



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

### NEWS REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Court upholds Equal Treatment Authority's decision on failure to adequately plan and prepare the winding up of segregated Roma neighbourhood
<b>Date:</b>	4 April 2016
<b>Expert:</b>	Kádár, András
<b>Update of flash report nr:</b>	1310-HU-53, 58-HU-ND-Curia decision on municipal Decree and 114-HU-ND-2015
<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 court decision (decision no. 6.K.33.048/2015/17. of the Metropolitan Administrative and Labour Court of 25 January 2016)
<b>Field:</b>	Housing
<b>Applicable law:</b>	Articles 4, 7-9, 17/A, 20 and 26 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA)

### Content

**Case:** The municipality of Miskolc (North-East Hungary) started to systematically terminate the social housing tenancies of persons living in a highly segregated, low comfort part of the town, called the "Numbered Streets" without taking any measures to provide the tenants with alternative housing and thus exposing them to the threat of homelessness. In its decision of 15 July 2015 (no. EBH/67/22/2015) the Equal Treatment Authority (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.<sup>1</sup> The Authority also obliged the municipality to put an end to the discriminative situation by developing an action plan (by 31 December 2015) detailing 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 face a direct threat thereof because of the discriminative practices. Finally, the Authority imposed a fine of HUF 500,000 (EUR 1,670) on the municipality (to

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<sup>1</sup> See: <http://www.egyenlobanasmod.hu/article/view/ebh-67-2015-1>.

be paid to the state). The municipality requested a judicial review of the decision – among others – on the basis of the following arguments:

- the Authority does not have authorisation to examine a practice, only the particular contractual relationships between the municipality and individual tenants;
- the elimination of the segregated areas concerns all the tenants irrespective of their ethnicity, social status or financial situation, so no discrimination may arise in the case;
- the Authority is not authorised to oblige the municipality to take certain positive measures (such as the adoption of an action plan);
- the Authority did not specify the contents of the action plan, so the decision is inexecutable.

**Decision of the Court:** In its decision of 25 January 2016, the court rejected the municipality's request for review and upheld the Authority's decision in every aspect. The court recalled that under Article 4 of the ETA, public entities falling under the law's scope are obliged to respect the requirement of equal treatment in all their legal relationships, measures and procedures. The elimination of the segregated areas (as all practices) is a series of measures, therefore the Authority did have the authorisation to examine the municipality's actions related to the elimination of the neighbourhood and its aggregated effects.

Quoting the CJEU's judgment delivered in Case C-83/14 (CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia),<sup>2</sup> the court pointed out that for indirect discrimination to be established, "it is sufficient that, although using neutral criteria not based on the protected characteristic, it has the effect of placing particularly persons possessing that characteristic at a disadvantage". In the court's view the declared objective of the series of measures by the municipality – the realisation of urban planning and the exercise of the municipality's ownership rights – was – at least apparently – neutral, so it had to be established whether it had the effect of placing particularly persons possessing that characteristic at a disadvantage. The court's conclusion was that due to the composition of the population in the Numbered Streets, the municipality's actions clearly affected persons belonging to a number of protected groups (Roma, indigent, disadvantageous social status) at a disadvantage, and therefore the alleged background motives of the municipality were irrelevant.

The court pointed out that the municipality may not be exempted from its responsibility on the basis of its ownership rights, as in relation to tenants in social housing, it performs a dual function of the owner and the entity responsible for the social welfare of its residents. The parties (the municipality on the one hand and the tenants on the other) are in a situation of structural imbalance, which fully substantiates the restrictions of property rights necessitated by the principle of equal treatment.

The court also established that the municipality committed indirect discrimination through its omission to take measures to protect from homelessness those who were evicted from the housing in the Numbered Streets (despite – among others – that its own integrated town development strategy contained the obligation to do so).

The court emphasised that since almost all the tenants in the Numbered Streets fall into one (or more) of the three protected groups listed by the Authority, the comparator in this case is necessarily hypothetical.

Finally, the court pointed out that the statutory possibility of obliging the discriminator to terminate the injurious situation, when the violation manifests itself in the form of an

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<sup>2</sup> Case C-83/14, Judgment of the Court (Grand Chamber) of 16 July 2015 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia.

omission would be devoid of any meaning if the Authority could not oblige the violator to take specific action. Therefore, the Authority was authorised to oblige the municipality to draft action plans. At the same time, taking into consideration the specific knowledge the municipality has, and also the municipality's scope of authority, it was justified that the Authority did not provide a detailed action plan itself, but only set the goals and trusted the municipality with coming up with the details.

**Key points of analysis:** The court has established very important principles with its judgement. The most important ones are:

- the application of the hypothetical comparator to a situation where practically all the residents of the neighbourhood concerned by the disadvantageous practice fall into the protected categories, and therefore, the comparison is problematic, and
- the approval of the Authority's approach of prescribing the preparation of an action plan to remedy the violation.

**Internet link source:** <http://dev.neki.hu/miskolci-szamoszott-utcak-mar-minden-letezo-forumon-elmarasztaltak-a-magyar-hatosagok-miskolc-onkormanyzatat/> last accessed on 21 March 2016.