Budapest-Capital Regional Court

Case number: 105.K.702.037/2022/22.

Plaintiff: Plaintiff

(adress1)

Representative of the plaintiff: dr. Adél Kegye, Attorney

(adress2)

Defendant: Commissioner for Fundamental Rights

(1055 Budapest, Falk Miksa u. 9-11.)

Representative of the defendant: dr. Judit Varga, Chamber Counsel

Interested party of the defendant's: Interested party of the defendant's

(adress3)

Representative of the interested party of the defendant's: Dr. Károly Czifra, Attorney

(adress4)

Subject-matter of the proceedings: Administrative dispute concerning equal treatment (EBF-AJBH-66-6/2022.)

JUDGMENT

The Court dismisses the claim.

Orders the plaintiff to pay the defendant 90,000 (ninety thousand) forints and the interested party on the defendant side 60,000 (sixty thousand) forints within 15 days.

The action fee of 30,000 (thirty thousand) forints shall be borne by the State.

There shall be no appeal against the judgment.

R e a s o n i n g

The facts of the case

[1] Using relevant European Union funding, measures were undertaken by the interested party to dismantle a segregated housing estate, occupied by individuals of a ..... ethnicity. As a result of these measures, by the end of 2019, the housing estate ceased to exist. A portion of the ..... families previously residing there—totaling 77 individuals—relocated to an integrated environment, while another portion moved to a different segregated area, referred to as the "settlement." The number of individuals of ..... ethnicity residing in the settlement and attending the church-run school (hereinafter “School”) operating there increased. Following the dismantling of the housing area, both the size of the segregated areas within the affected region and the population residing there have decreased.

[2] On 22 June 2021, the plaintiff filed an application (hereinafter "application") with the defendant against the interested party, the Ministry of Finance (hereinafter "MoF") and the Ministry of Innovation and Technology (hereinafter "ITM"; collectively referred to as the "ministries" and together with the interested parties referred to as the “respondents”). The plaintiff contends that the interested party had acted in a manner that by permitting or failing to prevent the mass relocation of several ..... families from the Nyíregyháza housing estate to another segregated area of the city as part of an urban renewal initiative, has sustained the unlawful territorial segregation of residents of Nyíregyháza from the non-Roma population since January 2020. The MoF, as the managing authority, provided financial support for this development under project number TOP-6.7.1-NY1-2017-00001 (hereinafter "project") from development funds, while the ITM, responsible for regulation and oversight, tolerated the use of these funds in a manner that upheld residential segregation. Through these actions, the respondents have unlawfully segregated in accordance with Section 10(2) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter “Equal Treatment Act” or “ETA”) with regard to the protected characteristics defined in Section 8(e), (p) and (q) of the Equal Treatment Act (namely, nationality, social origin, property status). The also plaintiff requested that the defendant compel the interested party to prepare a desegregation plan within a specified deadline, the plaintiff considered that the responsibility of the interested party lay in the fact that the dismantling of the housing estate had not been accompanied by the integration of the ..... and deprived people living there. On 29 July 2021, the plaintiff supplemented its application by stating that the infringement had also been committed by segregating the ..... children who moved to the settlement from the non-Roma children in the interested party’s preschools and state-run primary schools, where ..... children continued their education in an ethnically homogeneous school environment. The plaintiff and the interested party in the proceedings made several statements.

Decision of the defendant

[3] The defendant rejected the application by decision EBF-AJBH-66-6/2022. The defendant referenced the following provisions of the ETA: § 3(1)(e), § 4(b)-(c) and (m), § 7(1)-(3), § 8(e), (p), (q), § 13(1), § 14(1), § 18(3), § 19(1)-(2) and § 26(3). As a background to the case, the defendant referred to the judgment of the Budapest-Capital Regional Court No 105.K.701.748/2021/8 (hereinafter referred to as

"the final judgment"), in which the court annulled a previous decision, EBF/HJF/146/17/2020, issued by the Equal Treatment Authority (hereinafter “predecessor to the defendant”) in an ex officio proceeding, which had sanctioned the interested party.

[4] The defendant found that the plaintiff was entitled to initiate the proceedings and referred to Section 2(8) of Article 2(8) of Government Decree No.314/2012 (8.XI.2012) (hereinafter “Government Decree”). The defendant stated among the segregated areas in Nyíregyháza, the settlement was larger than the housing estate and offered better conditions even before the actions taken by the interested party; moreover, the interested party did not create the segregated area. The defendant examined the impact of the implementation of the project on the degree of segregation and, since the quantitative direction of the municipal measures was in dispute, the defendant had to reach a decision on this issue. On the basis of the data submitted by the interested party, the defendant found that the number of occupied housing units as well as the total number of housing units in the segregated areas had decreased; the plaintiff did not indicate the source of the data in connection with the change from 700 to 1,400-1,500 persons; the data provided by the interested party showed that the number of persons in the settlement at the end of 2019 was around 850, and following the relocation from the housing estate, the settlement’s population increased to around 1100.

[5] The defendant also determined that the settlement was home to around 240 families before the disputed moves, and 269 families in 270 apartments after the project. The total number of families living across the two segregated areas before the project was 340, and after the removals this number was reduced by 70. The defendant emphasized that its review was not an assessment of the project’s compliance with regulations but rather an examination of whether unlawful segregation had occurred. The defendant underscored that the interested party did not create the segregated area, and thus its responsibility pertained only to the persistence and potential worsening of segregation. The defendant referred to the fact that, on the basis of the final judgment, the way to put an end to segregation could be to improve the living environment, and that the earlier actions of the interested party were not unlawful thus, as a result, the interested party did not hinder the integration of settlement residents. The level of segregation has improved as the housing estate has been completely dismantled by the interested party. In the context of educational segregation, the defendant referred to the Curia judgment in Case no. Pfv.20.241/2015/4 (hereinafter “Curia judgment”) emphasizing that neither the interested party nor the ministries are the maintainers of the ecclesiastically maintained school, thus the examination of whether the education and training provided in the institution complies with Section 28 (2a) of the ETA is not relevant in the case. Highlighting the Act CLXXXIX of 2011 on Local Governments in Hungary (hereinafter “Local Governments Act”), Section 13 (1) (18), and the Curia judgment, the defendant provided a detailed explanation of which schools are accessible from the settlement, by which local public transport service, and within what time frame. Based on these details one cannot conclude that access to the integrated schools is not ensured by public transport. The defendant also noted that the Family and Child Welfare Service of Nyíregyháza has a separate site in the settlement, thereby ensuring support services for the people living there.

[6] Overall, the defendant found that the interested party did not apply unlawful segregation in the context of the project, as the implementation of the program did not lead to the infringement described in the plaintiff’s application. Therefore, the requirement of equal treatment was not infringed in the context of the financing and control activities of the ministries.

The application, the defense, the statement by the interested party

[7] In its claim, the plaintiff sought the annulment of the defendant's decision and an order that the defendant should be mandated to commence new proceedings. The plaintiff invoked a violation of Sections 62 and 81(1) of Act CL of 2016 on the Code of General Administrative Procedure (hereinafter: "CoGAP Act") and of Sections 14(14) to (16) of the ETA. The plaintiff argued that the defendant had failed to comply with its obligation to clarify the facts by failing to send him the statements of the respondents. The plaintiff considered the lack of clarity of the procedural position of the ministries to be a serious procedural error. The plaintiff also referred to the fact that, in the course of the prior procedure, it had submitted a communication from the European Commission (hereinafter "Commission") stating that the interested party had infringed Article 7 of EU Regulation No 1303/2013 of the European Parliament and of the Council. The failure to take account of that communication was also a serious procedural error affecting the merits of the case, as was the failure to hold a hearing and to hear the witnesses requested by the plaintiff. The defendant failed to state reasons for not seeking input from the Educational Authority and the School, thereby breaching its obligation to provide justification for its actions.

[8] According to the plaintiff, the defendant misunderstood the application and should not have decided on it by mathematical calculations, detached from the target group of the proceedings. According to the plaintiff, the relocation to another segregated area was unlawful and the Commission's decision to withhold the aid was also based on that fact, since, following the moves to the settlement, it was found that there were only 77 residents who had not moved to a segregated area. Although the plaintiff had requested to hear witnesses in the pre-litigation procedure on the qualitative change, the comfort level of the housing is of little relevance when people have moved from one homogeneous ethnic community to another. The plaintiff also objected that the defendant did not investigate educational segregation either; in this context, he stressed that pupils had been transferred from a mixed-composition school to a segregated school, a concern that the Commission had also highlighted in its communication.

[9] The plaintiff contended that the defendant misinterpreted the concept of unlawful segregation because the subject of the proceedings was not the creation of segregation, but the package of municipal measures that maintained segregation. According to the plaintiff, the interested party actively engaged in unlawful segregation in respect of all the families who eventually moved to the housing estate and would have acted lawfully if the interested party would have not offered the families living in the housing estate housing in another segregated area (settlement). Those who were given housing in the settlement were not segregated spontaneously, but at the initiative of the interested party.

[10] The plaintiff stressed that in the application of Section 8(e) of the ETA, neither the fundamental rights nor the reasonableness defense is permissible according to Section 7(3) of the ETA. The plaintiff also referred to the decision of the Budapest Court of Appeal No. 2.Pf.21.145/2018/6/I., which found the ministry responsible for education liable for unlawful segregation in 28 primary schools. Through a survey, the plaintiff demonstrated the fact that many of the children of the families moving to the settlement were enrolled in the local school which has a ..... majority. The plaintiff argued the interested party should have been expected to prevent this by all means, since the social integration of ..... families also requires that children should be educated in an integrated environment. The plaintiff stated that, due to a change in legislation, the Curia judgment was rendered irrelevant, as the exculpatory provision of the ETA on educational discrimination had been amended. Therefore, the part of his application relating to school segregation was not adjudicated. The plaintiff further cited a response received from the Hungarian State Treasury on August 9, 2023, to a request for public interest data, which confirmed that the projects identified in the request were not funded by the European Union.

[11] The defendant requested the dismissal of the claim and sought litigation costs. The defendant explained that ministries were not called upon to make a statement because their role was incidental compared to that of the interested party and, since no infringement had been found in relation to the conduct of the interested party, the ministries' statements were unnecessary. The defendant also found it unnecessary to examine the Commission's communication, as it was not a binding, authoritative or judicial decision; furthermore, the defendant's examination focused on equality and opportunity rather than funding compliance. The defendant concluded that neither a hearing nor witness testimony was required, as explained in its decision. No proceedings were brought against the School and it was therefore not necessary to contact it, and the subject of the investigation was properly identified; overall, the extent of segregation, the number of families living there has decreased, some of them have been placed in better conditions, and therefore the measures aimed at and resulting in a reduction of the extent of segregation, and it cannot be considered to maintain segregation. The defendant examined the trend in line with the final judgment, noting that the court had previously ruled that its predecessor's decision was unlawful because it addressed a specific moment in time.

[12] In the matter of educational segregation, the liability of the respondents cannot be established, because neither at the time of the facts assessed in the Curia judgment, nor during the period examined in the present case, was the interested party concerned a school maintainer, and thus the interested party could not have implemented educational segregation, irrespective of the provisions of Sections 28 (2a) - (2b) of the ETA. The district schools are maintained by the Nyíregyháza school district, and the Curia judgment also ruled out the existence of an infringement due to the lack of maintainer status. The measures taken by the interested party did not establish that segregation was maintained, so the question of excusal did not arise. The defendant also did not assess compliance with the integrated urban development strategy, as its mandate was to decide on the legality of the actions, and it is not the defendant's role to oversee the use of European Union funds.

[13] The interested party requested the dismissal of the claim and sought litigation costs. The interested party highlighted that its measures have aimed at reducing segregation, noting that the number of housing units within segregated areas decreased by 30% between 2010 and the end of 2022, the housing estate has been dissolved, and the population of the settlement has not significantly increased. Access to services for children living in the settlement is ensured, and the plaintiff interprets the relocations narrowly. Citing the Fundamental Law, the United Nations Covenant of December 16, 1966, the New York Convention on the Rights of the Child, and the Curia Judgment, the interested party pointed out that the freedom of school choice is a constitutional right that must be upheld. The interested party emphasized that no irregularity proceedings have been initiated against it, it has received no communication from the Commission about the withdrawal of EU funding, and it has no knowledge of the content of the letter addressed to the Deputy State Secretary, and the final judgment is also applicable to this case.

The court's decision and its reasons

[14] The claim is unfounded.

[15] The court examined the legality of the defendant's decision pursuant to Sections 2 (4) and 85 (1) - (2) of Act I of 2017 on the Code of Administrative Court Procedure (hereinafter “CACP”), based on the facts existing at the time of the decision, within the limits of the application, and established the facts on the basis of the statements of the parties and the documents of the previous proceedings.

[16] The court had to decide on the merits of the case whether the defendant had lawfully rejected the application on the grounds that the move of some of the residents from the housing estate to the settlement did not constitute direct discrimination and unlawful segregation on the basis of the characteristics identified by the plaintiff and that there was no educational segregation of the children moved to the settlement.

[17] In its claim, the plaintiff cited both procedural and substantive legal violations. Procedural violations can lead to the annulment of the contested administrative action only if they constitute serious breaches that impact the merits of the case. The plaintiff alleged violations of the obligation to clarify the facts and to provide adequate justification, arguing that it did not receive substantive statements from the ministries and that the procedural role of the ministries remained unclear without an explanation of their inclusion in the process. This aspect of the claim is unfounded, as the defendant correctly argued that the responsibility of the ministries could only arise secondarily and only if a violation by the interested party had been established. The defendant, therefore, reasonably first assessed the responsibility of the interested party, and having lawfully excluded it as outlined below, the responsibility of the funding and oversight bodies did not arise. Consequently, it was unnecessary to request substantive statements from the ministries; the defendant explained this on page 18, paragraph 3 of its decision, thus fulfilling its obligation to provide justification in this regard.

[18] The court found that the defendant had involved the ministries in the pre-litigation procedure. The suspension order EBF-AJBH-271-2/2021 issued in respect of the previous proceedings and the transcripts EBF-AJBH-271-5/2021 addressed to ITM and EBF-AJBH-271-6/2021 addressed to MoF, which contain the continuation of the suspended proceedings, also record that the defendant is not only pursuing the proceedings against the interested party but also involving the ministries. For all these reasons, the defendant was not under any further obligation to clarify the facts or to state reasons with regard to the procedural status of the ministries. The court acted in accordance with Section 20(4) of the CACP with regard to the ministries.

[19] In its decision, the defendant also stated that, due to the orientation and purpose of its procedure defined by the application, it was not required to examine whether the project complied with the legal requirements for state or EU funding, but whether the application alleged violations of equal treatment. The defendant and the interested party have rightly pointed out that the Commission's communication is a non-binding source, the subject of which is not an assessment under the ETA, nor was even addressed to the interested party. The interested party could therefore not have been aware of the content of the communication and could not have adapted its measures accordingly. Furthermore, the notice from the Hungarian State Treasury submitted by the plaintiff during the proceedings, under reference number ADATV/518-2/2023, does not affect the legality of the defendant’s decision because, under Section 85(2) of the Code of Administrative Court Procedure (CACP), the court must review the defendant’s administrative action based on the facts as they existed at the time the decision was made.

[20] The plaintiff’s objections regarding the lack of a hearing, witness testimony, and explanation for not contacting the Education Authority and the School in the prior proceeding are unfounded. The rules governing hearings conducted by the defendant are set out in Section 16 of the ETA, but the plaintiff did not cite any legal provision requiring the defendant to hold a hearing in the prior proceeding. The records from the prior proceeding show that the defendant attempted to reach a settlement, although it was unsuccessful. Since a hearing is merely an option for the defendant, there was no need to specifically address its absence in the decision.

[21] With regard to the motions for witness hearings, page 16 of the decision contains a reasoning that the procedural act was omitted by the defendant for lack of relevance, and that contacting the School and the Education Authority was unnecessary, as the available data were suitable for a decision on the merits. The plaintiff’s request focused on assessing the responsibility of the interested party and the ministries, while the defendant addressed its position regarding educational segregation on pages 16-18 of the decision. The defendant’s justification for omitting the proposed actions was appropriately documented and also noted that it was undisputed in the prior proceeding that children attending the School were predominantly from the ..... community and that, following relocations from the housing estate, residents enrolled their children in this school.

[22] As regards the merits of the case, the plaintiff's claim was that the defendant had incorrectly determined the direction of the investigation, deciding on the basis of figures alone whether the interested party had implemented housing segregation. In this regard, he challenged the calculation derived on page 13 of the decision, the essence of which was that the respondents maintained the segregation of ..... people, keeping them from the possibility of escaping from a segregated environment. The court referenced a final judgment in an earlier case between the interested party and the defendant, in which the court annulled the decision of the defendant's predecessor in title, EBH/HJF/146/17/2020. By the latter decision, the defendant's predecessor in title found a breach of Section 10(2) of the ETA and ordered the cessation of the infringement and the development of a program to eliminate the segregation status of the settlement. In the final judgment, the court held that the interested party (the plaintiff in that case) had no further obligations to eliminate the segregation, as it had already implemented several programs to that end. The court considered the improvement of the housing environment to be a relevant circumstance and attached importance to the fact that the interested party could achieve the desegregation also taking into account that it complied with its obligations under the Local Governments Act and other legislation. The court considers the findings in the final judgment to be applicable to the present case, together with the fact that there was no dispute between the parties that the overall extent of segregation and the number of families living there had decreased, nor that some families had been placed in better conditions and that there had been not only moves from segregation to segregation, but also moves from segregation to an integrated environment.

[23] The plaintiff did not make consistent statements regarding the number of people living in the segregation, since, according to its statement of claim, "a total of 1,177 people lived in the two segregations in November 2021", a figure which corresponds to the one taken into account by the defendant in the decision. However, during the proceedings, the plaintiff later claimed that the population of the settlement was approximately 2,000. Given that the plaintiff did not dispute the figures

in the defendant's decision in its original claim, the Court considered the modified later statement to be contrary to Section 43(1) of the CACP and, therefore, disregarded it.

[24] The plaintiff contended that unlawful segregation based on protected characteristics could be established if even a single family was relocated from one segregated area to another. According to the plaintiff, the interested party would only avoid perpetuating unlawful segregation if it assisted every family from the dismantled housing estate in moving to an integrated residential environment, resulting in all families relocating to such an environment. However, this interpretation is not supported by Section 10(2) of the Equal Treatment Act (ETA). In its final judgment, the court had previously found the defendant's predecessor's decision unlawful precisely because it evaluated facts at a single point in time without acknowledging that eliminating, or even reducing, a segregated area cannot occur instantaneously and may require a long-term action plan. Nor can it be ignored in the present case that the segregations were not created by the interested party, so that liability can only arise in connection with the maintenance of the segregation, in connection with measures and unlawful omissions which specifically act against its elimination. The defendant, however, extensively analyzed and substantiated in its decision the actions taken by the interested party, which have resulted in a trend showing not only a reduction in the area of the segregated zones but also a decrease in the number of residents within them. The subject of the defendant's proceedings may undoubtedly be the assessment of the alleged or actual harm to a person or family, but that was not the subject of the application, which was an assessment of the impact of the project, which necessarily must be assessed in the light of trends. The significance lies not in the fact that the population of the settlement increased slightly compared to the decrease in the population of the housing estate (which undeniably led to a slight population increase in one segregated area). Instead, the critical point is that the dismantling of the housing estate ultimately led to a reduction in the overall segregated area and the number of people living within it. This fact, logically, cannot establish liability for maintaining segregation; hence, the defendant was not required to issue a ruling sanctioning the interested party. Measures aimed at reducing segregation cannot be equated with actions that implement segregation.

[25] The plaintiff's position on educational segregation is not well founded either. The defendant has set out in detail in its decision of the issue examined in the plaintiff's supplementary application. The court also attributed decisive importance to the fact that neither the interested party nor the ministries are the maintainers of the School and do not organize education there. The defendant also rightly referred to the Curia judgment and to the fact that Section 28(2a) and (2b) of the ETA, which entered into force on 1 July 2017, did not apply to the respondents, since those provisions expressly concern the maintaining of education and the organization of education. The fact that the vast majority of those who moved from the integrated school in the housing estate to the settlement enrolled their children in the school located there does not reasonably raise the question of the liability of the interested party.

[26] In the context of education, the defendant also considered the transport possibilities in its decision. The plaintiff merely contested the defendant's finding in the decision on travel time but did not plead any express infringement of the law in that regard. The defendant examined the educational segregation to the extent necessary to decide the case as defined in the application and provided a detailed description of the transport options available to the residents of the settlement. For these reasons, it was right to find that the respondents were not liable for educational segregation.

[27] Based on the foregoing, the defendant's decision is not unlawful in the scope of the claim. Therefore, the Court dismissed the claim pursuant to Section 88(1)(a) of the Code of Administrative Court Procedure (CACP).

[28] The defendant and the interested party brought a claim for costs, asking for their costs to be assessed on the basis of 21 hours of work. The costs for the defendant, represented by a legal counsel, were determined according to the hourly rate specified in Sections 4(1)(a) and 3(3) of Decree No. 32/2003 (VIII.22.) of the Ministry of Justice on Attorneys' Fees in Judicial Proceedings. The fees for the interested party, represented by an attorney, were determined at an hourly rate of 100 EUR plus VAT in accordance with Section 83(1) of Act CXXX of 2016 on the Code of Civil Procedure (CCP). The court set the defendant’s and the interested party’s litigation costs at an amount lower than requested, pursuant to Section 3(6) of the Ministry of Justice Decree, as the requested sum was excessive given the number of hearings held, the length of the defendant’s and interested party’s statements, and the overall complexity of the case.

[29] The recorded filing fee remains the responsibility of the state, as the Plaintiff is fully exempt from fees under Section 5(d) of Act XCIII of 1990 on Duties, pursuant to Section 102(6) of the CCP.

[30] The possibility of appeal against this judgment is precluded by Section 99(1) of the CACP.

Closing section

Budapest, 12 October 2023.

Dr. Gábor Huber s.k.	Dr. Péter Nagy s.k	Dr. Tibor Litauszki s.k.
Presiding Judge	Judge-Rapporteur	Judge