

EBH Booklets

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*Multiple discrimination
in the Equal Treatment Authority's case-law*

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BÁNÁSMÓD HATÓSÁG

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I. Introduction

In 2015 the Equal Treatment Authority (Egyenlő Bánásmód Hatóság (EBH) in Hungarian, hereinafter referred to as the Authority) decided to launch a series of specialised publications entitled EBH Booklets. The first booklet in the series was about workplace harassment, the second concerned harassment at school, the third discussed what is known as “other situation” as a protected characteristic, and the fourth summarised the Authority’s experience with respect to discrimination in education. These publications are available on the Authority’s website.

Over the past years the Authority has investigated numerous cases in which the petitioners linked the grievance or grievances they had suffered to more than one so-called protected characteristic. There were also some cases in which the Authority itself assessed that the petitioner had been subject to a disadvantage for reasons also attributable to other protected characteristics than the characteristic or characteristics expressly mentioned in their complaint. Since recently the concept of multiple discrimination has been evolving dynamically, and its discussion is increasingly gaining ground in the case-law and other activities of European equality bodies and other internal legal fora, and, moreover, the Authority also boasts relevant experience in this area, we decided to devote the present publication to this topic.

Although our previous publications have already presented the most important information about the Authority and the concept of discrimination, before turning to the topic of the present publication we would like to preface the discussion with a brief review of the relevant terms and concepts, especially with respect to the range of protected characteristics. We should also note in this context that the present publication will not include a discussion of the concept referred to as “other situation” as a protected characteristic or its interpretation in the Authority’s case-law since we already addressed this issue in a previous booklet of this series.

About the Authority

In Hungary, the Equal Treatment Authority is responsible for monitoring the implementation of the principle of equal treatment, and its jurisdiction extends ac-

ross Hungary. The Authority is an independent and autonomous administrative body that was created in 2004. It is only subject to the law and is bound by outside instructions concerning the performance of its responsibilities. It performs its responsibilities separately from other bodies and free of outside influence. All its responsibilities must be laid out in law. The President of the Equal Treatment Authority is nominated by the Prime Minister and appointed by the President of the Republic for a term of nine years.

The Authority's primary responsibility and main activity is to investigate complaints and reports filed concerning cases involving alleged discrimination. Its work in this area is helped by a nationwide network of equal treatment consultants. The Authority conducts its investigations in the framework of public administration procedures.

The legal framework for the activities of the Equal Treatment Authority is set out in Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter referred to as the Ebktv pursuant to the Hungarian abbreviation).

Detailed information about the Equal Treatment Authority is available on the Authority's website.

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Discrimination

Discrimination is a violation of the principle of equal treatment. According to the Ebktv, the principle of equal treatment is violated – in other words discrimination occurs – when an individual or a group of individuals are subjected to a disadvantage because of one or more protected characteristic he/she/they possess.

The protected characteristics

Protected characteristics are the characteristics and personal features enumerated in the Ebktv, which may not be used as grounds for adverse differential treatment since that would constitute a violation of the principle of equal treatment, in other words discrimination.

The protected characteristics listed in the Ebktv are the following:

- a) gender,
- b) racial origin,
- c) skin colour,
- d) nationality,
- e) belonging to a national or ethnic minority,
- f) mother tongue,
- g) disability,
- h) health condition,
- i) religion and belief,
- j) political or other opinion,
- k) family status,
- l) motherhood (pregnancy) or fatherhood,
- m) sexual orientation,
- n) gender identity,
- o) age,
- p) social origin,
- q) financial status,
- r) limited term or part time employment or other form of work contract,
- s) membership in a trade union,
- t) other situation, characteristic or attributes

As is apparent, the Ebktv tends to extend protections to innate characteristics that are either permanent, immutable or difficult to change. In line with international practice, the Ebktv typically protects characteristics that are essential features of a person's character, lend themselves to group formation, may give rise to prejudice and are associated with some form of underprivilege.

The topics of the publication

Since multiple discrimination and its various subtypes and manifestations are relatively new concepts and terms even in the anti-discrimination literature, **a brief conceptual and historical review** – including the evolution of the relevant European legal theory and practice – is definitely in order. Once that is concluded, we turn to the **issue of the particularities and special features of the Hungarian legal regulation and the Authority’s application of the law with respect to multiple discrimination**. Finally, we present a **few cases** in the Authority’s case-law **which involved multiple discrimination**.

II. Multiple discrimination

An overview of the underlying concepts

The recognition and conceptual definition of the phenomenon of multiple discrimination is relatively recent. The concepts of multiple discrimination, which involves protected characteristics that apply in parallel and independently, and intersectional discrimination, which involves the mutual interaction between inextricably linked protected characteristics that mutually impact one another, first appeared in anti-discrimination literature in the late 1980s. It was first described by the American scholar KIMBERLÉ CRENSHAW who observed the phenomenon in the context of her studies on the discrimination suffered by Afro-American women, where she found that in such cases the subject's status as women, their racial background and skin colour were closely linked to one another and exerted a joint impact which led to the everyday disadvantages that Afro-American women experience. This helped Crenshaw recognise that individuals might belong to several underprivileged groups at the same time, that is they could simultaneously possess more than one protected characteristic, which might in turn give rise to special forms of discrimination against them. It was on the basis of this insight that Crenshaw and other scholars began to critique the single ground approach to understanding discrimination, which is based on the consideration of just one protected characteristic with regard to the given person. This approach looks at the disadvantage that the person with a protected characteristic has suffered strictly in the narrow context of that single protected characteristic, the grievance is examined only in terms of its relationship with this single characteristic, and it is attributed exclusively to this one characteristic or feature. Scholars argue that the approach based on the model of a single grievance often impedes a full understanding and mapping of the actual processes of discrimination.¹

The basis for the recognition and investigation of the phenomenon of multiple discrimination is the insight and awareness that every person has multiple identities (protected characteristics) at the same time. If we turn the pages of this publi-

¹ Tackling Multiple Discrimination. Practices, policies and laws. European Communities, 2007, p. 15

cation back to where the protected characteristics are listed, we will find that we all have many protected characteristics. What this means at the same time is that every individual is potentially liable to suffer multiple discrimination.² Still, there are characteristics the simultaneous presence of which – according to researchers and in the practical experience of those applying the law – is more likely to give rise to discrimination. One such example is the combination of the protected characteristics ethnic origin (in Hungary, this typically means Roma origin) and skin colour. In other European countries it is religious belief in combination with female gender in the case of women who wear headscarves.

The academic literature on the subject distinguishes between various types of discrimination on the grounds of more than one protected characteristic which exert their impact together and at the same time. We should also note in this context, however, that – since the underlying phenomena have been recognised only fairly recently and the concepts are also relatively new, as is the relevant research on the subject – the academic literature is not consistent in its use of the various designations, the use of the relevant concepts is continuously shifting and often in flux (researchers and legislators, too, often change up the individual concepts and their definitions).

The first basic type of multiple discrimination is discrimination on the grounds of **several protected characteristics that apply at the same without any interaction between them (this is what we refer to simply as multiple discrimination in the discussion of specific cases below)**. What this means is that the protected characteristics of the individual in question do not intersect, they are distinct and can be separated, that is they each exert a distinct and separate impact on the discrimination suffered by the person. This would be the case, for example, when a woman who is affiliated with an ethnic minority is discriminated against as a woman in one situation while she suffers a disadvantage as the member of a minority in another. In the first case, her minority status is immaterial to the discrimination, while in the second her female gender plays no role in it.³

The second type is **compound discrimination**, which describes a situation in which an individual suffers a disadvantage in connection with two or more protected characteristics that apply to them at the same time, in a manner that the

2 Ibid., p 36

3 Ibid., p16

presence of one characteristic compounds the impact of the other. An example would be the British case (*Perera v Civil Service Commission*) in which an employer specified several criteria for the position in question, such as age, work experience in the United Kingdom, a knowledge of English and citizenship. Failing to satisfy any one of these criteria would not have disqualified the complainant, although it would have obviously diminished her chances. The failure to satisfy further requirements for the position compounded the impact of the initial factor, however, which led to her chances dropping further still, with the result that ultimately she did not get the position in question.⁴

The third type of multiple discrimination is **intersectional discrimination** and it describes a situation when several protected characteristics apply at the same time and their respective impacts interact in a way that renders them inseparable. An example would be the case of a woman who belongs to an ethnic minority (e.g. she is affiliated with the Roma minority), and as a woman she faces a somewhat different form of discrimination than the men in the same minority as a result of the inseparable impact of being at the same time both a member of a minority *and* a woman.⁵ We should note in this context that based on recent trends, both the academic and the legislative focus is shifting towards an emphasis on understanding and tackling this type of discrimination in particular.

Summarising the above, when referring to multiple discrimination we fundamentally mean situations when...

- there is more than one protected characteristic that applies – rather than more than one grievance suffered by the person (fundamentally, multiplicity in this context refers to the number of protected characteristics that simultaneously apply and serve as the grounds for the disadvantage(s) suffered by the person in question)
- the protected characteristics that apply to the person in question can be in varying kinds of relationships and interaction with one another (they can just exist side by side, they can compound each other's impact, and in some situations they are inseparable from one another, that is they intersect)

4 Ibid., p 16

5 Ibid., p 17

- the stereotype, prejudice and the discrimination afflicting the individual can be traced back to more than one protected characteristic, which obviously also impacts the quality and kind of the disadvantage/discrimination that they suffer (that is the same person would not suffer that specific disadvantage if they did not possess more than one protected characteristic at the same time, or the disadvantage would at least take a different form).

Multiple discrimination in European legislation and application of the law

The EU's effective anti-discrimination regulations do not include any express provisions banning multiple discrimination. The preambles of the Race Equality⁶ and Employment Equality⁷ directives do nevertheless state that the Community – in line with Article 3 (2) of the EC Treaty – must “aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination”. The Employment Equality Directive specifies four protected characteristics (age, disability, religion or belief, and sexual orientation), and several articles in its Preamble, to wit (2), (3) and (10), explicitly refer to other EU provisions prohibiting discrimination on the basis of race (on the grounds of race or ethnic origin) or gender. Based on the above, some argue that the regulation concerning anti-discrimination in employment essentially aims at combatting multiple discrimination.⁸

In reviewing the case-law of the European Court of Justice (ECJ), we also find that the ECJ has rarely addressed the issue of multiple discrimination, and in adjudicating the discrimination cases before it, it tends to focus on a single protected characteristic. Illustrative examples of this approach include the cases (*Spotti*,⁹

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

7 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

8 Tackling Multiple Discrimination. Practices, policies and laws. European Communities, 2007, pp 19-20

9 C-272/92

*Schöning-Kougebetoulou*¹⁰ and *Scholz*¹¹) involving the employment of women who sought to work in the EU member states where they had followed their husbands. In deciding these cases, the ECJ fundamentally focused on the issue of citizenship and did not examine whether women might face other types of problems, too, because of their gender (their social or socio-economic situation may be different for gender-related reasons, for example) as opposed to men who are citizens of a different member state than the one they reside in.¹² In the *Lindorfer* case,¹³ which came before the ECJ later than the previously mentioned examples, the Court had the opportunity to review the impact of potential multiple discrimination on the grounds of female gender and age in a case involving the complainant's pensions claim. Nevertheless, the ECJ once again set aside the decision of the court of first instance without ruling on the issue of discrimination on the basis of gender.¹⁴

In its 2016 decision in the *Parris* case,¹⁵ the Court had to touch on the issue of multiple discrimination because the question at hand made it unavoidable. Since it is a very recent decision, we will discuss it in slightly greater detail. Mr Parris had been living in Ireland for over 30 years with his same-sex partner. In 2009, he and his partner entered into a registered civil partnership in the United Kingdom. In Ireland, same-sex coupled were given the possibility to enter into a civil partnership starting in January 2011, and from that point on – going forward – Mr Parris' registered civil partnership was recognised locally as well. Mr Parris was 64 years old at that time. The pertinent Irish pension laws provide that surviving spouses or registered civil partners are entitled to two-thirds of their partner's pension, unless the marriage or registered civil partnership was concluded after the person with the pension entitlement had reached the age of 60. Since Mr Parris was over 60 years of age when his civil partnership was recognised in Ireland, his surviving partner was not entitled to two-thirds of his pension. In its decision, the Court had to answer the question if it was possible for the underlying national regulation to include provisions that discriminated on the basis of sexual orientation and age in combination with one another, even though the same provision did not discrimi-

10 C-15/96

11 C-419/92

12 Multiple Discrimination in EU Law, European Commission, 2009, p. 7

13 C-227/04

14 Multiple Discrimination in EU Law, European Commission, 2009, p. 8

15 C-443/15

nate separately on the grounds of either sexual orientation or age. The ECJ took the position that even though an act of discrimination may be grounded in several of the characteristics listed in Article 1 of the Employment Equality Directive (religion, disability, age or sexual orientation), there is no category of discrimination based on the joint impact of several grounds of discrimination, such as for example sexual orientation and age, which could give rise to a determination that discrimination had occurred even though no discrimination was discernible on either of those two grounds when viewed in isolation from one another.

The EU member states are under obligation to transpose the anti-discrimination directives adopted by the European Union into national law, in other words the regulation in the member states concerning equal treatment has to be in compliance with the provisions of the EU's relevant directives.¹⁶ At the same time, this also means that beyond the minimum requirements set out in the EU's directives, the various member states can also enshrine more extensive protections against discrimination in their national laws. The logic of the directives is namely special: There are anti-discrimination directives that offer protections to a certain group, that is they extend protections to several areas based on a certain protected characteristic. One example of this is the Race Equality Directive, which provides protection against discrimination based on racial or ethnic origin. This protection extends to five areas: employment, goods and services, healthcare, education and housing. Other directives lay down norms concerning the obligation to comply with the principle of equal treatment in certain specific areas of life: they define the protections in the given area that certain persons or groups of persons based on specific protected characteristics are entitled to. An example of this is the Employment Equality Directive, for example, which prohibits discrimination in employment on the grounds of age, disability, religion and beliefs, and sexual orientation. Based on the above, in their totality the anti-discrimination directives do not extend protections to all the protected characteristics they identify (gender, age, disability, national or ethnic origin, religion and belief, and sexual orientation) in all areas specified in the relevant legislation (employment, goods and services, healthcare, education, and housing). One could also say that in this sense the range of protections extended by the EU are like a "mosaic". This means that the member states have the option to define a broader set of protected characteristics than

¹⁶ See the list in the Ebktv's Section 65

those specified by the EU, or they may, for example, make it possible for protections in a given area to be extended not solely based on the protected characteristics defined in the EU directives. The Hungarian regulation as it is enshrined in the Ebktv, for example, has been substantially expanded beyond the minimum requirements laid down in the directives in that it specifies 20 protected characteristics overall, and it prohibits discrimination in all five of the abovementioned areas on the grounds of any of the 20 protected characteristics specified in the law. The member states also have fairly broad discretion with respect to the type of bodies they establish to promote equal treatment: they can thus choose whether they create a single institution to handle all characteristics and all areas specified in their respective anti-discrimination legislations or to divide these responsibilities between several equality bodies. In this context, we should note at the outset that in a Hungary such a division does not exist, the EBH's scope of authority extends to all protected characteristics and areas enumerated in the Ebktv (the Authority may examine whether a petitioner's right to equal treatment has been violated in any of the five areas and on the grounds of any of the 20 protected characteristics specified in the Ebktv).

In the context of the above, we would also like to highlight that the greater the number of protected characteristics specified in national regulations, or the greater the possibility of extending protections to a larger number of areas and protected characteristics beyond those specified in the EU regulations – which can be seen in this context as a set of minimum requirements – the more opportunities open themselves up for investigating potential instances of multiple discrimination, of handling cases that involve multiple discrimination, and to offer effective legal remedies in these cases. This effect is further reinforced by there being a single equality body in the given country, with an encompassing authority to investigate any case involving any and all protected characteristics and areas designated in the given national regulations.¹⁷ When the latter situation prevails, then in a case when more than one protected characteristic applies at the same time (let's say being female and belonging to an ethnic minority), the complainant will not find herself in the quandary of being compelled to choose whether she will turn to the equality body that specialises on gender equality or the one that

¹⁷ Tackling Multiple Discrimination. Practices, policies and laws. European Communities, 2007, p 22

focuses on discrimination against ethnic minorities.¹⁸ Finally, we should also note that individual member states naturally also have the option of expressly banning multiple discrimination in the form of statutory provisions to this effect – that is the case in Romania, for example. Typically, however, national anti-discrimination legislations in the EU member states do not tend to include such provisions.

A relevant development at the European level with respect to the issues discussed in the present publication was the adoption on 7 December 2017 by the European Commission against Racism and Intolerance (ECRI) of General Policy Recommendation (GPR) No. 2. This Recommendation for the member states of the Council of Europe¹⁹ concerning the competences, responsibilities and operation of equality bodies expressly refers to cases involving multiple and intersectional discrimination on the grounds of more than one protected characteristic. It notes in this context that the equality bodies established by the member states must have the competence to review cases involving discrimination on the grounds of racial or ethnic origin, skin colour, mother tongue, religion, citizenship, sexual orientation and gender identity, as well as cases involving multiple and intersectional discrimination on the grounds of more than one protected characteristic.

December 2017 saw the publication of the thematic document entitled *Women's sexual and reproductive health and rights in Europe*²⁰ published by the Council of Europe's Commissioner for Human Rights, which also expounded on issues involving intersectional discrimination.²¹ The publication discusses the intersectionality and inseparability of female gender and other characteristics such as poverty, the individual's status as a single or married woman, HIV infection, life as a sex worker, affiliation with an ethnic minority (e.g. Roma ethnic origin), youth or adolescence, disability, a status as refugee or asylum seeker or residing illegally in a given country. The publication also argues that the women who – in addition to their female gender – have one or more of the previously mentioned characteristics often suffer grievances with severe consequences as a result of the simultaneous and joint presence of these characteristics with their female gender. The

18 The situation is similar in Belgium, where a distinct institution was established to deal with issues concerning gender differences and a separate institution was created to address the other five protected characteristics laid down in the EU directives.

19 The Council of Europe is not an EU body and should not be confused with the European Council, which is one of the key decision-making bodies of the European Union.

20 *Women's sexual and reproductive health and rights in Europe*, Council of Europe, December 2017

21 *Ibid.*, pp 42-43

document points to the example of women living with disabilities, referring in that context to concerns about the regulations governing legal capability and guardianship. National regulations often restrict the ability of women to render properly informed decisions about their sexual and reproductive health. As a result, these women often become victims of forced birth control measures, sterilisations and abortions. Practical and financial limitations, as well as the lack of reasonable accommodation, often hinder women with disabilities from access to sexual and reproductive healthcare, or even to the relevant information. The publication also refers to the situation of European Roma women, who are subject to segregation and harassment in connection with their Roma origin while giving birth and during post-natal care. They also often have to endure racist and sexist verbal statements and harassment in the context of other medical treatments involving their sexual and reproductive health. The publication also notes that Roma women are routinely denied proper healthcare because they are presumed to be unable to pay for the costs of the medical treatment on the grounds of their presumed travelling lifestyle or because of the lack of documents showing their personal identity or their entitlement to healthcare services.

Finally, among the events of the recent past we should mention that on 7 December 2016 the European Network of Equality Bodies (Equinet), devoted a separate conference to the issue of discrimination on the grounds of the intersection between female gender and other protected characteristics. At another Equinet conference held on 22 March 2018, a representative of the Hungarian Equal Treatment Authority presented two cases investigated by the EBH,²² which we also discuss in Chapter 4 of the present publication. The presentation of the cases in question focused on intersectionality, which involved the interaction between and mutual impact on one another of social origin, financial status and belonging to an ethnic minority, and an explanation of how these jointly led to the discrimination of the complainants.

22 Case Nos. EBH/67/2015 and EBH/166/2017

III. The Authority's scope of competence in handling multiple discrimination

We already referred to the Ebktv in the introductory chapter as the legal act that is of fundamental importance with respect to the enforcement of the principle of equal treatment and which also provides the framework of the Authority's work.²³ We also presented above the list of the 20 characteristics and features that make up the spectrum of protected characteristics in Hungary (the list is effectively open-ended due to the inclusion of Section 8 (t), which refers to "other situation, characteristic or attributes"). We also noted that the Ebktv extends protection in five areas (employment, education, goods and services, social security and healthcare, and housing), which means that in any of these areas the Authority can examine any disadvantage that may have occurred on the grounds of any protected characteristic(s). At the same time, however, as of this writing the effective statutory framework does not include any provisions that explicitly address multiple discrimination or any previously discussed specific variation thereof. **Considering the above, what can we conclude about the Authority's possibilities in terms of tackling and investigating instances of potential multiple discrimination?**

First, we need to emphasise that in the event that a complainant refers to more than one protected characteristic in their petition submitted to the Authority, then the latter examines whether the complainant has been discriminated against in the context of any of the protected characteristics indicated. The Authority also examines whether the protected characteristics cited are in any way linked to one another, and if the answer is affirmative, then it seeks to ascertain what type of relationship prevails between them, whether we can talk of intersectionality, for example. It can also happen that the Authority itself realises in the course of an investigation that the complainant has suffered a disadvantage in connection with a protected characteristic beyond the characteristic or characteristics indicated in the petition. That was the situation, for example, in case No. EBH/349/2016 when

²³ The Ebktv is of course not the only legal act that contains rules concerning equal treatment and equal opportunities. Definitely worth mentioning are Sections II and XV of the Fundamental Law of Hungary, and many subject-specific laws also include relevant regulations, such as for example *Act XXVI of 1998 on the rights and the securing of equal opportunities of people with disabilities*.

the complainant referred to her Roma origin in the petition, but in investigating the case the Authority concluded that the petitioner's skin colour had also played a role in the disadvantage she had suffered.²⁴ **In other words – regardless of the fact that the Ebktv does not contain provisions that expressly refer to multiple discrimination or any subtype of this broader category – the Authority does have the competence to investigate complaints citing multiple discrimination and it does indeed examine such petitions.** One can also approach the issue from the angle that based on the provisions of the Ebktv, the Authority is obligated to investigate all cases in which the complainant invokes that they suffered a disadvantage on the grounds of a protected characteristic. This obligation logically also extends to those cases in which the petitioner links the grievance or grievances that they have suffered to more than one protected characteristic. Naturally, this also provides the possibility of examining the relationship that prevails between individual protected characteristics. The Authority also focuses especially on the latter situations because – as was apparent in the previous chapter – the challenge of tackling multiple discrimination is also emerging as an increasingly important issue at the European level. In its decisions rendered in the cases Nos. EBH/67/2015 and EBH/130/2017, for example, the Authority clearly pointed out that these cases involved some type of multiple discrimination, and its decision also included a discussion of the conceptual definition of the term.²⁵ With a view to the Authority's case-law on multiple discrimination, we should also note that when this particular form of discrimination is realised, then in determining the sanctions that it applies against the violator, the Authority also needs to consider whether the petitioner had suffered the disadvantage on the grounds of more than one protected characteristic.

We also emphasise that as **a single equality body which is authorised to conduct investigations concerning all characteristics protected by the relevant national legislation, the EBH has a fairly broad scope of authority to investigate multiple discrimination.** The legislator has opened up this broad scope of authority by identifying a comparatively large number of protected characteristics, as well as by making the list open-ended. One example that might be

24 We discuss case No. EBH/349/2016 in the chapter below where we review examples from the Authority's case-law.

25 We discuss cases Nos. EBH/67/2015 and EBH/130/2017 in the chapter below where we review examples from the Authority's case-law.

mentioned here is that the Ebktv's Section 8 (a) identifies female gender, motherhood, and pregnancy all as distinct protected characteristics. We saw previously that the regulation in the EU directives refers explicitly to six protected characteristics only. Although this includes female gender, it does not expressly refer to motherhood and pregnancy in the explicit form that the Ebktv protects these characteristics. A similar situation also applies to the national legislations of many EU member states, which means that those who apply the law in these member states must typically infer the legislator's presumed intent to extend protection to motherhood and pregnancy by taking a logical step forward and deducing the protection of the aforementioned from the complainants' protected status as women. In Hungary, by contrast, the legislators expressly included these two protected characteristics as distinctly protected qualities in the law, which means for one that no separate legal theory reasoning needs to be produced to link them to the protected characteristic that undergirds their status as protected features, while at the same time it also implies that in the certain cases before the Authority female gender and motherhood appear as two distinct but intersecting protected characteristics. That was the situation in the Authority's case No. EBH/130/2017, for example, where intersectional discrimination was found to apply based on these two protected characteristics.²⁶ It also follows from the aforementioned that when someone in Hungary wants to refer to several protected characteristics in the context of a grievance or grievances that they have suffered, then they are not compelled to choose between their protected characteristics in terms of which equality body to turn to, since the Authority proceeds with respect to all grievances that are presumed to be in a causal relationship with any of the protected characteristics mentioned in the Ebktv.²⁷

It is also important to touch on the Authority's decade of experience in applying the law, which has shown that the petitioners who turn to the Authority citing more than one protected characteristic often do so not because they are convinced that those were the underlying grounds for the grievance in question but because – as it emerges from the petition – they assess that doing so improves their chances that the Authority will rule that their complaint has merit. In

26 We discuss case No. EBH/130/2017 in the chapter below where review examples from the Authority's case-law.

27 Discrimination may of course also be invoked in court (in a labour lawsuit, for example), but in the present publication we focus on proceedings before the Authority, and we naturally compare the EBH to other equality bodies in Europe.

this context, one must highlight the provisions of the Ebktv's 19 (1), which sets out what the petitioner must render probable in order for the Authority to launch proceedings. According to these provisions, in addition to the disadvantage suffered, the petitioner must also show that the protected characteristic(s) which they believe are the underlying grounds for the adverse treatment they have suffered do indeed probably apply to them. This also means that these must be characteristics or features of the petitioner that they really believe served as the basis for the grievances they have suffered. This is of fundamental importance because in its proceedings, the Authority focuses exclusively on finding out whether the petitioner had suffered the disadvantage in question because of the protected characteristic that petitioner has indicated and rendered probable. The investigation performed by the Authority is thus not aimed at ascertaining or selecting which of the characteristics among the universe of the protected characteristics either enumerated in the Ebktv's Section 8 or indicated by the petitioner can be causally connected to the grievance indicated by the petitioner. This is why it is of utmost importance that in their petition, the petitioner should only refer to those characteristics (if there is only one, then to that specific one, and if there are multiple such characteristics, then evidently to several) which they are convinced served as the underlying cause or causes of the disadvantage they have suffered.

It is also important to highlight the above because – as we have noted previously – when we read through the list of protected characteristics in the law, we will find that all of us have many of these characteristics. It is at the same time also obvious, however, that the overwhelming majority of the slight or major grievances we experience in life are not connected to our gender, our age, our family status or a combination of these factors. If we thus decide that we would like the Authority to proceed in our case, then as the petitioners we must explain which characteristic or characteristics were – in our opinion – the underlying grounds for the disadvantage referred to in our petition. When reviewing the concept of multiple discrimination and its various types, we find that the various kinds of multiple discrimination constitute special instances of the joint interaction of protected characteristics, and hence they also constitute special cases of discrimination. Thus, it is also important to stress that multiple discrimination involves more than a mere reference to several protected characteristics.

Finally, let us also note in the context of the previous discussion that we must distinguish, on the one hand, between a scenario where a petitioner merely cites

several protected characteristics as the potential reasons underlying the disadvantage suffered, because the petitioner expects, for example, that the Authority will “seek out and select” the proper protected characteristic/characteristics for them, and on the other hand two other situations that we previously discussed in this publication. For one, there are the situations when during its investigation the Authority comes to the realisation that the petitioner has suffered the disadvantage also because of other protected characteristics beyond the one originally indicated by the petitioner (such cases are fairly rare in the Authority’s experience, however). Next, we must treat as a distinct class of cases those situations when more than one protected characteristic applies at the same time, but the protected characteristics do not intersect, their impact is distinct. It needs to be emphasised that in both of the latter types of cases the petitioners met the condition that at the time when they filed their petition, they had a strong conviction that the characteristic or characteristics designated by them were causally connected to the disadvantage they had suffered. What happens in the first case is that the characteristic or characteristics indicated by the petitioner are augmented by other characteristic(s) on the basis of the Authority’s findings – which it arrives at in the course of its efforts directed at disclosing the facts of the case – and on that basis the Authority may come to assess that the causal relationship between the disadvantage suffered and the protected characteristics obtains not only with respect to the protected characteristic originally cited in the petition, but also with respect to another characteristic, or potentially even more than one characteristic. In the second scenario, the petitioner has simply designated protected characteristics which by their very nature are not intrinsically related or intersecting with one another (e.g. age or the protected characteristic of “another situation” in the context of a temp worker),²⁸ or it may involve situations in which the petitioner links their protected characteristics to grievances that are distinct from one another. In neither scenario, however, does the Authority itself “seek out and select” the protected characteristics that are causally related to the grievance from the entire range of protected characteristics in Section 8 of the Ebktv or from a list of options presented by the petitioners themselves.

28 See case No. EBH/114/2017.

IV. Cases in the Authority's practice involving multiple discrimination

Cases related to multiple discrimination on the basis of multiple non-intersecting protected characteristics

“Enough of the women’s clothes, get in line finally!”

EBH/88/2016 | Decision finding a partial infringement

Protected characteristics: gender identity, sexual orientation, political beliefs

In her application to the Authority, the petitioner designated her gender identity, sexual orientation and political beliefs as her protected characteristics. Specifically, she invoked her transsexuality (although she is a man, she identifies as a woman and she had often performed as a transvestite performer in the rural community where she lived) and her homosexuality. She also invoked that she had not supported the mayoral candidate who was ultimately elected in the most recent municipal election. She complained that the municipality’s mayor had uttered statements directed at her which constituted harassment, such as “You cannot do your fag thing here, you cannot put on make-up! Enough of the women’s clothes, get in line finally!”. He also said that as long as he is the mayor, the petitioner would not be allowed to perform as a transvestite performer in the village. The petitioner further complained that since the election of the mayor she had not been allowed to participate in any workfare opportunities.

The Authority had to investigate whether the petitioner had been subject to harassment on the grounds of her gender identity or sexual orientation. Based on the witness examinations of the mayor and other local residents, it was possible to establish – and the Authority also assessed this as realistic – that everyone in the village – hence the mayor, too – was aware of the petitioner’s gender identity and sexual orientation. The mayor’s only comment regarding the statements that

the petitioner alleged he had made was that he had in fact never said these, but he did not submit a detailed statement on this issue and also failed to provide other evidence in the procedure. Correspondingly, the Authority assumed as fact that the statements alleged by the petitioner had been uttered. In order to assess whether an intimidating, humiliating and degrading environment had emerged around the petitioner as a result of these statements, the Authority had to rely on the statements by other witnesses, which affirmed the claim that the impugned statements had been uttered in public places (the local post office, in front of the kindergarten) within earshot of several citizens who overheard them.

One of the witness statements affirmed that in terms of their impact, these statements really did result in the emergence of an intimidating and degrading atmosphere surrounding the petitioner, since from the time when these comments were made, the petitioner became more withdrawn and cautious in terms of professing her identity and refrained from visiting local clubs and establishments. In light of the above, the Authority determined that through his comments, which had been unequivocally directed at the petitioner's gender identity, the mayor complained against had realised the harassment of the petitioner as defined in Section 10 (1) of the Ebktv. Ultimately, therefore, the Authority only saw it as established that the petitioner had been harassed on the grounds of gender identity, since based on her submissions during the administrative procedure and the witness statements, it emerged that the mayor had qualified the petitioner's performance in women's clothing and her appearance as unwelcome. We should also note in this context that in this particular case the petitioner's sexual orientation and her gender identity were not inextricably linked, and the mayor's statement only touched on the petitioner's gender identity.

The Authority also examined whether the petitioner had been subject to direct discrimination as well. In so doing, the Authority had to include the issue of the petitioner's political beliefs in the investigation, in addition to her gender identity and sexual orientation. Based on the submissions in the petition as well as the witness statements, the Authority concluded that the residents of the village were aware of each other's preferences concerning the respective mayoral candidates, and the mayor and municipal government, too, knew that during the municipal election of October 2014 the petitioner had supported the candidacy of the incumbent mayor, who was subsequently replaced by the mayor named in the complaint. In light of the contradictory statements regarding the question of how often the

petitioner had applied for workfare at the mayor's office, as well as the fact that on this question the petitioner had contradicted herself as well, and, moreover, that her name was not included in the municipal government's roster of persons who had applied for workfare, the Authority determined that it had not been shown beyond doubt that the petitioner had applied for workfare at the mayor's office. The Authority also took into consideration that the list submitted by the mayor containing the names of those employed in the workfare programme between 31 October 2013 and 31 January 2016 included many persons who had been employed by the municipal government in such a capacity both before and after the municipal election in October 2014 (in several cases more than once). Pursuant to the above, a causal relationship between the petitioner's protected characteristics (her gender identity, sexual orientation and political beliefs) and the fact that the municipal government did not enter into a workfare contract with her after October 2014 could not be established, which is why the Authority rejected the portion of the petition that referred to direct discrimination. Based on the aforementioned, we can also conclude that the protected characteristics designated by the petitioner were not inextricably linked in the context of this alleged grievance, especially with respect to the posited connection between political beliefs and the other two protected characteristics. The mayor appealed the Authority's decision in court, but the court rejected the action without issuing summons.

The 62-year-old temp who worked as a forklift driver

EBH/114/2017 | Decision finding a partial infringement

Protected characteristics: age, other situation (temporary agency worker)

The 62-year-old complainant, who had been working for years as a temporary agency worker in the position of forklift driver in the warehouse of the company in question, complained in his petition filed against the borrowing employer that the latter had declined to offer him a fixed position as part of its regular staff because of his age. He also argued that as a temporary agency worker he received a lower level of benefits than the company's regular employees.

Although the petitioner's complaint was fundamentally directed at the conduct of the borrowing employer, in the interest of ascertaining and establishing the respective responsibilities of both employers – that is the borrowing employer and the lending employer –, the Authority launched procedures against both.



In the course of examining whether age-based discrimination had taken place in this case, the Authority established that the petitioner did possess the protected characteristic (age) that he had invoked in this context, and that he had suffered a disadvantage when despite his requests to this effect the borrowing employer did not offer him a position on its permanent staff. As a disadvantage, the Authority referred to the differing legal structure of the petitioner's employment.

Subsequently, the Authority had to examine whether a causal relationship existed between the petitioner's age and the fact that the borrowing employer failed to take him on as a member of its regular staff. In its examination of the case, the Authority was mindful of the fact that the borrowing employer was aware that the petitioner wanted to become part of the regular staff. His interest was manifest in the fact that he had asked for a fixed position at the company on several occasions, and he had also filed regular applications for published vacancies at the company. Moreover, during the time period in question the company had hired new workers for positions at the warehouse: they hired ten warehouse workers, seven of whom had previously worked as temporary agency workers at the company. Several of these worked in the same position as the petitioner, that is they were "forklift drivers". Those who were subsequently hired for a regular job at the company – including applicants from outside the company as well as from among the staff of temporary workers placed there, including the petitioner's immediate co-workers – were all younger than the petitioner, and typically considerably so. The ratio of people who were younger than the petitioner among the warehouse workers was very high anyway, there was only one other employee working at the warehouse who was in the same age group as the petitioner. At the same time, however, the petitioner met all the requirements that the employer expected of employees whom it transitioned into regular employment, in that he had been employed as a temporary agency worker at the warehouse for over a year, his performance was exemplary, he had not been absent without leave and had never been subject to disciplinary proceedings. Based on the foregoing, and in reflection of the fact that the borrowing employer offered practically no

explanation whatsoever for its decision not to employ the petitioner on a regular basis, the Authority concluded – with a view towards the special evidentiary rules that apply to the procedures conducted by the Authority – that the reason for the company's failure to hire the petitioner as a regular employee had been his age, and as a result the borrowing employer had discriminated against the petitioner. The Authority did not find that the temporary work agency bore any responsibility for the infringement, since the question of whether to transition the employee into regular employment at the borrowing company was a decision in the sole discretion of the latter.

In the scope of its review of the petitioner's status as a temporary agency worker (other situation), the Authority held that the petitioner did have the protected characteristic of "other situation". According to the Authority's application of the law – which has been affirmed in court –, in light of the provisions of Section 219 of Act I of 2012 on the Labour Code, a status as an agency worker qualifies as a protected characteristic within the scope of other situation as specified in the Ebktv's Section 8 (t). The Authority had to investigate whether the petitioner had suffered a disadvantage with respect to his wages and other benefits when compared to those regular employees of the company who were in a comparable position with the petitioner. The Authority looked at all the items in the company's payroll – the amounts before any deductions – for a period going back five months to assess how much pay and benefits the employees designated by the petitioner had received and how much the petitioner himself had received by comparison. The Authority ascertained that in each month during the period in question the petitioner received a higher level of remuneration overall than all the other employees mentioned by him who were in the company's direct employ. The Authority also examined the trajectory of the total remuneration of those warehouse workers whom the employer had transitioned into direct employment from their previous status as agency workers. Based on the payroll data, the sum of their remuneration did not suggest that there was a clear and pronounced difference between their level of pay before and after the transition, so this, too, did not lead to the conclusion that the company's regular employees received a clearly higher level of pay than the employees who worked there as temporary agency workers. Based on the above, the Authority concluded that in terms of his salary and other benefits, on the whole the petitioner had not suffered any specific disadvantages when compared to regular employees of the company who were in a comparable posi-

tion, and thus in this respect the employers had not violated the principle of equal treatment in their treatment of the petitioner. Correspondingly, the Authority rejected this aspect of the petition. The borrowing employer that the Authority had ruled against appealed the decision in court, but its action was rejected.

The case above was a typical instance of those broader category of cases in which several protected characteristics apply at the same time without intersecting. The petitioner referred to several characteristics which by their very nature cannot intersect, in other words they can be separated from one another. The notion that this case involved multiple discrimination was further reinforced by the fact that the petitioner associated different grievances with each of his different protected characteristics. He attributed the fact that the borrowing employer did not transition him into regular employment to his age, while he assumed that his presumably lower remuneration owed to this status as a temporary agency worker. The detailed presentation of the concept of multiple discrimination also served to show that a typical manifestation of this type of discrimination is when different protected characteristics of the complainant play distinct roles in various situations, or when they are at least assumed to play different roles in causing the grievance that the complainant has suffered.

Cases involving intersectional discrimination

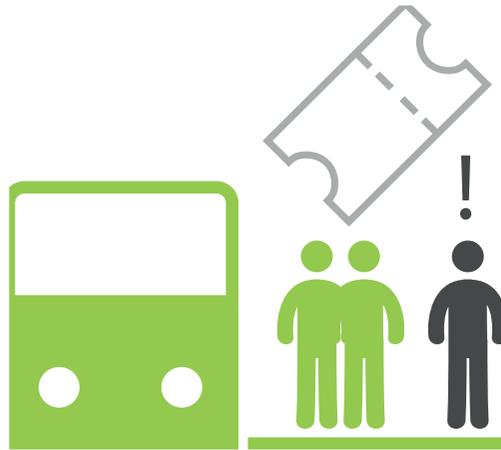
We have previously pointed out that a typical example of intersecting protected characteristics is a situation in which some type of ethnic minority origin (typically Roma origin) and skin colour are both present as protected characteristics. In the following, we will review cases in which the intersection and inseparability of protected characteristics served as the grounds of discrimination.

Roma passengers have to present their ticket already on the platform!

*EBH/29/2017 | Decision finding an infringement
Protected characteristics: ethnic origin, skin colour*

The petitioner turned to the Authority because he was the only passenger on the platform whose ticket the conductor had asked to inspect already before the de-

parture of the train. He assessed that he had suffered this disadvantage because of his Roma origin since the tickets of other, non-Roma, passengers had not been inspected despite the fact that the train stood at the station for five minutes, and hence the conductor would have had the time to do so.



In the Authority's procedure, the railway company invoked in its defence that its internal terms of business state that "the railway company may perform ticket validations or ticket inspections several times on the same train, and the ticket may also be inspected before boarding, after de-boarding, and also at railway terminals and stops". It assessed that the conductor had been fulfilling her professional responsibilities – in conformance with company's the terms of business – when she had inspected the petitioner's ticket on the platform. After all, the conductor had descended from the train on the same steps that the passenger wanted to use to board the train, and the conductor correspondingly did not encounter any other passengers since the other passengers on the platform were waiting for a train coming in from another direction. The witness who was questioned in her capacity as the conductor confirmed this in her statement. The Authority requested cash register statistics from the railway company for the day in question. According to the cash register statistics requested by the Authority – which concerned a one-hour period before the departure of the train that the petitioner had travelled on –, a total of 13 regular tickets, 19 excess fare tickets, and 4 InterCity excess fare and seat reservation tickets had been purchased in that time period. The statistics showed that there were a maximum of 23 people waiting at the station who were in a comparable situation with the petitioner. The 23 tickets sold allow for the conclusion that – contrary to the uniform statements of the railway company and the conductor – there were also other passengers present at the time who were in a comparable situation with the petitioner (that is persons who were not of Roma origin and had a different skin colour than the petitioner). In other words, there were several

passengers on the platform who were preparing to board the same train as the petitioner. Based on the above, the Authority determined that the conductor had asked to inspect the Roma passenger's ticket because of latter's Roma origin and because of his skin colour. The Authority further held that the railway company had thereby directly discriminated against the petitioner.

The railway company appealed the Authority's decision in court. The court agreed that the causal relationship between the petitioner's Roma origin and skin colour and the conductor's procedure had been unequivocally proven, and as a result it rejected the appeal.

"You Gypsies only have children for the money anyway!"

EBH/349/2016 | Decision finding an infringement

Protected characteristics: ethnic origin, skin colour

The petitioner, who said she was of Roma ethnic origin, claimed in her petition that she had suffered a grievance while giving birth to her child at the maternity unit of the hospital complained against. While she was in labour, a midwife told her that if she were to cry out once more, she would slap her and push a pillow against her face. The attending physician said that if the petitioner were to cry out again, he would call for the psychiatrist to have the child taken from her, and she would not receive any maternity benefits, adding that "You Gypsies only have children for the money anyway!"

In this case the Authority had to examine whether the petitioner had been subject to harassment on the part of the hospital staff while she was in the process of giving birth to her child at the hospital. Of the various statements complained about by the petitioner, the Authority focused solely on one ("You Gypsies only have children for the money anyway!"), which included an unequivocal reference to the petitioner's Roma ethnic origin. In this context, the Authority had to examine whether the statements complained about by the petitioner had indeed been uttered, given that the hospital disputed her version of the events. The respective statements of the petitioner and of the witnesses were not in agreement on this point. At the hearing held by the Authority in this case, the members of the hospital staff who had been present at the delivery and were heard as witnesses (the obstetrician, the resident, two midwives and a cleaning lady) stated that the alleged remark complained about by the petitioner had not been uttered.

The Authority assessed that the contradiction could be resolved. When prompted by the case manager at the beginning of the hearing, the petitioner was capable of unequivocally recalling the events that had transpired during the delivery five months prior, and she quoted the statement “You Gypsies only have children for the money anyway!” verbatim. Furthermore, the petitioner was also able to distinguish between the witnesses, and she distinctly recalled which one of the persons present had made the quoted comment (she unequivocally identified the physician as the person who made the statement concerning her Roma origin) and she remembered whom she had had no problems with. Thus, she described one of the midwives as “nice and kind”. Based on the above, the Authority concluded that the petitioner’s statements were realistic and credible. With respect to its investigation of whether the statement complained about had been uttered, the Authority was also mindful of the circumstances surrounding the hospital’s internal investigation of the petitioner’s complaint. In this context, the Authority found it especially disconcerting that the physician/hospital director who was responsible for presenting the hospital’s defence on the merits had shared the contents of the petitioner’s complaint with the physician whose presence at the petitioner’s delivery had been established with complete certainty. In fact, the former provided the latter with a copy of the complaint. As a result, a person who had been present during the events in question (the obstetrician accompanying the delivery), and who was also considered to be likely the person at the centre of the petitioner’s complaint and the source of the comment concerning her Roma ethnic origin, clearly played a vital role in the hospital’s review of the incident. The Authority thus had to take into consideration the fact that the witnesses who testified had previously been apprised of the contents of the petition, that they had received copies thereof, and that – based on the statement submitted to the Authority by the hospital as an attachment to its defence on the merits – they had agreed on a coordinated joint position on the allegations in the petition already prior to the hearing and the witness examinations.

In adjudicating this case, an important consideration was the impression of the Authority’s case managers that an outside observer might readily share the impression that the petitioner is of Roma origin. And even though the petitioner did not explicitly cite this in her petition, her skin colour clearly plays a central role in creating such an impression. That is why the argument presented by the hospital that it did not collect data about its patients’ ethnic or other origins, and

hence they could not know or did not know that the petitioner was of Roma origin, was not credible. The Authority's assessment concerning the petitioner's skin colour was also important because from that point on its investigation was no longer limited to the petitioner's Roma origin; it also examined whether she had been discriminated against because of her skin colour, which inseparably intersects with her ethnic origin. In light of the above, the Authority ultimately concluded that it agreed with the petitioner's presentation concerning the fact that the statement "You Gypsies only have children for the money anyway!" – which the petitioner found injurious and which unequivocally reflected on her Roma origin and skin colour – had indeed been uttered.

Following its determination that the statement impugned by the petitioner had indeed been made, the Authority had to investigate whether the statement also met the definition of harassment as it is laid out in Section 10 (1) of the Ebtv. In his context the Authority started from the assumption that while individuals receive health care or hospital care, the relationship that prevails between them as patients who need care and the hospital staff who provide said care can be characterised as an asymmetrical relationship, in which the patient can easily become very vulnerable and helpless. In such an asymmetrical relationship, one must be exceedingly mindful of ensuring that human dignity is being respected. This holds especially when a woman gives birth to her child. The statement saying "You Gypsies only have children for the money anyway!" undoubtedly refers to the petitioner's protected characteristic, that is her Roma origin. At the same time, the statement above was also liable to give rise to a hostile, intimidating and above all degrading and humiliating atmosphere surrounding the petitioner. And since several members of the hospital staff were present throughout the petitioner's delivery, this type of humiliating environment did indeed arise. Based on the above, the Authority determined that the hospital had engaged in the harassment of the petitioner with respect to her Roma origin and skin colour. The hospital that was the subject of the Authority's decision did not appeal the ruling in court.

Being born in the wrong place and having little money could expose one to indirect discrimination or even harassment

EBH/67/2015, EBH/166/2017 | Decision finding an infringement

Protected characteristics: ethnic origin, social origin, financial situation

What the cases above had in common is that the Authority's proceedings were initiated – on the basis of the Ebktv's Section 18 (3) – by civil rights organisations in the framework of so-called public interest petitions. This involved cases in which the disadvantage affected or threatened to affect a larger but not clearly identifiable class of persons. In the Authority's case No. EBH/67/2015, the public interest petitioner filed a complaint against the property condemnation practices of the municipal government. The petition said that the property condemnation practices of the municipal government aimed at a specifically designated section of the town in question exposed the residents of the area (ca. 900 persons) to the risk that they might become homeless as a result of the policy, or that they would be forced to move to a segregated area in the town or its surrounding area. The residents whose properties were designated for condemnation by the municipal go-



vernment were subject to the aforementioned risks on the grounds of their social origins, financial situation and their ethnic origins. In the case No. EBH/166/2017, the public interest petitioner complained that the municipal government had concluded an agreement with an association that was led by a politician who is widely associated with the extreme right. Their agreement concerned an area of the municipality which qualified as a segregated community, and as a part of the agreement the association was authorised to perform “property inspections” and even police-style “raids” in the area with the involvement and even the support of the municipal government. In the course of these inspections, the residents of the area were questioned by the leader of the association and other association members – in a style that exuded superiority –, asking them questions such as, for example, whether their children are clean or whether they are aware that they would have to buy a rubbish-bin later on. These “inspections” and the checks to look for electricity theft were also conducted during night-time, and those who performed them shone lights in the residents’ courtyards. Furthermore, despite the protests of the residents, those performing these “raids” also made video recordings of these “inspections”, which they subsequently published on the internet.

In both of the decisions concluding the abovementioned cases, the Authority explicitly referred to the intersecting, mutually impacting and compounding effect the protected characteristics of the persons living in the segregated areas of the municipalities involved. In other words, it noted that with respect to the range of persons affected (the larger but not clearly delineated class of persons living in segregated areas), belonging to a minority (Roma origin), financial situation and social origin are intersecting characteristics, and that their combined impact is characteristic of the entire affected group. In this case, therefore, being Roma, having a low financial status and the affected individuals’ social origin (which also includes financial situation but is far broader, also subsuming parental background, education and the individual’s chances social integration and success in life), which have a vast impact on one’s life trajectory, jointly compounded each other’s impact and produced the socially underprivileged situation of the persons who lived in this segregated area. In both cases referred to above, one aspect of the situation of the persons living in the segregated areas was that they had been born into circumstances that exerted a negative impact on their life trajectory, their learning and work opportunities, which also included an unfavourable financial situation. On the whole, these conditions had continuously applied to the resi-

dents of these areas going back three to four generations, and they were expected to remain the same in the future, too. It is namely extremely hard to leave such a situation behind, and in many cases it is nigh impossible. All this was further exacerbated by the affected persons' affiliation with the Roma minority, which exposed them to the measures taken by the municipal governments that were the subjects of the complaints.

In the case EBH/67/2015 the Authority found that the municipal government had begun and then continued the property condemnation programme in the segregated area of town without properly preparing the implementation and without reviewing in detail its anticipated impact on the persons living there. Furthermore, it persisted in the implementation of the programme without informing the residents unequivocally, clearly and in a helpful manner about housing-related issues, and without considering in the process their mostly low level of education or their social situation. These omissions constituted a dereliction of the municipal government's duties. With respect to the prevailing practice of property condemnation, the Authority determined based on the information available that the municipal government's course of action was discriminative towards the persons living in the neighbourhood in question.

The municipal government stated during the proceedings that the property condemnation programme had the same impact on all affected persons living in the neighbourhood in question regardless of their financial, income or social situation, or of their ethnic origins. The municipal government argued that how a person was affected depended on the location of the real estate they rented, and it further submitted that its actions equally affected all persons living in the given area. That is why the Authority investigated whether the persons affected had suffered indirect discrimination as the concept is defined in Section 9 of the Ebktv. Indirect discrimination pursuant to the Ebktv means that while the action is seemingly based on neutral criteria, it nevertheless impacts persons who share certain protected characteristics disproportionately. The Authority ultimately held that the seemingly neutral action concerning the residents of the neighbourhood in question – the elimination of the segregated area – was statistically significantly more likely to exert a detrimental impact on persons of Roma origin and of a social origin that had a disadvantageous impact on their life trajectory, who were living in poverty. A segment of this population that could not be precisely identified was left in complete uncertainty as to how their housing would be secured once the

property condemnation programme was completed, they did not know how and whether the municipal government would provide housing alternatives. There was a real and immediate danger for the persons affected that the implementation of the programme would leave them either homeless or would force them to move to another segregated area in the town or its surrounding area. Thus, in case No. EBH/67/2015 the Authority determined that the roughly 900 persons affected had suffered indirect discrimination as a result of the municipal government's actions. In its decision, the Authority ordered the municipal government to put an end to the infringing situation and to draw up a plan that would outline where and under what circumstances the housing of the persons living in the affected neighbourhood would be provided for – with special consideration of the respect for human dignity and the principle of equal treatment – within the municipality (in the municipal area), as well as to specify what financial funds it wants to draw on to comply with this decision. The municipal government appealed the Authority's decision in court, but the court rejected the action.

In case No. EBH/166/2017 the Authority determined that by concluding the agreement with the association in question and implementing it, the municipal government had engaged in the harassment of the Roma residents living in the municipality's segregated area by allowing the inspections and check-ups in the area to be performed by the association, in some cases even involving representatives of the municipal government. This regular presence, and the lecturing and questioning of the residents concerning their lifestyles – in front of running cameras –, as well as the subsequent public dissemination of the recordings, violated the human dignity of the persons living in the segregated areas and was liable to give rise to a degrading and humiliating, as well as hostile and intimidating environment surrounding them. The Authority also found that this was causally related to the affected persons' social origins, financial situation and their Roma origin. Based on the witness examination of local residents during the proceedings, such an environment did indeed emerge. At the same time, however, given that the procedure was conducted in the framework of a public interest petition, even the immediate threat that such an environment could emerge for a wider group of persons would have been enough to establish a violation of the principle of equal treatment. Although in and of themselves neither the presence in public spaces nor the reporting of electricity thefts or other petty offences to the authorities can be regarded as harassment, in the case at hand the conduct at issue was

more complex. The volume of these activities and their coordinated performance effectively subjected the residents of the segregated area in question to a campaign-like public inspection performed by the association. This campaign extended to various areas of their lives, which was expressly supported by the municipal government, with some of the municipal employees even participating personally in the process. Based on the above, the Authority determined that intersectional discrimination had occurred in the form of harassment. The municipal government appealed the Authority's decision in court, but the court agreed with the Authority and rejected the action.

The harassment of Roma women in workfare programmes

EBH/467/2016 | Decision finding an infringement

Protected characteristic: female gender, ethnic origin, other situation (status as a workfare recipient)

The three female petitioners turned to the Authority claiming that since they had not found any long-term job opportunities in their home municipality, the mayor of the neighbouring municipality had offered to employ them as workfare recipients. The petitioner submitted that the mayor regularly uttered demeaning remarks concerning their status as women, using obscene and foul language, and that he further made unbid physical advances, embracing and touching them against their will. The petitioners pointed to several instances of such behaviour. The petitioners also complained about the working conditions and the instructions issued by the mayor. They said that they had to clean a ditch containing sewage water and animal waste, and they also had to stand outside in the rain for hours waiting for the mayor's instructions, who did not even leave his house. The petitioners had to put up with these atrocities because they were financially dependent on the workfare income since they had no prospect of any long-term employment, and they had to support their young children. Finally, the petitioner claimed that because they had rejected the mayor's advances, they had been forced to terminate their workfare programme contracts.

Based on the witness statements and the data available, the Authority was able to determine that the acts of harassment alleged by the petitioners and attributed to the mayor had indeed taken place. Although the petitioners' assessment was that they had been the targets of harassment solely on the grounds of their



female gender, in the process of ascertaining the facts of the case the Authority came to the conclusion that the grievances they had suffered were also connected to another protected characteristic involving the concept of “other situation” in the Ebktv’s Section 8 (t). As workfare recipients who had been searching for jobs in vain for a long time in their own municipality, they were financially dependent on the mayor’s decision to extend

workfare to them. The Authority concluded that the mayor was in position in which he could harass the petitioners because of the vulnerable position that the latter found themselves in, and that he had seriously abused the power that he held in this situation. The Authority also found it significant that the petitioners were of Roma ethnic origin. In that context, during the hearings one of the complainants cited a comment by the mayor in which he suggested that since the petitioners are Roma, their word is worth “zilch” compared to his. The Authority assessed, therefore, that the petitioners had suffered multiple disadvantages in this case, and during the time when these were ongoing, several protected characteristics applied to them (female gender, Roma origins and their vulnerable and underprivileged position stemming from their status as workfare employees). In the Authority’s assessment, all of these combined to form part of the basis for the mayor’s behaviour towards them. Based on the foregoing, the Authority was able to determine that in its capacity as the petitioners’ employer, the municipal government complained against had violated the principle of equal treatment in connection with the petitioners’ female gender, Roma origins and their other situation, i.e. their status as workfare recipients. Furthermore, the mayor had harassed them both sexually and in the context of their Roma origin and their status as workfare recipients. The municipal government did not appeal the Authority’s decision in court.

The extra benefit that discriminates against mothers with small children

EBH/130/2017 | Decision finding a partial infringement

Protected characteristics: female gender, motherhood

As mothers of small children, the petitioners were the employees of a company that works in four shifts. They turned to the Authority with a petition arguing, among others things, that since the benefit known as the 13th monthly pay is contingent on attendance level, i.e. it is “sick pay-based”, they are compelled to forgo this benefit because as a result of their children’s illnesses their attendance does not reach the level where this benefit is awarded.

Even though the petitioners only cited their motherhood and the fact that they raised children under the age of 12 as the reason for the grievance they suffered, the Authority also assessed the fact that they are women as a relevant protected characteristic in this case. It is namely a generally acknowledged fact that when small children get sick, it is predominantly the mother rather than the father who tends to stay home with them and, correspondingly, it tends to be the mother who avails herself of the sick days and the corresponding sick pay (abbreviated as GYÁP in Hungarian) that is paid to parents who care for their sick children. Correspondingly, in designating the relevant group of persons who are generally in a comparable situation with the petitioners in most respects apart from the protected characteristic in question, the Authority looked not only at persons who perform the same physical work duties as the petitioners but do not have children under the age of 12, but also at men who raise children under the age of 12.

It was possible to ascertain during the proceedings that with respect to employees who perform physical labour, the 13th monthly pay benefit was awarded exclusively on the basis of attendance; absence in excess of 25 workdays resulted in the individual loss of their entitlement to the benefit. In counting absence, the following were not considered: vacation time, sick pay as a result of work-related accidents, periods of hospital stay, conditions that resulted in subsequent hospitalisation and post-hospital care. Regular sick days, however, as well as the period spent on leave while the person received GYÁP for nursing a child under 12, were considered as absence in this context, and thus these had a direct impact on the individual’s entitlement to the benefit in question.

Evaluating the evidence at its disposal, including the statistical data, the Authority determined that the company had violated the principle of equal treatment with respect to the petitioners, in the form of indirect discrimination. The Authority assessed that even though in the way it had defined the eligibility for the 13th monthly pay benefit, the company had not implemented a policy that was directly aimed against women/mothers, that is the policy was prima facie neutral, it was nevertheless disproportionately detrimental to employees who were compelled to draw on the GYÁP to care for their sick children and to female employees. In its decision, the Authority obliged the company in question to review the company policies regarding the eligibility requirements for the 13th monthly pay benefit, and to come up with and implement a set of criteria that does not run afoul of the principle of equal treatment. The company ruled against did not appeal the Authority's decision in court.

We are looking for female salespersons!

EBH/168/2016 | Decision finding a partial infringement

Protected characteristics: gender identity, belonging to the male gender

At the time when she filed her petition, the woman who initiated the Authority's procedure had neither had sex reassignment surgery nor had she applied for legally changing her gender. However, she had already lived her life as a woman for six years of her life at that point, and she dressed and conducted herself accordingly. In other words, even though she had born into the body of a man, and that time of her application that was also what was recorded in her personal identification documents, in fact she lived her life as a woman. The petitioner had applied for a position of sales assistant at the store of the company complained against, but when she appeared in person at the store, the manager – after consulting her résumé – informed the petitioner that they were looking for a female rather than a male sales assistant. The petitioner tried to explain that she is not a man but a woman, but at that point the store manager buried her face in her hands and laughed at her. After the petitioner thanked her for her honesty, the store manager only gestured dismissively and walked away without saying good-bye.

The petitioner designated his gender identity (being transgendered) as the protected characteristic, but the Authority was also mindful of the fact that

according to the data in her identification document, the petitioner is a man, and hence the Authority assessed that her biological gender is also a protected characteristic.

During the proceedings, the company complained against failed to react to the Authority's notices, it refused acceptance of the notice informing it about the Authority's procedure as well as the summons to the two hearings held in the case. Correspondingly, the Authority based its factual findings in the case on the submissions of the petitioner. At the same time, the Authority also had to investigate concerning both, direct discrimination and harassment, that is it had to ascertain whether the legal criteria that define these two violations of the Ebktv had been met. The latter had to apply for a determination that the company had violated the principle of equal treatment in its treatment of the petitioner.

It was possible to ascertain during the procedure that the rejection of the petitioner's application for the position of sales assistant was motivated in part by the petitioner's gender. It was namely realistic to assume that the petitioner's outward appearance, her gestures, behaviour, hairstyle, clothing, tone and manner of speaking made her appear like a woman to the store manager, and it was only in looking at the name in the résumé that the store manager realised that the petitioner was – at least according to the identification documents – a man. At the same time, the Authority also had to consider that according to the aforementioned identification documents the petitioner was a male, and hence the store manager's statement saying that they are not looking for men but for female sales assistants unequivocally suggested that the company wanted to exclude men from the circle of potential applicants. It was also important to note in this context that the company was still looking for sales assistants a month after the events described, which suggested that the petitioner was rejected because of the above cited protected characteristic and not because they had found a more suitable candidate to fill the position. This was further supported by the fact that upon learning the petitioner's name, the store manager did not take a detailed look at the résumé, nor did she ask any technical questions concerning the performance of the job duties for the position in question. Based on the above, it was possible to determine that by failing to employ the petitioner in the position of sales assistant, the company complained against had engaged in the direct discrimination of the petitioner on the grounds of the latter's gender identity and male gender,

that is the petitioner had been subject to intersectional discrimination based on these protected characteristics.

The Authority found that the charge that harassment had taken place had not been substantiated, because based on the complainant's statement no one else but the store manager had been present at the incident, and hence it was not possible to determine that an intimidating, hostile, degrading and humiliating or offensive environment had emerged surrounding the petitioner. Correspondingly, the Authority had to partially reject the petition as far as this aspect was concerned. The company did not appeal the Authority's decision in court.

V. Schematic overview of the types of multiple discrimination

Type of multiple discrimination	The relationship that prevails between the protected characteristics	Example
Discrimination based on several distinct but non-intersecting characteristics that apply at the same time (multiple discrimination).	The protected characteristics do not intersect, they are distinct and severable.	Political belief and age – on account of their age, a sixty-year-old person was not hired by the employer which had posted the vacancy notice. Also, the municipal government rejected their application for a welfare benefit to buy firewood for heating because it was well-known throughout the village that the complainant had supported the candidate of a rival party during the municipal election.
Compound discrimination	The protected characteristics apply at the same time and jointly, so that one characteristic compounds the impact of the other	Religion, sexual orientation, motherhood – as these characteristics become revealed to the interviewer step-by-step, the Jewish job applicant – who is raising her underage child together with her same-sex partner – sees her chances to win the position dwindle ever further.
Intersectional discrimination	The protected characteristics are present at the same time and they mutually impact one another in a way that makes it impossible to separate them in terms of their respective impact	Social origin, financial situation and affiliation with an ethnic minority – the unemployed person of Roma origin, who hails from a family with several children and has several of their own, and who lives in a part of the municipality that is widely regarded as being inhabited by Roma, is rejected at the job interview, is not allowed to enter the club in the non-segregated area of the municipality and is not being served in the local store.