

Working Group on discrimination against women in law and in practice

Questionnaire on good practices

In accordance with its mandate, the UN Working Group on the issue of discrimination against women in law and practice has developed this questionnaire to gather information on “good practices” in eliminating discrimination and empowering women for its next thematic report. Given the centrality of the law to the Working Group’s mandate, the report will focus on the processes by which laws that support women’s equality and enjoyment of human rights come into being and are implemented in ways that support women’s enjoyment of their human rights and fundamental freedoms.

The questionnaire intends to solicit information on how a specific law aimed at addressing discrimination against women and promoting women’s substantive equality has come into being, was effectively implemented (I), and what impacts the law has had for women on the ground (II).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes State obligation to respect, protect and fulfill women’s human rights, ensuring the de facto enjoyment of those rights by women. CEDAW’s framework is founded on the principle of substantive equality, which requires States to take active measures to not only eliminate laws and practices that directly discriminate against women, but to create an environment in which women’s rights can be fulfilled. Good practices in the promotion of women’s human rights thus require a holistic approach that addresses both the causes and consequences of discrimination, and aim at social transformation.

Recognizing the aspiration of the Working Group to better understand the processes and elements which contribute to build “good practices” in legislation and its implementation the Working Group requests that you provide detailed information on at least **one law** adopted in a State that has been successfully implemented in that it has had a notably substantial impact on eliminating discrimination against women in the specific area related to that law and has enhanced women’s enjoyment of their human rights in your national context, such that you consider it a “good practice.” Processes of substantive change often take place over a period of many years, so the law need not be new: this survey should focus on a law whose impact has been substantiated and the impacts of which are still being seen.

The Working Group wishes to thank all stakeholders for responding to this questionnaire **by 12 September 2016**.

Questionnaire

For the following sections, please provide information about a law that has been selected as an exemplary case study of a “good practice” in eliminating discrimination and empowering women in your national context.

I. Identification of a law that has eliminated or substantially reduced discrimination and supported women’s empowerment.

Background Information on the Law

1. Name/Title of the Legislation:

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter Equal Treatment Act)

2. Date the law passed and came into force:

The Equal Treatment Act was adopted by the Parliament on the 22nd of December 2003 and it came into force on the 27th of January 2004.

3. Was it a new law or an amendment of an existing law?

New (X) Amendment ()

If it was an amendment of an existing law, please providing name/title of existing law and any pertinent information here:

4. Is the legislation focused specifically on discrimination against women/gender equality, or is it part of a larger piece of legislation (i.e. Labour law with provisions around gender)? Please explain.

The Equal Treatment Act provides for the general rules on equal treatment, both horizontally and with detailed rules on specific sectors.

It is not specifically focused on discrimination against women. The Act on Equal Treatment prohibits discrimination on the basis of protected characteristics. Protected characteristics are as follows: gender, ethnic origin, race, skin colour, age, mother tongue, disability, state of health, motherhood (pregnancy) or fatherhood, family status, sexual orientation, gender identity, social origin, financial status, religious or ideological conviction, political or other opinion, part-time status or fixed-term of employment relationship, membership in an interest representation organization, any other status.

5. Please provide a summary of the content of the law, its preamble or explanatory note, policy measures, dissemination and implementation regulations, and provisions for access to justice, as well a link to where all these can be found online.

The Equal Treatment Act states in its Article 1) that all persons on the territory of Hungary must be treated with the same respect, according to the provisions of the Equal Treatment Act. Any difference of treatment based on *sex*, race, colour, ethnicity or belonging to an ethnicity, language, disability, health status, religious or other conviction, political or other opinion, family status, parenthood (pregnancy), sexual orientation, gender identity, age, social status, financial situation, the fact of having a part-time or fixed-term work contract, belonging to an organisation whose aim is to protect certain interests or any other situation, attribution or characteristic resulting in a less favourable treatment of these persons is to be considered direct discrimination and is prohibited by law (*emphasis added*). The Equal Treatment Act contains a series of detailed provisions implementing the general prohibition of discrimination. It defines the concept of discrimination, names indirect discrimination as punishable and introduces the possibility of positive discrimination to remedy disadvantages.

The Equal Treatment Authority (hereinafter: Authority) conducts proceedings if the principle of equal treatment might have been violated either at the request of the injured party or ex officio in cases set forth by law in order to establish whether any discrimination occurred. The infringement of the law may lead to an administrative fine up to 6.000.000 HUF (19.354 EUR). (The Authority is able to initiate procedure if one year from the date of becoming aware of the breach of the law and three years from the occurrence of the breach of the law have not expired yet.)

The procedure may be initiated by natural persons who suffered disadvantage (in person or through their representatives), heads or representatives of legal persons, interest representation organizations or bodies submitting a complaint as *actio popularis*, in a complaint submitted to the Authority.

Complaints may be submitted against:

- state and local government organizations,
- organizations exercising official powers,
- the Hungarian Army and law enforcement bodies,
- organizations performing public utility services, institutions providing educational, social, child protection, cultural and health services,
- voluntary insurance funds, private insurance funds,
- parties and all other budgetary agencies.

In procedures initiated concerning the violation of the principle of equal treatment based on the written authorization of the complainant, social and interest representation organizations may proceed as representatives and they can also exercise the so-called client rights (right to notices, access to documents, declaration).

Civil organizations may initiate proceedings before the Authority in the interest of a large group with a protected characteristic (e.g. religious conviction, disability, sexual orientation, race, ethnic origin) in the case of infringement or the imminent danger thereof. These organizations may also initiate lawsuits under personal or labour law in the above cases because of the violation of the principle of equal treatment (*actio popularis*).

The Authority may also proceed ex officio against:

- the State of Hungary,
 - local governments and nationality local governments and the relevant bodies thereof,
 - organizations exercising official power, and
 - the Hungarian Army and the law enforcement bodies,
- if the violation of the principle of equal treatment is noticed by the Authority.

The Authority may also proceed in certain relations of the private sector.

The Authority may conduct investigations:

- in employment relationship, in respect of the employer,
- in the course of using state subsidies, in respect of sole traders and partnerships receiving subsidies,
- in respect of catering and commercial, as well as cultural institutions and institutions established for the purpose of entertainment,
- in respect of bidders of contracts or those who invite such persons to tender.

The Authority may not proceed in all cases. It is not competent for instance in family law relationships, relationships between relatives, relationships of ecclesiastical entities directly connected with the activities of the religious life of churches and relationships between the members of organizations concerning their membership. The Authority also may not investigate the executive decisions and actions taken by Parliament, the President of the Republic, the Constitutional Court, the State Audit Office, the commissioner of fundamental rights, as well as courts and prosecutor's offices. If it is proved in the course of the procedure that the person or organization placed under the procedure violated the principle of equal treatment, the Authority may

- order that the state of infringement be terminated,
- forbid the continuation of the violation,
- order that its final decision declaring the infringement be made public,
- impose fine from HUF 50 thousand to HUF 6 million, decide on the procedural cost in a way that it must be covered by the offending party.

The Authority may not establish financial compensation for a client and may not order the restoration of the original status.

Prior to taking a decision the Authority shall try in all cases to reach a settlement between the parties. If the parties show willingness and settlement was reached, which corresponds to the law, the Authority shall approve the settlement in a decision. The implementation of

the settlement may be enforced in the same way as of the decisions establishing the breach of law.

The procedure is free of duty.

No appeal lies against the decision taken by the EBH, the court review of the decision may be requested at the Budapest Metropolitan Public Administration and Labour Court. Court proceedings are free of duty only if the petitioner was granted personal exemption from duty.

The text of the Act is here:

<http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex3.pdf>

And here is the summary of the activity of the Equal Treatment Authority in English:

http://www.egyenlobanasmod.hu/data/EBH_Altalanos2_ENG.pdf

6. When was the first draft of this law introduced, and when was it adopted (please specify dates of first draft and adoption?)

The Equal Treatment Act was adopted by the Parliament on the 22nd of December 2003. The draft bill was submitted to the Parliament on the 26th of September 2003. There was a public consultation on earlier versions of the draft in the autumn and spring of 2003, moreover, the concept of the draft was made public for observations already in the winter of 2002.

7. In your view, does the law in question place a positive duty on the State to achieve substantive equality for women?

Yes (X) No ()

If yes, please explain:

The Equal Treatment Authority – as a new institution - try to realize the European Union's best practices by public awareness raising , booklets, trainings and etc.

8. Does the law contain a definition of discrimination that is in accord with Article 1 of CEDAW?

Yes (X) No ()

If yes, please direct us to the section of the pertinent document. If not, please indicate if that definition is enshrined already in the constitution or charter of rights.

Article 8 of the Equal Treatment Act defines direct discrimination as “dispositions as a result of which a person (...) is treated or would be treated less favourably than another person (...) in a comparable situation because of his/her (...) sex”. Article 9 defines the concept of indirect discrimination as it “apparently complies with the principle of equal treatment but puts any persons (...) having characteristics defined in Article 8 at a considerably larger disadvantage than other persons (...) in a similar situation were or would be”. These rules, in conjunction with Article XV (2) and (3) of the Fundamental Law (“Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of (...) sex (...)” “Women and men shall have equal rights.”), provide for a definition which is in accord with Article 1 of CEDAW.

9. Does the law’s definition of discrimination include and define both direct and indirect discrimination?

Yes (X) No ()

If yes, please explain:

See question 8.

10. How has the Constitution supported the process of adoption and implementation of the law? Does the Constitution have an equality and non-discrimination provision?

See question 8.

The Constitution (the Fundamental Law of Hungary) has an equality provision. Article XV. is about equality:

“Article XV

(1) Everyone shall be equal before the law. Every human being shall have legal capacity.

(2) Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.

(3) Women and men shall have equal rights.

(4) By means of separate measures, Hungary shall promote the achievement of equality of opportunity and social inclusion.

(5) By means of separate measures, Hungary shall protect families, children, women, the elderly and persons living with disabilities.”

11. Does the law contain provisions that address discrimination against women from an intersectional perspective, taking into account a diversity of women’s social identities, statuses and experiences?

Yes () No (X)

If yes, please explain which social identities, statuses and/or intersectional factors are explicitly noted in the law:

12. Whom of the following are bound by the law?

The State	Yes	(X)	No	()
Public Authorities/Bodies	Yes	(X)	No	()
Civil society organisations	Yes	()	No	(X)
Private companies	Yes	(X)	No	()
Individuals	Yes	()	No	(X)

Basically the Equal Treatment Act does not apply to civil society organisations and individuals, however, in some context they are also bound by it (e.g. conditions of membership, employment, provision of services).

II. How the law came into being and was implemented

1. What was the impetus for the development of this law (i.e. social movement activism, political platform, a Supreme Court ruling, an egregious case of discrimination, constitutional reform...)?

Accession to the European Community, and compulsory harmonization of law obligations of European Community

2. Were there any conditions in the political context that made it possible for this law to be developed and adopted at the time that it was (i.e. a particular political party in power, a conflict/post-conflict situation, a recent ratification of an HR instrument, etc.)?

Yes () No (X)

If yes, please explain:

3. What actors were consulted and how were they consulted in the law's development and formulation? Check all that apply, and, where possible, provide names of involved individuals, agencies, organizations, etc.

Legal Experts/scholars (please specify) (X)
Government Ministries (X)

NHRI)
NGOs/CSOs -)
Other social groups (specify)) Trade unions

4. Was there opposition to the law?

Yes) No)

If yes, please explain from whom and why, and how it was addressed:

There were some diverging views about the proposed Equal Treatment Act in the course of public consultation and parliamentary debate but there was no significant opposition to the adoption and the enforcement of the law. After nearly 15 years, the Equal Treatment Act is still, albeit with several amendments, an integral part of the Hungarian legal system and it is enforced consistently by the Equal Treatment Authority and courts. This law was amended 33 times since it came into force.

In the "Fundamentum" human rights professional journal articles have appeared about the discussions of content of the law with pro and con arguments (Fundamentum 2003/2.)

6. Were there other laws that needed to be reformed in order to enact this law?

Yes) No)

If yes, please list and explain:

The Equal Treatment Act amended several other legal norms in order to ensure coherence with its rules. The amendments concerned mainly the field of civil law, labour law and education.

7. Were any international human rights treaties or mechanisms referenced in the law's creation?

Yes) No)

If yes, please list and explain: European Community

8. Did any international/regional/national human rights mechanism issue recommendations to the State in regard to amendment or formulation of this law, or regarding effective implementation? If yes, was this recommendation formulated prior, during or after the adoption of the law?

Yes) No)

If yes, please list and explain:

Prior: 2002 UN CEDAW Committee

After: 2007 UN CEDAW Committee

2013 UN CEDAW Committee

9. What measures to support implementation were built into the law or developed immediately after (and as a result of) its passing? This could include such measures as budgetary and resource allocation, monitoring mechanisms, data collection, impact measurement mechanisms, independent monitoring, etc. Please list and explain, providing any relevant documents.

Budgetary:

Act CXCIV of 2011 on Public Finance Law

http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100195.TV

368/2011. (XII. 31.) Government Regulation on Implementation of the Public Finance Law

http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100368.KOR

Monitoring and data collection:

362/2004. (XII. 26.) Government Regulation on the Equal Treatment Authority and the detailed rules of procedure

<http://www.egyenlobanasmod.hu/data/362-2004Kr.pdf>

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

<http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex3.pdf>

Independence of the Equal Treatment Authority:

Act CCI of 2011 on amending certain laws related to Basic Law

<http://mkogy.jogtar.hu/?page=show&docid=a1100201.TV>

10. How was the law made accessible to the public? Did it include formal training on the new law for all stakeholders involved? Were specific groups of women targeted for these activities? Who was involved in these initiatives, and where did the funding come from? Please answer in detail.

There were trainings by the Equal Treatment Authority with EU support (TÁMOP 5.5.5.) : "The Fight against Discrimination – Social awareness raising and strengthening the work of Equal Treatment Authority". The Authority made educational films and videos, and curriculum for training about discrimination, and the Authority made a special leporellos about discrimination against women.

11. Have there been any barriers to the law's full and successful implementation?

Yes ()

No ()

If yes, please explain the barriers and how they were/are being addressed:

The weakness of public awareness, and the regulation is not specialized for equal treatment of women and men.

12. What kinds of roles are being carried out by civil society/women's organizations in supporting the implementation and impact of the law? How are these activities being financed?

The implementation and impact of the law - these activities of the women's NGO were not financed.

III. The impacts that the law has had for women on the ground

1. Did the adoption of the law result in the creation of any policies?

Yes ()

No ()

If yes, please list and explain:

2. Have court cases/decisions resulted from the law? Has this data been systematically collected? If so, please provide details about the number of cases, convictions, decisions made.

Court cases have resulted from the law, and the data were collected by Equal Treatment Authority.

Legal cases on the website of Equal Treatment Authority (only Hungarian version is available): <http://www.egyenlobanasmod.hu/article/index/jogesetek>

3. What specific and measurable outcomes showing the impact of the law on society and on women's enjoyment of their rights have been recorded as a result of the adoption and implementation of the law? How have these been monitored and by whom?

Equal Treatment Authority is monitoring the results. The results are every year on the web-page of Authority.

4. Are there other impacts of the law that have been observed?

Yes ()

No ()

If yes, please list and explain what they are, as well as monitoring mechanisms used to observe and/or measure those impacts:

5. What mechanisms have been set up to review and assess the implementation of the law?

It is the duty of Equal Treatment Authority, which is an independent institution, and its budget is part of the budget of the Hungarian Parliament.

6. Is there data on how the law has affected some groups of women differently (i.e. based on race, ethnicity, religion, social class, age, etc.)?

Yes () No (X)

If yes, please explain the differential impacts and provide any relevant documents.

7. Has there been independent monitoring of the law?

Yes (X) No ()

Please provide information.

1./ The Equal Treatment Authority is an independent institution. See above

2./ The Commissioner for Fundamental Rights and his Office:

The work and the mandate of the Commissioner for Fundamental Rights and his Office are determined by the Article 30 of the Fundamental Law of Hungary adopted in 2011 and based on the Act CXI of 2011 on the Commissioner for Fundamental Rights, both which enter into force 1st January 2012.

The Commissioner for Fundamental Rights pays special attention to the protection of the rights of children, the rights of nationalities living in Hungary, the rights of the most vulnerable social groups, the values determined as 'the interests of future generations'.

The Commissioner for Fundamental Rights gives an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; and he/she may make proposals for the amendment or making of rules of law affecting fundamental rights and/or the recognition of the binding nature of an international treaty.

The Commissioner surveys and analyses the situation of fundamental rights in Hungary, and prepares statistics on those infringements of rights in Hungary which are related to fundamental rights. Therefore, the Commissioner submits his/her *annual report to the Parliament*, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission.

In the course of his/her activities, the Commissioner cooperates with organisations aiming at the promotion of the protection fundamental rights.

As a new mandate, the Commissioner for Fundamental Rights may initiate the review of rules of law at the Constitutional Court as to their conformity with the Fundamental Law.

Furthermore, the Commissioner participates in the preparation of national reports based on international treaties relating to his/her tasks and competences, and monitors and evaluates the enforcement of these treaties under Hungarian jurisdiction.

Anyone may turn to the Commissioner for Fundamental Rights, if in his/her judgement, the activity or omission of the public and/or other organs performing public duties infringes a fundamental right of the person submitting the petition or presents an imminent danger. When the person reporting has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or if no legal remedy is available to him or her.

The Commissioner for Fundamental Rights may initiate at the Constitutional Court the review of legal rules as to their conformity with the Basic Law.

The petition and the Commissioner's proceeding are free of stamp duty. The complaint can be submitted both orally and in writing (also via email). It is advisable to enclose the copies of the existing documents which can be relevant to the inquiry.

The Constitutional Court has the possibility too, to monitor the fundamental rights. The Constitutional Court is the principal organ for the protection of the Fundamental Law. Its tasks are to protect the democratic State governed by rule of law; the constitutional order and the rights guaranteed by the Fundamental Law; to safeguard the inner coherence of the legal system and to foster the principle of the division of powers.

3./ The Competences of the Court:

- 1) Ex ante Review of Conformity with the Fundamental Law (Preliminary Norm Control)
- 2) Ex Post Review of Conformity with the Fundamental Law (Posterior Norm Control)
- 3) Judicial Initiative for Norm Control in Concrete Cases
- 4) Constitutional Complaint
- 5) Examination of Conflicts with International Treaties
- 6) Examination of Parliamentary Resolutions Related to Ordering Referendum
- 7) Opinion on the Dissolution of a Local Representative Body Operating Contrary to the Fundamental Law

- 8) Opinion on the Withdrawal of the Acknowledgment of a Church Operating Contrary to the Fundamental Law
- 9) Removal of the President of the Republic from Office
- 10) Resolving Conflicts of Competence
- 11) Examination of Local Government Decrees, Normative Decisions and Orders, and Decisions on the Uniform Application of the Law
- 12) Interpretation of the Fundamental Law
- 13) The Elimination of Legislative Omission