



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

NEWS REPORT

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| Country: | Hungary |
| Title: | Ombudsman's report on housing discrimination in Miskolc and neighbouring towns |
| Date: | 5 June 2015 |
| Expert: | Kádár, András |
| Update of flash report nr: | 1310-HU-53 and 58-HU-ND |
| <u>Context</u> | |
| Issue at stake: | Ombudsman concludes that municipal decrees aiming to drive indigent families (most of them Roma) out of the city or to prevent them from moving in are discriminative. Other serious violations are also discovered in relation to the practice of social housing in Miskolc. |
| Ground of discrimination: | race/ethnic origin |
| Source: | Miscellaneous (Ombudsman report) |
| Field: | employment, social protection, social advantages, education, housing |
| Applicable law: | Act CXI of 2011 on the Commissioner for Fundamental Rights |

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. The decree as amended stipulated that the authorities can only provide financial compensation to low comfort social housing tenants in order to secure a mutually-agreed termination of the tenancy if the tenants undertake to purchase from the compensation a property outside of the territory of Miskolc. Tenants of low comfort social housing are almost exclusively Roma. In response to the Miskolc decree, nine municipal councils in the city's proximity adopted decrees excluding those persons who purchase a real estate in their respective territory with the support of any other municipal council from social benefits, social housing and public employment.

In March 2014, two NGOs filed a complaint with the Commissioner for Fundamental Rights (Hungary's Ombudsman) complaining about the recurring and concentrated inspections the Miskolc municipal authorities (public health, child protection, social administration authorities, etc.) kept carrying out in the segregated, mainly Roma neighbourhoods, which, according to the complainants, amounted to racially based harassment. After the May 2014 amendment of the social housing decree, the NGOs extended their complaint to the decree as well. In January 2015, the complainants – along with two further NGOs – submitted yet another complaint concerning the decrees of the towns neighbouring Miskolc. The Ombudsman therefore extended his investigation – carried out in cooperation with the Deputy Ombudsman responsible for national

minorities living in Hungary – to these decrees as well.

In the meantime, the Borsod-Abaúj-Zemplén County Government Office (government offices are vested with the task of overseeing the legality of municipal decrees), initiated proceedings before the Curia (Hungary's highest court) with the aim of having the Miskolc decree quashed. In its decision Köf.5003/2015/4 (13 May 2015), the Curia concluded that the amendment of the Miskolc municipal 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, so the amendment amounted to discrimination, and was consequently quashed by the Curia.¹ Based on the warning of the Borsod-Abaúj-Zemplén County Government Office, five municipalities out of the nine withdrew their discriminative decrees, but three – Sátoraljaújhely, Szerencs and Taktaharkány – refused to do so and kept their decrees in force (one municipal decree is still under analysis). Therefore, the government office launched proceedings before the Curia with respect to these municipalities as well. The cases are pending.

The Ombudsman also dealt with the general housing situation in Miskolc for marginalised groups. In this respect, the investigation established the following. In 2008, 90% of municipally owned apartments were rented out as social housing, by 2014, this ratio had decreased to just 15%. This situation was the result of a number of factors. In 2010, the relevant local decree was modified. The new legislation terminated the possibility of renting out municipal housing for an indeterminate period of time, and maximised the rental of municipal housing in 5 years. As a result many indeterminate rental contracts were modified to determinate ones (when for instance families had to be moved from their indeterminately rented housing to new housing at the time of tearing down some segregated neighbourhoods), and after the rental periods expired, the contracts were not renewed. There were cases when the authorities refused to register the tenants' requests for the prolongation of the expiring rental agreements, and also instances when the municipality did not warn or notify the tenants falling behind with payments about the termination of their rent contracts, so they were faced with the problem only when the eviction process had already been started. It was also discovered that in a number of cases the local authorities refused tenants' request to have their domicile registered as the official address of their relatives (including their children), in some instances on the basis of the pertaining decree's provision that makes such a decision possible if the registration "would disproportionately increase the number of persons living in the concerned apartment". As a result, in the absence of an official address in the territory of Miskolc, several children could not be enrolled into the local schools, which rejected the admission of the children on the basis that their official domicile is not within their catchment area.

Conclusions of the Ombudsman's report: in relation to the decree of the Miskolc municipality, the Ombudsman fully agreed with the Curia's decision and stated that it amounted to direct discrimination on the basis of financial situation, and indirect discrimination on the ground of race.

In relation to the decrees of the neighbouring municipalities, the Ombudsman pointed out that the restrictions concerning social allowances, social housing and public employment contradict the relevant acts of Parliament (which, for instance, do not allow the consideration of circumstances beyond one's financial situation when deciding on social allowances) and that there is no objectively justifiable reason for discriminating between those who wish to settle in the given municipality on the basis of whether they wish to buy property with the support of another municipal council or any other source. The Ombudsman concluded that such restrictions amount to direct discrimination based on

¹ See flash report 58-HU-ND.

financial situation and raises the possibility of indirect discrimination based on race. Furthermore, the restrictions violate the human dignity of the concerned persons, as they are capable of stigmatising and isolating the newcomers, who already set off from a very disadvantaged position.

With regard to the social housing situation, the Ombudsman concluded that the Miskolc authorities' related practice violated the tenants' right to fair administrative proceedings. Due to the severe decrease in the numbers and proportions of social housing and the evictions, it can be established that the municipality has failed to comply with its obligations concerning the promotion of social protection and housing, and has created a situation that poses the threat of mass homelessness. The authorities' practice of refusing to register official domiciles is in contradiction with the pertaining laws, and therefore is a violation of the requirement of legal certainty, and entails the direct and severe risk of breaching the fundamental interests of children.

(The report also severely criticises the practice of concentrated administrative inspections in segregated neighbourhoods, and establishes that this practice constitutes a violation of fundamental rights.)

The Ombudsman formulated a number of recommendations, including: the withdrawal of the discriminative municipal decrees; the termination of concentrated inspections; cooperation with NGOs and professional bodies in a number of areas (the prevention of evictions, placement of families threatened by becoming homeless, etc.); bringing in line the provisions on the registration of domicile with the relevant higher ranking legal norms.

Key points of analysis: The report establishes that:

- decrees disadvantageously differentiating tenants of low comfort social housing amount to direct discrimination based on financial status, and indirect discrimination on the ground of race (as most of such tenants in the region are of Roma origin);
- unlawful practices leading to a significant decrease in the number and proportion of available social housing violate fundamental rights.

While this latter subject is not approached from the perspective of discrimination, but from the point of view of other fundamental rights and constitutional values (right to a fair administrative procedure; legal certainty, etc.), it is still an important document that can serve as a point of reference for non-discrimination work in the marginalised and vulnerable Roma community of the region.

Internet link source:

http://www.ajbh.hu/documents/10180/2395518/miskolci_jelentes_20150527.pdf/49568f34-d431-4112-a64f-9e3a5e2babfd.