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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

HUNGARY

**ACT CXXVII OF 2020
AMENDING CERTAIN LAWS
TO ENSURE MORE EFFECTIVE ENFORCEMENT
OF THE REQUIREMENT OF EQUAL TREATMENT***

EXTRACTS AMENDING

**ACT CXXV OF 2003
ON EQUAL TREATMENT AND PROMOTION
OF EQUAL OPPORTUNITIES**

AND

**ACT CXI OF 2011
ON THE COMMISSIONER FOR FUNDAMENTAL RIGHTS**

**Non-official translation*

1. Amendment of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities

Section 1 In Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter referred to as "Ebkvt."), the following Section 13 shall be inserted in the Subtitle "Certain rules relating to the enforcement of the requirement of equal treatment":

"Section 13 (1) The Commissioner for Fundamental Rights (hereinafter referred to as the "Authority") shall act in the framework of administrative proceedings in the cases provided for in this Act.

(2) The Budapest-Capital Regional Court shall have exclusive jurisdiction to hear administrative proceedings against decisions made by the Authority under this Act. Legal representation is mandatory in the proceedings."

Section 2 Subsections (1)-(3) of Section 14 of Ebkvt. shall be replaced by the following:

"(1) The Authority shall

a) upon request, conduct an investigation of its own motion or in the cases provided for in this Act, to determine whether the requirement for equal treatment has been infringed and examine, upon request, whether employers obliged to do so have adopted an equal opportunities plan, and shall make a decision on the basis of the investigation;

b) initiate lawsuits to protect the rights of persons and groups who have had their rights violated under the assertion of claims of public interest;

c) give its opinion on legislation on equal treatment, instruments governing public bodies and draft reports;

d) propose government decisions and legislation concerning equal treatment;

e) regularly inform the public and Országgyűlés (Hungarian Parliament) of the situation regarding equal treatment;

f) co-operate in the performance of its duties with civil and advocacy organisations and with the public bodies concerned;

g) provide those concerned with continuous information and assistance in tackling violations of equal treatment;

h) contribute to the preparation of government reports on the requirement for equal treatment for international organisations, in particular the Council of Europe;

i) contribute to the preparation of reports to the Commission of the European Union on the harmonisation of directives on equal treatment;

j) - perform, with the exception provided for in a government decree, the tasks of the enforcement body as defined in Article 14 of Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

(2) In order to keep the public informed, the Authority shall regularly publish its reports, proposals and detailed information on its operation on its website.

(3) The Authority may not examine the decisions and measures adopted by the Országgyűlés, the President of the Republic, the Alkotmánybíróság (Constitutional Court), the Állami Számvevőszék (State Audit Office) and the courts and the public prosecutor's office."

Section 3 The following Subsection (1a) shall be inserted in Section 17/A of Ebkvt.:

"(1a) The fine referred to in Paragraph d) of Subsection (1) shall constitute revenue for the central budget."

Section 4 Subsection (3) of Section 18 of Ebkvt. shall be replaced by the following:

"(3) If a breach of the requirement for equal treatment or an imminent threat thereof was based on a characteristic as defined in Section 8, which is an essential feature of each person's personality and affects a major group of persons who cannot be precisely defined, the organisation referred to in Subsection (1) may bring proceedings before the Authority."

Section 5 Subsection (1) of Section 20 of Ebkvt. shall be replaced by the following:

“(1) In the event of a breach of the requirement for equal treatment, a lawsuit may be initiated before a court for the enforcement of a personality right, as an employment action and in connection with a public service by

- a) the public prosecutor;
- b) the Authority;
- c) the civil and advocacy organisation,

if a breach of the requirement for equal treatment or an imminent threat thereof was based on a characteristic as defined in Section 8, which is an essential feature of each person’s personality and affects a major group of persons who cannot be precisely defined.”

Section 6 The following Section 67 shall be inserted in Ebktv.:

“Section 67 Paragraph j) in Subsection (1) of Section 14 sets out the provision required to implement Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.”

Section 7 Chapter V/A of Ebktv. shall cease to apply.

3. Amendment of Act CXI of 2011 on the Commissioner for Fundamental Rights

Section 9 In Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter referred to as “Ajbt.”), the following Subsection (8) shall be inserted in Section 2:

“(8) The Commissioner for Fundamental Rights shall perform the tasks laid down in Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (hereinafter referred to as ‘Ebktv.’).”

Section 10 The following Chapter III/C shall be inserted in Ajbt.:

“CHAPTER III/C PROCEEDINGS UNDER EBKTV.

Section 39/M (1) In the course of performing the tasks specified in Ebktv., the Commissioner for Fundamental Rights shall act within the framework of proceedings for an administrative authority.

(2) If, based on the petition, the proceedings can be initiated under both this Act and Ebktv., proceedings shall be initiated according to the statement from the petitioner. If, on the basis of the petitioner’s statement, the petitioner requests proceedings to be initiated under Ebktv., the petition shall be regarded as an application made under Ebktv.

(3) If the petitioner does not make a statement or requests the initiation of both proceedings, the Commissioner for Fundamental Rights, with the exception specified in Subsection (4), shall initiate proceedings under Ebktv. and shall notify the petitioner thereof within 10 days, in which case the petition shall be regarded as an application made under Ebktv.

(4) If, in a case relating to the enforcement of the rights of the nationalities living in Hungary, the petitioner does not make a statement, or requests the initiation of both proceedings, the Commissioner for Fundamental Rights shall make a decision based on the proposal of the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of the nationalities living in Hungary as to whether initiating proceedings under this Act or under Ebktv. shall be considered justified.

(5) The Commissioner for Fundamental Rights may not examine the administrative decision made under this Act in the proceedings specified in Subsection (1).

(6) The proceedings conducted under this Act shall not preclude that, after their conclusion, the Commissioner for Fundamental Rights, upon request or ex officio, may initiate proceedings in the same case under the provisions of Ebktv.

(7) The performance of the tasks of the Commissioner for Fundamental Rights specified in Ebktv. shall be carried out by a separate organisational unit of the Office designated for this purpose.

(8) The separate organisational unit of the Office specified in Subsection (7) shall co-operate

with the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of the nationalities living in Hungary in cases related to the enforcement of the rights of the nationalities living in Hungary, and with the head of the separate organisational unit of the Office specified in Subsection (3a) of Section 41 in cases related to police measures and the omission thereof, and to the use of coercive instruments and police complaints.

(9) In the course of performing the tasks specified in Ebktv., the Commissioner for Fundamental Rights may act in person or via members of staff authorised to take action.”

Section 11 (1) The following Subsections (2e)-(2h) shall be inserted in Section 42 of Ajbt.:

“(2e) The Commissioner for Fundamental Rights shall exercise employer’s rights over the head of the separate organisational unit under Subsection (7) of Section 39/M.

(2f) The head of the separate organisational unit under Subsection (7) of Section 39/M shall be entitled to a salary identical to the upper limit of the Pay Scale applicable to permanent secretaries of state under the Government Administration Act (Kit.) and allowances identical to those of a permanent secretary of state, as well as to 20 working days of supplementary executive leave in every calendar year.

(2g) While carrying out this activity, the head of the separate organisational unit under Subsection (7) of Section 39/M shall bear the title of “General Director for Equal Treatment”.

(2h) The head of the separate organisational unit under Subsection (7) of Section 39/M shall be assisted in their work by a Deputy General Director. The Deputy General Director shall be entitled to a salary identical to the upper limit of the Pay Scale applicable to deputy secretaries of state in accordance with Kit. and to allowances identical to those of a deputy secretary of state, as well as to 15 working days of supplementary executive leave per calendar year.”

(2) Subsections (3)-(3d) of Section 42 of Ajbt. shall be replaced by the following:

“(3) The Commissioner for Fundamental Rights shall exercise employer’s rights – with the exception of the right of appointment and the right of dismissal specified in Subsections (3a) – (3c) – over civil servants employed by the Office.

(3a) Civil servants employed under Subsection (4) shall be appointed and dismissed by the Deputy Commissioner for Fundamental Rights.

(3b) Civil servants employed at the separate organisational unit mentioned under Subsection (3a) of Section 41 shall be appointed and dismissed by the head of the separate organisational unit under Subsection (3a) of Section 41, with the consent of the Commissioner for Fundamental Rights.

(3c) Civil servants employed at the separate organisational unit mentioned under Subsection (7) of Section 39/M shall be appointed and dismissed by the head of the separate organisational unit under Subsection (7) of Section 39/M, with the consent of the Commissioner for Fundamental Rights.

(3d) The contents of Subsection (3) shall be applicable to employees employed by the Office; the contents of Subsection (3a) shall be applicable to employees employed under Subsection (4); the contents of Subsection (3b) shall be applicable to employees employed at the separate organisational unit under Subsection (3a) of Section 41; the contents of Subsection (3c) shall be applicable to employees employed at the separate organisational unit under Subsection (7) of Section 39/M on the understanding that ‘appointment’ shall designate the conclusion of the contract of employment, and ‘dismissal’ shall designate the termination of employment.”

(3) The following Subsections (3e) and (3f) shall be inserted in Section 42 of Ajbt.:

“(3e) In the event that the Deputy Commissioner, the head of the separate organisational unit mentioned under Subsection (3a) of Section 41, or the head of the separate organisational unit mentioned under Subsection (7) of Section 39/M is prevented from attending to their duties, or if the relevant position or post is vacant, the right of appointment and the right of dismissal under Subsections (3a)-(3c), as well employer’s rights under Subsection (3d), shall be exercised by the Commissioner for Fundamental Rights.

(3f) The Office shall endeavour to give due representation to women, ethnic, minority and disadvantaged groups within the staff of the Office.”

Section 12 The following Section 45/D shall be inserted in Subtitle 15 of Ajbt.:

“Section 45/D (1) The Equal Treatment Authority, by way of merging into the Office of the

Commissioner for Fundamental Rights, shall cease to exist as of 1 January 2021, and its general legal successor shall be the Commissioner for Fundamental Rights. In the case of civil servants and employees of the Equal Treatment Authority, the provisions of Küt. on legal succession in the person of employer shall be applied.

(2) The Commissioner for Fundamental Rights shall be entitled to process the data processed by the Equal Treatment Authority.

(3) In the case of administrative cases falling within the scope of Ebktv., proceedings which are pending on 1 January 2021 shall be suspended until 31 January 2021.

(4) Administrative court actions brought against the decisions made under Ebktv. which are pending on 1 January 2021 shall be suspended until 31 January 2021.

Section 13 The following Subtitle 16/A shall be inserted in Ajbt.:

“16/A Compliance with EU law

Section 46/A This Act serves the purpose of compliance with the following legal acts of the European Union:

a) Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC;

b) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

c) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; and

d) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.”

Section 14 With regard to Ajbt.

a) in Subsection (1) of Section 2, the phrase “the public administration organ monitoring the enforcement of the requirement for equal treatment, the National Authority for Data Protection and Freedom of Information” shall be replaced by the phrase “National Authority for Data Protection and Freedom of Information”;

b) in Subsection (3a) of Section 41 the phrase “independent organisational unit” shall be replaced by the phrase “separate organisational unit”;

c) in Subsections (2b), (2c) and (2d) of Section 42 the phrase “independent organisational unit” shall be replaced by the phrase “separate organisational unit”.