



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Curia quashes local council's discriminative decree on housing
<b>Date:</b>	28 May 2015
<b>Expert:</b>	András Kádár
<b>Context</b>	
<b>Issue at stake:</b>	Hungary's highest court concludes that municipal decree aiming to drive indigent families (most of them Roma) out of the city is discriminative and is therefore to be quashed
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National court decision
<b>Field:</b>	Housing
<b>Applicable law:</b>	Articles 8 and 26 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA), Article XV of the Fundamental Law

### Content

**Case:** In May 2014, the Municipal Council of Miskolc (North-East Hungary) amended its Decree No. 25/2006. (VII.12.) on Social Housing, introducing a limitation on receiving financial compensation for the termination of social housing for those who live in “low comfort” social housing. Article 23(3) of the decree as amended stipulates that the authorities can only provide financial compensation (in the amount of HUF 2,000,000 – EUR 6,400) to low comfort social housing tenants in order to secure a mutually-agreed termination of the tenancy if the tenants undertake to comply with the following cumulative obligations: (i) they purchase a property from the compensation; (ii) the property is purchased outside of the territory of Miskolc, (iii) they agree to a “restraint on alienation and encumbrance” (prohibiting the owner from selling or mortgaging of the property), registered in the land registry for five years in respect of the purchased property and enforceable by Miskolc Local Council. As opposed to low comfort housing tenants, tenants of higher quality social housing are provided with the possibility of being relocated within Miskolc. Therefore, this is differential treatment of low comfort as compared to ordinary social-housing tenants, *de facto* allowing the authorities to ‘expel’ from the territory of Miskolc tenants living in low comfort social housing. Tenants of low comfort social housing are almost exclusively Roma, who thus would no longer be able to access social services in Miskolc due to the change of their address (as under Hungarian law on social services, such services shall be provided by a local government on whose territory a person has a registered place of residence). The Borsod-Abaúj-Zemplén County Government Office (government offices are vested with the task of overseeing the legality of municipal decrees) requested the Municipal Council to amend the decree, but the council refused to do so. After this, in accordance with the pertaining legal provisions, the Government Office filed a motion with the Curia for the quashing of the decree.

**Decision of the Court:** In its decision Köf.5003/2015/4 (published in the official journal on 13 May 2015), the Curia concluded that Article 23(3) of the decree puts persons living in low comfort social housing in a disadvantaged situation compared to persons living in social housing of higher comfort levels, and although differentiation may be acceptable if it has a legitimate purpose, in this particular case, no such purpose was presented by the Municipal Council. The grounds for the discrimination according to the Curia were financial situation and “other characteristic” (more closely: social status) – under Article 8 Points q) and t) of the Equal Treatment Act (ETA). The Curia invoked Article 26 of the ETA, which expressly bans discrimination in relation to housing subsidies, benefits provided by the state or a municipality, or to determining the conditions of sale or leasing of state-owned or municipal housing and plots.

In response to the Municipal Council's attempt to defend the amendment, the Curia stated that the amendment may not be regarded as a positive measure, since although the payment of a sum to compensate the termination of the tenancy is indeed a positive possibility, this is also open for the persons in comparable situation (tenants of higher comfort housing), who are not obliged to spend the compensation on housing outside the premises of Miskolc. Furthermore, the Curia pointed out that – as opposed to what the Municipal Council claims – the tenant's decision to leave the city may not be regarded as truly voluntary, as it stems from a legal norm adopted by the municipality in its capacity of a public authority. Finally, the Curia made it clear that the autonomy of owners stemming from the right to property can be restricted on the basis of the owners' responsibility for society, and this is especially true for municipalities, which – in the framework of exercising their property rights – are responsible for acting in a manner that respects the fundamental rights of others.

Based on the above, the Curia abolished the amended Article 23(3) of the municipal decree.

**Key points of analysis:** The Curia delivered a sound and well-substantiated decision, by which it

- rightly defined the groups to be compared (persons in low comfort social housing to be compared with persons in other type of social housing);
- rightly established that their treatment was less favourable and that treatment was inevitably linked to their worse social status and financial situation; and
- convincingly refuted the municipality's arguments concerning the voluntary nature of the tenants' moving out and the reference to the freedom of property owners to manage their property.

One interesting aspect of the decision to point out is that while it is common knowledge that the majority of the tenants concerned are of Roma origin, the Curia did not deal with the racial aspect of the issue, as under the ETA, social and financial status are protected grounds in their own right.

**Internet link source:**

<http://magyarkozlony.hu/dokumentumok/62a153856fe4d348a532ffbfb51ac3ea8e4a6330/megtekintes>  
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