

No. Pfv.IV.20.097/2015/3.

*The Curia, in the case initiated by the plaintiff, represented by Dr. Adél Kegye, Attorney-at-Law, against the first defendant, represented by Dr. Erika Ulics, Attorney-at-Law, the second defendant, represented by Dr. Ákos Pápai, Attorney-at-Law, and the third defendant, also represented by Dr. Ákos Pápai, Attorney-at-Law, for the violation of personal rights, originally filed before the Eger Regional Court under case number 12.P.20.351/2011 and concluded with the final judgment of the Budapest Court of Appeal under case number 2.Pf.20.305/2013/20, after a hearing rendered the following*

*j u d g m e n t :*

*The Curia upholds the final judgment.*

*The unpaid HUF 70,000 (seventy thousand forints) review procedure fee shall be borne by the State.*

*No further review is available against this judgment.*

*R e a s o n i n g*

According to the final judgment, the second defendant's institution previously operated under the first defendant's administration. The founding document of the second defendant's institution specified its operational area as the administrative territory of ... municipality. In accordance with its founding document, the second defendant's institution also provided education to students with special educational needs. The institution has three levels, with students attending classes on the ground floor, first floor, and attic level. There are nine classrooms on the ground floor, five on the first floor, and four in the attic.

In the 2012-2013 academic year, only one first-grade class was established at the second defendant's institution. In 2007, the

institution had 221 students enrolled in 19 classes. The training pool located in the Gyöngyöspata swimming facility, maintained by the first defendant, was available for use by the second defendant's school during physical education lessons whenever the pool was in operation.

The second defendant's institution provided after-school care for grades 1-4. By Resolution No. 89/1996 (X.17.), the local representative body decided that only students whose mothers were employed would be admitted to after-school care. This decision was later repealed by Resolution No. 138/2011 (XII.19.), adopted on 19 December 2011.

On 31 May 2007, the Educational Authority conducted an on-site inspection at the second defendant's institution, resulting in a report. On page 8 of the report, a table recorded the total number of students as 221, of whom an estimated 106 were Roma students. Following the inspection, the second defendant changed its class allocation method, basing first-grade admissions on the date of enrolment and implementing a standardised enrolment form. Parents were given two consecutive days—one morning and one afternoon—to enrol their children.

In April 2011, ..the Parliamentary Commissioner for the Rights of National and Ethnic Minorities prepared a report on the situation in Gyöngyöspata in response to complaints regarding the segregation of Roma children. His staff visited the second defendant's classrooms, conducted classroom observations, reviewed documents, and spoke with the ..headmaster. The investigation report, dated 19 April 2011, examined the class allocation system using a weighted criteria system. It presented tables listing the estimated number of Roma students per class, both based on perception and weighted perception criteria. The estimation process considered factors such as: The surname of the student and their mother, the student's socio-economically disadvantaged status, the student's actual place of residence, and the student's given name. In December 2011, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities also issued a follow-up report, which assessed in detail what specific measures the second defendant's institution had taken in response to nine concrete recommendations from the initial report. The follow-up report also examined what actions the first defendant had taken in response to these recommendations. The follow-up report ultimately concluded that no changes had occurred regarding the segregation of Roma students at the second defendant's school following the initial investigation.

...,subsequently, the president of the plaintiff foundation, upon learning of the findings in the follow-up report, submitted a request to the Minister of Human Resources. The Minister, through the State Secretary, informed the plaintiff that a legality

review of the educational situation in Gyöngyöspata had been initiated at the Heves County Government Office. On 3 April 2012, the Heves County Government Office ordered an investigation but suspended the administrative inspection until the final conclusion of the present lawsuit.

Due to changes in legislation, as of 1 January 2013, the legal successor of the first defendant concerning the maintenance and educational responsibilities of the second defendant's public education institution became ....

*In its amended claim, the plaintiff sought a declaration that, with the exception of the first-grade class initiated in the 2012-2013 academic year, Roma children were illegally segregated from non-Roma students at the second defendant's school, which was then under the maintenance of the first defendant, from 27 January 2004 onwards. This segregation was allegedly implemented through unlawful class allocations and the spatial arrangement of classrooms, both at the class level and physically within the school premises, as different floors were assigned to different groups. The plaintiff argued that this practice extended to school ceremonies and meal arrangements as well. The plaintiff further requested a declaration that the defendants provided Roma students in segregated classes with an inferior quality of education compared to parallel classes composed of non-Roma students, including differences in the curriculum content and swimming instruction. Additionally, the plaintiff sought a declaration that, in the education of students with special educational needs (SEN), the defendants unlawfully combined multiple classes beyond what was legally permitted. This practice, the plaintiff argued, resulted in direct discrimination against SEN students and indirect discrimination against Roma students who attended the same school. Furthermore, the plaintiff alleged that Roma students were subjected to indirect discrimination based on ethnicity by the policy restricting after-school care enrolment to students whose both parents were employed.*

*As legal remedy, the plaintiff requested that the defendants be ordered to cease the unlawful conduct and that the court further require the defendants to eliminate the unlawful situation by implementing a desegregation plan prepared by the plaintiff. The plaintiff also sought an order requiring the defendants to bear the litigation costs.*

*The first and second defendants requested the dismissal of the claim for lack of legal basis and sought an order requiring the plaintiff to cover litigation costs.*

*The first-instance court found that, with the exception of the first-grade class in the 2012-2013 academic year, from 27 January 2004 onwards, the defendants maintained the segregation of Roma*

students from non-Roma students at the second defendant's school through their class allocation practices. As a result, Roma students were unlawfully separated from their non-Roma peers at the class level. The court also found that, from 27 January 2004 onwards, the segregated Roma students were provided with an inferior standard of education, placing them at a disadvantage compared to non-Roma students within the same school. Accordingly, the first-instance court ordered the first and second defendants to cease the established violations. Furthermore, it required the defendants to eliminate the unlawful situation by implementing a class allocation method that excludes segregation based on ethnicity starting from the academic year following the finality of the judgment. Beyond these rulings, the first-instance court dismissed the remainder of the plaintiff's claim and ordered the defendants to pay partial litigation costs in favour of the plaintiff.

The first-instance court stated that the plaintiff foundation had filed a public interest lawsuit, which had to be adjudicated in accordance with the Equal Treatment and Promotion of Equal Opportunities Act of 2003 and its burden of proof rules. The court found that the plaintiff successfully proved that the Roma students were directly discriminated against and illegally segregated from non-Roma students at the second defendant's school, based on their perceived Roma ethnicity as a protected characteristic. In reaching its decision, the court placed significant reliance on the 2011 report and follow-up report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities. The Commissioner's staff conducted on-site visits, classroom observations, document reviews, and interviews with the school principal, ensuring an opportunity to respond. The investigation report defined a student as Roma based on a weighted classification system considering multiple factors, including: the surname of the student and their mother, the student's socio-economically disadvantaged status, the student's actual place of residence, and the student's given name.

The first-instance court considered the testimony of ..., the former president of the ... Roma Minority Self-Government, who stated that it was common knowledge in the local community which residents were of Roma origin and which were not. The witness further stated, without contradiction, that there were typical Roma surnames in the municipality, and even the youngest children knew which streets were home to Roma families. Based on an evaluation of the evidence, the first-instance court found that both the first defendant's local government and the second defendant's school were fully aware of the Roma identity of the students attending the institution. The court also took into account that the school's headmaster signed the minutes of the on-site inspection, including the specific page listing the classes, student numbers, and the estimated number of Roma

students per class. The court concluded, based on aggregated data, that on 31 May 2007, the second defendant's school had 221 students, of whom an estimated 106 were Roma students.

The first-instance court also heard testimony from ..., who served as mayor of the first defendant's local government. In his testimony, the witness spoke about both the perceived ethnicity of students and the perceived ethnicity of a school janitor. Based on an evaluation of the evidence, the court concluded that, under Section 8 of the Equal Treatment Act, unlawful segregation does not require actual or proven knowledge of ethnicity, as segregation based on perceived Roma ethnicity is also prohibited under the law. The court established that, in violation of Section 8(e) of the Equal Treatment Act, Roma students at the second defendant's school were segregated from comparable non-Roma students without any legal authorisation. Following the evidentiary procedure, the first-instance court determined that the second defendant's school unlawfully segregated Roma students through its class allocation practices, separating them from their non-Roma peers. The court emphasised that unlawful segregation can occur not only through direct acts but also through passive maintenance of an existing segregated state. As such, the defendants were responsible for addressing even de facto or unintentional segregation. The court held that unlawful segregation, as a violation of equal treatment, can be committed not only intentionally but also through omission. Referring to the follow-up report, the court found that the defendants failed to take any substantive measures to eliminate the segregated situation. Ultimately, the court did not hold the defendants liable for creating segregation, but rather for maintaining it.

The first-instance court also examined whether the education provided to Roma students in the segregated classes was of lower quality, constituting an additional form of discrimination. Based on the evidentiary procedure, the court found proven that the second defendant's school provided an inferior standard of education to Roma students, thereby placing them at a disadvantage. While the second defendant denied the existence of unlawful segregation, it did not dispute that different educational content was applied in some classes. The second defendant claimed that these differences were based on pedagogical and educational considerations. Under the Equal Treatment Act, the defendants had the burden of proving that such pedagogical differences did not result in an inferior education for Roma students. However, the defendants failed to submit any evidence, did not request the appointment of judicial experts, and did not propose witness testimony. As a result, the court attributed the failure to prove otherwise to the defendants, concluding that Roma students in segregated classes received an inferior education.

The first-instance court provided a detailed justification for the dismissal of the plaintiff's additional claims.

The court did not establish that the defendants discriminated against students with special educational needs (SEN) by combining multiple classes beyond the legally permitted level, either directly against SEN students or indirectly against Roma students attending the same school. The burden of proof in this matter rested on the plaintiff, who failed to fulfil it. The reports by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and its supplementary report did not provide sufficient evidence, and the plaintiff did not propose witness testimony to support the claim.

The court also did not establish unlawful segregation in relation to the placement and participation of Roma students in school ceremonies. The plaintiff again failed to meet its burden of proof in this respect.

Similarly, the court rejected the claim of unlawful segregation concerning meal arrangements in the school cafeteria. The court accepted the second defendant's factual statement regarding the actual size of the cafeteria, concluding that the alleged segregation could not be established. The court dismissed the claim of unlawful segregation in swimming lessons. It found that the second defendant was justified in requiring that students have swimming gear to participate in lessons. The court did not consider it the school's obligation to provide such equipment. It also found no evidence that any students were barred from using the training pool due to their perceived Roma ethnicity. The court also rejected the claim of indirect ethnic discrimination regarding enrolment in after-school care. It held that the requirement for both parents to be employed as a condition for admission to after-school care was not proven to be systematically enforced and was not shown to disproportionately disadvantage Roma students compared to similarly situated non-Roma students.

As an objective legal consequence, the first-instance court ordered the first and second defendants to: Cease the unlawful conduct. Eliminate the unlawful situation arising from the unlawful segregation of Roma students.

Both the plaintiff and the first and second defendants appealed the first-instance judgment. During the appeal, the second-instance court issued a separate ruling, confirming that a legal succession had taken place regarding the second defendant, and that its legal successor, ..., had assumed responsibility for both maintenance and educational administration.

The final judgment upheld the uncontested portions of the first-

instance judgment and confirmed the appealed rulings with a clarification that the third defendant was also responsible for ceasing the unlawful conduct and rectifying the situation. The court ordered each party to bear its own appellate costs, while the State bore the unpaid appellate and cross-appeal fees. Since the appeals only challenged the ruling on segregation during school ceremonies, all other provisions of the first-instance judgment remained unaltered. The final judgment confirmed that the first-instance court had correctly established the facts and that its decision was based on a comprehensive evidentiary procedure. The second-instance court agreed with the substantive conclusions of the first-instance court. The key legal issue in the appellate proceedings was whether the actions of the second defendant's educational institution, under the first defendant's maintenance, violated the principle of equal treatment. The final judgment found that the higher proportion of Roma students in certain classes (e.g., "B" sections) compared to parallel classes (e.g., "A" sections) indicated that neither the school nor its maintaining authority fulfilled their integration obligations. Instead, they perpetuated a segregated situation, which had emerged through spontaneous segregation. The final judgment reaffirmed that segregation in public education can occur not only through direct actions but also through the passive maintenance of spontaneously developed segregation.

Regarding the implementation of an inferior education, the final judgment stated that it was an established fact that different curricula were taught in the A and B classes. Based on the April 2011 report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, the court found that there was not only a significant difference in the proportion of Roma students in parallel classes but also that some classes became explicitly "Roma classes".

The report also documented the statement of the headmaster of the second defendant's institution, confirming that there were differences in teaching methodology and curriculum. Specifically, in B classes, greater emphasis was placed on meeting the mandatory subject requirements, with less focus on additional curriculum, whereas A classes provided talent development opportunities from the first grade onward. According to the final judgment, this constituted a violation of the law, and therefore, ordering the cessation and rectification of the unlawful practice was justified. The judgment also stated that the order could be enforced without the implementation of a separate desegregation plan. The general objective sanction of proper class allocation and the provision of appropriate educational standards was considered sufficient for execution. The final judgment also noted that the practical implementation of the order might be affected by the current situation, as only

two classes remained at a single grade level. Furthermore, the judgment held that determining the necessary measures for enforcement primarily falls within the public law domain, meaning that the identified legal violation should be addressed through public law mechanisms.

As a result of the cross-appeal, the final judgment separately examined the claims that had been dismissed by the first-instance court. The final judgment evaluated the evidence regarding the exclusion of Roma students from swimming lessons and found that the case records did not support the claim that Roma students suffered direct discrimination based on ethnicity. The evidence instead established that students were excluded from swimming lessons solely because they lacked swimming equipment. The judgment also referenced the Ombudsman's report, which did not substantiate any legal violation regarding swimming instruction. The court concluded that the lack of equipment was due to poverty, which was independent of ethnicity. The court reached the same conclusion regarding school meals. The justification stated that the burden of proof rested on the plaintiff, but the plaintiff failed to establish unlawful segregation in meal arrangements. Testimony confirmed that the school cafeteria could only accommodate a limited number of students at one time, and as in other schools, it was common practice for entire classes to go to the cafeteria together after lessons. The final judgment reasoned that if the cafeteria size physically prevented all students from eating at the same time, this could not constitute unlawful discrimination.

Regarding admission to after-school care, the final judgment noted that the earlier municipal regulation, which limited after-school care to students whose mothers were employed, was later amended to prioritise students whose both parents were employed. The court assessed that after-school care should primarily be provided to children who lack adequate supervision and learning support at home. The judgment held that unemployment is a societal issue rather than an ethnic one, affecting the entire population. The court ruled that merely referencing sociological data—such as higher unemployment rates among Roma families—did not constitute sufficient proof of indirect ethnic discrimination. The availability of after-school care was not found to be based on ethnic identity.

The plaintiff filed a petition for judicial review, primarily seeking the annulment of the final judgment and the issuance of a new decision in which the Curia would uphold all claims, including Exclusion from after-school care, Exclusion from swimming lessons, and Segregation in meal arrangements. Alternatively, the plaintiff requested that the Curia annul the final judgment and instruct the appellate court to issue a new decision in accordance with legal provisions. The plaintiff also



requested guidance on how courts should address the violations identified in the case. The petition explicitly aimed for the recognition of all forms of discrimination suffered by Roma students in Gyöngyöspata and for the courts to provide effective remedies. The petition emphasised that decisions regarding class allocation, school meal arrangements, and swimming lessons within physical education fall within the headmaster's authority, rather than requiring public law (municipal) intervention. According to the petition, effective legal remedies could only be achieved if the courts not only declared the violations but also imposed specific obligations on the defendants regarding how to rectify the unlawful situation. According to the petition, effective legal remedy could only be achieved through the imposition of desegregation measures. The plaintiff requested that the Curia modify the reasoning of the final decision, specifically to state that the unlawful segregation did not arise within a public law relationship, and therefore, civil law remedies were appropriate for eliminating the violation. The plaintiff also sought an amendment to the reasoning of the final judgment to reflect that segregation was actively established until 31 May 2007, rather than merely maintained.

Regarding swimming lessons, the plaintiff requested a declaration that unlawful segregation had occurred and that this had been properly proven. The plaintiff argued that the second defendant would have complied with the principle of equal treatment if it had either provided swimming equipment to students in need, or organised swimming lessons as an optional extracurricular activity for interested students if it was unable to provide such equipment. Regarding after-school care, the petition stated that the plaintiff had met its burden of proof, as the Ombudsman's report had confirmed that very few Roma children attended after-school care. The petition further argued that for the poorest Roma children, the school provided essential support, including warmth in winter, regular meals throughout the year, and necessary conditions for studying and completing homework (chairs, desks, lighting, and a quiet environment). The petition established that Roma children were disproportionately represented among the most disadvantaged students. The vast majority of Roma children in ... lived in deep poverty. The plaintiff contended that by denying the poorest children access to a warm, clean, and safe environment in the afternoons, where they could have a snack and complete their homework, the school and local government were effectively punishing the most vulnerable children for their parents' poverty. From this, the plaintiff concluded that the requirement introduced by the first defendant's regulation, which the second defendant applied without objection, disproportionately affected the poorest Roma children. The petition also asserted that despite the modification of the regulation, Roma children were

still not enrolled in after-school care, as their parents had not been informed of the new conditions.

The defendants did not submit a counter-petition for judicial review.

The petition for judicial review was found to be unfounded due to reasons elaborated below:

According to Section 275(1) of the Code of Civil Procedure, no new evidence may be introduced in judicial review proceedings. The Curia assesses the petition based solely on the available case files. Under Section 275(2), the Curia may only review the final judgment within the scope of the petition and any counter-petitions. Consistent judicial practice establishes that judicial review does not entail the reconsideration or re-evaluation of evidence. A legal violation may only be found if the evaluation of evidence was manifestly illogical or extremely unreasonable (BH 1999.44 case law, BH 2013.119 case law).

Under Section 75(1) of the Civil Code, everyone is obliged to respect personal rights, which are protected by law. Section 76 states that a violation of personal rights includes, in particular, breaches of: The principle of equal treatment, Freedom of conscience, Personal liberty, Physical integrity and health, and Honour and human dignity. This provision of Section 76 has been in force since 27 January 2004, following the enactment of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "ETA" or "Equal Treatment Act"). The plaintiff sought a declaration of violation from this date onward. Under Section 20(1)(c) of the ETA, the plaintiff foundation had legal standing to initiate a public interest lawsuit. At the time of filing the lawsuit, the applicable law was the 1993 Act LXXIX on Public Education. On 1 September 2012, the 2011 Act CXC on National Public Education entered into force, which, under Section 1(2), explicitly declares that the entire public education system must be governed by the principle of equal treatment.

According to Section 8 of the Equal Treatment Act, direct discrimination occurs when a provision results in a person or group receiving less favourable treatment based on their actual or perceived nationality (point d) or belonging to a nationality (point e), compared to another person or group in a comparable situation. Under Section 9, indirect discrimination occurs when a provision that appears to comply with the principle of equal treatment nonetheless places certain persons or groups with characteristics defined in Section 8 at a significantly greater disadvantage compared to another person or group in a comparable situation. According to Section 10(2), unlawful segregation is any provision that, based on the characteristics listed in

Section 8, separates certain individuals or groups from others in a comparable situation unless such separation is explicitly permitted by law. Under Section 19(1), in proceedings initiated for a violation of the principle of equal treatment, the injured party or an entity entitled to pursue a public interest claim must demonstrate that: The injured party or group has suffered a disadvantage, or in the case of a public interest claim, there is an imminent risk of such a disadvantage (point a). The injured party or group, at the time of the violation, actually possessed or was presumed by the violator to possess one of the characteristics defined in Section 8. According to Section 19(2), once this initial demonstration is made, the burden shifts to the opposing party, who must prove that: The circumstances alleged by the injured party or the public interest claimant did not exist (point a), or The principle of equal treatment was upheld, or that the party was not legally required to comply with it in the given legal relationship (point b). Under Section 27(3), in the field of education, a violation of equal treatment includes: The unlawful segregation of an individual or group within an educational institution or in a specific class, division, or group within the institution (point a). Limiting access to education in a way that fails to meet professional standards, does not comply with regulatory requirements, and, as a result, does not ensure the expected preparation necessary for continuing studies and taking state exams.

According to Section 206(1) of the Code of Civil Procedure (Pp.), the court establishes the facts of the case based on the parties' submissions and the available evidence, assessing them as a whole and forming a judgment based on its convictions. Since the plaintiff's petition for judicial review primarily challenged the evaluation of evidence in the final judgment, the Curia's role was to determine whether the final judgment contained a reasoning error so exceptional that it would justify a reconsideration of the facts.

Taking into account the specific evidentiary rules of the Equal Treatment Act, the Curia found no grounds for re-evaluation and ruled that the final judgment properly justified the dismissal of the disputed claims. The Curia concurred with the final judgment, holding that the plaintiff failed to prove that there had been intentional segregation in class allocation, either between 2004 and 2007 or after 2007. After 2007, the Educational Authority's recommended method was applied. The Curia also found that the plaintiff failed to prove that following the order of enrolment automatically led to the alleged "outcome". Thus, the final judgment correctly concluded that the failure to implement integration constituted the maintenance and toleration of an unlawful situation, which itself amounted to a violation of the law.

Regarding swimming lessons and after-school care, the Curia upheld the final judgment's conclusion that the lack of swimming equipment and the requirement for parents to be employed for after-school care did not constitute selection based on ethnicity (nationality). Thus, discrimination based on ethnicity (nationality) could not be established.

Regarding school meal arrangements, the final judgment correctly determined that due to space limitations, it was not feasible to provide simultaneous communal dining for all students. Furthermore, the practice of organising meals by class groups was deemed a general practice, and therefore, no specific disadvantageous discrimination could be established in this respect.

Regarding legal consequences, the Curia concurred with the final judgment, holding that the implementation of desegregation did not require a separate plan. This was especially true given that, according to available data, only one new class had been established per year in recent years. Additionally, any further clarification or adjustment regarding after-school care conditions required a decision by the local government. Furthermore, equalising educational standards and defining its methods fell within the purview of professional educational administration, rather than civil litigation. The judgment in this case merely established the fundamental principles.

In light of the above, the Curia upheld the final judgment pursuant to Section 275(3) of the Code of Civil Procedure. The unpaid procedural fee for judicial review was borne by the State, as the plaintiff was personally exempt from fees, in accordance with Section 14 of Decree 6/1986 (VI. 26.) of the Ministry of Justice. As no litigation costs arose for the defendants in the judicial review proceedings, no ruling was necessary on this matter.

Budapest, 25 March 2015

Dr. Mátyás Mészáros s.k. Presiding Judge, Dr. Árpád Pataki  
s.k. Judge-Rapporteur, Dr. Zsuzsanna Kovács s.k. Judge

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