



## NEWS REPORT

|                                  |   |
|----------------------------------|---|
| <b>Date:</b>                     | 2 October 2011  |
| <b>Expert:</b>                   | András Kádár  |
| <b>Title:</b>                    | Supreme Court establishes segregation by the local council of Jászladány  |
| <b>Country:</b>                  | Hungary   |
| <b>Context</b>                   |   |
| <b>Issue at stake:</b>           | Whether local council's decision to rent part of the municipal school building to a private school amounts to segregation |
| <b>Ground of discrimination:</b> | Race/ ethnic origin   |
| <b>Source:</b>                   | National court decision no. Pfv.IV.20.037/2011/4 (delivered on 29 June 2011)  |
| <b>Field:</b>                    | Education   |
| <b>Legislative provisions:</b>   | Articles 7, 8, 9, 20 of the Equal Treatment Act (Act 125 of 2003), Articles 75 and 84 of the Civil Code                   |

### Content

**Case:** With the declared intention to prevent majority parents from taking their children to schools located in other settlements, in 2002 the local council of Jászladány decided to rent a part of the local school building to a foundation which was established to provide the legal framework for the launching of a private school requiring a tuition fee from its pupils. The local council asked the foundation for a symbolic rental fee, while provided the private school with significant financial support. The school started its operation in 2003. While most of the Roma pupils (who could not afford to pay the tuition fee) remained in the local school, most of the majority pupils enrolled to the private school. In 2007, the Chance for Children Foundation (CFCF) launched an *actio popularis* claim against the local council and the foundation requesting the court – among others – to establish that the local council discriminated and segregated the Roma children, to oblige the defendant to refrain from future violation and to restore the situation that had prevailed before the violation started. The first and second instance courts rejected all the claims of CFCF.

**Decision of the Court:** In its decision no. Pfv.IV.20.037/2011/4 (delivered on 29 June 2011, but put in writing only later), the Supreme Court found CFCF's claim partly substantiated.

The court was of the view that the situation of the Roma children studying in the local school is not comparable to that of the pupils in the private school, since such a comparison may only be made in relation to schools maintained by the same entity.

Since the local school is maintained by the local council, while the private school is maintained by the foundation, this criterion of comparability is not in place, in spite of the fact that the local council provides the private school with significant financial support, the foundation regularly updates the council on its activities, and several members of the council are also on the foundation's board. Therefore, the difference in the quality of education does not qualify as discrimination of the Roma pupils who study under much worse conditions.

On the other hand, the Supreme Court found that the existence of segregation may be established on the basis that the local council is the owner of the building in which both the local school and the private school operates. By renting out part of the local school building to the foundation, the local council contributes to the maintenance of a situation in which Roma pupils are segregated from their non-Roma peers. CFCF as the plaintiff fulfilled its obligations under the burden of proof regulations (existence of a protected ground and the disadvantage), while the local council could not point to the legal provision allowing for such a separation of the two groups of pupils. Since under the ETA, the general exempting rule is not applicable in cases of differentiation based on ethnicity, while the separation of groups of students is only allowed if it is specifically permitted by an Act of Parliament, the defendant's failure to be able to identify the legal basis of its action resulted in the Supreme Court establishing that the local council had been segregating the Roma pupils from their non-Roma peers. The Supreme Court therefore established the violation of the requirement of equal treatment and obliged the local council to refrain from future violation. It referred back to the first instance court that part of the petition that claimed for the restitution of the original situation on the basis that the plaintiff's claim in that regard was not sufficiently precise to be enforced. The Supreme Court indicated that it would regard a settlement between the parties desirable, but if no such agreement can be reached, ultimately the private school has to move out from the local school's building.

**Internet link source and additional information:** [http://www.cfcf.hu/a-legfelsobb-birosag-kozlemenye\\_hu.html](http://www.cfcf.hu/a-legfelsobb-birosag-kozlemenye_hu.html)