Metropolitan Court of Budapest

Case number: 105.K.701.748/2021/8.

Plaintiff: Plaintiff (plaintiff's address)

Representative of the plaintiff: Dr. Károly Czifra, lawyer

(address of the representative of the plaintiff.)

Defendant: Commissioner for Fundamental Rights

(1055 Budapest, Falk Miksa street 9-11.)

Representative of the defendant: dr. Judit Varga, bar legal advisor

Subject of the case: administrative dispute on equal opportunities (EBH/HJF/146/17/2020.)

Judgment

The court annuls the defendant's decision EBH/HJF/146/17/2020.

Orders the defendant to pay to the plaintiff within 15 days HUF 100,000 (one hundred thousand) in legal costs.

The action fee remains the responsibility of the State.

The judgment is not subject to appeal.

Reasoning

The facts of the case

[1] The Equal Treatment Authority (the predecessor of the defendant, hereinafter together with the defendant: the defendant), on the basis of a notification and a previous case, has become aware that the plaintiff has a high proportion of Roma population in Settlement 1, which is located in the administrative territory of the plaintiff, and that there are circumstances there as a result of which no taxis go out on call, insurance companies do not take out housing insurance, banks do not grant housing loans, regular garbage collection is obstructed, and there are stray dogs in the settlement, which also frequently attack the plaintiff. For all these reasons, on 20 February 2020, it opened ex officio proceedings against the plaintiff, inviting him to answer the questions detailed in the notification EBH/HJF/146/2/2020. The substance of the plaintiff's statement, received on 20 March 2020, is set out on pages 2 to 5 of the decision which is the subject of the present dispute, and the plaintiff replied to the repeated official invitation on 28 April 2020 as detailed on pages 5 to 6 of the decision. The defendant heard the person who had been a resident of Nyíregyháza for 22 years and had visited Settlement 1 on several occasions at a hearing held on 11 June 2020. The statement of the witness was detailed on pages 7-8 of the decision, to which the plaintiff made comments, detailing the traffic conditions affecting Settlement 1, the number of residents of the settlement, the housing situation, highlighting the results of the ongoing project in the latter respect; he also referred to Resolution No 9/2020 (II.6.) adopted by the General Assembly.

[2] Overall, the plaintiff stated that for years it has been making strenuous efforts to improve the development of Site 1 and to improve the living conditions of the residents by concentrating professional and financial resources. It stressed that the results are less measurable in the short term and that long-term results can only be seen years or decades later. During the re-statement, the mayor of the plaintiff argued that the Integrated Urban Development Strategy (IVS), the Integrated Settlement Strategy (ITS) and other programmes are essentially strategic plans, basically setting out objectives and directions. In response to a new call on the number of people moving to Settlement 1, he made a statement on another segregation, from Settlement 2 to Settlement 1. The defendant has taken into account in its procedure the number of people living in Settlement 2, the mayor's statements on rental housing and the public procurement procedure for housing.

Decision of the defendant

[3] By decision EBH/HJF/146/17/2020, the defendant found that the plaintiff had violated the requirement of equal treatment against persons living in Settlement 1 on the basis of their

intersectional protected characteristics (Roma ethnicity, social origin and property status) and had violated the provisions of the Equal Treatment and Promotion of Equal Opportunities Act 2003. CXXV of 2003 (Equal Treatment and Equal Opportunities Act). It ordered the cessation of the unlawful situation and ordered the plaintiff to draw up a programme and a feasibility study by 31 March 2021, in which it should explain the steps it intends to take to eliminate the segregation status of Settlement 1. In this context, it called on the plaintiff to submit the programme and the study to the authority within 5 days of their completion and, if necessary, of their adoption by the assembly. It also required the plaintiff to implement the programme and its feasibility study by 30 June 2024, that is to say, to ensure that the segregation of Settlement 1 is abolished by that date. In the latter connection, it called on the plaintiff to inform the defendant in writing every six months during the implementation period of the measures it had taken, in particular as regards the progress of the programme and any deviations from it.

[4] In its reasoning, it referred to the provisions of Articles 14(1)(a), 17, 15(5), 4(b), 7(1)-(3), 10(2), 8(e), (p) and (q), 26(1)(a), (b) and (3) and 19(2) of the Ebktv. (Equal Treatment and Promotion of Equal Opportunities Act CXXV of 2003). On the basis of the plaintiff's statements and testimony and the available data, the Court found that the plaintiff is covered by the personal scope of Equal Treatment Act (Ebktv.) and is obliged to comply with the requirement of equal treatment in all his legal relations. With regard to the protected characteristics assessed in the case of the residents of Settlement 1, he referred to the fact that he had initiated the proceedings on the basis of Article 8(e) of the Equal Treatment Act, taking into account the fact that the majority of the residents of the settlement belonged to the Roma ethnic group. In the course of the procedure, the unfavourable social origin and financial situation were also identified as protected characteristics, and the mayor's statement that the Settlement 1 is a segregated area was taken into account, in which he also referred to points 8 and 7/A of Section 2 of Article 2 of Government Decree No. 314/2012 (XI.08) on the settlement development concept, the integrated settlement development strategy and settlement planning instruments, and certain specific settlement planning legal instruments (Government Decree). On the basis of the above, it concluded that, in addition to belonging to the Roma nationality, low social status and unfavourable property status should also be assessed as protected characteristics. Since these characteristics are present simultaneously and at the same time, they can form the basis for so-called intersectional discrimination.

[5] The proceedings examined whether the plaintiff had taken the necessary measures in the past year and in the recent past to ensure that the residents of the area do not live in segregated conditions. It assessed whether the residents of Settlement 1 could be moved out of segregated housing and living conditions as a result of the plaintiff's actions, which had to be consistent, effective, and forward-looking. The facts were evaluated in such a way that it was not the plaintiff's goal to eliminate the settlement in the sense of relocating all residents and demolishing the housing units located there. Instead, within the plaintiff's urban rehabilitation policy, the plaintiff aimed to rehabilitate the settlement and, for this purpose, implemented EU-funded programs. However, the defendant primarily focused on the measures taken for the rehabilitation of Settlement 1. Referring to the mayor's statement, the decision noted that although projects date back to the early 2000s, despite renovations, Settlement 1 remains a segregated area. Among the current programs, the plaintiff focused on the "Social Urban Rehabilitation in the Segregated Areas of Nyíregyháza" program (hereinafter referred to as the project). As part of this program, by mid-2020, 15 municipal apartments in the settlement had been renovated, while the planned renovation of an additional 57 apartments had not yet begun.

Furthermore, no families from Settlement 1 had been relocated to the renovated apartments outside Settlement 1.

[6] The defendant also referred to point III.3 of the Annex to Decision No 9/2020 (II. 06) of the plaintiff municipality, in relation to which it stated that the following years 2015 and 2019. In the period from 2015 to 2015, of the 13 families who had moved to Settlement 2 and for whom the plaintiff had knowledge of where they had moved, all of the families who had moved to a segregated environment, i.e. 6 families, were allocated municipal rental housing on Settlement 1, and between 17 and 31 January 2020, the 14 families who had moved to Settlement 2, which was condemned to demolition, were also allocated municipal rental housing on Settlement 1. He stressed that the subject of the investigation was not the dismantling of Settlement 2 as a segregation area, and that the processes related to it were only assessed from the point of view of their impact on the conditions in Settlement 1. He referred to the fact that the definition of segregation in Article 10(2) of the Equal Treatment Act includes the maintenance of a situation or circumstances that may be characterised by segregation, and that if a municipality, which is obliged to observe the requirement of equal treatment in all legal relations, does not take the necessary measures to prevent the maintenance of a segregation in its administrative territory, it is a segregation within the meaning of Article 10(2) of the Equal Treatment Act.

[7] The defendant considered the social and child welfare services and support system provided by the plaintiff to be a positive aspect. It did not find it established that, in terms of public transportation, Settlement 1 lacked connection to the city or that public offices were inaccessible to its residents. However, it took into account that the witness expressed a less favorable opinion regarding the local police officer's activities and the installed camera system. The witness also mentioned difficulties, such as taxis and pizza delivery services not serving the settlement. The defendant determined that the plaintiff had taken and continues to take numerous positive measures aimed at improving the quality of life for the residents of the settlement. However, it concluded that the plaintiff's housing policy consistently and directly contributes to the maintenance of the segregated conditions in Settlement 1 rather than their elimination. The defendant did not find the plaintiff's arguments regarding relocation from the segregated area to be well-founded. As a result, it concluded that the plaintiff had committed and continues to commit unlawful segregation, as defined in § 10(2) of the Equal Treatment Act (Ebktv.). When determining the sanctions, the defendant considered the need to address the identified issues as quickly and effectively as possible. It aligned the implementation of the necessary measures with the expected date of the next municipal elections, ensuring that the current mayor, municipal assembly, and local government would have nearly a full term to implement them. The defendant emphasized that, in order to eliminate the unlawful situation, it could not impose specific measures on the plaintiff.

The claim and the defence

[8] The plaintiff brought an action against the defendant's decision, seeking its annulment. In its view, the facts of unlawful segregation had not been established.

[9] As a procedural legal violation, he referred to the exceeding of procedural deadlines. In this context, he pointed out that the situation of Settlement 1 had been known for a long time. He cited the judgment of the Kúria (Supreme Court) in case Pfv.IV.20.241/2015/4, in which the Kúria dismissed the claim against the plaintiff, ruling that the plaintiff had not committed unlawful segregation. Despite this, the ex officio procedure was initiated only on February 20, 2020, more than one year after the authority became aware of the matter, and the decision issued on August 7, 2020, resulted in a significant overrun of the administrative deadline. He considered the application of Section 11 of the Equal Treatment Act (Ebktv.) to be incorrect, as Section 15/A(1) of the Ebktv. does not provide for any deviation from this rule. He argued that the misinterpretation of the burden of proof in the ex officio procedure resulted in a violation of Section 62 of Act CL of 2016 on General Administrative Procedure (Ákr.). He objected that even in the notification of the proceedings, it was already stated that Settlement 1 qualified as a segregated area.

[10] The circumstances listed in the defendant's taxonomy were not real and, in its view, it was still spending billions of euros on several projects. It submitted that the defendant had established the facts of unlawful segregation in its decision on the basis of the plaintiff's housing management practices, without changing the subject-matter of the proceedings, and had also violated the principles of fairness and good faith by keeping the real subject-matter of the proceedings secret; it had unjustifiably required the plaintiff to prepare a separate programme, including a feasibility study, since the plaintiff already had such programmes and studies in place and was implementing them. In its view, the defendant has imposed conduct for which the plaintiff has no budgetary resources, the law must be assessed in the light of the criteria of reasonableness, utility and morality under the Fundamental Law and the tasks of the municipality are not imposed by the defendant but by law. In particular, it considered it prejudicial that the time-limit for performance had been fixed in the light of the elections and that the defendant had failed to assess the consequences of the obligation in relation to the mandatory and voluntary tasks of the municipality.

[11] He considered the decision to be substantively incorrect. He emphasized that the plaintiff had enacted Municipal Decree 4/2015 (II.20.) on the Rental of Municipal Housing and the Determination of Rent (the Decree), and no objections had been raised regarding it. He referred to Article T(2) and Article R(2) of the Fundamental Law, arguing that if the defendant did not object to the legal regulation, then its consistent application—by virtue of the Equal Treatment Act (Ebktv.) itself—could not constitute unlawful segregation, as compliance with the law cannot be considered a violation. He stressed that municipal-owned housing is only partially transferable, citing Section 3(1) of Act LXXVIII of 1993 on the Rental and Alienation of Apartments and Premises (Housing Act). He argued that the subject of the examination should have been whether the Decree’s provisions were violated or not. He pointed out that the plaintiff is not only a property owner but also a legislator, and that Section 10(2) of the Equal Treatment Act (Ebktv.) cannot be established in a case where the local government utilizes rental housing it owns. He argued that the legislator enacted Section 26 of the Equal Treatment Act (Ebktv.) with consideration for this specific legal relationship, and compliance with equal treatment could only be examined under this statutory provision. However, even in this case, no unlawful segregation occurred.

[12] He argued that Settlement 1 had not expanded in any way as a result of the dismantling of Settlement 2. He submitted data and statements from residents who moved to Settlement 1 as

supporting evidence. He emphasized that intersectional discrimination does not have an autonomous legal dogmatic status, and the reference to it was intended to prevent the defendant from allowing exemptions based on financial status and social origin. He objected that the defendant failed to account for the existence of protected characteristics, and that the decision did not specify what factual data and evidence led to the conclusion that residents of Settlement 1 qualified as having disadvantaged social origin and financial status as protected characteristics.

[13] He referred to the case decision published under BDT 2019.1976 in connection with social origin. He pointed out that the plaintiff is addressing and rehabilitating the segregated areas of Nyíregyháza through three long-term programs. In this context, he referred to the call for applications, which sets out detailed regulations on how relocation should take place. He identified a legal violation, stating that the defendant failed to consider these referenced programs and their implementation, despite having a specific statement from the plaintiff regarding them. As a result, the defendant established the facts incompletely and partially incorrectly. He highlighted that in the procedure conducted since February 2020, the issues outlined in the initial case notification were not the primary focus of the proceedings or the decision.

[14] Referring to the questions raised by the defendant, he complained that the infringement was finally found in the context of a housing problem, while the notification did not mention a housing problem. He pointed out that on page 17 of the decision, the defendant itself had explained that segregated conditions could be achieved by the elimination of the segregation, possibly by demolition or rehabilitation, but that also under the Government Decree the threshold for the segregation indicator had been reduced from 50% to 35% in the previous period. According to the plaintiff, it was established in the course of the proceedings that the complaints made were not confirmed, the witness did not confirm that the residents of Settlement 1 were disadvantaged, he made a positive statement about the plaintiff's activities; the objection concerning the taxi service was only made by the witness, which was assessed negatively by the defendant, which acknowledged that some of the measures taken by the plaintiff in relation to the service were not attributable to the plaintiff.

[15] Referring to Section 8 of the Equal Treatment Act (Ebktv.), he pointed out that the defendant failed to examine the interconnections between the ongoing projects and did not recognize that relocating some families from Settlement 2 to Settlement 1 was part of a project element, which was linked to other components of the projects. The defendant did not assess the allocation system for municipal rental housing, which the plaintiff had detailed in the claim. He argued that indirect discrimination was also not present, as the rental housing application system established uniform conditions applicable to everyone. Thus, the plaintiff did not violate Section 26(3) of the Equal Treatment Act (Ebktv.). The criteria for obtaining housing were not intended to create artificial segregation, and the allocation process operated based on a point system, which did not take race or nationality into account. He emphasized that while the proceedings focused on Settlement 1, Settlement 2 also became the subject of investigation. However, the defendant failed to examine the interconnections between the two projects and those implemented within the action area, leading to incorrect conclusions based on the relocations. He objected that the defendant incorrectly assessed the submitted documents and numerical data, and he also criticized the negative evaluation of the fact that the plaintiff had not made any irresponsible statements regarding the dismantling or relocations. He considered

it unlawful that, in reference to Section 17/A of the Equal Treatment Act (Ebktv.), the authority could not impose a deadline, yet it determined a four-year period for eliminating conditions that had existed since the 1960s. Regarding the substantive disputes, the plaintiff requested the hearing of witnesses as evidence.

[16] In its defence, the defendant argued that the plaintiff has the right to know the facts and circumstances that allowed the initiation of the proceedings, the "other notifications" were not known to the plaintiff, and the defendant did not explain why the implementation of the urban development projects would not lead to the termination of the unlawful situation. It stressed that belonging to a nationality or ethnicity is not a grouping criterion, the plaintiff's housing policy does not contain any information on social origin, the criterion is the proper exercise of powers; the removal (demolition) of the segregation is also influenced by the fact that some buildings are protected as historical monuments, which the defendant also failed to assess. The plaintiff did not request an extension of the time-limit, and a single request by the defendant would have allowed the time-limit to be met. He considered the defendant's reference to the decision of the Municipal and Administrative Labour Court of Budapest in Decision No. EBH67/22/2015 and the judgment of the Municipal and Administrative Labour Court of Budapest in Case No. 6.K.33.048/2015/17 (M.i-case), which reviewed the decision, to be inadequate. He stressed that the liquidation of Settlement 2 would reduce the character of the Settlement 1 segregation.

[17] In its defence, the defendant asked for the action to be dismissed. In its view, there was no violation of Section 17 of the Ebktv. III.37881/2018/6 of the Court of Justice, it emphasised that in a continuous infringement the time limits do not even start to run. In connection with the time limit for the administration of the case, it referred to the fact that it had called the plaintiff five times for a statement, during which it had granted the plaintiff 91 days. The facts had been sufficiently clarified, Article 19(2) of the Ebktv did not apply and the defendant had obtained the evidence from the plaintiff. In the context of the subject matter of the proceedings, the notice stated that it had initiated the proceedings in the light of the circumstances existing at Settlement 1; it was clear that the defendant was examining whether the plaintiff had taken the necessary measures to eliminate the segregation; the notice also contained the provisions of Article 26(1) and (3) of the Ebktv, i.e. the specific provisions on housing segregation. It referred to its decision in the M.i case and to the judgment of the court therein, on the basis of which it concluded that the sanction imposed was appropriate and that it had no power to review the Ordinance. As regards certain documents annexed to the application under numbers F2 to F4, it observed that they had not been relied on by the plaintiff in the main proceedings. The defendant submitted that intersectionality is not a statutory category, but is a concept used and accepted in anti-discrimination literature in the context of the coexistence of several protected characteristics. In its view, it had assessed in its decision the projects relied on by the plaintiff, had examined Article 10(2) of the Ebktv and not Articles 8 and 9 of the Ebktv; it had considered it unnecessary to carry out an on-site inspection and had set out the statistical data in detail on pages 17 to 22 of the decision.

The court's decision and its legal grounds

[18] The action is well founded for the following reasons.

[19] The court reviewed the lawfulness of the defendant's decision in accordance with Article 2 (4) and Article 85 (1) - (2) of Act I of 2017 on Administrative Procedure (Administrative Procedure Act), based on the facts existing at the time of its implementation, within the limits of the application, and established the facts on the basis of the statements of the parties to the dispute and the content of the available administrative documents.

[20] In the light of the above, the court had to decide whether the defendant had lawfully obliged the plaintiff to comply with the provisions of the operative part of the decision in the context of the abolition of the segregation of the Huszár settlement in the plaintiff's territory.

[21] Pursuant to Section 4 (b) of the Equal Treatment Act, local and national minority self-governments and their bodies are obliged to observe the requirement of equal treatment in the establishment of their legal relations, in their legal relations, procedures and measures (hereinafter jointly referred to as "legal relations").

According to Section 7 (1) of the Equal Treatment Act, direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation and orders to do so constitute a violation of the requirement of equal treatment, in particular as defined in Chapter III. Paragraph 3 shall not apply in the case of direct discrimination based on a characteristic within the meaning of Article 8(b) to (e) and unlawful segregation.

According to Section 8 of the Equal Treatment Act, direct discrimination is deemed to be any provision which has as its result the real or perceived e) nationality, p) social origin, q) property status of a person or group.

Section 10 (2) of the Ebktv. states that a provision which, on the basis of the characteristics defined in Section 8, distinguishes certain persons or a group of persons from persons or a group of persons in a comparable situation to them, without being expressly permitted by law, constitutes unlawful segregation.

Pursuant to Section 15 (5) of the Equal Treatment Act, the authority shall also act ex officio in relation to violations of the requirement of equal treatment by the bodies specified in Section 4 (a) to (d), if no other administrative body is involved in the case in question.

Pursuant to Section 19 (2) of the Equal Treatment Act, in the case of the probable circumstances referred to in paragraph (1), the other party must prove that a) the circumstances alleged by the aggrieved party or the person entitled to assert a claim in the public interest did not exist, or b) the requirement of equal treatment was observed or was not required to be observed in the legal relationship in question.

Pursuant to Section 26 (1) of the Equal Treatment Act, it is a violation of the requirement of equal treatment to, in particular, discriminate against persons according to the characteristics defined in Section 8 a) directly or indirectly in connection with the provision of state or municipal housing subsidies, discounts or interest subsidies, b) discriminate against persons in determining the conditions of sale or lease of state or municipal housing and building plots.

According to paragraph 3, the determination of conditions of access to housing shall not be aimed at artificially segregating certain groups in a municipality or part of a municipality according to the characteristics defined in Article 8, not on the basis of a voluntary decision of the group.

[22] In its application, the plaintiff also alleges procedural and substantive errors of law. The Court examined, first of all, the procedural pleas of the plaintiff, in the context of which the plaintiff also challenged the observance of procedural time limits and the procedural capacity of the defendant. In the latter context, it explained that, under Article 17 of the Equal Treatment Act, the administrative procedure for the examination of the application of the requirement of equal treatment may be initiated if one year has elapsed from the date on which the infringement became known and three years have not yet elapsed from the date on which the infringement occurred. The plaintiff claims that the defendant was already officially aware of the nature of the Settlement 1 segregation area and could not therefore have initiated proceedings. On the other hand, however, the defendant rightly relied in its defence on the decision of the Curia in Case No. Kfv.III.37.881/2018/6, which established in principle that the time limits do not start to run even in the case of a continuous infringement. As the plaintiff itself had identified Settlement 1 as a segregation area and the defendant had imposed an obligation on the plaintiff to remedy this, the existence of the infringement could not be in dispute between the parties. On the basis of the foregoing, the defendant had procedural standing notwithstanding the passage of time.

[23] Regarding the failure to comply with the administrative deadline, the court pointed out that the defendant initiated the proceedings ex officio by an order dated February 20, 2020, and issued the decision challenged in this lawsuit on August 7, 2020. As also referenced in the statement of defense, the plaintiff was granted a total of 91 days to submit statements, which the plaintiff largely utilized for responses. The defendant’s minor overrun of the administrative deadline did not constitute a violation of the law affecting the merits of the case, and the plaintiff did not claim any legal harm related to this in the claim. The defendant also did not commit a legal violation by requesting the plaintiff to make statements multiple times. The plaintiff further objected in the claim that a single comprehensive request could have shortened the procedural timeframe. However, the preliminary procedure may necessarily involve issues requiring further clarification of facts, justifying the authority's issuance of additional requests. This right cannot be denied to the authority merely on the grounds of a reference to a unified request.

[24] The plaintiff also pointed out as a procedural violation that the housing situation in Settlement 1 was not indicated by the defendant as the subject of the case, it was not clear to him that the defendant would investigate this matter and therefore convict the plaintiff for the deficiencies found in this context. The court also found no merit in this objection of the claimant. The defendant issued several requests for observations to the plaintiff during the proceedings. Questions 1 and 2 (a) to (g) of the notice EBH/HJF/146/6/2020 of 30 March 2020 specifically focused on the housing situation in Settlement 1. All questions of the call for comments EBH/HJF/146/13/2020 of 23 June 2020 specifically addressed the housing situation in Settlement 1 and the measures taken by the claimant in relation to it. On the basis of the above, the direction of the defendant's investigation was clear, taking into account the content of the orders, and the court did not identify any infringement in this context.

[25] The plaintiff pointed out as a procedural violation that the defendant, in addition to the characteristic under Section 8(e) of the Ebktv (nationality), also identified in its decision the characteristic under points (p) (social origin) and (q) (financial situation), which, according to the plaintiff, was not justified by the defendant. The court found that the plaintiff's plea in law in this action was well founded. The defendant did not set out in its decision the facts, either in relation to wealth or social origin, which would have allowed the existence of these two protected characteristics to be established in relation to the residents of Settlement 1. For all these reasons, the defendant's statement of reasons for its decision is incomplete, but the Court did not consider that this was not such as to justify, as such, the ordering of the defendant to reopen the proceedings, in view of the following findings on the merits of the case.

[26] The plaintiff also contested the proper identification of the burden of proof by the defendant. In this context, the Court points out that, in the ex officio proceedings, the burden of proof is on the authority, while the plaintiff is under a duty to cooperate in the proceedings and thus has a duty to provide evidence. As stated above, the authority issued several requests for statements to the plaintiff, in respect of which the plaintiff submitted statements to the defendant and attached the available evidence. For all these reasons, the Court did not identify any infringement of the law falling within the scope of the obligation to clarify the facts which would have had an impact on the merits of the case as such.

[27] With regard to the merits of the case, it is above all a highly relevant fact that Settlement 1 is a segregated area, as acknowledged by the plaintiff, the long-standing existence of this situation is not disputed, and the proportion of Roma nationals living in Settlement 1 is also dominant. The essence of the defendant's investigation, as set out in the decision, was what the plaintiff had done in the year prior to the decision and in the preceding period to reduce the segregation character, in particular with regard to the plaintiff's housing policy.

[28] The court also confirms in general that, under the Equal Treatment Act (Ebktv.), a violation of the law can also be committed through omission. However, in the context of this case, it cannot be ignored that the plaintiff is a legal entity and a public authority, whose legal status is inseparable from the assessment of the case. As a municipal government, the plaintiff is subject to the mandatory duties and competencies established by Act CLXXXIX of 2011 on the Local Governments of Hungary (Mötv.).

[29] The court, having regard to the documents generated in the previous proceedings, found that the plaintiff had presented extensive documentation detailing how it was acting in relation to the Settlement 1 segregation area in order to liquidate it. In this connection, the court refers to the fact that the Action Area Plan "Area and Social Integration of Settlement 1" was dated April 2012 and contains programmes from September 2012 to 31 December 2014, inter alia, in connection with the improvement of the affected residential area. In its declarations, the plaintiff also refers to other programmes which it has implemented ('Community intervention plan TOP-6.9.1 - 16-Ny1-2017-0001', 'Local equal opportunities programme 2018-2023. integrated urban development strategy', Urbact II programme and 'Together for the Way Out' programme, 'Integrated Urban Development Strategy'), in connection with which the court also found that they either specifically relate to the rehabilitation of Settlement 1 or contain as an essential element the plaintiff's strategy for the desegregation of Settlement 1. Thus, the fulfilment of the plaintiff's obligation is based on the programme plan presented on page 31 of the "Community

Intervention Plan TOP-6.9.1 - 16-Ny1-2017-0001", the "Local Equal Opportunities Programme 2018-2023 Integrated Municipal Development Strategy" 56-59. The action plan for segregated areas, also detailed on pages 56 to 56-2023, the working method detailed on page 44 of the Urbact II programme and the anti-segregation plan detailed on pages 69-74, 109-116 and 131-134 of the "Integrated Urban Development Strategy".

[30] The Court, referring back to the plaintiff's legal status, emphasises that the plaintiff's activities and, in comparison, its possible anti-discrimination omission, must be assessed in a legally binding and comprehensive manner, in which it cannot be ignored that the above programmes were part of development strategies that went beyond the scope of the defendant's investigation, which were part of the plaintiff's complex tasks and which also constituted an obligation on the plaintiff.

[31] The essence of the omission found by the defendant in the decision was how many people moved from and to the latter place in connection with the abolition of Settlement 2, which was examined in connection with the segregation of Settlement 1, and how this affected the strengthening or weakening of the character of the Settlement 1 segregation. In this respect, the Court found that the figures in the defendant's decision and in the plaintiff's application did not allow a reasonable inference to be drawn from the infringement by omission found against the plaintiff (30% of the 20 households that moved from Settlement 2 moved to Settlement 1, and those that moved from Settlement 1 moved to an integrated or segregated area). The defendant has also pointed out that the way to overcome the segregation character, in addition to the demolition of the settlement, could be the improvement of the housing environment, which cannot be a realistic expectation of the plaintiff within the timeframe of one year examined by the defendant. In this regard, the court has emphasised the rules of the plaintiff's Ordinance. In that connection, the court took into account the defendant's decision EBH-AJBH-19-11/2021, annexed by the plaintiff, in that, although it was undoubtedly issued after the decision challenged in the present action was taken, it also contains findings in relation to the Regulation from which it can also be concluded that the plaintiff objectively determines the criteria on the basis of which plaintiffs may obtain access to municipal rental housing. That is relevant to the present action because the condition for access to municipal rental housing is, first, the submission of an application and, second, the ranking of the scores given to the plaintiffs on the register according to a specific criterion. This means that, in the light of the municipal factor, the plaintiff can only achieve the abolition of segregation if it complies with the other statutory obligations of the plaintiff municipality. There have also been moves from Settlement 1 to integrated housing, which is not disputed by the defendant, in which case the court did not find that the facts were unclear, but that the defendant's inference from fact to fact was unreasonable.

[32] In its application, the plaintiff also stressed that the defendant could not have charged the plaintiff with a breach of Article 10(2) of the Ebktv, but should have examined the matter under Article 26 of the Ebktv. In this context, the court held that Section 10(2) of the Ebktv could also be applicable to the present proceedings, because Section 26 is only a special rule, but does not exclude the application of Section 10(2). This unfounded argument of the plaintiff, however, did not affect the merits of the action as stated above, because on the basis of the above, the defendant wrongly concluded that the plaintiff had additional obligations as stated in the decision in order to abolish the segregation, in view of the implementation programmes certified by the plaintiff and in progress (taking into account the plaintiff's other obligations under the law). It is undisputed that the plaintiff has several programmes, and the defendant itself stated

in its decision that the processes relating to the renovation of 57 flats in the framework of the project entitled 'Social urban rehabilitation in the segregated area of Nyíregyháza' were accelerated presumably as a result of the initiation of the administrative procedure, which assumption of the defendant also does not support the validity of the decision, since the recognised renovations of flats show the plaintiff's fulfilment of the obligations undertaken in the project.

[33] The court considered the defendant's statement—that the plaintiff, as a county seat city, must have the budgetary resources required for the obligation imposed by the defendant—as a mere assumption, and, in the context of the application of the Equal Treatment Act (Ebktv.), also deemed it irrelevant to the substance of the case.

[34] In summary of the above, the court found that, considering the programs detailed by the plaintiff in the preceding procedure, the obligation imposed by the defendant's decision was unlawful; therefore, the court annulled the decision based on point a) of Section 89 (1) of the Code of Administrative Procedure (Kp.).

[35] The court dismissed the plaintiff's motion to call witnesses as unnecessary, because the merits of the action could be decided without the need for witnesses, on the basis of the available documentary evidence and the parties' declarations.

[36] The court decided on the costs of the action on the basis of Section 83 (1) of Act CXXX of 2016 on the Code of Civil Procedure (Pp.), the amount was determined on the basis of Section 3 (3) of Decree 32/2003 (VIII. 22.) IM on the attorney's fees that may be assessed in court proceedings, taking into account the length of the statement of claim and the preparatory documents, the labour-intensive nature of the case, the attendance and the statements made at the hearing of the case, and the fact that not all of the arguments in the action were well-founded.

[37] The court fee determined under Section 45/A(1) of Act XCIII of 1990 on Duties (Itv.) remains the responsibility of the state pursuant to Section 102(6) of the Code of Civil Procedure (Pp.), due to the defendant's full personal exemption from court fees.

[38] The possibility of appealing the judgment is excluded by Section 99(1) of the Code of Administrative Litigation (Kp.).

Closing section

Budapest, 22 June 2021.

dr. Gábor Huber s.k.	dr. Péter Nagy s.k.	dr. Katalin Surányi s.k.
the President of the Chamber	Judge-Rapporteur	Judge