



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

FLASH REPORT

Country:	Hungary
Title:	Second instance court decision on damages for segregation in education
Date:	30 September 2019
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Update of flash report:	Hungary - First instance court decision on damages for segregation in education (PDF 89 kB)
<u>Context</u>	
Issue at stake:	Whether damages are payable to individual victims of educational segregation to compensate for the disadvantages they suffered as a result of the segregation
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Education
Source:	National court decision (judgment no. Pf.I.20.123/2019/16. of the Debrecen Appeals Court, delivered on 16 September 2019)
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 March 2015, the Curia (Hungary's Supreme Court) concluded in an *actio popularis* lawsuit launched in 2011 by the Chance for Children Foundation (CFCF) that the Roma pupils in the Néksei Demeter elementary school of Gyöngyöspata (Northern Hungary) had been segregated. In each grade there were two classes: one with practically only Roma pupils and one where there were hardly any Roma children. The Roma and the non-Roma classes were separated physically too, and the Roma children were provided with lower quality education than their non-Roma peers. Based on the Curia's final and binding decision, in February 2016, with the help of CFCF and pro bono lawyers, 63 former Roma pupils of the Néksei Demeter school launched a lawsuit for damages against the school, the Municipal Council of Gyöngyöspata and the Klebelsberg School Maintaining Centre (KLIK, the state body that – as of 1 January 2013 – became the municipality's legal successor as a result of the national centralisation of school management) for the long-term disadvantages they had suffered as a result of their substandard education (e.g. the loss of the real possibility to succeed in the labour market).

On 16 October 2018, the Eger Regional Court delivered a first instance judgment in the case (under the number 12.P.20.489/2015/402). The court concluded that the respondents had violated the claimants' right to equal treatment by segregating them and providing them with education of lower quality than that of their non-Roma peers. The court adjudicated the claims of 62 claimants. It rejected the claim of two claimants, fully granted the requested compensation in 12 cases, and granted a part of the requested compensation

in 48 cases. The lowest amount a plaintiff received was HUF 200,000 (EUR 605), the highest amount HUF 3.5 million (EUR 10,605). All parties appealed against the judgment.

Decision of the court: In its decision no. Pf.I.20.123/2019/16. delivered on 16 September 2019, the Debrecen Appeals Court modified the first instance court decision (with regard to some of the claimants it increased, with regard to others it decreased the amount of damages, and with respect to some of the claimants it also modified the time periods with regard to which their segregation was concluded), however, the essence it upheld the decision that non-pecuniary damages are to be paid to victims of segregation and discrimination in education. The judgment's most important conclusions of general interest are the following:

- The fact that the first instance court did not inform the respondents fully accurately of the burden of proof is not a reason for annulling the decision and order a retrial when from the respondents' submission it is evident that they were fully aware of what they should have proved in order to be exempted from responsibility.
- The statute of limitations started to run only when the first (*actio popularis*) lawsuit was concluded because only this is when the vulnerable – under age – complainants of a case that is far from obvious came into the possession of all the information that they needed to decide whether to try to enforce their claim for damages.
- The often contradictory statements of the complainants and generalised statements by witnesses (even if possessing specialised knowledge) without individualised examination by a forensic expert is not sufficient to substantiate that the level of education provided in the segregated Roma classes was inferior compared to the non-Roma classes. (As a result of this, the judgment only accepted that the claimants were both segregated *and* subjected to direct discrimination resulting from substandard education in the time period with regard to which the Curia's decision in the *actio popularis* lawsuit concluded so. Starting from the 2012/13 school year – which was not the subject of the *actio popularis* lawsuit – the Debrecen Appeals Court only found the respondents responsible for segregation, but not for direct discrimination – a distinction which was reflected in the amounts granted to the complainants).
- It is common knowledge that segregation causes a feeling of humiliation and inferiority and hinders the concerned children in overcoming their sociocultural disadvantages. In addition, substandard education does not only humiliate those subjected to it, but also puts them at a disadvantage in all areas of life, including studies and employment. Since this is common knowledge, no individualised proof is needed concerning the moral damages each individual complainant suffered as a result of their segregation and the substandard education they received. If these facts (that they were segregated and provided with inferior education) are proven, damages based on the general jurisprudence concerning non-pecuniary remedies can be granted without examining the case of each and every complainant. For the same reason the fact that some complainants managed to succeed in their studies and work (often with extraordinary efforts) cannot be regarded as evidence against the claims of those who did not. On this basis, the Court granted HUF 500,000 (EUR 1,515) for each school year when a complainant was segregated and received inferior education, and HUF 300,000 (EUR 910) for each year when a complainant was educated in a segregated class (but the substandard quality of education was not proven).

Key points of analysis: The Court's approach that is based on the common knowledge nature of the damaging impacts of segregation and discriminatively substandard education offers victims of discriminatory and segregating practices a somewhat enhanced access to judicial remedies and enables to build on the success of *actio popularis* litigation. If followed up by other large-scale lawsuits, this can put a financial pressure on those state agencies which are responsible for stepping up against segregation and discrimination but have so far failed to do so.

Internet link source:¹

<https://debreceniitelotabla.birosag.hu/sajtokozlomeny/20190918/itelet-gyongyospatai-szegregacios-ugyben>, and
<https://168ora.hu/itthon/szegregacio-oktatas-kozoktatas-roma-eselyegyenloseg-gyongyospata-birosagi-itelet-174293>.

¹ The decision is not publicly available yet. The links are: the official press release of the court and a more detailed article on the judgment.