

MEMORANDUM

On the lawfulness under European and international law of amendment to Miskolc social housing law

Local government decree contravenes the Race Equality Directive

Miskolc Local Government decree No. 25/2006.(VII.12.) on social housing was amended in May 2014, introducing a limitation on accessing financial compensation for social housing for those who live in “low comfort” social housing, housing that is occupied almost exclusively by Roma.¹

The decree now stipulates that the authorities can only offer compensation to low comfort social housing tenants in order to secure a mutually-agreed termination of the tenancy, if they offer those tenants monetary compensation in the amount of exactly HUF 2 million (EURO 6.700) and if the tenants undertake to comply with the following cumulative obligations:

1. They purchase a property AND
2. The property is purchased **outside of the territory of Miskolc**, AND
3. 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.

The legislation does not foresee any other form of monetary compensation for low comfort tenants in case of the termination of tenancy based on mutual agreement. However, the legislation provides for other social-housing tenants to be offered compensation to relocate,

¹ Amendment proposal to the Miskolc Local Government decree No. 25/2006.(VII.12.) on social housing, available in Hungarian at <http://todo.miskolc.hu/hcr/6phdoc/3330.pdf>

without requiring those other tenants – among whom the Roma are underrepresented – to purchase any property (without further conditions, in or outside Miskolc). It therefore introduces different treatment of low comfort as compared to ordinary social-housing tenants, and if implemented, would *de facto* allow the authority to ‘expel’ from the territory of Miskolc tenants living in low comfort social housing who are almost exclusively Roma. The (Roma) people concerned would no longer be able to access social services in Miskolc due to the change of their address. 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 (Act No. III of 1993 on social services, § 5 and Act No. 140 of 2004 on Public Administration, § 21). They will be limited to lower quality services in their new homes, because the money they receive as compensation can buy them property only in impoverished villages or towns. Given that the amendment was adopted in order to demolish slums in Miskolc, the low comfort tenants will not be able to remain in the ghettoized low comfort housing in which they now live. Moreover, there is no possibility of them integrating into areas of Miskolc where non-Roma live.

This amendment constitutes (i) covert direct discrimination based on race and ethnic origin, and/or (ii) alternatively indirect discrimination based on race or ethnic origin in violation of EU and international law.

1. European Union Law

Race Equality Directive

Under EU law, the Race Equality Directive (Council Directive 2000/43/EC, RED) explicitly prohibits discrimination in the access to and supply of housing available to the public on grounds of racial and ethnic origin.

Under Article 3 (1)(h) the Directive explicitly states that it applies to access to and supply of goods and services which are available to the public, including housing. Under indents (e) and (f) social protection and social advantages are also covered. Social housing is clearly covered. Under the RED the concept of discrimination extends to direct and indirect discrimination, harassment and instruction to discriminate. Article 3 of the RED defines its material scope, and it stipulates that the directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to inter alia social protection, social advantages and access to public services, including housing.

The RED has been transposed into Hungarian law, and discrimination based on ethnicity is banned under domestic legislation, including the fields of housing and social protection (Articles 24,25,26 of the Equal Treatment Act No. 125 of 2003, ETA). Under the RED direct discrimination occurs where one person is treated less favorably than another is, has been or would be [...] in a comparable situation on grounds of racial or ethnic origin. Under the RED and domestic law, direct race or ethnicity-based discrimination in access to goods and services

including housing, as well as social protection is banned and cannot be justified, other than for the purposes of positive action (Article 5 RED and Article 7(3) ETA).

Under the RED and domestic law, indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. (Article 2.2.b. RED)

The amended decree in question is clearly in violation of the RED, constituting 1. covert direct discrimination; and/or alternatively 2. indirect discrimination based on race and ethnic origin.

The amendments were adopted as part of local government and mayoral policies which, alongside significant hate speech from the mayor have targeted the local Roma population over the last four years. Under the RED, harassment is defined as a form of discrimination and harassment in housing and social protection is prohibited. Under Article 2.3. of the RED it occurs when ‘an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.’ Domestic anti-discrimination law defines harassment in line with the RED adding more protective grounds and it does not require a comparator (Article 10(1) ETA).

In Article (4) of its preamble, the RED also stipulates that ‘It is also important, in the context of the access to and provision of goods and services, **to respect the protection of private and family life** and transactions carried out in this context.’

2. Relevant provisions of international law

The right to equality before law and the right to non-discrimination is not only protected under EU law, but is a universal right that is protected by several international legal documents as referenced in the preamble of the RED. These include, *inter alia*, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), both of which Hungary has signed and ratified.

With regards to the prohibition of racial discrimination in accessing housing social security and social services, ICERD stipulates that States Parties shall “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [...] **the right to housing** (5 (iii)) and the right to [...] **social security and social services** (5 (iv)).”

While there is no specific provision about the right to housing under the ECHR, the European Court of Human Rights (ECtHR) has already established that the non-discrimination principle

shall be observed with regards to aspects of the right to housing falling under the right to private and family life (Article 8). Article 8 stipulates that “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

In the case of *Yordanova and Others v Bulgaria* (judgment of 24 September 2012) that concerned the planned collective eviction of a Romani community from land they had for decades occupied, the Court noted that it was “undisputed that Article 14 applies in the present case, seeing that discrimination is alleged in relation to the applicants’ right to respect for their homes and private life and, therefore, in respect of issues falling within the ambit of Article 8 [...]”.

3. Facts of the case

3.1. *Evidence of harassment in the present case*

The impugned decree shall be examined in the context of earlier instances of public speeches and policies conducted or ordered by representatives of the local government, including systematic inspections targeting the Romani community in Miskolc constitute harassment against the Roma population in Miskolc in relation to their social protection, social advantages and access to services which are available to the public, including housing (RED, Article 3 (e), (f), (h) respectively).

3.1.1. *Racist speech by local mayor targeting Roma*

In February 2013 the local mayor stated that he wanted to clear Miskolc from ‘anti-social’, deviant Roma who earlier illegally benefited from the Nest Program (Fészekrakó program) and from those living in social housing and owing rent and utility charges. The local authorities therefore started to evacuate these families, and by February 2013 fifty out of the 273 impugned flats had been evacuated.²

The Nest Program was launched in 2005 with the aim of providing support for young socially and economically disadvantaged families in purchasing property. Many Roma, especially in Miskolc participated in the program. However, later on the authorities charged about one fourth of the beneficiaries for fraud while accessing the monetary support. Local businessmen, lawyers and other stakeholders illegally – mostly by falsifying documents – enticed and then assisted families to claim contributions from the fund. Many Roma fell victims of such fraud. The local

² The media report made it clear that Roma involved in the Nest Program were targeted, see e.g. http://alfahir.hu/avas_menniuk_kell_a_feszekrako_ciganyoknak-20130215

authorities of Miskolc started to evacuate these families by targeting the beneficiaries of the Nest Program. The public statements made about the Nest Program make it clear that `fészekrakó` (the nesting) is used in Miskolc as a proxy for Roma.

Systematic inspections of Roma homes and family life

Between 1 April 2013 and 23 January 2014, the Miskolc Local Government Law Enforcement Section (together with various authorities, including social services) conducted 45 inspections in parts of the Avas neighbourhood of Miskolc populated by Roma affected by the Nest Program. During the 45 inspections 10-15 representatives of various local authorities entered the apartments, inspected the rooms, bathrooms and toilets and adopted around 580 measures. According to the Miskolc Local Government the purpose of the inspections was to observe and protect the property of the local government (especially with regards to social housing), to review whether inhabitants are registered at their addresses, whether they are collecting rubbish according to the local rules and maintaining order around the house and whether rules for keeping pets are being respected. It is to be noted that the law enforcement forces established by the local government for the purpose of policing the Roma affected by the Nest Program has no competence to examine whether the inhabitants register their addresses. The inspections were clearly targeting apartments rented or owned by Roma. According to the inhabitants, although fines were imposed only in few cases, the inspections were frequent and very humiliating, so that the inhabitants felt harassed and intimidated when representatives of the local government entered into private homes and checked the families. No such intervention had been ordered or carried out in any other neighbourhood of Miskolc, nor in parts of Avas inhabited by non-Roma. A complaint to the Ombudsman's office had been submitted by two Hungarian NGOs claiming, amongst others, that the practice of inspections amounts to discrimination and violates the right not to be subjected to inhuman and degrading treatment and the right to private and family life.³ The Ombudsman has launched an investigation which is still pending.

3.1.2. Restricted access to compensation for low comfort social housing

In the impugned decree Miskolc clearly targets neighbourhoods stricken by poverty (nyomortelep), where the Roma are overrepresented. On the other hand, as transpires from Miskolc's Equal Opportunities Program 2013-2018 (pp. 130-131, 137-138, 149-156. and 211-212.), the city is aware of the overrepresentation of its Romani inhabitants in poor neighbourhoods and starting from 2014, led by the mayor has pledged to provide various services to this group of people. However, in his public and media presentations the mayor has not mentioned these plans and focused on scapegoating the target group instead.

Although the decree does not explicitly target the Roma, bearing in mind the antecedents and public statements made by the mayor and other city officials, it adds to an environment that is

³ Submission by the Hungarian Civil Liberties Union (HCLU) and Legal Defense Bureau for National and Ethnic Minorities (NEKI) to the Ombudsman; Available at: <http://tasz.hu/files/tasz/imce/ombudsmani-beadvany-miskolci-razziak.pdf>

offensive, degrading and humiliating. It suggests that Roma are unwanted inhabitants of Miskolc whose segregated social housing should be demolished and who should leave Miskolc altogether. The purpose of the measure is the effective expulsion from the city of the Roma living in poor neighbourhoods. Rights groups have interviewed residents and found that while non-Roma are not worried, Roma feel threatened by the measure and ensuing forced evictions.

3.2. *Direct discrimination in this case*

As stipulated above the RED provides protection from direct discrimination on the ground of race and ethnic origin. Domestic anti-discrimination law is broader: it covers an open-ended list of grounds for discrimination, including social, financial status and any ‘other’ status that is also covered by the Constitution and the ECHR.

Under RED and domestic law, in order to make out direct discrimination one needs to establish the (i) protected ground, (ii) less favourable treatment, and (iii) a comparator.

3.2.1. The comparator

Since the impugned decree sets a new condition concerning low comfort social housing, which it does not extend to any other category, in the present case, tenants living in low comfort social housing shall be compared to those who live in full comfort social housing. It is to be noted that almost exclusively Roma live in low comfort social housing, while non-Roma are overrepresented in full comfort social housing.

The areas of Miskolc where low comfort social houses can be found are known as poverty stricken Roma neighborhoods. The vast majority of the inhabitants are Roma, and few Roma live in other areas, in full comfort social housing. Consequently, in Miskolc “low comfort social tenants” and people living in poverty stricken neighbourhoods are categories used as proxies for Roma. Therefore in the present case the comparison has to be made between Roma and non Roma tenants. According to rights groups who have interviewed residents, only Roma feel threatened by the measure, while non Roma are confident that the planned measure will not affect them.

3.2.2. The protected ground

In the present case, the criterion of low comfort tenants is not apparently neutral vis-à-vis race and Romani ethnic origin. The protected ground of race and ethnic origin has for years deliberately been and remains to be concealed in the present case, albeit from the antecedents it is commonly known that the amendment of the decree is targeted at the Roma living in poverty stricken neighbourhoods. However, Miskolc is aware that these neighbourhoods are almost exclusively inhabited by Roma, as acknowledged in its Equal Opportunities Program 2013-2018. Local officials, including the mayor have for years used proxies to describe the Roma population they claim is unwanted in their city. Such proxies include ‘the nesting’ (fészekrakó), ‘late with

paying public utilities and rent' (hátralékos) and 'those living in poverty stricken neighbourhoods' (nyomortelepek lakói). In general, poverty has been ethnicised in the country and especially 'self-inflicted poverty' (önhibából szegény) is equated with being of Romani ethnic origin.⁴

The unveiling of the concealed intention to target the Roma and ethnic origin as a protected ground, therefore, consists of two steps, analogous to those applied in *Maruko* and *Römer*, while taking into account the way in which a proxy is formulated with the intent to mask conceal direct discrimination s unintentional indirect discrimination. The latter has been demonstrated in the Grand Chamber judgment of the European Court of Human Rights in *E.B. v France*. First, it must be shown that legislation arbitrarily treats one group less favourably than another group when the two groups are in a comparable situation. Second, it must be shown that members of the group less favourably treated are constituted solely by members of a protected ground. In *Maruko* (C-267/06 § 72) the Court of Justice of the European Union found direct discrimination where pension laws treated surviving married partners more favourably than surviving registered partners, when marriage was open to heterosexuals only. A similar decision was reached in *Römer* (C-147/08, § 51). In *E.B. v France* (judgment of 22. January 2008, §73) the Grand Chamber went further in unpacking the second tier of the test, when it examined whether the seemingly arbitrary criterion used in denying the adoption of a child by a lesbian couple had in effect served to conceal less favourable treatment on a protected ground. The arbitrary criterion, i.e. the 'lack of a paternal referent in the household' did not solely – but almost exclusively - denote lesbian couples, while adequately describing sexual orientation as a protected ground without once mentioning it. In the present case, it is arbitrary for Miskolc to impose compulsory resettling outside of the city as a condition to compensation in the case of low comfort social-housing tenants while having no restriction for full amenities tenants. The groups with different 'amenities level' are similarly situated in terms of rights and obligations. However, the condition set for the former group in effect leads to *de facto* expulsion from the city.

3.2.3. The less favourable treatment

The amended decree subjects those living in low comfort social housing to less favourable treatment by providing power to the local government to offer them compensation as long as they **relocate**: whereas the local government can offer ordinary social-housing tenants no-strings-attached compensation, i.e. they are free to use the compensation as they wish, including staying in the city. Compensation is due to low comfort residents if they agree to use the money to purchase property outside of Miskolc, in line with the conditions set out above. The public statements made by local officials, including the mayor in relation to the amendment and

⁴ According to statistical information 70% of Roma live in poverty, See: National Social Inclusion Strategy, Annex I., available at: http://ec.europa.eu/justice/discrimination/files/roma_hu_strategy_annex1_en.pdf [roma_hu_strategy_annex1_hu.pdf](http://ec.europa.eu/justice/discrimination/files/roma_hu_strategy_annex1_hu.pdf), page 14.

previous measures taken in the field of housing and social protection make it crystal clear that they are targeted at the Roma and not members of the majority ethnic group.

3.3. *Indirect discrimination in this case*

In any event, the case would amount to indirect discrimination, since almost exclusively Roma live in the low comfort social housing, therefore Roma are disproportionately affected by the way the local government restricts the freedom of movement of those who settle for compensation.

Under the RED, indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.⁵

The justification that the local government offered in the amendment is “to eradicate slums and facilitate city rehabilitation”. The Miskolc Equal Opportunities Program 2013-2018 provides for the actions that ought to be taken in order to achieve that aim in accordance with the obligation to ensure equal treatment on the basis of Romani ethnic origin.⁶ Why then, has the local government adopted an amendment to the local decree that is in stark contrast with the objectives enlisted in the Program? The discrepancies demonstrate that the means chosen to achieve the aim are disproportionate and unnecessary. According to the Program, in order to reach the aim, the local government should ensure some sort of social housing: to prevent evictions the local government shall provide housing in crisis homes for families. The local government should open calls for social housing, ensure mobility in housing in accordance with societal needs, renovate and modernize social housing, provide financial support for housing, cooperate with different stakeholders, and maintain a crisis center. The mayor (together with the Equal Treatment Team) is personally responsible for the implementation of the Program.

In contradiction with the Program, the amendment seeks to resettle the Roma outside of Miskolc by offering them financial compensation as long as they move out of the city. There can be no objective justification for the local government not to provide low comfort tenants compensation they could use as they wish (including, for example, to buy a flat in Miskolc) as is the case with full comfort tenants. Such a discriminatory measure, that disproportionately affects Roma tenants, cannot serve as an objective justification, because it is neither proportionate, nor necessary. Moreover, the measure chosen is in clear violation of the right to freedom to choose one’s residence and the right to private and family life.

3.3.1. *The freedom to choose one’s residence*

⁵ Article 2(2)b of the RED

⁶ Miskolc Equal Opportunities Program 2013-2018, available at:
http://www.miskolc.hu/sites/default/files/dokumentumok/csatoImanyok/hep_miskolc.pdf

In order to eliminate slums, the local government would limit the freedom of the affected Roma tenants to choose their residence. However, under the ECHR this is a clear violation of the right to freedom to choose one's residence.

Article 2 Protocol No 4. of the ECHR stipulates that:

(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

[...]

(3) No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

(4) The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

The right to freedom of movement under Article 2 of Protocol No 4 incorporates the liberty of movement within a Member State and the freedom to choose a residence within that state for those who are lawfully present in the State, including ethnic Romani Hungarian citizens.

3.3.1.1. Application of Article 2 Protocol 4 to the present case

The present case clearly falls under the scope of Article 2 Protocol 4, as Roma living in low comfort social housing in Miskolc are Hungarian citizens, therefore they are legally present in the country and as such are entitled to freely move and choose their residence in Hungary.

3.3.1.2. Existence of interference

It is also clear that there has been an interference with their right to choose their place of residence when this right has been restricted by the decree of the local government that provides access to monetary compensation to low comfort tenants as long as they move outside of Miskolc. By this measure, the local government interferes with the right to choose the residence freely, as it does not allow Roma to purchase property from the compensation within the territory of Miskolc and move from the social housing to other housing in the town. The measure is arbitrary. Changing the place of residence would result in changing the address on the address card (domiciliation) too, which would mean that they can no longer access social services provided by Miskolc and the municipality of Miskolc would no longer be responsible to provide services to them.

3.3.1.3. Whether the interference is in accordance with the law

The restriction was introduced as an amendment of a local government decree, which is in contravention of equal treatment (Article XV. (1), (2)) and the freedom of movement and to choose one's residence (Article XXVII. (1)). These are fundamental rights that are set out in the Constitution of Hungary. Local governments do not have the right to restrict fundamental rights that are protected by the Constitution. The Constitution of Hungary stipulates that fundamental rights can only be restricted by acts of parliament and only if the restriction serves to ensure the protection of another fundamental right and if such a restriction is necessary and proportionate (Fundamental Law of Hungary, Article I. (3).) Therefore, no local government can impose such discriminatory restrictions on fundamental rights guaranteed by the Constitution, nor can it interfere with citizens' right to choose their residence freely regardless of the aim pursued. Consequently, the interference is not in accordance with the law.

3.3.1.4. Whether the interference is justified

The present case is analogous to that of *Tatishvili v. Russia*, (judgment of 9 July 2007) in which the European Court of Human Rights (ECtHR) found Russia in violation of Article 2 of Protocol No 4 of the Convention for restricting the applicant's freedom to choose her residence by not registering her place of residence because she was a former USSR citizen in Russia. This refusal prevented her from exercising many social rights, including access to medical assistance, social security, pension, the right to possess property and to marry.

In the present case, the interference with the right to choose residence cannot be justified. The local government clearly targets poor neighborhoods with the impugned measure. It is well aware that low comfort social housing is occupied almost exclusively by Roma and that Roma are overrepresented in the poor neighborhoods. The aim sought to be realized is the demolition of poor neighbourhoods, but the result would be the resettlement of Roma outside of Miskolc. This resettlement would further curtail their access to social services, excluding them from services available in Miskolc, including access to social services, medical assistance, social housing, etc. In lieu of further measures tailored for the needs of the inhabitants in accordance with the Equal Opportunities Program, such a restriction cannot be proportionate with the aim of demolishing poor neighbourhoods.

In view of the above said the interference is not in accordance with the law and cannot pursue a legitimate aim that is corresponding to a pressing social need and would therefore be necessary in a democratic society.

3.3.3.1. Right to private and family life and housing

The impugned measure not only violates the freedom to choose one's residence under Article 2 of protocol 4 to the Convention but it also falls under the scope of Article 8, and constitutes a violation of the right to private and family life.

Article 8 of the ECHR stipulates that:

“1. Everyone has the right to respect for his private and family life, his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

3.3.3.2 Application of Article 8 to the present case and the existence of an interference

It is undisputed that the relocation of low comfort Roma tenants would violate their right to private and family life protected under Article 8, as a deprivation of one’s home is a most extreme form of interference with this right. In the present case families living in low comfort social housing will need to leave their homes as well as their community, in which they have been living for several years – most for 10-15 years. Not only they will need to leave their homes but they will have to leave the territory of Miskolc. As a consequence, their community life and previously established relationships would be in danger. Community nets are of paramount importance for the Roma who experience extreme levels of social and economic exclusion, and are already in a vulnerable situation.

3.3.3.3 Whether the interference is in accordance with the law

The Hungarian Constitution also protects the right to private and family life under Article VI. (1). As explained above, such a fundamental right can only be restricted if another fundamental right is at stake and only by an act of parliament, inasmuch the restriction is necessary in a democratic society and proportionate to the aim sought. Local governments therefore do not have the power to restrict fundamental rights. Consequently, the impugned decree is clearly in violation of domestic law.

3.3.3.4. Whether the interference is justified

In order to restrict the right to private and family life, domestic authorities need to ensure that the interference pursues a legitimate aim, that is necessary in a democratic society and is proportionate to the aim sought.

The ECtHR in the case of *Yordanova and Others v Bulgaria*, in which a Romani community was under threat of removal from their homes for reasons of urban and rural planning, have already established the principles that need to be considered in relation to the proportionality of a displacement.

The ECHR emphasized in particular that in principle States enjoy a wide margin of appreciation when applying social and economic policies, including as regards to housing (§ 118 (i)). However, the Court noted that the margin of appreciation will be narrower where the right at stake is crucial to the individual’s effective enjoyment of intimate or key rights. The Court said:

“Since Article 8 concerns rights of central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community, where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the **context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant.**” Furthermore, the Court emphasized that “Article 8 (2) raises a **question of procedure as well of substance.**” (§ 118. (iii)) In this respect the fairness of the decision making process leading to the measures of interference and the due respect to the interests safeguarded by Article 8 are at scrutiny.

Whereas unlike in *Yordanova* in the present case Roma would receive minimal financial compensation once leaving social housing, their access to social services would be limited and they would run the risk of becoming homeless. The interference with their right protected under Article 8 is thus unjustified.

The Court has also stipulated that the “necessary in a democratic society” requirement under Article 8 (2) raises a question of substance. Therefore it has a particular importance, that the decision making process has failed to take into account considerations laid out in the Equal Opportunities Program that safeguards the interests under Article 8 of the Roma affected by the decree. The targeting of low comfort tenants and the obligation on them to move out from Miskolc is clearly in contravention with the rights to respect private and family life. The fact that such a condition is only attached to low comfort social housing tenants (i.e. Roma) is discriminatory therefore clearly in contravention with the principle of fairness.

The Court has also explained in *Yordanova and Others* that “the loss of one’s home is a most extreme form of interference with the right under Article 8, to respect for one’s home, any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8, notwithstanding that, under domestic law, he has no right of occupation.” In the present case, the amendment of the law was introduced by the local government, whose representatives have expressed on several occasions that Roma inhabitants in Miskolc are not wanted. Moreover, low comfort tenants are not offered alternative social housing in Miskolc or any other accommodation that would enable them to stay in the city. Such a measure cannot be proportionate and cater for a pressing social need, especially considering the already vulnerable position of the group targeted.

Impoverished Roma living in low comfort social housing have no means to challenge such an agreement. Nonetheless such a procedure would last long and would not remedy the interference with their right to private and family life. It is also to be noted that the local government has not designed measures to ensure that those who do not accept the minimal compensation will not become homeless. While the local government has acknowledged that there is a need for

eliminating slums, it has so far failed to draw up a comprehensive plan for the rehousing of the inhabitants of such slums in Miskolc.

In relation to the right to housing in the case of *Yordanova* the ECtHR has recognized that when it comes to certain social groups in need of assistance **”a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of Article 14”** (see *Yordanova*, §129;;). The Court further emphasized that “in the context of Article 8, in cases such as the present one, the applicants’ specificity as a social group and their needs must be one of the relevant factors in the proportionality assessment that the national authorities are under a duty to undertake.” (*Yordanova*, § 129). Indeed, they have performed this test in the Miskolc Equal Opportunities Program 2013-2018, but later on took a course of action that contravenes the Program.

In the present case, in light of the Miskolc Equal Opportunities Program 2013-2018 that provides for the actions that ought to be undertaken in order to ensure equal treatment on the basis of Romani ethnic origin in relation to housing, the local government shall implement this Program instead of adopting a decree that aims at resettling Roma outside of Miskolc, thereby violating their fundamental rights to non-discrimination, freedom to choose their residence and their right to private and family life protected under the Constitution and the ECHR.