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FLASH REPORT

Country:	Hungary
Title:	Second instance court decision on education ministry's responsibility for failing to take effective action against segregation in 28 elementary schools
Date:	15 March 2019
Expert:	Kádár, András
Update of flash report nr:	058-HU-ND-2018-First instance decision on mass school segregation
<u>Context</u>	
Issue at stake:	Education ministry's responsibility for segregation in state-run school system
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Education
Source:	National court decision
Applicable law:	Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Act LXXIX of 1993 on Public Education, Act CXC of 2011 on National Public Education, Act IV of 1959 on the Civil Code

Content

Case development: In 2009, the Chance for Children Foundation (CFCF) initiated an *actio popularis* lawsuit against the – then – Ministry of Education and Culture (now Ministry of Human Capacities), 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.

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

- 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 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 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 operating 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 (approx. EUR 159 000) to be spent on the civil monitoring of desegregation programs within the next five years.

The Ministry appealed against the first instance decision.

Decision of the court: On 14 February 2019, the Metropolitan Appeals Court modified the first instance judgment in several aspects.¹ The court of second instance shared the first instance decision's assessment that the Ministry had failed to make use of its powers to try to put an end to segregation in several schools, although it had been aware of the widespread existence of segregation in these educational institutions. The second instance court also agreed with the first instance court that this failure had amounted to a violation of the requirement of equal treatment. However, the Metropolitan Appeals Court had a very differing view on what types of actions may be prescribed for the Ministry under the obligation to put an end to the violation.

The court of second instance took the stance that the Ministry could not be obliged to order a ban on admitting new first graders to those 13 schools where segregation was still in place. The court's reasoning was that such a ban (which eventually leads to the closing of the given school) may only be imposed on the basis of a detailed, individualised examination taking local specificities into account. The appropriate form of such an examination is the creation of a desegregation plan that relies on a careful mapping of the local situation and is based on the cooperation of experts, teachers, local politicians and parents. Without such an individualised desegregation plan, a general ban on launching first grade classes in certain schools is deemed to fail, therefore, the first instance court's decision in this regard must be quashed. Accordingly, there is also no need for finding a place for those first-graders who are about to start their studies in the segregating schools.

The second instance court also quashed the Ministry's obligation to monitor the implementation of the desegregation plans and the publication of the conclusions of the monitoring on its website. The basis for this decision was that the monitoring of the implementation of similar plans generally belongs to school district centres and government offices, so this obligation may not be placed on the Ministry.

The appeals court also quashed the Ministry's obligation to amend its guidelines for the inspection into compliance with the requirement of equal treatment. The reason for this was that the lawsuit concerned 28 specific, individual schools, whereas the amendment of the guidelines would have a general impact on all schools inspected in the future, which means that the prescription of such an obligation would exceed the framework of the actual lawsuit.

Finally, while the court of second instance approved of the imposing of a public interest fine, it held that courts do not have a statutory authorisation to determine what the public interest fine must be used for. So while the Ministry will remain obliged to pay the sum

¹ Metropolitan Appeals Court, decision No. 2.Pf.21.145/2018/I. of 14 February 2019 (not yet published).

prescribed by the first instance court, this amount will flow into the state budget without any specific indication of what the money should be spent on.

Key points of analysis: While the court of second instance accepted that the Ministry had been at fault for failing to take action against school segregation, it significantly weakened the set measures that the first instance court had prescribed with the aim of putting an end to segregation. What remains is the Ministry's obligation to instruct school operators to prepare desegregation plans, and to pay a public interest fine.

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