

Government Decree 362/2004 (XII. 26.)

Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Rules of its Procedure

On the basis of the authorization included in Article 64 of Act CXXV of 2003 on the principle of equal treatment and the promotion of equal opportunities, the Government makes the following order:

Article 1¹ (1) Equal Treatment Authority (hereinafter called: Authority) is a central agency. The Authority is overseen by the minister of social affairs and labour (hereinafter called: Minister).

(2) The Authority is a budgetary organization, operating independently, having a complete scope of authority over the budgetary estimates.

(3) The seat of the Authority is located in Budapest.

Organisation and Management of the Authority

Article 2 (1) The Authority is headed by its President, appointed and withdrawn by the Prime Minister at the joint recommendation of the Minister of Social Affairs and Labour and the Minister of Justice. The appointment is made for an indefinite period of time, in accordance with the relevant provisions of Act XXIII of 1992 on the legal status of public officials (hereinafter called: Act on Public Officials).

(2) Such a solicitor of Hungarian nationality may be appointed for the position of president and vice-president, who has a clean record, is an eligible voter, has an outstanding knowledge on the area of the enforcement of the obligations of equal treatment or the protection of human rights, who passed a specialist examination on law and has a practical working experience of at least 5 years in a job requiring a law diploma or spent in public administration.

(3) In accordance with the relevant laws and regulations, the President controls the operation of the Authority, acts on behalf of it and exercises the employer's rights over the vice-president and public officials of the Authority.

(4) Except for the appointment and withdrawal, the employer's rights over the President of the Authority are exercised by the Minister.

Article 3 The vice-president of the Authority is appointed and withdrawn by the President for an indefinite period of time, in accordance with the relevant provisions of the Act on Public Officials.

Assignment of the public administration agency responsible for supervising compliance with the obligations of equal treatment²

Article 4³ The Government assigns the Equal Treatment Authority to supervise compliance with the obligations of equal treatment as a public administration agency having a national scope of authority.

Detailed rules of procedure of the Authority

Article 5 In the course of its procedures conducted on the basis of its powers provided for in Article 14(1)a) of the Act on Equal Treatment, the Authority shall act according to the provisions of the relevant laws and regulations, as well as the provisions of Articles 6-15 hereunder.

Parties participating in the procedure

¹ Established by: Article 1 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

² Enacted by: Article 2 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

³ Established by: Article 2 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

Article 6 (1)⁴ For the purposes of this Decree:

a) *an applicant*: is a private individual, a legal entity or an organisation without legal entity who/which, on the basis of Article 15(1)a) or Article 20(1)b) of the Act on Equal Treatment, instigated the establishment of the violation of the principle of equal treatment, or would have been entitled to instigate it and is qualified as a Partner within the procedure;

b) *a person drawn under procedure*: is a private individual, a legal entity or also an organisation without legal entity, against whom/which a procedure is conducted in order to establish the violation of the provisions ensuring equal treatment.

(2)⁵ If a non private individual partner is dropped out of a procedure instigated at a request received, its legal successor shall take its place according to the provisions of the civil law. In such a case, the obligations or rights established in a legally effective decision of the authority made in the course of the procedure instigated at a request shall be binding on the legal successor.

Withholding or communication of notices⁶

Article 6/A⁶ The Authority may decide not to give notice to the Partner about the instigation of a procedure if there are reasonable grounds to assume that the notice would counteract the completion of evidence, or some specific actions of evidence. If the Authority decides to give notice, it must be communicated within 8 days reckoned from the instigation of the procedure, or from the receipt of the relevant request.

Deadline for settlement

Article 7 (1)⁷ The Authority shall make its actual decision within seventy-five days reckoned from the presentation of the request or the instigation of the procedure by the Authority ex officio, respectively.

(2)⁷ The Authority shall make its actual decision out of term, but not later than within forty-five days reckoned from the presentation of the request or the instigation of the procedure by the Authority ex officio if:

a) the Partner is minor,

b) the procedure was instigated by the parliamentary commissioner on the basis of Article 18(3) of Act LIX of 1993 on the Ombudsman (parliamentary commissioner) for civil rights, or

c) the procedure was instigated by the prosecutor.

Representation⁸

Article 7/A⁸ (1) In the case of representations defined in Article 18(1) of the Act on Equal Treatment, the social or interest representation organization shall prove its right for representation by presenting its Deed of Foundation or Statutes, as well as the written authorization received from the Partner.

(2) In the case of a failure to prove its right for representation according to the provisions of the above paragraph (1), and if the call of the Authority for doing so brings no results, the Authority shall issue an order to reject the involvement of the representative.

Official mediators⁹

Article 7/B⁹ In a procedure affecting a significant number of Partners, the Authority may employ an official mediator.

Suspension of the procedure¹⁰

⁴ Numbering amended by: Article 3 of Government Decree 332/2006 (XII.23.)

⁵ Enacted by: Article 3 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

⁶ Enacted by: Article 4 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

⁷ Amended by: Article 12(2)a) of Government Decree 332/2006 (XII.23.)

⁸ Enacted by: Article 5 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

⁹ Enacted by: Article 6 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

¹⁰ Enacted by: Article 7 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

Article 7/C¹⁰ Considering the time consuming nature of expert opinions, the Authority may suspend the procedure at the time of the appointment of an expert or when requesting an expert opinion, until the receipt of such an opinion.

Summons and notices¹¹

Article 8 (1)¹⁰ If a personal hearing is necessary during the procedure, and the person concerned has no address at the place where the Authority has its seat, the person shall be summoned to the seat of the mayor's office of that local government within the territory of which the person lives or resides. The hearing of the person summoned shall be conducted by the Authority.

(2)¹⁰ If during the procedure the Authority conducts a trial, the persons to be questioned there shall be summoned to the seat of the mayor's office of that local government, within the territory of which the applicant lives or resides.

(3)¹⁰ If the entity drawn under the procedure is

a) a local government or a local governmental association operating with the participation of the local government,

b) a budgetary organization maintained by the organizations indicated under the above point a),

c) a foundation, public foundation, social organization established or supported by the organizations mentioned under the above point a), or

d) a business enterprise operating with the participation of the organisations listed in the above points a)-b)

mentioned in the above paragraphs (1)-(2), the persons concerned shall be summoned to and/or noticed at the seat of the mayor's office of the local government of that settlement not involved in the procedure, which is the easiest to access from their domicile or place of residence.

(4) If the application of the provisions of paragraphs (1)-(3) causes unreasonable difficulties or a delay in the procedure, the Authority may summon the persons to be questioned to its own seat, in which case the Authority shall reimburse the costs of such an attendance.

Trials during procedures instigated by reporting

Article 9 (1) In the course of procedures instigated by reporting, the Authority shall conduct a trial, except for cases defined in paragraph (2).

(2) The Authority may forbear from conducting a trial if

a) it is obvious that the application has no grounds,

b) the factual and legal judgement of the case is straightforward and the documents provide a firm ground for making a decision,

c) conducting a trial would cause unreasonable difficulties, with a special regard to the stipulations of Article 8(2),

d) it infringes the interests of the applicant, or

e) it is the definite request of the applicant.

(3)¹² The Authority may pass a decision about the agreement reached between the Partners only at a trial held in the joint presence of both the applicant and the person drawn under the procedure.

(4)¹³ The Authority shall decide about abstaining from the trial in an order.

Article 10 (1) Unless otherwise stipulated in the present Government Decree, the trial conducted by the Authority is open.

(2)¹⁴ Publicity may be disallowed by the Authority in a justified decision regarding the entire trial, or a part thereof, if that is absolutely necessary in order to keep state secrets, secrets of service, business secrets or any other secrets defined in a separate law confidential.

¹¹ Established by: Article 8 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

¹² Amended by: Article 12(2)b) of Government Decree 332/2006 (XII.23.)

¹³ Amended by: Articles 12(2)c) and 12(3) of Government Decree 332/2006 (XII.23.)

¹⁴ Amended by: Article 12(2)d) of Government Decree 332/2006 (XII.23.)

(3) The Authority may disallow publicity in order to protect public morals, as well as at the request of the Partner also in such cases when it is justified for the protection of the personality rights of the particular Partner.

(4) At their request, the Authority shall question the applicant, the person having reported about the violation of the obligation of equal treatment in the absence of the person drawn under the procedure.

(5)¹⁵ The Authority shall provide for the closed trial and the hearing in the absence of the person drawn under the procedure in a separate order.

Article 11 (1) After the opening of the trial, the Authority provides a short briefing on those documents generated during the preparation of the trial, which the Partners present may look into, based on the provisions of a separate legislation.

(2) Following the introduction of the position of the applicant, the person drawn under the procedure also introduces its position regarding the case.

(3) If it proves to be necessary for the establishment of the state of affairs, the Authority calls upon the Partners to make their representations and conducts the evidence procedure.

(4) Before the trial is adjourned, the Authority is obliged to warn the Partners about the adjournment and ask whether they wish to present anything else.

Participation of an expert in the procedure

Article 12 If it proves to be necessary to involve an expert in the procedure and the Authority has not got a public official of its own with appropriate knowledge available, without violating the interests of the Partner, the Authority shall contact first of all that agency, at which the person whose interests were violated could have also initiated the procedure, based on the provisions of Article 15(1)b) of the Act on Equal Treatment.

Special rules of evidence

Article 13 (1) The Authority may conduct tests in order to check compliance with the obligation of equal treatment. During such testing, the Authority involves other persons that are different regarding their position, characteristics or attributes (hereinafter called collectively: characteristics) defined in Article 8 of the Act on Equal Treatment, but are otherwise similar and puts them into an identical situation regarding the conduct, measures, condition, omission, instruction or practice (hereinafter called collectively: disposition) of the person drawn under the procedure, and examines the disposition of the person drawn under the procedure regarding compliance with the obligation of equal treatment.

(2) The results of such testing may be used as an evidence during procedures instigated because of the violation of the obligation of equal treatment.

(3) For the examination described in the above paragraph (1), the Authority may involve people working under other relationship aimed at employment, as well as employees having a temporary employment book on the basis of the provisions of Act LXXIV of 1997 on employment with a temporary employment book and on the simplified procedures for payment of associated public dues. For such a participating person, the Authority issues a letter of commission which includes the name of the person involved, as well as a description of the types of examination that may be conducted at the various persons drawn under such a procedure.

Costs of procedure

Article 14¹⁶ During an official public administration procedure conducted because of the violation of the obligation of equal treatment, all the costs incurred as a result of the application of the special rules of evidence defined in the above Article 13, the costs incurred in connection with the use of legal assistance within Hungary, as well as the costs incurred in connection with the procedural actions of the Authority conducted outside of its seat are qualified as other procedural costs.

¹⁵ Established by: Article 9 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

¹⁶ Established by: Article 10 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

Utilization of penalty¹⁷

Article 14/A¹⁷ (1) 50% of the penalty imposed by the Authority on the basis of Article 16(1)d) of the Act on Equal Treatment shall be used by the Minister for the purposes of programmes promoting compliance with the obligation of equal treatment and the equality of opportunities, while 50% shall be used by the Authority as its own revenues for the purposes defined in paragraph (2) below.

(2) The amount received from the penalty defined in the above paragraph (1) shall be used by the Authority for the following purposes:

- a) expenditure related to the operation of the Equal Treatment Advisory Board;
- b) publication of guides, brochures in connection with the obligation of equal treatment, issue of pamphlets widely publicising the activities of the Authority;
- c) organization and management of professional conferences, events;
- d) professional training for the public official staff of the Authority;
- e) assignments of experts supporting the activities of the Authority;
- f) support for the training of knowledge relating to the obligation of equal treatment.

Recommendations and reports of the Authority, publicity of its activities

Article 15¹⁸ The Authority makes its recommendations regarding the contents of statutory regulations to the minister responsible for the preparation of the particular piece of legislation, as well as to the Minister of Justice and Law Enforcement.

Article 16 (1) In order to provide continuous information for the general public, the Authority regularly publishes its reports, recommendations and detailed information regarding its operation in its homepage.

(2) The Authority publishes its decisions but without the data necessary for the identification of the offender, i.e. in an anonymous format, if it seems necessary for the prevention of the violation of the obligation of equal treatment, or for the mitigation of the extent of the grievance.

Articles 17-21¹⁹

Provisions of enforcement and closing provisions

Article 22

(1) This Decree shall come into force on 1st January 2005.

(2) This Decree, together with the Act on Equal Treatment is aiming at the compliance with Article 13 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹⁷ Enacted by: Article 11 of Government Decree 332/2006 (XII.23.); Effective as from: 01.01.2007

¹⁸ Modified by: Article 12(2)e) of Government Decree 332/2006 (XII.23.)

¹⁹ Repealed together with the former sub-heading by: Article 12(3) of Government Decree 332/2006 (XII.23.); Ineffective as from: 01.01.2007