



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

### NEWS REPORT

<b>Country:</b>	France
<b>Title:</b>	Court of cassation, Criminal Chamber, 11 July 2017, ° 16-82426
<b>Date:</b>	13 December 2017
<b>Expert:</b>	Sophie Latraverse
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Criminal Liability of Social Housing corporations' collegial commissions of attribution
<b>Ground of discrimination:</b>	Racial/ethnic origin
<b>Source:</b>	National court decision
<b>Field:</b>	Social housing
<b>Applicable law:</b>	Article 225-1 and 225-2 of the Penal Code, Article 441-2 of the Code of Construction and Housing

### **Content**

**Case:** The Commission of attribution of the social housing corporation Logirep, dismissed Mr. X's demand for social housing. It explicitly took in consideration the fact that given the number of tenants of African or Caribbean origin already occupying the building where was situated the vacant apartment, it must in order to promote social mix, as required by law, refuse additional black candidates.

**Decision of the Court:** The Criminal Chamber of the Court of cassation, for the first time, decided that a decision taken by an attribution commission composed of persons external to the social housing corporation itself, on the ground of meeting the legal requirement of ensuring social mix in social housing attributions, could engage the liability of the social housing corporation. The social housing corporation was legally responsible for the conditions in which the commission of attribution proceeded to the selection of tenants.

The Court stated that, by designating the commission of attribution as the structure legally attributing social housing, Article 441-2 of the Code of Construction and Housing confirms that these commissions constitute an integrated structure of the social housing corporation and can thereby engage its penal liability under article 225-2 of the Penal Code.

In addition, the court, for the first time, concluded that taking in consideration racial or ethnic origin of an applicant in order to determine whether the social mix requirement was met, constituted discrimination in access to goods and services, as meant by the Criminal Code.

As a result of this decision, the case will be sent back to the Court of Appeal where the latter will fix the fine imposed to the social housing corporation and determine damages to be paid to the victim and to the NGO that appeared as a civil party to the case.

**Key points of analysis:** This case was initiated by SOS Racism, an anti-racist NGO that has for many years pursued the criminal liability of social housing corporations for their decisions using the criteria of social mix to implement ethnic quotas, arguing that it constituted criminal discrimination in access to goods and services on the ground of origin.

Until now, many lower courts refused to conclude to the penal liability of commissions of attribution on the ground that their decisions were the result of secret votes taken by independent personalities, the commission being essentially considered as the accumulation of different institutional positions that did not meet the requirements to constitute the criminal intention of a legal person.

This case intervenes in a context where the requirement of social mix has been known to be the euphemism for managing ethnic quotas in social housing.

By explicitly condemning such reasoning, this decision will necessarily foster change in practices relating to attribution of social housing.

**Internet link source:**

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000035192594&fastReqId=1856731927&fastPos=1>.