Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

56.

A. The applicant

1. The applicant is of Roma ethnic origin and lives in Piliscsaba (Hungary). In the 2013-2014 school year the applicant was enrolled in the first grade at Jókai Mór Primary School in Piliscsaba, a school attended only by Roma pupils.

2. The applicant, represented by his mother and her legal representative, and with the help of the Chance for Children Foundation (CFCF, an NGO based in Budapest), attempted to secure the applicant's transfer from Jókai Mór Primary School to Dózsa György Primary School in Pilisjászfalu for the 2014-2015 school year, to enable him to study in non-segregated environment. The proceedings that ensued are described in further details below.

B. Jókai Mór Primary School

3. Jókai Mór Primary School is the only ordinary state school in Piliscsaba. The two other schools in the town are a school maintained by the German Self-Government (Német Nemzetiségi Önkormányzat) teaching a specific curriculum, and a school operated by the Catholic Church. In the 2013-2014 school year Jókai Mór Primary School was the only school in Piliscsaba which formed part of the local school district system, and was therefore the only ordinary-curriculum school designed to guarantee enrolment for children living in its catchment area. There are several ordinary-curriculum primary schools near Piliscsaba which are easily accessible either by car or by public transportation, such as Kossuth Lajos Primary School in Tinnye, Dózsa György Primary School in Pilisjászfalu, and the Primary School of Pilisvörösvár. Many children who live in Piliscsaba attend these other schools. In April 2015, for example, 27 students residing in Piliscsaba studied in Dózsa György Primary School, making up 24% of the student population of that school. State schools outside Piliscsaba are not required to enrol pupils who live in Piliscsaba, but have the discretion to do so under domestic law (Law CXC of 2011, § 50 (1)).

4. Pilisvörösvár Educational District is maintained by the Klebelsberg Institution Maintenance Centre (Klebelsberg Intézményfenntartó Központ, hereinafter referred to as "KLIK", the national educational authority in Hungary operating under the aegis of the Ministry of Human Resources). It is a well-known fact among the residents of Piliscsaba that Jókai Mór Primary School is attended only by Romani pupils. According to data (Annex 11) provided by the Pilisvörösvár Educational District in response to a request from CFCF, all 46 students enrolled in the school in the autumn of 2013 were classified as "disadvantaged". The school director has confirmed to the press that the majority of the students in the school, as of 3 September 2013, were Roma. The applicant directs the Court to a video of the school director speaking on that date, which can be found at http://nava.hu/adatlap/?id=1685438. Overall, Roma make up only 4% of the population of Piliscsaba (out of a total population in the town of 7,700 people). The quality of the education in Jókai Mór Primary School is poor. The material and human resources there are insufficient. Education data from 2013 showed that the rate of those students who continued their studies in a secondary grammar school after completing eight years of primary education in Jókai Mór Primary School was below 10%. The proportion was 30% in Dózsa György Primary School in Pilisjászfalu and 30.5% nationally.

5. In 2011 Jókai Mór School was operating under the authority of the local municipality. Having recognised that the school was racially segregated, the municipality adopted a resolution (181/2011. (VII. 13.)) to desegregate the school: it established an "Equal Opportunities Working Group" (Esélyegyenlőségi Munkacsoport) in order to create and implement a desegregation plan. In accordance with the first step of this plan, the municipality instituted a moratorium on enrolment in the school for the 2012-2013 school year, with the long-term aim of closing the school altogether. In January 2013, KLIK took over the responsibilities of the local municipality in relation to the school. New pupils were then able to enrol for the 2013-2014 school year. However, only four first-grade pupils started their studies at the school that year.

C. The Proceedings in the Applicant's Case

6. With the help of CFCF, in the summer of 2014 eleven Romani children studying at Jókai Mór Primary School (including the applicant) attempted to transfer to non-segregated schools in the Pilisvörösvár Educational District (Annex 12). In judicial review proceedings, the Budapest Environs Regional Court (Budapest Környéki Törvényszék) found that in the cases of six children, the decisions refusing the transfers were unlawful. The court based those judgments on the failure of the authorities to provide reasons for the refusals and ordered the school district to re-open the proceedings (Annex 10). However, in those cases, once the cases were resolved in their favour, the parents no longer wanted their children to attend non-segregated schools, in the light of the passage of time (six to seven months) and what they perceived as the racist attitudes of the Pilisvörösvár Educational District authorities. Two siblings from the group nonetheless transferred to an integrated school in another district (Szentendre) in the meantime.

Statement of the facts (continued)

57.
7. On 17 July 2014, as part of CFCF's efforts described directly above, the applicant submitted a request (Annex 1) to the director of Dózsa György Primary School (which belongs to the Pilisvörösvár Educational District) to transfer to that school for the next school year (2014-2015). It was argued that the applicant would receive a more suitable education in that school.

8. On 6 August 2014 the director of Dózsa György Primary School refused the request. The decision (Annex 2) referred to section 50(1) of Act CXC of 2011 on National Public Education: because the applicant did not reside in the catchment area of the school district to which Dózsa György Primary School belonged, the director had discretion whether to enrol the applicant and was refusing to exercise that discretion. No reasons were given for refusing to exercise this discretion in the applicant's favour.

9. On 22 August 2014 the applicant's legal representative filed an appeal (Annex 3) with the Pilisvörösvár Educational District against the 6 August 2014 decision, claiming a violation of section 8(e) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities. The appeal argued that the transfer request was an obvious attempt to place the applicant in a higher quality, racially integrated school. As it was not the first such request (see § 6 above), but part of a larger campaign to facilitate the transfer of Romani pupils from a segregated school to a non-segregated school, the director ought to have known the underlying reasons of the request. The applicant claimed that by denying the enrolment request, the director had prevented the applicant from enjoying a racially-inclusive education. The applicant's representatives argued that such an education would have improved the applicant's future employment opportunities and his chance to become an active citizen; the applicant's mother, taking into consideration the far-reaching negative consequences that education in a segregated Roma-only school entails, decided to choose an inclusive education for her child. Dózsa György Primary School hindered this effort by refusing the mother's request, and so the decision perpetuated school segregation. They further argued that by neglecting the applicant's vulnerability inherent in his Roma ethnic origin, the school director had acted contrary to the applicant's right to equal treatment, which amounted to direct discrimination. The applicant's representatives reiterated that the discretion school directors enjoy to enrol pupils from outside the school's catchment area is limited by the prevailing legislation in force as well as general legal principles. Furthermore, the director was obliged to provide reasons in case of refusal, which he did not; those reasons ought to have taken the best interests of the child as a primary consideration, in accordance with Article 3 of the UN Convention on the Rights of the Child. The applicant's representatives also pointed to section XVI(1) and (2) of the Fundamental Law of Hungary and section 1(1) of Act CXC of 2011 on National Public Education, which ensure a right to the protection and care necessary for the child's proper physical, mental, and moral development.

10. On 8 September 2014 the Pilisvörösvár Educational District rejected the appeal (Annex 4). They argued that the easy accessibility and proximity of Jókai Mór Primary School meant that it was in the applicant's best interest to attend that school. They also argued that the educational programme at Jókai Mór Primary School, established in 2013, ensured an appropriate quality of education for the applicant. The District noted that the two other schools in Piliscsaba (those maintained by the German Self-Government and the Catholic Church, see above, § 3) had become part of the school district as of the 2014-2015 school year and thus could have served as alternatives for the applicant.

11. On 14 October 2014 the applicant brought an action (Annex 5) before the Budapest Environs Regional Court for judicial review of the 8 September 2014 decision. The applicant's representatives argued that the decision was contrary to a parent's right freely to choose her/his child's school and to the principle of equal treatment (i.e. non-discrimination). The applicant noted that the fact that the two other schools in Piliscsaba had become part of the school district was not communicated to the applicant's parents. This information was also not published in the register of the Education Office as of 14 October 2014. However, these schools, one a school for the German minority and the other a religious school, were not suitable alternatives; even if the information had been available, the applicant's mother would have wished to enrol him in an ordinary, secular Hungarian state school.

12. On 19 November 2014 the Pilisvörösvár Educational District submitted a statement of defence claiming that it was in the child's best interest to stay in his familiar and usual educational environment. According to District, commuting between the two towns would cause unnecessary and undue hardship for the applicant. Both the parent and the legal representative failed, they claimed, to provide any further argument to justify their decision apart from the right to freely choose a school for one's child.

13. On 20 January 2015 the Budapest Environs Regional Court dismissed the applicant's claim (Annex 6). It upheld the previous decisions, reasoning that the headmaster had appropriately exercised his discretion. It agreed that Dózsa György Primary School's location in a different town was a decisive factor.

14. On 7 April 2015 the applicant's legal representatives lodged judicial review proceedings (Annex 7) in Hungary's Supreme Court (the Kúria) against the 20 January 2015 decision, citing the pattern of refusals of transfer requests set out above (see § 6).

Statement of the facts (continued)

58.

15. The applicant's representatives argued before the Kúria that it was in the applicant's best interests to enjoy a racially-inclusive education. The education authorities, they argued, had ignored this factor and the long-term consequences of a racially segregated education. They had failed to examine whether there was a free place for the applicant in Dózsa György Primary School. Thus they had allowed the discretion of the authorities to require students to attend their local school to trump the applicant's fundamental right to an education without discrimination. The applicant's representatives further argued that the court and the education authorities failed to follow the principles set out in the Court's judgment in D.H. and others v the Czech Republic (2007).

16. On 2 September 2015 the Kúria upheld the decision of the Budapest Environs Regional Court (Annex 8). According to the Kúria's reasoning, the applicant misinterpreted the right freely to choose one's school, as it is not an unlimited right. The headmaster of Dózsa György Primary School had discretion not to enrol pupils residing outside the school district even if there were free spaces at the school. The Kúria rejected the argument that the first-instance court had ignored the situation of school segregation, as that court had referred to efforts to improve the quality of education at Jókai Mór Primary School. Furthermore, the Kúria noted that "the fact, that the plaintiff's child belongs to the same school district as many other Roma pupils is based on their residential circumstances. Consequently, even if it results in a high number of Roma students in the same school it does not qualify as segregation" (Annex 8, page 5). The Kúria also stated that the undue burden of travelling caused by the significant distance between the applicant's home and Dózsa György Primary School could be a sufficient reason to justify the decision of the court below.

17. The applicant's representatives were notified of the Kúria judgment on 21 October 2015.

18. On 7 December 2015 the applicant's lawyer lodged a constitutional complaint (Annex 9) with the Constitutional Court (Alkotmánybíróság) of Hungary. The applicant's representatives argued that the case was of fundamental importance as it dealt with the question of whether education without discrimination was in the best interests of the child, as compared with easily accessible but racially segregated education. They argued that the Kúria's conclusion that the situation in Jókai Mór Primary School did not qualify as school segregation was, itself, unconstitutional. The population of Piliscsaba was heterogeneous and Jókai Mór Primary School was meant to be the ordinary-curriculum school for the entire town. Thus residential segregation could not be the cause of the racial segregation within Jókai Mór Primary School. In terms of the other two schools, they were not, at the time, part of the local school district, and, in any event, the applicant's mother wanted her child to study in an ordinary-curriculum school; those schools taught specific curricula based on their (respective) German and Catholic orientations. Furthermore, the situation of racial segregation in Jókai Mór Primary School was contrary to the prohibition of discrimination enshrined in Article XV (2) of the Fundamental Law of Hungary (i.e. the constitution). The Kúria had also failed to take into account its own case law on the subject, according to which even "spontaneous" segregation engages the responsibility of the maintainer of the school and of the school itself. Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities did not include any element of deliberateness or intention in the definition of school segregation.

19. The complaint is still pending before the Alkotmánybíróság.

20. The applicant is still enrolled at Jókai Mór Primary School.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

59. Article invoked	Explanation
Article 2 of Protocol no.1, taken with Article 14	The applicant submits that the Court must determine whether the authorities, when refusing to allow the applicant's transfer from a racially segregated to a non-segregated school, complied with three key principles inherent in the Convention and which emerge concretely from the Court's case law in relation to the right to education and the segregation of Romani children: the positive obligation to avoid the perpetuation of past discrimination or discriminatory practices (Horváth and Kiss, §§ 104, 116); the best interests of the child (see, e.g., N.Ts and others v Georgia (2016), §§ 73, 81-83); and the convictions of the parents (Article 2 of Protocol 1 in fine). A. The positive obligation to avoid the perpetuation of past discrimination. In a context of widespread, historical segregation of Romani pupils in the school system, and the attendant positive obligation on the authorities (see Horváth and Kiss v Hungary (2013), § 115; and Oršuš and others v Croatia (2010), § 177 (noting the authorities' positive obligation to combat high drop-out rates among Romani pupils)), the domestic authorities will have to show particularly strong reasons before they refuse a request by a Romani parent to move her/his child from a segregated to an integrated school. This is because the fundamental rights of a group which has suffered historical discrimination are at stake (Alajos Kiss v Hungary (2010), §§ 42, 44). No such substantial reasons were given in this case. Indeed, the initial refusal gave no reasons at all, and the domestic courts confined their reasoning to the formalistic conclusion that it was in the applicant's best interest to attend a school as close to his home as possible. The applicant notes in particular that the domestic authorities – including the domestic courts – did not require the initial decision maker (the school director) to provide reasons, nor, at any stage, did the courts give any reasons that were relevant to the applicant's mother wish to ensure a non-segregated education for the applicant. The applicant submits that this amounts to a failure to provide sufficient procedural safeguards against discrimination in a climate of widespread and historical school segregation. See Horváth and Kiss v HU (2013), § 125. The applicant notes that in six of the eleven cases that formed part of CFCF's campaign to enable Roma children to transfer out of Jókai Mór Primary School, the domestic courts found that the decisions were unlawful. The decision in the applicant's case suffered from the same defects condemned by the domestic courts in those six cases: the refusal was made without reasons, despite the fact that it formed part of a pattern of refusals by the Pilisvörösvár Educational District. The applicant submits that the Court must look at this pattern of refusals when determining whether the authorities' decision was discriminatory. See, mutatis mutandis, Bączkowski v Poland (2007), § 100. B. The best interests of the child. The notion that the best interests of the child must be a primary consideration in all actions concerning the child, derived from Article 3 of the UN Convention on the Rights of the Child, has now become an integral part of the Convention through the Court's case law. The domestic courts recognised this notion in the present case, but so formalistically as to deprive it of any meaning for the applicant. The domestic courts contrasted the applicant's mother's wish for the applicant to attend a non-segregated school with the view that it was in the applicant's best interest to attend a school as close to home as possible. This is irrational: there is no basis (particularly under the Convention) to believe that the interest in attending a segregated school close to home could outweigh the interest in attending a racially integrated school not much farther away. The reasoning is particularly disingenuous given that the greatest inconvenience would fall on the applicant's mother, who requested the transfer. In any event, no balancing between these competing interests emerges from the decisions in the case; one concern was merely allowed to trump the other. This is the kind of rigid interpretation of the best interests of the child that Judge Sajó recently rejected in his concurring opinion in Soares de Melo v Portugal (2016): "L'absolutisme dans l'interprétation de l'intérêt de l'enfant peut facilement devenir source de formalisme administratif". This is an example of what Judge Sajó calls "la méconnaissance de la nécessité d'interpréter cette notion de manière harmonieuse avec les autres droits fondamentaux". Only in very exceptional cases (see, e.g. Osman

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

60. Article invoked	Explanation
Article 2 of Protocol no.1, taken with Article 14 (continued)	v Denmark (2011), § 73) should the authorities contrast the best interests of the child with the parents' wishes; the ordinary approach should be to integrate the parents' vision for their children with the determination of the child's best interests. This is particularly true in a context of school segregation. The Court has already pointed out the importance of inclusive education for Romani children. Horváth and Kiss (2013), § 127; Sampanis and others v Greece (2008), § 92. The applicant also notes the Court's very recent jurisprudence on inclusive education. Çam v Turkey (2016), § 64 ("[La Cour] note en ce sens l'importance des principes fondamentaux d'universalité et de non-discrimination dans l'exercice du droit à l'instruction.... [L]'éducation inclusive a été reconnue comme le moyen le plus approprié pour garantir ces principes..."). These comments apply as much to racial minorities as to persons with disabilities (Horváth and Kiss, § 128): racial integration in schools is so important that it is contrary to the public interest for anyone to waive her right to be free from discrimination in education. D.H. and others v Czech Republic (2007), § 204. The kind of harmonious interpretation of the best interests of the child Judge Sajó called for in Soares de Melo v Portugal incorporates this right to an inclusive education into the analysis, along with the applicant's mother's convictions as to how her child should be educated; instead the domestic courts arbitrarily pitted the applicant's right to an inclusive education and his mother's convictions, on the one hand, against the question of how far the school was from home, on the other. C. The convictions of the parents. The applicant made clear in the domestic proceedings that it was her conviction that her child should be educated in an ordinary-curriculum school (i.e. not one run by the German Self-Government or the Catholic Church) and in a non-segregated environment. The applicant's mother submits that her views on the subjected of non-segregated education are in line with the basic tenets of a democratic society and reach the "level of cogency, seriousness, cohesion and importance" to amount to the kind of conviction covered Article 2 of Protocol no.1. See, mutatis mutandis, Campbell and Cosans v UK (1982), § 36; EU Charter of Fundamental Rights, Art.14 § 3. In any event, the first and second sentences of Article 2 of Protocol no.1 must be read together and, in cases concerning allegations of segregation of Romani pupils, those two sentences must be read together with Article 14. Folgerø and others v Norway (2007), § 84. When parents whose children are being educated in a racially-segregated environment take steps to ensure that their children are educated in a racially-inclusive environment, Article 2 of Protocol no.1, read with Article 14, requires that states honour that request; this is the only conclusion which flows from the positive obligation to combat historical discrimination. The applicant cannot imagine circumstances which would justify a refusal of a parent's request to move her Romani child from a segregated school to an inclusive school. In any event, no circumstances that militate against the applicant's transfer appear in this case. The applicant also recalls that parents and pupils have a particular right to ensure that children are educated in a way that avoids their stigmatisation. Grzelak v Poland (2010), § 99. The stigmatising effects of racially-segregated education are well-known, particularly for Roma in Hungary. The applicant concludes by noting that in earlier cases, the Court has rejected stereotypical assertions by respondent states that Romani parents' gave their consent to their children's segregation. See, e.g., D.H. and others, § 204. Likewise, it would be inconsistent with the Convention to allow states to thwart Romani parents' conviction that their children should be educated in a racially-inclusive education.
Article 13, taken with the articles mentioned above	The Pilisvörösvár Educational District refused the applicant's appeal and those in six other cases (facts, § 6). This pattern of refusals shows that the remedy was insufficiently independent from the initial decision of the school directors; the decisions, in this case and the others, were also inadequately reasoned. On both bases the remedy failed to meet the standards under Article 13. The subsequent appeal to the administrative courts could not remedy the defect: it was so lengthy as to prevent any child who had requested transfer from actually transferring by the start of the school year or within an otherwise reasonable time. See Sampanis v Greece (2008), §§ 54-59.

- Please ensure that the information you include here does not exceed the pages allotted -

G. Compliance with admisibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

61. Complaint	Information about remedies used and the date of the final decision
Article 2 of Protocol no.1, taken with Article 14	The applicant exhausted domestic remedies by challenging the 6 August 2014 decision before the administrative authorities and domestic courts, through the Supreme Court of Hungary (Kúria) which delivered its judgment on 30 September 2015. The applicant was notified of this judgment on 21 October 2015. The applicant notes that he has a complaint pending before the Constitutional Court (Alkotmánybíróság). A person may submit a constitutional complaint if: her/his fundamental rights as guaranteed in the Constitution (Alaptörvény – referred to above as the Fundamental Law of Hungary) have been violated; this violation influenced in substance of the decision-making process in the case concerned; and the decision itself or the case concerns a "grave constitutional question". However, it is not presently clear under the Court's case law if the Alkotmánybíróság is a remedy which must be exhausted before an application can be lodged with the Court. In the applicant's view, a constitutional complaint is not an effective remedy as there is no clear definition under domestic law of what constitutes an unconstitutional "substantive influence" on the decision-making process or what constitutes a "grave constitutional question". Statistics show that only 10% of constitutional claims are declared admissible. See Horvat v Croatia (2001), §§ 43-44. However, if it turns out that a constitutional complaint is an effective remedy, the applicant urges the Court not to dismiss this application as inadmissible, but instead, as it has done in comparable cases, to wait and see how the Alkotmánybíróság deals with the case. See, mutatis mutandis, Karoussiotis v Portugal (2011), § 57 ("La Cour... tolère que le dernier échelon des recours internes soit atteint peu après le dépôt de la requête, mais avant qu'elle soit appelée à se prononcer sur la recevabilité de celle-ci").
Article 13, taken with the articles mentioned above	See directly above.

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