unusual. This seems like a bogus action again.”

### **Number of cases reported**

The integration resulted in a drastic drop in the number of complaints. In 2019 (2020 numbers are not available yet), ETA received 868 cases throughout the year. In the first 6 months of 2021, ETD received only 156 complaints, proportionate to the time only one third of the 2019 number of complaints. One interviewee recalled that she used to have 15-20 cases parallelly being investigated, while she only had 2-3 when she left. Interviewees listed the following reasons for such a drastic drop in the number of complaints:

- the termination of the equal treatment officers’ network,
- lack of active communication,
- unclear information on the webpage, which provides “no information on what complainants should do, and how to submit a complaint”,

Interviewees also mentioned the COVID situation, but emphasized that the number of cases decreased even compared to last year, where the COVID situation was already bad.

### **Transparency of decisions**

While on the website of ETA, anonymized summaries of all cases where ETA had found a violation were published as well as all cases where a settlement had been reached. For cases where ETA found no violation, a decision was made collectively depending on whether the decision contained legal argumentation that could be relevant for other cases as well. The database was filterable by year, protected characteristic, type of discrimination and area of discrimination. The website of ETA is no longer available, not even in an archived form. The CFR website only allows to browse cases by year, and while CFR wishes to upload all cases between 2012 and 2020, currently only the 2020 and 2021 cases are available, and there is no will to upload cases decided between 2005 and 2011, even though that earlier period was crucial in setting precedents in the application of the law after its adoption. All of our interviewees said that not publishing case summaries in a structured way will make the work of ETD less transparent, and will not encourage people to submit complaints if they do not see what kind of cases other people have brought forward.

### **Overall assessment**

Háttér Society was among the civil society organizations who were very critical of the abolishment of the Equal Treatment Authority when the bill was introduced in the Parliament. The first eight months of ETD’s work confirmed that our concerns were valid. The merger of ETA to CFR ‘downgraded’ the issue of equal treatment rather than improved the effectiveness of its enforcement as the title of the law suggests. The fact that no director or deputy director has been appointed, that several staff members have left ETD, that there are vacancies that are not filled, that complaints are not investigated under the Equal Treatment Act, but under the much softer CFR procedure, and most importantly the drastic drop in the number of cases shows that the merger raises serious concerns about the enforcement of the principle of equal treatment in Hungary.