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NEWS REPORT

Country:	Hungary
Title:	Ministry of education is also responsible for segregation, but implementation of desegregation plan is not ordered by the court
Date:	8 January 2016
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<u>Context</u>	
Issue at stake:	Whether the Ministry responsible for education has a role in and responsibility for not acting against segregation, and whether Hungarian courts are willing to order effective measures to combat school segregation
Ground of discrimination:	Race/ethnic origin
Source:	National court decision, 11.P.21.553/2013/70
Field:	Education
Applicable law:	Act CXXV of 2003 on Equal treatment and the Promotion of Equal Opportunities (ETA), Articles 7, 10 and 27

Content

Case development: In November 2010, the Supreme Court (predecessor of the Curia) established in its judgment no. Pfv.IV.21.568/2010/5. that the Pécsi street school in Kaposvár was ethnically segregated, and that its maintainer, the Municipal Council of Kaposvár had violated the requirement of equal treatment by failing to act against the spontaneously developed segregation through (for instance) re-determining the catchment areas of the local schools. Despite the court decision, the Municipal Council did not take any measures to put an end to the segregation, in fact, the issue was not even included in the agenda of the Council's meetings. Consequently, the Chance for Children Foundation (CFCF) decided to start another lawsuit in late 2013. In the meantime, the function of school maintaining was transferred to a centralised state organisation – the Klebelsberg Center for Maintaining Educational Institutions (KLIK) – which operates under the Ministry of Human Resources (EMMI). Therefore, the CFCF extended the lawsuit to these bodies as well, requesting the court not only to establish the violation, but also to order desegregation through closing the school.

Decision of the Court: In its first instance decision delivered on 11 November 2015, the Kaposvár Regional Court established the violation, and also declared that the EMMI was responsible for the breach of the requirement of equal treatment, because it failed to instruct the KLIK to put an end to the segregation. At the same time, the court took the stance that it was not in the position to order the implementation of the complex desegregation plan devised by CFCF and based on the closing of the segregating school. This happened despite the fact that in its decision on CFCF's request to submit a preliminary question to the CJEU on whether the sanctions available for segregation in Hungarian law are compatible with the requirements set forth by Article 15 of the Racial Equality Directive (RED), the domestic court took the stance that nothing in the

Hungarian legal framework excludes the possibility that courts adjudicating segregation cases provide detailed orders as to how segregation shall be terminated. However, in the present case the court concluded that the desegregation process is such a complex one depending on many factors (such as political will) that it would not be possible to order its implementation with the clarity and unambiguity that is required from a judicial decision in order for it to be executable.

Key points of analysis: While it has become obvious that simply declaring that segregation is taking place and ordering the actors to put an end to the injurious situation in an abstract manner does not yield the desired results, Hungarian courts are still reluctant to put forth detailed orders as to how desegregation shall be achieved. If this approach is upheld, it means that the presently available judicial route is not an effective remedy and falls short of the requirements of Article 15 of the RED.

Internet link source: http://cfcf.hu/sites/default/files/MX-M264N_20151116_142154.pdf.

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