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La Corte EDU sul tema della segregazione scolastica di bambini di origine rom
(CEDU, sez. I, sent. 30 marzo 2023, ric. n. 24408/16)

Con la decisione resa al caso in esame, la Corte Edu si è pronunciata sulla questione della segregazione scolastica all'interno di una scuola primaria ungherese frequentata (quasi esclusivamente) da studenti rom.

Nel merito, i giudici di Strasburgo hanno richiamato la pregressa giurisprudenza sul tema, ribadendo che la discriminazione basata sull'origine etnica di una persona deve essere considerata come una forma di discriminazione razziale e che quest'ultima necessita di una vigilanza speciale e di una reazione vigorosa da parte delle autorità nazionali; una protezione speciale che, in modo particolare, deve essere assicurata nei confronti dei rom i quali rappresentano un tipo specifico di minoranza svantaggiata e vulnerabile.

Ne consegue che l'educazione dei bambini rom in classi o scuole segregate senza l'adozione di adeguate misure volte a correggere le disuguaglianze cui sono soggetti difficilmente potrebbe essere considerata compatibile con gli obblighi positivi posti a carico dello Stato di non discriminare gli individui sulla base dell'origine etnica.

La Corte ha altresì affermato che nessuna disparità di trattamento fondata esclusivamente o in misura determinante sull'origine etnica di una persona può essere oggettivamente giustificata in una società democratica contemporanea edificata sui principi del pluralismo e del rispetto delle diverse culture.

Nel caso di specie, il ricorrente lamentava la presunta segregazione cui era stato esposto nella scuola primaria e il fatto che, a causa della sua origine etnica rom, gli fosse stato rifiutato il trasferimento presso un'altra scuola che avrebbe potuto offrirgli un'istruzione più appropriata anche in considerazione di un lieve disturbo dell'apprendimento da cui egli è affetto.

A tal riguardo, i giudici hanno riscontrato una condizione di effettiva segregazione dei bambini di origini rom all'interno della scuola primaria frequentata dal ricorrente, evidenziandosi altresì il mancato impegno delle autorità ungheresi nel correggere una tale diseguaglianza.

Sicché, pur in assenza di un qualsiasi intento discriminatorio da parte delle autorità statali, la Corte ha ritenuto che la disparità di trattamento cui il ricorrente è stato sottoposto durante la sua formazione non possa essere ragionevolmente giustificata dal perseguimento di uno scopo legittimo. Né lo Stato ha adottato misure adeguate al fine di correggere la situazione ed evitare il suo perpetuarsi e la conseguente discriminazione.

Di qui, l'accertata violazione dell'Articolo 14 della Convenzione in combinato disposto con l'Articolo 2 del Protocollo N.ro 1 alla Convenzione.

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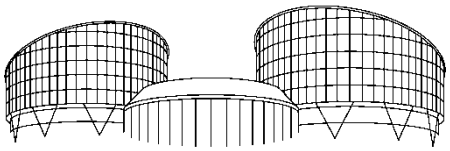

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXX v. HUNGARY

(Application no. 24408/16)

JUDGMENT

STRASBOURG

30 March 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Hungary,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 24408/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr XXX ("the applicant"), on 20 April 2016;

the decision to give notice to the Hungarian Government ("the Government") of the complaints concerning discrimination and the right to education, and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Rosa Parks Foundation, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 7 March 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant's alleged segregated education in a Roma-only primary school.

THE FACTS

2. The applicant was born in XXX and lives in XXX. He was represented by the European Roma Rights Centre, a non-governmental organisation based in Brussels.
3. The Government were represented by their Agent, Mr Z. Tallódi of the Ministry of Justice.
4. The facts of the case may be summarised as follows.
5. In the school year 2013/14 the applicant, who is of Roma ethnic origin, enrolled in the Jókai Mór primary school ("the Jókai Mór school"), which was the only ordinary curriculum State school in Piliscsaba and part of the Pilisvörösvár educational district. The Jókai Mór school was almost exclusively attended by Roma children, although, according to the applicant, the Roma make up only about 4% of the total population of Piliscsaba[1].
6. According to the applicant, the curriculum taught at the Jókai Mór school was poor, the material and human conditions insufficient; education data from 2013 indicated that fewer than 10% of pupils who completed eight years of primary education at Jókai Mór school continued their studies in a secondary grammar school.
7. There are two other schools in Piliscsaba teaching specific curricula: a school run by the Catholic Church ("the Catholic school") and another one run by the local Self-Government of Germans ("the German minority school").
8. Until 2013 the Jókai Mór school was operating under the authority of the local municipality, which had acknowledged that the school was racially segregated, adopted a resolution to desegregate it and put a moratorium on enrolments for the school year 2012/13.
9. Since January 2013, the Pilisvörösvár educational district has been managed by the Klebelsberg Institution Maintenance Centre, the State authority responsible for managing public education and maintaining public schools operating under the aegis of the Ministry of Human Resources. School enrolments in the Jókai Mór school resumed for the school year 2013/14 with only four pupils enrolling in year one.
10. On 17 July 2014 the applicant submitted a request to transfer to the Dózsa György school, another school in a neighbouring town belonging to the Pilisvörösvár educational district, claiming that he would receive a more suitable education in that school in view of his mild learning disability (hearing impairment). According to the applicant, in 2015 there were twenty-seven students from Piliscsaba attending the Dózsa György school, making up about one-quarter of that school's pupils. The Dózsa György school was easily accessible from Piliscsaba within five minutes on public transport.
11. On 6 August 2014 the headmaster of the Dózsa György school rejected the applicant's request because he did not live in the school's catchment area.
12. On 22 August 2014 the applicant lodged an appeal with the Pilisvörösvár educational district claiming that his request for transfer had been rejected because he was of Roma origin. By denying his transfer request, he had been denied enjoyment of the right to racially inclusive education. He relied on section 8(e) of Act no. CXXV of 2003 (see paragraph 18 below).

13. On 8 September 2014 the Pilisvörösvár educational district dismissed the applicant's appeal, holding that the Jókai Mór school was geographically closest to him, and it was therefore in his best interest to attend that school. They also noted that two other schools in Piliscsaba (see paragraph 7 above) had meanwhile become part of the educational district and could thus serve as alternatives for the applicant. It also stressed that the curriculum taught at the Jókai Mór school was of adequate quality.

14. On 14 October 2014 the applicant lodged a request for judicial review with the Budapest Surroundings Administrative and Labour Court complaining that he had been subjected to segregated education and, under section 8(e) of Act no. CXXV of 2003 (see paragraph 18 below), discrimination based on his ethnic origin. His action was dismissed on 20 January 2015, the Administrative and Labour Court holding that the headmaster of the Dózsa György school had exercised his discretion appropriately in the applicant's case and that the location of that school had been the decisive factor in refusing the applicant's transfer.

15. On 7 April 2015 the applicant lodged a petition for review by the *Kúria*, arguing that he had been discriminated against and that it was in his best interest to benefit from racially inclusive education. The applicant relied on both section 7(3) and section 8(e) of Act no. CXXV of 2003 (see paragraph 18 below).

16. On 2 September 2015 the *Kúria* dismissed the applicant's petition, finding that he had misinterpreted the right to choose a school. The school headmaster had the discretion to decide on whether to admit children who lived outside the catchment area and the right to choose a school did not create the right to admission to a specific school. The applicant's daily travel had been found to be an inappropriate burden which was sufficient to lawfully reject his transfer request. The *Kúria* also stated that the applicant belonged to the same school catchment area as other Roma children, which was why the majority of the school's pupils were of Roma origin; that did not constitute segregation. The *Kúria* further noted that the applicant had not lodged a complaint with the Equal Treatment Authority.

17. On 7 December 2015 the applicant lodged a constitutional complaint, arguing that he had the right to education free from discrimination, but on 5 July 2016 the Constitutional Court, acting in its plenary composition of eleven judges, refused to deal with the case, holding that it did not raise an issue of constitutionality.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

18. The relevant parts of Act no. CXXV of 2003 on equal treatment and promotion of equal opportunities ("the Equal Treatment Act") provide as follows:

Section 4

Scope of the Act

"The principle of equal treatment shall be observed by

(a) the Hungarian State,

...

(c) organisations exercising powers as authorities,

...

(g) institutions of primary and higher education (hereinafter collectively: educational institutions),

...
in the course of establishing their relationships, in their relationships, in the course of their procedures and measures (hereinafter collectively: relationships)."

Section 8

"Provisions that result in a person or a group being treated less favourably than another person or group in a comparable situation because of his or her

...
(e) national or ethnic origin,
...
are considered direct discrimination."

Section 12

"Claims arising from a breach of the principle of equal treatment can be enforced in the scope of the procedures described herein or in separate legal acts, particularly in the scope of lawsuits for the violation of personality rights, lawsuits under labour law, or procedures by the consumer protection, labour or administrative offence authorities."

Section 27

"(1) The principle of equal treatment extends to any care, education and training
(a) carried out in accordance with requirements approved or ordered by the State,
...
(2) The principle of equal treatment shall be enforced in relation to education defined in subsection (1), particularly in
(a) determining the conditions for accessing education and assessing applications,
...
(3) The principle of equal treatment is violated, in particular, if a person or group is
(a) unlawfully segregated in an educational institution, or in a division, class or group within such an educational institution,
(b) limited to a care or educational system, or a care or educational system or institution is created or maintained whose standards do not reach accepted professional requirements or do not meet professional rules, and thus do not ensure a reasonable opportunity to prepare for State exams."

19. The relevant part of Act no. CXC of 2011 on national public education ("the National Public Education Act") provides as follows:

1. Purpose and principles of the Act

Section 1(2)

"Public education is a public service which establishes the conditions for the long-term development of Hungarian society for the sake of new generations, and whose general framework and guarantees shall be provided by the State. The whole of public education is determined by knowledge, justice, order, freedom, fairness, the moral and intellectual values of solidarity, equal treatment and education for sustainable development and a healthy lifestyle. Public education shall universally serve the common good as well as private objectives respecting the rights of others."

Section 3(10)

"The school system shall be interoperable, allowing students to join any other school or school type even during the school year [in progress] based on the requirements of the receiving institutions established within the framework of this Act."

Section 46(6)

"Students have the right, in particular, to

...

(n) request his or her transfer to another educational institution,

..."

Section 50(1)

"Students, including private students, have student status at their school. Student status is established as the result of admission or transfer. Admission and transfer are by application. The headmaster of the school shall decide on the admission or transfer [application]."

Section 72(2)

"Parents have the right to freely choose a pre-school, school or residence hall in compliance with their children's abilities, skills and interests and their own religious and ideological convictions and their nationality. After the child reaches the age of 14, if he or she does not lack legal capacity, parents may exercise this right jointly with their child."

II. OTHER RELEVANT MATERIALS

20. The Report on Hungary of the European Commission against Racism and Intolerance (ECRI) (fifth monitoring cycle), adopted on 19 March 2015 and published on 9 June 2015, contains the following passages:

"77. As regards education, ECRI recalls that it made a number of recommendations in its fourth report, including the following: intensify efforts to reintegrate Roma children enrolled in special schools into mainstream schools; improve the access of Roma children to the full cycle of kindergarten education; and pursue efforts to promote equal access of Roma to secondary and tertiary education.

78. Many of the concerns underlying these recommendations persist, including those about the enrolment of Roma children in special schools, an issue dealt with in the section of this report on Topics specific to Hungary. In addition, although segregation is officially illegal, more than 20% of Roma pupils attend 'segregated' schools in Hungary: these are understood to be non-specialised schools in which an ethnic minority constitutes the majority in the school or class; a 50% threshold is commonly applied. According to the authorities, the main cause of school segregation is the concentration of the Roma population in certain areas. A lighter curriculum is followed in these schools or classes; thus, the education provided is inferior compared with mainstream schools.

79. On 12 July 2013, the Act on Equal Treatment and Promotion of Equal Opportunities was amended, introducing the principle that 'social catching-up' is first and foremost a state commitment. Roma rights groups expressed concern that providing for 'catch-up opportunities' – an approach supported also by the NRSG – could confer legitimacy to the above-mentioned practice of *de facto* segregation which affects Roma children. The authorities deny any such intention.

80. ECRI, which shares these concerns, notes that, in a landmark judgment in February 2014, the Greek Catholic Church in Hungary lost the right to keep open a primary school in a

predominantly Roma neighbourhood in the town of Nyiregyhaza. Human rights activists successfully argued that the school segregated Roma children from the non-Roma majority. The judge ruled that the functioning of the school violated both Hungarian laws on equal opportunity and Council of Europe standards. ECRI welcomes this ruling and hopes that it will prompt the authorities to address segregation in education and take steps to eliminate it. Some developments related to the transfer of responsibility for schools from local authorities to central government, described in § 105, seem to provide a window of opportunity in this connection.

81. ECRI strongly recommends that the authorities develop a policy against segregation in education and take steps to eliminate it."

21. The local Equal Opportunities Programme of the Municipality of Piliscsaba for the period 2013-18 identified the problem of segregation at the Jókai Mór school, and its Action Plan included a plan for eliminating the segregated classes and making better use of the building's capacity. In so far as relevant, it reads as follows:

"Currently, several classes [of the Jókai Mór school] can be considered segregated, as the vast majority of students are of Roma origin. It can therefore be said that, contrary to other public education institutions in Piliscsaba, most Roma children only attend this institution. The number of students attending the institution currently does not even reach fifty pupils, although it could accommodate up to 230 children."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENCTION TAKEN IN CONJUNCTION WITH ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

22. The applicant complained that he had been discriminated against in the enjoyment of his right to education on account of his Roma ethnic origin, contrary to Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1, which read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 2 of Protocol No. 1

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

A. Admissibility

1. The Government

23. The Government argued that the applicant had failed to exhaust the available effective domestic remedies. The proceedings pursued by him had concerned the lawfulness of the refusal of the Dózsa György school to admit him and had not been the appropriate forum for raising his complaint about racial segregation at the Jókai Mór school, which fell outside of the scope of those

proceedings. For that grievance, the applicant should have instituted proceedings before the Equal Treatment Authority, as mentioned in the *Kúria*'s judgment. That authority could have fined the school or ordered its desegregation. The applicant could also have lodged an ordinary civil action relying on the Equal Treatment Act or the Civil Code. By availing himself of the wrong remedy, the applicant had also failed to raise his complaint properly before the Constitutional Court.

24. In their additional observations on the case, the Government also claimed that the present case concerned an *actio popularis* and abuse of the right of petition because the applicant had never intended to enrol in the Dózsa György school but merely wished to "open an avenue to the Court".

2. *The applicant*

25. The applicant agreed that both the proceedings before the Equal Treatment Authority and a civil claim could have been remedies for him to use in order to raise his discrimination complaint. However, he had availed himself of an alternative remedy which had been accessible to him and could have effectively remedied the violation of his right to non-discrimination. In such circumstances, requiring him to use yet another remedy would have placed an undue burden on him and would be contrary to the Court's case-law in situations where there were several effective remedies available.

26. In the applicant's view, the Pilisvörösvár educational district had been under a positive obligation clearly set out in the Equal Treatment Act to ensure the applicant equal treatment in education. Despite that obligation, the educational district had allegedly ordered the State schools near Piliscsaba not to admit Roma children from the Jókai Mór school in order to ensure that the number of its students did not decrease, which would eventually lead to that school's closing.

27. The applicant's request for transfer had also been the most effective way for him to access inclusive education and thus avoid the negative effects of segregation as of year two of primary school. In contrast, a complaint to the Equal Treatment Authority could not have resulted in his having immediate access to inclusive education; that authority could only have ordered the cessation of segregation by obliging the educational district to implement a desegregation plan, or have fined the Jókai Mór school.

28. In the applicant's view, bringing a civil action would have been futile. Whereas such a remedy was available in theory, recent practice in Hungary showed that any court judgments ordering desegregation of Roma children and awarding them damages were not being implemented. The applicant cited a domestic court judgment in which damages had been awarded but never paid to the Roma families. A public statement by the Prime Minister related to that case had stated that paying damages to Roma victims of segregation "violated the Hungarian people's sense of justice".

29. The applicant also maintained that he had pursued his discrimination complaint in substance before all levels of domestic authorities. In particular, he had raised the claim of a violation of his right to equal treatment in relation to his access to education before the courts at all levels of jurisdiction, thereby giving them the opportunity to remedy the situation.

3. *The Court's assessment*

30. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. States are dispensed from answering

before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-71, 25 March 2014, and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 85, 9 July 2015).

31. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Vučković and Others*, cited above, § 72).

32. However, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999, and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-XII). Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were also available but probably no more likely to be successful (see *R.B. v. Hungary*, no. 64602/12, § 60, 12 April 2016, and the cases cited therein).

33. In the present case, the Court notes that the applicant consistently complained about his segregated education and consequent discrimination before all the domestic authorities, including the *Kúria*. It further observes that section 12 of the Equal Treatment Act provides alternative avenues through which an individual can seek protection from discrimination: either by raising the discrimination complaint directly before the Equal Treatment Authority – a particular legal avenue provided for by the Equal Treatment Act – or in other proceedings (see paragraph 18 above). Given that the applicant in the present case explicitly and consistently complained of discrimination, relying on section 8(e) of the Equal Treatment Act (see paragraphs 12 and 14-15 above), the Court considers that he was not required to pursue another remedy under the Equal Treatment Act with essentially the same objective in order to meet the requirements of Article 35 § 1 of the Convention (compare *Guberina v. Croatia*, no. 23682/13, § 50, 22 March 2016, and *Jurčić v. Croatia*, no. 54711/15, § 52, 4 February 2021). The Government's argument of non-exhaustion must therefore be dismissed.

34. As regards the Government's remaining arguments (see paragraph 24 above), the Court notes that the applicant complained about attending a segregated school and about the refusal of his transfer to a non-segregated school (see paragraphs 22 above and 49 below). He was thus "directly affected" by the measure complained of (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 96, ECHR 2014) and his application to the Court can therefore not be considered *actio popularis*. Moreover, nothing in the file suggests that the applicant's wish to

enrol in the Dózsa György school had not been genuine, or that he sought to mislead the Court or abuse his right of petition in any other way (compare *S.A.S. v. France* [GC], no. 43835/11, § 68, ECHR 2014 (extracts)). The Government's objections must therefore be dismissed.

35. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

36. The applicant maintained that, in refusing to allow his transfer from a racially segregated school to a non-segregated school, the Hungarian authorities had failed to comply with their positive obligations under the Convention and had violated his right to a racially inclusive education. In his view, the authorities had been biased and had ignored the long-term negative consequences of segregated education, and they had failed to examine whether there had been space for him at the racially inclusive Dózsa György school.

37. The applicant maintained that the refusal to transfer him to the Dózsa György school had been the result of racial discrimination. Since under domestic law anyone had the right to apply for admission to a school other than the one in their catchment area, the fact that he did not reside there could not have served as a valid reason for the refusal to transfer him. The educational district's assertion that travelling to the Dózsa György school would have been too burdensome had been unjustified because the trip amounted to five minutes by bus, and he had been in a position to organise his commute just like the remaining 165 primary school children residing within the area who already attended schools outside of Piliscsaba. None of the above reasons could thus serve as the real reason for the refusal to transfer the applicant to another school, and they had only been used to keep the Roma children at the segregated Jókai Mór school, thus ensuring its existence.

38. The applicant further submitted that there were no other ordinary district schools available to him in Piliscsaba that would be obliged to admit him automatically. While he had been aware that both the Catholic school and the German minority school had a public education contract with the local municipality, he did not know the specifics of that arrangement. Having contacted the German minority school, he had been informed that that school was not considered a district school. Moreover, neither of the two schools were a suitable alternative for the applicant, since his mother wished him to be educated in an ordinary secular Hungarian State school. It would have been impossible for the applicant to follow the part of the curriculum provided in German and a large part of that school's curriculum reflecting the German minority heritage (such as advanced German classes, certain subjects being taught in German, German dance lessons) had been irrelevant to him. Similarly, the Catholic school did not provide an ideologically neutral education and it required its pupils and their parents to accept the school's values and educational purposes, which the applicant's mother had not wished to do. Finally, neither of the schools had been equipped to deal with his mild learning disability, which had been one of the principal reasons his mother had requested his transfer to the Dózsa György school.

(b) The Government

39. The Government maintained that the State's obligation to provide education free from discrimination was an obligation of result and not of means, and that the Convention did not require States to take a specific measure when there were alternative ways of achieving the same goal. The authorities had several options for addressing the factual segregation brought about by other children living in the same catchment area as the applicant. In this case, they had chosen to impose compulsory enrolment at more than one school in the area where the applicant lived, namely the Catholic and the German minority schools, combined with measures to improve the quality of education at the Jókai Mór school. Even assuming that the Catholic school may not have been in line with the applicant's parents' philosophical convictions, the German minority school could not cause such a conflict since it taught the same secular philosophical convictions as mainstream public schools and there were a number of Roma children already attending that school.

40. In the Government's view, in cases where segregation was the unintended factual result of lawful aspirations and actions of the members of society, States could be held in violation of their positive obligations only if they failed to undertake measures to counter the effects of such lawful actions and not simply on account of the occurrence of those effects. In the present case it had not been the task of the Dózsa György school to remedy the situation at the Jókai Mór school; nor was compelling a particular school to admit the applicant the only possible measure for the education authority to ensure the applicant's right to education free from discrimination. Consequently, the Dózsa György school's refusal to admit the applicant could not violate his right to education free from discrimination. Complaints about the alleged failure of the education authority to take other possible and necessary measures, or about the insufficiency or inadequacy of the measures taken, as noted by the *Kúria*, could have been raised in separate proceedings before the Equal Treatment Authority, but had no relevance to the lawfulness of the decision of the headmaster of the Dózsa György school.

41. Lastly the Government pointed out that the decision delivered in the proceedings complained of had not compelled the applicant to attend the Jókai Mór school or deprived him of his freedom to choose one of the other two district schools or another school outside of his district which may have admitted him. In practice, such transfers took place after a personal consultation between a pupil's parents and the teachers and not on the basis of an impersonal letter by a lawyer, or upon the advice of a non-governmental organisation which was striving to litigate.

2. *The third-party intervener's submissions*

42. According to the third-party intervener, segregation of Roma children in school was a country-wide problem in Hungary. Approximately 45% of Roma children in Hungary attended Roma-only schools or classes. In 2014, 381 primary and secondary schools in Hungary had 50% or more Roma pupils. No specific measures had been undertaken by the government to decrease the segregation; mainstream education policies adopted since 2010 had only worsened the opportunities of Roma children in education and increased the gap between them and non-Roma children.

43. The domestic courts had adopted a number of judgments ordering the authorities to introduce effective desegregation measures with a view to making inclusive education possible. However, most of those judgments remained unenforced. In 2016 the European Commission had launched an infringement procedure against Hungary over the segregation of Roma children in schools,

calling on the Hungarian authorities to bring the domestic legislation on equal treatment and education in line with the EU Racial Equality Directive, and expressed concerns over Hungarian legislation and administrative practices of placing Roma children in special needs classes in disproportionately high numbers.

44. According to the third-party intervener, given the systemic nature of the segregation, Roma families who were not willing to accept segregated education could only search for a school that was willing to accept their child irrespective of the fact that it had no mandatory admission. There were a number of procedural flaws surrounding enrolment and transfer that hindered Roma children's access to inclusive education, such as the formation of school catchment areas, school capacity not being public information, and the decision on refusal of admission often being made orally and requiring no reasoning.

3. *The Court's assessment*

45. The relevant Convention principles regarding alleged discrimination of Roma pupils in the enjoyment of their right to education were set out in *D.H. and Others v. the Czech Republic* ([GC], no. 57325/00, §§ 175-81, ECHR 2007-IV) and *Oršuš and Others v. Croatia* ([GC], no. 15766/03, §§ 144 and 146-48, ECHR 2010) and further summarised in *Lavida and Others v. Greece* (no. 7973/10, §§ 60-63 and 72, 30 May 2013).

46. In particular, the Court has stressed that discrimination on account of a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (see *D.H. and Others v. the Czech Republic*, cited above, §§ 175-76).

47. Furthermore, the Court has held that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (see *Horváth and Kiss v. Hungary*, no. 11146/11, § 102, 29 January 2013).

48. The Court has also reiterated that discrimination potentially contrary to the Convention may result from a *de facto* situation and that in cases concerning discrimination in education it is not necessary to prove discriminatory intent on the part of the relevant authorities (see *D.H. and Others v. the Czech Republic*, cited above, § 194).

49. In the present case the applicant complained about the alleged segregation he had been exposed to at the Jókai Mór school and about the fact that he had been refused transfer to another school providing integrated education owing to his Roma ethnic origin.

50. In relation to the latter, the Court notes that under domestic law no right existed to automatically transfer or be admitted to another school which was outside of a pupil's catchment area and that such a decision depended on the discretion of the institution in question (see paragraph 19 above). In the applicant's case, the headmaster of the Dózsa György school gave no reasons for refusing to enrol him other than the fact that he resided outside the school's catchment

area. On appeal, the Pilisvörösvár educational district put forward the applicant's own best interest, concluding that his daily travel to the Dózsa György school would have been too burdensome for him. This argument was again mentioned by both courts reviewing the case, despite the applicant's mother's explanations that the travel involved amounted to a short bus ride, which was in no way overly burdensome for the applicant (see paragraph 37 above).

51. In this context, the Court notes that, as submitted by the applicant and not contested by the Government, in 2015 some twenty-seven students from Pilicsaba were attending the Dózsa György school (see paragraph 10 above). While the Court does not have information whether or not any of those students were of Roma origin, it cannot but observe that in those pupils' cases their place of residence outside of that school's catchment area had not played a decisive role. However, in the absence of any concrete evidence or statistical data, the Court is unable to come to a firm conclusion on whether or not the applicant's transfer request was indeed refused as a result of his Roma origin.

52. The Court will now turn to the second limb of the applicant's discrimination complaint, namely his allegations about the segregated education at the Jókai Mór school, which he attended between 2013 and 2020, that is to say, throughout his primary education.

53. In this connection, the Court notes that it has not been disputed by the parties that the Jókai Mór school was almost exclusively attended by Roma pupils, whereas the Roma population in the catchment area does not seem to have exceeded 4% of the inhabitants (see paragraph 5 above). It has also not been explicitly disputed by the Government that the curriculum taught at the Jókai Mór school was of a poor quality (see paragraph 6 above; see also paragraph 78 of ECRI's report cited at paragraph 20 above).

54. The Court is unable to accept the *Kúria*'s finding that the fact that the Jókai Mór school was almost exclusively attended by Roma children did not amount to segregation but merely reflected the presence of other Roma children in the school's catchment area (see paragraph 16 above). Such a conclusion was neither supported by the actual population figures for Piliscsaba (see paragraph 5 above), nor could the ethnic structure of residents within the catchment area, in the circumstances, be sufficient to objectively justify the segregation of the applicant as a Roma pupil in the Jókai Mór school (compare *X and Others v. Albania*, nos. 73548/17 and 45521/19, § 86, 31 May 2022).

55. In those circumstances, the applicant's situation at the Jókai Mór school is sufficient for the Court to conclude that he was being educated in segregated conditions (compare *Lavida and Others*, cited above, § 73), which had imposed a positive obligation on the State to take steps to correct this factual inequality and avoid the perpetuation and discrimination that resulted from the over-representation of Roma pupils at the Jókai Mór school (see *Horváth and Kiss*, cited above, § 102, and *X and Others v. Albania*, cited above, § 84).

56. The Government maintained that the State had fulfilled their positive obligation by providing the applicant with the possibility of transferring to one of the other two schools in Piliscsaba, namely the Catholic school or the German minority school. In this connection, the Court first notes that it cannot be said with certainty from the available documents that either of the two schools were under an absolute obligation to enrol the applicant. Whereas the Government maintained that both schools had district-school status and were under the obligation to admit children living in Piliscsaba (see paragraph 39 above), the applicant relied on correspondence with the

headmaster of the German minority school, who refuted that information (see paragraph 38 above). Moreover, the Government have not refuted the applicant's assertion that these two schools in Piliscsaba were ill-equipped to accommodate a child with a disability such as the applicant's (see paragraph 38 above).

57. The Court has found violations of the right to education free from discrimination in a number of cases concerning education of Roma pupils in different contexts and in respect of various Contracting States. Some of those cases concerned practices of systematic placing of Roma pupils in separate schools or classes (see *D.H. and Others v. the Czech Republic*, cited above, §§ 205-10; *Oršuš and Others*, cited above, §§ 180-86; and *Horváth and Kiss*, cited above, §§ 109-29), while others focussed on the failure of the domestic authorities to implement measures with a view to addressing the over-representation of Roma pupils in schools (see, for example, *X and Others v. Albania*, cited above, §§ 81-87, and *Lavida and Others*, cited above, §§ 64- 73). It follows from all of those cases that education of Roma children in segregated classes or schools without taking adequate measures with a view to correcting the inequalities to which they were subjected could hardly be considered compatible with the State's obligation not to discriminate individuals on the basis of their race or ethnic origin.

58. In view of the foregoing, and even in the absence of any discriminatory intent on the part of the State authorities in the present case, the Court considers that the difference in treatment which the applicant was subjected to in his education cannot be regarded as having been objectively and reasonably justified by any legitimate aim. Nor did the State take adequate measures with a view to correcting the situation and avoiding its perpetuation and resultant discrimination.

59. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 41 of the Convention

60. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. *Damage*

61. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government contested that claim.

63. Having regard to the circumstances of the case and the violation found, the Court awards the applicant EUR 7,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. *Costs and expenses*

64. The applicant also claimed EUR 4,537.50 in respect of the costs and expenses incurred before the Court. This included sixty hours of work by his representative organisation's staff at an hourly rate of EUR 60, and twelve and a half hours of work by a Hungarian lawyer at an hourly rate of EUR 75.

65. The Government contested that claim.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and

are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,537.50 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

B. Article 46 of the Convention

67. Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

68. The Court reiterates that, by virtue of Article 46 of the Convention, the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers of the Council of Europe. It follows, *inter alia*, that where the Court finds a breach in a judgment it imposes a legal obligation on the respondent State, whether or not the applicant has requested just satisfaction, to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress the effects as far as possible. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46, provided that such means are compatible with the conclusions and the spirit of the Court's judgment (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 221, 20 September 2018, and *X and Others v. Albania*, cited above, § 96).

69. It further reiterates that the coexistence of members of society free from racial segregation is a fundamental value of democratic societies (see, *mutatis mutandis*, *Vona v. Hungary*, no. 35943/10, § 57, ECHR 2013) and that inclusive education is the most appropriate means of guaranteeing the fundamental principles of universality and non-discrimination in the exercise of the right to education (see *Çam v Turkey*, no. 51500/08, § 64, 23 February 2016). Having regard to these principles, the Court considers that measures to be taken in the context of the present case must ensure the end of the segregation of Roma pupils at the Jókai Mór school and, more generally, develop a policy against segregation in education and take steps to eliminate it as recommended by ECRI (see paragraph 20 above).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 to the Convention;
3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 4,537.50 (four thousand five hundred and thirty-seven euros and fifty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
Done in English, and notified in writing on 30 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar
Marko Bošnjak President