



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:	5 August 2020
Expert:	András Kádár
Update of flash reports:	<ol style="list-style-type: none">1. Hungary - First instance court decision on damages for segregation in education (PDF 89 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)4. Hungary - Draft Bill on mandatory in-kind compensation for segregation in education submitted (97 KB)

Context

Issue at stake:	Whether Hungary's new law that prevents courts from imposing pecuniary compensation for fundamental rights violations in education are in compliance with the EU <i>acquis</i> Racial or ethnic origin
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Grounds of

discrimination:

Field of application:

Source:

Applicable law:

Education
National legislation
Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Articles 6 and 15; Act CXCV of 2011 on National Public Education, Article 59(4); Act LXXXVII of 2020 on the Amendment of Act CXCV of 2011 on National Public Education, Article 18

Content

Law/policy development: In its Decision No. Pfv.IV.21.556/2019/22 of 12 May 2020, the Curia (Hungary's highest court) upheld the second instance decision of the Debrecen Appeals Court (Decision No. Pf.I.20.123/2019/16 of 16 September 2019) granting non-pecuniary damages to over 60 Roma victims of educational segregation going on for over a decade in the elementary school Gyöngyöspata (Northern Hungary). The Curia's decision was made amidst public statements from high ranking government politicians, including the Prime Minister, in which they expressed their wish that the Curia would overturn the second instance judgment and oblige the respondents (the school, the municipality and the state office responsible for managing public education) to provide in kind compensation to the Roma claimants (such as IT and language trainings and assistance in combatting their integration difficulties) instead of money.

On the day of the Curia's judgment, László Horváth, the incumbent party's MP for the region where Gyöngyöspata is located made a statement¹ that a wrong and unjust judgment had been handed down which would upset social peace and punishes a whole town indiscriminately and excessively for the – alleged or actual – grievances of a minority. Three days later the Prime Minister commented² that it was unacceptable that the majority must feel like aliens in their own homeland. He stated that as someone who had a law degree he must say that the judgment 'is unjust as it is', and that the Curia could not see the justice of Gyöngyöspata from its downtown Budapest offices, but he would find that justice for the town through amending laws to make sure that not another similar judgment could be made.

László Horváth submitted on 4 June 2020 an amending proposal to Draft Bill No. T/10742 on the Amendment of Act CXC on National Public Education. The proposed amendment envisaged to insert the following paragraph [Paragraph (4)] into Article 59 of the Act: '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 makes an express reference to the Gyöngyöspata case.

The MP's amending proposal was endorsed by the Parliamentary Committee for Cultural Affairs on 9 June 2020. The Parliament debated the amendment on 2 July. In addition to the incumbent Fidesz-KDNP coalition, the right-wing Jobbik Party expressed support for the amendment, claiming (in very cautiously formulated terms but practically) that most often the minority pupils and their families themselves are responsible for segregation, as they generate with their destructive behaviour the 'white flight' that leads to segregation.³ All other opposition parties criticised the amendment for trying to circumvent the judicial decision, failing to offer a lasting solution for the problem of segregation and being an element of a campaign inciting to negative sentiments towards the Roma community. The Parliament adopted the amendment on 3 July. A 'yes' vote was cast by 130 MP's of the incumbent coalition, 17 MP's of Jobbik, 5 independent MP's (former Jobbik members), 1 MP of the Hungarian Socialist Party and the Parliamentary Spokesperson for National Minorities. Thirty-two MP's from the opposition coalitions and three independent MPS voted "no", while two independent MP's refrained from voting. The law was published in the official journal on 14 July and came into force on 22 July.

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

- 1) The text 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, but an unauthorised use of the child's picture on the school website is also an inherent personal rights violation, regarding which the provision of training services to the child is equally irrelevant).
- 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 irrelevant.

¹ <https://24.hu/belfold/2020/05/12/gyongyospata-kuria-fidesz-horvath-laszlo/>.

² <http://www.atv.hu/belfold/20200515-orban-viktor-kokemenyen-nekiment-a-kurianak>.

³ Records of the parliamentary session, pp. 20704-20707. Available at: <https://www.parlament.hu/documents/10181/1569934/ny200702-ossze.pdf/e1707e3a-7246-b403-7b07-500c46bb52fe?t=1594190214438>.

- 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 raises an agency problem, as victims of fundamental rights violations are not be allowed to decide for themselves what kind of remedy they wish to receive.
- 4) The amendment itself is a violation of the requirement of equal treatment as it constitutes indirect discrimination based on ethnicity. It is obvious that it will 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 is disadvantageous to the victims of rights violations, since – compared to all other victims of rights violations – it reduces 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) are now deprived of any such choice.
- 5) Furthermore, besides concerning victims adversely, the amendment puts perpetrators of educational violations in a more advantaged situation than the perpetrators of any other fundamental rights violations, as they are exempted from the 'hard' consequence of having to pay each concerned child pecuniary compensation. Such a solution will in all likelihood be much cheaper for the perpetrators in most cases, as organising a couple of training occasions for larger groups of victims will 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 has reduced the degree of dissuasiveness of the current system of sanctions, thus breaching the requirements set forth by Articles 6 and 15 of the Racial Equality Directive.

Internet link sources: mentioned in the footnotes.