

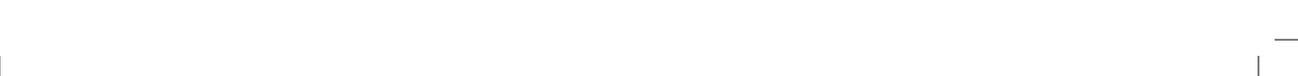


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# INFORMATION

on the activity of the Equal Treatment Authority in 2008,  
and on the findings of the application of Act CXXV of  
2003 on Equal Treatment and Promotion of Equal  
Opportunities

**Budapest, July 2009**



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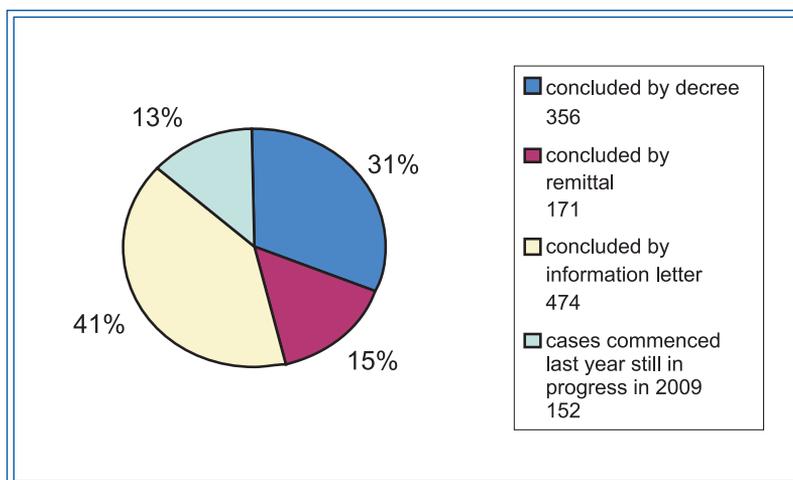
Responsible leader: Zoltán Balogh general manager

## I. Brief summary

Last year the Authority received **1153 applications, submissions**. This exceeds the previous (2007) case turnover by **52.5%**.

From 1153 cases **356 was concluded by resolution**, 171 by remittal, 474 by information letter. The number of cases commenced in the previous year still in progress in 2009 is 152.

The 1153 cases split per types:



**37 of 356 cases investigated were concluded by condemnation.** This again shows rise in number compared to 2007 when it was **29**; however, in its proportion to other decisions it did not change basically.

Condemnation affected the field of employment and services to the greatest extent, of which the former has represented 60 percent rate for years.

On the grounds of protected features determined by law it can be established that in most of the cases complainants incurred disadvantage in relation to other feature (feature that belongs to the essential attribute of the personality but not specifically named in Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities [Ebkvt.]), disability, age, motherhood and belonging to ethnic minority. (In the sudden and significant rise of complaints of persons with disabilities it played a part that a regional association enforced claims of public interest on behalf of the blind and persons with impaired eyesight against 19 pharmaceutical manufacturer and distributor companies asserting that medicine instructions were improperly made for the blind and persons with impaired sight.)

Furthermore, last year two claims of public interest were enforced before the Authority. In both cases a larger group of exactly not specifiable persons incurred or were threatened with disadvantage. In such cases it is not necessary for each complainant to submit an application, instead an organisation may represent their case and proceed before the Authority whose rules and regulations, deed of foundation includes a task of advancing social equal opportunities of the given disadvantaged group. Enforcement of claims of public interest before the Authority had been allowed prior to 1 January 2007; yet few interest representation organisations had used this new legal option.

As sanction ordered on the grounds of condemnations the Authority imposed a total of HUF 13.000.000 penalty in **9** cases, the lowest amount of which was HUF **500.000** while the highest amount was HUF **3.000.000**.

In 27 cases we ordered to make the condemning resolution public.

Compared to the number of arrangements in **2007**, in **2008** the number of arrangements based on mutual compromises, so ensuring long term and peaceful coexistence saw a sudden rise. While in 2007 arrangement was made in **3 cases**, in 2008 in **23 cases**.

Since the foundation of the Authority (1 February 2005) it has adopted a total of 898 resolutions on the merits. Up to now the parties has requested judicial revision of 74 resolutions out of the above. In 2008 in 25 cases the applicant, in 10 cases the persons subjected to proceedings attacked the resolution of the Authority. The number of court proceedings currently in progress is 21.

In 2008 in 2 of the 35 cases concluded before court the court sustained the application of the party attacking the resolution, by final and unappealable decision; of these in 1 case the court abrogated the resolution, and in 1 case it abrogated the resolution and obliged the Authority to conduct new proceedings. In 25 cases the court shared the standpoint of the Authority and sustained its resolution. In 5 cases the statement of claim was dismissed without summons, and in 3 cases – through the plaintiff's abandonment of the claim – the court terminated the proceedings by a decree.

On the grounds of the above data it can be declared that in 2008 the success of the Authority was 92%, which is significant because the concept of discrimination and the procedural rules thereof are new in adjudication practice in Hungary.

Complaints investigated in 2008 split per geographical terms:

1. Budapest: 135
2. Pest county: 43
3. Borsod-Abaúj-Zemplén (BAZ) county: 28

4. Szabolcs-Szatmár county: 19
5. Baranya county: 14
6. Hajdú-Bihar county: 11
7. Jász-Nagykun-Szolnok county: 11

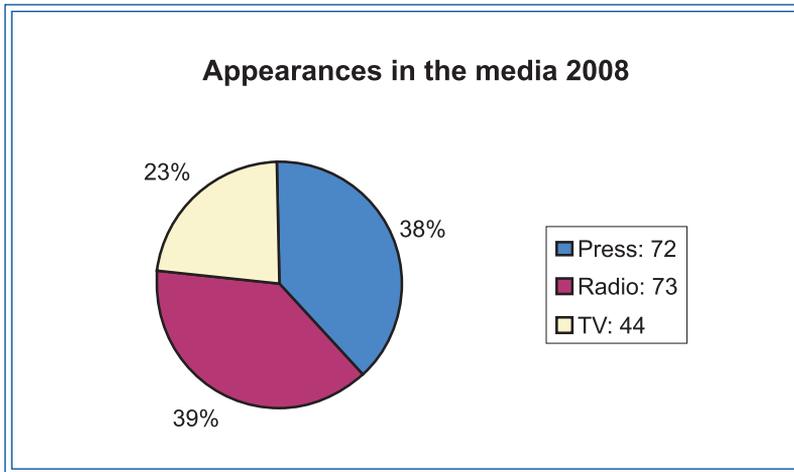
The least complaints (4) were received from Békés county. The number of complaints and the content of decisions do not correlate. From BAZ county, for example, **28** investigated complaints were received but 1 condemning decision was adopted out of them. From **6** complaints received from Somogy county, however, **2** condemning resolutions were adopted by the Authority.

The rules of law determining the activity of the Equal Treatment Authority stipulate as primary obligation that hearing shall be held at the applicant's domicile – be it at the farthest point of the country. In 2008 the administrators of the Authority held **212 hearings** at various settlements of the country.

Not only the relatively low number of resolutions declaring violation of law but the **474** cases concluded by information letter also shows lack of knowledge regarding the requirement of equal treatment. In addition to describing rules of discrimination to the complainant, in the information letter the Authority makes efforts to refer the client to the office, authority that provides specific help. This time and energy could be saved, however, if clients were aware of the meaning of discrimination, in what cases the Authority may proceed ex officio, that we shall not investigate unanimous reports, etc.

It may be a conclusion that may can be drawn from the above and instructive for the future that informative activity in cooperation with other public and nongovernmental organisations must be made more efficient.

In 2008 the staff of the Authority attended professional conferences, held lectures in **171** cases, and appeared in the media in **189** cases.



The authority's proceedings are free of charge for the complainant, applicant except when they have proceeded in ill faith. Since the commencement of its operation (February 2005) up to now the Authority has not needed to adopt a decision in any cases where it should have declared bad faith and based thereon it should have obliged the applicant to bear costs.

In 2008 the drafting of the program named TÁMOP 5.5.5 /Social Renewal Operational Programme/ 'Combating discrimination – shaping social approach and strengthening', under which the Authority is the beneficiary, reached the final stage. The contract of the program was signed in May 2009. One of the most important elements of the program is that a lawyer in each of the 20 Houses of Opportunities of the country and in Budapest will help complainants to ensure that the Authority should receive professional complaints with necessary documents attached, thereby shortening the administration dead-

line because then completion, now unfortunately taking several weeks, will become unnecessary. As a matter of fact, the number of consulting hours will grow, so the number of cases, complainants can be expected to rise significantly too.

In view of increased tasks and workload in 2008 the Authority was allowed to extend the staff by 4 persons but it is still much below the headcount necessary for more efficient performance of work, taking the drastically rising number of complaints and non-authority tasks formulated in law and governmental decree into consideration. Due to that in 2008 the number of cases commenced ex officio was negligible and no action was brought under enforcement of claim of public interest. In the activity of the Authority investigation of matters of discrimination, informing the public, maintaining contact with non-governmental and social organisations and satisfying information needs of international human rights organisations constituted priority.

## II. The Authority's activity

### 1. Characteristics of submissions, complaints

Based on the data of 2008 it can be stated in general that the turnover of cases of the Authority suddenly rose: while it proceeded in authority matters **in 491 cases in 2005 and in 592 cases in 2006**, it proceeded **in 729 cases in 2007 and in 1153 cases in 2008**. At the beginning of **2008 126 proceedings, at the beginning of 2009 152 proceedings were in progress before the Authority**. In cases where submitters did not seek commencement of the authority's proceedings and asked for information, legal advice only, similarly to previous years the Authority sent information letter to the parties concerned. Their number also rose: while 306 **information letters** were sent in 2006, 348 in 2007, and **474 in 2008**.

Out of 1153 **submissions 159** cases in 2007, **356** cases in **2008** were concluded by **decision on the merits**.

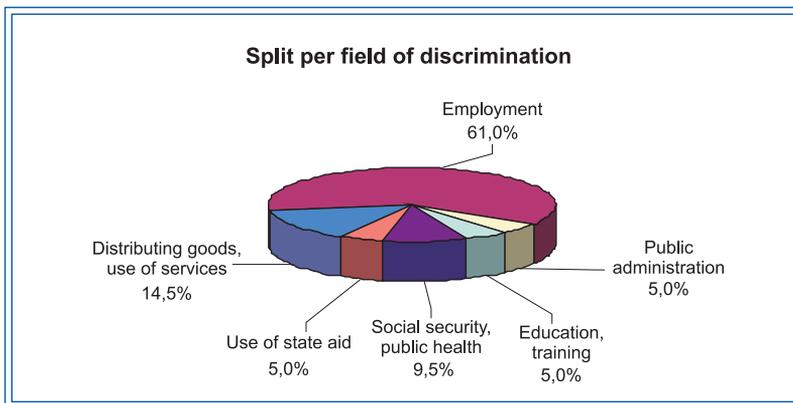
The number of cases **also rose** where it was unambiguously clear that no investigation could be commenced. Due to legal injuries affecting all fields of life persons turned to the Authority with complaints; e.g., they contested decisions of courts and various authorities, and requested information on enforcement of rights. In several cases they asked for information regarding the activity of the Authority: on the process of conducting the proceedings, and the content of possible decisions. In these submissions in most of the cases the parties con-

cerned gave account of discriminative legal injuries, for this reason the Authority- continuing its practice commenced in previous years - informed the complainant not only on lack of powers but in each case made an effort to provide detailed and specific information on opportunities to enforce rights. **171** submissions **were remitted** to other administrative bodies having powers and competence.

In several cases the complainant submitted its submission in electronic letter to the Authority without specifying its postal contact details; consequently, the application did not comply with formal requirements necessary for commencing proceedings. In such cases the Authority called the applicant's attention in an electronic letter to the fact that it should submit its application by post with the specified documents attached. If after that no reply was received either by post or electronically, the Authority was not able to adopt formal decision on the matter. It also occurred that in spite the express request of the Authority the complainant did not specify its postal contact details, then, following the information letter of the Authority, thanking the help of the Authority, they informed the Authority that their problem had in the meantime been solved, therefore, did not request conducting the proceedings of the Authority.

In a part of inquiring submissions complainants requested the interpretation of the Ebktv. Within such requests submissions were received in the greatest number regarding employment, the world of labour and in relation to the age and other situation of the contacting person, and no protected features were specified in them. In lower number inquiring requests were received regarding employment in relation to complainants' gender and motherhood (pregnancy), and by disabled persons in relation to distribution of goods and use of services. Further inquiring requests were received regarding social security

and public health, education and training, use of state aid. In such requests we can find items that apply to the tasks and powers of other administrative bodies, and requested information from the Authority regarding them. In several cases the Authority advised complainants to use mediation procedures (e.g., Education Mediation Service), and informed clients on the opportunities and conditions of using legal assistance, so on access to the Legal Assistance Service of the IRM /Ministry of Justice and Law Enforcement/.



The Authority received 313 complaints in which the complainant specified, in addition to the injury suffered, a protected feature, which is one of the conditions of commencing proceedings. Most of such complaints, a total of 119, were again related to employment. Also in significant number and in identical proportion, submissions were received regarding social security and public health, distribution of goods and use of services and due to proceedings of bodies exercising authority powers. In 28 percent of submissions the complainant did not specify any protected feature; therefore, the Authority remitted the complaint to the administrative body having powers and competence. In 5.7% of complaints the powers of the Authority could be declared; however, the party submitting the submission had to be called to implement completion.

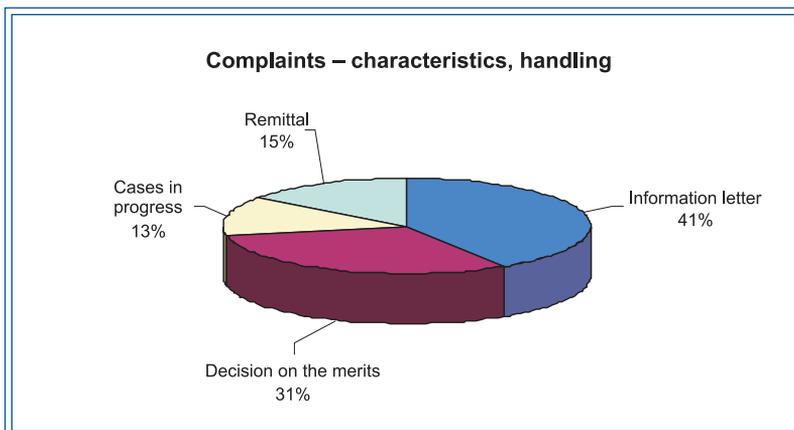
## II. The Authority's activity

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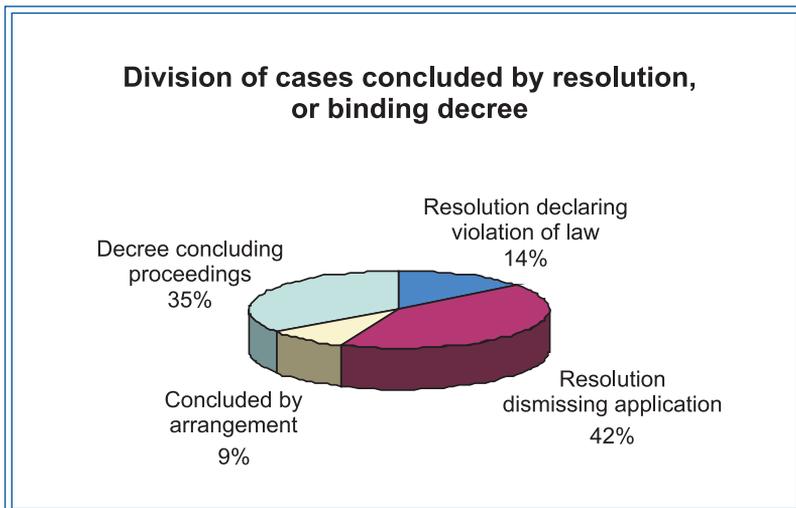
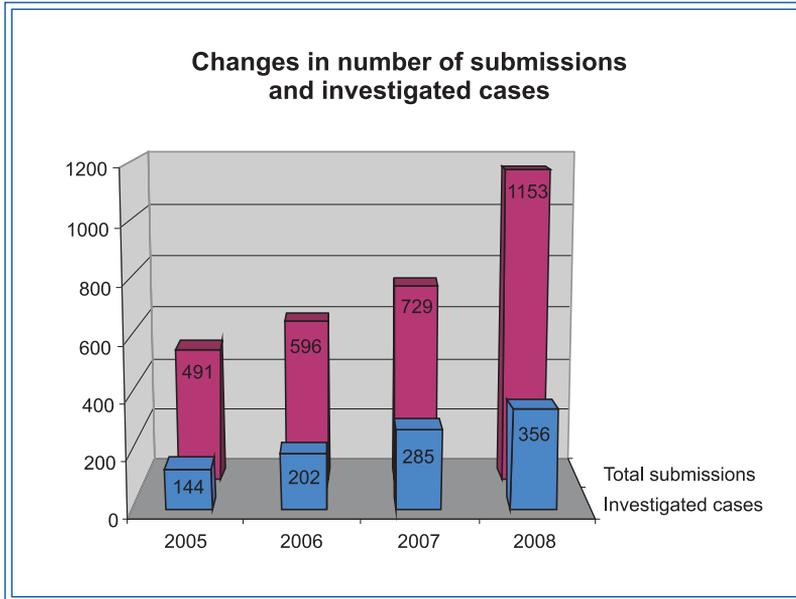
Since the client did not meet the call for completion the Authority decided to terminate the proceedings. The rest of the cases were concluded by information letter (66.3%) because the conditions of either remitting the case or commencing the proceedings did not exist.

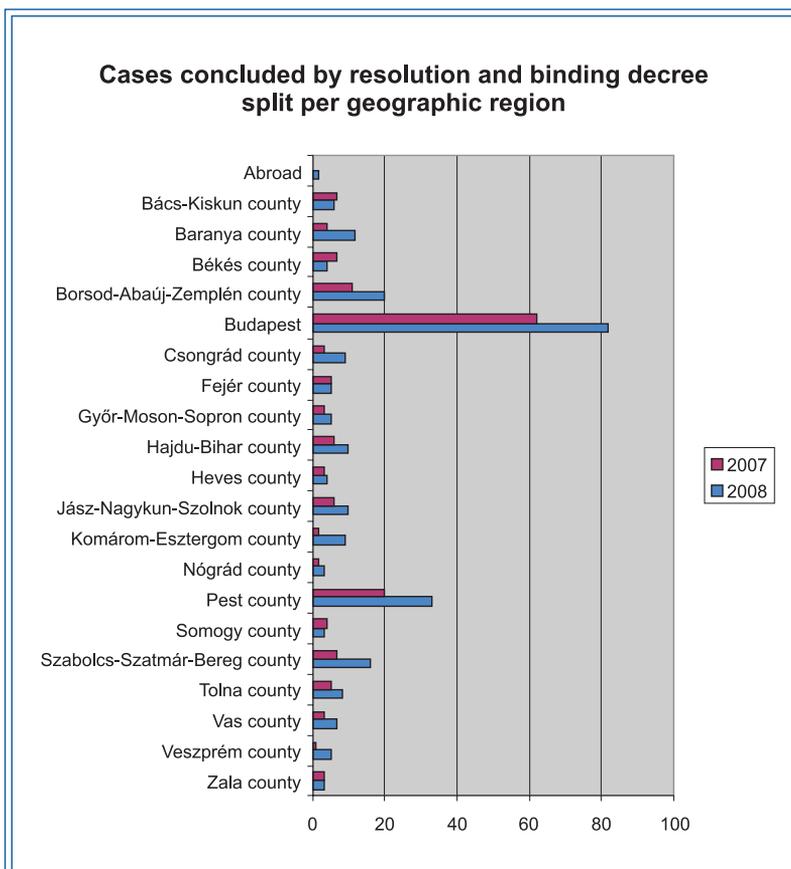
In 19.5% of specific complaints the complainant contested public authority decisions adopted by court or the public prosecutor's office, and provisions of rules of law. A significant part of complaints related to enforcement of civil law claims, such as trespass, common property in condominium, family law problems, and found court foreclosure proceedings injurious. In the latter cases the Authority declared lack of powers.

Due to the nature of complaints, we remitted most of the applications in which the Authority could not proceed for lack of powers to the Ministry of Social Affairs and Labour (48). With the Private/Household Relations Department of the Ministry we had personal consultations on handling particular cases, and requested them to forward a copy of their response written to the complainant to the Authority. These actions represent useful help later on in other cases for the Authority in providing clients with information of as wide scope as possible.



Characteristics of investigated cases (resolution, decree, etc.)

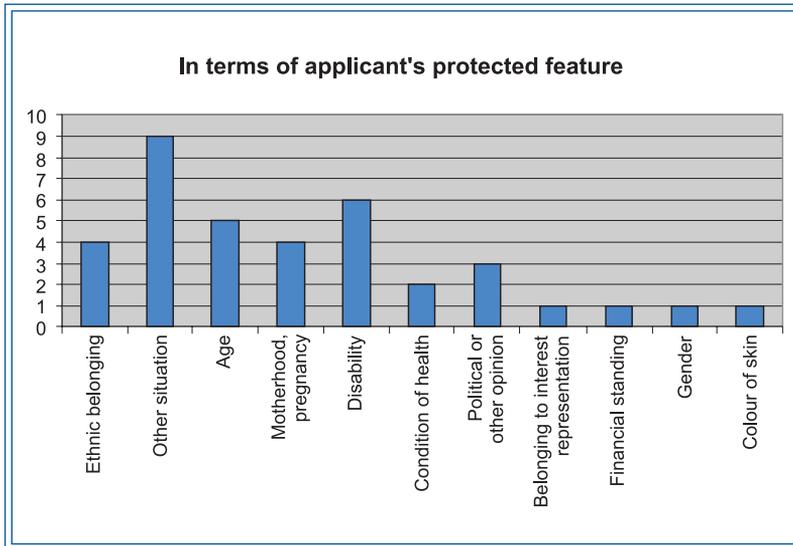




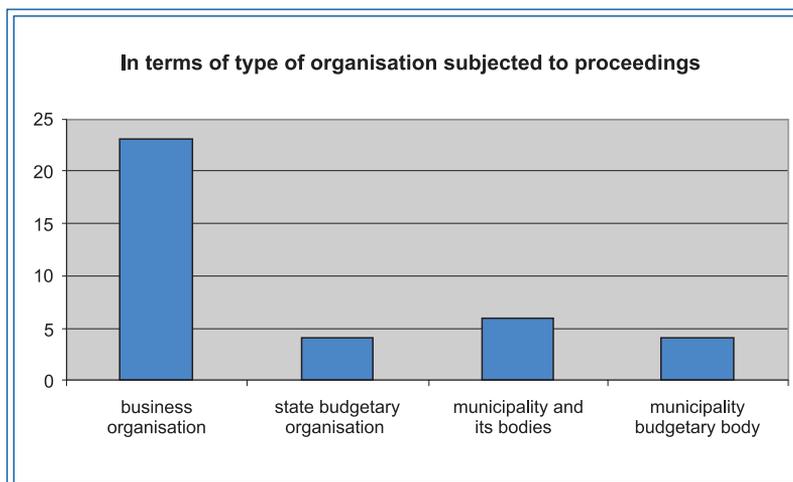
## 2. Characteristics of cases concluded by resolution

### 2.1. Decisions declaring violation of law

In **2005** on **9**, in **2006** on **27** occasions the Authority declared violation of the requirement of equal treatment; in **2007 29**, in **2008 37** resolutions declaring violation of law were adopted, which represents 13% rise compared to the previous year.



From among the five forms of conduct implementing discrimination, in 2008 the tendency that direct discrimination represents the major part of violation of law continued.



Condemning decisions adopted by the Authority in 2008 split per field of discrimination were as follows:

**I. employment**

**II. distribution of goods, use of services**

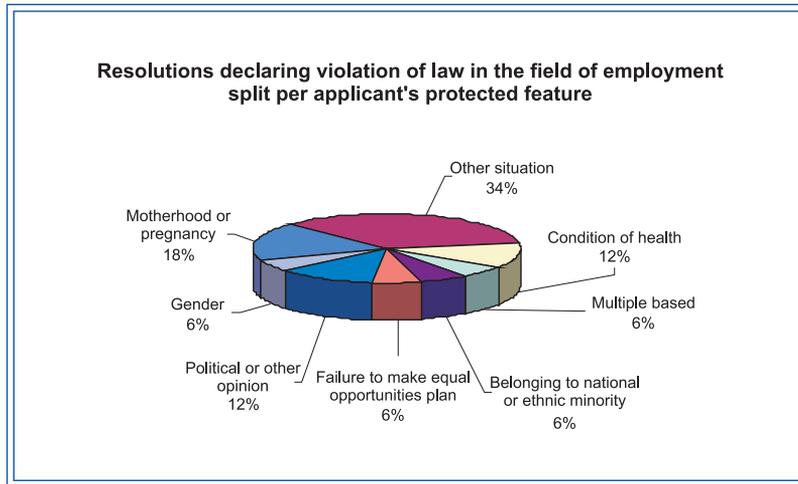
**III. matters related to fulfilling municipality task**

**IV. abode**

**I. Employment**

In 2008 in the field of employment the Authority declared violation of the requirement of equal treatment in **19** cases, where the basis of discrimination was constituted by the so-called **other situation** of the complainant pursuant to Section 8 t) of the Ebktv in **6** cases, **motherhood or pregnancy** in **3** cases, **condition of health** or **political and other opinion** in **2** and **2** cases respectively, **gender**, **belonging to national or ethnic minority** and **belonging to**

**interest representation organization** in **1** case each, and so-called multiple based discrimination based on **motherhood and other situation** was implemented in **1** case. The Authority declared **retorsion** in **2** cases, and condemned an employer due to **lack of equal opportunities plan** also in **1** case.



In terms of protected features, complainants who based their injury on their so-called other situation turned to the Authority to the greatest extent.

Based thereon the Authority evaluated regionality, the situation when an employee spent their notice period or when a personal conflict existed between their employer and one of their family members as other situation. The Authority holds the position that the above enumeration is in harmony with the requirement developed on the grounds of judicial practice that the feature evaluated as other situation must be an inseparable part of the personality.

### ***Discrimination due to other situation***

*Complainant found it injurious that after the termination of his employment relation with dismissal during the term of dismissal his employer had made it hard for him on several occasions to enter the place of work, participate in the plant council elections, actually barred him from the territory of his place of work. In its defence the employer claimed that all of its measures had been taken in the interest of the applicant, however, during the proceedings it was established that the trade unions had protested several times against the employer's measures without any result. The employer did not regulate who and on what occasion in what form was allowed to enter its premises so it had been made difficult arbitrarily for the applicant to enter the building.*

*The Authority declared that that the party subjected to proceedings had infringed the requirement of equal treatment against the applicant due to his other situation (employee spending his term of dismissal) and had engaged a conduct against the applicant during the term of his dismissal on several occasions which was suitable for creating hostile, humiliating environment and injured the applicant in his human dignity. The Authority prohibited continuance of unlawful conduct and ordered to make the resolution public for 90 days.*

\* \* \*

*A teacher lodged a complaint with the Authority claiming that her employer, the principal of a primary school discharged her from his job after her husband who also taught at the school had turned to the Authority. The applicant claimed that she had suffered injuries because of the disagreement between her husband and the school. The parties stated unanimously in the proceedings that their formerly good relation had deteriorated after the disagreement between the applicant's husband and the principal of the school had developed. The employer asserted, however, that educational and disciplinary problems had also arisen*

regarding the applicant's work and she had been discharged for this reason. The Authority declared that the disagreement between the applicant's husband and the principal of the school had developed into a serious conflict for both of the parties and as a result of that the applicant had felt being harassed at their common place of work and the leader of the institution had not taken any measures to resolve that, instead ordered to discharge the applicant. The party subjected to proceedings was not able to prove that the applicant, a teacher of Hungarian, had been discriminated not because of the above when the employer – referring to the decision of the maintainer of the institution and to professional reserve regarding her work – discharged her whereas there were not enough teachers of Hungarian in forms 7 and 8 of the school.

The Authority declared that the employer had implemented direct discrimination based on other situation (**bad relation between the applicant's spouse and the employer**) against the applicant, it barred it from engaging unlawful conduct in the future and ordered to make the resolution public for 30 days on the web site of the Authority and on the notice board of the local mayor's office.

\* \* \*

Against the complainant, because of his belonging to the Roma minority, his former leader at the place of work had launched a "discrediting campaign" as a result of which a hostile environment had developed against him, and then terminated his employment relation during staff reduction. The applicant specified the commencement date of the leader's conduct as the time when he declared intention to enter the leader's election where the elected old/new leader was the other candidate in addition to him. In the Authority's proceedings it became obvious that the employer had implemented the state of facts of harassment against the complainant not in connection with his Roma origin but so-called other situation, that is, his entering the competition announced for fulfilling the leader's position.

## II. The Authority's activity

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Based on the above the Authority barred the employer from engaging in unlawful conduct in the future and ordered to make the resolution public. The party subjected to proceedings attacked the resolution of the Authority before the Metropolitan Court by bringing an action, and said court abrogated the resolution of the Authority and obliged the Authority to conduct new proceedings. In the repeated proceedings, in order to explore the state of facts in its entirety the Authority heard every person who had knowledge of any material circumstance regarding the matter. Based thereon the Authority declared that **the employer's conduct had not been not in proportion with the requirement of necessity and proportionateness, and the leader at the place of work had not applied due care to eliminate tendencies that negatively influenced the morale of the team.** As harassment pursuant to the Ebktv. can be implemented not only through active conduct but by failure too. The Authority prohibited continuance of the unlawful conduct and made its resolution public.

\* \* \*

In a call for proposals on fulfilling a job a municipality mayor's office stipulated that local inhabitants would be preferred in granting the job. The applicant held the position that the call for proposals had resulted in unjustified discrimination of applicants not having domicile at the given settlement. The mayor expounded that in the relevant call for proposals domicile at the settlement was only criterion of preference and not condition of employment. Local inhabitants had not been absolutely preferred in spite of the point that according to its position an employer had the right to prefer persons living at the settlement. The mayor also said that none of the successful applicants for the job had been local inhabitants, the only local applicant had been refused. Furthermore, the mayor expounded that a significant number of not local inhabitants also worked at the mayor's office.

The Authority declared that the municipality had infringed the requirement of equal treatment by **including local domicile as a condition ensuring preference in unjustified and unlawful form in the call for proposals** because the party subjected to proceedings was unable to give material reasons for including the criterion based on the character or nature of the work. The Authority prohibited continuance of the unlawful conduct, and ordered to make its resolution public for 30 days.

\* \* \*

In its application seeking enforcement of claim of public interest the local organisation of a trade union expounded that a company had decided on return of quota of its two factories, as a result of which in their content the agreements signed with specific factories contained more favourable conditions for people working at two permanent establishments of the North Hungary region than with regard to the North Greater Plain region. In the two agreements workers were given compensation for damage for a period 4 months longer on average through setting off years of studying against the amount calculated. The trade union held the position that the party subjected to proceedings considered the North Greater Plain region compared to the North Hungary region being in a more favourable situation in terms of employment, job creation and real estate prices, and for this reason compensation for damage of people working there was lower than that of the workers at the permanent establishments of the North Hungary region. The employer asserted that when concluding the agreements they had not wanted to make regional labour market differences, and the relevant workers of all the three permanent establishments had received the emoluments otherwise set forth in the collective agreement but in the indemnification part beyond that there were differences between permanent establishments.

The Authority found the applicants' submission seeking enforcement of claim of public interest well-founded, so it declared discrimination based on **regionality** as other situation since it did not find that the reasons for differentiation had been properly supported. The Authority obliged the company to terminate the unlawful condition providing that in the agreements it should apply identical treatment vis-à-vis the groups of employees employed at the permanent establishments of the two regions.

\* \* \*

The applicant found it injurious that a company engaged in providing labour for hire had not entered into an employment contract with him because it was conditional upon having a registered address, domicile or place of residence. The applicant had applied for the job of a shop assistant at a fast food restaurant; after the job interview he was informed that he would be engaged, however, he had to administer the engagement related documents at the labour for hire office. Among others the employer referred to the point that without a particular address they could not assume responsibility for the employees, so they could not engage a person who did not have postal contact details. Furthermore, the employer pleaded that the obligation set forth in the rule of law on reimbursement of travel expense related to going to work could not be fulfilled either in the event that the employee did not verify his address.

The Ministry of Social Affairs and Labour contacted in the matter asserts that conclusion of employment contract shall not be refused because only settlement level address with having no address added is given in the official address card of the persons applying for the job. The Authority did not find the reasons pleaded by the party subjected to proceedings acceptable and so declared that the employer had infringed the requirement of equal treatment by **not entering into employment contract with the applicant not having registered address**.

*The Authority prohibited continuance of the unlawful conduct and ordered to make its resolution public for 90 days.*

### ***Discrimination based on gender***

The importance of discrimination **based on gender** manifested in employment seems to be supported by the fact that motherhood (pregnancy) is in the second place in resolutions split per protected features. The Authority declared in three cases that the applicant had suffered disadvantage due their such feature and in two cases the Authority deemed it so serious that a fine (HUF500.000 and HUF1.500.000) was imposed as sanction.

Violation of law declared in relation to motherhood were contrary to the provisions of the requirement of equal treatment set forth in Section 21 c) and f) of the Ebtv. In these cases the examination of the termination of the employment within probation period and non-extension of employment relation for a definite term constituted the subject of the proceedings; and the employee having returned from maternity leave was employed from then on in sphere of work of different ranking with lower wages, and absence fee of improper rate was paid to her.

Discriminative measures applied due to motherhood and pregnancy call the attention, on the one hand, to the fact that employers' attitude observed on the Hungarian labour market fails to advance undertaking to give birth to children, starting a family. On the other hand, they imply that the majority of employers do not know, do not take seriously the scope of questions that may be put in job interviews, and the requirement asserting that labour protection of women who undertake to give birth to children is not simply a legislative objective, failure to comply with it will bring along serious consequences in practice. It is

partly attributable to the above that in 13 out of 19 cases concluded by declaring violation of law in the field of employment female applicants suffered injury and enforced their claim before the Authority, while in a total of no more than 3 cases did the Authority declare discrimination that harmed male complainants. In the other 3 cases the applicant's side was represented by an association, interest representation organisation.

\* \* \*

*The applicant's employment contract for definite term was not extended after its expiry because she announced that she was expecting a child. Before submitting her application to the Authority the applicant had turned to labour court seeking declaration of the infringement the requirement of equal treatment, so in accordance with Section 15/A (1) of the Ebktv. the Authority suspended the proceedings until the adoption of the final and unappealable decision of the labour court. The court decision final and unappealable in the first instance stated that the employer had unlawfully terminated the applicant's employment relation, the court did not accept the employer's exculpation demonstration regarding compliance with the infringement the requirement of equal treatment. Section 15/A (4) of the Ebktv. stipulates that in its proceedings the Authority shall proceed in the same violation of law upon receipt of the court decision based on the state of facts determined therein.*

*Based on the state of facts determined by the court the Authority found the applicant's application well-founded and declared that the employer had implemented direct discrimination against the applicant. The Authority barred the party subjected to proceedings from engaging unlawful conduct in the future, decided to make the resolution public and imposed HUF 500.000 fine.*

\* \* \*

*The applicant had worked at a company since 2000 under employment contract for indefinite term as an office leader; from mid November 2001 she had been on sick pay because she was expecting a child and her condition of health prevented her from continuing performance of work. Her first child was born in 2001, and she stayed at home with the child until December 2004, her second child was born in March 2005, she stayed at home with this child for two years. In March 2007 she wanted to re-enter work, and contacted the employer in writing. At the end of May she was noticed to appear at the beginning of the following month in order to perform work, but then the employer proposed that they should terminate her employment relation by common consent. The applicant did not agree, wanted to enter work and requested to adjust her salary to the extent of wage increase in the past five years, and to provide meal coupon in an amount that other employees working in administrative jobs received but none of the above had not been carried out. In the Authority's proceedings it was declared that the party subjected to proceedings had been in several months delay in determining and giving the applicant's leave, and after that, because the applicant announced in September 2007 that she was expecting a child, the party subjected to proceedings did nothing for the settlement of the applicant's emoluments. The Authority took the position that apart from giving leave to the applicant after corrections on several occasions the employer had taken no steps to correct her personal basic wages and emoluments in view of the change having occurred in the meantime.*

*The Authority declared that the party subjected to proceedings infringed the requirement of equal treatment against the applicant due to her motherhood; therefore, it ordered discontinuance of the unlawful condition in 30 days, to review earlier payments, and barred the party subjected to proceedings from engaging unlawful conduct in the future.*

\* \* \*

*The applicant established public service legal relation as from 1 January 2008. At the time of signing her appointment she had already known that she was 6 week pregnant. Her appointment was for a definite term, for the period of absence of a civil servant, stipulating six-month probation period. At the beginning of February 2008, having completed the 12<sup>th</sup> week of her pregnancy the applicant told her superior that she was pregnant, and her workplace leader responded "You have perfectly entrapped us!" After that the applicant was hardly given any work on the merits, then as from 30 April 2008 during probation her public service legal relation was terminated. The Authority did not accept the defence of the party subjected to proceedings which claimed that the applicant's public service legal relation had been terminated due to her inability to perform tasks in her job. In the proceedings the party subjected to proceedings itself pleaded that in job interviews with new employees it inquired about the employees' intention to undertake to give birth to children, plans to start a family.*

*In this scope the Authority called the attention of the party subjected to proceedings to the fact that under employment relation it was not allowed to put such questions to the employee, and it comes from the interpretation of the Advisory Board's Position No. 1/2007. TT that an employee is not obliged to answer even after the establishment of the employment relation questions which shall not be put in job interviews to employees, and that the employee's failure to respond shall not be evaluated as a condition to her disadvantage. As a sanction against the party subjected to proceedings the Authority ordered to make the resolution public on two places, on the web site of both the Authority and the party subjected to proceedings.*

In addition to the above, condition of health in two cases, belonging to national or ethnic minority, belonging to interest representation organisation, politi-

cal or other opinion and gender in one case respectively constituted protected feature that provided grounds for discrimination.

In the latter case the applicant suffered disadvantage due to being male when applying for a job.

*The applicant having practical experience in this respect applied by phone for a job of patient reception administrator announced by a health institution where he was told that the women working at the patient reception office did not want to work with a man, and the head of the patient reception office informed the financial director that they continue to intend to fill the job with female labour. The party subjected to proceedings pleaded to the Authority that finally they fulfilled the job announced with a female applicant. The Authority did not accept the defence of the party subjected to proceedings claiming that the requirement of equal treatment was not infringed because the applicant had not used the opportunity of the job interview offered, which was offered to him after it had been said twice that they intended to fill the job in the patient reception office with a female applicant.*

*Based on the proceedings conducted and the parties' unanimous statements the Authority declared that the party subjected to proceedings had infringed the requirement of equal treatment by not providing equal opportunities for the applicant for winning the job announced by it, due to his gender. The Authority barred the party subjected to proceedings from engaging unlawful conduct in the future, and order to make its resolution public for 60 days.*

***Discrimination related to condition of health  
and political or other opinion***

In relation to condition of health and political or other opinion as protected feature it can be declared that the employer is unfortunately unable to appreciate the situation of its employee fighting with health problems when it takes measures that sanction illness. Besides, it is expressly typical that the employer does not tolerate its employees' different opinion represented in professional or political issues, which first leads to recurring conflicts between superior and subordinates "only", then it is manifested in discriminative employer's measures.

In the field of employment a part of complainants turns to the Authority because their professional disagreements related to performance of work become permanent conflicts, complainants experience disregarding their professional opinion as disadvantage. The Authority, however, declares violation of equal treatment (mostly harassment) only in the event that the employer, abusing its employer's rights, responds to the employee's other opinion by engaging retorsion like conduct.

*His former employer (a children protection institution) first transferred the complainant to another point of performance of work, then gave him written and oral notice on several occasions, finally terminated his employment relation. In the complainant's opinion all this had taken place because of his different opinion formulated against his direct superior. The applicant found the investigation, which was carried out after controlling the computer system of the institution due to visiting web sites with sexual content from the PC in his room during service period, extremely injurious. The complainant's direct superior admitted that his good relation with the complainant had indeed deteriorated because of an SMS which was in his opinion indecent; furthermore, he said that in his view the*

*applicant's work had not complied with requirements in every respect. As formulated by the witness heard in the case the examination of the computer system of the institution "was specifically aimed at proving that no other than the applicant could have been the person who was looking at such sites". The witness also said that such visits to the ominous web sites was talk of the team both among the employees of the institution and resident young people.*

*The Authority declared that the form of investigation carried out against the applicant had developed a hostile, humiliating environment around him, and was suitable for injuring his human dignity. The investigation carried out by the employer had not complied with the requirement of proportionateness and necessity and eligibility. In addition to prohibiting continuance of unlawful conduct the Authority made its resolution public.*

\* \* \*

*At the shop of the company that employed the applicant between January and July 2006 the applicant suffered various atrocities from the shop leader and colleagues because the applicant had raised reserve due to measures taken regarding the disappearance of a television set owned by the company to the regional representative of the company, who conducted the investigation on the said subject. Due to the injuries suffered the applicant went on sick leave. In the proceedings it was proved that the applicant had turned to the executive exercising employer's rights seeking investigation and redress of the injuries suffered by him but the executive had failed to take any measures on the merits.*

*The Authority sustained the application and declared that the requirement of equal treatment had been infringed when the employer failed to take necessary measures to eliminate the hostile, humiliating environment that had developed around the applicant, and thereby violated the applicant's human dignity and implemented the state of facts of harassment set forth in the Ebktv. In its resolu-*

tion the Authority barred the employer from engaging unlawful conduct in the future.

### ***Discrimination based on ethnic belonging***

It was only in one case that the Authority declared discrimination based on ethnic belonging in the field of employment although this issue has become a nationwide phenomenon according to all statistical surveys, everyday experience and the number of complaints received. The violation of human dignity and social segregation of the Roma population must be handled as an extremely serious problem. In the "unexplored" state of cases low awareness of the law of the Roma (they do not know where to turn to with their complaints; they withdraw their application in proceedings already commenced) and the fact that it is hard to prove cause and effect relation between origin and discriminative measures might play a part. The activity of ethnic municipalities and rights protection organisations, apart from a few exceptions, cannot be observed in this field to a great extent.

*At the local job centre field office one of the three complainants was given the telephone number of a business organisation which were looking for applicants for cleaner's work. The same day the applicant called the number received where the company's managing director said that they were looking for personnel to clean offices, and the work could be started the following day. To the question if it were possible to engage two other persons too, the answer was yes. After that the managing clerk put general questions regarding filling the job, and the complainant answered them. Finally, the parties agreed that they would meet in a few days time on the location of performance of work. However, after the caller had asked if it constituted any problem for taking the job that the applicants were of Roma origin the managing director interrupted the conversa-*

tion. The following day all the three applicants went to the job centre field office where they described what had happened. Meeting the request of the applicants the head of the field office called the managing director of the Ltd, who confirmed that he would not employ Roma persons because his colleagues did not like working with them.

As the result of the proceedings conducted in the case the Authority declared that the party subjected to proceedings had infringed the requirement of equal treatment against the applicants by not employing them for the cleaning job due to their belonging to the Roma minority. In addition to prohibiting continuance of unlawful conduct the Authority ordered payment of HUF 500.000 fine, and ordered to make its resolution public for 90 days.

#### ***Discrimination due to belonging to interest representation organisation***

It was possible to declare belonging to interest representation organisation as basis of discrimination specifically named in the Ebktv only in one case because the Authority deemed that although conflicts between employers and trade unions in the field of employment were frequent and might lead to mutual harms, disagreements, they did not implement discrimination applied by the employer. *The case purely constituting the facts that an employer discriminates an employee just because s/he is a trade union member occurs rarely in practice,* and professional conflicts arising from the nature of membership in interest representation organisations do not infringe the Ebktv.

*The applicant worked at the directorate of a central administrative body but the institution, where the applicant was transferred to and left from in early retirement in November 2007, separated from the directorate in restructuring the organisation. At both of his workplaces the applicant was active as trade union*

*official, worked towards actively representing the interests of the members and for this reason he had problems with his employer several times. He felt that neither his direct superiors nor the chief executive officer exercising employer's rights appreciated his activity in interest representation, he took the position that efforts were made to separate him from the members and for this reason he was transferred to a room of small area with poor light. He found it injurious that his direct superior several times challenged his attending trade union meetings, and felt that in granting benefits, rising wages the employer regularly neglected him or granted lower benefits to him than to the rest of the workers of the department. From the statement of benefits and wages attached by the party subjected to proceedings it was possible to declare that the applicant had been given benefits below the average. The Authority could not ignore the fact that on the grounds of the witnesses' confessions co-operation between the party subjected to proceedings and the trade union operating at its premises was not proper.*

*Paying regard to the above, the institution had infringed the requirement of equal treatment against the applicant, discriminated him due to his membership in an interest representation organisation, the function assumed in the organisation and the activity performed by him for the sake of the members. The Authority ordered to make the resolution public for 30 days on its web site, and barred the party subjected to proceedings from engaging unlawful conduct in the future.*

### **Multiple based discrimination**

In one case the Authority declared so-called **multiple based discrimination** where motherhood and appointment to act as a leader as other situation jointly constituted the basis of discrimination. However, the situation that can be called typical is when an employee in a leader position goes on maternity leave, e.g., and the employer does not find legal form of substituting her. In

such cases the leader's appointment is often terminated while the employee shall not be refused, merely due to undertaking to give birth to a child, to return to the same position under the same conditions from where she went on leave.

*The complainant had maintained employment relation with the company since 1994, her first child was born in 2004 and her second child in 2006, and before their birth she had been financial director at the legal predecessor of the party subjected to proceedings. In March 2007, during maternity leave she wanted to enter work again but her employer told her to take her leave accumulated in the meantime, and in July informed her that the financial director's position filled by her earlier was terminated, for this reason it offered her the job of in-house controller saying that this work could be done at home too. The applicant did not accept the job offered since it would involve emolument significantly lower than her former basic personal wages. The applicant pleaded that the legal predecessor of the party subjected to proceedings had been transformed but the sphere of work that she had filled earlier continued to exist in the transformed organisation. The Authority did not accept the defence of the party subjected to proceedings in which it claimed that the applicant's job had in the meantime terminated and instead of the earlier financial director's position now financial and controlling director's position existed at the party subjected to proceedings because the employer would have had the opportunity to employ a deputy during the applicant's absence, and as it presented the tasks of the financial and controlling director did not contain materially different duties compared to those fulfilled by the applicant.*

*The Authority declared that the employer had infringed the requirement of equal treatment against the applicant due to her motherhood and other situation (executive job) by failing to ensure when she entered work during her maternity*

*leave that she could continue to work in her earlier job or a job identical with it under similar conditions. The Authority ordered to discontinue the unlawful condition in 30 days and to make the resolution public for 30 days, and obliged the party subjected to proceedings to pay HUF 1.500.000 fine and prohibited continuance of unlawful conduct.*

### **Retorsion**

In two cases the Authority declared **retorsion** when a superior caused disadvantage to an employee because said person had proceeded in the case before the Authority earlier. Applicants in these cases reasonably did not have to have a so-called protected feature. The Authority considers it important to continue to call each client's attention to the opportunity and importance of taking action against retorsion that might follow the examination of their case.

*The applicant was civil servant at a mayor's office, and on 14 August 2008 the deputy clerk brought disciplinary proceedings against him, on the mayor's initiative. Earlier, the applicant had appeared personally before the Authority to be heard as client, so he took the position that after he had been heard by the Authority the mayor initiated to bring disciplinary proceedings against him, and the deputy clerk had brought such proceedings, which constituted retorsion against him. The applicant stated that the reason for bringing the disciplinary proceedings was attaching an official document during the personal hearing of the applicant before the Authority and use of the office car. The Authority declared that the clerk exercising employer's rights had brought proceedings against the applicant on the mayor's initiative in spite of the fact that the clerk himself had signed the application for the office car. The mayor initiated bringing the disciplinary proceedings with the clerk in spite of the fact that after 18*

August 2008 he personally called the Authority's administrator and inquired about the matter regarding which and the capacity in which the applicant had been heard.

The Authority took the position that the mayor had implemented threatening with causing legal grievance against the applicant by his conduct of initiating disciplinary proceedings. As the mayor did not exercise employer's rights over the applicant, as appropriate, his act amounted to no more than threat. The Authority prohibited continuance of unlawful conduct.

\* \* \*

A worker of a social institution maintained by the municipality found it injurious that he had become the target of sarcastic comments made by his employer and colleagues on the message board of a community portal, he had been left out of the 2008 reward without any reason, and his employer did not assign him to night shift, and transferred him to another wing of the building. The applicant specified his condition of health as protected feature. In the proceedings commenced the applicant also referred to the fact that his employer had used retorsion because he had turned to the Authority due to the employer having brought unfounded disciplinary proceedings against him. In its defence the employer pleaded that it had reorganised the applicant's work because rumour had it in the institution that the applicant had established close contact with one of the persons cared for. And that it had not given reward to the applicant because it was not satisfied with his work and because he was on sick pay, did not work for months. After conducting the demonstration the Authority declared that the reserves made against the applicant's performance of work did not qualify material circumstances that would have justified full withdrawal of the reward. The employer expressly referred to the point that it had withdrawn the reward, among others, because in its view the applicant had been on sick pay without

good cause. In spite of the fact that there were employees who had been given reward after having been absent for a longer period it could be declared that the applicant had not been given reward because he had been forced to go on sick leave. The employer had brought disciplinary proceedings against the applicant because as it claimed it had learned of such new facts regarding the matter in January 2008 that provided grounds for the suspicion that the applicant had indeed engaged unethical conduct regarding a former person cared for. On the grounds of the documents of the disciplinary proceedings, however, the Authority declared that the employer had not in the meantime learned of any new data that it had not been able to know earlier. Eventually, the employer terminated the disciplinary proceedings by referring to the point that rule of law did not provide grounds for commencing such proceedings. The Authority condemned the employer because the disciplinary proceedings that lasted for almost two months and the number of the witnesses heard might have been suitable for injuring the applicant's human dignity. The Authority barred the employer from committing similar violations of law in the future.

### **Harassment**

The Ebktv. provides for the act of **harassment** in a special state of facts; the Authority declared commitment of harassment in the above described matters in a total of 6 cases, the highest number since the commencement of the operation of the Authority, including **4** in the field of employment. Harassment may be implemented simultaneously with direct discrimination and as a series of several acts each causing direct discrimination independently since due to its nature in general it presumes a process or a regularly recurring conduct rather than a specific employer's measure.

*A trade union operating within a company turned to the Authority in the workers' interest because the company management made the name of the employees who were on sick pay in the previous year public. The employer's measure raised high outrage among employees, for this reason the trade union leader called the workplace leader to remove the list but his request was refused. The Authority investigated the matter under enforcement of claim of public interest. The workers heard as witnesses claimed that the publication of the list had humiliated them; on the contrary, the company manager argued that he had decided to make the list public in line with domestic and international practice, and the publication had served to raise attention and supplied facts and data as he had received comments from employees several times claiming that certain employees used sick pay without being entitled to it.*

*As a result of the investigation the Authority declared that the employer had committed harassment against the workers in relation to condition of health, barred it from continuing unlawful conduct and ordered to make its resolution public.*

### ***Failure to adopt equal opportunity plan***

In accordance with the amendment to the Ebktv. entered into force as from 1 January 2007 the Authority will on notification examine if the employers obliged to do so have adopted **an equal opportunities plan**, and will adopt decision on the grounds of the investigation. It was in one case that the Authority declared that the party obliged to do so did not have an equal opportunities plan.

*The Authority called the organisation subjected to proceedings to attach its equal opportunities plan, the organisation failed to meet this call, and in its defence it pleaded that it had been founded not long ago and as no representa-*

*tive trade union was operated at it and there was no plant council, it did not have equal opportunities plan either.*

*The Authority did not accept this argument and declared that the employer had been in breach of its obligation to adopt equal opportunities plan stipulated in Section 63 (4) of the Ebktv. As a sanction the Authority called the party subjected to proceedings to adopt the equal opportunities plan of the institution in 45 days, and send it to the Authority. This was discharged by deadline. At the same time, the Authority ordered to make its resolution declaring violation of law public for 45 days.*

Decisions declaring violation of law can be grouped also **in terms of types of employer**; examining the point in this respect: the Authority condemned business organisations in 9 cases, local, regional or national administrative bodies and educational, social and health institutions (it needs to be emphasised that as an employer) in 5 cases each. The above data reveal that the majority of the condemned entities constitute business organisations; it is more surprising and indicates lack of knowledge of human rights that even persons working at educational, social and health institutions also suffer discrimination to such a high extent.

The **sanctions applied by us** in particular cases are split as follows. In 17 cases the Authority barred the offender from engaging unlawful conduct in the future – as this is a basic sanction, it may be dispensed with only in the event that the offender is no longer in the situation that would enable it to commit the same kind of violation of law. On 14 occasions the resolution was made public, which sanction has serious repressive force as experience shows; therefore, it is often applied. The Authority, however, ordered discontinuance of the situation violating law in 3 cases only since in the rest of the cases the situation violating law had terminated the latest during the proceedings. Fine was imposed in 3 cases (HUF 1.500.000 in 1 case and HUF 500.000 in 2 cases).

Looking at violations of law in employment **split per regions** it can be observed that the closeness of the seat of the Authority and the national labour market being centred in the capital city influence the intention to enforce rights – the former in undertaking to enforce claim, the latter in the frequency of the occurrence of complaints. It may be attributed to this point that violation of law was declared in Budapest in 8, in each of Jász-Nagykun-Szolnok and Tolna counties in 2 cases, in each of Csongrád, Heves, Somogy, Vas, Borsod-Abaúj-Zemplén, Szabolcs-Szatmár-Bereg, and Pest counties in 1 case.

It is worth underlining that **in most of the above cases**, that is, in a total of 11 cases **complainants turned to the Authority independently**, they succeeded in proceeding in their cases even without legal or other representative, while in 4 cases they were represented by a legal representative (lawyer, law office) and in 1 case by an authorised private person. The Authority adjudged 2 events of enforcement of claims of public interest, which can be considered few in the mirror of violations of law that occur, and in 1 case the Authority commenced proceedings ex officio. We intend to continue to lay great emphasis on informing organisations that perform activity of enforcing rights in order to enhance awareness of the law.

We have examined **in which phase of employment** applicants suffered injury and when they turned to the Authority with complaint. It can be stated that 4 of violations of law took place during the engagement process preceding enrolment (due to the nature of such cases complainants turned to the Authority when legal relation had not even been established between them and the party subjected to proceedings); in 10 cases complainants suffered disadvantage during employment while in 6 cases upon the termination of their employment relation. The number greater than 19 is caused by overlap-

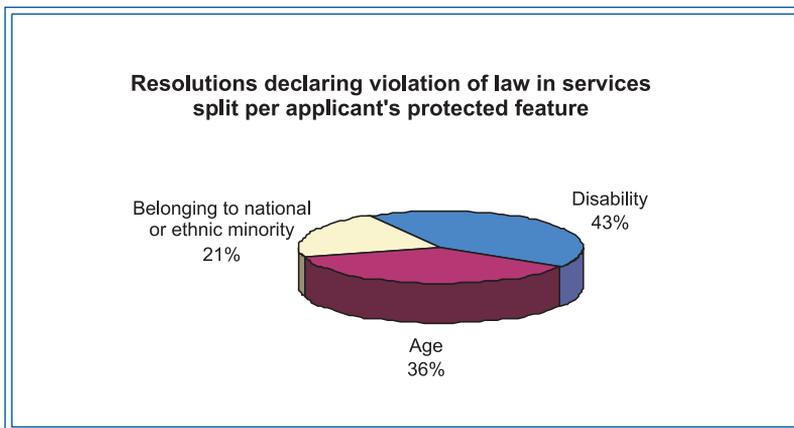
ping: it occurred that the complainant had been discriminated during his/her employment relation and were then fired. In 9 cases complainants turned to the Authority only after the termination of their employment relation (even if they had suffered harms during their employment relation), and only 6 complainants undertook to submit application against their current employer. So complainants are afraid of possible further disadvantages in spite of the fact that retorsion may be sanctioned.

Complainants' so-called **other situation** proved the most frequent basis for discrimination as the resolutions adopted by the Authority in 2008 reveal. It is worth summing up which circumstances qualified material feature of the complainants' personality were considered other situation **by the practice having developed by the Authority so far**: bringing legal and authority proceedings against the employer; disagreement between the applicant's husband and the employer; participation in competition for leader's position announced at the employer; lacking domicile (or address), regionality, leader's appointment. Our standpoint is that cases related to domicile are unambiguous and unfortunately typical, regarding the other features, however, it is always a question of deliberation if they can be evaluated as other protected features. Nevertheless, practice should work towards interpretation as narrow as possible.

The condemning decisions adopted in the field of employment by the Authority in 2008 were contested by the condemned party in court in 7 cases; 5 of these court proceedings are still in progress, in 1 case the court abrogated the resolution and instructed the Authority to conduct new proceedings, and in 1 case the court proceedings were terminated.

## II. Distribution of goods, use of services

In the field of distribution of goods, use of services the Authority declared discrimination in 14 cases in 2008. In 6 of them disability, in 5 case age, in 3 cases national or ethnic belonging of the party having suffered harm (in 1 case its colour of skin, in addition to belonging to national or ethnic minority) constituted the basis of discrimination as protected feature.



In 2008 in the field of distribution of goods, use of services **persons with disabilities** suffered the most harms. It is important to add that 5 decisions declaring violation of law out of 6 cases arose from the complaint submitted by the same applicant against several parties subjected to proceedings, based on identical state of facts. Several pharmaceutical manufacturers engaged the same conduct qualified discrimination against the blind and persons with impaired sight. These cases called the attention to the point that access with equal opportunities to services by persons with disabilities shall be enforced by authority's instruments in the absence of proper co-operation between the parties concerned. Discrimination due to disability was implemented e.g. by

the rail company, which terminated its accessibility service from one day to the other.

Discrimination based on **age as protected feature** committed in the field of goods, services is the second most frequent act, which is implemented mostly during banking transactions, credit applications. 3 of the decisions declaring violation of law based on age last year condemned financial institutions; however, several complaints with similar content had to be dismissed stating that e.g., profound investigation revealed that the given financial institution had refused credit applications lawfully with acceptable reasons rather than on the grounds of age. All this clearly implies that the Authority's activity is far from being useless. In the field of tourism/arranging vacation a single case occurred where also elderly people were excluded from the service without good reasons, and in once case a fitness club applied discrimination against people over 25.

The third larger area contains discrimination applied on the grounds of **belonging to national or ethnic minority**, which is manifested in the field of services most frequently in the exclusion of guests of Roma origin from catering industry units, in refusing to provide services or as the case may be in making services subject to more disadvantageous conditions. All of the 3 violations of law declared by the Authority last year can be linked to this service area. In one case more expensive goods were offered to Roma people, while in two other cases, the most typical in practice, they were not permitted to enter a point of entertainment because of their origin. In the latter cases, in their defence the parties subjected to proceedings referred to improper conduct engaged by the Roma persons earlier, to exclusive event, admission subject to membership card, which shall not exempt from declaring violation of law. In 2008 once it occurred that the parties subjected to proceedings distanced themselves from

any form of discrimination in a statement; however, there were complainants who requested their condemnation in spite of that.

**In terms of applicants split per gender**, in 2008 the Authority declared discrimination in service on the grounds of the complaints of a total of 5 male and 2 female applicants (6 of them acted independently, in 1 case a lawyer provided representation), while in 5 cases associations enforced claims of public interest, and in 2 cases right protection offices acted on behalf of the complainants.

In terms of **the type of goods distributor, service provider** 5 offenders were pharmaceutical distributors, 3 operated in each of the financial sector and catering industry, 2 in tourism (fitness centre, firm advertising vacation programs), and 1 in community transport (rail company).

Looking at the cases split per the **sanctions applied** it can be stated that this time the Authority barred the offender from continuing unlawful conduct almost in each case, i.e., 13 cases, in 12 cases it exercised the opportunity of publication, on 7 occasions the unlawful condition still existed so the offender had to be obliged to terminate it and again on seven occasions fine was imposed. The amount of the fine was HUF 500.000 and HUF 1.000.000 in 2 cases respectively, while the Authority decided to impose a fine of HUF 2.000.000, HUF 2.500.000 and HUF 3.000.000 in 1 case respectively. The reason for the Authority having exercised the opportunity to impose fine on much less occasions in the field of employment is that its in the world of goods and services where fine produces highly repressive effect; in order to terminate unlawful practice affecting wider range of consumers, in addition to making decisions public, this is the other really effective instrument. In determining the

amount of the fine the Authority shall every time be obliged, also due to the above, to take the offender's income, financial standing into consideration.

Violations of law split per **regions** in the field of goods and services show the same focus on the capital city as in employment: the Authority declared violation of law in 10 cases in Budapest, in 1 case in each of Hajdú-Bihar, Komárom-Esztergom, Pest and Somogy counties.

**The Authority's decision was contested by the condemned party in court in 4 cases**, in 3 of them the proceedings are still in progress, in 1 case the court sustained the Authority's resolution.

### *Disability*

*An association representing persons with impaired eyesight as an organisation entitled to enforce claims of public interest found it injurious that several pharmaceutical distributors had not sent it the instructions to patients of the medicines licensed in the procedure on entering products to market commenced after 30 October 2005 until 15 February 2008 in the format requested by it, in Braille writing and enlarged letter version, in 100 copies and electronically. The pharmaceutical distributors subjected to proceedings by the Authority gave reasons for such failure in various forms. Regarding the case of each company the Authority made efforts to develop arrangement between the parties but regarding five pharmaceutical distributors consultations did not bring any result so the Authority had to examine if the reasons stated in defence were acceptable in order to adopt decision. The Authority did not accept, among others, the defence that certain products had been withdrawn from marketing, and that the applicant had defined too short deadline for sending the instructions to patients, furthermore that the determined criteria were unfounded both legally and pro-*

professionally. Reference to the low number of persons who knew Braille writing and the services of other web sites was not acceptable either since in the present proceedings the Authority examined the co-operation between the applicant and the party subjected to proceedings. Nor did the Authority accept the reference which claimed that request could be submitted through national organisations, and that the rule on making instructions to patients available did not apply to the applicant which was not an interest representation organisation of "patients".

On five occasions the Authority drew the conclusion that the persons with impaired eyesight represented by the applicant had been directly discriminated compared to their fellow beings with good eyesight by the manufacturers subjected to proceedings having failed to take steps on the merits prior to the commencement of the proceedings towards the applicant in order to develop co-operation and having failed to make the instructions to patients available in any form. The Authority ordered to discontinue the unlawful condition in 90 days in such form that the party subjected to proceedings should, in accordance with the provisions set forth in Section 3 (4) of Decree No. 30/2005. (VIII. 2.) EüM on the label and instructions to patients of medicines to be used by humans, upon consultations with the applicant, make the instructions to patients available to the applicant in the quantity and format mutually accepted by both of the parties. The Authority prohibited continuance of unlawful conduct and ordered to make the resolution public for 90 days.

\* \* \*

In its submission the applicant asserted that as from 26 February 2008 at one of the railway stations the railway company terminated the opportunity of using the formerly operating mobile lift equipment necessary for transporting physically handicapped passengers. The applicant claimed that by that the railway

company had excluded him as physically handicapped person moving in wheel chair from using its service. The applicant pleaded that he had problems several times with handling the lift structure also in the period when it had been possible to apply for it at the given station. For a while the equipment was operated by his father at the station, then by the employees of the railway company but by them often with delay. After the applicant had lodged a complaint due to the above, the railway company terminated the operation of the lift equipment in the given town. The party subjected to proceedings claimed that shortage of proper labour was the only reason for its measure, not contested by it, having caused physically handicapped passengers disadvantage compared to the persons with no disability, and indicated its intention to change the situation found injurious in the future to the extent of the opportunities available to it through reintroducing the service. The Authority took the position, however, that the use of the mobile lift equipment could not be qualified so complicated activity requiring extensive expertise that would make it impossible to have a railway employee who met personal requirements of operation at least at each of the stations where such equipment was installed.

The Authority declared that the railway company had infringed the requirement of equal treatment, and ordered to discontinue unlawful condition in 30 days and to make its resolution public for 90 days. The unlawful condition had been terminated by the deadline in a confirmed form.

### Age

The applicant had not been provided with credit card by a financial institution solely due to his age in spite of the fact that in terms of his income and financial standing he could have been creditworthy. The financial institution acknowledged that it had indeed refused the applicant's application for credit card due to his age (68), however, it had changed age related terms of application since

*the submission of the application referred to in harmony with the recommendation of PSZÁF to this effect. On the other hand, in its opinion its earlier practice could not be considered unlawful, it served to eliminate natural risks only.*

*The Authority declared the fact of violation of law and prohibited continuance of unlawful conduct in conflict with the requirement of equal treatment and ordered to make the resolution public for 90 days, and obliged the party subjected to proceeding to pay HUF 2.000.000 fine.*

\* \* \*

*The applicant found it injurious that a credit institution dismissed its application for credit card referring to his age (71) constituting too high risk. The applicant claimed that his bank account kept with the financial institution subjected to proceedings could have served proper cover in the application for credit card, what is more, he had been a reliable client of the financial institution for several decades. In the proceedings it was declared that the financial institution had decided to dismiss the application for credit card without investigation of income and property on the merits solely on the grounds of the applicant's age. The financial institution denied that the fact of the application had been entered in the IT records of the institution; on the contrary, the applicant attached the information received from the financial institution which referred to the dismissal as a fact. Beyond rules of law in force the Authority again took the relevant recommendations of PSZÁF into consideration, which do not deem it acceptable if a financial institution dispensing with special assessment uses the applicant's age as reason for automatic dismissal.*

*The Authority declared that the party subjected to proceedings had infringed the requirement of equal treatment and barred the financial institution from continuing unlawful conduct. Furthermore, it ordered to make its resolution public for 90 days; and obliged the party subjected to proceedings to pay HUF 3.000.000 fine.*

\* \* \*

*The applicant intended to purchase a HUF 65.000 worth washing machine in March 2008 at a shop, and, albeit, the financial standing of the applicant and of his spouse living with him in the same household would have provided sufficient cover for completing the loan agreement beyond doubt, the credit institution refused to enter into the agreement without giving reasons. The party subjected to proceedings claimed as exculpation that it did not consider the client's age a factor that would have provided grounds for automatically excluding the client from the service, nor did it use prohibition in its announcements and internal regulations regarding applicants' age cap. The party subjected to proceedings also referred to the statutory regulations regarding credit institutions (Hpt.), which contains strict provisions regarding loan extension to ensure safe banking operations. At the same time, it expounded that the credit institution had several clients who had turned 70, and had credit facilities specially developed for elderly people. The Authority could not accept the argument of the credit institution and in its resolution called the attention to the fact that assuming any kind of direct connection between the age and financial standing of applicants for credit seriously violated the principle of objective examination the bank was expected to carry out, and in the given case human dignity of elderly people.*

*The Authority declared that the party subjected to proceedings had infringed the requirement of equal treatment and prohibited continuance of unlawful conduct and ordered to make the resolution public for 6 months, and imposed HUF 2.500.000 fine.*

\* \* \*

*The applicant notified that in its advertisement offering favourable vacation opportunity published on the Internet a business organisation had set age limit regarding the scope of customers entitled to use it by specifying age 35–65 as*

condition of using the service. The applicant and his wife would have intended to use the vacation offer but for having been older than 65 the party subjected to proceedings had excluded them from using the opportunity. In spite of the Authority's notice to this effect the company did not exculpate itself. The advertisement attached by the applicant contained the warning as follows: "Partners (spouses) aged 35-65 may take part in the action ...". In the absence of demonstration to the contrary the Authority deemed that the applicant and his wife had had to suffer the disadvantage that as persons over 65 they were not able to use the vacation service advertised on the Internet and promoted in emails. The Authority declared commitment of violation of law, prohibited continuance of unlawful conduct and made its resolution public for 90 days, and obliged the offender to pay HUF 1.000.000 fine.

\* \* \*

The 27-year-old applicant presented that in its current price list a business organisation operating a fitness salon provided favourable conditions for buying student season tickets and tickets solely for full-time students under 25 within the group of persons entitled to student allowance. The party subjected to proceedings pleaded that they provided allowance also for pensioners, furthermore, a part of the services could be used with allowance during hours in the morning. In its defence the party subjected to proceedings also claimed that they had to set an age limit, 25, due to abuses as several people had abused student cards by presenting other persons' card in admission.

The Authority declared that the party subjected to proceedings had infringed the requirement of equal treatment against the applicant, therefore the Authority prohibited continuance of unlawful conduct, and obliged the offender to pay HUF 500.000 fine. It ordered to discontinue unlawful condition providing

that each full-time student should be equally treated in providing access to the service and they should not be distinguished by age.

### **Belonging to national/ethnic minority**

At a catering industry unit of a settlement in the provinces, due to their Roma origin and friendly relation maintained with acquaintances of Roma origin the complainants had had to pay higher consideration for the products consumed than non-Roma purchasers or purchasers arriving with non-Roma acquaintances. One of the otherwise non-Roma applicants, e.g., had had to pay higher amounts at the shop only since the time when it came out that he lived at his friend of Roma origin. The applicants stated that to their question the staff of the catering industry unit told them that they had charged them higher amount "on the boss's instruction". Following the complainants notification, the Regional Supervisory Authority of NFH /National Consumer Protection Authority/ carried out test purchases twice on the premises of the unit. In the second test purchase the non-Roma supervisor present had to pay only half of the amount indicated on the price list for his consumption. The party subjected to proceedings pleaded that at the point of entertainment in the summer of 2007 a regular guest card system was introduced, and the persons having regular guest card included persons of Roma origin too. The Authority declared that no internal regulation contained issuance of regular guest cards, such cards were provided for guests on an ad hoc basis, they were issued by taking mostly arbitrary aspects into consideration. The Authority declared that the operator of the catering industry unit had implemented direct discrimination against the applicants because it had excluded them from the opportunity of obtaining regular guest card clearly due to their Roma origin, and, in the case of one of the complainants, due to his temporary stay at his Roma friend. The Authority prohibited continuance of unlawful conduct and made its resolution public, and imposed HUF 1.000.000 fine.

\* \* \*

*The applicants of Roma origin had not been admitted to a point of entertainment by the security guards standing at the entrance. First the guards referred to the point that "they have not been on the list", then they refused them for being minors. In the meantime the applicants saw that guests of non-Roma origin were admitted without any problem. The Authority took the position that neither the applicants' age, nor the exclusive nature of the event could be accepted as explanation for the security guards' conduct, the witnesses' testimony had unambiguously and undoubtedly refuted it. Based on the statements made by the applicants and the testimonies of the witnesses heard the Authority drew the conclusion that only one thing must have explained their conduct, which was the applicants' Roma origin. According to the state of facts established by the Authority on the grounds of the above the security guards had not admitted the applicants to the point of entertainment due to their Roma origin, thereby the security company and the operating, service providing company had directly discriminated the applicants.*

*The Authority imposed HUF 500.000 on each of the companies, and ordered to make its resolution public.*

### **Multiple based discrimination**

#### **(belonging to national or ethnic minority and colour of skin)**

*In their complaint the applicants of Roma origin claimed that they had not been admitted by the security guards discharging service at the entrance of a point of entertainment in the capital city referring to exclusive event while other non-Roma guests entered without any problem. The party subjected to proceedings put forward an offer for arrangement in which the operator and the security company made a joint statement that they respected human rights, fought for eliminating discrimination, and made every effort to promote equal opportuni-*

*ties. Both companies condemned and distanced themselves from the case constituting the subject of the complaint, and requested to accept their apologies for the statements and conduct of an employee of the company having produced the impression that violated an applicant's right, lawful interest. Both companies committed themselves to enforce the requirement of equal treatment in their operation in the future, and they added this commitment to the assignment agreement entered into and existing between them. Three of the applicants accepted the offer for arrangement whereas one of them refused it. As a result of the proceedings the Authority declared that the party subjected to proceedings applied direct discrimination by not admitting the applicant to the point of entertainment due to his colour of skin and belonging to the Roma minority. The Authority prohibited continuance of unlawful conduct.*

### **III. Discrimination related to fulfilment of municipality tasks**

In two cases the applicant's other situation, in 1 case the applicant's political and other opinion constituted the basis of discrimination.

Basically in both cases, the other situation as protected feature was manifested in the personal attribute that the applicant ceaselessly caused the municipality to deal with submissions and brought legal proceedings. In one of the cases the Authority founded its proceedings on the relevant court decision; the state of facts declared by the court bound the Authority also in evaluating other situation as protected feature. In the other case the Metropolitan Court abrogated the Authority's decision dismissing the application because it evaluated the fact of several legal proceedings conducted between the applicant and the municipality as other situation. Taking these court decisions into consideration the Authority decided condemnation of the party subjected to proceedings. In

the third case the complainant's political or other opinion constituted the basis of discrimination. On the one hand, the complainant entered municipality elections as the opponent of the mayor elected later who caused the applicant disadvantage; on the other hand, the complainant represented different opinion in other matters too.

The Authority barred the municipality violating law from continuing unlawful conduct in all three cases, made its resolution public in 2 cases but did not deem it necessary to impose any fine as no unlawful condition existed that it would have had to call the offender to terminate.

Split per regions 1 violation of law occurred in each of Budapest, Pest county and Baranya county; the complainant was male in 2 cases and female in 1 case; two of them acted independently, one of them was represented by his/her spouse. From the low number of cases far reaching conclusions cannot be drawn.

#### **Other situation**

*The applicant found it injurious that in spite of his special request the settlement municipality of his domicile had not made it possible for him to participate in the consultation procedure with the population held during the development of the settlement structure plan and local housing regulations referring to the fact that the applicant had brought too many legal proceedings against the local government, and regularly made the office deal with submissions. The Authority dismissed the application without investigation on the merits because it was not possible to establish from the applicant's submission if it had any protected feature. The applicant contested the decision in court, and the court obliged the Authority to conduct new proceedings. From the documents it was possible to establish that in the consultation procedure the municipality had examined comments made by other inhabitants of the settlement on the merits whereas fully ignored the applicants' proposals. Later the applicant attached the final and*

*unappealable court decision to his application which declared violation of the applicant's personal rights regarding the same case. Since the Ebktv. stipulates that in such cases the Authority shall proceed in adjudging the same violation of law on the grounds of the decision adopted by court, taking the state of facts established by the court as basis, the Authority accepted the other situation set forth in law as the applicant's protected feature that the applicant regularly brought legal proceedings against the municipality, lodged submissions with the office more frequently than other local inhabitants. Furthermore, the Authority declared that the municipality had had no reasonable cause for ignoring the applicant's comments in the consultation procedure with the population, so it had committed violation of law.*

*In its resolution the Authority barred the municipality from continuing violation of law, and ordered to make its resolution public for 90 days.*

\* \* \*

*In its submission to the Authority the applicant found it injurious that since 1994 the district municipality had not sold the council flat rented by him in spite of the fact that he had continuously submitted applications for purchasing the flat. In February 2004, dispensing with auction, the party subjected to proceedings sold the flat located beside the applicant and having similar conditions. The applicant had brought several actions earlier regarding the flat against the municipality. The party subjected to proceedings did not give any reasons for not intending to sell the flat. Earlier the Authority had proceeded in the case twice and adopted dismissing resolution. By its resolution the Metropolitan Court obliged the Authority to conduct new proceedings in which the Authority declared that the municipality had infringed the requirement of equal treatment against the applicant due to his other situation by refusing without giving reasons to sell the flat owned by it and rented by the applicant and the ownership share that belonged to it from the*

*common property, at the same time it had made possible to sell the adjacent property also owned by the municipality outside call for proposals.*

*The Authority barred the party subjected to proceedings from engaging unlawful conduct in the future against the applicant providing that it should treat the applicant equally to the lessees of the properties owned by the municipality who were in situation comparable to that of the applicant.*

### **Political and other opinion**

*The lawyer who turned to the Authority found it injurious that the mayor had prohibited him to use the village bus service operated by the municipality because he represented a position regarding issues affecting the community's life contrary to the mayor's position. The Authority accepted it as the applicant's protected feature that he had entered settlement municipality general elections and by-elections in 2006 and 2007 as a candidate running against the mayor, and that since then he had several times attacked the mayor's decisions before the public prosecutor's office and the administrative office. The mayor prohibited the village caretaker who fulfilled the service to let the applicant get on the bus. After the investigation of the complaint lodged by the applicant with the municipality against the above measure, the body of representatives confirmed the mayor's decision in a resolution since it did not find it discriminative. Otherwise, in accordance with the practice evolved the inhabitants of the community were allowed to use the bus any time if there were vacant seats thereon.*

*In the case the Authority declared violation of law and in its decision pointed out that in accordance with effective domestic and Community law regulations anybody could lodge complaints with the body entitled to proceed, and the complainant or the notifier should not incur any disadvantage because of that. The Authority barred the municipality from continuing violation of law, and*

*ordered to make the resolution public on its web site and on the web site of the municipality for 90 days.*

#### **IV. Abode**

In 2008, in the field of abode the Authority adopted a resolution declaring violation of law due to harassment based on financial standing in one case.

*A Roma woman living in the capital city lodged a complaint against the district municipality because the municipality had enforced the final and unappealable court decision to vacate the flat in such form that without any notice sent in advance and lacking any official procedure or making its action appear as such, the municipality had caused a business organisation assigned to this task to remove her movables from the flat as a result of which a part of them had been destroyed and another of them had been lost. In addition to all that the municipality had not provided assistance to place the family having become homeless at a temporary home. The Metropolitan Court abrogated the Authority's resolution declaring violation of law adopted in 2007 and instructed the Authority to conduct new proceedings. In the repeated proceedings, discharging the provisions set forth in the court decision, the Authority carried out extensive demonstration. As a result of that it declared that the municipality subjected to proceedings applied harassment against the applicant based on her financial standing when the employees of the business organisation acting as assigned by the municipality, ignoring the interest of the applicant and minor children to retaining the flat, had vacated the flat in such form that they had not arranged for preserving the condition of the movables owned by the applicant, so they had been destroyed and become unusable. In the course of vacating the flat the party subjected to proceedings proceeded in a form violating the applicant's human dignity.*

*The Authority barred the municipality from engaging unlawful conduct in the future.*

The Metropolitan Court revised the resolution contested by claim and dismissed the claim, sharing the defendant Authority's standpoint, in its judgment passed in April 2009.

## **2.2. Approving arrangements**

In the general legal sense arrangement shall be settlement of disputed issues through mutual compromises.

In authority proceedings conducted with the participation of adverse clients it may be a desirous and useful step, which also advances reassuring conclusion of the dispute, to offer the opportunity of arrangement as one of the forms of concluding the proceedings. The literature asserts that in this case the proceeding body "swaps roles". The aim of this is to attain that compromise should be achieved between the adverse clients, which as a matter of fact complies with legislative environment.

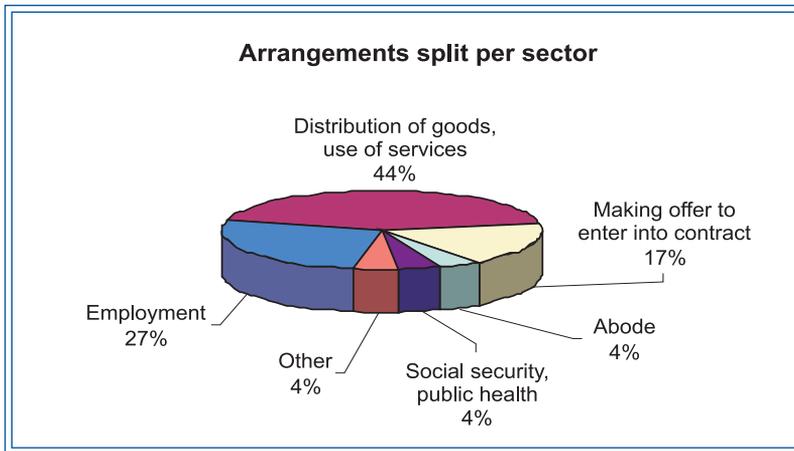
In the event that adverse clients come to an arrangement the Authority will approve the arrangement that complies with statutory conditions, by resolution.

The Authority holds the position that it is especially important and pleasing that in proceedings commenced due to violation of the requirement of equal treatment the conclusion of the proceedings by arrangement is implemented—stepping out of the dimension of mere opportunity—in increasingly greater number. The number of arrangements was 9 in 2005, and 13 in 2006.

## II. The Authority's activity

Compared to the 3 arrangements entered into in 2007, in 2008 the number of arrangements approved by the Authority's resolution rose to 23.

This represents 6.4 percent of the cases concluded by resolution in 2008, which in terms of their proportion corresponds to the figures seen in 2006. Looking at the persons entering into arrangement split per gender, it can be stated that the same rate of men and women (8 in proportion to 11) enter into arrangement.

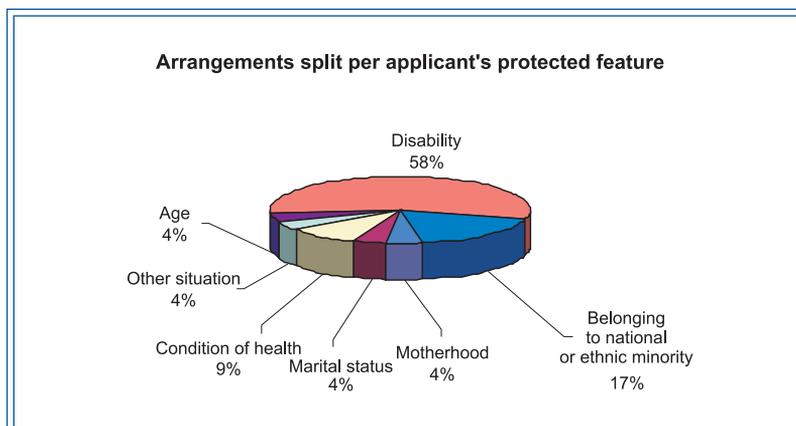


Field of applying discrimination	Number of arrangements
Employment	6
Distribution of goods, use of services	10
Making offer to enter into contract	4
Abode	1
Social security, public health	1
Other	1
<b>Total:</b>	<b>23</b>

Looking at arrangements split per sectors, proportions show similarity to the division of complaints received by the Authority, that is, just as the bulk of applications received are related to the world of labour, distributing goods and providing services (including making offer to enter contract), the majority of the cases concluded by arrangement also come from this scope. Based on that it might be as well stated that this connection is natural since arrangement will/ can be entered into between two adverse parties in specific professional cases received by the Authority.

26 percent of the cases concluded by arrangement are related to employment, 43.4 percent to distributing goods, providing services, and 17.3 percent to making offer to enter into contract. The three specific categories in total amount to 86.7 of arrangements.

As rules of law applying to the Authority also declare, commencement of administrative official procedures shall be, among others, conditional upon having a so-called protected feature regarding which the complainant has incurred disadvantage.



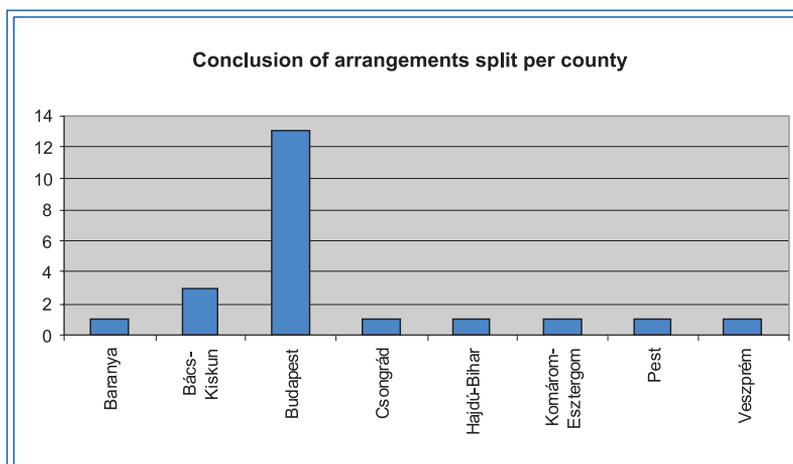
## II. The Authority's activity

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Protected feature	Number of arrangements
Motherhood	1
Family status	1
Condition of health	2
Other situation	1
Age	1
Disability	13
Belonging to national and ethnic minority	4
<b>Total:</b>	<b>23</b>

In the above data series a major part is clearly constituted by the arrangements where the complainant's disability constituted his/her protected feature. This represents an unambiguous shift compared to last year's and the 2006 data since in each of these two years only one case could be linked to disability pursuant to the so-called protected feature. The causes of this significant rise include the fact that in 2007 the National Alliance of the Blind and Persons with Impaired Sight commenced administrative official procedures against almost 20 pharmaceutical companies.

Simultaneously, new protected features have been added to the list of the protected features of applicants of the above cases concluded by arrangement, such as age, motherhood or condition of health.



County and capital city	Number of arrangements
Baranya county	1
Bács-Kiskun county	3
Budapest county	13
Csongrád county	1
Hajdú-Bihar county	1
Komárom-Esztergom county	1
Pest county	1
Veszprém county	1
<b>Total:</b>	<b>23</b>

The above table reveals that complainants from Budapest represent the bulk in the cases where the authority proceedings were concluded by arrangement. The Authority takes the position that the main reason for this is that in terms of the number of submissions Budapest is leading, which can be certainly attributed among others to the point that it was the persons living in the Central

## II. The Authority's activity

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Hungary region (more specifically in Budapest) that had been informed, had been able to be informed first, and from the most sources, of the existence of the Authority.

However, it is also noteworthy that 8 cases were concluded by resolution or decree in each of Bács-Kiskun, and Veszprém county, and out of them 3 in Bács-Kiskun county, 1 in Veszprém county were resolutions approving arrangement, which represents 37.5, and 12.5 percent respectively. Contrary to this, the same rate of Pest county was 43:1, that is 2.3 percent; and the rate in Borsod-Abaúj-Zemplén county was 28:0.

The reasons for that can be looked for in factors such as the nature of the case, the escalation degree of the case referred to the Authority and the number of the parties concerned.

Type of body subjected to proceedings	Number of arrangements
Municipality and its body	3
Budgetary body of municipality	2
Business organisation	17
State budgetary body	1

The above data as a matter of fact can be interpreted in relation to preliminary knowledge. Most of the cases concluded by arrangement can be linked to employment, distributing goods, providing services and making offer to enter into contract, which "guarantees" high rate of involvement of business organisations.

**I. Arrangements that can be linked to the field of employment**

***Motherhood (pregnancy)***

*The applicant had been employed by a company under employment contract for definite term since September 2007. As her superiors were satisfied with her work she was confident that her contract would be extended. In February 2008 it was established that the complainant was expecting a child, then at the beginning of March 2008 her employer told the applicant that her expiring employment contract would not be extended. To the mother fulfilling the representation of her daughter the employer's regional manager confirmed by phone that it was the fact of pregnancy that served reason for the decision. The Authority commenced the proceedings against the applicant's employer. In the hearing held by the Authority the party subjected to proceedings did not distance itself from the opportunity to enter into an arrangement, and the complainant consented thereto.*

*In the arrangement the director of the institution subjected to proceedings assumed obligation to act with more circumspection in the future in adopting decisions affecting their employees, and to take its employer's measures taking into consideration, in addition to economic aspects, employees' individual living conditions. The party subjected to proceedings agreed to provide the complainant with the opportunity that in the event that after the expiry of child care benefit or child care fee it intended to work at the employer again, then the employer would make it possible under an employment contract for indefinite term. The complainant accepted the apologies of the employer and agreed to notify her intention to take a job, estimated date of her entering work in writing one month in advance to the employer.*

### **Family status**

*The applicant working as railway station cashier claimed that she had been discriminated by her direct superior at her workplace, who regularly harassed her due to her age (soon to retire) and family status (widow) and developed morale at the workplace that violated human dignity. The Authority held a hearing and consultation between the parties in the course of which the party subjected to proceedings offered several opportunities to solve the situation and settle the conflict. As the result of the Authority's proceedings an agreement beneficial to the applicant was reached.*

*In accordance with the arrangement the party exercising employer's rights will transfer the applicant to a permanent establishment offered by the employer, in an identical sphere of work. The employer specially committed itself to comply every time with the requirement of equal treatment, and the applicant acknowledged that the retorsion set forth in the Ebktv. would not exempt her from vocational liability regarding performance of work.*

### **Condition of health**

*Before the Authority the applicant told that at a job exchange he handed over his curriculum vitae to the representative of an employer from whom he later received notice that he could take part in the enrolment procedure announced for the vacancy. The complainant claimed that although he had successfully filled in the tests necessary for filling the vacancy he was told that he could not be enrolled due to his dyslexia. The applicant was injured by the procedure especially because he had informed the employer's officials at the job exchange that he had dyslexia, and they had not made any statement that this would prevent him from being employed. The Authority commenced proceedings against the employer. In the hearing neither the party subjected to proceedings, nor the applicant distanced themselves from entering into an arrangement.*

*In the arrangement the party subjected to proceedings requested to accept its apologies for having developed the conviction in the applicant when communicating the decision on his person in the enrolment procedure that they had infringed the requirement of equal treatment in relation to his person. Simultaneously, the party subjected to proceedings confirmed that it would proceed in making decisions, taking measures affecting its employees in accordance with the requirement of equal treatment and the provisions set forth in the equal opportunities plan adopted by the employer. The party subjected to proceedings agreed to notice the complainant on the opportunity to fill a job that suits his qualifications, training. The applicant accepted the apologies and agreed to take part in the enrolment procedure necessary for filling a suitable job – as soon as the party subjected to proceedings sent such notice – if he continued to intend to take on a job at the given employer.*

### **Age**

*In his complaint lodged with the Authority the applicant claimed that the municipality had infringed the requirement of equal treatment against him due to his age by not employing him in the job of caretaker of a holiday home maintained by the municipality due to his age. He asserted that the previous year he fulfilled caretaker's duties at the holiday home, the mayor and several holidaymakers expressed their thanks for his caring work. In his submission he claimed that after that the mayor confirmed several times in the presence of witnesses that he would get the job again this year. On an occasion the deputy mayor, who was the family doctor of the applicant's spouse, during an examination informed the complainant's spouse that "young people should be given the chance", so this year the job would not be given to the applicant. The Authority subjected the municipality to proceedings. The Authority's investigation was to find out if the applicant's age had been the decisive reason for not engaging him in the*

caretaker's job. In its statement the municipality referred to the point that it had not selected the applicant from among the candidates because in the previous year several complaints about the applicant's work had been received from the municipality for the Gypsy minority, and simultaneously the mayor denied to have made the applicant believe that he would get the job again this year. In order to clarify the state of facts the Authority held hearing on the matter. In the hearing the parties reached an arrangement.

In the arrangement they recorded that in the future the mayor would act personally to ensure that the applicant having been unemployed for a long time could get a job, simultaneously he requested to accept his apologies for unwillingly having developed the impression of unfair conduct in the applicant in the procedure of selecting the caretaker.

#### **Citizenship as other situation**

The applicant lodged a complaint with the Authority claiming that she had not been employed at a hypermarket either in cashier's or goods replenisher job due to her foreign citizenship. She referred to the fact that she had the documents necessary for taking on a job because she had a card for permanent stay. She asserted that the personnel manager had told her that her papers would require 6 month administration and for this reason he would not employ her, in reply she referred to the rule of law that stipulated that she could take on a job without any special permit. In its defence the department store subjected to proceedings pleaded that there had been no vacancies and the applicant's foreign citizenship had not played any part in dismissing her. The Authority held hearing on the matter where it was revealed that the applicant fully complied with the requirements included in the job advertisement, the test she had filled out also supported that the head of department who had made the interview with her found her expressly eligible. That there were no vacancies could not have been the reason for even-

tually not entering into employment contract with her because the department store continuously advertised vacancies. The personnel manager was unable to give reasonable cause for his dismissal, and acknowledged that he had indicated on the application form that the applicant was an Ukrainian citizen.

The department store subjected to proceedings offered to employ the applicant in cashier's job from January 2009. In the hearing the parties reached an arrangement, the party subjected to proceedings had sent a copy of the employment contract entered into to the Authority.

### ***Belonging to national and ethnic minority***

The employee of Roma origin of a public education institution had been continuously harassed at her place of work since 2005, she asserted that she had suffered accident at her place of work in 2006 as a result of that. She said that she had initiated personal conversation with the leader of her place of work on the problems arising regarding her origin but no steps on the merits were taken. The Authority commenced proceedings against the applicant's employer.

In the arrangement the director of the institution subjected to proceedings committed himself to integrate the compliance with requirement of equal treatment in the internal regulations of the institution in written form, and the instruments to provide actions to be taken in case it was infringed. The party subjected to proceedings agreed that all of the workers of the institution would attend the anti-discrimination training program held by the staff of the Educational Mediation Service. The deputy principal, who participated in the hearing as client, agreed to apologise to the applicant, and to fully comply and cause to comply with the requirement of equal treatment. The applicant accepted the apologies and acknowledged that under the present proceedings indemnification would not be ordered.

## **II. Arrangements entered into in the field of distributing goods and providing services**

### **Condition of health**

*The applicant and her 9-year-old daughter and 4-year-old physically handicapped son sitting in a pram accompanied by her sister-in-law intended to buy a ticket and see a film at a cinema in the capital city, which the man introducing himself as the works manager prevented referring to the point that prams were not allowed to be taken to the auditorium. Finally, he did not admit them without the pram either, and specified their minority origin as cause. After the Authority's proceedings had been commenced the party subjected to proceedings ordered to carry out internal investigation to clarify the situation as a result of which it established that the applicant's complaint was well-founded and offered to enter into an arrangement in order to solve the conflict.*

*In the arrangement the applicant accepted the apologies of the party subjected to proceedings, who simultaneously agreed to comply and cause to comply with the requirement of equal treatment to an enhanced extent.*

### **Other situation**

*In 2001 the applicant was under preliminary arrest, he was released in November 2004. After that he intended to use the physical condition improving services of a fitness salon operated at his domicile, however, the owner refused it referring to an atrocity that took place in the spring of 2001. The applicant claimed that he had initiated conversation with the owner to clarify the situation several times but this was not successful. He asserted that this attitude remained unchanged after the owner had let the fitness salon in the spring of 2008. The applicant took the position that the genuine reason for distinguishing him had been his preliminary arrest and the period spent there. The Authority commenced the pro-*

ceedings against the owner of the building of the fitness salon, who was the former operator, and the current lessee business organisation. After the hearing held by the Authority both parties subjected to proceedings seemed to be open to enter into an arrangement, which the applicant consented to.

In the arrangement the representative of the legal person currently leasing the fitness salon agreed to make internal regulations and rules of the house that complied with the requirement of equal treatment and were binding on everybody and to apply them without any distinction in the future. The representative of the owner of the salon agreed that in the event that it operated the studio again it would take over the valid rules of the house, or to make a new internal regulation that fully complied with the requirement of equal treatment. The applicant agreed to comply with the Internal Regulations and Rules of the House on the premises of the fitness salon, and in addition to that to engage conduct that adheres to the rules of civilised behaviour generally accepted in society.

### **Disability**

An applicant with impaired eyesight found it injurious that he had not been admitted with his blind guiding dog to the department store of the party subjected to proceedings on several occasions to purchase. The Authority held hearing on the matter where the parties entered into an arrangement.

The party subjected to proceedings requested acceptance of its apologies for what had happened to the applicant at the department store. It promised to call the attention of the managers of the department stores and the companies fulfilling security tasks to equal treatment of persons with impaired eyesight moving with blind guiding dog and to relevant statutory provisions. Furthermore, it promised to call the attention of the National Trading Alliance in its notice that their members should comply with the requirement of equal treatment of purchasers with impaired eyesight moving with blind guiding dog. The party subjected to proceed-

ings acknowledged that in the event that the applicant were not treated at any of its departments stores in the future in accordance with the requirement of equal treatment, the applicant would be allowed to bring a new official procedure.

\* \* \*

In his complaint lodged with the Authority the applicant claimed that a company engaged in organising goods presentation combined with hiking had infringed the requirement of equal treatment against him when the bus driver was not willing to place his wheel chair in the luggage compartment of the motor vehicle referring to the point that then on the way back there would not be enough room for the goods purchased by the passengers. After the applicant had got off the bus with difficulties, the bus driver offered to put in the wheel chair once he had realised that it was collapsible but by then the applicant had abandoned his intention to take part in the trip. The passenger list provided by the main contractor for the subcontractors did not reveal if the passengers included any person who required special assistance in getting on and off due to their disability. The bus driver regretted what had happened, he claimed he had not known that the wheelchair was collapsible and was not prepared for the situation. The clients had indicated their intention to enter into an arrangement prior to the hearing.

In the hearing the parties entered into an arrangement which set forth that the main contractor would in the future include the following statement in the application form for the day-trip in the blank space beside the passenger's data: "As a person with disability I need help in travelling", simultaneously it would ensure that beside this statement passengers could specify what help they would need. The main contractor agreed to forward demands received to the subcontractors properly, who would directly inform bus drivers.

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*In his complaint lodged with the Authority the applicant claimed that the conduct engaged by the local swimming pool had been disadvantageous to him since at the swimming pool provided with accessibility in 2005 – and having a mobile lift to help persons with disabilities to get into the water – they had not made it possible for him to enter the swimming pool area and get into the pool. The applicant specified his disability as protected feature. The party subjected to proceedings pleaded that in its view the requirement of equal treatment had not been infringed although the applicant was indeed stopped at the cash-desk of the swimming pool but the purpose of this was to find out at which pool they should set up the mobile lift in order to reduce the time the applicant would need to wait. The applicant had entered the swimming pool on each occasion although it occurred that the mobile lift was out of operation so he was not able to get into the pool since the party subjected to proceedings did not consent to the staff putting the applicant manually into the pool due to increased risk of accident. In the hearing the parties entered into an arrangement.*

*The arrangement provides for the modification of the structure of the mobile lift (to construct a new holding structure; to place the mobile lift near the entrance; to provide frost-proof drainage of operation pressure pipeline water suitable for operating the lift), the parties' mutual co-operation, tolerance in the use of the swimming pool.*

\* \* \*

*An applicant with disabilities moving in wheelchair had intended to see the exhibition organised by the party subjected to proceedings but he had had no opportunity to do that since only one person in wheelchair per hour was admitted on the premises and when he arrived at the site, several persons in wheelchairs had already been waiting, so he did not have the chance to enter that day. The party subjected to proceedings claimed that the restriction was introduced*

due to fire prevention considerations (escaping; narrow passages; corridors). The Authority held a hearing on the matter where the party subjected to proceedings regretted what had happened to the applicant during the procedure of admission to the exhibition. The parties entered into an arrangement which provided that the party subjected to proceedings would make 1 free ticket available to each of the applicant and his escort to an event to be organised by it until 31 December 2009, and agreed to comply and cause to comply with the requirement of equal treatment in the future to an enhanced extent, also it acknowledged that in the event that the applicant were not treated in the future in accordance with the requirement of equal treatment, the applicant would be able to bring new official procedure.

#### ***Belonging to national and ethnic minority***

The applicant of Roma origin and his family intended to have supper at a restaurant in the evening hours but the waiter told him that they had already closed and proposed them another restaurant. Next day the applicant reserved a table for 9:30 p.m. in order to test the restaurant, which he confirmed in an email message. The employee of the restaurant said that the restaurant was open until 10:00 p.m. so the reservation was valid. By not serving him and his family during official working hours on the previous day the operator of the restaurant discriminated him and his family due to their Roma origin. In its defence the party subjected to proceedings pleaded that their restaurant belonged to a hotel where mostly groups of children were received, who had supper until 8:00 p.m. and external guests rarely visited them. The restaurant was open until 10:00 p.m. but after 08:00 p.m. they usually did not take orders for supper because their cook lived at another settlement and his last coach left at 08:00 p.m. However, on appointment made in advance they could undertake to provide supper also between 08:00 p.m. and 10:00 p.m. When the applicant did testing the shop manager with

cook's qualification was able to stay and make the supper ordered. The applicant accepted what had been stated by the party subjected to proceedings as reasonable explanation for what had happened, so it was possible to conclude the proceedings by the parties' arrangement approved by the Authority.

In the arrangement the party subjected to proceedings apologised to the applicant for refusing to serve him. Furthermore, the shop assistant made a statement that he would continue to comply with and would emphatically call the attention of the employees working at the restaurant to comply with the requirement of equal treatment vis-à-vis guests of Roma origin. By accepting the apologies of the party subjected to proceedings the applicant considered the case concluded on his side.

### **III. Cases concluded by arrangement in the field of abode**

#### ***Disability***

A foundation protecting the interests of persons with disabilities lodged a complaint with the Authority claiming that a district municipality had infringed the requirement of equal treatment against the applicant, who was bringing up her two autistic children alone, represented by it by the municipality not having met her application for change of flats. The applicant's representative claimed that earlier the municipality had entered into a flat lease agreement with the applicant, however, the flat had become damp, its walls had been covered by mildew. The flat was not suitable for the applicant's children for intended use because one of them suffered from serious kidney disease but her application for change of flats had been dismissed by the municipality for lack of exchange flats. The representative of the foundation attached a newspaper article in which the chairman of the social committee of the municipality stated in the district journal that the municipality would enter into flat lease agreements primarily with public servants,

## II. The Authority's activity

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*civil servants who had done a lot for the district. At the Authority's notice the mayor acting on behalf of the municipality supplied the information that he would take measures so that the committee of social affairs and property management of the municipality should discuss the applicant's application for change of flats at its next meeting. The municipality had sent the Authority the resolution of the committee of social affairs which proposed that the municipality should enter into a lease agreement on a 2-room flat with the applicant. The Authority called the municipality to set a deadline for concluding the flat lease agreement as the resolution of the committee of social affairs had not specified any deadline for concluding the flat lease agreement. The municipality forwarded to the Authority the lessor's consent issued by the deputy mayor of the municipality. The consent set forth that the deputy mayor consented to the municipality entering into a flat lease agreement with the applicant on a 2-room flat with all modern conveniences specified in the consent as soon as the property manager of the municipality had delivered the designated flat in condition suitable for intended use to the lessee. In the hearing the parties entered into an arrangement.*

*The arrangement provided for the date of entering into the articles of agreement and the form how the head of the flat management department having appeared on behalf of the municipality would monitor the renovation works indispensable for intended use. The municipality agreed to inform the Authority on the completion of the above by sending the flat lease agreement.*

## **IV. Case concluded by arrangement related to social security and public health**

### ***Disability***

*The applicant took the position that the municipality subjected to proceedings had infringed the requirement of equal treatment against him when it had not*

*provided for his access to the building of the municipality on the ramp made for physically handicapped persons.*

*The Authority approved the parties' arrangement, which was entered into in the hearing, providing that the municipality should inform the Authority in writing until 31 October 2008 if the bell installed for physically handicapped persons at the Community House had been repaired, and if it had been made available to physically handicapped persons too. Furthermore, the party subjected to proceedings should inform the Authority until 15 July 2009 if the ramp for physically handicapped persons at the building of the social kitchen had been made.*

#### **V. Arrangement entered into in other fields of discrimination**

##### ***Belonging to national, ethnic minority***

*The applicant turned to the Authority claiming that one of the resolutions of the body of representatives of the settlement municipality on dismissing the recommendations of the ombudsman for national and ethnic minority rights and the acceptance of the submission made by the clerk of the large village qualified harassment against the Roma population living in the large village. The applicant attached the initiative of the ombudsman for minorities addressed to the body of representatives, and the resolution adopted by the body on partly dismissing the initiative.*

*The applicant and the mayor having appeared on behalf of the body of representatives of the municipality announced that they intended to enter into an arrangement, requested to include in the text of the arrangement that in the future consultations in accordance with rules of law and mutual dialogue would be maintained between the chairman and members of the local municipality for the Gypsy minority, and the members of the body of representatives of the municipality of the large village as well as the clerk and the mayor.*

### 2.3. Dismissing applications

Looking at the Authority's professional work, the predominance of dismissing resolutions over decisions on the merits adopted upon proceedings conducted (so, not including decrees concluding proceedings and injunctions) is striking since their number somewhat exceeds one hundred (106) and their rate is 60%. For this reason it is worth paying special attention to the examination of the characteristics of dismissing decisions that can be explored because they might serve as guidance, instructive indication to both the Authority and the persons suffering injury, and at last but not least might determine the most important directions of developing the population's awareness of the law, disseminating the idea of equal treatment.

#### Legal causes of dismissing:

Typically, dismissing may be traced back to any of the following causes – possibly to several causes at the same time. The party subjected to proceedings may prove that the circumstances made probable by the party having suffered violation of law or the party entitled to enforce claims of public interest did not exist, cause and effect relation between the injury and the protected feature entirely lack, it has complied with the requirement of equal treatment, or it was not obliged to comply with it (typically due to provisions of rules of law) in the given legal relation, or it has lawfully applied preference. It also occurs in a significant number of cases that the Authority is not able to accept the attribute specified by the applicant as other situation as protected feature because it cannot be qualified material trait of the personality, or due to the nature of differentiation made on the grounds thereof it does not violate human dignity.

It might also lead to dismissing the application when the court had earlier adopted final and unappealable decision on the violation of the requirement of equal treatment in the relevant case, since in this case the Authority shall be obliged to proceed taking the state of facts declared by the court as the basis.

As a general cause of exculpation Section 7 (2) of the Ebktv. stipulates the provision lawful that restricts the fundamental right of the party having suffered injury in order to enable other fundamental right to be enforced, in unavoidable cases, to a necessary and proportionate extent, and that – in the absence of the fundamental right being affected – based on informed and unbiased deliberation has a reasonable cause directly connected with the given legal relation (general causes of exculpation).

On the other hand, in accordance with Section 7 (3) of the Ebktv. in the event of direct discrimination based on race, colour of skin, nationality, belonging to national and ethnic minority and unlawful separation, exculpation pursuant to the general rules does not lie. Furthermore, no exculpation shall be allowed in the event of violation of the principle of equal wages for equal work based on gender, race, colour of skin, nationality, belonging to national and ethnic minority either [Section 21 f) and Section 22 (2) of the Ebktv.].

We can find special rules of exculpation in Section 22 of the Ebktv. which set forth that within the scope of employment only and exclusively proportionate distinction justified on the grounds of the character and nature of the work, based on all material and lawful conditions that may be taken into account in employment, and distinction based on religious or world view conviction or belonging to national and ethnic minority, directly arising from the spirit that basically determines the nature of the organisation, justified owing to the con-

tent or nature of the given activity of employment, based on proportionate and real requirement of employment shall qualify lawful.

In accordance with Section 30/A (1) of the Ebktv. in the field of distributing goods and providing services, in the event of insurance services and services based on insurance principle, distinction based on gender does not violate the requirement of equal treatment if the risk proportionate extent of the premium and the service involves setting up of determined groups based on risk factors, and if, on the grounds of relevant and exact insurance mathematics and statistical data in the calculation of the premium and in providing the service, the factor of gender is determining in risk assessment.

In practice in the most part (approx. 70%) of the cases concluded before the Authority by dismissal during the last year it was proved that the organisation or person subjected to proceedings had complied with the requirement of equal treatment, distinction was not in cause and effect relation with the specified protected feature, or based on informed and unbiased deliberation it had a reasonable cause directly connected with the legal relation.

It makes one think that in approx. 20% of the cases the applicant was not able to specify a protected feature that would have justified conducting the proceedings. In these cases the Authority typically immediately upon having received the application – without notice to the party subjected to proceedings and holding a hearing but following examination of the specified feature on the merits – dismissed it (adjudging the protected feature is an issue on the merits that in the basic case excludes dismissal without investigation on the merits). In approx. 10 % of the cases it was proved that the party subjected to proceedings had proceeded on the grounds of rule of law, and the rate of dis-

missing resolutions that were adopted by taking the state of facts declared by court into account was negligible.

It is striking that although last year in approx. 20% of dismissals applicants sought judicial review of the decision, no judgment was passed where the Metropolitan Court having exclusive jurisdiction had abrogated the Authority's dismissing resolution adopted in 2008.

In terms of the prioritised field principle based grouping in accordance with the Ebktv., traditionally it is persons who suffer injury in two life conditions, employment and distributing goods and providing services that turn to the Authority in the greatest number. During 2008 in approx. 65% dismissing resolutions affected the field of employment and in 20% the field of distributing goods, providing services. In terms of further splitting within the field of employment 37% of applicants sought commencement of the proceedings with regard to injury suffered in relation to establishment of employment relation, 42% of them regarding injury suffered in relation to the termination thereof (or upon the termination thereof) and 21% of them regarding injury suffered during the existence of the employment relation. Unfortunately but understandably these data also support the fact known to the public that employees consider it more important to keep place of work than to redress harms; often they speak about them only upon the termination of the employment relation and of the risk of losing the job.

Compared to employment and distributing goods, use of services, the rate of dismissing decisions affecting the field of social security and public health, abode, education and training is negligible (the third largest group was constituted by the group of cases that cannot be ranked among the five special fields

set forth in the Ebktv.). It is important to add: in the possession of such statistical data we shall by no means state that in the above-mentioned three fields the number of discriminative practices, cases related to discrimination are lower in reality too – because the data might have been influenced by higher latency typical of these problems. At the same time, relying on experience it might be worth carrying out further examination of causes of differences, primarily by sociological tools.

In terms of several aspects, the fact that almost one-fourth of dismissing resolutions concluded proceedings that investigated discrimination (mainly in the field of employment) due to other situation from among the 20 protected features enumerated in the Ebktv. is worth paying attention to. On the one hand, this shows that in addition to the 19 protected features specifically expounded in the Act there might be several other causes that may serve as discrimination doing harm to human dignity. At the same time, this statistical figure supports—what is more calls for confirmation, even stricter screening—the preliminary investigation regarding the law application practice of the Authority that asserts that only attributes that can be closely linked to person and embody an important element of human dignity may as protected features provide grounds for violation of the requirement of equal treatment. Therefore, the Authority's practice that in the event of disadvantages which may be traced back basically to personal conflicts conducting proceedings does not lie should be strengthened and calls for wider public awareness.

*The complainant submitted an application against a higher education institution due to infringement of the requirement of equal treatment since his application for admission had been dismissed. The applicant took the position that the dismissal had represented distinction based on other situation against him since he*

*had taken an international secondary school leaving examination and not the examination in accordance with the Hungarian system. The applicant found it injurious that under the calculation system pursuant to the recommendation of the Ministry of Education and Culture he had lost 15 scores in mathematics and history whereas if he had taken a secondary school leaving examination in the Hungarian system he would have reached the score limit necessary for admission. In his complaint the applicant specified his other situation, that is, that he had taken international and not Hungarian secondary school leaving examination, as protected feature.*

*The fact that the applicant had taken international secondary school leaving examination shall not qualify feature protected by rule of law since it is not closely connected with a human's attribute related to his personality, human dignity, so it does not fall in the category of other situation, feature or characteristics either. In view of the above the Authority had to dismiss the application.*

At this point, we need to refer also to the standpoint of the Constitutional Court which claims that prohibition of discrimination does not mean that any and all distinction, eventually distinction aimed at greater social equality is prohibited. The prohibition of distinction applies to the point that the law shall treat everybody as equal (as a person with equal dignity), that is, the fundamental right of human dignity shall not be impaired, the aspects of allocating entitlements and benefits shall be determined by identical respect and circumspection, by taking individual aspects into consideration to identical extent.

From among the protected features specifically set forth in rule of law, the greatest weight was represented last year, similarly to earlier experience, by cases commenced because of, in order of importance, age (17%), belonging to national and ethnic minority (14%), and disability (11%). It is worth paying

attention to that within them the majority of complaints dismissed were received primarily from the field of employment due to age and belonging to national and ethnic minority, while from the field of distributing goods, use of services due to disability.

*In his complaint submitted to the Authority the applicant claimed that a business organisation had discriminated him due to his age (51) when he had not been employed in the job advertised by the company. In the proceedings the Authority established that only 13% of the applicants had been employed in the operator's job advertised by the party subjected to proceedings due to the high number of applicants. In the multi-step selection procedure the applicant had reached the final phase in spite of the fact that the result of the graphic mathematics test constituting part of the enrolment procedure, attached by the party subjected to proceedings had not reached the minimum 60%. The establishment of the employment relation was conditional upon eligibility in the multi-step selection system. The selection system specifically served the purpose that the employer should enter into employment agreement with applicants who were the most suitable for fulfilling the task. It contradicts the 51-year-old applicant's discrimination due to his age that he had reached the last phase of the competition procedure. The applicant had been given the opportunity to take part in the oral conversation in spite of the fact that his written examination had not reached the determined level. Based on the statement of records attached by the party subjected to proceedings it was possible to establish that the company had entered into employment contract with several applicants over 35 and 40 from among the employees who had applied at the same time as the applicant; currently the oldest employee in operator's job was 47 years old. The Authority did not find the applicant's statement well-founded which claimed*

that the party subjected to proceedings had not entered into an employment contract with him due to his age; therefore, it had to dismiss the application.

\* \* \*

The application claimed that the applicant of Roma origin had been discriminated by the employer in the enrolment procedure compared to the other persons applying for the advertised "kitchen maid" job through the company's kitchen chef having engaged condescending, refusing conduct against her throughout the job interview, then clearly, orally dismissing her application after a no more than a few minutes meeting. The test person of non-Roma origin as applicant, on the other hand, was received by the kitchen chef in the job interview politely, readily and co-operatively, and then, after supplying extensive information, offered to employ her to the job. As both applicants had skilled worker's qualification, had identical gender, similar age and competencies, the applicant and her representative claimed that the applicant's dismissal had been based on her ethnic belonging, Roma origin recognisable from her external attributes. The company subjected to proceedings pleaded on the matter that at the time of the applicant's job interview the kitchen chef responsible for enrolment had thought that he could select from the applicants; later, however, due to increased tasks he had to employ somebody urgently, so did not consider lack of vocational practice reason for exclusion as he had done before. The party subjected to proceedings pointed out that the test person of non-Roma origin at variance from the applicant with less convincing performance expressed enthusiasm and commitment to the job which might have deceived the kitchen chef, who wanted to employ her as kitchen maid rather than any other applicants, including the complainant. The length of the job interview of the applicants heard as witnesses had presumably exceeded that of the complainant but, on the one hand, 10 minute differences in order of magnitude did not prove the fact

*of discrimination, and, on the other hand, the character and content of the interviews were not different in terms of essential issues. Regarding the conduct engaged by the kitchen chef in the job interview, which was despising as the complainant claimed, the witnesses stated that they had seen the kitchen chef as a resolute, frank person whose style might in the given case hurt another person's sensitivity.*

*The party subjected to proceedings successfully exculpated itself by proving that in its enrolment procedure it had complied with the requirement of equal treatment, it had made distinction between applicants only by taking into consideration material and lawful conditions justified on the basis of the character, nature of the work. As a circumstance making enrolment to the job urgent the Authority accepted the argument of the party subjected to proceedings that after the school year had begun the kitchen tasks of the company providing school meals had suddenly increased, so following the search for labour at the end of August, early September setting vocational practice and physical competence as basic condition, later on the kitchen chef required applicants to meet less strict conditions. Taking the above into account the Authority took the position that in the case in the subject it was not possible to establish cause and effect relation between the applicant's Roma origin and the dismissal of her application for the job, so it dismissed the complaint.*

\* \* \*

*An association representing persons with impaired eyesight as an organisation entitled to enforce claims of public interest lodged a complaint with the Authority in which it found injurious that X. pharmaceutical distributor had not sent them by deadline the instructions to patients of four medicines in the format requested, in Braille writing and enlarged letter version in 100 copies and electronically. In the hearing held by the Authority and in its statement the party subjected to proceedings pleaded that they received the request at the end of*

January 2008. The same day they sent the instruction to patients of one product in electronic format, then the capital letter printed instructions to patients of another medicine in 10 copies on CD and electronically, after that, already during the proceedings they attached the instructions to patients printed with Braille writing of three products. In its proceedings the Authority investigated if the party subjected to proceedings had infringed the requirement of equal treatment in meeting the requirements made in the applicant's notice, if the persons with impaired eyesight represented by the applicant had been discriminated compared to their fellow beings not having this protected feature, and prior to receipt of the notice on the commencement of the proceedings what measures the party subjected to proceedings had taken towards the applicant in order to make the instructions to patients available. From the documents generated in the proceedings, the statements made and witnesses' testimonies in the hearing it was possible to declare that prior to receipt of the notice on the Authority's proceedings the party subjected to proceedings had sent the requested instructions to patients electronically, then capital letter instructions to patients of three products in 10 copies by post.

The Authority accepted the defence of the party subjected to proceedings claiming that it had met the applicant's request, that from the instructions to patients in electronic format the applicant was able to produce instructions to patients with enlarged letters and in Braille format, so the persons with impaired eyesight would not incur any disadvantage. In view of the above the Authority had to dismiss the application since the party subjected to proceedings had not infringed the requirement of equal treatment in the particular case.

Owing to their statistical weight, dismissals due to political or other opinion, condition of health and motherhood (pregnancy) or fatherhood should be also highlighted. It is important to add that the low number of proceedings con-

ducted in cases on discrimination due to belonging to a race or colour of skin can be examined only in the light that typically the persons who have such attributes also declare that they belong to a national or ethnic group, and they specify their such attribute as protected feature as the basis of the proceedings.

On the other hand, the low number of references to gender based discrimination is striking especially in comparison to European figures, especially in the light that statistical data show slowly decreasing but significant differences, for example, between wages of women and men who perform work of identical value.

The applicant was a woman in 46%, man in 41% and an organisation in the rest of the cases concluded by dismissing decision.

It is a typical figure that in approx. 90% of dismissing resolutions, on request the Authority examined direct discrimination; compared to that the number of cases due to harassment, segregation and retorsion was negligible.

It is necessary to specifically point out the lack of cases of indirect discrimination – i.e. measures seemingly complying with the requirement of equal treatment, which however put complainants with protected features in disadvantageous situation to a definitely greater extent – which reflects difficulties in recognising such violations of law (e.g., demanding serious physical endurance for light activities might represent indirect discrimination against women or older age groups). Extensive awareness-raising campaign would be necessary to enable persons concerned to notice such cases, often hard to recognise even for lawyers, with greater opportunity, and to help social and interest representation organisations to play a significant role in such violations of law typically affecting a wider scope of persons by exercising their right of enforcing claims of

public interest. During last year merely 6% of dismissing resolutions were commenced on enforcement of claims of public interest, however, they did not include any submission that found indirect discrimination injurious.

In terms of geographical location it can be declared that the largest part of dismissed applications were received from the capital city (28%), Pest county (16%), Szabolcs-Szatmár-Bereg county (7%), Borsod-Abaúj-Zemplén county (6%) and Baranya county (5%). Last year, Somogy was the only county where no complaint were received from that the Authority had to dismiss; on the other hand, significant under-representation of certain geographical areas again underlined the need to inform households and raise legal awareness since almost half of the applications came from the Central Hungary region.

Presumably it sheds light on lack of knowledge of the conceptual elements of discrimination and on use of the authority proceedings as "ultima ratio" that in 40% of the cases concluded by dismissal the Authority was able to dispense with noticing the party subjected to proceedings since in these cases easy to be adjudged immediately upon commencement of the proceedings decision on the merits was adopted. Although as a general rule it shall be mandatory to hold a hearing in the authority proceedings, in 60% of the cases no hearing was held typically because it was easy to adjudge the case in terms of facts and law, it was possible to adopt decision on the strength of the documents. From the comparison of the latter two data it can be also declared that in 20% of cases the written defence of the party subjected to proceedings founded the dismissing decision beyond doubt, the complainee successfully exculpated itself through its statement on the merits and attaching other documents.

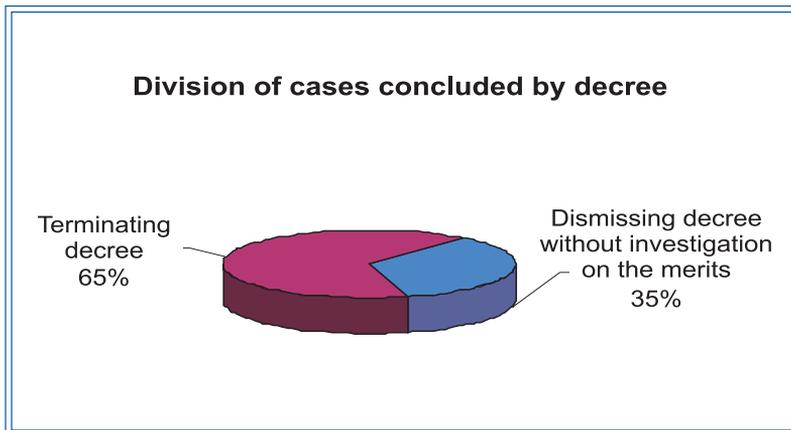
In a few more complicated cases, prior to adopting the dismissing resolution, the Authority asked the opinion of a fellow authority or other organisation having expertise, and used the statement attached by the client. Such information was provided, for example, by the National Security Committee of the Parliament, the Ministry of Education and Culture, the State Supervisory Authority for Financial Institutions, the Health Insurance Supervisory Authority, the ombudsmen for citizen rights, the Ministry of Health or the National Telecommunication Authority.

In accordance with the provisions of Ket. /Act CXL of 2004 on the General Rules of Administrative Official Procedures and Services/ it is possible to conduct proceedings before the Authority through authorised representative, however, only 15% of applicants used this option in cases concluded by dismissing resolution. It is worth paying attention to this low number in the light that in cases easy to adjudge, not implementing discrimination at first sight conducting of proceedings could have been most probably avoided through using a legal representative or other assistants available to applicants, and thereby the applicants' unnecessary time and energy input could have been saved, while in more complicated cases applicants would have been able to prove their claim with greater opportunity by refuting the defence of the party subjected to proceedings. This is true in spite of fact that both rules of law and the Authority's undiminished practice place the bulk of the burden of proof on the party subjected to proceedings.

In the mirror of the above it is absolutely necessary to support that parties having incurred injury should use legal assistance available to them (lawyers of Houses of Opportunities, of the Roma Anti-discrimination Customer Service Network of the IRM /Ministry of Justice and Law Enforcement/, the "Lawyer of

the People" network, NGO rights protection organisations, minority municipalities, social interest representation organisations) in order to supply information, to draft applications and provide representation in proceedings. Through that, and of course through ongoing extensive information provided for the population, the number of cases to be dismissed by the Authority without holding a hearing and noticing the party subjected to proceedings merely on the grounds of documents attached will probably decrease.

### 3. Cases concluded by decree



#### Decrees concluding proceedings

In 2008 almost 18% of cases before the Authority were concluded by decree, accordingly, in 89 of the 356 investigated cases the Authority adopted a decree concluding the proceedings. In most of the cases the Authority had to

dismiss the application without investigation on the merits mostly for lack of powers. Also, the Authority concluded the proceedings by decree when the applicant withdrew its application during the proceedings or when in spite of the Authority's call for completion the applicant failed to make a statement, or failed to send the documents requested, which prevented the Authority from exploring the state of facts.

### ■ **Termination of proceedings due to withdrawal of the application**

In 2008 the Authority adopted a decree terminating proceedings in a total of 89 cases. In 30 of such cases the proceedings were terminated because of withdrawal of the application. Only in 4 cases were no reasons given for withdrawing the application by the applicants who had turned to the Authority. In the other 26 cases withdrawal of the application was based on the reasons set out below:

- in the meantime the clients had reached an agreement (in 9 cases),
- in the meantime the applicant's problem or complaint had been solved (5 cases),
- the applicant had accepted the exculpation of the party subjected to proceedings (on 8 occasions),
- the applicant intended to use other (legal) forms to redress its injuries (in 2 cases),
- and, on 2 occasions the applicant withdrew its application because having learned the defence of the party subjected to proceedings the applicant believed that s/he would not be able to support his/her pleadings by proper evidence.

*In his complaint submitted to the Authority the applicant of Roma origin asserted that he had intended to hold christening at the village house of the community on 31 December 2007. Upon his inquiry made by phone on 3 December 2007 the mayor first responded that the hall would be vacant, later he refused to rent out the hall by referring to the point that an association would hold a New Year's Eve ball there, and he would not rent out the hall to Gypsies for the purpose of any kind of entertainment. The mayor several times declared in public that "the village house is not for Gypsies". In its written statement the party subjected to proceedings referred to the point that only NGO's and social organisations could use the village house, they made it available to private persons solely for the purposes of holding a funeral feast. In the hearing the parties reached agreement by common consent that they would convene a village meeting where each local inhabitant could state their injuries, and then with knowledge of such injuries, if necessary, they would hold a meeting of the body of representatives to adopt decisions on the merits. The party subjected to proceedings sent the minutes taken at the village meeting. At the end of the event the mayor asked for the complainant's pardon in public, which they confirmed by shaking hands before the persons present. The mayor also sent the minutes taken at the extraordinary meeting of the body of representatives, which included the resolution of the body of representatives that made possible for each local inhabitant to rent the village house and the house of culture under identical conditions. The party subjected to proceedings also informed the Authority that he had assigned a Roma woman living nearby to fulfil the caretaker's duties of the village house and the house of culture.*

*The applicant accepted the apologies of the party subjected to proceedings, and requested to terminate the proceedings since in his case positive changes had taken place (the village house could be rented by anybody). The Authority*

## II. The Authority's activity

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*terminated the proceedings by a decree in accordance with Section 31 (1) c) of the Ket.*

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*The complainant found it injurious that his employer was transferring him continuously without reason from one district to another supplied by it due to his activity in the trade union, as a result of which his wages had not decreased formally but he had not received certain extra emoluments. The complainant also said that the colleagues assigned to him had less knowledge for this reason he regularly had to start work one/one and a half hours earlier and had to stay longer at his place of work in the afternoon too. In his submission the complainant also found it injurious that his direct superior made a sarcastic comment on one occasion due to his religious belonging. The Authority held public hearing on the matter under which the applicant, the party exercising employer's rights, the applicant's direct superior and the president of his interest representation organisation clarified the injuries claimed in the complaint.*

*As it was sufficient result for the complainant that he had been able to discuss the causes of his application with the party exercising employer's rights and his direct superior, and simultaneously his employer had assured him that upon his written request it would provide him with the working hours allowance guaranteed by law, he decided to withdraw his application. The act applying to the Authority provides the Authority with option to terminate the proceedings by decree if the proceedings had been commenced on request, and the client had withdrawn its application prior to the resolution on the merits became final and unappealable. Paying regard to the above the Authority terminated the proceedings.*

55% of the applicants who withdrew their applications were women and 45% of them men.

Most often, in 62% of the cases applications were withdrawn regarding complaints made in the field of employment, in 21% of the cases regarding complaints lodged against organisations that had called or made offer to previously unidentified persons to enter into contract, in 7% of the cases in each of education and distributing goods, using services, and in one case (3%) regarding complaint submitted against a municipality.

In 62% of the proceedings terminated due to withdrawal of the application the Authority did not deem it justified holding a hearing but in a few instances the client was personally heard as part of completion.

In terms of cases split per protected features it can be stated that in most of the cases applications were withdrawn by applicants who specified their protected feature as age (31%), belonging to a national or ethnic minority (20%), motherhood (14%), disability, condition of health, other situation and the nature of their employment relation (7% each), colour of skin and belonging to an interest representation organisation (3.5% each).

In summary: it can be stated that the applicants who withdrew their applications during the proceedings had found some solution for their complaint in most of the cases; actually, continuance of the Authority's proceedings had no longer had a cause. However, it also occurred that the applicant withdrew its application because having learned of the statement made by the party subjected to proceedings and for lack of any legal representative the applicant considered it hopeless to continue the proceedings.

■ **The applicant failed to implement completion; in spite of notice s/he made no statement**

In a total of 27 cases the Authority had to terminate the proceedings because the applicant failed to meet the notice for completion, and failure to make statement prevented the Authority from clarifying the state of facts. 55% of such applicants were men and 45% of them women. Most of the complaints were received from the field of employment (48%), distributing goods, using services (18%), abode, social care, education and use of state aid (4% each), the rest of the cases affected other fields.

In 14 cases, i.e. 51% of the cases the applicant failed to attach, send the Authority the documents to support the claims made in their complaint in spite of the Authority's express notice to this effect. In 19% of the cases proceedings were terminated because the applicant was not able to make the disadvantage or the protected feature properly probable or failed to specify it. Also, in approx. 20% of the cases proceedings had to be terminated already in the phase of investigation on the merits because the applicant failed to make statement upon notice. In 2 cases it also occurred that the applicant failed to appear at the time defined by the Authority for the purpose of personal hearing, and did not ask for a new date and time either.

In terms of protected features, in summary it can be declared that in most of the cases notice for completion was not met by applicants who specified their belonging to a national or ethnic minority as protected feature (37%).

*The complainant applied to an enterprise for a cleaning woman's job. Since she lived under difficult financial conditions, and was bringing up her one-year old*

*child alone with her parents' assistance, she went to the personal meeting with hope. Contrary to her expectations, in the enrolment conversation she was asked not with regard to the job to be fulfilled, and leaving the room she could hear that the participants were making jokes about her due to her motherhood, Roma origin. In its written statement the representative of the enterprise subjected to proceedings pleaded that the complainant was heard in a personal meeting after the applicant's girlfriend had recommended the complainant to the company's representative present in an aggressive and pushy style in the morning of the day of the conversation. In the enrolment interview the persons present on behalf of the party subjected to proceedings developed the impression that the complainant had no knowledge of the vocational requirements of the job to be filled. Furthermore, objective factors prevented the employment of the applicant, such as e.g. due to mandatory reimbursement of travel expenses her employment would have put significant extra burden on the employer. At the same time, this would have meant that in addition to the eight hours of her working hours per day the complainant would have had to spend another two hours away from her little child. The employer's decision – as stated in the description – was also influenced by the fact that the complainant considered the job applied for only as a temporary solution. The statement containing the above assertions of the party subjected to proceedings had been sent to the applicant, whose representative had received it as confirmed by the certificate of receipt of delivery returned but failed to make comments thereon within the deadline specified in the notice, nor requested extension of such deadline. Paying regard to the fact that failure by the complainant to make a statement prevented clarification of the state of facts, the Authority, in harmony with governing statutory provisions, terminated the proceedings by decree.*

### ■ Dismissing applications without investigation on the merits

In 31 of 89 cases the Authority dismissed applications without investigation on the merits. In most of the cases, on 10 occasions, the Authority dismissed the application for lack of powers, mostly because adjudging the complaint fell in the jurisdiction of the court. The Authority had to declare lack of powers again and thereby dismiss the application when the applicant was unable to specify a protected feature that was indispensable for the Authority's proceedings. The application sought revision of some court decision found injurious (in 7 cases), some rule of law (2 cases) and the resolution of the Constitutional Court (1 case). The Authority dismissed the application in 2 cases because the complaint was related to some kind of membership relation as set out in Section 6 d) of the Ebktv. For lack of jurisdiction the Authority dismissed the application in one case, and on one occasion because it had earlier adjudged the complaint on the merits. Due to injury having been incurred prior to the Ebktv. entering into force, again on one occasion, the Authority had to dismiss the application without investigation on the merits.

*The applicant brought a lawsuit against her former spouse seeking dissolution of marriage in 2003, seeking termination of obligation of child maintenance in 2005, and seeking declaration of spouse maintenance, and indemnity action in 2006. The applicant doubted unbiased, unprejudiced proceedings of the court, on the one hand, and the fair activity adhering to rules of law of the lawyers, law firms providing legal representation in the above-mentioned lawsuits, on the other. She believed that the competent court had not only failed to comply with the requirement of freedom from bias but together with the assisting lawyers had disregarded her rights, proceeded in unfair manner. She expected the Authority to provide help to ensure that the court proceedings in her matters should fulfil their duty in*

*accordance with the provisions set forth in laws and she herself should obtain legal remedy. She did not specify any protected feature but as it was possible to establish from her pleadings it was due to her condition of health and financial standing that she – as a disability pensioner – felt helpless in official procedures. The Authority shall not investigate public authority decisions and measures of courts and the public prosecutor's office. In the present case, however, the applicant raised injuries that fell specifically in this category, so the Authority would not have been able to conduct investigation on the merits even if other conditions had existed (protected feature and making disadvantage probable). The Authority dismissed the application on the grounds of Section 30 b) of the Ket. since based on the above it did not have powers to proceed in the case.*

61% of applicants having submitted applications dismissed were men.

In 21% of the cases applicants specified other than the protected features named in Section 8 of the Ebktv. as protected feature, and in the same amount of the cases applicants failed to specify any protected feature. 20% of applications specified belonging to a national or ethnic minority, and 13% of them the nature of their employment relation as protected feature. In the rest of the cases one application referred to each of motherhood, age, condition of health, religious conviction, disability and political opinion from among protected features. Apart from the above, in one case the Authority terminated the proceedings by its decree because it had learned during the Authority's proceedings of the fact that other authority's proceedings were in progress in the same case (prevention).

■ **The Equal Treatment Authority's decrees concluding the proceedings before court**

6 of the decrees concluding the proceedings adopted by the Authority in 2008 were referred to the Metropolitan Court for revision, that is, it was in 7% of the decrees concluding the proceedings adopted by the Authority that clients sought court revision thereof. From among them only one decree concluded the proceedings because the client had failed to meet notice for completion, in the rest of the cases the Authority's reviewed decree had dismissed the application without investigation on the merits. The Metropolitan Court sustained the Authority's decree in each of the cases.

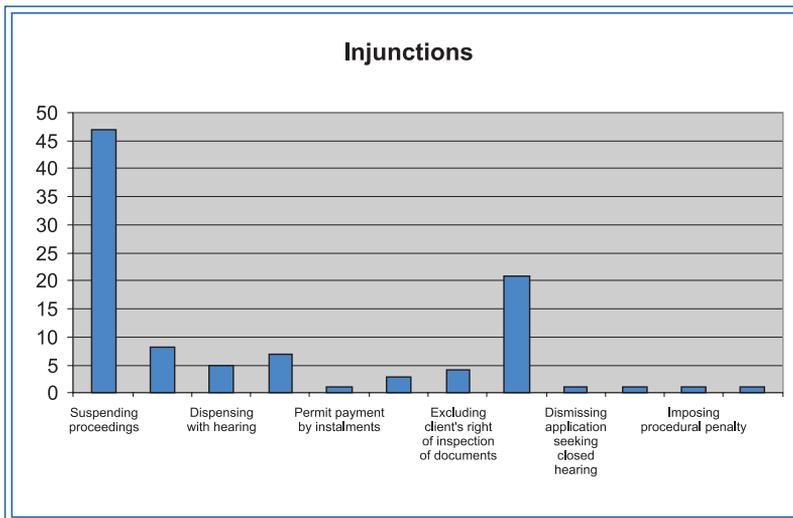
■ **Applications providing grounds for decrees concluding the proceedings split per regions**

In one-fourth of the applications providing grounds for decrees concluding the proceedings the applicant's domicile was in Budapest, so it can be declared that also in the event of cases concluded by decree the most of the submissions were received from Budapest. In order of magnitude Borsod-Abaúj-Zemplén county was the second from where 13% of complaints concluded by decree were received. It is followed by Pest county with 12% of complaints, then by Szabolcs-Szatmár-Bereg county with 8%. If we take also the causes providing grounds for decrees concluding specific proceedings into consideration it can be established that applications were withdrawn in most of the cases by applicants domiciled in Budapest, followed by applicants from Pest county, and Borsod-Abaúj-Zemplén county.

Due to the applicant's failure to make statement upon the Authority's notice the proceedings had to be terminated in most of the cases again with regard to applicants domiciled in Budapest just as in the event of decrees dismissing the application without investigation on the merits.

It is, however, also worth noting that no complaints serving basis for decree terminating the proceedings were received from Somogy county, Veszprém county and Nógrád county. Compared to the high number of complaints received from the central part of the country and East of Hungary, the number of complaints received from West of Hungary was significantly lower. Only one case from each of Heves county, Tolna county and Bács-Kiskun county was received on the grounds of which the Authority adopted a decree to conclude the proceedings.

The Authority issued 27 injunctions in 2007 and 100 in 2008.



#### 4. Certain procedural issues

In 2008 the Authority held 212 **hearings**. Furthermore, on several occasions the Authority heard the applicants personally to provide completion at the Authority's seat or at the applicant's domicile. In specific investigated cases the number of participants exceeded 4, in certain cases 10-12 persons on average. The venues of hearings in the provinces were located on widely various points of the country as it is indicated by county statistics.

##### ■ Investigations conducted by fellow institutions due to infringement of the requirement of equal treatment

**The Health Insurance Supervision Authority** declared violation of law in one out of 11 cases and imposed a fine. **The National Safety-at-Work and Labour Supervision Authority** declared violation of law in a total of 6 cases. **The Education Office** commenced 13 proceedings, in 5 of such cases it imposed supervisory fine. **The National Consumer Protection Authority** conducted a total of 4 proceedings last year, in two of these cases the investigation was concluded by declaring violation of law, imposing consumer protection fine.

## 5. Records maintained by the authority

### ■ Orderly labour relations

The employer on whom the Authority has imposed a fine due to infringement of the requirement of equal treatment shall pursuant to the Áht. /State Budget Act/ not comply with the requirement of orderly labour relations, which has the consequence that within two years from the resolution becomes final and unappealable it shall not be granted state aid, and all of the organisations regarding which the Authority has adopted condemning decision shall not take part in public procurement tendering procedures as tenderers. In addition to the authority's sanctions this represented efficient repressive consequence and highly advanced rise in the number of arrangements especially in the scope of business organisations that have committed violation of law.

The bill on the amendment to specific acts related to the requirement of orderly labour relations and other measures necessary for labour issues, submitted to the Parliament in 2009 ranked infringement of the requirement of equal treatment among the category of slightest violations of law identical with violation of labour procedural rules. The planned regulation would have resulted in the consequence that offenders, contrary to the current regulations, would not be excluded automatically from state aids, and could take part in public procurement tendering procedures. We take the position that this is one of the most efficient repressive forces against potential violations of law, which would be fully terminated, liquidated by the planned amendment. In the midst of the economic/financial crisis it is an obvious purpose in order to preserve the level of employment to reduce employers' administrative duties deemed "unneces-

sary", which, however, shall not involve degrading the protection of human rights, constitutional values (protection of human dignity). At such expense the State shall not waive protection of persons who suffer legal grievances, the importance of solidarity, shall not encourage potential perpetrators by ranking discrimination without any weighting and e.g., employers' administrative failures under the same category.

If discriminative violations of law were placed to the level of the slightest procedural law violations, it would lead not only to devaluation of the protection of human rights, human dignity but it would also weaken the sanction system protecting employees who are the most exposed in the present economic situation. In view of the above we have proposed modification of the amendment to the act in such form that infringement of the requirement of equal treatment should be ranked among at least violations of law considered medially serious rather than among the slightest violations of law. Through the proposed modification, on the first occasion the violation of law committed will not result in exclusion from state aid (public procurement tendering procedures).

### ■ Licences issued by the authority

In addition to the above, the Authority continues to issue official licences on the grounds of Government Decree 176/2005. (IX.2.) on the rules of the accreditation of employers engaging employees with reduced capacity for work, and on controlling accredited employers, and Section §8 (3) h) of the Decree 14/2005. (IX. 2.) FMM of the Minister of Employment and Labour on the rules of the rehabilitation accreditation procedure and requirements. Employers engaging employees with reduced capacity for work shall attach to

the application for accreditation attestation the Authority's certificate stating that within the half year preceding the submission of the application the Authority has not declared violation of the requirement of equal treatment in the area of employment against the employer.

**In 2008** a total of **628** official licences certifying compliance with the requirements of orderly labour relations and necessary for issuing rehabilitation attestation were issued.



### III. The activity of the Advisory Board of Equal Treatment

The Ebktv. stipulates that the Authority shall fulfil its tasks in collaboration with the Advisory Board of Equal Treatment (the Board). In accordance with the provisions of the Act the six members of the Body are persons who have outstanding experience in the field of human rights protection and the enforcement of the requirement of equal treatment. Several members of the Board have changed; following dr. László Majtényi dr. Ernő Kállai was admitted to the Board; then after he had been elected ombudsman for minorities and his resignation university educator dr. Somody Bernadette was invited to join the Board. Due to her resignation because of family reasons Bernadette Somody fulfilled this position until November 2008. Nomination of the new member of the Board is in progress.

The Body holds its meetings regularly in accordance with a predetermined work schedule. When determining tasks in the work schedule the Body took into account the Authority's proposals, the problems that arose concerning the cases received by the Authority. Last year the Board held a meeting **on 5 occasions**. The Board adopted its work schedule for 2008; finalised several positions discussed in the previous year, such as: the position on the division of the obligation to produce evidence, the position on the obligation to provide accessibility, the position related to the application of the equal wages for equal work principle, determination of the scope of concept of harassment and retorsion. It discussed the report on the activity of the Equal Treatment Authority in 2007 to be submitted to the Government. It dealt with motions for amendment of the

Ebktv.; it discussed the problem area related to the interpretation of "other situation" as protected feature set forth in Section 8 of the Ebktv. It discussed individual cases in progress before the Authority; entered into negotiations on its draft position on the scope of the Ebktv.

The Board made a clear publication easily interpretable by the general public entitled "You do not get a job because of discrimination?", which the Authority forwarded in a great number of copies to job centres.

**The Equal Treatment Advisory Board's  
Position No. 384/1/2008. (I. 23.) TT  
on the obligation to provide accessibility**

The 2007 amendment to Act XXVI of 1998 (Fot.) has changed the rights that persons with disabilities are entitled to, the scope of obligors and accessibility deadline. The new accessibility deadlines do not mean that until the expiry of the deadline the obligor will be completely exempted from the obligation to provide accessibility. If the obligor (owner, operator) changes the physical environment, instruments, financial conditions of the service at significant cost, then it shall not refer to the exemption deadline with well-founded reason. Furthermore, public services that had not operated on 1 April 2007 will not be exempted from the obligation to provide accessibility. The term of service already operated on 1 April 2007 shall be interpreted in a restricted form. In the cases in progress prior to the entry into force of the amendment to the Fot. (1 May 2007) the provisions in force prior to the amendment shall be applied.

**The Equal Treatment Advisory Board's  
Position No. 384/2/2008. (I. 23.) TT  
on equal wages for equal work principle**

In legal disputes regarding equal wages for equal work principle the provisions of the Labour Code (Mt.) shall be applied in harmony with Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (Ebktv.). The identical value of two works can be declared even if the spheres of work or the job descriptions are different but they can be considered of equal value based on the aspects listed in Section 142/A (2) of the Mt. No other than employees maintaining employment relation with an identical employer may be compared except when the wage difference between employees who perform work of equal value arises from a single source, statutory provision or collective agreement. Any and all pecuniary and in kind (social) benefit provided directly or indirectly for employees based on their employment relation shall qualify wages. Any employer or person entitled to give instructions may be exempt from liability pursuant to Section 22 a) of the Ebktv. except when the principle of equal wages is impaired in relation to the employee's gender, belonging to race, colour of skin, nationality, belonging to national or ethnic minority.

**The Equal Treatment Advisory Board's  
Position No. 384/3/2008. (II.27.) TT  
on the concept of retorsion**

Retorsion against persons taking action due to the infringement of the requirement of equal treatment constitutes an obstacle of efficient enforcement of rights and strict sanctions shall be applied to combat it. The prohibition of retor-

sion shall cover all legal relations and natural or legal persons that are subject to the scope of the Ebktv. Protection shall cover also those who do not have any protected feature determined in Section 8 of the Ebktv. but suffer disadvantage because they have submitted reserve, brought an action or participated therein due to the infringement of the requirement of equal treatment. Retorsion can be declared also in the event that the complaint, reserve or proceedings serving the basis of retorsion are unsuccessful.

The rules of demonstration set forth in Section 19 of the Ebktv. shall be applied while paying regard to the peculiarities of the concept of retorsion. Rules of demonstration shall be applied so that it should comply with Community law requirements and should ensure efficient protection of applicants' rights.

**The Equal Treatment Advisory Board's  
Position No. 384/4/2008. (III. 28.) TT  
on dividing the obligation to produce evidence**

The aim of exculpation demonstration prevailing in civil and administrative proceedings commenced in the event of infringement of the requirement of equal treatment is to compensate for the disadvantage of the party enforcing the claim incurred in access to evidence. Beyond making the circumstances set forth in rule of law probable, the burden of proof of cause and effect relation between the disadvantage and the protected feature shall not be put on the party enforcing the claim. In proving specific types of discrimination varying statutory definitions and special rules of demonstration shall be taken into consideration.

In proceedings of public interest commenced in the event of infringement of the requirement of equal treatment, in addition to the above, social and interest

representation organisations shall prove their capacity as client (registered organisation, organisation determined by law), and shall make the conjunctive conditions defined in Section 20 of the Ebktv. probable.

In the event of direct discrimination and unlawful segregation based on race, colour of skin, nationality, belonging to national or ethnic minority exculpation pursuant to the general rules (Section 7 (3) of the Ebktv.) do not lie. Furthermore, it is not possible to be exculpated in the event of gender based violation of equal wages for equal work principle either (Sections 21 f and 22 (2) of the Ebktv.).

In applying the rules on exculpation demonstration it is mandatory to pay regard to the Community law and the practice of the Constitutional Court. Accordingly, in each case when the infringement of equal treatment is related to fundamental constitutional right of the party having incurred disadvantage the party subjected to proceedings shall prove that its measure is absolutely necessary for enforcing another fundamental right, suitable for and proportionate with the achievement of the purpose. In any other case it is sufficient to prove that the measure has a reasonable cause directly related to the given legal relation.

**The Equal Treatment Advisory Board's**

**Position No. 384/5/2008. (IV. 10.) TT**

**on the concept of harassment and sexual harassment**

Both harassment and sexual harassment can be implemented by engaging active and passive conduct, by nonrecurring and continuous, regularly recurring acts, and also in the absence of intention aimed at it. All of the circumstances of the given case shall be taken into consideration, especially statements uttered and their nature. Due to the direct scope of directives, if neces-

### *III. The activity of Advisory Board of Equal Treatment*

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sary, the Hungarian rule restrictive compared to Community law shall be ignored, and the legal issue shall be decided on the grounds of the rules of Community law. If the complainant seeks to call a natural person who does not qualify employer (for example, harassing fellow staff member) responsible, then the complainant will be able to enforce such claim solely in privacy rights lawsuit in court.

## IV. Co-operation with NGO's and interest representation organisations and government bodies; informing the public; consulting hours

Section §14 (1) e) and f) of the Ebktv. obliges the Authority to co-operate while fulfilling its tasks with NGO's and interest protection organisations, relevant government bodies, and inform the public and the Government on a regular basis on the current state of the enforcement of equal treatment.

One of the key elements of supplying information is the **authority' web site**: ([www.egyenlobanasmod.hu](http://www.egyenlobanasmod.hu)). The web site can be easily manipulated; it is accessible both for persons with impaired eyesight and the blind. The web site contains any and all information regarding the operation of the Authority, meetings with NGO's and international relations, the characteristics of procedures; under the caption "Legal cases" summaries can be read now also in English on the cases investigated. The Authority **exercises** the sanction of making resolutions public on its web site **in several cases**. Regular information can be read on the meetings of the Advisory Board; their positions were made public. In **2008** the Board held **5 meetings** and finalised **5 positions**. The web site is visited by increasingly more inquirers, **in 2008 by 83.284**, in **2007 by 63.000**. We understand institutions, researchers engaged in human rights extensively use the published legal cases to support their publications. It should be noted that from February 2007, in addition to the official web site, the Authority operates another site [www.antidiszko.hu](http://www.antidiszko.hu) with easily understandable content, presenting

the types of discrimination with caricatures, and regularly issues a **newsletter** sent to 4-5000 addressees.

In addition to its specific professional tasks, the authority fulfilled its obligation to supply information on 189 occasions through the media—the radio, televisions and printed press. This figure was 161 in 2007.

The authority's executives and staff members attended **conferences** and delivered lectures on **171** occasions in 2008, in **179** cases in **2007**. **In 2006 this number was 73**. 2007 was the Year of Equal Opportunities in the European Union, and several events were held in each part of the country where the authority was always invited. At the same time, it should be noted that this put a huge burden on the lawyers of the authority, while investigation of individual cases were given priority. On our own initiative meetings were held with NGO's; and **we invited interest protection organisations and representatives of alliances**. At these negotiations they provided in-depth analysis of the authority's work, discussed problems raised by NGO's and interest representation organisations, described particular legal cases. The key objective of these meetings was to encourage the organisations to exercise their entitlements provided by law to represent and enforce claims of public interest. The authority maintains continuous relations with **108 NGO's**.

On two occasion we attended the consultations on possible directions of legal regulation of animosity speech organised by the Ombudsman for National and Ethnic Minorities where we were able to expound our standpoint on the draft proposal of the Ministry of Justice. 20 submissions were received from the office of the ombudsman for minorities regarding which the Authority commenced proceedings and we have provided information on their outcome.

From among various conferences, lectures we mention the following:

- international conference entitled "Invisible Culture" – from bird's eye's view held on the occasion of the International World Day of the Deaf,
- conference of the Trade Union of Railway Workers,
- National Law Enforcement Co-ordination and Consultative Meeting entitled "The Order of Freedom",
- European Roma Roundtable conference,
- Meetings of SINOSZ /National Alliance of Deaf and Hard of Hearing Persons/,
- Conference arranged by the Education Office,
- Session of the National Interest Conciliation Council,
- Event held by the State Institute of the Blind,
- Attending the Open Parliamentary Hearing organised by Katalin Lévai,
- Events of the Regional Administrative Offices,
- Event of the Metropolitan Pedagogical and Career Orientation Advisory Institute,
- PSZÁF professional day,
- 3<sup>rd</sup> Conference of Women with Disabilities,
- event of the Békés county Association of Physically Handicapped Persons,
- event of the Law Clinic Foundation,
- event of the Hand in Hand "Joining Forces for Persons with Disabilities" Foundation,
- Student – Media Festival,
- "Day of ELTE-BTK students with special needs",
- International conference organised by the Institute for Research of Ethnic and National Minorities of the Hungarian Academy of Sciences (MTA),
- House of Opportunities;

*IV. Co-operation with NGO's and interest representation organisations and government bodies; informing the public; consulting hours*

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- "Equal Wages for Equal Work" conference arranged by the Women for Tomorrow Foundation.

On the Authority's powers, order of procedure an easily understandable **information material** has been made in Hungarian and English for NGO's, the customer services of ministries and job centres.

The Authority maintained **consulting hours** once a week from 2:00 p.m. to 5:00 p.m. each Monday. In addition to appearance in person, **inquiries were made by phone** several times, 20-25 daily, answered by a panel of 5-6 lawyers. Staff members were available by phone to clients continuously without any restrictions.

## V. International activity

In 2008 the Authority continued to perform its international activity based on its relations developed in previous years.

We were again invited to and attended the **seminar of ECRI (Committee Against Racism and Intolerance of the European Council)** organised on **28-29 February 2008** for national equal opportunities bodies, which focused on the relation between integration and combating racial discrimination where we heard lectures on both good and well-working practices, methods and less fortunate solutions. In several countries the tone of debates carried out on this issue influences the now existing integration policy negatively and thwarts the results attained so far in combating racism and racial discrimination. *The ECRI takes the position that the authorities set up with a view to advancing the requirement of equal treatment – such as the Equal Treatment Authority and the ombudsman for minorities in Hungary – may play a significant role in combating racism and racial discrimination*, their participation in community debates is indispensable. These bodies must play a part in working out and implementing measures and steps to work towards integration.

We continued to perform our work in the **Gender Equality Network of the European Commission**, which focused in 2008 on compliance and the possibility of causing to comply with the equal wages for equal work principle in the Member States, presenting measures, good practices, campaigns taken so far to work towards reducing the wage gap between men and women.

At the meeting attention was called to *the role played by trade unions in implementing equal wages*, in concluding collective agreements. The duty of trade unions is to argue for the issue that reference to structural differences provides only partial explanation for wage differences. During the project running on this field several collective agreements were analysed, and the statement was arrived at that each agreement contained gender discrimination. The findings thereon were published in Spain, Greece, the Netherlands, Italy and Germany. National studies pointed out that women were indirectly discriminated in collective agreements in spite of it was not their intention. *Research pointed out that the principle of equal wages did not constitute a corner stone of any of the collective agreements.* The negotiating parties ignored differences between wages, employees denied that they had any right to enter negotiations in this field. This can be attributed to the fact that scarcely any women took part in collective negotiations, negotiating partners were not motivated and properly trained to emphasise the problem of inequality of opportunities.

The project set *minimum requirements* in this field, which were enshrined in a *manual*. One of the most important of such requirements is that *an official body shall have powers to evaluate collective agreements in terms of equal wages as an outsider, before they enter into force.*

As invited guests we attended the **international conference of the British Council Living Together** in March in London. The three-day international summit was the first large-scale event of the Living Together program. The meeting was organised under the auspices of the European Council; the session was attended by approximately 150 renowned politicians, lawmakers, journalists, jurisdiction personnel and rights protectors on behalf of civil society from Europe, which focused on *migration and its impacts on society, and participation of minority societies in public affairs.*

Our staff member attended as a lecturer the **"Fair-Minded" Society conference** organised by Czech NGO's in March in **Prague**. The key subject of the conference was *review of anti-discrimination Member State and Union policies* within the European Union treated partly in lectures held by invited Member State authorities, Czech and other Member State NGO's and the representatives of the European Commission. In the lectures the participants placed emphasis primarily on introduced and applied practices to help victims of discrimination, and outlined planning of strategies of ministries at Member State level and the challenges posed by the overall anti-discrimination policy of the European Union on European level.

*At the conference our staff member presented the operation, work of the Equal Treatment Authority and the legal background in Hungary, paying special regard to cases commenced on the grounds of discrimination due to belonging to national and ethnic minorities and colour of skin.*

At the **annual general meeting of Equinet** held on 17-18 April 2008 the participants adopted decision on admitting new members, so the organisation was extended by the Bulgarian Committee for Protection Against Discrimination, the Estonian Gender Equality Committee, the Finish Office of the Ombudsman for Minorities, the Equal Treatment Centre of Luxembourg, the Maltese National Committee Responsible for Promoting Equality, the Spanish Council for Promoting Equal Treatment and Against Discrimination Due to Racial and Ethnic Origin and the Romanian National Council for Combating Discrimination.

The chairperson of the organisation, presenting the work schedule of Equinet for 2008 and the strategic plan for 2007-2010 expounded that the structure of the organisation by having obtained non-profit oriented legal entity status in November 2007, in accordance with registration under Belgian law, had

changed. The key decision-maker continued to be the annual ordinary general meeting, which consists of partner organisations. The key task of the directorate is, among others, to work out the general business plan, to represent the Equinet in the European Commission, to organise and chair annual general meetings, to ensure the future of the network, to administer finances of the Network and to report on such issues. Membership fee for 2009 continue to be EUR1000, furthermore, various Member State organisations are to contribute to the work of the organisation through performance of mandatory work determined in a differentiated form (the EBH undertook 16 work days p.a.).

We attended **two training sessions of the Equinet** where we heard lectures on discrimination due to age implemented in the field of employment, collective consultations between organisations that provide representation of employees and employers, its content elements – paying special regard to compliance with the requirement of equal treatment – the role and responsibility of social partners, and the process of litigation before the European Court of Justice and the European Court of Human Rights and multiple based discrimination.

*The lecturers invited to the training included Lilla Farkas, the Chairperson of the Advisory Board of the Equal Treatment Authority, who presented some relevant decisions of the European Court of Human Rights regarding areas related to the education of the Roma and their access to training, and gave account of decisions adopted in several lawsuits related to abode, social security and health care of the Roma.*

At the invitation of the Equinet we attended the conference organised by the European Commission, which focused on one of the follow-up actions of the program of the 2007 European Year of Equal Opportunities for Everybody and on communicating and displaying equality and combating discrimination in the EU. On the subject of communication and co-operation with the media we heard lectures of communication experts and journalist, who gave practical advice

on how to communicate successfully, how to reach various target groups, how to handle reporters, who represent good subjects of reports and interviews, what situations it is worth avoiding, how to respond to “unpleasant” questions.

As invited guests we attended the **Equality Summit international conference** organised by the European Commission and the French Presidency of the Council of the European Union on 29-30 September 2008, which was an organic continuation of the first Equality Summit arranged during the German Presidency, and the events of the 2007 European Year of Equal Opportunities for Everybody. At the conference the minister responsible for labour, family affairs and solidarity expounded that anti-discrimination offices were partners who set high requirements; however, without setting up such – emphatically independent – organisations this combat could not be successful.

A member of the staff of the office of the Ombudsman of Cyprus underlined the importance of the issue that these organisations should be independent both of public and private spheres since victims of discrimination typically did not trust bodies maintaining subordinated relation with the public and private spheres.

Vladimir Spidla ombudsman Commissioner responsible for Employment, Social Affairs and Equal Opportunities pointed out that discrimination also meant wasting resources, and without combating them no economy could be fully successful. As an example to be followed he highlighted the Anti-Discrimination Charter of French Companies, which now has more than 1200 signatories.

At the conference several references were made as a positive example to the Act on Equal Treatment and Promotion of Equal Opportunities of Hungary, and the operation of the Equal Treatment Authority.

On 9 December 2008 **the unit dealing with legal issues of equality and action against discrimination of the General Directorate of Employment,**

**Social Affairs and Equal Opportunities of the European Commission** held **its second meeting** in Brussels, which was attended by all the organisations on behalf of national gender equality bodies that perform their activity on the grounds of the 2002/73/EC Directive, so on behalf of the Authority we also attended the meeting. At the meeting they gave account of what opinion the European Economic and Social Committee developed on combating wage gap between genders at the invitation of the Commission made last summer. Furthermore, what recommendations it made in the field of fight for equal wages and salaries to the governments, institutions of Member States and organisations dealing with equal opportunities and social partners to ensure that they would apply the principle of equal pay to men and women for equal work or work of equal value both in national legislation and in wage negotiations to be conducted by social partners.

Wage gap continues to be a current problem in each Member State; its causes are different evaluation of work performed by men and women, splitting specific works in terms of gender (“typical” male and female works), different power and status positions of men and women. In the recommendation – and this was also manifested in several lectures held at the meeting – there is a need to encourage employers efficiently to ensure that they annually revise wages and changes therein, explore problems of differentiation in work classification systems, make equal opportunities plan to implement proper solutions, realise transparent payment systems. In the closing part of the series of lectures and the meeting Daniela Bankier, head of the unit of Equality Action against Discrimination, Legal Aspects of the Commission called the participants’ attention to the fact that the period when individual cases were examined was soon to expire; to replace them action or investigation programs, methods, controlling plans should be worked out that make equal pay for work of equal value available to masses of workers.

## Appendix

### I. List of rules of law related to the enforcement of the requirement of equal treatment

#### ■ Acts

Act XX of 1949 on the Constitution of the Republic of Hungary

Act III of 1952 on Civil Law Procedure

Act IV of 1959 on the Civil Code

Act II of 1986 on the Press

Act XXII of 1992 on the Labour Code

Act XXIII of 1992 on the Legal Status of Civil Servants

Act XXXIII of 1992 on the Legal Status of Public Servants

Act XXXVIII of 1992 on Public Finances

Act LXXVI of 1993 on Vocational Qualification

Act LXXVI of 1993 on the Rights of National and Ethnic Minorities

Act LXXIX of 1993 on Public Education

Act XCVI of 1993 on Voluntary Mutual Insurance Funds

Act XLIII of 1996 on the Service Relation of Professional Members of Armed Forces

Act LXXV of 1996 on Labour Law Controlling

Act CLIV of 1997 on Public Health

Act CLV of 1997 on Consumer Protection

Act CLVI of 1997 on Public-Weal Companies

Act LXXXIII of 1997 on Mandatory Health Insurance Benefit

Act XXVI of 1998 on the Rights and Promotion of Equal Opportunities of Persons with Disabilities

Act LXIX of 1999 on Misdemeanours

Act LX of 2000 on the Promulgation of Treaty No. 111 adopted at the session 42 of 1958 of the International Labour Conference on Employment and Discrimination arising from Employment

Act XCV of 2001 on the Legal Status of Professional and Contracted Soldiers of the Hungarian Army

Act CI of 2001 on Adult Education

Act LX of 2003 on Insurers and Insurance Activity

Act LXXX of 2003 on Providing Legal Assistance

Act C of 2003 on Telecommunication

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities

Act I of 2004 on Sport

Act CXL of 2004 on the General Rules of Administrative Official Procedures and Services

Act XCVIII of 2005 on the Promulgation of the Supplementary Protocol of 1988 of the European Social Charter

Act CXXXIX of 2005 on Higher Education

Act LVII of 2006 on Central Administrative Bodies and the Legal Status of Government Members and State Secretaries

Act XCII of 2007 on the Promulgation of the Treaty and related Facultative Protocol on the Rights of Persons with Disabilities

## ■ Government Decrees

Govt. Decree No. 4/1997. (I. 22.) on the operation of shops and conditions performing domestic trade activity

Govt. Decree No. 217/1998. (XII. 30.) on the Order of Operation of Public Finances

Govt. Decree No. 218/ 1999. (XII.28.) on Certain Misdemeanours

Govt. Decree No. 67/2001. (IV. 20.) on the detailed rules of the operation and organisation of the National Council for Persons with Disabilities

Govt. Decree No. 193/2003. (XI. 26.) on internal controlling of budgetary bodies

Govt. Decree No. 362/2004. (XII. 26.) on the Equal Treatment Authority and the detailed rules of its operation

Govt. Decree No. 176/2005. (IX. 2.) on the rules of accrediting employers engaging employees with altered ability to work and controlling employers accredited

Govt. Decree No. 177/2005. (IX. 2.) on budgetary support that may be granted to engaging employees with altered ability to work

Govt. Decree No. 335/2005. (XII. 29.) on the general requirements of handling documents by bodies fulfilling public duties

### ■ Ministerial decrees and Government resolutions

Decree No. 1/2006. (II. 2.) FMM of the Minister of Employment and Labour on documents suitable for proving the conditions of orderly employment relations

Decree no. 11/1994. (VI. 8.) MKM of the Minister of Education and Culture on the operation of education/training institutions

Govt. Resolution No. 1129/2006. (XII. 25.) on the establishment of the Roma Integration Council

### ■ Directives

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to

employment, vocational training and promotion, and working conditions; and Directive 2002/73/EC amending it;

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Council Directive 86/378//EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes;

Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood;

Council Directive 96/67/EC of 20 December 1996 on the amendment to Council Directive 86/378//EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes;

Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex;

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

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

Directive 2002/73/EC of 23 September 2002 of the European Parliament and the Council on the amendment to Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment as regards access to and supply of goods and services;

**II. Transferred cases**

Prime Minister's Office	1
Ministry of Social Affairs and Labour,(MSL) Households Information and Advisory Department General	52
MSL Disability Affairs and Rehabilitation Department General	4
MSL Legal Department General	2
MSL State Secretary for employment and training	3
MSL State Secretary for equal opportunities	3
MSL Protection of Children and Young People Department General	1
MSL State Secretary	1
National Safety-at-work and Labour Supervisory Authority General OMMF	9
Central Administration of National Pension Insurance ONyF	3
Consumer Protection Supervisory Authority General	10
National Employment and Social Office	2
Central Office of Justice	1
Ministry of Justice and Law Enforcement	4
Roma Anti-discrimination Network	1
Central Police Force of Budapest	1

Director General of the Hungarian Prison Service	2
Ministry of Agriculture and Rural Development	3
Ministry of Health	2
Health Insurance Supervisory Authority	3
National Rehabilitation and Social Institute	1
Ministry of Education and Culture	3
Education Office	5
Education Mediation Service	1
National Telecommunication Authority	5
Hungarian Energy Office	2
Ministry of Local Governments and Regional Development	2
Local Governments	1
State Supervisory Authority for Financial Institutions PSZÁF	2
National Radio and Television Board ORTT	2
Hungarian Competition Authority	2
Public Administration Office	8
Prosecution Service	1
Hungarian National Recreational <b>Foundation</b>	1
Hungarian Parliamentary Commissioner for Data Protection and Freedom of Information	1



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