

## **Questionnaire**

### **Access to Justice for the Right to Housing**

Regarding the fact that the right to housing is not enshrined in the Hungarian Fundamental Law as a legally justiciable right, this right cannot directly be subject to hearings. Section XXII, subsection (1) of the Fundamental Law declares that “*Hungary shall strive to ensure decent housing conditions and access to public services for everyone.*” Consequently, this is not a clear obligation but only a directive principle of state policy and citizens do not have legal recourse to ensure the fulfilment of their constitutional rights.

The provisions on lease agreements are regulated by the Chapter XLIV of the Hungarian Civil Code. According to the residential lease agreements, there are special provisions relating to the rights and obligations of the landlord and the tenant without any aspects of the right to housing. Special provisions concerning this issue are regulated by the Act LXXVIII of 1993 on certain rules of lease and disposal of dwellings and premises, with specific arrangements relating to the local governments. As a whole, the Act has not imposed an obligation on the local governments to guarantee any accommodation for the citizens facing forced eviction even if this eviction is the decision of the local authorities. Several tenants are being threatened with eviction just because they cannot afford the rents increased by the local municipalities. Moreover, the residential lease agreements are often terminated following a payment delay of a negligible amount.

A typical case for us is where our client, who lives in a dwelling rented from the local municipality, has had a small amount of arrears. Any delay in payment following the written notification of the municipality leads to an enforcement proceeding based on breach of contract. According to the regulation of the enforcement proceedings, the court has to oblige the family to leave the dwelling, without any discretion. Providing an instalment payment facility or maintaining debt settlement programs are not a compulsory task of the municipalities, therefore these families lose their housing.

The relevant regulatory framework does not include the prohibition of eviction without appropriate alternative housing, even where a family with children is concerned. In this case, children will be separated from their parents and placed in a residential care institution. This practice is manifestly contrary to the Covenant on the Rights of the Child.

From 2015, the government implemented a new social benefits system. According to the new legislation, it is fully the responsibility and the discretion of the municipalities to provide housing benefit for those in need, without the direct financial support of the central state budget. According to section 45 of the Act III of 1993 on social administration and social services (Social Act), local governments can provide aid in the case of circumstances which they consider to be subject to support and which they regulate by local decree. It is at the full discretion of local governments to decide on the conditions and how much support can be provided. The only obligation imposed by the Social Act is that the board of representatives grants exceptional municipal aid to those in extreme situation endangering their means of subsistence. The determination of this situation and the conditions are also at the discretion of local governments, as well as the amount of benefit provided. Consequently, the regulatory framework does not guarantee even the support itself. The Hungarian Constitutional Court held in a case relating to this issue that the lack of regular social assistance provided by the local government meets the constitutional requirements.

Allocation of resources to the local governments does not depend on the number of people in need, and the local decrees relating to housing supports vary across the country. According to Article 37 paragraph (4) of the Fundamental Law, as long as the state debt exceeds half of the GDP, the Constitutional Court may not review the Acts on central budget for conformity with the Fundamental Law except in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, and to conscience and religion, or the rights related to Hungarian citizenship. It means that in case of the violation of other fundamental rights the Constitutional Court may not examine the challenged norm and has to reject those petitions for lack of competence. This restriction excludes constitutional examination of budget allocation – inter alia - on the grounds of discrimination.

The abovementioned regulation has been criticised also by the Venice Commission, which considered the restriction of the Constitutional Court’s competence running counter to the obvious aim of the constitutional legislature to enhance the protection of fundamental rights.

At the same time, the housing costs have increased significantly, and the most vulnerable groups cannot afford to pay the rent or utility bills. Several local governments have no sufficient resources for tackling poverty, housing deprivation and the complex social problems of vulnerable groups.

Programs aiming the promotion of constructing or purchasing residential housing have been designed in such a way that only people with children have eligibility for the support and entitlement is linked to the employment status. For this reason, the support is not available for the most disadvantaged (jobless households), and regulation discriminates against those who cannot or do not want to have children.

We cannot see any progression in realization of the right to housing. On the contrary, the criminalization of homelessness is an obvious retrogression while it does not resolve the social problems thus this cannot be considered as a reasonable measure. The latest amendment of the Fundamental Law prohibits habitual residence in public places, and on 15<sup>th</sup> October this year, the new provisions of the Act on Minor Offences entered into force. According to the new regulation, living in a public place is illegal, homelessness is punishable by community service or by confinement.

The abolishment of central regulation of the housing benefits is also not reasonable since it imposes the burden of tackling housing deprivation on the local authorities without obligation to do so, and therefore it broadens inequalities between citizens on regional grounds.

The social security system as a whole privileges those who have job and taxable income while the support of most disadvantaged groups does not meet with their minimum living standard.

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