



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

### NEWS REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Equal Treatment Authority condemns the town of Miskolc for failure to adequately plan and prepare the winding up of segregated Roma neighbourhood
<b>Date:</b>	25 August 2015
<b>Expert:</b>	Kádár, András
<b>Update of flash report nr:</b>	1310-HU-53 and 58-HU-ND-Curia decision on municipal decree
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Whether the failure of a municipality to adequately plan and prepare the winding up of a segregated Roma neighbourhood (and thus creating the threat of homelessness among the concerned families) amounts to discrimination
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National Equality Body
<b>Field:</b>	Housing
<b>Applicable law:</b>	Articles 7-9 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities

### Content

**Case:** Miskolc is Hungary's third largest town with a significant Roma population. Many of the Roma families live in social housing provided low comfort segregated neighbourhoods, one of them is known as the "Numbered Streets". In 2008, the municipality of Miskolc adopted its Integrated Town Development Strategy for 2008-2013 (hereafter: IVS). The IVS contained a desegregation plan that envisaged the elimination of the segregated neighbourhoods, including the Numbered Streets. It set forth that the elimination of such neighbourhoods shall be accompanied by the preparation of mobilisation plans for the residents, and preceded by their placement in a way that would prevent the development of new segregated areas, decrease the geographical concentration of low status tenancies, and provide the tenants with at least semi-comfort placement. The IVS also stipulated that the existence of funds available for the above purposes is a precondition for the elimination of segregated areas. In September 2014, a new strategy replacing the IVS was adopted: the Integrated Settlement Development Strategy (hereafter: ITS). While its chapter on desegregation sets forth that in itself the physical elimination (demolition) of segregated areas does not solve the problem of people moving from one segregated area to another, it does not envisage any concrete conditions and steps, and with regard to the Numbered Streets it contains one single sentence: "due to the real estate development connected to the stadium, this segregated area shall be eliminated". (In May 2014, the local decree on social housing was amended to make financial compensation for the mutually agreed termination of social tenancies available for tenants of low comfort housing only if they agree to move out from Miskolc – for details, see Flash Report HU-58.)

In July 2014, the NGO Legal Defence Bureau for National and Ethnic Minorities (NEKI) filed an *actio popularis* complaint with the Equal Treatment Authority claiming that the municipality of Miskolc is systematically terminating the social housing tenancies of persons living in the Numbered Streets without taking any measures to provide them with housing and thus exposing them to the threat of homelessness. In their petition, they identified a number of ways in which the tenancies are terminated, including the following: (i) replacing indeterminate tenancies with fixed term tenancies whenever possible (e.g. when a tenant is moved to a new apartment); (ii) refusing to prolong fixed term tenancies after their expiry (even in the case of tenants who always pay their rent and utility fees); (iii) terminating tenancies even when the tenants who are overdue with payments are willing and able to pay the arrears. At the same time, despite its obligations under the laws of Hungary and its own IVS, the municipality has failed to (i) notify the tenants of the Numbered Streets beforehand in due course; (ii) involve the tenants in the decision making process in any way; (iii) prepare any impact assessment of the situation; (iv) take any steps to place those tenants who were forced to leave the tenancies because of the expiry of their contract. According to NEKI's estimation, as a result of these practices and failures, 40-45% of approximately 900, mostly Roma residents of the Numbered Streets have been exposed to the threat of homelessness, which amounts to discrimination on the basis of their financial situation, social status and ethnic origin.

The municipality basically put forth the following arguments to refute that discrimination has taken place: (i) Government Decree 1895/2013 (XII. 4.) on the Measures related to the Reconstruction of the Diósgyőr Stadium [stadium of the local football team] to be Implemented in the Framework of the National Stadium Development Program prescribes that a building site shall be created in a certain area of the Numbered Streets, and the municipality is under the obligation to implement the tasks prescribed by the Government Decree; (ii) the elimination of the segregated neighbourhoods (including the remaining areas of the Numbered Streets) is motivated by the will to eliminate living conditions that violate the dignity of those who live there and their right to a healthy environment; (iii) after the tenancy is terminated – either because it expires or because the municipality must terminate it due to the tenant's failure to pay the rent and utilities – there is no legal relationship between the municipality and the tenant anymore, so there is no obligation that can be imposed on the municipality with regard to these persons; (iv) the treatment is not based on ethnicity, financial or social status, it is based solely on the location of the concerned persons' tenancies, so no discrimination could have taken place; (v) the provisions of the IVS cannot be applied in the present case, as it was replaced by the ITS, and therefore lost its effect.

**Decision of the Authority:** The Authority established that the IVS can and shall be applied to the present case, as it was in force when the procedure was launched, and also because it contains general principles that also stem from the municipality's obligation under Article 13 of Act CLXXXIX of 2011 on Hungary's Municipalities, which expressly states that providing for and the rehabilitation of persons who become homeless on the territory of a given municipality and the prevention of homelessness are statutory tasks of municipalities. For the same reason, the municipality's argument that after the termination of the tenancy agreements it does not have obligations in relation to the former tenants is unfounded. The municipality's role in relation to housing is dual: it is the owner on the one hand, but has social responsibilities on the other, so by referring to its ownership and property rights, it cannot be exempted from its social duties.

The Authority went on to state that the municipality failed to take all those measures that should have according to the IVS preceded the elimination of a segregated neighbourhood, such as the Numbered Streets (preparation of a mobilisation plan, making an impact assessment, informing the tenants, etc.), and recalled that discrimination may be committed through omission according to the Supreme Court's

case law. Furthermore, the Authority qualified the municipality's omission as indirect discrimination, claiming that despite its apparent neutrality (being based on the location of the tenancies), it had a disproportionately negative effect of a group of persons distinguishable on the basis of their ethnicity and indigence.

After arriving at this conclusion, the Authority looked into whether the arguments provided by the municipality reasonably justify the municipality's action (or the lack thereof). The Authority concluded that while it may justify the termination of the concerned tenancies, the reconstruction of the stadium may not reasonably justify that it is done in a manner that exposes the concerned persons to the threat of homelessness or having to move to another segregated area. Similarly, the will to eliminate conditions that violate human dignity and the right to health may not justify the elimination of the neighbourhood without any preparation, impact assessment, or the involvement of those concerned tenants, because this would exactly lead to the conditions (or at least expose the tenants to the danger thereof) that it claims to try to rectify.

On this basis, in its decision of 15 July 2015 the Authority established that the municipality of Miskolc subjected the residents of the Numbered Streets to the threat of homelessness or having to move to other segregated areas, and by doing so, discriminated them on the basis of their social status, financial situation and Roma origin.

The Authority also obliged the municipality to put an end to the discriminative situation by developing an action plan (by 31 December 2015) on where within Miskolc, how and from what sources it can provide the tenants of the Numbered Streets with adequate housing. The Authority also called on the municipality to stop its ongoing discriminative practice until the action plan is prepared. Furthermore, the Authority obliged the municipality to prepare (by 30 September 2015) another action plan on how it will provide those with adequate housing who have already become homeless or are concerned by the revealed practices (e.g. their tenancy expires by 31 December and the municipality does not wish to prolong it or they are under eviction processes). Finally, the Authority imposed a fine of HUF 500,000 (EUR 1,670) on the municipality. The decision is open to judicial review.<sup>1</sup>

**Key points of analysis:** The most important point of the Authority's decision is that the municipality has obligations towards the tenants of social housing, including the obligation to terminate segregation and prevent homelessness. The failure to meet these obligations can amount to discrimination based on the features (including ethnicity) that residents of segregated, indigent neighbourhoods share.

**Internet link source:** <http://dev.neki.hu/ujabb-elmarasztalas-a-miskolci-szamoszott-utcak-ugyeben/> (NEKI's homepage. The decision will not be published before the time for requesting judicial review expires or the court rejects the municipality's request for judicial review.) Last accessed 18 August 2015.

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<sup>1</sup> See: <http://dev.neki.hu/ujabb-elmarasztalas-a-miskolci-szamoszott-utcak-ugyeben/> Last accessed 18 August 2015.