

EBH Booklets

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*Harassment in the Area of Education
Equal Treatment Authority Booklets*

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Egyenlő Bánásmód Hatóság
Equal Treatment Authority



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INTRODUCTION

1. About the Equal Treatment Authority

The Equal Treatment Authority (Egyenlő Bánásmód Hatóság (EBH), hereinafter referred to as the Authority) is responsible for monitoring the implementation of the principle of equal treatment, and its jurisdiction extends across Hungary. The Authority is an independent and autonomous administrative body, subject only to the laws. It is not subject to instructions regarding its functions, and it discharges its responsibilities separately from other bodies and free of outside influence. Its responsibilities must be set out in law. The President of the Equal Treatment Authority is nominated by the Prime Minister and appointed by the President of the Republic for a term of nine years.

The Authority's first and main responsibility is to investigate complaints and reports filed concerning cases involving alleged discrimination. The Authority conducts its investigations based on the rules of public administration procedures, and its work is helped by a nationwide network of equal treatment consultants.

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

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

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2. About the Equal Treatment Authority Booklets

In 2015, the tenth year since its founding, the Equal Treatment Authority decided to create a series of publications on issues that are of interest to the wider public. The first in the series of Equal Treatment Authority Booklets was published on the subject of workplace harassment and is available on the Authority's website, just



Source: Jeremy Segrott

like the present publication. The topic of this booklet is harassment in education. Day in and day out we hear news about violence, abuse and harassment in school. It is widely known that harassment by fellow students and teachers at school can have a severe impact on the development of students' personalities, and this impact may last a lifetime.

The law is of course not the most ideal instrument for curbing or preventing such types of conducts. Education and child rearing provided by families and schools, along with the instruments offered by pedagogy and psychology, are the most suitable tools for tackling these problems. Though harassment in school is not primarily a discrimination issue, we nevertheless felt that the problem is deserving of making it the topic of our second Equal Treatment Authority Booklet.

3. Who is this publication intended for?

Attending school is a must for all of us.

We therefore recommend this publication for schools, teachers, parents, civil society organisations, and all those involved in the educational system, as well as anyone who is interested in the subject and feels a responsibility for the younger generation.

Concise Explanatory Dictionary of the Hungarian publisher Akadémiai Kiadó:

Harasses

1. Continuously disturbs and bothers (with requests, demands), pesters someone.
2. Troubles, torments someone for a sustained period of time.

Harassment is the act, fact of someone or something harassing someone.

4. What do we mean by harassment?



The everyday meaning of the term harassment is very complex. The concept is considerably narrower, however, when we speak of harassment in the legal sense. The legal meaning of the concept of harassment, however, is also varied, and its meaning in criminal law differs from the concept as it is used in discrimination law.

Source: Ian D. Keating

HARASSMENT as a form of discrimination

The topic of the present publication is harassment in the field of education. In the current chapter we will discuss the concept of harassment as defined in the Ebktv (in other words discrimination law), and in the next chapter we will learn about harassment specifically in the field of education. In order for us to better understand the legal definition of harassment, we must first clarify the following.

1. Discrimination

We refer to instances when the principle of equal treatment is violated as discrimination. Pursuant to the Ebktv, we speak of a violation of the principle of equal treatment, that is discrimination, if a person/persons suffer(s) injuries in connection with his/her/their *protected characteristic*.

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

The protected characteristics listed in the Ebktv are the following:

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

As is apparent, the Ebktv tends to extend protections to innate characteristics that are either permanent, immutable or difficult to change. In line with international practice,

protected characteristics refer to essential features of a person's character that lend themselves to group formation and may give rise to prejudice. At the same time, however, the enumeration of characteristics in the law is not a closed list, for the last line in the list refers to "other situation, characteristic or feature" (Section 8 (t) of the Ebktv). Nevertheless, this does not imply that the law regards the differential treatment and harassment of any and all persons or groups based on any type of characteristic as discrimination, for that would undermine the meaning of the regulation. The provision concerning "other situation, characteristic or feature" must to be construed more narrowly; only characteristics and situations that are essentially similar to those enumerated in the law can be construed as protected characteristics.

We distinguish between different **types of discrimination**, to wit direct discrimination, indirect discrimination, *harassment*, unlawful segregation and retribution. The current publication will take a detailed look at the issue of discrimination through harassment.

2. The concept of harassment as defined by law (the Ebktv)

"Harassment is a conduct, of a sexual or other nature, *violating human dignity in connection with the relevant person's protected characteristic*, with the purpose or effect of creating an *intimidating, hostile, degrading, humiliating or offensive environment* around that person".

the conceptual elements of harassment

- conduct that is injurious to human dignity
- a connection between the conduct and a protected characteristic
- hostile, degrading, etc. environment (intended or actual)

3. Conduct that violates human dignity

Harassment is always a form of conduct that violates human dignity. According to Position Paper No. 384/5/2008. (IV.10.) of the Advisory Board that previously operated alongside the Equal Treatment Authority, "the Hungarian concept of harassment prohibits conduct that violates human dignity; such conduct may manifest itself in a variety of ways. Generally, conduct that is derogatory, degrading, disparaging or offensive is also injurious to human dignity. Conduct that pokes fun at a person's human characteristics, ridicules said characteristics, makes them the subject of mockery or rough practical jokes, or humiliates the person through physical contact, also falls into this category".

Nevertheless, though individual sensitivities differ, in order for a given conduct to qualify as harassment as defined in the law it must rise to a level – based on an objective standard – that can actually provide the grounds for a determination that harassment has taken place. This must be ascertained in each case relative to the specific relation that prevails between the person who has engaged in a harassing conduct and the person

who has suffered from said conduct, that is the parties involved. (Thus if someone has a predilection for telling Gypsy or Jewish jokes, then he/she cannot in another situation complain that he/she felt insulted in his/her religious beliefs or minority identity because jokes of this nature were told.)

4. Connection to the protected characteristic

Pursuant to the Ebktv, harassment only qualifies as discrimination if the conduct that violates human dignity is connected to the protected characteristic of the aggrieved person/persons. Harassment can also be realised in situations when the harasser only presumes that the person suffering the harassment possesses the given protected characteristic, as long as that is the reason why the harasser subjects the victim to the conduct that is injurious to his/her human dignity. It is not a precondition, therefore, that the aggrieved party genuinely possess the given characteristic. (It may also qualify as harassment if a student who has a darker complexion than other students, as well as black curly hair, is subject to derision as a Gypsy even though he/she does not actually belong to the Roma community.)

5. Hostile, degrading, humiliating or offensive environment (intended or actual)

A result of the conduct that is injurious to human dignity is typically the emergence of an intimidating, hostile, degrading, humiliating or offensive environment with respect to the targeted person. It is not necessary for a hostile environment to actually emerge in order for harassment to be realised; it is sufficient for conduct to be directed at bringing about such an environment.

Intentionality it is not a conceptual element of the definition. Harassing conduct is unlawful if it creates an environment as defined in the Ebktv even if the creation of said environment was not deliberate. (For example joking, teasing, banter - in other words all types of conduct that are liable to create an environment that violates human dignity, regardless of whether there is an underlying intention to do so).

6. Sexual harassment

Sexual harassment is a special type of harassment. When this occurs, then the previously described conduct, which violates human dignity, takes on a sexual character. The law does not contain a distinct conceptual definition of sexual harassment. Instead, it incorporates sexual harassment into the conceptual range of general harassment. In other words the criteria laid out above can be applied to sexual harassment as well, with the distinction

that in order to realise sexual harassment, the emergence of a hostile, degrading, etc. environment is not always necessary, precisely because by its very nature sexual harassment often occurs in private, without the knowledge of others. The legal underpinnings of this concept are laid down in the definition of sexual harassment provided by Directive 2002/73/EC, which is also applicable in Hungary based on the doctrine of the supremacy of EU law.

Typical examples of sexual harassment include text or image-based messages with sexual content; attempts at physical contact that cause embarrassment; the promise of promotion, rewards or other benefits in exchange for sexual services; embarrassing or dubious signals and gestures; in certain instances regular remarks, innuendo concerning the victim's outward appearance, etc. The victims of sexual harassment need not necessarily be women. Sexual harassment may affect persons of the opposite or of the same gender. Nevertheless, typically the complaints received by the Authority concern the harassment of women by men. In these cases the implicated protected characteristic – and this also applies in the case of children – is the female gender of the aggrieved person.

7. Who is obligated to comply with the principle of equal treatment?

Institutions in the public sector (e.g. the Hungarian State, local governments, authorities, the Hungarian armed forces and policing bodies, public service organisations, **educational**, healthcare and public education **institutions**, other budgetary institutions, etc.) are typically obligated to comply with the principle of equal treatment in all *their legal relations*.

Other organisations, private companies, self-employed persons and private persons are only obligated to comply with the principle of equal treatment in the context of some of *their legal relations* (the provision of services or the sale and distribution of goods, employment and the use of state subsidies).

Demarcation from the criminal law definition of harassment

The criminal law definition of harassment is laid down in Section 222 of Act C of 2012 on the Criminal Code (hereinafter referred to as the Btk following the Hungarian abbreviation). The Btk includes harassment among crimes against human dignity and fundamental rights (Chapter XXI). Given its personal nature, harassment is prosecuted on the basis of a private motion, just like defamation and slander; in other words criminal proceedings are only launched based on a complaint by the victim.

Harassment in the Criminal Code (Btk)

(1) Any person who engages in conduct intended to intimidate another person, to disturb the privacy of or to upset, or cause emotional distress to another person arbitrarily, or who is engaged in the pestering of another person on a regular basis, is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offence.

(2) Any person who, for the purpose of intimidation:

a) conveys the threat of force or public endangerment intended to inflict harm upon another person, or upon a relative of this person, or
b) giving the impression that any threat to the life, physical integrity or health of another person is imminent,
is guilty of a misdemeanour punishable by imprisonment not exceeding two years.

(3) Any person who commits the act of harassment:

a) against his/her spouse or former spouse, or against his/her domestic partner or former domestic partner,

b) against a person under his/her care, custody, supervision or treatment, or

c) while abusing a recognized position of trust, authority or influence over the victim,

shall be punishable by imprisonment not exceeding two years in the case provided for in Subsection (1), or by imprisonment not exceeding three years for a felony in the case provided for in Subsection (2).

The violations of the law that the Btk seeks to penalise are different from discrimination with respect to their objectives and realisation, and they are more grievous in nature; the acts that the Btk's relevant regulation wishes to capture constitute regular or lasting molestation.

While the Ebktv's scope typically extends only to those whose are active in the public sector, and only encompasses certain types of legal relations outside this sector - thus expressly excluding from its scope relations in the realm of family law or relationships between relatives - the Btk's scope extends to practically everyone and all types of relations.

For the criminal offence of harassment as defined in the Btk to apply, it is not necessary for the harassing conduct to be connected to a protected characteristic of the victim, even though this is a basic element in the concept of harassment as discrimination. The Ebktv, by contrast, does not provide protections against disturbing behaviours that are expressly rooted in personal motives.

With respect to the Btk's concept of harassment, it must also be pointed out that while the Ebktv subsumes sexual harassment into the general concept of harassment, the Btk devotes a separate chapter to Sexual Freedom and Sexual Offences (Chapter XIX). We will not go into a comprehensive discussion of the latter provisions, but we will review the felony of sexual abuse (Section 198), for this is the concept that is most closely linked to the issue of harassment in school.

Sexual abuse

(1) Any person over the age of eighteen years who engages in sexual activities with a person under the age of fourteen years, or persuades such a person to engage in sexual activities with another person, is guilty of a felony punishable by imprisonment between one to five years.

(2) Any person over the age of eighteen years who attempts to persuade a person under the age of fourteen years to engage in sexual activities with him/her or with another person is punishable by imprisonment not exceeding three years.

(3) If the victim is a family member of the perpetrator, or is in the care, custody or supervision of the perpetrator, or receives medical treatment from the perpetrator, or if the sexual abuse is committed in the context of a recognized position of trust, authority or influence over the victim, then the penalty shall be:

a) imprisonment between two to eight years in the case defined in Subsection (1);

b) imprisonment between one to five years in the case defined in Subsection (2).

(4) Any person over the age of eighteen years who engages in sexual activities with a person over the age of fourteen years and under the age of eighteen years, where abuse is made of a recognised position of trust, authority or influence over such person, is punishable by imprisonment not exceeding three years.

On the whole we can assert that though there is some overlap between harassment and sexual crimes as defined in the Criminal Code and the Ebktv's concept of harassment, harassment and sexual crimes defined in the Btk are typically more serious offences than the conducts defined in the Ebktv.

The Equal Treatment Authority may not proceed when a criminal act has been committed, and in such cases a report must be filed with either the prosecutor's office or the investigating authorities (the police).

The EBH may investigate violations of the law that are relatively less grievous than criminal offences as long as they are connected to protected characteristics.

Harassment in education (according to the Ebktv)

HARASSMENT IN SCHOOL according to a psychologist

Harassment in school is a - typically recurrent - conduct by students against fellow students that is aimed at causing physical or mental suffering. Harassment in school may manifest itself in many different forms, including beating a student; locking him/her up; ridicule; spreading rumours; and exclusion. These may involve physical, verbal or social (relational) abuse. By the latter we mean efforts by the harasser to inflict suffering by destroying the social relations of the victim, or threatening to do so.

What does the act on public education say?

Pursuant to Act CXC of 2011 on National Public Education children and students have the right to respect for their personal rights (including their right to human dignity), by the educational institution they attend, with special regard to their right to the free development of their personalities, to self-determination, to freedom of action and to family and private life. However, the exercise of these rights may not violate other people's assertion of the same rights, and may also not endanger one's own health or physical integrity, or that of peers or of the employees of the educational institution, nor may it jeopardise the provision and maintenance of the necessary conditions for the assertion of the right to education. (Section 46 (3) (f))

It is the teacher's basic responsibility "to fully respect the human dignity and the rights of children, students, parents and colleagues, and to respond in substance to their proposals and questions". (Section 62 (1) (h))

"In connection with his/her position, the teacher shall be entitled a) to be respected as a member of the community of teachers, to have his/her human dignity and personal rights respected, [and to have his/her] education activities valued and acknowledged, [as well as] b) to make his/her own choices concerning the knowledge-content, the teaching material and methods of education on the basis of the pedagogical programme" that he/she subscribes to. (Article 63 (1) (a) and (b))

1. Harassment in education

When we speak of harassment in school we primarily refer to the way children/students behave towards one another. Yet harassment may also be realised through the conduct or activities of teachers, educators and other persons involved in education, or even outside persons who interact in some way with the educational institution (for instance cleaning staff, persons who offer health services, etc.).

The most typical manifestation of *conducts that violate the human dignity of fellow students* are mockery; teasing; verbal abuse; ridicule; menacing; blackmailing; exclusion; spreading rumours; hitting; shoving; spitting; locking in; taking away or damaging note-books, school bags, phones; or even continuing to ignore someone. Mobile phones and other technical instruments have given rise to new forms of harassment, so-called cyber-bullying, which is realised by disseminating malicious rumours and pictures on various social networking sites, and may also include hacking into user accounts and tampering with data and uploaded images.

The most typical forms in which **teachers** violate the human dignity of children and students are excessive and unwarranted reprimands; punishment; pillorying; making students stand in the corner; isolation from their fellow students; scapegoating; intimidation; menacing; physical abuse (pulling the ears or sidelocks of students, slaps, etc.). In the context of cases involving harassment by teachers, however, it is very important to distinguish conduct that violates the human dignity of students from appropriate educational and disciplinary instruments, since teachers have the right to choose their educational methods based on a pedagogic programme (thus we cannot speak of harassment when a teacher gives a student a bad mark, a notice, a warning, etc.)

In the area of education it is also possible for a conduct – be it by fellow students or teachers – that violates human dignity to assume a **sexual** nature. If a teacher approaches a child/student sexually, harassment may be realised even if this sexual approach was encouraged by the child/student him/herself, in fact even if the latter initiates it. It is common for students who are looking for idols to “fall in love” with a teacher and to then take the initiative. Naturally, in such situations, too, it is the teachers’ responsibility to make sure that relations between them and their students stay within the boundaries of their respective roles. In other words neither the teacher nor the educational institution are relieved of their responsibility by virtue of the fact that a child or student acts as the initiator in such a context. We should note that in cases when a teacher engages in the sexual harassment of a student as defined in the Ebktv, then his/her actions generally also simultaneously constitute a felony defined in the Criminal Code, which is why such cases are investigated by the police.

In order to make a determination that harassment has occurred, the negative actions must typically recur over a pronounced period of time, but based on the Ebktv it is also possible for even a single large-scale incident to realise harassment.

At this point we must emphasise once again that only conducts connected to protected characteristics can qualify as discrimination. The Authority investigates only cases in which the complainant invokes some protected characteristic and in which the harassment *can be connected to a protected characteristic* that the child/student who suffered the harassment possesses. In the context of harassment in school, the most typical protected characteristics in the Authority’s case-law are a person’s belonging to a national minority (Roma ethnicity), disability, health condition and sexual orientation, but there have also been cases when students were subject to harassment in school because of their religious convictions, social background or financial situation. Harassment (discrimination) may also be realised in the form that a student is harassed

in connection with a protected characteristic that does not apply directly to him/her but to a person who is close to him/her, such as for example his/her parents' religious convictions, sexual orientation or disability. In such cases we speak of so-called associative discrimination.

What applies for other manifestations of discrimination also holds for harassment: it is not necessary for the child - or a person associated with him/her, as was pointed out above - to actually possess the protected characteristic in question. As we previously noted, it is sufficient if it is presumed that he/she possesses the protected characteristic, for example if he/she is subjected to negative comments on account of his/her presumed sexual orientation.

A negative environment may emerge in the classroom; throughout the school; during excursions or other events organised by the class or the school; at camp; in any type of school community; or, in the form of cyber-bullying, even in virtual space. Yet it is not necessary for a *degrading, offensive and hostile environment* to emerge as a result of the negative expressions concerning the child who suffers the harassment. It is sufficient for the harassing expressions to aim at engendering such a negative environment.

2. Who can the Authority conduct proceedings against?

In the previous chapter we already noted that the Ebktv defines the range of subjects that have a responsibility to comply with the principle of equal treatment (in other words those who are subject to the scope of the law). This also defines the range of persons/bodies against which the Authority can conduct a procedure, and what legal relations have to prevail between said persons/bodies and the injured party for the principle of equal treatment to apply.

All institutions of general and higher education are required to comply with the principle of equal treatment in all their legal relations. Pursuant to the Ebktv, in the area of education the principle of equal treatment extends to all education, teaching and training that is approved by the state or is conducted based on state-provided requirements; or all education, teaching and training the organisation of which is supported directly or indirectly – thus for example by exemptions from taxes or other dues, by tax credits or write-offs – by funds from the central budget. Kindergartens and all educational institutions operated by the state, municipal governments, churches or foundations, as well as trainings based on the National Qualification Register, etc., are subject to the scope of the law.

The Authority cannot proceed directly against a person who engaged in harassing behaviour because the law does not extend to relations between private persons. Hence the Authority conducts its proceedings against the educational institution. It investigates whether the legally specified criteria of harassment apply and whether the institution is responsible for the fact that harassment has occurred. When the latter is found to apply, then the Authority investigates whether the education institution in question (its head teacher or its teacher(s)) knew about the harassment, and whether the insti-

tution took the appropriate actions to pre-empt, prevent or end the harassing conduct; whether it investigated the issue and whether it applied appropriate sanctions against persons who engaged in harassment; who were implicated in it proactively or through indifference.

In cases when the harassment is performed by an external person or organisation with some type of relationship to the educational institution, then proceedings may be launched directly against this external person or organisation as long as it is subject to the scope of the Ebktv and if it is under obligation to comply with the principle of equal treatment with respect to the underlying legal relationship. Thus for example if the school physician or school nurse engages in the harassment of a student, then proceedings may be conducted against them (or the organisation or business corporation that provide the medical services to the educational institution) because health service providers are also subject to the scope of the law and must comply with the principle of equal treatment in all their legal relationships. In such cases it is practically up to the complainant to decide whether he/she requests proceedings against the educational institution, the provider of the health service, or potentially both. It may happen, for example, that a student is harassed by the employee of a private company that performs cleaning services at the school. In such an instance, however, the Authority cannot proceed against the cleaning company because there is no legal relationship between the student and the company that falls under the scope of the Ebktv, and thus there is no relationship that would obligate the latter to comply with the principle of equal treatment. In such situations the Authority can only initiate proceedings against the school and can only examine the responsibility of the latter. (It needs to be emphasised, however, that this does not imply that the persons or the organisation that engaged in harassment do/does not potentially bear criminal or civil law liability for their/its actions.)

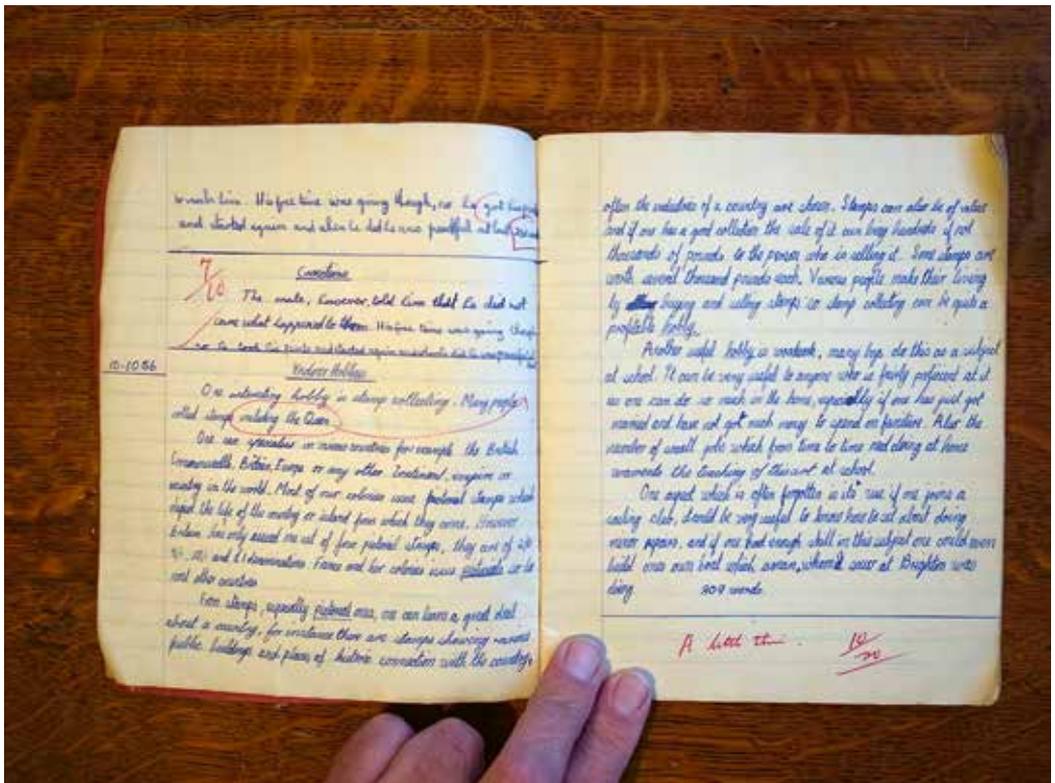
The Authority does not initiate and conduct its administrative proceedings against the persons who engaged in harassment (children, students, teachers, etc.) but against the educational institution.

3. When does harassment at school qualify as harassment in school?

Given the fact that the Authority can only conduct proceedings against institutions, in which it examines the responsibility of the given institution, the only type of incidences that can qualify as harassment in school are those for which the school or other educational institution in question bears responsibility. The possibility of harassment in school does not arise at such events organised by children, students or parents over which the school wields no influence, which it does not oversee, even if at these events fellow students or schoolmates engage in the harassment of a student. As a general rule, the school can of course not be held accountable for conduct that occurs in the context of

HARASSMENT IN THE AREA OF EDUCATION

personal relationships between students and/or teachers outside school. In such cases the Authority cannot proceed. If however a child or a parent complain about harassment that targets a students and which is performed by a teacher, a fellow student or a group of the aforementioned, then the school's responsibility may be implicated with respect to its handling of the complaint and its actions taken in response to it.



Source: George Redgrave

The Authority's (EBH) procedure

1. Launching proceedings

The Authority typically initiates proceedings against educational institutions based on a *petition* by the person who was subjected to harassment, or the legal representative (parent) of this person. If the complainant is represented by a representative (e.g. legal representative, another person who is not the legal guardian, a relative or a teacher), then a corresponding authorisation must also be attached to the petition. The representation of a person who was subject to an infringement of his/her rights may also be performed by an NGO or trade union (NGOs: e.g. foundations, associations). In addition to an authorisation by the person they represent, such organisations must also submit their articles of association or their memorandum of association along with the petition itself. In the case of educational institutions, the Authority cannot launch *ex officio* proceedings. An NGO or trade union, however, is entitled to act as a client before the authority (even at its own initiative) and to request that proceedings be launched when the violation of the principle of equal treatment, or an imminent threat thereof, affect a large group of persons that cannot be clearly delineated. In such proceedings the NGO does not act as a representative, therefore, but as a client, and, as such, is entitled to all the rights that are due to clients. In this situation an organisation must submit its articles of association or its memorandum of association, and its functions must include defending the rights of persons who possess the protected characteristic that is relevant in the case at hand. With respect to given national minorities (that is the 13 recognised national minorities in Hungary), minority self-governments are also entitled to this right.

Proceedings may be launched before the Authority if no more than a year has passed since the violation of the law was learned about or no more than three years have passed since the violation of the law occurred.

2. The content elements of a petition

A petition (complaint) must contain the following:

- the petitioner's name and address (it may also include an e-mail address, phone number)
- the designation of the institution or organisation complained against (exact name, if possible, and an address)
- an explanation of the legal relation that applies between the institution and the petitioner (copies of any type of document that show an enrolment as a student, for example the front page of the student's gradebook or a certificate of attendance)

- a detailed presentation of the harassing conduct (when; where; who said what; who did what; and who saw it)
- an indication why the petitioner was subject to the prejudice/unfavourable treatment in question (a reference to the protected characteristic)
- an explanation why a protected characteristic applies to the petitioner (some document to this effect, if available; in the case of belonging to a national minority, or a professed sexual orientation or gender identity, it is sufficient to submit the petitioner's statement to this effect)

3. Formal requirements and submission of the petition

A petition may be submitted in writing. A written petition may be submitted – without any specific formal requirements – in person at the Authority or by mail; the petition must be signed by the petitioner.

The petition may also be submitted by using the complaint form on the Authority's website. When the form on the Authority's website is filled it, may also be submitted electronically through the government's official Client Gateway (Ügyfélkapu).

A complaint may also be filed orally during the Authority's office hours; in these situations the Authority records the complaint in a protocol.

4. The course of the procedure, typical instruments of proof

The Authority is obligated to ascertain the facts of the case which are necessary to render a decision. If the information available is insufficient to arrive at a decision, then the Authority conducts an evidentiary procedure. The deadline for concluding a case is 75 days, which may be extended for one period lasting no longer than 21 days. (Time periods designated in Section 33 (3) of the Code of Administrative Procedure (abbreviated as Ket in Hungarian) do not count towards the deadline). It is important to note that even if his/her petition is rejected, typically the complainant will only be liable for the costs of the Authority's proceedings if it is found that he/she acted in bad faith.

In situations when the interests of minors are in jeopardy, the deadline for concluding a case is 45 days.

Though the course of each case is different, in the following we will summarise the main stages of the Authority's procedure, its most important elements and the most frequently used instruments of proof.

If the petition received is incomplete and does not include the required content elements, or only contains some of these, then the Authority issues a summons in which it calls upon the petitioner to submit missing documentation. The **summons to submit missing documentation** includes the grounds for the Authority's request, and also provides further information concerning the rules that apply to the client's case, as well as a guide on how he/she can remedy the deficiency.

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After its receipt of the petition, the Authority – if it is competent to investigate the case – initiates proceedings and **informs the institution complained against** (the subject of the procedure) about this fact, simultaneously providing the latter with a copy of the petition. It also **calls upon the institution to submit a statement on the merits** of the petition, and to submit the documents it deems relevant for adjudicating the case, to designate witnesses, etc.

In cases relating to harassment, the Authority generally **holds hearings**, to which it summons the parties (the petitioner and the institution that is the subject of the procedure) or their representatives, as well as potential witnesses. It is important to mention that the parties are not necessarily summoned to the Authority's seat in Budapest. When the petitioner's home address or address of residence is not in the same city as the Authority's seat, then the Authority holds the hearing in the town office of the municipality where the petitioner resides. The Authority hears both parties at the hearing. At the hearing, the clients can make statements, they can comment on what they heard and they may question one another as well as the witnesses, they can submit evidentiary motions, etc. The hearing is public, and the general public can only be excluded in situations defined by law.



Source: George Redgrave

A frequent element of such proceedings is that the Authority – be it at the hearing or outside the hearing – examines as **witnesses persons** who witnessed the harassing conduct (that is they heard or saw it). Since the Authority conducts its procedures against institutions, it also examines the person or persons who engaged in harassment as witnesses. In fact, if the petition was not submitted by the person who suffered the harassment but by an NGO, then the victim or victims of the harassment, too, are heard as witnesses. Data relating to a witness' personal identification and home address may be handled confidentially (**protected witness**) if the witness so requests and provides reasonable grounds to support that request, that is if he/she renders probable that his/her involvement in the proceedings might result in severely detrimental consequences for him/her. When the Authority decides that the data concerning a witness must be handled confidentially, then those must be handled separately and securely in the case files so that they are not revealed in the course of procedural actions (for example exercises of the parties' right to inspect the files). The Authority examines protected witnesses outside the regular hearings.

The Authority is also especially circumspect when it comes to examining minors. The examination of any witness who lacks legal capacity or only has limited legal capacity may only happen in the presence of his/her legal representative. If there is a conflict between the interests of the witness and his/her legal representative, then the public guardianship authority is authorised to exercise the right laid down in Code of Administrative Procedure Section 53 (4a) - (4c).

5. Special rules of proof

Special rules of proof apply to procedures initiated on account of violations of the principle of equal treatment. The party that suffered an infringement of his/her rights (the petitioner) must **render it probable** that he/she suffered a disadvantage and that at the time of the infringement he/she possessed a protected characteristic - actually or in the presumption of the violator - as defined in the Ebktv.

Rendering probable implies a lower level of proof. In its position paper 384/4/2008. (III.28.), the Advisory Board, a body that used to operate alongside the Authority, laid down that rendering probable is a type of proof that will lead an average person to conclude that on objective assessment the complainant's complaint is well-founded. The Position Paper also stipulates that the subject of the procedure may only be obligated to discharge its burden of proof if the party that allegedly suffered an infringement of his/her rights met its obligation to render the complaint probable. In harassment cases it is absolutely essential to present what the harassing conduct specifically entailed, as well as its circumstances (who, when, what was said, what was done, who else was present, and how the hostile environment manifested itself). It is not sufficient to write, therefore, that "I am constantly subject to comments that severely offend my human dignity, and as a result a hostile and degrading environment has emerged around me". Instead, facts need to be presented.

When the petitioner has fulfilled his/her obligation of proof, then it is up to the other party (the subject of the procedure) to **prove** that the *circumstances rendered probable* by the aggrieved party *did not in fact obtain*, or that it had *acted in compliance with the principle of equal treatment, or that it was exempt from compliance* in the context of the relevant legal relationship.

6. The conclusion of the procedure

No decision on the merits (by order)

In certain cases a procedure may be concluded without the Authority rendering a decision on the merits. This is most often the case when the petitioner fails to comply with the Authority's request to submit missing information, or if he/he fails to submit a statement in response to the Authority's request to that affect and thereby impedes the clarification of the facts of the case. Another typical reason is that the petitioner changes his/her mind and withdraws the petition. Petitions are often withdrawn because the subject of the procedure or the harasser stops the infringing conduct or because the parties come to an agreement outside the framework of the Authority's procedure. In these cases the Authority issues an order to terminate the procedure.

Settlement (decision approving a settlement)

The Ebktv explicitly provides that the Authority should try to ascertain whether there is a possibility of concluding a settlement between the parties before rendering a decision of its own. Especially in cases involving harassment at school, the Authority places a substantial emphasis on this particular procedural element. Sometimes the parties conclude a settlement at the hearing with the help of the Authority, in other situations they indicate their willingness to settle, and the details are then worked out following the hearing, potentially at another hearing held later.

The settlement concluded by the parties is then approved by the Authority with a decision – as long as it complies with the relevant statutes and does not violate the public interest, or the rights or rightful interests of others. It must also include a deadline for meeting its terms as well as provisions about the allocation of procedural costs. The Authority's decision to approve the settlement cannot be appealed, and the decision provides the basis for the execution of the settlement. It is important to stress that the settlement may not include a decision on the issue of whether or not the principle of equal treatment was violated (hence it may not contain a phrase such as "since it violated the principle of equal treatment, the subject of the procedure commits itself to..."). Settlements differ in terms of their substance. In less grievous cases the complainants may be satisfied with an apology from the head of the institution complained against or from the person who engaged in harassment, along with the promise that the offensive conduct will cease, and that greater attention will be paid in the future to compliance with the principle of equal treatment. Holding the person who had engaged in harassment personally accountable, and disciplining him/her, may also provide proper satisfaction

to the complainant. Another possible outcome is that as part of the settlement the institution in question undertakes to adopt a code of conduct (which may include sanctions for violations of the principle of equal treatment), to organise trainings for those whose activities are subject to the scope of the law, or to offer other activities related to the specific problem, potentially with the involvement of the school psychologist.

Decision on the merits (decision)

If the proceedings were not terminated and the parties did not agree on a settlement, then the Authority renders a decision on the merits. If it determines that the institution that was investigated did not engage in the petitioner's harassment as defined in the Ebktv, then it renders a *decision rejecting* the petition. If it finds, however, that harassment as defined in the Ebktv did occur, then it renders a *decision establishing a violation of the principle of equal treatment*.

If it finds that the principle of equal treatment was violated, then the Ebktv may apply the following sanctions:

- a) it can order that the infringing situation cease
- b) it can enjoin the subject of the procedure from future manifestations of the infringing conduct
- c) it can order the public display of its binding decision establishing a violation of the principle of equal treatment
- d) it may issue a fine (which may range from 50,000 to 6 million forints)
- e) it may apply legal consequences as set out in a different law.

7. Appealing the Authority's decision

The Authority's decisions are not subject to appeals before a body of public administration. They may be appealed in the Budapest Court of Public Administration and Labour by filing an administrative lawsuit.

Costs of the procedure

The procedure of the Equal Treatment Authority is exempt from any charges, and there is no administrative service fee. The costs of the procedure are typically advanced by the Authority (for example in a situation when an expert needs to be consulted). The subject of the procedure must advance its own expenses related to its involvement in the proceedings (e.g. attending the hearings and travel-related expenses). If the Authority's decision affirms the petition, then the Authority obligates the subject of the procedure to bear the costs of the procedure. The party that suffered the grievance that was investigated may only be obligated to bear the costs of the procedure if the Authority finds that he/she acted in bad faith.



Source: George Redgrave

8. Other possibilities for enforcing rights, parallel procedures

Based on Act V of 2013 on the Civil Code (abbreviated as Ptk in Hungarian), claims concerning the violation of personal rights may be enforced in *court* by way of a personal rights lawsuit. This includes the enforcement of the right to equal treatment. A court may offer a wider range of judicial remedies to the person who suffered a violation of his/her rights. Those who suffer a violation of their personal rights may demand damages in court for non-financial damages they suffered, and, furthermore, those who suffer damages as a result of violations of their personal rights may demand to be compensated by the offender for said damages based on the rules governing the liability for unlawfully caused damages. The Authority cannot award monetary types of compensation.

If a personal rights claim regarding the violation of the principle of equal treatment has been filed in court, then the Authority cannot launch proceedings in the same case until the courts have rendered a binding decision. If there are parallel proceedings ongoing in both a court and before the Authority regarding a case involving the violation of the principle of equal treatment, then the Authority may proceed, but it must suspend its proceedings until the judicial case has been concluded with a binding decision. The Authority must inform the court about its order of suspension. The court, in turn, will send the Authority its binding decision in the case. The Authority will resume its proceedings upon receipt of the court's decision, and it will rely on the court's determination of the facts of the case as the basis for its own procedure.

Cases from the Authority's practice

In the following we will review some cases from the Authority's practice on the subject of harassment in school.

1. Autistic boy at the massage therapist training *(settlement)*

A mother turned to the Authority with the complaint that her 20-year-old autistic son had been humiliated, intimidated and harassed at the school, where he was enrolled in a training as a massage therapist (in a programme based on National Qualification Register guidelines).

Part of the prehistory in this case was that in consideration of the boy's disability, the school had recommended and allowed him to record his classes using a dictaphone. The boy attended every class and recorded what was said. His classmates often missed classes, and when final examinations were coming up at the end of the year, several asked him to furnish them with the recordings. The mother consulted the school, inquiring how they should respond to these requests. The school responded in writing, stating that they had only made this opportunity available to the boy in question, and that they had informed the teachers about this at the start of the academic year. The school requested that the boy do not share the recordings with anyone else. The boy did not share the recordings, and as a result he became the subject of persistent harassment by his classmates, even though they were aware of his condition and knew why he had to make audio recordings. The boy's fellow students made offensive, degrading, humiliating, hostile and threatening statements in the presence of the teacher, who even encouraged them instead of reprimanding them and telling them to stop. Due to his health condition the boy was unable to defend himself against the attacks. The mother turned to the school to resolve the situation. Nevertheless, the conflict was not resolved despite this effort, and soon thereafter the boy continued his studies at a different institution.

The Authority conducted proceedings against the school. The school submitted that the teacher in question was issued a written reprimand because of the abovementioned events. The Authority held a hearing in the case, and the boy and the head teacher at the institution were summoned to appear in person at the hearing. The boy was accompanied by his mother. At the hearing the head teacher acknowledged the fact that the boy's fellow students had spoken in an intolerable manner and had behaved unacceptably, and that the teacher had also been involved in these conducts. The head teacher expressed his regret over these occurrences and the institution's failure to resolve the situation. He apologised for the above, and pledged at the same time that in the future he would proceed with greater care and empathy in such situations, that he would always comply with the principle of equal treatment and that he would do all in his power to ensure that the institution's teachers and students do not behave in ways that violate the human dignity of others. The boy found that the

apology and the written reprimand for the teacher in question provided a satisfactory resolution and considered the case closed. The Authority did not have to render a decision on the merits of the case since the parties arrived at a settlement, which the Authority approved in a decision.

2. Epileptic boy in the trade school *(settlement)*

The petitioner turned to the Authority with the complaint that he had been humiliated and harassed by his fellow students at the school where he is enrolled to learn a trade. He also stated that the school had failed to adequately address the problem.

According to his submission, there had been instances when he had had an epileptic attack at school or during his professional practice. These incidents were not handled appropriately by the teacher who was present, nor were they subsequently adequately communicated towards the other students by the teacher or the school. From this point on his fellow students began to exclude and isolate him, and no other student would sit by him or talk to him. The situation deteriorated to such an extent that during a class another student stood up and said that either the petitioner would withdraw from the school or else the entire class would. The teacher who was present did not interfere with or protest the statement, nor did she condemn it in front of the students. Though the homeroom teacher tried to help the petitioner and repeatedly warned his classmates to change their behaviour, this proved ineffective.

The Authority launched proceedings against the institution and held a hearing to ascertain the facts of the case. It summoned the complainant and the head teacher of the institution to appear at the hearing in person. The complainant's father also attended the hearing as a representative of the complainant. At the hearing, the head teacher explained that the situation between the complainant and his classmates had been a topic of discussion at several faculty meetings, and that the complainant's homeroom teacher had tried on multiple occasions to resolve the conflict that had emerged in the class. The petitioner also acknowledged the homeroom teacher's efforts.

The parties displayed a willingness to conclude a settlement. As part of their agreement, the head teacher pledged to devote special attention in the future to promoting the inclusion of students with health conditions and disabilities. The petitioner assessed that this provided adequate satisfaction and considered the case closed. The Authority did not render a decision on the merits and approved the settlement.

3. Invective or presumed sexual orientation *(rejection of the petition)*

A father turned to the Authority in representation of his son, arguing that the boy, who had attended grade eight in the previous academic year, was the subject of continuous harassment on account of his presumed sexual orientation. He claimed that the boys' fellow students regularly referred to him as a "poof", and also had written the slur on his

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pencil case. Once the boy was even beaten. Even though the father personally contacted the homeroom teacher and the head teacher about the situation the boy was in, they failed to take the requisite measures to resolve the situation.

The Authority launched proceedings. The school defended its actions by arguing that the complainant's parents had admitted that the boy was having trouble fitting in, which is why they enrolled him at the school in the first place. The school submitted that the complainant had himself often provoked and harassed his fellow students, and several complaints were submitted to the school's management in connection with this. The students in his class – the petitioner included – often used obscene and abusive language in referring to one another, even in the presence of teachers. The head teacher had involved the homeroom teacher and held discussions about these problems with the deputy head teachers, the class, the petitioner's father and the petitioner, while the homeroom teacher tried to resolve the conflicts in the classroom by organising role games.

The Authority found that five of the students that the petitioner had been in conflict with had received a written admonition from the head teacher, while another two students had received warnings.

The Authority held a hearing in the case. In addition to the parties and their representatives, it also heard the homeroom teacher and the deputy head teacher for education as witnesses, and then also examined several classmates of the petitioner outside the main hearing as protected witnesses (the personal data of these students were sealed).

The homeroom teacher assessed that in reality the insults hurled at the petitioner were motivated by jealousy. At the beginning of the academic year, the petitioner had been going out with a girl from that class. Once they broke up, the girl in question had started teasing the boy and began to use the term "poof". A recurrent element in her comments was that the petitioner was trying to "ingratiate himself" with girls from another class in the school.

The classmates who were examined as witnesses stated that they did not believe the petitioner to be a homosexual, this had not even occurred them. They used the term "poof" in referring to the petitioner (and other classmates) when they were angry with him, generally as a synonym for "idiot" or "scum". Everyone in the class used this term and other invectives casually and with great frequency, regardless of what they believed about each other's sexual orientation. One of the witnesses explained that recently they had started to use the word "csíra" (the word for germ in Hungarian, a common slur) to refer to one another in such instances.

Though in terms of their original meanings the offensive terms hurled at the petitioner are in fact associated with a sexual orientation, in the given context they took on a different meaning and were used as invectives that were independent from the protected characteristic in question. The classmates did not in fact believe that the petitioner was a homosexual.

The Ebkvt provides that for harassment to be realised, this must result from and be connected to some real or presumed protected characteristic of the injured party. In the particular situation at hand, however, the petitioner was not in fact believed to be

a homosexual. Thus the petitioner did not have a protected characteristic, which is why there was no discrimination and no harassment as defined by the Ebktv took place. The Authority rejected the petition. The Authority's decision was not appealed in court.

4. A pedagogic opinion is not harassment *(rejected petition)*

A mother turned to the Authority because her son, who struggles with learning and behavioural disorders, was subject to harassment at a new school where she had enrolled him in a special fourth grade class with a reduced number of students. Without mentioning specific incidences, the parent noted in general that the homeroom teacher had been hostile towards her son from the very beginning. She continuously nagged the boy, called him "stupid" and stated that he did not belong in the class. The parent argued that the homeroom teacher's pedagogic assessment of her son showed clearly that the teacher harbours personal antipathy towards the child and wishes to get rid of him. (The parent also complained that the school had failed to provide the developmental education prescribed for her son by an expert, but in the present publication we will focus on the segment of the case that dealt with harassment).

The Authority first informed the parent that it cannot proceed personally against the homeroom teacher, and that only the institution as such may be subject to a procedure. The parent acknowledged this information and requested that proceedings be launched against the institution.

The parent did not recount any specific instances of harassment performed by the homeroom teacher against the child. It emerged that in actuality the parent perceived that the teacher's pedagogical assessment was offensive and injurious because it stated that the child uses foul language; fights; does not take responsibility for the things he does; mostly denies what he does; does not tolerate when he is called upon in class; shouts; makes noises; often lies; does malicious things, etc.

The Authority's position was that a pedagogical expertise about a student cannot constitute harassment as defined in the Ebktv, even if it must inevitably contain negative observations that are injurious to the given person or parent. The Authority rejected the petition.

5. Abusive remarks about Gypsies in the study room

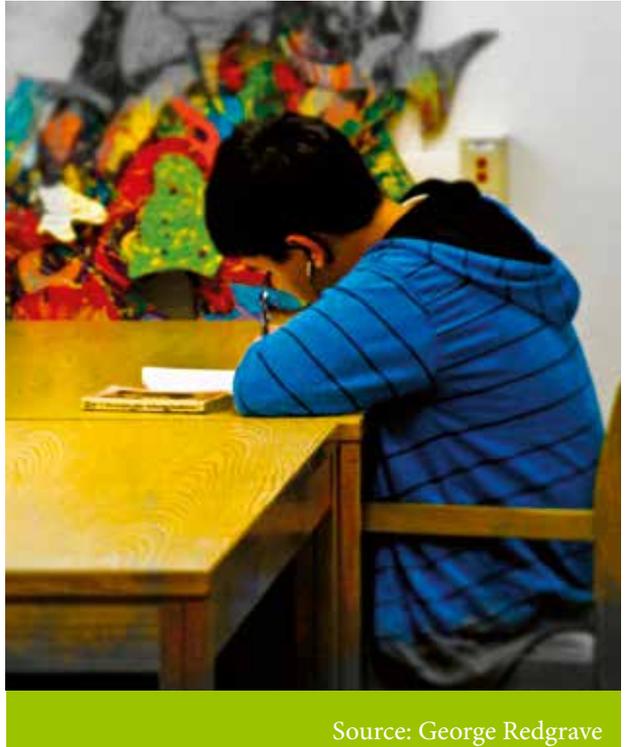
(decision establishing a violation of the principle of equal treatment)

The petitioner submitted in the complaint that a teacher at the school had made offensive statements concerning her child's Roma ethnicity during a study room exercise. ("Disgusting mountain Gypsy. What is this Gypsy behaviour, you naughty Gypsy kid".) In its defence on the merits, the head teacher, who represented the school at the proceedings, acknowledged that these comments had been uttered by the teacher. The head teacher submitted that following the incidence he had attempted to resolve the

conflict in the most appropriate way possible, and both the head teacher and the teacher in question had apologised several times to the mother and the boy.

The parties showed a willingness to conclude a settlement. In the end, the petitioner stated that she considers the school's management to be at fault for failing to take the teacher's remarks seriously enough and regarding them as slight mistakes rather than the serious violations of human dignity that they actually were. That is why, the parent explained, an apology was not sufficient. A settlement was thus not concluded, and the Authority resumed its proceedings.

In light of the fact that the school had acknowledged the offensive remarks in connection with the petitioner's Roma child, the Authority held that harassment as defined in the Ebtv had been realised with respect to the petitioner's child, and that the school was responsible. The Authority determined in its decision that the school had violated the principle of equal treatment with respect to the petitioner's child in connection with the latter's Roma ethnicity.



Source: George Redgrave

6. Woe to you when the Guard comes!

(decision establishing a violation of the principle of equal treatment)

In this case the petitioner submitted a complaint against the municipally-operated elementary school at the time when the organisation called Magyar Gárda (Hungarian Guard, a paramilitary nationalistic organisation that was since banned) was still operating legally. The petition submitted that the head teacher of the municipal school threatened the disorderly students in the class - which was mostly made up of Roma students - with the Guard, while a teacher at the school noted in reaction to the bad behaviour of three ethnically Roma students that he is not surprised that the members of the Guard are killing Gypsies.

The comments by the teacher and the head teacher elicited fears in the students, who were predominantly of ethnic Roma background, especially since in the period preceding

this event the Guard had been prominently present in the region. The Authority's investigation in the case sought to ascertain whether the comments by the head teacher and the teacher at the school had been liable to give rise to an intimidating environment for Roma students, to violate their human dignity and to degrade or humiliate them.

As a result of the evidentiary procedure it conducted, the Authority determined that the principle of equal treatment had been violated. Its decision stressed that the reference to the Hungarian Guard in an improper context, and the threat by the teachers that this reference implied, was uttered in the awareness that it would elicit fears in the Roma students. The Authority determined that harassment had taken place in this case.

7. Roma boy at the technical training *(settlement)*

The petitioner turned to the Authority by way of his legal representative because he was continuously harassed in connection with his Roma ethnicity at the workshop where he worked as a trainee. The harassment was performed by both the employees and the owner of the limited liability company that operates the workshop. The petitioner submitted that at one point he was faced with the fact that the coffee machine and two windows at the workshop had been plastered with his photo - which had been downloaded from his Facebook page. The photos were captioned with comments and offensive remarks referring to his Roma ethnicity. As a result of these abuses, the petitioner decided to continue his practical training at another training workshop.

Based on the petition, the Authority launched proceedings against the limited liability company that operated the workshop. Despite the Authority's request to that effect, the managing director who was designated as the company's legal representative failed to submit a defence on the merits. The Authority held a hearing to ascertain the facts, and it examined two employees who were employed at the workshop. The hearing failed to reveal the identity of the person who had put the pictures and the injurious comments up, but it was nevertheless clear that both the workshop manager and the other employees saw these pictures and that no one had removed them for days.

As the hearing progressed, both parties showed a willingness to conclude a settlement. As part of the settlement, the subject of the procedure apologised to the petitioner for the prejudice he had suffered. The petitioner accepted the apology. The subject of the procedure pledged that in the future it would pay greater attention to respecting the principle of equal treatment, and to ensuring that those working at the workshop would comply with it. The subject of the procedure also committed itself to providing - for the time period specified in the settlement - the petitioner with technical training led by a technical teacher at the polishing workshop. This was important because the petitioner lacked the opportunity to perform such type of work at his new training site, and thus also did not have the opportunity to acquire the requisite technical knowledge and practice there. As a result of the undertakings in the settlement, the petitioner was able to acquire outside the framework of his training the practical experience in the technical area he had chosen.

The Authority approved the settlement.