

No. Pfv.IV.21.568/2010/5.

The Supreme Court of the Republic of Hungary, in the lawsuit initiated by the plaintiff, represented by Dr. Lilla Farkas, attorney-at-law, against the defendant, represented by Dr. Attila Szíjártó, attorney-at-law, for the establishment of a violation of personal rights and the application of legal consequences, commenced before the Somogy County Court under case number 24.P.21.443/2008 and concluded by the final judgment of the Pécs Court of Appeal under case number Pf.I.20.061/2010/7, upon the review application submitted by the plaintiff under serial number 40 and the cross-review application submitted by the defendant under serial number Pfv.3, has rendered the following

j u d g m e n t :

The Supreme Court partially annuls the final judgment, including its provisions on the allocation of first-instance litigation costs, and upholds the first-instance judgment insofar as it rejected the plaintiff's claim for the termination of the violation. Beyond this, the final judgment remains in effect.

Each party shall bear their own litigation costs incurred at the first instance and review proceedings.

The unpaid review and cross-review procedural fees shall be borne by the state.

R e a s o n i n g

According to the facts relevant for the adjudication of the review application, the defendant, along with nine other municipalities, jointly maintains the ..., which has been operating as a branch of the ... School since July 1, 2009. Within the framework of the association established for the operation of 12 schools, the defendant, as the managing entity, exercises the rights and obligations. The 12th educational district of the city, which belongs to the school in question, covers the eastern part of the city, where a significant number of people of Roma ethnic origin reside. Accordingly, the vast majority of the students at the district elementary school are of Roma origin or come from mixed

marriages, with approximately 15% of the students being of non-Roma descent.

According to the 2008 records, in the first semester of the 2008/2009 academic year, 25% of the multiply disadvantaged children in ... attended the school in question. During this period, 90% of the school's students were socially disadvantaged. In the 1995/1996 academic year, a program for the educational integration of Roma students was launched, introducing minority education providing Roma cultural knowledge. From the 2004/2005 academic year, exclusively Hungarian-language Roma minority education was introduced, and in the 2008/2009 academic year, the teaching of the Beás language commenced in the first grade under a progressive implementation system.

In its statement of claim, the plaintiff requested the court to establish that, since the 2003/2004 academic year, Roma children attending the ... School maintained by the defendant have been unlawfully segregated from non-Roma students through the continuation of the existing system and that the segregated Roma students receive education of a lower standard than that provided in other elementary schools maintained by the defendant, which follow the standard curriculum. The plaintiff also requested that the defendant be ordered to cease the violation and to eliminate the unlawful situation by distributing the Roma children attending the ... School among the other schools maintained by the defendant, thereby ensuring their integration. According to the plaintiff's position, the school maintained by the defendant has been attended almost exclusively by Roma children. The defendant's decision regarding the school district boundaries linked the locally known Roma settlement to the school in question, thereby effectively limiting Roma minority education and instruction to this institution alone. The defendant has taken no measures to ensure integrated education for the children and, by operating the school with small class sizes and only one class per grade level, provides an education of inferior quality compared to the other schools in the city. As the segregation is not justified on professional grounds, the defendant unlawfully separates Roma students and violates the provisions of the Public Education Act.

The defendant requested the dismissal of the claim. In its defence, it asserted that it had not engaged in any conduct that resulted in the segregation of students based on their ethnicity or led to their receiving an inferior education. The elementary school in question has been operating since 1930, and its district covers the eastern part of ..., the boundaries of which were not established on an ethnic basis. The school has adequate facilities, the teaching staff is competent, and the majority of students and parents are satisfied with the school's conditions. The school is

a minority public education institution, where all students receive Roma cultural education, and later, the opportunity was provided to learn the Beás language. The defendant further argued that the plaintiff's request for eliminating the alleged unlawful situation by distributing Roma students among other schools would, on the one hand, result in racial discrimination and, on the other hand, force parents to enrol their children in schools farther from their place of residence. The defendant submitted Resolution No. 66/2008 (IX.15.), which opposes any measure leading to the closure of the school in question, along with a petition signed by 203 parents protesting against its closure.

The Court of First Instance found that the defendant had, since the 2003/2004 school year, been educating pupils belonging to the Gypsy ethnic minority in an educational institution, the current ... Member School, unlawfully segregates and discriminates against them by providing them with an education that has a higher number of repeats, a higher drop-out rate, a higher number of absences, a lower national competency test score and a lower percentage of students who continue their studies than the results of the normal primary schools maintained by the defendant. The Court ordered the defendant to cease the infringement and dismissed the action for an injunction. Ordered the defendant to pay the applicant HUF 250 000 in costs at first instance within 15 days. It ordered the State to pay the costs of the proceedings at first instance.

In its appeal against the judgment at first instance, the defendant sought an alteration of the judgment and the dismissal of the action in its entirety. In its cross-appeal, the applicant sought, by way of amendment of the judgment at first instance, an order that the unlawful segregation be ended, in the manner described in the application.

By its judgment, the court of appeal partially reversed the judgment of the court of first instance and found that the defendant violated the requirement of equal treatment by maintaining the unlawful segregation of pupils belonging to the Roma ethnic minority in an educational institution, the current ... School Branch, from the school year 2003/2004 onwards. He rejected the finding of indirect discrimination in the first instance judgment. It also ordered the defendant to cease the infringement. The judgment at first instance was upheld. It ordered the parties to bear their own costs of the proceedings at second instance.

The appellate court examined the conditions for the realization of unlawful segregation under Section 10(2) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities

(hereinafter "Equal Treatment Act"), in its version applicable to the period of the lawsuit, as amended by Act CIV of 2006, effective from January 1, 2007, and in its previous version. This examination was conducted in light of Section 27(3)(a) and Section 28(2)(a) of the Equal Treatment Act, which are applicable to educational legal relationships, as well as Section 76 of the Civil Code.

Based on the case data, the court found that the majority of the students at the school in question belong to the Roma ethnic group. However, this proportion does not reflect the ethnic distribution of school-aged children in the city. Accordingly, under Section 19 of the Equal Treatment Act, the plaintiff sufficiently demonstrated that individuals possessing the protected characteristic defined in Section 8(e) of the Equal Treatment Act were subject to segregation based on that characteristic.

According to the reasoning of the final judgment, the defendant, as the local government responsible for determining school attendance districts, had an obligation to act against the so-called spontaneous segregation that arose independently of its intent, within the scope of its administrative duties related to public education. Unlawful segregation is established merely by maintaining such segregation; therefore, the defendant's argument that it did not engage in conduct resulting in ethnic segregation of students was not acceptable.

Furthermore, the defendant's defence that the ethnic-based segregation had an objectively justified and reasonable ground directly related to the public education relationship was unfounded. The appointed expert in minority public education opined that Roma cultural studies can be taught not only in minority education institutions but also in general (integrated) educational settings. In this case, voluntary segregation, which could exclude unlawfulness, was also not established under Section 43(4) of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities or Section 28(2) of the Equal Treatment Act. Specifically, parental consent to Roma cultural education, their decision in school selection, and the fact that, as of September 2009, 66 of the 157 newly enrolled students lived outside the school district, cannot be considered as a conscious parental intent to separate students within one educational institution. Based on the above, the final judgment, pursuant to Section 84(1)(a) of the Civil Code, established a violation of the principle of equal treatment due to the maintenance of unlawful segregation of students belonging to the Roma ethnic minority.

Regarding the issue of whether the students at the school in question were subjected to discriminatory treatment by receiving a

lower standard of education (Equal Treatment Act Sections 8 and 9), the appellate court held that all factors determined by the appointed expert in educational administration must be evaluated comprehensively. The assessment of discrimination cannot be based solely on certain aspects of education that are indisputably weaker than average while excluding achievements in other areas. Upon conducting a comprehensive evaluation of all factors, the court concluded that the students at the school in question were not subjected to discriminatory treatment. Accordingly, the defendant demonstrated compliance with the principle of equal treatment in accordance with Section 19(2)(b) of the Equal Treatment Act. Therefore, the plaintiff's claim was unfounded in this respect.

According to the reasoning of the final judgment, since the unlawful situation arose as a result of unlawful segregation, the defendant's obligation to cease the violation was also justified under Section 84(1)(b) of the Civil Code. Furthermore, the claim seeking the elimination of the injurious situation was deemed appropriate as a remedy for the violation. Consequently, the appellate court, partially modifying the first-instance judgment, ordered the defendant to terminate the violation pursuant to Section 84(1)(d) of the Civil Code. However, it did not determine the method for eliminating segregation, as the segregation at the school in question arose not within a civil law relationship but within a public law context. Therefore, civil law, by its regulatory framework, is not suitable for prescribing the method of eliminating segregation. The necessary measures fall within the domain of public law, meaning that the remedy for the violation can only be achieved through public law mechanisms.

In its review application submitted against the final judgment, the plaintiff, citing violations of substantive and procedural law, requested the establishment of discriminatory treatment and the ordering of the elimination of the injurious situation in the manner specified in its claim. The plaintiff also requested the initiation of a preliminary ruling procedure before the European Court of Justice to address the following questions: In applying civil law sanctions, within the obligation to eliminate the unlawful situation, is it necessary, under Article 15 of Council Directive 2000/43/EC (hereinafter "the Directive"), commonly referred to as the Racial Equality Directive, to prescribe the specific method of elimination to ensure that the remedy is effective, dissuasive, and proportionate? If so, must the defendant be required to take affirmative measures to ensure that the remedy provided complies with the requirements of Article 15 of the Directive? If so, what specific measures should the defendant be required to take in this case? In its review application, the plaintiff argued that the final judgment violated the obligation

to provide reasoning under Section 221(1) of the Code of Civil Procedure (hereinafter "Code of Civil Procedure") and the obligation to reasonably assess evidence under Section 206 of the Code of Civil Procedure. The plaintiff contended that the court accepted the findings of the appointed expert without resolving the contradiction between the expert opinion and the pedagogical-sociological expert opinion submitted by the plaintiff. Furthermore, the plaintiff claimed that the final judgment violated Section 84(1)(d) of the Civil Code by failing to specifically define the defendant's obligation to eliminate the injurious situation. Since the equal opportunity assessment report accepted by the defendant also states that if, in the ... Street School, there is no short-term positive change in the results of further education indicators, the proportion of students with special educational needs, disadvantaged students, and multiply disadvantaged students, then restructuring of the elementary school network will become necessary, it is clear what specific method would be the most professionally appropriate for eliminating the unlawful situation. Without defining the specific method for eliminating the injurious situation, the judgment cannot be effectively enforced.

In its cross-review application, the defendant requested the annulment of the final judgment and the complete dismissal of the claim. It argued that the mere fact that the proportion of students belonging to a certain ethnic group is higher in one of the city's educational institutions than among all school-aged children in the city does not constitute unlawful segregation. The final judgment erroneously disregarded the changes made to school district boundaries and, as a result, failed to consider the changes in the proportion of out-of-district students at the school. The court also erred in not classifying school enrolment as a conscious parental decision. The defendant's counter-review application sought to uphold the portion of the final judgment that rejected the plaintiff's claim. The defendant argued that it cannot collect or store data on the ethnic identity of students attending its institutions, nor can it distribute students among schools based on such data. Furthermore, the local minority self-government and the parents explicitly opposed such a redistribution. The defendant also asserted that enforcing the plaintiff's request to redistribute students among different institutions could place the protected individuals in a more disadvantageous situation than before.

The plaintiff's review application was unfounded, while the defendant's cross-review application was partially well-founded.

Based on the review applications, the Supreme Court had to

determine whether the final judgment's findings on unlawful segregation, the obligation to cease the violation and eliminate the injurious situation, as well as the rejection of the claim regarding indirect discrimination and the specific method proposed by the plaintiff for eliminating the injurious situation, were in violation of the law.

Pursuant to Section 3(1) and Section 213 of the Code of Civil Procedure, the court adjudicates the claim as filed. In the lawsuit, beyond requesting a declaration of unlawful segregation, the plaintiff, under Section 84(1)(a) of the Civil Code, sought only to establish that the defendant provides a lower standard of education to unlawfully segregated Roma students than to those attending other elementary schools under its maintenance that follow the standard curriculum. Under Section 20(1)(c) of the Equal Treatment Act, the plaintiff is entitled to initiate a general action based on the violation of personality rights under the Civil Code in cases of violations specified in the Equal Treatment Act. Accordingly, the plaintiff is authorized to bring legal action in cases involving direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation, and instructions to engage in such conduct, as defined in Section 7 of the Equal Treatment Act. In such cases, the plaintiff may necessarily request the establishment of these violations and the application of further objective sanctions under Section 84(1) of the Civil Code. However, the plaintiff is not entitled to bring a collective action for the establishment of violations and the application of legal consequences that are not explicitly defined in the Equal Treatment Act or other legislation. Consequently, the only legally valid claim under Section 121(1) of the Code of Civil Procedure is one in which the plaintiff clearly and unequivocally specifies which violation under Section 7 of the Equal Treatment Act is the basis for the lawsuit.

Beyond the unlawful segregation, the plaintiff did not specify any other violation falling within the scope of the Equal Treatment Act. The first-instance court, under Section 3(2) of the Code of Civil Procedure, substantively reclassified the plaintiff's claim—aimed at establishing that lower-quality education was provided at the school in question—as "discriminatory" (specifically, indirect discrimination, as inferred from the reasoning). However, this was not the plaintiff's actual claim. By doing so, the first-instance court exceeded the scope of the claim in violation of Section 215 of the Code of Civil Procedure. Consequently, the appellate court did not violate the law when it dismissed the plaintiff's claim as unfounded, given that it did not fall within the scope of the Equal Treatment Act. Furthermore, regardless of the validity of the expert opinions obtained during the proceedings, neither direct (Equal

Treatment Act Section 8) nor indirect discrimination (Equal Treatment Act Section 9) could be established against the defendant. The plaintiff, as explicitly stated in the claim, merely alleged that the defendant provided lower-quality education in the school it maintained compared to other schools. The only supporting evidence was that the school's performance indicators were weaker compared to other schools in the city and the national average. However, this is merely an outcome, and it does not, in itself, establish which specific conduct by the defendant caused this result. Since the plaintiff did not invoke either direct or indirect discrimination as the basis of the claim, it also did not identify any specific treatment or provision—other than the unlawful segregation—that would substantiate such a violation. Accordingly, the final judgment lawfully and correctly dismissed the plaintiff's claim, both procedurally and substantively.

Under Section 76 of the Civil Code, a violation of personality rights includes, among others, a breach of the principle of equal treatment. According to Section 10(2) of the Equal Treatment Act, as amended by Section 2 of Act CIV of 2006 and effective from January 1, 2007, segregation is unlawful if it separates individuals or groups based on the protected characteristics defined in Section 8 of the Equal Treatment Act from others in a comparable situation, unless expressly permitted by law. Based on these legal provisions, the final judgment lawfully established that the defendant had committed a violation of the principle of equal treatment through unlawful segregation. It is an established fact—regardless of the underlying causes—that Roma children at the school in question were separated from other students in a comparable situation (i.e., students attending other schools in the city) based solely on the protected characteristics listed in Section 8(b), (c), (e), (p), and (q) of the Equal Treatment Act, without any legal justification.

The defendant's cross-review application wrongly contested this correct finding of the final judgment. The defendant argued—incorrectly—that merely having a significantly higher proportion of students from a particular ethnic group in one of the city's schools, compared to the overall school-aged population, does not constitute unlawful segregation. However, this fact indicates that the defendant failed to fulfil its obligation to promote integration and instead tolerated and maintained the segregated situation that developed at the school through spontaneous segregation. This omission qualifies as a "provision" within the meaning of Section 7(2) of the Equal Treatment Act and satisfies the requirements of Section 10(2) of the Equal Treatment Act, thereby establishing the defendant's liability.

Under Section 84(1)(b) of the Civil Code, the injured party may request that the court order the perpetrator to cease the violation and prohibit further violations. However, if the unlawful situation resulting from the violation persists in the future, the injured party may also seek the elimination of the injurious situation under Section 84(1)(d) of the Civil Code. A claim seeking the elimination of an injurious situation constitutes a specific claim for enforcement, meaning that a judgment imposing an obligation to eliminate the violation, while clearly defining the required actions, qualifies as an enforceable judgment. In this regard, apart from the sanction provided in Section 84(1)(c) of the Civil Code, an order issued under Section 84(1)(d) to eliminate the violation is generally an enforceable judgment that can serve as the basis for issuing an enforcement order under Section 13 of Act LIII of 1994 on Judicial Enforcement (hereinafter "Judicial Enforcement Act"). Consequently, a judgment that merely prohibits further violations or generally orders the cessation of the violation, without specific provisions on how to eliminate it, does not typically constitute an enforceable judgment. Naturally, depending on the circumstances of the case and the nature of the violation, an order to cease the violation may, in certain cases, be considered a sufficiently specific ruling for enforcement purposes. However, in general, such orders merely serve as guidance for the parties on appropriate conduct following the violation. Since the final judgment's provision ordering the defendant to cease the violation was an objectively enforceable general sanction under Section 84(1)(b) of the Civil Code, but not directly enforceable in this particular case, the Supreme Court upheld this provision of the final judgment regarding the unlawful segregation.

However, the final judgment erred in also generally obligating the defendant to eliminate the unlawful situation under Section 84(1)(d) of the Civil Code. As discussed above, the elimination of an injurious situation necessarily constitutes an enforcement order, which complies with the requirements of the Code of Civil Procedure (hereinafter "Code of Civil Procedure") only if it is clear and enforceable. A general obligation of this kind is unenforceable under Section 13 of Act LIII of 1994 on Judicial Enforcement (hereinafter "Judicial Enforcement Act").

Moreover, such a general obligation does not align with the plaintiff's claim, as the plaintiff sought a more specific order than mere elimination by requesting the "redistribution of students" to remedy the injurious situation.

The Supreme Court does not share the view of the final judgment that beyond a general obligation, there is no possibility of ordering the elimination of the unlawful situation in a specific

manner. The lower court reasoned that, since the segregation arose in a public law rather than a civil law relationship, civil law is not suitable for regulating the method of elimination, as such measures fall within the realm of public law. However, in both collective and individual enforcement actions, all plaintiffs, including those asserting public interest claims, are entitled to seek the enforcement of the objective sanctions provided in Section 84(1)(a)-(d) of the Civil Code, within the limits of the case circumstances.

Thus, under Section 84(1)(d) of the Civil Code, if a properly formulated claim is made, the court may order the elimination of the injurious situation, regardless of the existence of a public law relationship. However, the plaintiff's claim in this regard was unenforceable.

A general ruling to eliminate the injurious situation—such as ordering the court to redistribute students to other schools in the city or, as a potential consequence, closing the school—is clearly impermissible. Such a ruling would not be enforceable due to its lack of specificity and would have unpredictable consequences. Since the plaintiff did not specify a realistic and enforceable method for eliminating segregation within the framework of a personality rights lawsuit and did not submit a definitive claim that could be fulfilled, the first-instance court correctly dismissed this aspect of the claim.

From the above, it follows that the Supreme Court adjudicated the case by applying the applicable provisions of the Civil Code and procedural law, without the direct application of the Directive cited in the review application. The case did not necessitate an interpretation of EU law by the European Court of Justice.

The Supreme Court had no doubt that, under Section 84(1) of the Civil Code, the court must ensure an effective, dissuasive, and proportionate remedy for the elimination of segregation, as required by Article 15 of the Directive. However, this is contingent upon the submission of a realistic, enforceable, and executable enforcement claim within the framework of a personality rights lawsuit. In the absence of such a claim, the Supreme Court could not grant the plaintiff's request. Consequently, there was no need to initiate a preliminary ruling procedure, and the Supreme Court refrained from doing so.

In light of the above considerations, the Supreme Court, pursuant to Section 275(4) of the Code of Civil Procedure, partially annulled the final judgment, including its provisions on first-instance litigation costs. Furthermore, under Section 253(2) of

the Code of Civil Procedure, it upheld the first-instance judgment insofar as it rejected the claim seeking the elimination of the unlawful situation. Beyond this, the final judgment was upheld under Section 275(3) of the Code of Civil Procedure

The Supreme Court modified the first-instance court's ruling on litigation costs and, pursuant to Section 81(1) of the Code of Civil Procedure, ordered that each party bear its own first-instance litigation costs. Consequently, the plaintiff, who was predominantly unsuccessful, shall bear the costs of the higher expert fees it advanced. Additionally, due to the nearly equal proportions of success and failure in the review proceedings, each party shall bear its own review litigation costs.

Pursuant to the right to fee exemption, the unpaid procedural fees for the review and cross-review applications shall be borne by the state under Section 5(1)(b) and (d) of Act XCIII of 1990 on Fees, as well as under Section 14 of Decree 6/1986 (VI.26.) of the Ministry of Justice.

Budapest, November 24, 2010

Dr. Mátyás Mészáros, presiding judge, Dr. Zsuzsanna Kovács, judge-rapporteur, Dr. Katalin Böszörményiné Kovács, judge

Responsible for the authenticity of the copy:
Vné, court clerk