



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

FLASH REPORT

Country:	Hungary
Title:	Draft Bill on mandatory in-kind compensation for segregation in education submitted
Date:	22 June 2020
Expert:	András Kádár
Update of flash reports:	<ol style="list-style-type: none">1. Hungary - Prime Minister calls damages granted to Roma pupils for decade-long segregation "unjust" during pending court case (116 KB)2. Hungary - Second instance court decision on damages for segregation in education (PDF 86 kB)3. Hungary - Prime Minister calls damages granted to Roma pupils for decade-long segregation "unjust" during pending court case (116 KB)
<u>Context</u>	
Issue at stake:	Whether Hungary's plans to prevent courts from imposing pecuniary compensation for fundamental rights violations in education are in compliance with the EU <i>acquis</i>
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Education
Source:	Policy development
Applicable law:	Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Articles 6 and 15

Content

Law/policy development: In its Decision No. Pf.I.20.123/2019/16. (16 September 2019), the Debrecen Appeals Court delivered a second instance judgment granting non-pecuniary damages to over 60 victims of educational segregation going on for over a decade in the elementary school Gyöngyöspata (Northern Hungary). The respondents requested an extraordinary review from the Curia.

In early January 2020, high ranking politicians of the incumbent Fidesz party started a concerted campaign questioning the justness and legitimacy of the court judgment. On 9 January 2020, Prime Minister Viktor Orbán said at a press conference that the Gyöngyöspata judgment violated the Hungarian people's sense of justice. *'[I]f 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.'* This was followed by a series of similar statements. E.g. 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

(such as IT and language trainings and assistance in combatting their integration difficulties).

In its Decision No. Pfv.IV.21.556/2019/22 of 12 May 2020, the Curia upheld the second instance decision and concluded that violations of inherent personal rights (including segregation) may only be compensated with money. 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.

As a response to the judgment, the Fidesz MP of the region, László Horváth submitted on 4 June 2020 an amending proposal to Draft Bill No. T/10742 on the Amendment of Act CXCV on National Public Education. The proposed amendment would insert a paragraph [Paragraph (4)] into Article 59 of the Act and would run as follows: 'If the educational institution violates the inherent personal rights of the child or pupil in relation to education, the Civil Code's provisions regarding moral damages shall be applied with the difference that the moral damages shall be granted by the court in the form of educational or training services. The educational or training services granted by the court can be either provided or purchased by the violator.' (Inherent personal rights are rights that are inalienably attached to the human personality – they are to a great extent equivalent to fundamental rights and freedoms.)

The reasoning attached by the MP (which even invokes Article 15 of Directive 2000/43) states that 'It has been raised in relation to the Debrecen Appeals Court's judgment in the Gyöngyöspata segregation case [...] that in-kind compensation would be just and reasonable for similar violations. The amendment prescribes in relation to future violations caused by access to substandard education that the court shall grant the compensation for the damages in the form of educational services instead of pecuniary compensation to be paid for moral damages.'

The MP's amending proposal was endorsed by the Parliamentary Committee for Cultural Affairs, which included it – along with the reasons – in its Amending Proposal No. T/10742/5 dated 9 June 2020. While it is certain that the Parliament will have extraordinary sessions in the coming weeks (as the central state budget for 2021 needs to be adopted before the summer recess), at the moment, no information is available on the Parliament's official website about either the date or the agenda of the upcoming sessions. If the proposal is not discussed and voted on before the summer recess, the final vote is likely to take place around the beginning of the fall session (starting on 1 September).

Key points of analysis: The proposed amendment is highly problematic on several levels:

- 1) The proposed text in its present form concerns all types of violations of inherent personal rights related to education and not only equal access issues and segregation. This can include violations regarding which the provision of additional educational or training services is completely meaningless (e.g. harassment by a teacher is certainly not remedied by offering training to the harassed pupil or student).
- 2) In the case of segregation, it might be the case (as it was the situation with some of the Gyöngyöspata complainants) that the segregated pupil succeeds despite the segregation, goes to secondary or higher education, gets a job, etc. For such a person, educational or training services may also be completely meaningless.
- 3) It is highly controversial to oblige the victims of inherent rights violations to accept educational or training services from the institution that violated their rights in the first place (especially so if the violation is segregation or any other form of discrimination). This would also raise an agency problem, as victims of fundamental rights violations would not be allowed to decide for themselves what kind of remedy they wish to receive.

- 4) The amendment would itself be a violation of the requirement of equal treatment as it constitutes indirect discrimination based on ethnicity. It is obvious that it would disproportionately concern segregated Roma pupils, as the majority of known cases of inherent rights violations committed by educational institutions are segregation cases (the reasons attached to the proposal make an express reference to the Gyöngyöspata case). It is also clear that the amendment would be disadvantageous to the victims of rights violations, since – compared to all other victims of rights violations – it would reduce their freedom of choice regarding the use of the compensation they are provided with: those who continue to get financial compensation can decide whether they wish to buy educational services from the damages paid to them or spend the money on something completely different (depending on what is relevant for them at the time of granting the compensation). Victims of inherent rights violations by educational institutions (with several segregated Roma pupils among them) would be deprived of any such choice.
- 5) Furthermore, besides concerning victims adversely, the amendment would also put perpetrators of educational violations in a more advantaged situation than the perpetrators of any other fundamental rights violations, as they would be exempted from the 'hard' consequence of having to pay each concerned child pecuniary compensation. Such a solution would in all likelihood be much cheaper for the perpetrators in most cases, as organising a couple of training occasions for larger groups of victims would by all probability require significantly less funding than paying substantial amounts to each and every individual whose inherent rights have been violated. (This is substantiated by the reactions of the respondents of the Gyöngyöspata case, who very fervently advocated against having to pay pecuniary compensation on the basis that it would jeopardise the town's budget, but would have been absolutely willing to buy educational services for the claimants.)
- 6) Due to the above, the planned amendment would by all likelihood also reduce the degree of dissuasiveness of the current system of sanctions, thus breaching the requirement set forth by Articles 6 and 15 of the Racial Equality Directive.

Internet link sources: <https://www.parlament.hu/irom41/10742/10742-0003.pdf>;
<https://www.parlament.hu/irom41/10742/10742-0005.pdf>.