

Questionnaire for WG Policy Formation 2012

Dear Equinet Members,

The working group *Policy Formation* is Equinet's primary platform enabling a constructive dialogue with EU institutions; a dialogue that supports policy formation at EU level to effectively promote equality, value diversity and tackle discrimination. The working group supports the dialogue between Equinet and the EU institutions through the preparation of Equinet *perspectives*. These *perspectives* seek to inform current policy development within the EU institutions in the area of equality and non-discrimination and to contribute an equality dimension to policy being developed on other issues. They are based on the learning from the practical work of the equality bodies in implementing equal treatment legislation.

In the second half of 2012 the Working Group on Policy Formation will draft a *perspective* on combating discrimination and promoting equality on the ground of race. This is being done to inform the work of the European Commission in conducting its review of the 'Race' Directive (2000/43/EC) in the first half of 2013. This will represent a key moment in the evolution of EU equal treatment legislation and it is important to ensure that this moment is informed by the experience and learning of the equality bodies across the Member States.

The purpose of this questionnaire is to substantiate Equinet's forthcoming *perspective* by gathering the experience of our members' work on the ground of race.

Please note that in answering the questionnaire the term 'race' should be understood broadly as including all other equivalent terms or markers used in national legislation implementing and/or falling in the scope of the Race Directive, such as ethnicity, skin colour etc.

**PLEASE, SEND YOUR ANSWER BEFORE 1 OCTOBER 2012 TO
THE EQUINET SECRETARIAT**

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We appreciate your cooperation.

Evelyn Collins
WG Moderator

Niall Crowley
Equinet Board Adviser

NOTE: Please answer the questionnaire in relevant spaces provided.

1. Legal work – Dealing with inquiries and providing legal support or deciding cases

- a. Do you have a legal mandate to deal with race discrimination? Does this mandate cover issues both inside and outside the labour market?

The Commissioner for Fundamental Rights (Ombudsman) is mandated to deal with all human rights stipulated in the Basic Law (Constitution). The Basic Law bans discrimination on all grounds, race discrimination included.

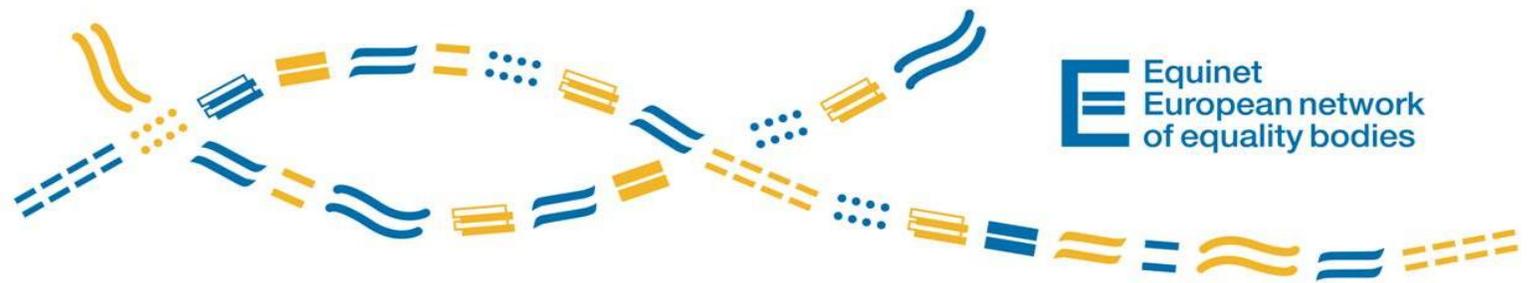
The Ombudsman's mandate however mainly covers authorities and public services. According to Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner has the right to – exceptionally – launch special proceedings related to organizations which are not public organs (e.g., companies, banks, social organizations). So his mandate mainly covers the acts of public actors, both inside and outside the labour market.

- b. What grounds do you use in casework in the field covered by the Race Directive? How are these grounds defined in your national legislation?

Act CXXV of 2003 on equal treatment and the equality of chances enumerates a non-exhaustive list of protected grounds. A few of them may be connected to grounds covered by the Race Directive, such as racial origin, colour, nationality, origin of national or ethnic minority, and even mother tongue. In the context of indirect discrimination, grounds concerning social origin and financial status can be used too.

- c. Do you have a specific litigation strategy for litigation in race discrimination cases? If so what priorities have you identified?

Before the entering into force of the new Basic Law, the Ombudsman for National and Ethnic Minorities was responsible for most cases concerning race discrimination. According to the provisions of the Basic Law, as of January 2012, there is only one ombudsman and this person will be empowered to propose his/her own deputies (also elected by the Parliament). The offices of the special ombudsmen (parliamentary commissioners for the rights of national/ethnic minorities and for the interests of future generations) and also the tasks they were performing – including race discrimination cases – were integrated into the office of the general ombudsman. Race discrimination cases reaching the ombudsman's office mostly concern Roma people. These are often specific cases concerning minority education or social deprivation, such as housing problems containing often elements of not individual but institutionalized discrimination. The ombudsman is an organ with soft powers. Therefore, although there is no explicit strategy on handling these cases of institutionalized discrimination, there is a strive to rather resolve problems (in line with the Ombudsman's mandate) by means of facilitation.



d. How many inquiries in relation to the race ground did you receive in 2011? What percentage of the total number of inquiries you received did these inquiries on the race ground represent?

In 2011, the Minority Ombudsman had altogether 1248 cases, amongst which 951 came from persons belonging to the Roma minority. All these case were related to the fact that complainants have belonged to the Roma minority. There is however no specific data on the fact that how many of these cases concerned forms of discrimination as prohibited by the Race Directive, and how many were related to systemic discrimination or other problems, such as social deprivation. There were also cases at the office of the ombudsman for civil rights dealing with the discrimination of refugees and immigrants, however, we do not have disaggregated data about those.

e. How many complaints taken by people on the race ground did you decide formally in 2011 (if tribunal type body):

or

In how many cases did you provide legal support to the victim in complaints on the race ground including before a judicial/quasi-judicial forum in 2011 (if promotional type body)?

The ombudsman does not have the power to take legally binding decisions nor did it support victims before judicial/quasi-judicial fora.

f. In how many of the total number of cases brought by people on the race ground has discrimination been established by the competent bodies in 2011? How many of these cases related to indirect discrimination?

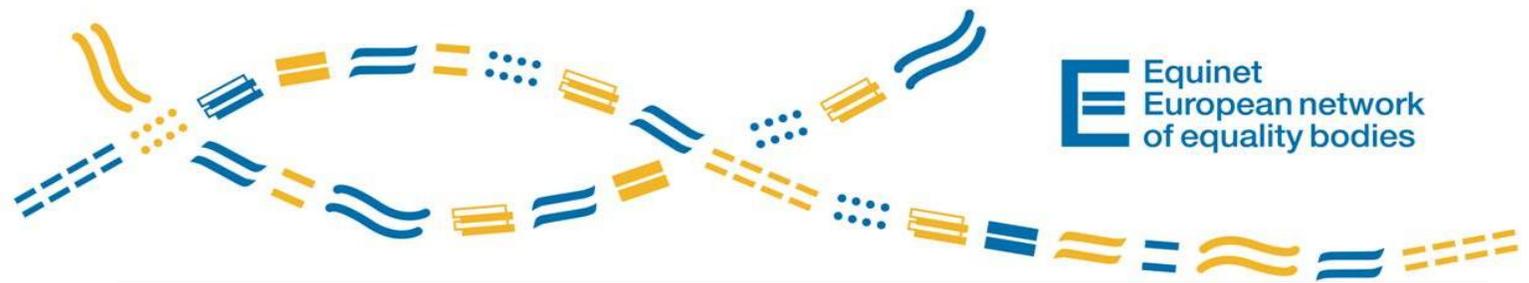
Established cases are around 30, but there are more cases concerning systemic discrimination. (Many were related to systemic discrimination or other problems, such as social deprivation. There were also cases at the office of the ombudsman for civil rights dealing with the discrimination of refugees and immigrants, however, we do not have disaggregated data about those.)

g. Do you consider that the sanctions applied in these successful cases are effective, proportionate and dissuasive? If not what do you consider to be the shortcomings?

The Ombudsman does not apply sanctions, but rather tries to resolve the problems of the clients. Without the legally binding nature of the Ombudsman's recommendations, these solutions may be effective, but are rarely dissuasive or proportionate. (However, the inquiries themselves may have a dissuasive effect on public authorities.)

More generally about the shortcomings of legislation in this regard:

The Act on Equal Treatment stipulates a range of sanctions that the Equal Treatment Authority may impose in cases of discrimination. It may order that the situation constituting a violation of law be eliminated, prohibit the further continuation of the conduct constituting a violation of law, order that its decision establishing the violation of law be published and impose a fine. However, a shortcoming of the Hungarian law is that it does not offer redress (compensation of any kind) to the victim, which is one of the key components of effectiveness. A victim seeking



monetary compensation should initiate a court proceedings after the decision of the Authority, which is a time- and money-consuming procedure.

h. How many of the complaints and inquiries you dealt with on the race ground in 2011 refer to multiple discrimination? What are the most common other discrimination grounds that intersect with discrimination experienced by people on the race ground?

We do not have statistical data on this issue, but those intersecting grounds are typically gender and social status.

i. What are the main employment issues in complaints and inquiries made by people on the race ground that you received or dealt with in 2011?

Many persons complained about issues concerning public work (no work opportunities, low wages)

j. What are the main issues in the provision of goods and services/ outside the labour market in complaints and inquiries made by people on the race ground that you received or dealt with in 2011?

The main issues concern housing and living conditions, police and detention facilities, and also health care.

j. Have you taken other legal actions (eg. amicus curiae, third party interventions, etc.) to combat discrimination against people on the race ground during 2011?

We have formulated an amicus curiae brief to the court concerning segregation in education and the personal scope of the Equal Treatment Act.

k. Do you have a mandate in relation to hate crime/speech? If so how many cases did you deal with in 2011? If so, what powers do you have in regard to this issue?

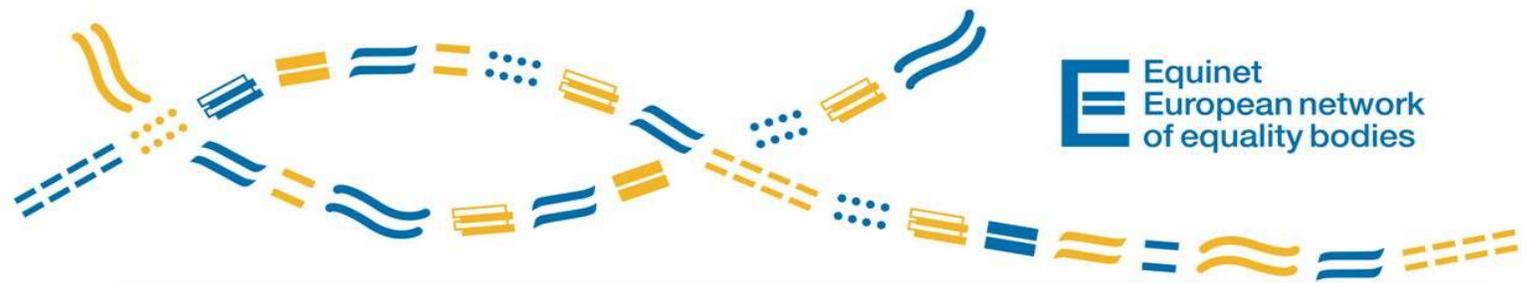
The ombudsman has soft powers concerning hate speech. The amicus curiae brief mentioned above also concerned hate speech in relation to the scope of the Equal Treatment Act.

l. What particular barriers/difficulties do you face in developing legal work in relation to people on the race ground?

Very often, legal and social problems cannot be clearly divided in these cases, and often systemic discrimination undermines effective action.

m. Are there any issues of discrimination on the race ground presented to your body that you are unable to deal with effectively due to gaps in or certain provisions of the Race Directive?

If so, what issues, gaps and provisions are involved?



No.

n. Are there any provisions of the Race Directive that you consider have not been properly transposed into your national legislation? If so, what provisions?

The definition of indirect discrimination provided in the Hungarian Act does not fully cover the definition provided by the Race Directive, which offers a full protection against potential indirect discrimination. Some experts say that the personal scope of the Equal Treatment Act is not fully in line with the scope of the Race Directive concerning the private actors. In the case of hate speech, problems may arise when a person performing a public function (for example a mayor) makes discriminatory statements as a private person (for example, at a demonstration)

2. Work in supporting good practice during the last five years – Guidance and Support to employers and service providers to implement good practice to promote equality and combat discrimination

a. What objectives have you defined for your work to support good practice for equality for people on the race ground by employers and/or service providers?

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b. What types of initiatives to support good practice have you developed in relation to equality on the race ground (eg. Training, guidance materials, etc.) in the last five years? What were the issues you sought to address with these initiatives?

Colleagues of the Ombudsman participated as professors in a university course for minority law and non-discrimination for persons working with NGO-s, public administration and public service providers.

c. What are the main types of organization that you are targeting with these initiatives?

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d. What barriers do you face in developing this type of work supporting good practice on the race ground?

Lack of personal and financial resources.

3. Research work in the last five years – Conducting or Commissioning Surveys or Research Projects

a. What priorities have you defined for your research work on equality on the race ground?

We have commissioned a great amount of surveys concerning also equality on the race ground, such as:

- Research on the handling of data related to ethnicity
- Research on the culture of minority communities
- Researches on different levels of minority education

Important ongoing investigations related to race equality are about the complex phenomenon of usury and about public work schemes affecting equality.

b. What issues were explored in any surveys you conducted or research projects you implemented on the race ground in the last five years?

See a)

c. What barriers do you face in the development of your research work on the race ground?

The lack of good statistical data is often a barrier.

4. Communication work in the last five years – Informing people who experience discrimination and building a culture of rights

a. What priorities have you defined for your communication work in relation to the race ground?

We give a clear message related to equality issues and the equal dignity of people irrespective of their ethnic origin.

b. What initiatives have you taken to raise awareness of the wider society about discrimination on the race ground?

thematic conferences, press releases

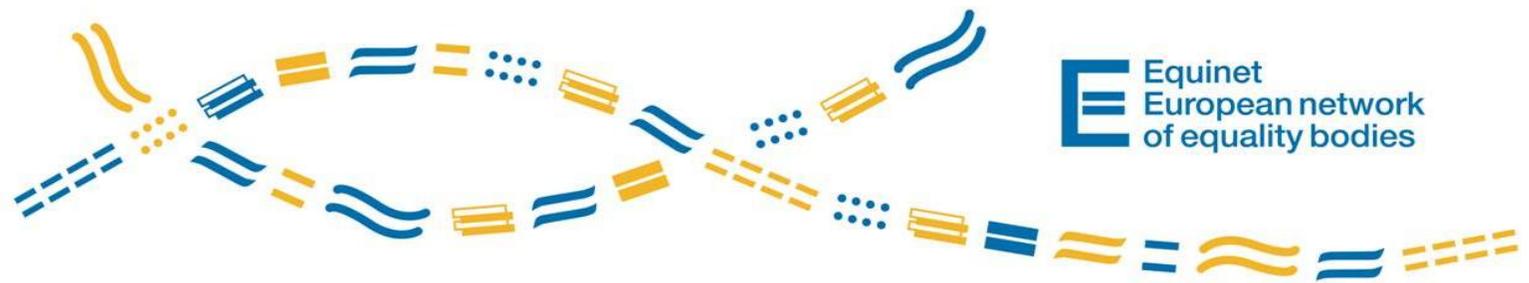
c. What initiatives have you taken to raise awareness of people experiencing discrimination on the race ground, and of the organizations representing them, on their right to non-discrimination?

See b) and d)

d. Do you have a regular cooperation/exchange with people who experience discrimination on the race ground, and with the organizations that represent them? Can you give details on how this is organized?

We have regular cooperation with NGO-s.

In August 2008 the Minority Ombudsman signed a co-operation agreement with the Hungarian Helsinki Committee, the Shelter – Hungarian Foundation for Migrants, the Otherness Foundation and the Kurt Lewin Foundation, with the Crisis Management and legal Office of the Roma Civil Rights Foundation, the Chance for Children Foundation, the Minority Rights and



Human Rights Foundation, the Roma Women in Public Life Foundation, the Minorities Legal Defence Association and the European Roma Rights Center. These agreements mostly concerned a professional cooperation in the field of human rights protection, including common conferences, common projects, common application for tenders. The cooperating partners invite each other to meetings organised by the other party and make consultations on given cases or subjects. Every agreement was formulated according to the specificities of the NGO, so these documents do not all have the same content.

e. Is under-reporting an issue on the race ground? If so, what specific steps did you take in relation to this under-reporting in the last five years?

In 2008, the Minority Ombudsman started to visit systematically Hungarian regions (the initiative is called “tour of the country”) in order to meet local minority self-governments and NGO-s. During the visits, we can get to know better specific needs and problems of the given regions, and people could also file their complaints to the colleges of the ombudsman.

f. What barriers do you face in the development of your communication work in relation to the race ground?

The society is not very sympathizing with Roma people, who are very often surrounded by prejudice and hostility. Therefore, it is a challenge to communicate findings of discrimination against Roma people in a way that does not deepen scape-goating and antipathy against them.

5. Final Comment

a. Is there any further specific issue in relation to the provisions of the Race Directive that Equinet should raise with the European Commission as part of the current review?

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