



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

### NEWS REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Court confirms that refusal by school to admit pupils raised by a lesbian couple amounts to discrimination and awards damages to one of the parents
<b>Date:</b>	10 January 2017
<b>Expert:</b>	Kádár, András
<b>Update of news report nr:</b>	1593-hu-55
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Whether school can exempt its responsibility under the Equal Treatment Act by referring to the intention to protect child from harassment and whether refusal on this basis amounts to a violation of inherent personal rights
<b>Ground of discrimination:</b>	Sexual orientation
<b>Source:</b>	National court decision, Decision 31.P.25.499/2015/16/1. of the Metropolitan Court of Budapest delivered on 24 June 2016 (the plaintiff was notified of the judgment becoming final and binding in October 2016, and the case was reported by the NGO representing the plaintiff on 26 October 2016)
<b>Field:</b>	Education
<b>Applicable law:</b>	Article 8 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA), Articles 75 and 84 of Act IV of 1959 on the Civil Code

### **Content**<sup>1</sup>

**Case:** The case started in the summer of 2013 when the mothers of a 13-year old boy decided to find a new school for their son. The boy's interview with the future form master went fine, and a trial-week was agreed on. At the end of the interview, the mother told the teacher that she was raising the child together with her same-sex registered partner. The teacher did not react in person, but the next day she wrote an email stating that "due to their family status" the child could not be admitted to her class. The mother turned to the leadership of the school who confirmed that the teacher's decision is final, so she decided to start legal action against the school before the Equal Treatment Authority with the help of Háttér Society, an NGO providing legal assistance to LGBTQ people. In the fall of 2014, the Authority concluded that discrimination had taken place and imposed a fine of HUF 50,000 (EUR 160) on the school. However, the parents felt that the fine was not proportionate to the severity of the violation, so they decided to also sue the school for damages.

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<sup>1</sup> At the writing of this flash report I greatly relied on the English language summary of the case available on the website of the Háttér Society.

**Decision of the Court:** In its decision of 24 June 2016, the Metropolitan Court of Budapest found in favour of the plaintiffs, and established a violation of the mother's inherent personal right to non-discrimination. The court concluded that the child's admittance to the school had been rejected due to his mother's sexual orientation. In response to the school's argument that the rejection was in line with the interest of the child, the court stated that "[a]ny educational institution and their teachers are expected [...] to use the necessary pedagogical tools to prevent the bullying of students who differ from their classmates in whatever aspect. Students with such characteristics diverging from the majority cannot suffer a disadvantage because an educational institution or a form master is not willing or able to take into consideration their special needs and facilitate their integration to the community of students." The court awarded the mother HUF 350,000 (EUR 1,100) as non-pecuniary damages, and ordered the school to cover the interests and legal fees.

**Key points of analysis:** It is important that the Court reiterated that the – alleged – intention to protect the child from harassment does not exempt schools and teachers from responsibilities under the Equal Treatment Act and the Civil Code, including their obligation to do their utmost to integrate pupils of protected grounds with majority children.

**Internet link source:** <http://en.hatter.hu/news/hungarian-court-awards-compensation-to-lesbian-mother-whose-child-was-rejected-by-a-school>.