No. Pfv.IV.20.936/2008/4.

The Supreme Court, in the case initiated by the plaintiff Foundation, represented by Dr. Lilla Farkas, attorney-at-law, against the first defendant, the Municipality of the City of ..., represented by Dr. Ferenc Ács, attorney-at-law, the second defendant, the General School, and the third defendant, the General and Art School, before the Hajdú-Bihar County Court under case number 6.P.20.341/2006, and concluded with the final judgment of the Debrecen Court of Appeal under case number Pf.I.20.361/2007/8, has rendered the following judgment upon the revision request submitted by the plaintiff under serial number 60:

j u d g m e n t :

The Supreme Court does not affect the provisions of the final judgment that were not challenged in the revision. It partially annuls the challenged provisions—including the obligation to pay litigation costs—and upholds the first-instance judgment concerning the defendants' liability for the unlawful segregation, the order to cease and refrain from such actions, while omitting the deadline-related provisions.

The first defendant is ordered to submit the provision of this judgment establishing the violation at the expense of the defendants to the Hungarian News Agency.

The Supreme Court upholds the other provisions of the final judgment challenged in the revision.

The defendants are jointly ordered to pay the plaintiff HUF 100,000 (one hundred thousand forints) in appeal and revision procedure costs within 15 days.

The state shall bear the unpaid revision procedure fee.

No legal remedy is available against this judgment.

R e a s o n i n g :

I.

The essential content of the facts established by the final judgment and relevant for the review application is as follows: In the city of [...], the general schools operated by the first defendant municipality include the second and third defendants.

The second defendant provides education at its main building located at [...], Szilágyi Dániel Street 2-4, as well as in buildings at Rákóczi Road 50 and Kossuth Street 3, situated 800-1000 metres away. In certain classes of grades 1-8 within the main building, bilingual education, advanced-level language instruction, and advanced IT training are offered, along with integration or ability-developing preparation in all classes. However, Roma ethnic education is not provided. In the Kossuth Street building, one class follows an advanced IT curriculum, while the other classes offer Roma ethnic education in Hungarian, in addition to integration or ability-developing preparation. In the Rákóczi Road building, all classes provide special education (for children with special educational needs) and Roma ethnic education. In the 2006/2007 academic year, students of Roma ethnicity constituted 54% of the total school population, 28% of the students in the main building, 86% in the Kossuth Street building, and 96% in the Rákóczi Road building. These figures had remained similar in the preceding years.

The third defendant provides education at its main building located at [...], Jókai Street 1-3, and in buildings at Szabó Gábor Street 7 and Dr. Földi János Street 57, which are 1500-2000 metres away. Education in the main building is conducted in regular-sized classes for grades 1-8, without offering Roma ethnic education. In the Szabó Gábor Street and Dr. Földi János Street branch buildings, four classes each (covering grades 1-4 and 5-8) are operated with small class sizes, offering ability-developing preparation alongside Roma ethnic education. In the 2006/2007 academic year, the proportion of Roma students was 32% of the total school population, 22% in the main building, and 100% in both the Szabó Gábor Street and Dr. Földi János Street buildings. In the preceding years, these figures had differed in that the number of students attending outside the main building had been significantly higher.

Under Section 20(1)(c) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "Equal Treatment Act"), the plaintiff, initiating a personality protection lawsuit on 13 March 2006, alleged that the schools maintained by the first defendant and operated by the second and third defendants, which possess separate legal personality, segregated Roma children in branch buildings separate from the headquarters, offering significantly less favourable conditions. This resulted in discriminatory treatment and unlawful

segregation. The plaintiff argued that civil organisations had been negotiating since 2000 to end Roma segregation in schools, but the issue remained unresolved. In its amended claim, referring to Section 76 of the Civil Code, the plaintiff sought a declaration that the defendants violated the principle of equal treatment through direct discrimination under Section 8 of the Equal Treatment Act and unlawful segregation under Section 10(2). Pursuant to Section 84(a)-(d) of the Civil Code, the plaintiff requested the recognition of the violation, an injunction against further violations, a public apology, and the cessation of the unlawful situation. The defendants primarily contested the plaintiff's standing and, in substance, sought dismissal of the claim.

The first-instance court established that the first defendant Municipality of ... and its maintained institutions, the second defendant General School and the third defendant General and Art School, unlawfully segregated Roma students in off-site branches of their schools and directly discriminated against them by providing lower-quality and less accessible facilities. The court ordered the first, second, and third defendants to cease the unlawful practice and prohibited them from continuing such violations. It mandated that the second and third defendants eliminate the unlawful situation by the beginning of the 2007/2008 school year and required the first defendant to tolerate this. The court also ordered the first defendant to submit the operative part of the judgment, along with an expression of regret for the established violation, to the Hungarian News Agency within 15 days. The court dismissed the remainder of the claim. Additionally, the court ordered the first, second, and third defendants to jointly pay the plaintiff HUF 390,540 in litigation costs within 15 days and assigned the unpaid procedural fees to the state.

The defendants, in their appeal, primarily sought the annulment of the first-instance judgment and the termination of the proceedings; alternatively, they requested the modification of the judgment to dismiss the claim; and in the further alternative, they sought the annulment of the judgment and the remittal of the case to the first-instance court for a new procedure. The claimant, in a cross-appeal, requested a partial modification or supplementation of the reasoning of the first-instance judgment.

The second-instance court, in its judgment, left the unappealed parts of the first-instance judgment unaffected, but partially modified the appealed provisions. Instead of the findings in the first-instance judgment, it established that the first, second, and third defendants discriminated against Roma students by operating the classes attended by them in greater proportions in school buildings with lower-quality facilities than the others.

It ordered the defendants to cease this practice. At the same time, it omitted the establishment of the fact of unlawful segregation and the prohibition thereof. It further ordered the first defendant to send the operative part of the judgment, including the names of the parties, to the Hungarian News Agency. Simultaneously, it omitted the obligation to issue a statement of regret. The first-instance litigation costs payable by the defendants to the claimant were reduced to HUF 120,000, and it was ruled that each party would bear their own costs of the appeal proceedings.

Applying the provisions of the Equal Treatment Act (hereinafter "Act") in force at the time of filing the claim, the second-instance court did not find unlawful segregation to be proven, as the claimant did not identify any specific conduct or omission, nor its perpetrator, that could substantiate the alleged violation. The court found no evidence that the defendants had taken measures to influence the ethnic composition of the classes. It also pointed out that the assessment of unlawful segregation is not a matter of expertise but a question of fact. Furthermore, it did not consider that the statistical data collected by the expert supported the conclusion that the dispersion of students identified as Roma resulted from segregation efforts. The court also noted that, in the 2006/2007 academic year, a counteracting trend was observed, indicating an intention toward integration, which further precluded a finding of unlawful segregatory conduct by the defendants. Due to the lack of evidence for the statutory elements of unlawful segregation, the court deemed it unnecessary to examine the defendants' justifications or counter-evidence. In light of the altered legal reasoning, the claimant's cross-appeal was deemed moot.

The claimant submitted a review application concerning the dismissed claim, seeking the annulment of the final judgment and the upholding of the first-instance judgment with the modifications requested in the cross-appeal reasoning. Additionally, the claimant proposed initiating a preliminary ruling procedure before the European Court of Justice, arguing the necessity of legal interpretation regarding the direct applicability of Directive 2000/43/EC (the so-called Race Directive) in the present case. The review application asserted that the second-instance court, in violation of the law, disregarded the expert opinion appointed in the proceedings, the attached documents, and witness testimonies, leading to the rejection of the claim concerning unlawful segregation. It also argued that, to establish the liability of the defendant legal entities, it was unnecessary to identify the individuals responsible for the unlawful conduct or the specific measures constituting the omission. The fact that Roma minority education was provided exclusively in the so-called annex buildings

resulted from the defendants' decisions regarding class organisation. The claimant further contended that the educational forms cited by the defendants (such as bilingual, advanced-level, small-group, specialised, or special education for children with special needs) and economic considerations did not justify an exemption from liability. According to the claimant's legal position, the exemption rule in Section 7(2) of the Act, in its version in force before its amendment on 31 December 2006, was incompatible with the Race Directive and thus inapplicable to cases of racial or ethnic segregation. Consequently, the defendants could only rely on the specific exemption under Section 28 of the Act concerning education, which did not apply in the present case.

In their review counterclaim, the defendants requested the upholding of the final judgment. They stated that they had commenced implementation of the final judgment by progressively vacating the affected buildings.

II.

The Supreme Court reviewed the final judgment within the scope of the review application pursuant to Section 275(2) of the Code of Civil Procedure. In the absence of a remedial request, it did not affect the parts of the final judgment that established direct discrimination and its related objective legal consequences.

Based on the case files, the Supreme Court supplemented the factual background as follows:

Until the early 1990s, schools in [...] educated Roma and non-Roma students together in the main school buildings within the same classes. From 1993-94, due to the increased number of students and the lack of additional capacity in the main school buildings, school education was extended to buildings originally not intended for educational purposes, referred to as small schools, which were located further from the main buildings. These buildings primarily accommodated Roma students. In the annex buildings, one of the key criteria for class organisation was the provision of Hungarian-language Roma ethnic education as an elective subject (as testified by witnesses [...] in protocol No. 6.P.20.341/2006/41). In 1995, the Roma Minority Municipality was established in the town, which has continuously fought against segregation since its inception.

Despite efforts to eliminate the situation, no significant changes occurred until the initiation of the lawsuit. Following the commencement of the proceedings, the first defendant decided at its municipal assembly meeting on 15 February 2007 to terminate education at the Szabó Gábor Street and Dr. Földi János

Street branch buildings of the third defendant for financial reasons, transferring the education of Roma students attending these buildings to the main school building. Furthermore, the Kossuth Street building, operated by the second defendant outside its main premises, was scheduled for renovation within three years. (Witness statements of ..., ... in protocol No. 6.P.20.341/2006/41). The parents of Roma minority children have, from the outset, overwhelmingly opted for the Hungarian-language minority education and training provided by the local schools. However, no requests were submitted to the defendants in which parents explicitly sought minority education to be provided separately from other students who do not require such education, either by establishing independent classes (divisions) or by housing them in separate buildings.

Based on the supplemented facts, the claimant's review application is, for the most part, well-founded.

III.

1. The Supreme Court did not find it possible to initiate the preliminary ruling procedure requested by the claimant. From the date of Hungary's accession to the European Union (1 May 2004), Hungarian courts have been entitled (and in some cases obliged) to refer questions to the European Court of Justice for a preliminary ruling under Article 234 of the EC Treaty, promulgated by Section 3 of Act XXX of 2004 (Accession Act). However, in the case of Ynos Kft. v. János Varga (C-302/04), the European Court of Justice held that it lacked jurisdiction to interpret EU law where the facts underlying the dispute occurred before the accession. Since, in the present case, the segregation of Roma students in Hajdúhadház had indisputably existed before Hungary's EU accession and efforts had already been made to eliminate it, the European Court of Justice would not have jurisdiction to interpret the relevant EU legal provisions in this dispute. Consequently, the Hungarian court could not refer the case to the European Court of Justice for a preliminary ruling (BH 2006/215).

However, this did not preclude the court from considering, in the application and interpretation of the relevant legal provisions governing the parties' legal relationship, the principles underlying Directive 2000/43/EC (hereinafter "Directive"), which establishes the principle of equal treatment irrespective of racial or ethnic origin, and its framework for positive discrimination (Equal Treatment Act, Section 65(f)).

2. Under Section 76 of the Civil Code, as amended by Section 37 of the Equal Treatment Act, a violation of the right to personality includes, among other things, a breach of the requirement of equal treatment. The substantive elements of this violation, the conditions for its proof, and the possibility of exemption from liability for the violation are regulated by the Equal Treatment Act.

The Supreme Court, concurring with the final judgment, established that the unamended provisions of the Equal Treatment Act, as they stood before the 2006 amendment by Act CIV of 2006, were applicable in the present dispute, given the timing of the lawsuit.

Pursuant to Section 4(g) of the Equal Treatment Act, educational institutions are obliged to observe the requirement of equal treatment in establishing their legal relationships, in their legal relationships, in their procedures, and in their measures (hereinafter collectively: "legal relationships"). Under Section 10(2), segregation is unlawful if it separates individuals or groups of individuals based on the protected characteristics specified in Section 8, without an objectively reasonable justification. Section 27(3)(a) explicitly states that a breach of the requirement of equal treatment includes, in particular, the unlawful segregation of a person or group in an educational institution, including within divisions, classes, or groups established within that institution. Section 8(e) identifies belonging to a national or ethnic minority as a protected characteristic.

Accordingly, unlawful segregation occurs in an educational institution if individuals or groups possessing the protected characteristics listed in Section 8—such as belonging to a particular national or ethnic minority—are separated from others based on these characteristics without an objectively reasonable justification.

Thus, according to the above legal provisions, unlawful segregation occurs in an educational institution if persons or a group of persons with the characteristics specified in § 8 are separated from others on the basis of their protected characteristics, such as belonging to a particular national or ethnic minority, without there being a reasonable justification for this on the basis of objective considerations.

According to Section 19(1) of the Equal Treatment Act (hereinafter "Act"), in proceedings initiated due to a violation of the requirement of equal treatment, the injured party or the entity entitled to enforce claims in the public interest must prove that:

a) the injured person or group suffered a disadvantage, and

b) at the time of the violation, the injured person or group—either actually or as presumed by the violator—possessed one of the characteristics defined in Section 8.

Pursuant to Section 19(2) of the Act, once the requirements set out in subsection (1) have been proven, the other party bears the burden of proving that:

a) they complied with the requirement of equal treatment, or

b) they were not obliged to comply with it in the given legal relationship.

Under Section 164(1) of the Code of Civil Procedure, in conjunction with the above-described specific rules of evidence, the claimant in the lawsuit was required to prove the unlawful conduct that resulted in a disadvantageous situation and the fulfilment of the statutory elements of unlawful segregation. Since the concept of unlawful segregation, which contravenes the principle of equal treatment, inherently excludes the consent of the affected individual or group to segregation, the fact of unlawful segregation necessarily disadvantages those affected. Therefore, no separate proof of disadvantage was required. If the claimant fulfilled their burden of proof, the defendants had the opportunity to demonstrate exonerating circumstances, i.e., that they had complied with the requirement of equal treatment or were not obligated to do so in the given legal relationship.

According to Section 7(2) of the Act, a provision based on the characteristics listed in Section 8 does not violate the requirement of equal treatment if, based on objective assessment, it has a reasonable justification directly related to the given legal relationship. Proving this general exemption means that the defendants were not obliged to comply with the requirement of equal treatment in the given legal relationship. The defendants' exemption also results from the specific rule under Section 28(2)(a) of the Act, which applies to education and training if they can prove that they were not obliged to comply with the requirement of equal treatment because, in a public education institution, they organised minority education at the initiative and voluntary choice of parents, where the purpose or curriculum justified the establishment of separate classes or groups. A condition for this exemption is that the students involved in such education do not suffer any disadvantage and that the education complies with the requirements approved, prescribed, or supported by the state.

Based on the review application, the Supreme Court established that the general exemption under Section 7(2) of the Act, as per the provisions in force at the time of filing the claim, was

also applicable to the alleged unlawful segregation in public education institutions. Section 28(2)(a) of the Act, in the absence of an explicit statutory provision, cannot be interpreted in a restrictive manner to mean that separate education in public education institutions could only be initiated by parents and that other (objectively reasonable) considerations must be disregarded.

This conclusion is further supported by the fact that one of the statutory elements of unlawful segregation is the absence of an objectively reasonable justification for the separation of persons with protected characteristics. The same statutory element is present in the provision that allows for the general exemption of the defendants. Since, according to consistent judicial practice, a negative circumstance—such as the absence of an objectively reasonable justification under Section 10(2) of the Act—cannot be proven, the burden of proof under Section 7(2) necessarily comes into focus in the defendants' exemption. That is, the defendants must prove that the segregation had an objectively reasonable justification. Therefore, due to the substantive connection between the statutory elements of the applicable legal provisions in this case, the claimant's argument in the review application regarding the inapplicability of Section 7(2) of the Act is incorrect.

The substantive scope of what constitutes an objectively reasonable justification for the defendants' exemption is determined by Article 5 of the Directive. According to this provision, in order to ensure full equality in practice, the principle of equal treatment does not prevent any Member State from maintaining or adopting specific measures aimed at eliminating or counteracting disadvantages linked to racial or ethnic origin (positive measures). This provision leaves no doubt that only those measures (or legal provisions) that might appear to be inconsistent with the principle of equal treatment but are specifically aimed at creating opportunities for those who suffer disadvantages due to racial or ethnic origin are permissible for Member States.

Therefore, when determining whether segregation based on the protected characteristics under Section 8 of the Act had an objectively reasonable justification in the context of public education, the interests of children participating in public education and the ability of parents to consciously express their will in representing their children's interests are of decisive importance. Assessing the children's best interests does not exempt the court from examining the legal framework governing their education and care, including any education-organising considerations, and comparing the actual educational situation with the applicable legal requirements.

After a general review of the relevant provisions of the Equal Treatment Act and its interpretative principles applicable to the dispute, the Supreme Court established the following in the present case:

3. The final judgment omitted a detailed examination of the statutory elements under Section 10(2) of the Act, as the claimant failed to identify any specific conduct or omission and its perpetrator that would establish the existence of unlawful segregation.

According to the relevant entry in the Academic Explanatory Dictionary, the term "conduct" refers to the way in which an individual takes a stance towards their environment, the phenomena of life and society, how they behave towards others, and how they manifest themselves towards others. Conduct is also expressed through maintaining a previously established unlawful state and the failure of the competent person to remedy the unlawful situation. Therefore, in assessing the responsibility of the defendants for the educational structure established in the town concerned in the proceedings, it is essential to examine their role in public education and in (student) legal relationships, as well as their education-organising activities, in light of the statutory provisions governing public education.

Regarding the first defendant, Section 8(4) of Act LXV of 1990 on Local Governments stipulates that municipal governments are required to ensure, among other things, primary education and schooling and to safeguard the rights of national and ethnic minorities. Additionally, Sections 86(1) and (2) of Act LXXIX of 1993 on Public Education (hereinafter "Public Education Act") further define the duties of municipal governments, obliging them to ensure primary education for members of national or ethnic minorities residing in the municipality and to provide education for students with special educational needs, provided that they can be educated alongside other students. The local government determines the catchment areas of schools (Section 90(1) of the Public Education Act). Under Section 85(4), the local government must prepare an action plan for organising its public education-related tasks, and under Section 85(7), it must develop a municipal quality management programme for its supervisory role, setting out its expectations for the entire municipal public education system and the related tasks. In the scope of supervisory management, the municipality determines the number of classes to be initiated in a given academic year, grants exemptions from maximum class sizes, monitors the legality of public education institutions' operations, approves their quality management, educational, and pedagogical programmes, and evaluates and oversees the implementation of these programmes (Section 102(2)(c), (d), (f) of the Public Education Act).

Regarding the second and third defendants, as public education institutions, Sections 40(10) and (11) of the Public Education Act require them to develop institutional quality management programmes, outlining their operational processes. Educational institutions perform tasks related to talent identification and development, the correction of early learning and integration difficulties, the educational support of disadvantaged students, and child and youth protection, in accordance with their pedagogical programme approved by the maintainer (Sections 41(6), 44(1), and 48(1)(a) of the Public Education Act). According to Section 52(7), schools organise non-compulsory (optional) lessons based on students' interests and needs, for remediation, development, talent management, consultations, specialised or supplementary knowledge. Section 52(14) states that the school determines what percentage of the available time for mandatory and non-mandatory classes will be allocated to class splitting and for what purposes. Under Section 66(1), a student is in a legal relationship with the school. The school principal decides on the admission or transfer of students and their placement into classes or groups, following consultation with the professional work community or, in its absence, the teaching staff. The rules for organising classes and groups are set out in Annex 3 of the Public Education Act (Section 66(5)).

Based on these statutory provisions, it can be established that the first defendant's responsibilities in organising public education, as well as its supervisory and management activities, played a role in the creation and maintenance of the situation contested in the lawsuit. Meanwhile, the operation of the educational institution by the second and third defendants was based on decisions approved by the first defendant, including the pedagogical programme's criteria for class organisation, student placement into classes, the allocation of classes to specific buildings (main or branch buildings), the size of classes, and the proportion of students belonging to ethnic minorities.

The school-maintaining role of the first defendant and the education-organising activities of the defendants—both in content and manner—reflect their stance towards a segment of society, specifically students, including Roma students. Therefore, the final judgment erred when it failed to consider the defendants' education-organising activities, which, according to undisputed case data, had been in place and maintained for over ten years, as conduct assessable under Section 10(2) of the Equal Treatment Act. Furthermore, conduct undertaken by a legal entity does not necessitate the explicit identification of a natural person acting on its behalf. Consequently, the reasoning in the final judgment could not support the conclusion that the claimant failed to prove the statutory elements of unlawful segregation due to a lack of

conduct attributable to the defendants.

4.The data gathered in the proceedings left no doubt that the ethnic distribution of school-aged children in the municipality did not, in itself, justify a situation in which the branch schools, in some cases exclusively and in most cases predominantly, educated Roma children separately from other students. The statistical data provided by the court-appointed expert unequivocally supported this conclusion (in the academic year under review, 54% of the total student population of the second defendant's institution were of Roma ethnicity, whereas in the branch buildings, the proportion of Roma students was 86% and 96%, respectively; in the third defendant's institution, 32% of the total student population were of Roma ethnicity, while in the branch buildings, the proportion was 100%). From this, it logically follows that the factual element set out in Section 10(2) of the Equal Treatment Act—namely, that persons with a protected characteristic were segregated on the basis of that characteristic—is a proven fact.

5. Pursuant to Section 4/A(1) of the Public Education Act, all participants involved in the organisation, management, operation, and execution of public education tasks must comply with the requirement of equal treatment when making decisions and taking measures concerning children and students. According to subsection (2), the principle of equal treatment entitles every child and student to receive the same level of education and services as others in a comparable situation under the same conditions. Subsection (3) requires that any violation of the requirement of equal treatment must be remedied, provided that such a remedy does not infringe or diminish the rights of other children or students. Furthermore, under subsection (5), the provisions of the Equal Treatment Act must also be applied. Since the separate education of Roma students in the schools in question did not comply with these legal provisions, the defendants could not validly rely on the burden of proof set out in Section 19(2)(a) of the Equal Treatment Act to claim that they had complied with the requirement of equal treatment.

6.Pursuant to Section 19(2)(b) and Section 7(2) of the Equal Treatment Act, in conjunction with Section 28(2)(a), the defendants bore the burden of proving that they were not obliged to comply with the requirement of equal treatment in the given legal relationship. That is, they had to establish that the segregation was justified on the basis of a legal authorisation and an objectively reasonable justification (Section 7(2)), or that it was permitted by the informed parental choice of the affected students (Section 28(2)), thereby making the segregation lawful.

6.1. Based on the above-defined content of an objectively reasonable justification that could exempt the defendants—namely, that differentiation based on racial or ethnic origin may only be justified as a positive measure aimed at creating opportunities while considering the best interests of children and informed parental choice, and that such justification must be based on a legal provision —the first-instance court did not err in its finding. It correctly established that factors such as the allocation of school buildings, the material conditions of the premises, the fact that a given situation had existed for decades, as well as financial or practical considerations or the lack of resources necessary for implementing changes, do not constitute an objectively reasonable justification in the context of public education that would preclude a finding of unlawful ethnic segregation. The defendants' justification for class organisation, namely that Roma students were placed in the branch buildings because the Roma minority education they required could not be provided in the main building due to a lack of space, or that the branch buildings were more suitable for small-class education due to their characteristics (as evidenced by witness statements in protocol No. 6.P.20.341/2006/41), is a financial and practical consideration. However, as explained above, such factors do not provide grounds for exemption from liability under Section 7(2) of the Equal Treatment Act.

6.2.One of the defendants' primary arguments was that their class organisation, implemented in accordance with the relevant legal provisions, could not be classified as unlawful segregation, as it was based on the voluntary choice of the affected students and was justified by certain educational forms (Section 28(2)(a) and Section 7(2) of the Equal Treatment Act).

The defendants' defence, however, was unfounded for the following reasons:

6.2.1. According to the undisputed facts, the second and third defendants provided Hungarian-language Roma minority education for three hours per week, but only in the branch buildings, not in the main buildings. This was also a factor in the organisation of classes. The defendants claimed that the legal basis for their exemption from liability was provided by Section 43(4) of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (hereinafter "Minorities Act") and Section 28(2)(a) of the Equal Treatment Act.

Section 43(2) of the Minorities Act grants children belonging to a minority group the right to receive education in their mother tongue, in a bilingual programme, or in Hungarian, depending on the choice of their parents. According to subsection (4), the

local government responsible for providing education must organise minority schooling if at least eight parents from the same minority request it and if the class can be organised under the provisions of the Public Education Act.

Furthermore, as previously discussed, under Section 28(2)(a) of the Equal Treatment Act, minority education does not violate the requirement of equal treatment if it is organised at the initiative and voluntary choice of parents (informed parental decision-making) and if the purpose or curriculum of the education justifies the establishment of separate classes or groups.

Section 43(4) of the Minorities Act does not, in itself, imply that minority education must be provided exclusively through the establishment of separate classes. Such an arrangement is only permissible under Section 28(2)(a) of the Equal Treatment Act, provided that the parents' explicit intention is to have minority education organised in separate classes.
Based on the case data, the defendants were not authorised to implement segregated education on the grounds of an informed parental consent explicitly requesting such segregation.

The parental declarations submitted in the case, in which parents consented to their children's participation in minority education programmes for the 2006/2007 academic year (Annex No. 6.P.20.341/2006/36/A/6), merely express a request for participation in Hungarian-language Roma minority education as an optional subject. However, they cannot be interpreted as an explicit and informed parental decision requesting that their children receive education in separate classes from non-minority students or in separate school buildings.

The claim of voluntary segregation by parental intent is further contradicted by the testimonies of witnesses heard during the proceedings: [...], a lifelong resident of [...] and a representative of the local Roma Minority Self-Government, stated that numerous Roma parents had sought his assistance to enrol their children in the "normal" (main building) school because of its higher educational standards. He also testified that he was aware of cases in which the school assigned a Roma child to a branch building despite the parent's request for placement in the main building. Since 1993-1994, he and other activists had continuously fought against segregation, striving to ensure that Roma children were not separated and given equal opportunities for further education. Furthermore, based on his knowledge, Roma parents whose children attended the branch schools never expressed an intention to voluntarily segregate their children, either through minority education or for any

other reason.[...], president of the local Roma Minority Self-Government, testified that they had daily interactions with Roma parents in their official duties, and 70-80% of those parents wanted their children to be enrolled in the main school building, where a "mixed educational system" was in place. He further stated that, in all his experience, he had never encountered any Roma parents who voluntarily sought segregation, nor had he met any parents who wanted their children to attend Roma-only classes or buildings (Protocol No. 6.P.20.341/2006/41). Several Roma parents ([...], [...], and [...]) who testified during the first-instance proceedings (on other matters) also stated that they preferred Roma and non-Roma children to study together (Protocol No. 6.P.20.341/2006/43).

A detailed analysis of the parental declarations submitted in the case, along with their comparison to other case data, unequivocally demonstrates that the statements of Roma parents merely constitute requests under Section 43(4) of the Minorities Act, which obligates the defendants to organise minority education. However, these declarations cannot be regarded as an explicit parental initiative for segregated classes under Section 28(2)(a) of the Equal Treatment Act, nor as a voluntary choice for segregated education.

6.2.2 Additionally, the precondition for voluntary segregation under Section 28(2)(a) of the Equal Treatment Act, which requires that the purpose or curriculum of the minority education justifies the establishment of separate classes or groups, was not met in this case. According to Section 48(1)(b) of the Public Education Act, a school's pedagogical programme, within the framework of its local curriculum, must include, among other elements, both mandatory and optional school subjects, as well as educational content aimed at introducing minority culture to students who do not belong to that minority group. Furthermore, under Section 1(3) of Decree No. 32/1997 (XI. 5.) of the Ministry of Culture and Public Education, enrolment in schools offering minority education entails, among other conditions, a commitment to participate in optional classes designated for minority education. The schools in question provided three hours per week of Hungarian-language Roma cultural education in accordance with the guidelines set out in Annex 2 of Decree No. 32/1997, through optional extracurricular activities. An analysis of the applicable legal provisions demonstrates that the legal framework for Hungarian-language Roma minority education does not require separate classes or groups. On the contrary, its stated purpose and curriculum aim to ensure that both minority and non-minority students gain knowledge of the local minority culture.

6.2.3 The Supreme Court also rejected the defendants' argument that they were not obliged to comply with the requirement of equal treatment under Section 19(2)(b) of the Equal Treatment Act, as the legal provisions governing various educational formats allegedly permitted separate class organisation.

The court further dismissed the defendants' claim that their class organisation, based on educational principles considering students' interests (Section 4(7) of the Public Education Act) and abilities (Section 41(6) of the Public Education Act), could constitute an objectively reasonable justification for exemption from liability.

According to the undisputed facts, at the main building of the second defendant, bilingual (two-language) education and advanced-level teaching in certain subjects were provided, along with integration or ability-developing preparatory programmes. Meanwhile, at the Kossuth Street building, which predominantly housed Roma students (except for one class offering advanced-level IT training), Roma minority education and integration or ability-developing preparatory programmes were conducted.

The ability-developing preparatory programme was organised by the school under Section 39/D(1) of Decree No. 11/1994 (V. 8.) of the Ministry of Culture and Public Education, aiming to counterbalance disadvantages arising from students' social background and level of development. Under subsection (3), students in such programmes must be taught together with other students in the same class and group. Additionally, subsection (5) states that participation in such a programme is conditional upon a written declaration from the parent, provided that the student is classified as multiply disadvantaged (Section 121(1)(14) of the Public Education Act). Similarly, integration preparatory programmes are defined under Section 121(1)(16) of the Public Education Act as education and training designed to create equal opportunities, based on a structured programme. Students enrolled in these programmes must be taught together with other students in the same school class or, in the case of class division, within the same group. Furthermore, the proportion of these students in a class must not exceed the statutory limit. According to Section 39/E(1) of Decree No. 11/1994, integration programmes cannot involve the segregation of multiply disadvantaged students and must adhere to the prescribed student ratio. Thus, the legal provisions governing ability-developing and integration preparatory programmes explicitly require that participating students be educated together with non-participating students. The requirement for joint education logically extends not only to being in the same class but also to being housed in the same school building. Consequently, the mere need for minority education does not justify the separate education of Roma students in a different

building and in segregated classes, even if a high proportion of students requiring ability-developing or integration programmes are among those participating in minority education.

At the Rákóczi Street branch building of the second defendant, education was provided to students with special educational needs, who were predominantly of Roma ethnicity, alongside minority education. The defendants claimed that minority education was not a factor in class organisation. Under Section 30(2) of the Public Education Act, institutions providing special education may organise the education of children with special needs together with other students in the same class. However, they also have the option to organise education in separate divisions, classes, or groups if a professional and rehabilitation panel recommends this mode, form, or location (Section 30(1) and (8), Section 35(3)(a) of the Public Education Act). However, no evidence was provided in the case to show that students at the Rákóczi Street branch were placed there based on a professional opinion recommending exclusively special education divisions. Furthermore, the defendants failed to prove that the placement of students in minority education was merely incidental and that the second defendant had no influence over the composition of classes and the proportion of ethnic minority students within them. The lack of such evidence was deemed to the detriment of the second defendant.

At the third defendant's main building, education was conducted in regular-sized classes, including some integration programmes. However, at the Szabó Gábor Street (lower grades) and Dr. Földi János Street (upper grades) branch buildings, which exclusively housed Roma students, minority education and ability-developing preparatory programmes were conducted in small-class settings. During the relevant period, the 2006 Budget Act (Act CLIII of 2005) provided a statutory basis for small-class education by allowing state funding for students in special circumstances, provided that a professional opinion from an educational counselling service recommended that their education be organised in small classes of no more than 15 students (Annex 3, Section 20(b) of the Budget Act). However, this legal provision does not, in itself, justify placing students in a separate school building or segregated education, even in cases where students with learning, behavioural, or integration difficulties require small-class remedial education, supported by an expert opinion. According to the court-appointed expert, from a pedagogical perspective, it is specifically advantageous for these students to be placed in the main school building alongside other students (Protocol No. 6.P.20.341/2006/39).

6.2.4.Based on the foregoing, it can be established that the statutory provisions governing certain educational formats provided by the second and third defendants do not necessitate

the education of Roma students in separate classes or buildings from students who do not require those specific forms of education. Consequently, the defendants' reliance on education-related statutory provisions—which also include school organisational principles—as an objectively reasonable justification for exemption from the requirement of equal treatment was unfounded. Furthermore, the fact highlighted by the court-appointed expert, referring to a commonly known reality in the local district, namely that multiply disadvantaged students are overrepresented among Roma students (Protocol No. 6.P.20.341/2006/39, p. 5), actually underscores a socially recognised and legally established expectation in public education. This expectation mandates that disadvantaged students' educational gaps should be addressed through integrated education and preparatory programmes, rather than through segregation based on social status or level of development.

7. In light of the above—together with the supplementary legal references set forth in this reasoning—the first-instance court rightfully concluded, based on the expert opinion and witness testimonies, that none of the educational formats provided by the second and third defendants (such as ability-developing preparatory programmes, integration preparatory programmes, minority education, small-class education, bilingual education, or education for children with special educational needs) justified the separate education of Roma students in different buildings and classes from other students.

IV.

Beyond the reasoning outlined above, the Supreme Court found that the modification or supplementation of the first-instance judgment's reasoning—as requested by the claimant in the review application and maintained in the cross-appeal—was not warranted for the following additional reasons.

The substance of the dispute did not depend on whether the parental declarations submitted during the first-instance proceedings—where some affected parents expressed opposition to the lawsuit and insisted on maintaining education at the branch schools—were signed under a mistaken belief. This had no bearing on the claimant's standing to enforce rights under Section 20(1)(c) of the Equal Treatment Act.

Moreover, it was not decisive whether the terms "race" and "skin colour"—which the first-instance court deemed irrelevant—are, in fact, defined in law. These terms are interpreted in Article 1 of the International Convention adopted in New York and promulgated by Legislative Decree No. 8 of 1969. In light of this, these characteristics may also be considered in relation

to membership in a national or ethnic minority.

Furthermore, for the purpose of determining the proportion of members of the ethnic minority in the case at hand, it was irrelevant that gathering declarations from affected individuals on their ethnic background was not only legally restricted but also presented practical obstacles.

Although minority education laws do not establish a statutory presumption that schools providing Roma minority education exclusively educate students belonging to that minority group, the court-appointed expert's opinion clearly and reliably demonstrated that in the present case, Roma students were educated separately.

V.

Since the facts established by the first-instance court and their logical assessment did not unequivocally substantiate the defendants' claimed justifications for exemption, and as there was no need for additional evidence on this issue, there was no procedural obstacle to the Supreme Court issuing a substantive decision in the case. This remained true despite the Debrecen Court of Appeal's divergent legal interpretation, which had not examined the legal arguments set forth in the defendants' appeal and the claimant's cross-appeal.

Due to the defendants' failure to fulfil their burden of proof, the Supreme Court found that the second-instance court had violated the law by failing to establish a violation due to unlawful segregation. Consequently, applying Section 275(4) of the Code of Civil Procedure, the Supreme Court partially annulled the contested provisions of the final judgment. It upheld the first-instance court's ruling establishing the violation of law due to unlawful segregation, as well as the objective legal consequences, including the injunction and order to cease the unlawful practice, except for the reference to a specific deadline (Section 84(1)(a) and (b) of the Civil Code). The reason for omitting a specific deadline was that, in this personality rights lawsuit based on the violation of equal treatment, the termination of the unlawful segregation could only be achieved through the implementation of a professional programme developed according to expert considerations outside the scope of this lawsuit. Under Section 217 of the Code of Civil Procedure, it was therefore not possible to impose a performance deadline. Regarding moral redress, the Supreme Court upheld the first-instance ruling, requiring the first defendant to submit the operative part of the present judgment to the Hungarian News Agency (Section 84(1)(c) of the Civil Code). Applying Section 275(3) of the Code of Civil Procedure, the Supreme Court upheld the second-instance judgment's partial dismissal of the claimant's request regarding the form of redress. It held that

the publication of the judgment's operative part by the Hungarian News Agency (even without an explicit expression of regret from the defendant) was sufficient to ensure moral restitution for the affected parties.

As a result of the Supreme Court's decision, the ratio of success and failure in the lawsuit was altered. Accordingly, under Section 270(1) in conjunction with Section 78(1) of the Code of Civil Procedure, the defendants were ordered to jointly pay the claimant's costs incurred during the appeal and review proceedings. The amount was determined based on the fee agreement submitted by the claimant during the second-instance proceedings, in accordance with Sections 2(1)(a) and 3(3), (5), and (6) of Decree No. 32/2003 (VIII. 22.) of the Ministry of Justice. Pursuant to Section 62(1)(f) of Act XCIII of 1990 on Duties, the unpaid review procedure fee, which was subject to a statutory fee exemption, was borne by the state under Section 5(1)(b) and (c) of the Act on Duties, in conjunction with Section 14 of Decree No. 6/1986 (VI. 26.) of the Ministry of Justice.

Budapest, 19 November 2008

Dr. Lászlóné Völgyesi, Chair of the Panel, Dr. Zsuzsanna Kovács, Judge-Rapporteur, Dr. Mátyás Mészáros, Judge

Responsible for the authenticity of the copy:

Vné, Clerk