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NEWS REPORT

Country:	Hungary
Title:	Education ministry found to be in breach of its non-discrimination obligations for failing to take effective action against segregation in 28 elementary schools
Date:	6 July 2018
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<u>Context</u>	
Issue at stake:	Education ministry's responsibility for segregation in state-run school system
Ground of discrimination:	Race/ethnic origin
Source:	National court decision
Field:	Education
Applicable law:	Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Act LXXIX of 1993 on Public Education, Act CXCV of 2011 on National Public Education, Act IV of 1959 on the Civil Code

Content

Case: In 2009, the Chance for Children Foundation (CFCF) initiated an *actio popularis* lawsuit against the – then – Ministry of Education and Culture, as the entity ultimately responsible for the management of the Hungarian system of education. The CFCF asked the Court to conclude that by not taking effective action – directly and/or through the administrative bodies responsible for the operation of educational institutions – against segregation of Roma children in education, the ministry failed to fulfil its obligations stemming from the Equal Treatment Act and the Act on National Public Education, and thus violated the segregated Roma pupils' right to equal treatment. In its petition, the CFCF referred to a 2005 research by sociologists Ilona Liskó and Gábor Havas¹ commissioned by the predecessor of the Ministry, which concluded that in 2005, there were altogether 44 schools where the proportion of Roma pupils exceeded 50% (in some schools 80%), and this number was on the rise. Segregation was accompanied by substandard material conditions and a lower quality of educational services.

Decision of the Court: On 18 April, in its first instance judgment 40.P.23.675/2015/84, the Metropolitan Court has

- concluded that the Ministry had violated the requirement of equal treatment in relation to Roma pupils in 28 elementary schools (10 in Budapest, 18 in different

¹ Havas, Gábor – Liskó, Ilona: Szegregáció a roma tanulók általános iskolai oktatásában. Felsőoktatási Kutató Intézet, Budapest, 2005. Available at: www.hier.iif.hu/hu/letoltes.php?fid=kutatas_kozben/182.

- other Hungarian cities/towns) by having maintained their school-level segregation starting from the 2003/2004 school year;
- ordered that the Ministry would ban from admitting new first graders in those 13 schools (6 in Budapest, 7 in different other cities/towns) where segregation is still in place;
- ordered that the Ministry would instruct the competent Government Offices to find a place for those first-graders who would otherwise start their elementary studies in the schools with regard to which the above ban applies;
- ordered the Ministry to instruct (within 3 months from the sentence becoming final and binding) the maintainers (i.e. the entities managing the schools) of the concerned schools to prepare – with the assistance of an educational equal opportunities expert – a desegregation plan aimed at assisting the integration of these first-graders in the schools where they would be enrolled after the redrawing of the school districts;
- ordered the Ministry to publish these desegregation plans on its website;
- ordered the Ministry to continuously monitor the implementation of these desegregation plans for five years and publish the results on its website;
- ordered the Ministry to amend its guidelines for the inspection into compliance with the requirement of equal treatment in a way that enables such inspections to estimate the proportion of pupils of Roma origin on the basis of their perceived ethnicity, and to instruct the competent Government Offices to carry out inspections on the basis of this new methodology;
- ordered the Ministry to pay a public interest fine of HUF 50 million (cca. EUR 159,000) to be spent on the civil monitoring of desegregation programs within the next five years.

The Ministry as respondent did not question that in the schools identified by the CFCF Roma pupils were highly overrepresented, but denied responsibility for the violation of the requirement of equal treatment on the basis that –among others – (i) it exercises its rights and performs its duties regarding educational institutions not directly, but through lower level administrative bodies and that (ii) due to the regulations pertaining to the protection of sensitive personal data, the Ministry is not in the position to collect data on the ethnic origin of the pupils, so it cannot take action against ethnically based segregation.

The Court however concluded that the Ministry must have been sufficiently aware of the situation: the Havas-Liskó research was commissioned by its predecessor and its desegregation strategy was based on that research. It must also have been aware of the fact that the situation was not improving, and if it was not aware of that fact, it would mean that its monitoring mechanisms/guidelines were deficient, which would also fall to its onus. Therefore, the Ministry – as the entity ultimately responsible for the lawful operation of the Hungarian educational system – is certainly accountable for the fact that the statutory requirement of non-segregation is not met. The Court also took the stance that when there is a collision of fundamental rights, it is necessary to measure those rights against each other, and accordingly make a decision on which one should prevail in order to avoid the causing of disproportionate harm. In the present case, the right to the protection of sensitive personal data may collide with the right to not be segregated, however, the interest behind the latter outweighs the former.

The Court prescribed very detailed obligations for the Ministry (ban from launching new first-grade classes, redrawing of school districts, monitoring, the preparation of desegregation plans), because it found that the Ministry's efforts to monitor and address the issue of segregation had not led to any improvements during the over ten years since the Havas-Liskó research was published. Therefore, it would be meaningless if the Court simply obliged the Ministry to put an end to the violation without actually prescribing how that must be done.

The Court determined the high amount of the public purpose fine (EUR 158,000) with a view to the prolonged nature of the violation and the severe consequences for those pupils who were impacted by the segregation. The Court obligated the Ministry to fund from this amount NGOs that monitor the implementation of desegregation plans due to the fact that “the present lawsuit, but also the results of other similar court cases, show that NGOs are particularly capable of demonstrating violations by the respondent and asserting the rights of marginalized groups”.

Key points of analysis: This is a ground-breaking judgment for a number of reasons: it concludes that the Ministry that is responsible for public education is ultimately liable for segregation in the public-school system; and it reinforces the recent jurisprudence that courts have the right to prescribe in a very detailed manner how public actors must address the issue of segregation if it is obvious that they are reluctant to do so or their efforts have been failing.

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