

Communication concerning the decision of the Curia of Hungary in
civil case number Pfv.IV.21.556/2019

In the framework of its judicial review proceedings, the Curia of Hungary delivered, on 12 May 2020 and – as a result of the restricting measures introduced because of the coronavirus situation – *in camera*, an important judgement in the highly publicised segregation case of Gyöngyöspata.

The supreme judicial forum's competent adjudicating panel upheld the final judgement of the Regional Appellate Court of Debrecen by which 60 former students of Roma origin had been granted compensations varying from 200 000,- Hungarian forints to 3 500 000,- Hungarian forints for school segregation and for violation of their personality rights due to the unlawful segregation of students based on their Roma ethnic origin and to the provision of lower-standard education for them, the amount of the compensations had been calculated in a manner according to which each school semester spent in segregation had been compensated by 300 000,- Hungarian forints, in addition, each semester in segregation during which a lower standard education had been provided had been indemnified by 500 000,- Hungarian forints as non-pecuniary damages.

In their petition for judicial review, the defendants requested the Curia to entitle them to compensate the injured plaintiffs in kind, *id est* by way of providing them with supplementary education or training instead of the payment of damages, and secondarily, if the principal claim would be dismissed, the local government defendant asked the Curia to reduce the amount of the non-pecuniary damages.

The Curia judged the petitions for judicial review ill-founded.

The case at hand required the application of the 1959 Civil Code that had known, as of the year 1978, the concept of non-pecuniary damages (moral compensation). The Civil Code currently in force has replaced such damages by the concept of grievance fees.

Based on the relevant provisions of the 1959 Civil Code and the explanatory memorandum related thereto as well as the several-decade old judicial practice and legal literature on moral compensation, the Curia established that non-pecuniary harm could be compensated uniquely by way of pecuniary damages and that the relevant legislation had not provided for the possibility of compensation in kind in respect of such harm. The replacement of pecuniary damages by the provision of supplementary training may only be possible on the basis of the parties' out-of-court settlement.

As regards the amount of the non-pecuniary damages awarded, the Curia held that it could not be considered manifestly excessive. However, the Curia noted that the damages awarded by the final judgement could not be regarded as based on a sort of general tariff regime that should be applied in other court proceedings as well, since the amount of the compensations granted had been determined, at the second instance court's discretion, with regard to the specific circumstances of the case at hand.

Budapest, the 26th of June 2020

Civil Department of the Curia of Hungary