The Curia
as a reviewing court
delivers the following
j u d g m e n t

Case number: Pfv.IV.21.556/2019/22.

Members of the Council:
Dr. György Wellmann, Presiding Judge
Dr. Árpád Pataki, Judge-Rapporteur
Dr. István Bajnok, Judge

Plaintiffs:
... 1st Plaintiff
... 2nd Plaintiff
... 3rd Plaintiff
... 4th Plaintiff
... 5th Plaintiff
... 6th Plaintiff
... 7th Plaintiff
... 8th Plaintiff
... 9th Plaintiff
... 10th Plaintiff
... 11th Plaintiff
... 12th Plaintiff
... 13th Plaintiff
... 14th Plaintiff
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... 17th Plaintiff
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... 47th Plaintiff
... 48th Plaintiff
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... 50th Plaintiff
... 51st Plaintiff
... 52nd Plaintiff
... 53rd Plaintiff
... 54th Plaintiff
... 55th Plaintiff
... 56th Plaintiff
... 57th Plaintiff
... 58th Plaintiff
... 59th Plaintiff
... 60th Plaintiff
... 61st Plaintiff
... 62nd Plaintiff
... 63rd Plaintiff

Representatives of the Plaintiffs:

...
Lengyel Allen & Overy Law Firm (Contact: Dr. Balázs Sahin-Tóth, Attorney)
Gárdos-Mosoni-Tomori Law Firm (Contact: Dr. Péter Gárdos, Attorney)
Dr. Eleonóra Hernádi Law Firm (Contact: Dr. Eleonóra Hernádi, Attorney)

Defendants:

... 1st Defendant
... 2nd Defendant
... 3rd Defendant

Representative of the Defendants:

Őszy Law Firm (Contact: Dr. Tamás Őszy, Attorney)

Subject Matter of the Case:
Violation of Personal Rights

Parties Submitting the Request for Review:
1st, 2nd, and 3rd Defendants

Name of the Court of Appeal and the Number of the Final Decision:
Debrecen Court of Appeal Pf.I.20.123/2019/16.

Name of the Court of First Instance and the Decision Number:
Eger Regional Court 12.P.20.489/2015/402.

Ruling Part

The Curia upholds the contested provisions of the final judgment.

The Defendants are ordered to jointly pay HUF 250,000 (two hundred and fifty thousand

Hungarian Forints) in review proceedings costs to the Plaintiffs within 15 days.

The unpaid HUF 3,500,000 (three million five hundred thousand Hungarian Forints) fee for the review proceedings shall be borne by the State.

No further review of the judgment is permitted.

R e a s o n i n g

Facts Underlying the Review and the Prior Proceedings

[1] The 1st Defendant, a municipality, was the maintainer of the 2nd Defendant, an elementary school located in ..., during the relevant period until December 31, 2012. Thereafter, as of January 1, 2013, the 2nd Defendant was first placed under the maintenance of the predecessor of the 3rd Defendant (which was dismissed from the case) and, from January 1, 2017, under the maintenance of the 3rd Defendant, a district education centre. The Plaintiffs were students of the 2nd Defendant during the relevant period.

[2] During the 2003/2004 school year, a spontaneous practice emerged at the 2nd Defendant's school in which students belonging to the Roma ethnic minority were segregated into the "b." classes from students not belonging to this minority. The 2nd Defendant, as well as the 1st Defendant as its maintainer, and later the 3rd Defendant and its predecessor, continued this unlawful segregation in the "b." classes—except for the first grade class started in the 2012/2013 school year—and, in addition, until the end of the 2011/2012 school year, provided lower-quality education in these classes.

[3] The Plaintiff's representative in the present case filed a public interest lawsuit against the 1st and 2nd Defendants on October 17, 2011 (prior proceedings). By its judgment No. 12.P.20.351/2011/47 of December 6, 2012, the Eger Regional Court established that, except for the first-grade class started in the 2012/2013 school year, the 2nd Defendant's school, maintained by the 1st Defendant, had unlawfully segregated Roma students from non-Roma students through class assignments from January 27, 2004, onward. Additionally, from January 27, 2004, the unlawfully segregated children were provided with lower-quality education, thereby being subjected to discriminatory treatment. The 1st and 2nd Defendants were ordered to cease and terminate the violations by implementing a method that excludes unlawful segregation in class assignments for Roma and non-Roma children from the school year following the finalization of the judgment. Beyond this, claims concerning the unlawful multiple placements of students with special educational needs in classes, segregation at school events and in the cafeteria, discrimination in swimming lessons, and admission to after-school programs were dismissed.

[4] In the appellate proceedings initiated upon the appeals of the 1st and 2nd Defendants, as well as the cross-appeal of the Plaintiff, the 3rd Defendant was joined in the case as the legal successor of the 1st Defendant. The Budapest Court of Appeal, by its judgment No. 2.Pf.20.305/2013/20 of October 7, 2014, left the non-appealed part of the first-instance judgment intact and upheld the appealed part with the clarification that the obligation to cease and terminate the violations extended to the 3rd Defendant. According to the reasoning of the final judgment in the prior proceedings, from January 27, 2004, until the end of the 2011/2012 school year, the unlawful segregation of Roma students in the "b." classes persisted, along with

the provision of lower-quality education to them.

[5] Upon the Plaintiff's request for review, the Curia, in its judgment No. Pfv.IV.20.097/2015/3 of March 25, 2015, upheld the final judgment.

Statement of Claim and the Defendants' Defence

[6] In the present case, the Plaintiffs, in their claim filed on December 4, 2015, and subsequently amended, sought a declaration that the 1st, 2nd, and 3rd Defendants had violated their right to equal treatment from the 2003/2004 school year onward by segregating them based on their ethnicity and providing them with lower-quality education. Additionally, they sought an order for the Defendants to jointly pay non-pecuniary damages, which they ultimately maintained at HUF 143,500,000. They argued that the unlawful segregation and inferior education occurred not only in the "b." classes, as established in the prior proceedings, but also in the "d." classes, both during the period covered by the prior final judgment and afterward. They contended that the requested HUF 500,000 per school year in non-pecuniary damages represented minimal compensation for the widely known disadvantages they suffered, for which the school and its successive maintainers bore joint liability.

[7] In their defence, the Defendants requested the dismissal of the Plaintiffs' claims, citing partial statute of limitations and arguing that no proven harm had been suffered by the Plaintiffs. They also contended that, after the period covered by the final judgment in the prior case, the Plaintiffs' personal rights had not been violated. Furthermore, they claimed that some Plaintiffs had contributed to their disadvantages through their own omissions and that the alleged disadvantages were not conclusively proven. The Defendants argued that the disadvantages could not be solely attributed to the school and that each Plaintiff's life circumstances needed to be thoroughly examined. They proposed the appointment of an expert to assess whether the alleged segregation caused any demonstrable loss or reduction in life prospects for individual Plaintiffs. Additionally, they suggested that any disadvantages could be compensated through non-monetary means, such as educational courses and training programs.

First- and Second-Instance Judgments

[8] The first-instance court partially upheld the Plaintiffs' claims. It dismissed the claims of the 5th and 40th Plaintiffs in full. Regarding the 18th Plaintiff, the proceedings were definitively terminated due to withdrawal of the claim. For the remaining Plaintiffs, the first-instance court found a dual violation of rights between January 27, 2004, and the end of the 2011/2012 school year, recognizing both unlawful segregation and the provision of lower-quality education. It established that their right to equal treatment had been violated. For the period from the 2012/2013 school year to the 2016/2017 school year, the court dismissed claims concerning lower-quality education. However, it found that the violation of personality rights persisted through the maintenance of unlawful segregation. As a legal consequence, the first-instance court awarded varying amounts of non-pecuniary damages to the Plaintiffs—except for the 5th and 40th Plaintiffs—ranging from HUF 200,000 to HUF 3,500,000. The specific amounts were determined primarily based on the number of school years each Plaintiff was affected by the personality rights violation and whether the violation was established on one or both grounds. Beyond these awards, the court dismissed the remainder of the Plaintiffs' claims.

[9] The first-instance court, in its reasoning, stated that in light of the finality of the prior proceedings, it was undisputed that from January 27, 2004, until the end of the 2011/2012 school year, a dual violation occurred—Roma students were segregated in the "b." classes and

received lower-quality education compared to students in the "a." classes. Based on the extensive evidence it conducted, the first-instance court concluded that, considering the special evidentiary rules, the 2nd and 3rd Defendants failed to exonerate themselves regarding the continued existence of discrimination in class assignments. However, the Plaintiffs could not prove that lower-quality education persisted from the beginning of the 2012/2013 school year. The first-instance court recognized and treated as a matter of common knowledge the disadvantages suffered by the affected Plaintiffs, including a decline in quality of life, differences in skill acquisition, frustration caused by segregation, and a sense of inferiority. It rejected the Defendants' argument that the Plaintiffs had contributed to their disadvantages and found no grounds for apportioning liability. Given the commonly known nature of the disadvantages, the court dismissed the Defendants' request for each Plaintiff to be examined individually by a forensic psychiatrist or psychologist to assess psychological harm. The court also ruled that factors such as school absences or grade repetition did not affect the amount of non-pecuniary damages. It did not consider the Defendants' argument that, instead of monetary damages, compensation in kind—such as organizing educational courses—should be accepted.

[10] All parties appealed the first-instance judgment. The Plaintiffs' appeal primarily sought an increase in the amounts of non-pecuniary damages. The 1st Defendant, as detailed on pages 31-37 of the second-instance judgment, sought the annulment of the first-instance judgment and the ordering of a new trial or, alternatively, the complete dismissal of the claim. If these requests were not granted, the 1st Defendant requested that the amount of non-pecuniary damages be reduced to HUF 100,000 per school year and that compensation in kind be ordered instead of monetary damages. The 2nd and 3rd Defendants submitted essentially the same requests in their appeals, as detailed on pages 37-41 of the second-instance judgment.

[11] The second-instance court modified the first-instance judgment by increasing the non-pecuniary damages owed by the 1st and 2nd Defendants in 35 out of 60 Plaintiff cases. It increased damages for five Plaintiffs affected in the 2003/2004 school year, considering the entire school year relevant. For 31 Plaintiffs, it raised the damages from HUF 400,000 per school year (as awarded by the first-instance court) to HUF 500,000. However, for certain Plaintiffs, the second-instance court omitted the recognition of violations for specific school years, reducing the awarded damages accordingly. In all other respects, it upheld the first-instance judgment.

[12] The key legal conclusions of the second-instance judgment (pages 44-62) are as follows:

- There was no reason to annul the first-instance judgment, as no procedural violations warranting such action had occurred (pages 44-49).
- The first-instance court correctly rejected the Defendants' statute of limitations defense (pages 49-50).
- The first-instance court rightly found the 3rd Defendant liable (pages 50-51).
- The first-instance court correctly established the Defendants' joint and several liability (pages 51-52).
- The first-instance court properly determined that unlawful segregation in the "b." classes continued beyond the 2011/2012 school year (page 52).
- The violation of personality rights was established for the entire 2003/2004 school year, not only from January 27, 2004 (page 53).
- For the five school years following the final judgment in the prior proceedings (2012-2017), lower-quality education was not proven (page 54).
- The exclusion of "d." class years from the affected period was justified (page 55).

- The first-instance court correctly ruled on the issues of repeated and merged classes (page 56).
- The second-instance court disagreed with the first-instance court's reasoning concerning private student status (page 56).
- Unlike the first-instance court, the second-instance court did not consider absenteeism when determining damages and found that non-pecuniary damages were justified even for school years with absences (page 57).
- The second-instance court supplemented the missing reasoning of the first-instance judgment regarding compensation in kind and found that the Defendants' request for such compensation was unfounded (page 58).
- The court emphasized that non-pecuniary damages serve not only a compensatory but also a preventive and punitive function (page 58).
- Plaintiffs were entitled to rely on the "common knowledge doctrine" to support their claims of harm due to segregation and lower-quality education. Consequently, the second-instance court rejected the Defendants' evidentiary requests, deeming further investigation into the Plaintiffs' life circumstances unnecessary (pages 58-59).
- For school years affected by both violations, the second-instance court increased non-pecuniary damages from HUF 400,000 (as set by the first-instance court) to HUF 500,000 per school year. For school years affected solely by unlawful segregation, it agreed with the first-instance court's award of HUF 300,000 per school year (page 59).

Request for Review and Response

[13] The first defendant, as well as the second and third defendants, filed a petition for review against the final judgment. In its petition for review, the first defendant primarily requested that the provisions of both judgments ordering the defendants to make a monetary payment be set aside and that the court of first instance be instructed to conduct a new procedure and issue a new decision. Secondarily and tertiarily—alongside the setting aside of the provisions ordering monetary payment—the first defendant requested a judgment that, in the alternative, obliges all three defendants (secondary request) or only the first and second defendants (tertiary request) to provide, organize, and bear the costs of services suitable for in-kind compensation of non-pecuniary damages (at the plaintiffs' discretion), along with the establishment of the necessary detailed rules for enforcement, as specified in the petition for review. Fourthly, it requested the modification of the provisions of the judgment ordering the defendants to pay monetary compensation for non-pecuniary damages by reducing the amounts awarded to the individual plaintiffs to the sums specified in the petition for review. In its petition for review, the first defendant elaborated that the courts handling the case failed to examine the evidence and statements regarding the mode of performance of non-pecuniary damages. They did not substantively assess the defendants' motion that, instead of monetary payment, they be allowed to fulfil the order for non-pecuniary damages by providing training. The courts also failed to consider the plaintiffs' statements related to this matter and the evidence submitted by the defendants, leaving the facts of the case insufficiently clarified. The appellate court did not base its decision on a reasonable assessment, thus violating Section 206 (1) and (3), Section 213 (1), and Section 253 (3) of the Code of Civil Procedure (hereinafter "Code of Civil Procedure") of 1952. Due to the lack of obtaining the plaintiffs' statements on in-kind compensation. The judgments violate Section 84(1)(e) and Section 355(2) of Act IV of 1959 on the Civil Code (hereinafter "Civil Code") due to the failure to obtain the claimants' statements regarding compensation in kind. Some of the claimants who were personally heard did not refuse to continue their studies, and therefore, under Section 163(2) of the Code of Civil Procedure

(hereinafter "CCP"), this should have been accepted as a concordant statement of the parties. The courts failed to clarify the discrepancies between the submissions of the claimants' representative and the individual statements of the personally heard claimants.

Regarding the interpretation of Sections 355(1) and (2) of the Civil Code, the petition for review argues that the law does not differentiate between the methods of pecuniary and non-pecuniary compensation and does not exclude either the restoration of the original condition or compensation in kind in cases of non-pecuniary damage. The defendants' request for performance in kind complies with both. The first defendant did not agree with the final judgment's position that "in-kind" reparation related to violations of personality rights would fall within the category of objective sanctions for such infringements (i.e., the restoration of the prior state under Section 84(1)(d) of the Civil Code). According to the first defendant, any form of reparation that is effective in mitigating the disadvantages suffered by the claimants—specifically, one that enhances their "labour market integrity and/or employee attitude"—should be considered appropriate. Regarding the reduction of non-pecuniary damages, the petition for review claims that the appellate court's determination of HUF 500,000 and HUF 300,000 per academic year was made "in violation of judicial practice and legal provisions," but it failed to specify which legal provisions were allegedly violated. The petition merely argues that HUF 250,000 and HUF 150,000 per academic year should be considered, with an additional 20% reduction for certain plaintiffs based on the extent of their absences.

[14] The petition for review filed separately by the second and third defendants is substantively identical to that of the first defendant but supplements its arguments with statistical data (pages 21-22 of the petition for review) to demonstrate that the training offered by the defendants would provide the plaintiffs with significantly greater value than the monetary compensation awarded. The petition for review by the second and third defendants did not seek to reduce the amount of monetary compensation for non-pecuniary damages awarded by the final judgment.

[15] The plaintiffs' counter-petition for review aimed to uphold the final judgment. In their counter-petition, the plaintiffs refuted in detail the alleged procedural and substantive legal violations cited in the petitions for review. They argued that non-pecuniary damages cannot be awarded in kind, as in-kind performance is only possible in cases involving pecuniary damages to replaceable goods. The personality rights violations suffered cannot be undone by additional training or education. The in-kind compensation proposed by the defendants would also be unenforceable, as the plaintiffs cannot be compelled to participate in education. The petition for review seeking a reduction in the monetary compensation for non-pecuniary damages is also unfounded, as the appellate court determined the amount lawfully and based on a reasonable assessment of the evidence. Therefore, reconsideration of the damages amount is not warranted.

The Curia's decision and legal grounds

[16] The Curia reviewed the final judgment solely within the scope of the petitions for review, as provided under Section 275(2) of the Code of Civil Procedure (hereinafter "CCP"). Consequently, the review procedure did not address the issue of whether the defendants violated the claimants' personality rights—an issue already established in the final judgment—nor the resulting disadvantages suffered by the claimants, which formed the basis of the defendants' liability for non-pecuniary damages. Due to the principle of adherence to the petition for review, the Curia could only examine whether the final judgment was unlawful based on the legal provisions and legal arguments cited in the petitions. Thus, the Curia did not consider issues such as limitation periods, the joint and several liability of the defendants, or other factors

influencing the amount of non-pecuniary damages (e.g., repeated school years, merged classes, evaluation of school years completed as private students), as these issues were not challenged in the petitions. The review procedure was therefore confined to determining the method of fulfilling non-pecuniary damages and the amount thereof.

[17] The Curia found the defendants' petitions for review to be unfounded, as it established—based on the reasoning set out below—that the final judgment did not violate any substantive or procedural legal provisions cited in the petitions.

[18] Pursuant to the first sentence of Article 26(1) of the Fundamental Law of Hungary (hereinafter "Fundamental Law"), judges are independent and subject only to the law; they are not subject to instructions in their adjudicatory activities. Under Section 2(2) of Act CLXI of 2011 on the Organisation and Administration of Courts (hereinafter "OAC"), courts ensure the enforcement of legal provisions in their application of the law. Additionally, Article 28 of the Fundamental Law provides that courts must interpret legal provisions primarily in accordance with their purpose and in harmony with the Fundamental Law. In determining the purpose of a law, the preamble and explanatory memorandum of the legislation must primarily be considered. In interpreting the Fundamental Law and legal provisions, it must be presumed that they serve a rational, morally and economically sound purpose consistent with the public good.

[19] Since the review procedure did not concern the legal basis of the compensation claim, the Curia primarily had to determine whether there was a legal possibility for the court to order compensation for non-pecuniary damage in kind under Section 355(1) and (4) of the Civil Code. As the Civil Code does not contain a specific provision on the method of compensating non-pecuniary damages, the relevant and interpretable legal provisions for resolving the dispute are Sections 355(1) and (2) of the Civil Code.

[20] Section 355(1) of the Civil Code provides that the person liable for damage must restore the original state; if this is not possible or the injured party does not wish it for a justified reason, the liable person must compensate both pecuniary and non-pecuniary damages. In the present case, restoring the original state—understood in a concrete, physical sense—is evidently not possible. However, the defendants did not rely on this argument during the lawsuit, only later in their petition for review, where they claimed that the additional training they offered could be interpreted not only as compensation in kind but also as a restoration of the original state. This claim was deemed unfounded, as the case involved irreversible violations of personality rights; experiences of unlawful segregation, humiliation, and frustration render restoration of the original state conceptually impossible.

[21] Section 355(2) of the Civil Code states in its first sentence that damage must be compensated in money, except when circumstances justify compensation in kind. The general rule, therefore, is monetary compensation, as confirmed by the original ministerial reasoning of the Civil Code:"Under existing law, damage must generally be compensated in money." Compensation in kind is exceptional and may only be applied when justified by the circumstances. The second sentence of Section 355(2) of the Civil Code provides: "Compensation in kind is particularly justified when the subject of compensation is produced by the tortfeasor or is otherwise at their disposal." The legal term “subject of compensation” clearly indicates that the legislative intent, consistent with the rationality, public good, morality, and economic efficiency principles of Article 28 of the Fundamental Law, was to limit compensation in kind to damage caused to tangible property, particularly fungible goods. The ministerial reasoning further clarifies: "If these conditions are not met, or if compensation in kind is impossible or entails extraordinary difficulty, monetary compensation applies. It is noteworthy that the proposal does not grant the injured party a right of choice..." "This, however, does not preclude an agreement between the parties."

[22] Legal scholarship has reached the same conclusion regarding compensation in kind. According to Gyula Eörsi, "Compensation in kind applies to fungible goods. This includes replacement

with the same type of goods, provision of food, clothing, etc., in kind. If the injured party accepts a different kind of good as compensation, it is not compensation in kind but rather a settlement-based datio in solutum." (Explanation of the Civil Code, KJK, 1981, p. 1644)

[23] Given that the Civil Code regulates compensation in kind specifically for damages involving tangible goods, it follows a contrario that this option is not available for non-pecuniary damages.

[24] The same conclusion follows from examining the nature and purpose of non-pecuniary damages. The primary function of this legal institution—besides its secondary preventive and deterrent function—is to compensate non-pecuniary (personality rights) violations with pecuniary means, as such injuries cannot be measured in monetary terms. Non-pecuniary compensation does not provide full, equivalent restitution of the harm suffered—since that is impossible—but rather serves to mitigate and alleviate the harm through an alternative benefit. This alternative benefit is always a monetary sum, the amount of which is determined by the court's discretion. The entire legal history, jurisprudence, and judicial practice of non-pecuniary damages indicate that such damages can only be compensated through monetary payment.

[25] The institution of non-pecuniary (moral, immaterial) damages has existed for over a century. As early as the 1900 draft text of the Civil Code, Section 1140 provided that non-pecuniary damages must be compensated in a judicially determined monetary sum. The 1914 Press Act, in Section 39, stipulated that victims of non-pecuniary damage caused by press publications could claim monetary compensation. The 1928 Private Law Bill, in Sections 1114 and 1726, also stated that the injured party is entitled to monetary compensation for non-pecuniary damage. Based on this private law proposal, the judicial practice of the time recognised only monetary satisfaction for non-pecuniary damage (e.g., Curia decision P.VI.839 of 1939 stated: "According to consistently applied judicial practice, non-pecuniary (moral) damage may only be compensated with monetary satisfaction to the extent that fairness requires, considering the circumstances of the case." (See Károly Szladits: Hungarian Private Law, Grill 1941, Vol. I, p. 646, footnote 22). Legal scholars of the time similarly held that "the approximate balancing of non-pecuniary harm is only possible through pecuniary compensation" (Géza Marton, Nagy Szladits, Vol. III, p. 395), …while compensation in kind is only applicable in cases of property damage, specifically for fungible goods, such as "providing another identical movable item in place of the destroyed one." (Jenő Fehérváry: Mirror of Private Law, 1942, p. 392).

[26] In 1953, the Supreme Court excluded non-pecuniary compensation from Hungarian law based on the principle that "in socialist social relations, moral values cannot be converted into money" (Supreme Court III. PED). Consequently, non-pecuniary compensation did not exist as a live legal institution in Hungarian law until its statutory amendment by Act IV of 1977 on the Civil Code, effective 1 March 1978. Instead, it remained only latently enforceable through the general legal framework of compensation, as also noted in the explanatory memorandum of Act IV of 1977.

[27] During the preparatory phase of Act IV of 1977, the concept of compensation in kind for non-pecuniary damages was not even raised. Whenever the preparatory materials discussed the method of compensation, they consistently referred to monetary compensation. (See the preparatory materials for the 1977 amendment to the 1959 Civil Code, Magyar Közlöny Lap- és Könyvkiadó Kft., 2018, pp. 264–265). The fact that the legislator envisioned monetary compensation as the sole method of satisfying non-pecuniary damages—as later codified in the now-repealed Section 354 of the Civil Code (valid until 1 November 1993)—is clearly expressed in the explanatory memorandum of Act IV of 1977: "The proposal is based on the premise that the tortious act may violate the interests of the injured party not only by causing pecuniary damage but also by inflicting non-pecuniary harm, which may, in its effects, be even more severe than the former. It would be unfair to deprive a person suffering such serious harm

of compensation and satisfaction merely because the damage cannot be measured in monetary terms. Monetary compensation may serve to mitigate non-pecuniary damages. The proposal, therefore, allows for the compensation of non-pecuniary harm as well." Applying the interpretation principles of Article 28 of the Fundamental Law, this memorandum unequivocally demonstrates that the legislator limited the method of non-pecuniary compensation exclusively to monetary compensation and modelled the statutory framework accordingly.

[28] Legal scholarship also never contemplated any alternative to monetary compensation for non-pecuniary damages. For instance, Ödön Zoltán formulated the following conclusion: "Compensation for non-pecuniary harm entails the obligation to pay a specified monetary sum, with the purpose of counterbalancing the immaterial injury caused by the violation, through monetary means—i.e., through an alternative benefit—thus making the immaterial harm suffered more bearable." (Magyar Jog, 1980, Issue 5, p. 416). Similarly, in Chapter XXXI of his commentary on the Civil Code, Gyula Eörsi repeatedly refers to the "awarded sum" or "amount of non-pecuniary compensation", which explicitly indicates monetary compensation. Likewise, Tamás Lábady, an expert on non-pecuniary damages, stated: "The approximate counterbalancing of immaterial injury is always done in money..." (Állam és Jogtudomány, 2006, Issue 1, pp. 40–45). The defendants failed to cite any legal scholarship supporting their claim that courts could order compensation in kind for non-pecuniary damage. Instead, their petition for review erroneously argued that the law does not explicitly prohibit it, an argument refuted by the foregoing analysis.

[29] Regarding judicial practice, the Supreme Court provided guidance on liability for non-pecuniary damages in Directive No. 16. The wording of the directive, issued in 1981, clearly indicates that at the time of its adoption, monetary compensation was the only recognised form of satisfying non-pecuniary claims. The preamble to the directive states: "Although such harm cannot be measured in monetary terms, monetary compensation or pecuniary benefits may still be suitable for mitigating non-pecuniary harm, providing some form of satisfaction." Furthermore, point 4 of the directives consistently refers to the "obligation to pay" and the "amount" of non-pecuniary compensation, while Point 6 explains that non-pecuniary damages may be awarded either as a lump sum or as an annuity. For several decades, courts have uniformly awarded non-pecuniary compensation exclusively in monetary form (typically as a lump sum, and in rare cases, as an annuity). The defendants failed to cite any court decisions in which a court ordered non-pecuniary compensation in kind, and the Curia is likewise unaware of any such binding case law.

[30] The Constitutional Court's Decision No. 34/1992 (VI.1.) AB, which partially annulled Section 354 of the Civil Code, also explicitly recognised that non-pecuniary damages must be compensated in money: "Monetary compensation for non-pecuniary damages serves the function of approximately balancing the harm suffered by providing a pecuniary benefit, which in effect compensates for the non-pecuniary injury suffered."

[31] Since the applicable law in the present case is the 1959 Civil Code, the Curia merely notes that the institution of non-pecuniary damages has been replaced in the 2013 Civil Code (Act V of 2013) by grievance damages, which also takes the form of a monetary sum. This is clearly reflected in the statutory phrasing "obligation to pay grievance damages" under Section 2:52(2).

[32] The Curia also notes—solely in response to the arguments raised in the petitions for review—that since the claimants' claim was based on Section 84(1)(e) of the Civil Code, the interpretation of Section 84(1)(d) in the final judgment (p. 58, para. 1) is neither contradictory to Section 84(1)(e) nor legally significant for the case. The exclusion of non-pecuniary compensation in kind does not stem from Section 84(1)(d) but rather from Section 355(2) of the Civil Code, as well as the purpose and function of the institution of non-pecuniary damages.

[33] In summary, the Curia has demonstrated—contrary to the defendants' arguments in their petition

for review—that monetary compensation is the only method for awarding non-pecuniary damages. Restoring the original state is conceptually impossible, and compensation in kind is not legally available. However, the additional training offered by the defendants in the present case cannot be classified under these excluded forms of compensation. Rather, it constitutes an offer to discharge their obligation through a different performance (datio in solutum), in lieu of monetary compensation. This special form of performance, known since Roman law, allows a debtor to offer an alternative service to satisfy their obligation, provided that the creditor accepts it voluntarily. However, this form of settlement is only permissible by agreement between the parties under the principle of contractual freedom in Hungarian contract law. Accordingly, the defendants may provide additional training, even exceeding their monetary liability, if individual claimants voluntarily accept it. However, a court cannot issue a judgment compelling claimants to accept such an offer in place of monetary compensation, as this would be both unlawful and unenforceable.

[34] Since substituting monetary compensation with additional training is only possible through an out-of-court agreement, the courts did not commit any procedural violations when they declined to obtain individual statements from the claimants regarding the defendants' offer, which, in any case, was vague and lacked detail. The few instances in which certain claimants personally stated that they would use monetary compensation for further studies cannot—contrary to the defendants' position—be interpreted as consent to accept an alternative service instead of monetary compensation. Consequently, Section 163(2) of the Code of Civil Procedure (CCP) does not apply to the claimants. The Curia also finds no contradiction between the statements of the individually heard claimants and their legal representative, as no claimant stated that they would reject monetary compensation. There was, therefore, no necessary evidence regarding the method of non-pecuniary compensation that the courts failed to examine. Consequently, the defendants' allegations regarding the violation of Section 213(1) of the CCP—on the grounds that the first-instance court ignored the defendants' statements on the method of compensation—are unfounded. The courts' judgments covered all claims, and the appellate court supplemented the missing reasoning of the first-instance court regarding the method of non-pecuniary compensation.

[35] As no procedural violations cited in the defendants' petition for review were found, the need to annul the final judgment and order a retrial never arose. The Curia found the defendants' primary, secondary, and tertiary petitions for review to be unfounded, as the appellate court acted without procedural violations and in full compliance with the relevant substantive legal provisions (Section 84(1)(e) and Sections 355(1), (2), and (4) of the Civil Code) and the established judicial practice based on them. The court correctly ruled that monetary compensation is the only appropriate method for awarding non-pecuniary damages.

[36] The Curia then proceeded to examine, in light of the fourth-tier petition for review filed by the first defendant, whether there were grounds to reduce the amount of compensation. The first defendant argued that the awarded compensation amounts were excessive and objected to the fact that the courts did not apply contributory negligence for claimants who had more than 150 hours of school absences per year. However, the Curia found this argument unfounded for two reasons: As correctly stated by the appellate court (Final Judgment, p. 57), the established judicial practice dictates that contributory negligence does not apply to non-pecuniary damages. Instead, the claimant's role in the harm suffered may only be considered in the court's discretion when determining the amount. Contributory negligence must be attributable to the claimant's own fault, and in this case, the first defendant failed to prove that school absences were solely due to the affected claimants' own culpable conduct—especially as the majority of them were minors.

[37] Since the determination of non-pecuniary damages is based on judicial discretion, the petition for review effectively challenges the evaluation of evidence under Section 206(1) of the CCP

and the assessment of all case circumstances under Section 206(3) of the CCP—meaning it seeks a reassessment of judicial discretion. However, based on consistent Supreme Court and Curia jurisprudence, such reassessments are only permitted in exceptional cases, specifically where: The established facts are incomplete, missing, or contradictory, the judgment is based on an illogical conclusion, or The evaluation of evidence is irrational (BH 1993.768; BH 1994.196; BH 1999.44). The Curia found none of these errors in the final judgment.

[38] The Curia determined that the compensation amounts awarded per school year by the appellate court—HUF 500,000 in cases of unlawful segregation and lower-quality education, and HUF 300,000 for years affected only by unlawful segregation—were not excessive. The appellate court's reasoning was well-founded, based on a logical assessment of all case circumstances, and took into account the factors generally considered relevant in determining the amount of non-pecuniary compensation. These factors—which have since been codified under Section 2:52(3) of the 2013 Civil Code (regarding grievance damages)—include: the severity of the violation, its repeated nature, the degree of fault, and the impact of the violation on the claimant and their environment. However, the Curia emphasised that the amounts awarded per school year should not be considered standard "tariffs" and are only applicable to this specific case. They should not be automatically applied in other school segregation cases.

[39] Based on the reasoning outlined in paragraphs 17–37, the Curia concluded that the final judgment is not unlawful on the grounds cited in the petitions for review. Therefore, under Section 275(3) of the CCP, the Curia upheld the final judgment.

Applied Legal Provisions and Judicial Practice

[40] Fundamental Law: Articles 26 and 28 of Act IV of 1959 on the Civil Code: Section 84(1)(e); Sections 355(1), (2), and (4)

Principle of the Decision

[41] Monetary compensation is the only legally recognised method for awarding non-pecuniary damages. Restoring the original state is conceptually impossible, and compensation in kind is not legally permitted. However, the additional training offered by the defendants does not fall under these excluded methods of compensation but rather constitutes an offer to discharge their obligation through alternative performance (datio in solutum). Such an arrangement, however, requires the voluntary acceptance of the other party.

Closing Section

[42] The Curia ordered the losing defendants to reimburse the claimants for their legal costs under Sections 270(1) and 78(1) of the Code of Civil Procedure (CCP), calculated based on the actual legal services rendered, in accordance with Sections 3(2), (5), and (6), and Section 4/A of Decree No. 32/2003 (VIII.22.) of the Ministry of Justice.

[43] Due to the defendants' personal exemption from court fees, the state shall cover the unpaid review procedure fee, as per Sections 13(1) and 14 of Decree No. 6/1986 (VI.26.) of the Ministry of Justice, and Section 50(1) of Act XCIII of 1990 on Court Fees.

[44] The Curia reviewed the review applications submitted by the first, second, and third defendants without a hearing, in accordance with Section 29(2) of Government Decree No. 74/2020 (III.31.) on certain procedural measures applicable during the state of emergency (hereinafter "Veir"), as the parties did not submit a joint request within 15 days of their notification under Section 29(3) of Veir to conduct the procedure pursuant to Section 21(3) and (4).

[45] Review of this judgment is precluded under Section 271(1)(e) of the CCP.

Budapest, 12 May 2020

Dr. György Wellmann s.k., Presiding Judge, Dr. Árpád Pataki s.k., Judge-Rapporteur, Dr. István Bajnok s.k., Judge

Responsible for the authenticity of the copy:
Court Administrator s.k.