

The Supreme Court of the Republic of Hungary, in the case initiated by plaintiffs I., III., IV., V., and VI., represented by attorney Dr. Balázs Sahin-Tóth, against the defendant represented by legal counsel Dr. Katalin Vaskó, for the establishment of the violation of personal rights and the application of legal consequences, commenced before the Borsod-Abaúj-Zemplén County Court under case number 13.P.20.580/2008, and concluded by the final judgment of the Debrecen Court of Appeal under case number Pf.I.20.125/2009/4., upon the plaintiffs' petition for judicial review filed under entry number 31, delivers the following

**j u d g m e n t :**

The Supreme Court annuls the provision of the final judgment challenged on appeal, including the provision relating to the costs of the proceedings, and partially modifies the judgment of the court of first instance, and orders the defendant to pay the plaintiffs the sum of HUF 100,000 (one hundred thousand forints) per person within 15 days, together with interest at the statutory rate from 1 January 2008 until the date of payment.

Each party shall bear its own costs of the proceedings at first instance, appeal and review.

Otherwise, the final judgment is upheld.

The unpaid review procedure fee is borne by the State.

There is no right of appeal against this judgment.

**R e a s o n i n g**

According to the relevant facts established in the final judgment, in a public interest lawsuit initiated by ..., the Debrecen Court of Appeal, by its final judgment of 9 June 2006 under case number Pf.I.20.683/2005/7., partially modifying the first-instance judgment, held that the defendant violated the right to equal treatment of Roma students represented by the plaintiffs by failing to implement school district integration simultaneously with the administrative and financial integration of the educational institutions under its maintenance as of 1 July 2004, only effecting such integration as of 30 August 2005.

The court ordered the defendant to submit the operative part of the appellate judgment, including the parties' identities, to the Hungarian News Agency. The third plaintiff completed primary school at the defendant's Miskolc-based branch school in the 2004/2005 academic year, while the other plaintiffs did so in the 2005/2006 academic year.

The plaintiffs sought a declaration that the defendant had violated their personality rights related to equal treatment and requested the defendant's public reparation, as well as the payment of HUF 500,000 in non-pecuniary damages per plaintiff, along with statutory interest from 1 January 2008 until the date of payment. Their claim was based on the assertion that the defendant's failure to align school district boundaries with the administrative and financial integration of its educational institutions deprived them of the opportunity to transfer to the higher-standard main school, thereby adversely affecting their further education and life prospects.

The defendant sought dismissal of the claim, arguing that the mere finding of a legal violation in the prior proceedings could not serve as a basis for damages. The plaintiffs failed to prove any disadvantage justifying non-pecuniary compensation, as their inability to gain admission to their chosen secondary schools was due to their own academic performance rather than any lack of educational quality.

In its judgment, the first-instance court terminated the proceedings regarding the second plaintiff due to withdrawal of the claim. It found that by failing to implement school district integration simultaneously with the administrative and financial integration of the school as of 1 July 2004—only doing so with effect from 30 August 2005—the defendant violated the right to equal treatment of plaintiffs I., III., IV., V., and VI. It dismissed the claim beyond this. The court ordered the plaintiffs to pay litigation costs of HUF 10,000 per plaintiff to the defendant within 15 days and ruled that the state would bear the unpaid court fees. In its reasoning, the first-instance court held that the incomplete implementation of integration disadvantaged the plaintiffs, who were members of the group affected by the public interest lawsuit, as confirmed by the final judgment in that case. The opportunity to transfer from the branch school to the main school was not identical for students residing within and outside the school district boundaries, as the latter required the school's discretionary approval. Whether the plaintiffs had actually sought such a transfer was irrelevant; deprivation of the opportunity itself constituted a legal violation. Accordingly, based on Section 75(1) and Section 84(1)(a) of the Civil Code, the court established the legal violation and, under Section 84(1)(c), applied other objective legal consequences. However, it rejected

the claim for non-pecuniary damages, brought under Section 84(1)(e) in conjunction with Section 339(1) of the Civil Code, finding it unsubstantiated. The court did not accept the plaintiffs' argument that the prior judgment's finding of a legal violation simultaneously established the basis for damages. It explained that, under general tort principles, plaintiffs must prove harm causally linked to the legal violation that warrants non-pecuniary compensation. The evidence did not establish that the quality of education at the main and branch schools differed significantly. Consequently, the plaintiffs did not suffer damages merely due to the failure to adjust school district boundaries alongside financial integration.

The plaintiffs filed an appeal against the first-instance judgment, primarily seeking the award of non-pecuniary damages, or alternatively, the annulment of the first-instance judgment and the remittal of the case for a new trial and decision. The defendant requested the affirmation of the first-instance judgment.

The appellate court upheld the unchallenged parts of the first-instance judgment and affirmed the appealed provisions. It ordered the plaintiffs to pay HUF 5,000 per plaintiff in appellate litigation costs to the defendant within 15 days.

According to the reasoning of the appellate judgment, the unlawful segregation was established in the prior proceedings on the basis of Section 10(2) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act). Under statutory definition, the existence of disadvantage suffered by the segregated group is not a prerequisite for unlawful segregation. Segregated education remains unlawful even if conducted under entirely equal conditions. Consequently, the prior judgment alone does not justify the conclusion that the plaintiffs—who are members of the group granted legal protection by the judgment—suffered a disadvantage due to the failure to achieve full integration. Contrary to the erroneous appellate argument, a violation of personality rights alone, without proof of harm causally linked to the unlawful conduct, does not constitute grounds for non-pecuniary damages. Therefore, it must be examined individually for each plaintiff whether they suffered harm as a direct consequence of the unlawful conduct.

The appellate court, though providing different reasoning, concurred with the first-instance court's conclusion that the plaintiffs failed to prove any resulting harm. It stated that the group protected by the prior judgment lost the opportunity to enrol in the Miskolc ... Primary School, which, under Section 66(2) of Act LXXIX of 1993 on Public Education, was obligated to admit students from the integrated school district. The unlawful

situation existed between 1 July 2004 and 30 August 2005. According to Section 66(1) of the Public Education Act, a student's legal relationship with a school is established through admission or transfer, which occurs upon application. Since the plaintiffs were already enrolled at the branch primary school before 1 July 2004, the refusal of an admission application was not a relevant issue. Regarding the sixth plaintiff, the court noted that he did not even submit a transfer application to the main school; thus, it could not be claimed that he was prevented from attending the allegedly higher-quality main school due to the defendant's unlawful conduct. The first, third, fourth, and fifth plaintiffs also failed to demonstrate that they had submitted transfer applications and that such applications had been rejected. Therefore, even if the plaintiffs' claim that they could not pursue further education due to inadequate schooling had been proven, it would not suffice to establish that they suffered harm warranting non-pecuniary damages as a direct consequence of the defendant's unlawful conduct. Furthermore, the evidence in the case supports the opposite conclusion. The first plaintiff personally testified that he dropped out of vocational school because he could not keep up with his peers. The fourth plaintiff-misidentified in the records as the third plaintiff-did not enrol in the vocational school that had admitted her because she became pregnant. The fifth plaintiff's vocational studies were interrupted due to his pretrial detention.

The plaintiffs submitted a petition for judicial review against the final judgment, seeking its annulment and, primarily, the acceptance of their claim, or alternatively, the remittal of the case to the first-instance court for a new trial to conduct evidentiary proceedings regarding the quality of the schools in question and the harm suffered by the plaintiffs. Their judicial review argument asserts that the lower courts erred in requiring proof of non-pecuniary harm, as the violation of personality rights itself justifies an award of non-pecuniary damages. They further argued that the first-instance court had already determined that the plaintiffs suffered a disadvantage due to the failure to achieve full integration. In civil liability, no distinction should be made between minor and significant harm, as the degree of harm is relevant only in determining the amount of damages.

The defendant did not submit a counterclaim for review.

The request for review is partially justified as follows.

In the case initiated by ..., the Debrecen Court of Appeal, in its final judgment No. Pf.I.20.683/2005/7, established that the defendant violated the "right to equal treatment of Roma

students" concerning the schools involved in the plaintiffs' claim. In the prior proceedings, the appellate court also accepted the existence of the disadvantage suffered and the "characteristic capable of triggering discriminatory treatment" as proven. In its reasoning, the appellate court, relying on Sections 7-10 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act), analysed the possible forms of conduct capable of causing the injury requiring legal protection, which was based on unlawful segregation and indirect discrimination. It established that a violation could occur not only through "active" conduct. On this basis, it further determined that, in the given case, "maintaining a state of disadvantage without any active intervention may also constitute a violation." Consequently, it found the defendant liable for an omission-based violation under Section 84(1)(a) of the Civil Code.

The plaintiffs, as members of the group granted legal protection under the final judgment of the prior case, sought the establishment of the violation determined therein, along with the application of objective and subjective legal consequences. Although the final judgment rendered in the public interest lawsuit does not formally create *res judicata* under Section 229(1) of the Code of Civil Procedure regarding the claims asserted by the plaintiffs in the present case, it substantively carries the effect of *res judicata* concerning claims arising from the same factual basis and asserting the same right. Therefore, in the absence of additional factual elements, the present court cannot reach a different conclusion regarding the existence or nature of the violation. However, as the legal provisions applied and the specific designation of the violation were not explicitly set out in the prior judgment, it is unclear under which provision of the Equal Treatment Act the violation of the right to equal treatment—presumably established under Section 76 of the Civil Code—was determined. Consequently, the prior final judgment requires interpretation.

The final judgment in the prior case essentially upheld the plaintiffs' argument that the defendant's failure to adjust the school district boundaries alongside the administrative integration of branch schools—and its maintenance of this pre-existing situation for a defined period—resulted in discriminatory treatment of students of Roma ethnicity. The violation was established on the basis of the maintenance of a state of disadvantage (omission). According to the interpretation of the Supreme Court, the defendant's conduct in this case corresponds to the definition of indirect discrimination under Section 9 of the Equal Treatment Act. This provision defines indirect discrimination as a seemingly neutral measure that does not constitute direct discrimination but nonetheless places individuals or groups possessing a protected characteristic, as

specified in Section 8, at a significantly greater disadvantage compared to other similarly situated individuals or groups. Pursuant to Section 7(2) of the Equal Treatment Act, a "measure" encompasses conduct, action, condition, omission, instruction, or practice. In this case, the administrative and financial integration of the affected schools appeared to be a neutral measure complying with the principle of equal treatment. However, the omission of adjusting the operational (admission) district boundaries of the merged schools affected all students residing outside the designated school districts who attended the branch schools. Given that the final judgment in the prior case recognized as a matter of common knowledge that students of Roma ethnicity were disproportionately represented in the branch schools, this (omission) disproportionately disadvantaged Roma students compared to students residing within the operational (admission) district of the main school, who were in a comparable situation. Given that— as acknowledged as a matter of common knowledge in the final judgment of the prior proceedings— students of Roma ethnicity were disproportionately represented in the branch school, the omission in question placed Roma students at a significantly greater disadvantage compared to their similarly situated peers residing within the operational (admission) district of the main school. Thus, the correlation between the discrimination and the protected characteristic of the disadvantaged group under Section 8 of the Equal Treatment Act was also established. Consequently, the Supreme Court reached the conclusion that the Debrecen Court of Appeal, in its final judgment rendered in the prior proceedings, found the violation attributable to the defendant's conduct (omission), irrespective of the fact that this conduct also resulted in unlawful segregation as defined under Section 10(2) of the Equal Treatment Act. The court primarily established the violation on the grounds of indirect discrimination.

In line with established case law, the lower courts correctly pointed out that the mere establishment of a violation of personality rights, without proof of actual harm suffered, does not in itself constitute grounds for damages (EBH 2000/302, BH 2002/24, BH 2001/110). However, in light of the aforementioned considerations, the final judgment—due to its differing interpretation of the nature of the violation as established in the final judgment of the prior case—erroneously concluded that the harm resulting from the unlawful conduct required separate proof in the present case. Since "disadvantage" is a constitutive element of the statutory definition of indirect discrimination under Section 9 of the Equal Treatment Act, the essence of the violation itself is the infliction of harm. Therefore, beyond establishing the violation, no further proof of harm is necessary. If, as previously interpreted, the final judgment in the prior case determined that a violation had occurred due to indirect discrimination, then the proof of harm suffered by the

individuals affected by the public interest litigation was inherently included in that finding. To this extent, the Supreme Court accepted the petitioners' argument that, for the purpose of establishing liability for damages, no distinction should be made between the "disadvantage" under Section 9 of the Equal Treatment Act and the "harm" required for non-pecuniary compensation under Section 355(4) of the Civil Code.

In the present case—as substantively established by the lower courts—the harm consisted of the fact that, due to the unchanged school district boundaries, the main school was not required under Sections 66(2) and 90(1) of the Public Education Act to admit students from the branch school who resided outside its operational (admission) district, despite the branch school being administratively part of the same institution. As a result, the branch school students were deprived of the opportunity to enroll in the main school and access what they perceived as a higher standard of education.

The defendant's omission—by which it kept the plaintiffs, Roma students at the branch school, in this disadvantaged position for more than a year (thus subjecting them to indirect discrimination)—inherently establishes the harm necessary for awarding non-pecuniary damages, without the need for further proof. The extent of the harm caused and the amount of damages required to mitigate or remedy this disadvantage must be determined based on the prevailing circumstances and economic conditions at the time of the injury (the 2004/2005 and 2005/2006 academic years). Therefore, contrary to the erroneous position taken in the final judgment, personal circumstances that subsequently arose in the plaintiffs' lives after completing their primary education cannot be considered as objectively excluding the claim for damages when assessing the occurrence and extent of the harm. In light of these considerations, the Supreme Court determined the amount of non-pecuniary damages in proportion to the harm suffered, taking into account the economic conditions at the time of the disadvantage's occurrence, based on Section 206(3) of the Code of Civil Procedure and by assessing all relevant circumstances of the case.

Under Section 360(1) of the Civil Code, damages become due immediately upon the occurrence of the injury. Therefore, pursuant to Section 360(2), which mandates the application of Section 301(1), the defendant is obligated to pay interest from that point forward. However, since the plaintiffs claimed interest on the awarded damages only from 1 January 2008, the Supreme Court, adhering to the principle of adherence to the claims submitted (Section 215 of the Code of Civil Procedure), ordered the defendant to pay interest starting from that date.

In view of the above, the Supreme Court, pursuant to Section 275(4) of the Code of Civil Procedure, annulled the challenged

*provision of the final judgment, including the decision on litigation costs, and, by applying Section 253(2) accordingly, partially modified the first-instance judgment. Considering the nearly equal proportion of success and failure of the parties' claims, the Supreme Court ruled on the allocation of first-instance, appellate, and judicial review procedural costs under Section 81(1) of the Code of Civil Procedure. In all other respects, the final judgment was upheld pursuant to Section 275(3) of the Code of Civil Procedure.*

*Pursuant to Section 62(1)(f) of Act XCIII of 1990 on Fees, the unpaid judicial review fee is borne by the state due to the plaintiffs' full personal cost exemption and the defendant's full personal fee exemption under Section 5(1)(b) of the same Act. This is in accordance with Sections 13(1) and 14 of Decree No. 6/1986 (VI. 26.) of the Minister of Justice.*

*Budapest, 2 June 2010*

*Dr. Mátyás Mészáros presiding judge, Dr. Zsuzsanna Kovács judge-rapporteur, Dr. Andrea Csőke judge*

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