



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

NEWS REPORT

Country:	Hungary
Title:	Curia upholds decision establishing segregation in education and ordering the closing down of segregated school
Date:	8 November 2017
Expert:	András Kádár
Update of news report	Hungary - Ministry of education is also responsible for segregation, but implementation of desegregation plan is not ordered by the court (PDF 63 kB)
<u>Context</u>	
Issue at stake:	Whether it is possible to order effective measures to combat school segregation, such as the effective closing down of a segregated school
Ground of discrimination:	Race/ethnic origin
Source:	National court decision (judgment no. Pfv. IV. 20085/2017 of the Curia, 4 October 2017)
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. Consequently, the Chance for Children Foundation (CFCF) decided to start another lawsuit in late 2013. In the meantime, the function of school maintenance 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 the closing of the school. In its first instance decision delivered in November 2015, the Kaposvár Regional Court established the violation, and the responsibility of the defendants, but took the stance that it was not in a position to order the implementation of the complex desegregation plan devised by CFCF and based on the closing of the segregating school. The domestic court stated the desegregation process is such a complex one depending on so 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 enforceable.

This decision was partly turned around on 14 October 2016, by the Pécs Appeals Court acting as court of second instance. The Appeals Court in its judgment no. Pf.III.20.004/2016/4. agreed with the first instance court that the defendants were responsible for the segregation, but at the same time it also ordered that the segregated school must be closed in an upgoing system: i.e. in the next schoolyear beginning 1 September 2017, no first graders may be admitted to the school. Those cca. 20 first graders who belong to the school's catchment area will have to be distributed among other, non-segregated schools of the town. The court also obliged the defendants to adopt and publish by 31 March 2017 on their websites a detailed desegregation plan on the admission and placement of those first-grade pupils who belong to the school's catchment area. Although the defendants complied with the decision (i.e. no first graders were admitted to the school in the schoolyear of 2017/2018 and the desegregation plan was also adopted by the deadline), some of them requested a review of the judgment by the Curia. They argued – among others – that the judgment violated the parents' right to the choice of school and that it was not enforceable.

Decision of the Court: In its judgment no. Pfv. IV. 20085/2017, the Curia upheld the decision of the Pécs Appeals Court and also upheld the sanctions imposed by the appeals court. It found that the right to the choice of school is not absolute, it can be limited under certain circumstances. In this case, the earliest possible termination of segregation takes precedence over the right to the choice of school with all the circumstances taken into consideration. As a principle, the Curia held that when courts can go beyond concluding that a violation has taken place and ordering the defendant to put an end to the violation; they may also order that specific measures be taken in order to enforce the requirement of equal treatment. The Curia also pointed out that the defendants' reference to non-enforceability was obviously erroneous, since it was actually possible to close down the segregated school, find placement for the children who otherwise would have been enrolled into this school, and the municipality did redraw the school district boundaries and adopt a desegregation plan, so the obligations imposed by the second instance court could be fulfilled.

Key points of analysis: In its landmark judgment the Curia opened the door for an effective remedy in desegregation cases. The decision of the appeal court upheld by the Curia may be regarded as the first case where the closing down of a school and the adoption of a complex school desegregation plan was ordered and carried out.

Internet link source: <http://kuria-birosag.hu/hu/sajto/tajekoztato-kuria-pfv-iv-200852017-szamu-kaposvari-szegregacios-ugyben-hozott-iteleterol>.