No.Pfv.IV.20.241/2015/4

The Curia, in the case initiated by the plaintiff, represented by Dr Lilla Farkas and Dr Adél Kegye, against the first defendant, Nyíregyháza Municipality of County Rank, represented by Dr Előd Kovács, the second, third, and fourth defendants, represented by Dr Károly Czifra, and the fifth defendant, represented by Dr Gabriella Rubi, concerning the determination of a violation of personal rights and the application of legal consequences, initiated before the Nyíregyháza Regional Court under case number 10.G.40.099/2012, and concluded by the Debrecen Court of Appeal with its final judgment No. Gf.I.30.347/2014/10. In response to the petition for review submitted by the second to fourth defendants under serial number 32 and by the first defendant under serial number 33, the Curia held a hearing and rendered the following

j u d g m e n t:

The Curia annuls the contested provision of the final judgment, modifies the first-instance judgment in respect of the main subject matter of the case, and fully dismisses the plaintiff's claim.

The plaintiff is ordered to pay HUF 50,000 (fifty thousand) in procedural costs for the first, second-instance, and review proceedings to the first defendant within 15 days.

The state shall bear the unpaid review court fee of HUF 70,000 (seventy thousand).

No further review is allowed against this judgment.

R e a s o n i n g

According to the essential facts underlying the final judgment... General School No. 13 had operated as a housing estate school since 1958. According to the expert opinion prepared on 26 March 2007 regarding the review of the educational and childcare institution network by the first defendant’s municipal assembly, the school operated in a segregated manner within a Roma community living in severe poverty. The school had 100 students, of whom 98 were considered multiply disadvantaged or eligible for regular child protection support.

The Szabolcs-Szatmár-Bereg County Court, in case No. P.22.020/2006 initiated for unlawful segregation, terminated the proceedings after the plaintiff withdrew the claim. This was due to the fact that the first defendant’s municipal assembly decided, by its resolution of 23 April 2007, to close General School No. 13 without legal succession, effective 31 July, and to relocate the students to six other schools. The first defendant undertook to provide school transport for the children from the housing estate. The one-step closure of the school was supported by the Roma Minority Municipality of the City of County Rank with its resolution No. 13/2007 (IV.3). After the school’s closure, the designated

receiving schools implemented a so-called "cold integration" of the housing estate children.

On 4 May 2011, the second defendant submitted a declaration of intent to the first defendant, stating that, from September 2011, they would initiate Roma pastoral work, support families, and organise cooperation with social institutions and organisations through preschool education. On 23 May 2011, they amended their declaration to state that if the city's leadership could ensure the necessary conditions, they would assume responsibility for primary public education, starting with one first-grade class from the 2011/2012 academic year and expanding gradually.

The ...Roma Minority Municipality, in its meeting of 24 May 2011, adopted resolution No. 11/2011 (V.24.), agreeing with the reopening of the general school. They requested special attention be given to the enrolment of multiply disadvantaged children.

On 31 May 2011, the first and second defendants signed a cooperation agreement and a support contract. The purpose of the cooperation agreement was to define the public education tasks undertaken within the Roma pastoral activities conducted in the housing estate. The agreement concerned the participation of a general school, founded by the church, in the implementation of public education tasks from 1 September 2011 for an indefinite period. The church undertook to provide public education services, accepting every child residing in Nyíregyháza who had reached the age of six and whose parents consented to Catholic education, up to a maximum enrolment of 200 students as per the operational licence. The agreement specifically emphasised the acceptance of multiply disadvantaged children, ensuring that their proportion within the school would reach the average proportion of such students in the city's general schools. The church committed to striving to implement a Roma minority education programme. The school provided education and training free of charge. The church guaranteed an appropriate level of education, ensuring the necessary personal and material conditions suited to the institution's specificities. To this end, they sought to secure state budget contributions as per the applicable legislation and endeavoured to obtain additional resources to maintain the institution. They committed to promptly applying to the competent Government Office for the unilateral declaration as per Section 118(9) of Act LXXIX of 1993 on Public Education. Furthermore, they undertook to integrate the school into the first defendant's integration programme, acknowledging the monitoring of compliance with the relevant regulations. The parties also stipulated in the agreement that the transfer of real estate and movable property for implementing the tasks would be subject to a separate usufructuary contract.

Under the support agreement concluded on the same day, the first defendant undertook to provide annual budgetary support to the second defendant, provided that the latter committed to the full-time education of disadvantaged children in the institution it had established or maintained and endeavoured to implement Roma minority education.

According to the first defendant's resolution No. 197/2011 (X. 27.), instead of the organised transportation of students from the now-defunct General School No. 13, it provided a 30% subsidy for the cost of travel passes and tickets for all students affected by the reorganisation.

The third defendant's founding charter was amended on 20 May 2011 to register the fourth defendant as a branch.

The Government Office authorised the independent operation of the fourth defendant from the 2012/2013 academic year, with activities defined under the sectoral regulations, including general primary education for grades 1-4 with a maximum of 60 students.

The plaintiff sought a declaration that the cooperation agreement and support contract concluded between the first and second defendants on 31 May 2011 violated Sections 5, 75(3), and 200(2) of the Civil Code, rendering them null and void. Consequently, the plaintiff requested the restoration of the legal status that existed before the contract was signed.

The plaintiff also requested a ruling that the first defendant, by granting free use of the school building it owned, discontinuing the school bus service, and providing additional financial resources to the second defendant, unlawfully segregated Roma children from non-Roma children on an ethnic basis from the 2011/2012 academic year.

Furthermore, the plaintiff sought a declaration that the second defendant unlawfully segregated Roma children from non-Roma children in the school operated by the third defendant during the 2011/2012 academic year and in the school operated by the fourth defendant from the 2012/2013 academic year onwards. Additionally, the plaintiff requested a ruling that the third defendant unlawfully segregated Roma children from non-Roma children in the 2011/2012 academic year.

The plaintiff's claims extended to the assertion that the fourth defendant, which did not have a mandatory enrolment district, unlawfully segregated Roma children from non-Roma children from the 2012/2013 academic year onwards by establishing segregated classes.

Based on the above, the plaintiff requested that the defendants be ordered to cease the violation and be prohibited from engaging in similar unlawful acts. The plaintiff also sought an order requiring the fifth defendant, as the legal successor to the first defendant's public education responsibilities, to restore the situation that existed before 31 May 2011.

Alternatively, the plaintiff requested that the first defendant be ordered to terminate the free use of the school building in question.

Regarding the Roma children enrolled at the fourth defendant's school, the plaintiff requested that the second defendant be ordered to place those Roma children who wished to continue denominational education into

majority (non-Roma) nationality (ethnic) classes corresponding to their grade level.

The defendants requested the dismissal of the plaintiff's claim.

The first-instance court ruled that:

- *The first defendant, by granting free use of the school building owned by it, discontinuing the school bus service, and providing additional financial resources to the second defendant, has unlawfully segregated the Roma children from the ..-settlement from non-Roma children on a national basis from the 2011/2012 school year onwards.*
- *The second defendant, during the 2011/2012 school year at the third defendant's school under its maintenance, and from the 2012/2013 school year at the fourth defendant's school, has unlawfully segregated the Roma children from the ..-settlement from non-Roma children.*
- *The third defendant unlawfully segregated the Roma children from the ..-settlement from non-Roma children during the 2011/2012 school year.*
- *The fourth defendant, from the 2012/2013 school year, has unlawfully segregated the Roma children from the ..-settlement from non-Roma children by establishing segregated classes.*

The court ordered the second to fourth defendants to cease the violation and prohibited them from engaging in similar unlawful acts in the future. Beyond these points, the court dismissed the remaining claims.

The first-instance court upheld the plaintiff's right to bring proceedings under Section 28(1)(c) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act).

Based on public interest data from equal opportunity programmes of 2007 and 2011, the court determined that the majority of the population living in the spontaneously segregated housing estate was of Roma origin. Compared to the urban population, the proportion of disadvantaged and multiply disadvantaged individuals was exceptionally high. Consequently, under Section 10(2) of the Equal Treatment Act, the decision of the first defendant to transfer a building located within the segregated area to the second defendant for educational purposes free of charge constituted unlawful segregation. The second defendant did not participate in the formation or maintenance of spontaneous segregation but carried out institutional segregation by operating a single school in the segregated area in addition to an existing inner-city school. This constituted unlawful segregation under Section 27(3)(a) of the Equal Treatment Act. Since the second defendant cited Roma pastoral care as its justification under the special exemption provisions of Section 28(2)(b) of the Equal Treatment Act but did not claim that the school was engaged in national minority education, the court only examined whether the transition of

the segregated school into church administration was initiated voluntarily by parents based on religious conviction. The court found that negotiations had taken place between the first and second defendants regarding the church's takeover of the segregated school. However, the second defendant's initiative was initially limited to the takeover of the nursery on the estate. It was the first defendant that proposed the church start a first-grade class a year earlier than originally planned. Evidence from pre-enrolment forms for children starting school in 2011 showed that the church school was not established at the parents' initiative, as only two out of 15 applications indicated Greek Catholic affiliation, while most cited proximity to their residence as the reason for enrolment. This finding was reinforced by fieldwork reports from 31 May 2011 and testimonies from ...witness and ...witness.

The court of first instance established that the claimant fulfilled the probability requirement set out in Section 19 (1) (a) of the Equal Treatment Act. Based on the testimony of .. .., the court found without doubt that segregated education causes a disadvantage, as the only opportunity for disadvantaged children to escape deep poverty is to obtain a secondary or higher education through appropriate schooling, which segregated education cannot provide. Only inclusive public education, conducted together with majority children, can achieve this.

The referenced Roma pastoral care does not justify the segregated education of Roma children, considering the church representatives' statement that its goal is the acceptance of Roma people by the majority society and vice versa. The court of first instance examined the group of persons in comparable situations, consisting of school-age children enrolled in primary schools maintained by the first defendant. In this context, it established that, according to 2011 data, 35.3% of students in primary schools operated by the first defendant were disadvantaged, while the proportion of cumulatively disadvantaged students was 7.1%.

At the school in question, the proportion of disadvantaged students was 100%, of whom 56.3% were cumulatively disadvantaged. Based on this, the court also established the fact of unlawful segregation attributable to the first defendant. It further recorded that in 2011, 17.4% of students attending .. Primary School were disadvantaged, while 3.9% were cumulatively disadvantaged.

The court of first instance found that the claimant had demonstrated the violation of the principle of equal treatment and the resulting disadvantage, while the second defendant's evidence did not lead to a contrary conclusion. The court rejected the first defendant's request to obtain data from the Hungarian Central Statistical Office regarding the demographic composition of .., as the documents submitted already provided sufficient data. It also deemed unnecessary the expert evidence on national minority education requested by the third and fourth defendants, as they themselves admitted that they did not conduct national minority education. The claimant did not allege deficiencies in the quality of education, and the institution providing education in the settlement was not authorised to conduct remedial education separately.

The claim based on the nullity of the contract between the first and second defendants on the grounds of being contrary to good morals was found unfounded. The court held that it is not manifestly contrary to good morals that the first defendant transferred a school building to the second defendant for educational purposes, nor that this resulted in unlawful segregation of students from the ..-settlement, as this does not violate the general moral expectations of society.

The court found the claim seeking the establishment of the violation and the cessation of the unlawful conduct well-founded. Pursuant to Section 84 (3) (a)-(b) of Act CXC of 2011 on National Public Education, due to the progressive educational system, the fourth defendant may not conduct further first-grade education at the settlement school following the final judgment. However, the court deemed the claim based on Section 84 (1) (d) of the Civil Code unsuitable for achieving the intended legal effect due to its general nature. The claimant submitted an alternative claim regarding the method of termination, which the court rejected as unenforceable through judicial means and as an infringement on parents' right to freely choose their children's school if they do not wish to enrol them in a church school.

The first to fourth defendants appealed against the first-instance judgment, while the claimant submitted a cross-appeal.

The court of second instance upheld the first-instance judgment with a textual clarification, stating that the second to fourth defendants are prohibited from further violations rather than "such and similar" violations. It ruled that the parties shall bear their own costs incurred during the appellate proceedings.

The appellate court, referring to Section 4 (g) of the Equal Treatment Act, explained that the second defendant is not an actual educational institution but its maintainer and is thus subject to the provision. Regardless, it also falls under Section 5 (c) of the Act. Otherwise, the decisions against the third and fourth defendants would not be enforceable without the second defendant's participation in the lawsuit. The appellate court concurred with the first-instance court in determining the ethnic composition of the settlement's residents based on the 2007 public education equal opportunity analysis. The equal opportunity programme for 2011-2016 continued to list the ..-settlement and .. housing estate among segregated areas, stating that the vast majority of the city's Roma population resides in these locations. No evidence of population change emerged after the preparation of these equal opportunity programmes and analyses. Thus, the first-instance court correctly established that the majority of residents in the spontaneously segregated ..-settlement were of Roma origin and that the proportion of disadvantaged and cumulatively disadvantaged individuals was exceptionally high compared to the urban population.

The Court of Appeal concurred with the court of first instance regarding the fulfilment of the conditions set out in Section 28 of the Equal Treatment Act. The church's declaration of intent, the subsequent

consultations with the municipality, the reasons indicated by parents on the pre-enrolment forms of children admitted in the first year, witness testimonies, and documentary evidence all demonstrated that the segregation was not initiated by the parents.

The second to fourth defendants erroneously argued that having only one class per grade level inherently precluded segregation. In the case at hand, segregation was not implemented between classes of the same grade but rather through the reopening of a school in the segregated settlement on a national basis. The discontinuation of the school bus encouraged parents to enrol their children in the settlement school. Another motivating factor was that it was a "Roma school," where children would not face exclusion. Based on these considerations, the court of first instance determined that the defendants failed to justify their conduct.

The first and second to fourth defendants filed a petition for judicial review against the final judgment.

In its petition for review, the first defendant primarily sought the annulment of the final judgment and the dismissal of all claims brought by the claimant. Alternatively, it requested that the case be referred back to the court of first or second instance for a new procedure, new evidence, and a new decision.

The first defendant first highlighted that the educational institution currently operated by the second and third defendants could not be regarded as the legal successor of the previously closed school maintained by the first defendant.

The first defendant argued that the 2007 equal opportunity analysis reflected the situation as of 2007 and could not be relied upon to make unequivocal findings about the present circumstances. It emphasised that the analysis contained statistics on disadvantaged and cumulatively disadvantaged children, from which neither the first nor the second-instance court could have concluded that the majority of the population in the ..-settlement was of Roma origin. According to the first defendant, the testimony of .. supported its claim that the ..-settlement was a deprived area inhabited by both Hungarian and Roma individuals. The first defendant considered it a significant procedural violation that the court of first instance rejected its request for evidence from the Hungarian Central Statistical Office. Under Section 2 (4) of the Code of Civil Procedure, knowledge of the historical ethnic composition of the ..-settlement was a crucial factor under Section 19 (2) of the Equal Treatment Act. Therefore, the rejection of the evidentiary request unjustifiably restricted the defendants' ability to justify their conduct. If relevant evidence is excluded, the procedural sanction under Section 3 (3) of the Code of Civil Procedure cannot be applied against the party.

The court established the existence of unlawful segregation by comparing data from primary schools maintained by the first defendant with those of the settlement school maintained by the second defendant. Based on

this comparison, it concluded that the first defendant engaged in unlawful segregation. However, the first defendant argued that it had no educational administration duties or authority over the second defendant's institution, as the second defendant independently managed its educational responsibilities.

Regarding the discontinuation of the school bus and the allocation of financial resources to the second defendant, the first defendant contended that the courts failed to explain why these actions constituted unlawful segregation. The availability or discontinuation of a means of transport does not amount to the separation of those who previously used it. During the proceedings, the first defendant explained that the school bus service was discontinued due to financial difficulties, but it introduced a travel pass subsidy scheme designed to facilitate students' commuting between their residences and educational institutions. Neither the claimant nor the court of first instance cited any legal provision requiring the first defendant to operate a school bus service continuously and without interruption. In relation to the right to freely choose schools, the first defendant argued that the fact that the president of the Roma minority self-government recommended or suggested the Greek Catholic school did not infringe upon parents' rights. Instead, it broadened their choices, as they were introduced to the new school upon its opening. Whether students continued attending the district school system or opted for the Greek Catholic school, which operated under different principles, was based on their and their parents' free choice, meaning that segregation did not occur. The first and second-instance courts violated Section 221 (1) of the Code of Civil Procedure by failing to fulfil their obligation to provide sufficient reasoning on the aforementioned matters.

The first defendant also argued that as of 1 January 2013, its responsibilities in the field of public education had ceased. It no longer possessed any authority or competencies that would enable it to implement segregation or to remedy any alleged segregation. Consequently, the present-tense wording of the judgment's findings was legally erroneous.

The second to fourth defendants, in their petition for judicial review, requested the annulment of the final judgment and the dismissal of the claimant's claims.

Their legal argument was that the final judgment did not comply with Sections 4(g), 5(c), 8, 10(2), 19, 27, and 28 of the Equal Treatment Act. Furthermore, they asserted that it violated the provisions of Act CLXXIX of 2011 on the Rights of National Minorities (Nationality Act), Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Religious Denominations, and Religious Communities (Church Act), and Article 10 of the Convention on the Rights of the Child, adopted in New York on 20 November 1989 (New York Convention). The second to fourth defendants also argued that the final judgment infringed fundamental rights, particularly the rights to freedom of

conscience and religion and the parents' right to freely choose their children's school.

They contended that the court's decision violated Sections 8(2) and 19(2) of the Church Act, as the courts rendered their judgments on Roma pastoral care and the objectives and intentions behind the establishment of the school without legal authorisation and in contravention of statutory prohibitions. They asserted that the bishop decided to establish the school in question based on the Code of Canons of the Eastern Churches (CCEO) rather than for segregationist reasons as alleged by the claimant. The third and fourth defendants operated as organisations subject to the internal law of the church. The courts' evaluation of Roma pastoral care as a special justification and their interference in an internal church decision concerning equal treatment and unlawful segregation violated Section 8(2) of the Church Act. The defendants also referenced ruling EBH 2005.1216, which states that even when receiving state funding, a church's autonomy cannot be infringed upon if its actions are based on specific religious principles. They argued that the establishment of a church-run educational institution cannot be challenged under the Equal Treatment Act merely because it could be found unlawful in a secular context. Furthermore, the right of parents to freely choose schools should preclude any objections, particularly since a church can impose specific admission criteria when establishing student relationships, which are not automatic. Establishing a school under the internal rules of a church does not constitute an infringement of the law if secular laws do not prohibit it. The same applies to student admissions, where the church has the right to determine with whom it establishes a legal relationship.

The defendants also claimed that the courts failed to examine Sections 11(1) and 15 of the Nationality Act, rendering the final judgment's finding that the ..-settlement's population was predominantly of Roma nationality unfounded. Under the Equal Treatment Act, it is impermissible to attribute national characteristics to individuals, including schoolchildren or their parents. In the absence of self-identification, the courts cannot designate any student or parent as Roma.

They further argued that the judgment infringed upon the rights of parents and children to freedom of conscience and religion, as well as the right to freely choose schools, by deeming the establishment and maintenance of the school unlawful. The courts' ruling prevented parents from enrolling their children in the denominational school of their choice. In support of this, they referenced Section 2 of the Church Act and Articles 14(3), 28, and 29 of the New York Convention. The second to fourth defendants maintained that the courts' decision deprived parents and children of their rights related to education and denominational schooling, violating their freedom of conscience and religion. They also argued that the final judgment was unenforceable. They pointed out that

the fourth defendant could only commit a violation if parents exercised their right to free school choice. Since the fourth defendant was a fully accredited school with the lawful right to enrol students, it would be in violation of the law if it refused admission to a student whose parent, under Section 15(1) of the Nationality Act, self-identified as Roma. This would mean that the mere exercise of a parent's right to freely choose a school would result in a legal violation.

Additionally, they criticised the courts for failing to examine the collision of fundamental rights and for not balancing competing rights, such as the right to free school choice and freedom of conscience and religion against the prohibition of unlawful segregation.

They emphasised that under Article 14(3) of the New York Convention, the freedom to manifest one's religion or beliefs may only be subject to such limitations as are prescribed by law and necessary for the protection of public safety, public order, public health, public morals, or the fundamental rights and freedoms of others. They argued that the prohibition of unlawful segregation and the principle of equal treatment do not justify such a restriction, as they are not included in the exhaustive list of permissible limitations.

The second to fourth defendants argued that the courts erred in attributing significance to the religious affiliation of parents and children when applying Section 28(2)(a) of the Equal Treatment Act. They contended that the information recorded on pre-enrolment forms regarding how many parents identified as Greek Catholic was irrelevant. According to them, the essence of freedom of conscience and religion lies in the free choice of religious and spiritual identity, and there should be no exclusionary interpretation that restricts religious identity only to those formally belonging to a particular denomination.

They maintained that the Equal Treatment Act does not impose any special requirement that Greek Catholic denominational education must be initiated solely by parents who explicitly identify with the Greek Catholic faith. Moreover, the reason why a parent opts for denominational education should not matter. Under Section 28(2)(a) of the Equal Treatment Act, only the purpose of education based on religious beliefs is relevant, not the motivation of the parents initiating it. The legitimacy of the initiative should not be undermined if it was motivated by proximity to the school or a fear of discrimination in other schools. Consequently, they argued that the pre-enrolment forms fully complied with the parental initiative requirements under Section 28(2)(a) of the Equal Treatment Act.

The second to fourth defendants further asserted that the existence of a protected characteristic under the Equal Treatment Act and the link between segregation and that characteristic had not been proven. In this

regard, they cited ruling EBH 2010.2272. They also argued that the courts had failed to specify which protected characteristic, as defined in Section 8 of the Equal Treatment Act, served as the basis for the alleged segregation. The judgment did not clarify the factual basis for segregation or whether ethnicity was a determining factor. If ethnicity was not the reason for segregation, then segregation—even if factually established—could not be deemed unlawful. In this case, no evidence demonstrated that the third and fourth defendants considered Roma ethnicity relevant in their admission practices. In the absence of such evidence, there was no factual basis to support a finding of unlawful segregation.

They also contended that the final judgment failed to fully address the second defendant's counterarguments, as the courts did not respond to the vast majority of the legal defences presented.

According to the second to fourth defendants, the application of the Equal Treatment Act, as interpreted in the final judgment, was unreasonable and contrary to the public good, potentially leading to outcomes that were neither ethical nor economically viable.

They further argued that the fourth defendant, having only one class per grade, could not logically engage in unlawful segregation. They disagreed with the court's conclusion that the school, reopened in the segregated settlement, implemented segregation based on nationality. They challenged the assumption that there was no distinction between church-run and state-run schools regarding their legal status. They maintained that church-run institutions were subject to different or additional rules compared to state-run institutions, and they referenced the Church Act, which does not apply to state-run schools.

Regarding the second defendant, they disputed its legal standing in the case under Sections 4(g) and 5(c) of the Equal Treatment Act. They also objected to the court's decision regarding the refusal to hear the Minister of Human Resources as a witness. They argued that the minister, as the chief legal authority in the field, had not deemed the operation of the school unlawful.

Based on their arguments presented in the appellate proceedings, they requested that, under Section 155/B of the Code of Civil Procedure, the case be referred to the Constitutional Court for review, particularly regarding Section 7(3) of the Equal Treatment Act.

The claimant, in its counter-petition for review, requested that the final judgment be upheld.

The fifth defendant did not submit any substantive statements during the review proceedings.

The Supreme Court reviewed the final judgment within the scope of the petitions for judicial review, in accordance with Section 275(2) of the Code of Civil Procedure.

The Supreme Court found the petitions for review submitted by the first and second to fourth defendants to be well-founded.

At the request of the second to fourth defendants, the Supreme Court first examined the necessity of proceedings under Section 155/B(1) of the Code of Civil Procedure. The second to fourth defendants argued that the Equal Treatment Act was in conflict with the Fundamental Law, which had come into force after the adoption of the Equal Treatment Act. They also objected to the fact that Section 7(3) of the Equal Treatment Act did not allow for the application of the general justification grounds set out in Section 7(2) in cases involving claims based on unlawful segregation.

The Supreme Court, however, did not find the Equal Treatment Act constitutionally problematic merely because the Fundamental Law had since come into force. Moreover, Section 7(3) of the Equal Treatment Act had been introduced by Act CIV of 2006 to align with Directive 2000/43/EC (Race Equality Directive), which prohibits the application of general justification grounds in cases of direct discrimination and unlawful segregation. Accordingly, the Supreme Court had no constitutional concerns about the legislation and saw no justification for referring the matter to the Constitutional Court or suspending the proceedings.

The Supreme Court (Curia) emphasised that it had to assess the matter at hand not from a sociological perspective but strictly based on legal regulations. It was not required to evaluate the social circumstances that led to the legal dispute but rather to decide the case according to the applicable legal provisions.

The claimant, in its lawsuit, alleged that the defendants engaged in unlawful segregation and requested a judicial declaration to that effect, along with the application of legal consequences.

According to the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in New York on 21 December 1965 and promulgated by Act 8 of 1969, any doctrine of superiority based on racial discrimination is scientifically false, morally condemnable, socially unjust, and dangerous, and racial discrimination cannot be justified in any way—whether in theory or practice.

Article 14 of the European Convention on Human Rights stipulates that the enjoyment of the rights and freedoms set forth in the Convention must be secured without discrimination based on sex, race, colour, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or any other status.

Under Section 75(1) of the Civil Code, everyone is obliged to respect personal rights, which are protected by law. Section 76 of the Civil Code specifies that a violation of personal rights includes, among other things, a breach of the requirement of equal treatment. The detailed rules for protecting individuals affected by such violations are set out in the Equal Treatment Act, which gives substantive content to the principle of equal treatment.

The second defendant contested the applicability of the Equal Treatment Act to its conduct. However, the Court of Appeal correctly determined that the second defendant falls within the scope of the Act under Section 5(c).

According to Article 28 of the Fundamental Law, courts must interpret laws in accordance with their purpose and the Fundamental Law. In interpreting laws, it must be presumed that they serve reasonable, public-interest, ethical, and economically sound objectives.

Accordingly, the provisions of the Equal Treatment Act concerning unlawful segregation must be interpreted consistently with its objective and the Fundamental Law, assuming they serve rational, public-interest, ethical, and economically sustainable purposes.

Under Section 10(2) of the Equal Treatment Act, unlawful segregation occurs when a rule or measure separates individuals or groups based on a characteristic protected under Section 8, without explicit legal authorisation.

The final judgment concluded that the first defendant engaged in unlawful segregation from the 2011/2012 school year by granting the free use of the school building, discontinuing the school bus service, and providing additional financial resources.

However, the Supreme Court found that these actions did not constitute unlawful segregation.

The transfer of the municipally operated school building to a church for the purpose of establishing a school was intended to satisfy the demand for religious education and facilitate the church's educational activities. Therefore, this act did not constitute unlawful segregation.

After closing the settlement school, the municipality provided school transport via a bus service, but it was not legally obligated to do so; this was a voluntary measure. Since discontinuing the bus service, it has instead provided transportation subsidies. The termination of this service and the provision of financial support do not meet the definition of segregation under Section 10(2) of the Equal Treatment Act.

Given that the first defendant did not have and does not currently have any authority over the disputed educational institution, it did not engage in unlawful conduct.

The Supreme Court also found that the claims against the second to fourth defendants were unfounded for the following reasons.

Under Section 19(1) of the Equal Treatment Act, in proceedings initiated for alleged breaches of equal treatment, the injured party or the entity entitled to pursue public interest claims must provide sufficient indication that the injured person or group suffered a disadvantage or, in public interest claims, that there was a direct risk of such a disadvantage. Furthermore, the injured person or group must have actually possessed, or been assumed by the discriminator to possess, a protected characteristic under Section 8 at the time of the alleged violation.

Based on the above, a violation of the principle of equal treatment, specifically unlawful segregation in the present case, can only be established if the alleged disadvantageous conduct was directed at the affected group due to its protected characteristic.

From the available data in the case, the claimant successfully demonstrated during the proceedings that the vast majority of children at the school possessed the characteristic defined in Section 8(e) of the Equal Treatment Act. Establishing this does not violate the provisions of the Nationality Act. Consequently, fulfilling the first defendant's request for evidence and seeking data from the Hungarian Central Statistical Office was unnecessary. The likelihood that the vast majority of students belonged to the Roma nationality was further confirmed by the fact that the second to fourth defendants explicitly stated, even in their petition for review, that their intention in taking over and operating the school was Roma pastoral care, which is an acceptable justification, and no evidence emerged that would call this reasoning into question. From this, it logically follows that the second to fourth defendants sought to operate a school in a location where their Roma pastoral mission could be effective—namely, in an area where the entire or the predominant majority of students belonged to the Roma ethnic group. In a location where this ethnic composition was not present, the Roma pastoral mission would evidently not achieve its objective.

In its decision Pfv.IV.20.037/2011/7, the Supreme Court established that unlawful segregation inherently constitutes a disadvantage, meaning that proving its likelihood is sufficient.

Following the claimant's demonstration of the likelihood of segregation, Section 19(2) of the Equal Treatment Act placed the burden of proof on the defendants to demonstrate that the circumstances alleged by the claimant did not exist, that they complied with the principle of equal

treatment, or that they were not legally required to observe it in the given legal relationship.

The second to fourth defendants fulfilled their burden of proof.

Section 28(2)(a) of the Equal Treatment Act states that the principle of equal treatment is not violated when, at the initiative of parents and through their voluntary choice, religious or other ideological education, as well as nationality-based education, is organised in a public education institution, where the objective or curriculum justifies the creation of separate classes or groups. However, this is conditional on the fact that participants in such education must not suffer any disadvantage and that the education complies with the requirements approved, prescribed, or supported by the state.

Accordingly, educational and pedagogical activities conducted in an educational institution maintained for religious reasons based on voluntary participation do not constitute unlawful segregation, provided that the education is in line with the parents' wishes, does not disadvantage children, and ensures that they receive an equal quality of education.

The provisions of Section 28(2) of the Equal Treatment Act, which allow for exceptions in cases where education is initiated and voluntarily chosen by parents, refer only to the requirement of voluntariness—that is, participation in such education must be based on the free will and decision of parents or guardians. This interpretation aligns with the 2005 annual report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities.

Article VII(1) of the Fundamental Law provides that everyone has the right to freedom of thought, conscience, and religion, which is also recognised in Section 76 of the Civil Code. This right includes the freedom to choose or change religion or belief and the freedom to manifest one’s religion or belief through religious acts, rituals, or other means, either individually or in community with others, publicly or privately, or to refrain from doing so.

In decision Pfv.IV.20.678/2005/5, the Supreme Court (Curia) ruled that religious education (for clergy and religion teachers) in a higher education institution founded by a church is inseparable from the religious doctrine and moral principles of that church. The training of clergy and religion teachers necessarily aligns with the church’s views on religious teachings, individual and collective worship, and the expectations regarding the lifestyle of clergy and religion teachers. The defendant institution, founded by the Reformed Church, legitimately and unchallengeably expressed its religious beliefs in this context, regardless of whether it received state funding.

The Constitutional Court's decision 4/1993 (II.12.) linked freedom of religion to human dignity, stating that conscience, including religion, is an integral part of human identity, and that this freedom is a prerequisite for the right to free development of personality. It also noted that the law can only influence freedom of thought and religion when those beliefs are externally manifested.

According to Article 2 of the First Protocol to the European Convention on Human Rights, no person shall be denied the right to education. In the exercise of its functions in the field of education and teaching, the state must respect the right of parents to ensure education and teaching in conformity with their religious and philosophical convictions.

Under Article 18(4) of the International Covenant on Civil and Political Rights, state parties to the Covenant undertake to respect the liberty of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 14 of the Convention on the Rights of the Child, promulgated by Act LXIV of 1991, declares the child's right to freedom of thought and religion and recognises parents' right to guide their children in exercising this right in accordance with their maturity.

Under Article XVI(2) of the Fundamental Law, parents have the right to choose the upbringing they wish to provide for their children.

According to Section 72(2) of the National Public Education Act, parents are free to choose kindergartens, schools, and dormitories for their children based on their abilities, skills, interests, religious and philosophical convictions, and national identity. This provision guarantees parents the right to select the most suitable institution for their children's education.

It is an undisputed fact that, following the closure of the municipality-run school, the church did not take over the existing educational institution but founded its own school independently. In its cooperation agreement with the municipality, the church committed to admitting all school-aged, already 6 years of age children in Nyíregyháza, explicitly stating that it would not refuse admission to cumulatively disadvantaged children.

Testimonies from leaders of the nationality self-government confirmed that parents themselves initiated the opening of the school. The Roma Minority Self-Government adopted a resolution expressing its agreement with the establishment of the primary school.

Case records show that parents were fully aware that the kindergarten and school would provide education and upbringing committed to Greek Catholic values. They enrolled their children with this knowledge and made their decision voluntarily. It cannot be asserted that parents lacked adequate information, as both the Roma Minority Self-Government and the diocese informed residents about the educational approach of the school. Parents had the opportunity to attend open days where they could familiarise themselves with the religious, educational, and pedagogical commitments of the church-run kindergarten and school. Given all this information, parents made a free and informed decision to enrol their children in the school or opt for another kindergarten or school. It is a fact that the education provided by the Greek Catholic Church was not exclusively available to a limited group, as the defendant school was not a district school, and children from any residential area could apply. Moreover, parents and their children were always free to enrol in district schools or other church-run institutions. The genuineness and validity of parents' right to freely choose schools cannot be questioned. It cannot be denied that a church school may be established even in the ..-settlement and that parents may enrol their children in the fourth defendant's school based on their commitment to Greek Catholic values. Since both district and church-run schools are available in Nyíregyháza, parents were not and are not currently prevented from enrolling their children in another school in the city if they deemed that institution to provide more suitable educational conditions for their children. However, parents' and students' rights to freedom of conscience, religion, and school choice must be respected. Therefore, the prohibition of unlawful segregation cannot justify restricting the right of parents to freely choose a school that provides the education they seek and accept in accordance with their convictions. Parents have the right to enrol their children in the church-run school of their choice, particularly when it is conveniently located near their residence. In light of the above, the reasons stated on the pre-enrolment forms are irrelevant. The right to free school choice includes parents' ability to decide, in the best interests of their children, whether they should attend a church school in the city centre or in the settlement. The fact that another church school operates elsewhere in the city does not justify restricting parents' or children's rights to freely exercise their religious and conscientious beliefs in choosing a school. Furthermore, mobility between the two denominational schools is guaranteed.

All children are admitted to the school they apply to, and no tuition fees are charged, meaning nothing prevents parents from exercising their right to free school choice.

The claimant referenced the European Court of Human Rights judgment in D.H. and Others v. Czech Republic, where the Court found a violation of Article 14 of the European Convention on Human Rights (prohibition of

discrimination) and Article 2 of the First Protocol (right to education). The Court ruled that the differential treatment of Roma and non-Roma children was neither objectively nor reasonably justified and that there was no reasonable proportionality between the aim pursued and the means used.

According to the facts underlying the Court's decision, special schools were established for children with special needs, including those who were mentally or socially disadvantaged. Due to the selection process resulting from general school admission requirements, most Roma children at the time attended such schools. The European Court of Human Rights (ECtHR) found that the enrolment of Roma children in these special schools was not accompanied by safeguards ensuring that the state, in exercising its discretion in education, took into account the special needs of members of a disadvantaged group.

Instead of addressing their actual problems or helping them integrate into mainstream education, the education they received further exacerbated their difficulties and hindered their future personal development, failing to equip them with the skills necessary for easier integration into majority society. Furthermore, the consent of socially disadvantaged parents to their children attending such schools could not be regarded as a waiver of their right to education.

However, such concerns do not arise in the present case. The claimant did not challenge the educational or pedagogical standards of the school in question. The quality of education was not disputed in this case. Parents did not waive the right to education, nor did they consent to a different form of education. Consequently, the students did not suffer any disadvantage.

It was established that the defendant school operated with small class sizes in a progressive educational system, which, combined with the exercise of free school choice, precludes segregation.

Based on these findings, the justification provided by the second to fourth defendants was well-founded.

Although this finding renders further examination unnecessary, the Court must address the argument raised in the petition for judicial review regarding the exclusion of the testimony of Dr. ... The court of first instance had heard Dr. .., the minister, as a witness. Under Section 167(1) of the Code of Civil Procedure, a witness serves as an evidentiary tool for proving a party's factual assertions. However, Dr. .. had not engaged in any law enforcement activity related to the establishment, operation, or maintenance of the school, and therefore did not provide testimony on such facts. The procedural law does not recognise expert opinion witnesses, meaning Dr. ..'s views on the segregation-related nature of the school were irrelevant to the legal assessment of the case.

Based on the above, the violation of the principle of equal treatment and unlawful segregation could not be established. Therefore, pursuant to Section 275(4) of the Code of Civil Procedure, the Supreme Court annulled the final judgment. In accordance with Section 253(2) of the Code of Civil Procedure, it amended the first-instance judgment and dismissed the claim.

Under Section 78(1) of the Code of Civil Procedure and Sections 3(3) and (5) of Ministerial Decree 32/2003 (VIII.22.), the claimant was ordered to pay the procedural costs incurred by the first defendant in the first-instance, appellate, and judicial review proceedings.

The second to fifth defendants did not request reimbursement of their procedural costs, so no ruling was necessary in this regard.

Pursuant to Section 5(1) of Act XCIII of 1990 on Duties, the claimant was exempt from paying fees, meaning the state bears the unpaid judicial review fee under Section 14 of Ministerial Decree 6/1986 (VI.26.).

Budapest, 22 April 2015

Dr. Mátyás Mészáros, Presiding Judge, Dr. Katalin Böszörményiné Kovács, Judge-Rapporteur, Dr. Zsuzsanna Kovács, Judge

For the authenticity of the copy:

Vné, Clerk