

## QUESTIONNAIRE FOR EXPERT'S OPINION "POSITIVE ACTION"

### **1) What is your assessment of the existing national and European legal framework when it comes to conducting measures of positive action? Where do you see room for improvement?**

As a national institution responsible for combating race discrimination, we will answer this questionnaire from a perspective narrowed down to race discrimination. We believe that both national and European legislation are adequate when it comes to positive action. Hungarian regulations for positive action are included in Act CXXV. of 2003 on Equal Treatment and the Equality of Chances. These general regulations have been formulated with a view to the jurisprudence of the European Court of Justice as well as to the respective decisions of the Hungarian Constitutional Court.

However, the issue of ethnic data is not properly regulated in our country.

### **2) In which fields of activity is positive action being carried out in Hungary?**

According to Article 11 of the above mentioned Equal Treatment Act, "the disposition aimed at the elimination of inequality of opportunities based on an objective assessment of an expressly identified social group is not considered a violation of the principle of equal treatment if

a) it is based on an act of law, on a government decree based on an act or on a collective contract, effective for a definite term or until a specific condition is met,

b) the election of a party's executive and representative body and the setting up of a candidate at the elections defined at the Act on the Electoral Procedures is executed in line with the party's fundamental rules."

This Article also stipulates that the disposition defined above shall not violate any basic rights, shall not provide unconditional advantages, and shall not exclude the consideration of individual circumstances.

So in theory, positive action may be carried out if it is stipulated by an act of law or a government decree or a collective contract in any field of life. In fact, not many positive action programmes are carried out in Hungary, the existent ones mainly concern the fields of education and employment. There are some scholarships especially targeting Roma students in education. There is a possibility of positive measures in higher education concerning the enrolment of people with multiply disadvantaged social backgrounds, indirectly targeting Roma people. A direct measure targeting Roma people is the government initiative that aims to employ educated Roma people in public administration. There are always government programmes aiming at Roma people, that contain some positive measures.

Act LXXIX of 1993 on the Rights of National and Ethnic Minorities stipulates the individual and collective rights of the 13 national or ethnic minority groups and the individuals belonging to these communities. This law enables for example the use of minority names, the participation in several forms of minority education, and – based on the principle of personal autonomy - it establishes the system of minority self-governments. In a sense, minority rights may be considered as positive action measures, as they give a constant differential treatment to minorities. This approach of considering minority rights as positive measures is however widely debated in literature. So – while filling in this questionnaire –

we will not further consider minority rights as a form of positive measures.

**3) Do you know of any (positive) examples of positive action being realised in Hungary?**

See answers at questions No. 2) 6) 7).

**4) Which target groups do you think are the focus of measures of positive action that are being carried out in Hungary? Which groups are being neglected? Why do you think these groups have been chosen?**

In Hungary, positive action programmes are in practice not widespread. The programmes mentioned above target directly or indirectly the Roma population. Roma in Hungary are in fact in need of effective measures to combat their multiple disadvantages, including historical discrimination against them. However, in absence of ethnic data, nor the group, nor the individuals belonging to it can be very concretely identified.

**5) Which general objectives do you think are being pursued by companies and organisations in Hungary through positive action?**

We don't know many such programmes, but their all over aims should be to diminish disadvantages of Roma people.

**6) What do you think are the main factors of success in realising positive action measures in Hungary?**

First of all, Hungary is in need of reliable ethnic data, both on the group level, as well as on the individual level. If we don't know, who belongs to a given group, it is not probable that measures will reach their target.

Besides, Hungarian society is not very favourable towards Roma people, and does not seem to understand the need for positive measures. The situation is even worse in the climate of economic crisis.

**7) What problems and obstacles do companies and organisations carrying out positive action measures in Hungary encounter?**

They cannot identify the target of these measures: they do not have information on the fact of who belongs to a given minority group, what's more, according to Hungarian laws, they cannot legally have this information either. So they either have to trust the self-identification of the "wanna-be beneficiaries", or have to class individuals themselves, or turn to minority self-governments for help. None of these methods is really without problems. So in 2009, the ombudsmen for minority rights and for data protection proposed together a new regime for handling ethnic data to resolve these problems. (See the report at our website <http://www.kisebbsegiombudsman.hu/data/files/158627216.pdf> . The report is unfortunately only available in Hungarian.)

**8) How do you think people who typically belong to the target groups of supportive measures in Hungary view positive action themselves? (possible benefits and drawback)**

We have never made a poll, but they mostly seem favourable towards positive action.

**9) How has positive action generally been experienced in Hungary until now? Do you know of any scientific studies on the implementation and effectiveness of positive action in Hungary?**

The Hungarian Court of Audit prepared a study monitoring Roma programmes of the past decades in 2008. The study stated that in fact, we don't have any reliable information on the effects of these programmes, because – as a consequence of the lack of ethnic data - we don't know whom these measures have targeted in reality. So the main point is the lack of ethnic data again.

**10) Do you think positive action as a concept is generally suited to fighting structural discrimination as well as to promoting equal treatment?**

Positive action may be a suitable means to fight structural discrimination, but it has to be applied wisely and carefully, in combination with other methods. It is vital to know very well the society as a whole and the target groups as well, as well as their respective problems and views. Positive action should not contribute to raising social conflicts or even more discrimination.

We cannot stress enough: without reliable ethnic data, positive measures are merely built on sand, and do not even have the potential to be effective.

Thank you for completing the questionnaire!

We assure you that we will handle any data supplied by you in strict confidence.

Yours faithfully,

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