



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

### FLASH REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Curia upholds judgment granting non-pecuniary damages for segregation
<b>Date:</b>	19 June 2020
<b>Expert:</b>	András Kádár
<b>Update of flash reports:</b>	<ol style="list-style-type: none"><li>1. <a href="#">Hungary - Budapest Mayor's Office unblocks access to LGBTQI websites (79 KB)</a></li><li>2. <a href="#">Hungary - Second instance court decision on damages for segregation in education (PDF 86 kB)</a></li><li>3. <a href="#">Hungary - Prime Minister calls damages granted to Roma pupils for decade-long segregation "unjust" during pending court case (116 KB)</a></li></ol>
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Whether damages are payable to individual victims of educational segregation to compensate for the disadvantages they suffered as a result of the segregation
<b>Grounds of discrimination:</b>	Racial or ethnic origin
<b>Field of application:</b>	Education
<b>Source:</b>	National court decision (Decision No. Pfv.IV.21.556/2019/22 of the Curia)
<b>Applicable law:</b>	Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Act LXXIX of 1993 on Public Education, Act CX of 2011 on National Public Education, Act IV of 1959 on the Civil Code

### **Content**

**Case:** In March 2015, the Curia (Hungary's highest court) concluded in an *actio popularis* lawsuit launched in 2011 by the Chance for Children Foundation (CFCF) that the Roma pupils in the Nekcsei Demeter elementary school of Gyöngyöspata (Northern Hungary) had been segregated. Based on this decision, in February 2016, 63 former Roma pupils launched a lawsuit for damages against the school, the Municipal Council of Gyöngyöspata and the Klebelsberg School Maintaining Center (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 segregated and substandard education.

On 16 October 2018, the Eger Regional Court delivered a first instance judgment (under the number 12.P.20.489/2015/402). It 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 and ordered the payment of compensation to most claimants. In its Decision No. Pf.I.20.123/2019/16 (16 September 2019), the Debrecen Appeals Court modified the first instance court decision (it changed the amount of damages with regard to some claimants), but in essence it upheld the

decision that non-pecuniary damages were to be paid to the victims of segregation. The respondents requested an extraordinary review from the Curia.

In early January 2020, high-ranking politicians of the government and the incumbent Fidesz party started a concerted campaign questioning the justness and legitimacy of the judgment. On 9 January 2020, Prime Minister Viktor Orbán said that the Gyöngyöspata judgment violated the Hungarian people's sense of justice. '*If I were to live [in Gyöngyöspata], I would ask how it is possible that members of an ethnic group who live with me in the same community [...], receive a significant amount of money without performing any work while I would have to work for the same amount for I don't know how many hours, days or year.*' He stated that this was unfair and '*can't stay this way*'. This was followed by a series of similar statements. On 17 January, the Secretary of State of the Ministry of Human Capacities said that while the government acknowledged that the Roma pupils of Gyöngyöspata must be remedied, it would serve the people's sense of justice and the improvement of the situation of the claimants much better if instead of money they would receive in kind compensation in the form of IT and language trainings and assistance in combatting their integration difficulties and the trauma the segregation had caused.

**Decision of the court:** In its Decision No. Pfv.IV.21.556/2019/22 of 12 May 2020, the Curia upheld the second instance decision. It started the listing of the relevant legal provisions applied in the case by invoking Article 26 of the Fundamental Law of Hungary (which stipulates that judges are independent, they are only subjected to the laws and shall not be instructed in their adjudicative work), which is by all probability a symbolic message reminding the executive that it shall not formulate expectations to the judiciary concerning the desired outcome of any legal dispute. The Curia then went on to state that *in integrum restitutio* is inconceivable with respect to the humiliation and frustration caused by segregation. The provision of in-kind compensation for violations of inherent personality rights (such as the right to dignity and non-discrimination) would also be conceptually impossible, as this type of compensation is only applicable if the damage occurred in so-called replaceable items (such as crops). Reviewing the history and literature of non-pecuniary damages, the Curia came to the conclusion that such damages may only be compensated with money. The trainings and education may only replace the financial compensation for non-pecuniary damages, if the complainants accept such compensation, but even in that case, such an agreement between the parties could only be reached outside of the lawsuit's framework.

**Key points of analysis:** The Curia upheld the first and second instance approach which – based on the common knowledge concerning the damaging impacts of segregation and discriminatively substandard education – offers victims of discriminatory and segregating practices an enhanced access to judicial remedies and enables them to build on the success of *actio popularis* litigation. The Curia's interpretation prevented a situation, in which perpetrators of segregation would be put in a more advantaged situation than the perpetrators of any other fundamental rights violations, as (although conditional on the court's decision) they could be exempted from the 'hard' consequence of having to pay each segregated child pecuniary compensation. Such a solution would have been in all likelihood much cheaper for the perpetrators, as organising a couple of training occasions for larger groups of victims of segregation would by all probability require less funding than paying substantial amounts to each and every individual who was segregated. Hence, by coming to the conclusion it actually reached in the case, the Curia upheld the degree of dissuasiveness of the current system of sanctions, thus making sure that the Hungarian system of sanctions continues to meet the requirements set forth by Article 15 of the Racial Equality Directive.

It is also important to point out that the Curia has protected judicial independence and resisted the unprecedented external political pressure aimed at preventing the complainants from enforcing the financial damages granted to them.

**Internet link source:**

<https://www.kuria-birosag.hu/hu/sajto/gyongyospatai-szegregacios-nem-vagyoni-karok-megteritesenel-karterites-megitelesenek-egyetlen>.