

**The Curia**  
**as the Court of Review**  
**j u d g m e n t**

**Case number:** Pfv.IV.20.085/2017/9.

**Panel members:**

Dr. András Baka, President of the Panel

Dr. Árpád Pataki, Judge-Rapporteur

Dr. Zsuzsanna Kovács, Judge

**Claimant:**

**Claimant's Representative:**

Dr. Adél Kegye, Attorney-at-Law

**Defendants:**

I. Defendant

II. Defendant

III. Defendant

IV. Defendant

V. Defendant

**Defendants' Representatives:**

Dr. Margit Kökény, Legal Counsel for the I. Defendant

Dr. Róbert Boda, Attorney-at-Law for the II. and V. Defendants

Dr. Attila Szíjártó, Attorney-at-Law for the III. Defendant

Dr. Beáta Borovszki, Legal Counsel for the IV. Defendant

**Subject of the Case:**

Violation of the Principle of Equal Treatment

**Party Submitting the Petition for Review:**

I-II-III. Defendants

**Name of the Court of Second Instance and the Final Decision Number:**

Pécs Court of Appeal Pf.III.20.004/2016/4.

**Name of the Court of First Instance and the Decision Number:**

Kaposvár Regional Court 11.P.21.553/2013/70.

**Operative Part**

The Curia upholds the final judgment.

The Curia orders the I., III., and V. Defendants to pay, within 15 days, HUF 10,000 (ten thousand) each to the Claimant as a cost of the review proceedings.

No further review is permitted against this judgment.

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

### **Facts Underlying the Review**

[1] The Somogy County Court, in its judgment No. 24.P.21.443/2208/35 of 30 November 2009, established that the Defendant (the present III. Defendant) has unlawfully segregated and discriminated against students belonging to the Roma ethnic minority from the 2003/2004 academic year onwards by providing them with education where, compared to the results of normal curriculum primary schools maintained by the Defendant, there was a higher rate of grade repetition, school dropouts, absenteeism, and lower performance in the national competency assessment as well as a lower rate of continuing education. The court ordered the Defendant (present III. Defendant) to cease the infringement and dismissed the claim in all other respects.

[2] The Pécs Court of Appeal, in its judgment No. Pf.I.20.061/2010/7 of 20 May 2010, partially modified the first-instance judgment and established that from the 2003/2004 academic year onwards, by maintaining the unlawful segregation of Roma students in one educational institution, the Defendant violated the principle of equal treatment. It omitted the finding of indirect discrimination from the first-instance judgment and, in addition to ordering the cessation of the unlawful act, also obliged the Defendant to terminate the infringement.

[3] The Supreme Court, acting as the Court of Review, in its judgment No. Pfv.IV.21.568/2010 of 24 November 2010, partially annulled the final judgment, upheld the first-instance decision rejecting the claim for terminating the unlawful situation, and otherwise maintained the final judgment. The Supreme Court found that, under Section 10(2) of Act CXXV of 2003 on Equal Treatment (hereinafter "Equal Treatment Act"), unlawful segregation was established. It held that under Section 8 of the Equal Treatment Act, segregation occurs when individuals or groups of individuals are separated from comparable groups without explicit legal authorisation based on their defined characteristics. The Supreme Court also found that, regardless of the cause, the Roma children at the school in question were unlawfully segregated based on their characteristics defined in Section 8 of the Equal Treatment Act. Furthermore, the Supreme Court stated that the Defendant (present III. Defendant) failed to fulfil its integration obligations and tolerated and maintained the situation that had arisen due to spontaneous segregation at the school in question.

### **Claim and Defendants' Defence**

[4] The Claimant filed an action with the court on 16 December 2013, later amending it multiple times. In the amended claim, the Claimant sought a declaration that the I. Defendant, by determining the school district boundaries of the branch school in question in such a manner that the majority of the segregated area known to be predominantly inhabited by Roma, belonged to the school in question, unlawfully segregated Roma students from the rest of the city's students. The Claimant argued that the II. Defendant was responsible as the maintainer of the school and as the legal successor of the III. Defendant concerning its public education duties from 1 January 2013 by failing to eliminate the ongoing unlawful segregation at the school in question. The III. Defendant was claimed to be responsible as the former maintainer of the school between 25 November 2010 and 31 December 2012 for failing to eliminate the ongoing unlawful segregation. Regarding the IV. Defendant, the claim specified that after 1 January 2013, it did not decide on closing the branch school in question, nor did it direct the authorities under its control to establish and subsequently eliminate the unlawful segregation, thus maintaining the segregation of Roma students at the school in question. It also did not, within its competence, order the closure of the branch school. The V. Defendant was included in the case as the legal successor of the II. Defendant.

[5] As a legal consequence, the claimant requested that the defendants be ordered to cease the infringement by prohibiting the launch of new first-grade classes at the branch school in question and restraining the defendants from further violations. Additionally, the claimant requested that the court oblige the defendants to eliminate the unlawful situation by implementing the measures set forth in the revised so-called desegregation plan, including the following actions:

- Primarily, the claimant sought to obligate Defendant II (Defendant V) to immediately prohibit the initiation of new first-grade classes at the branch school in question from the academic year following the receipt of the final judgment;
- Immediately after receiving the final judgment, prepare a register of students enrolled at the branch school in question;
- Inform the legal representatives of the students at the branch school in question about the desegregation process;
- Ensure the personal and organisational conditions necessary for desegregation, prepare the students of the receiving schools by fostering an inclusive attitude, and conduct

conflict resolution training for the students of the segregated school by 31 May following the final judgment;

- In conjunction with Defendant IV, be obligated to decide on the closure of the branch school in question by 31 May following the final judgment;
- Organise a school bus service to transport students from the branch school in question to the designated receiving schools immediately after their designation;
- Assess the mathematical and reading comprehension skills of students directly involved in the desegregation process by 30 September following the final judgment;
- Annually assess the academic performance and social integration of the affected students, including their fundamental mathematical skills and reading comprehension development, and monitor their social relationships using sociometric tools, publishing the results annually until the completion of their primary education at the former school;
- Immediately commence the professional training and sensitisation of teachers at the receiving schools to prepare them for the admission and education of students from the branch school in question upon receipt of the final judgment;
- In conjunction with Defendant III, obligate Defendant V to launch compensatory programmes in the primary schools and kindergartens under their maintenance immediately after the final judgment;
- Monitor the composition of students in the receiving schools to prevent segregation mechanisms by annually examining the number of students from ... attending the primary schools maintained by the defendant;
- Obligate Defendant I to redistribute the ... school district among the other state schools in the city, thereby designating the receiving primary schools.

[6] Alternatively, the claimant requested that the court oblige Defendants II and IV to close ... by 31 May following the final judgment, require Defendant II to integrate the students of ... into the primary schools under its maintenance from 1 September following the final judgment, and within 30 days of receiving the final judgment, determine the specific measures required for integration (preparing the desegregation plan) with the involvement of an expert in equal opportunities in public education.

[7] As a tertiary request, the claimant sought to terminate the infringement by obligating Defendants II (V) and IV to close ...

by 31 May following the final judgment and further require Defendant II (V) to integrate the students of ... into the primary schools under its maintenance from 1 September following the final judgment.

[8] Defendant I requested the dismissal of the claim and sought the determination of litigation costs. In its view, it had complied with the statutory requirements regarding the proportion of multiply disadvantaged students when establishing school district boundaries. It stated that Defendant I is not permitted to collect or use data concerning the national or ethnic origin of students. It argued that the preparation of the public education development plan falls within the competence of the education office, with the government office only participating in its preparation. Additionally, it indicated that it had taken various steps to amend the school district boundaries and that it could not be obliged to update the so-called desegregation plan or ensure the necessary personal and organisational conditions. It further emphasised that more specific and targeted proposals had been made for the inclusion of disadvantaged and marginalised groups than in most counties of the country.

[9] Defendant II (Defendant V) also requested the dismissal of the claim and sought the determination of litigation costs. In its view, parents exercised their right to free school choice by enrolling their children in ..., where students were not subjected to less favourable treatment than those attending the main school or other branch schools. It pointed out that maintaining the school enjoyed unanimous support from the local community, primarily due to geographical reasons. Defendant II argued that the claimant's request, in its specific form, was unenforceable and that several elements based on voluntary participation were, for this reason, also unimplementable. It further contended that the requirement of equal treatment is not violated when, at the initiative and voluntary choice of parents, additional nationality education based on religious or other ideological beliefs is organised in a public education institution, where the objectives or curriculum justify the formation of separate classes or groups. The Roma-Gypsy nationality education was organised at the branch school in question.

[10] Defendant III likewise requested the dismissal of the claim and sought the claimant's liability for litigation costs. It disputed having committed any omission as a maintainer between 25 November 2010 and 30 December 2012 that unlawfully segregated students of the school based on ethnicity, economic status, race, or skin colour. It also pointed out that no records could be kept on the origins of students attending the branch school, as

this is prohibited by law. Furthermore, it noted that the school district boundaries were modified multiple times during the relevant period, resulting in several streets of the affected settlement being reassigned to the catchment areas of neighbouring branch schools. Defendant III argued that it could not be obliged to operate a school bus service and that redistribution itself would create inequality of opportunity, as the distance between students' residences and schools would vary significantly. It contended that the requested legal consequences could not be judicially enforced. It submitted declarations from 69 parents during the proceedings, stating that they wished to continue educating their children at the branch school in question. Additionally, it referred to the local Roma nationality self-government's insistence on maintaining and operating the branch school.

[11] Defendant IV also requested the dismissal of the claim and sought the claimant's liability for litigation costs. It argued that implementing the requested measures would have unforeseeable legal and social consequences, that the proposed remedies for ceasing the infringement were impracticable, could not be summarised in the operative part of a judicial decision, and would be unenforceable in execution proceedings. Defendant IV contended that the claim did not specify a realistic and enforceable method for concretely eliminating segregation. It did not dispute that no decision had been made to close the school but argued that this omission, in itself, did not constitute a violation of the law. It stated that the closure of an educational institution falls within the minister's competence and is exercised upon the proposal of Defendant II. It also pointed out that Defendant II had been repeatedly informed and urged to ensure that compliance with the principle of equal treatment in education was given priority in district-level equal opportunity action plans and that the maintainer should propose the necessary restructuring.

## **First- and Second-Instance Judgments**

[12] The court of first instance established that Defendant I, in determining the school district boundaries for ..., unlawfully segregated Roma students from other students in the city. It also found that Defendant II, as the maintainer of ..., and as the legal successor responsible for public education tasks since 1 January 2013, had committed an omission-based infringement by failing to eliminate the ongoing unlawful situation at the school in question. As a result, the unlawful segregation of students based on ethnicity, economic status, race, and skin colour persisted, separating them from students

attending other schools. Furthermore, the court found that Defendant III, between 25 November 2010 and 31 December 2012, by failing to eliminate the unlawful situation at the school in question, had continued to maintain the unlawful segregation of students based on ethnicity, economic status, race, and skin colour, separating them from students at the main school and other branch schools. Additionally, it held that Defendant IV, from 1 January 2013 onwards, by failing to take all necessary measures to eliminate the unlawful segregation in the branch schools in question—specifically, by not instructing the authorities under its jurisdiction to cease the unlawful segregation—had committed a violation by maintaining the unlawful segregation of Roma students at the school in question.

[13] The court ordered Defendants I, II, and IV to cease the infringement but dismissed the claim aimed at eliminating the unlawful situation.

[14] In its reasoning, the court established that unlawful segregation in itself constitutes a disadvantage; therefore, its mere probability is sufficient. It stated that, once this probability was demonstrated, the burden of proof shifted to the defendants to establish either that the circumstances alleged by the aggrieved party or the entity entitled to enforce public interest claims did not exist, or that they had complied with the principle of equal treatment, or that they were not required to comply with it in the given legal relationship. Following the evidence presented, the court concluded that the defendants had failed to fulfil their integration obligations and had tolerated and maintained the situation that arose due to spontaneous segregation at the branch school in question. They did so despite the fact that a final court judgment had already established the fact of unlawful segregation and had ordered Defendant III to cease the infringement. The court found that unlawful segregation continued to exist at the branch school in question, and that Defendants III (from 25 November 2010 to 31 December 2012) and Defendants I, II, and IV (from 1 January 2013 onwards) had committed an omission-based infringement.

[15] The court of first instance did not accept the defendants' arguments as grounds for exoneration, thereby establishing the fact of the infringement and ordering Defendants I, II, and IV to cease the infringement. It partially dismissed the claimant's request (with respect to the specific manner of eliminating the adverse situation), arguing that the measures sought by the claimant to eliminate the infringement could not be included in the operative part of a judicial decision under the provisions of the Code of Civil Procedure and the Execution Act, and their enforcement could not be compelled. The court reasoned that a

fundamental transformation of the public education system in the region would be the only effective solution and that desegregation could not be achieved by judicial decree without the involvement of political stakeholders and experts.

[16] Following the appeals submitted by the claimant and Defendants I, III, and IV, the appellate court clarified the first-instance judgment in the appealed sections and established that Defendants I, III, and IV—Defendant III between 25 November 2010 and 31 December 2012, and Defendants I and IV from 1 January 2013 onwards—had violated the principle of equal treatment by maintaining the unlawful segregation of students belonging to the Roma ethnic minority in a single educational institution, specifically at the K. K. Z. Á. I. P. Street branch school. The appellate court partially modified the first-instance judgment and prohibited Defendants II and IV from initiating a first-grade class at the K. K. Z. Á. I. P. Street branch school from the 2017–2018 academic year onwards. It further ordered Defendant I to adjust the school district boundaries of compulsory admission schools accordingly by 31 January 2017. Additionally, it required Defendants II and III to prepare, by 31 March 2017, a desegregation action plan—developed with the involvement of a public education equal opportunity expert—for the integration of students from the K. K. Z. Á. I. P. Street branch school district and to publish this plan on their website by the same deadline. The court rejected the claim in all other respects. In all other appealed sections, it upheld the first-instance judgment. The defendants were ordered to pay the claimant HUF 200,000 each in first- and second-instance litigation costs within 15 days.

[17] The appellate court supplemented the factual findings established by the first-instance court. It recorded that, as of 1 January 2013, the K. K. Z. Á. I. P. Street branch school, located in School District No. 12 of K. City, was transferred from the maintenance of Defendant III to that of Defendant II. This educational district covers the Szentjakab district in the eastern part of the city, a socially and economically deprived area of K. City. Szentjakab is an isolated, slum-like segregated settlement predominantly inhabited by Roma, including streets such as N. Street, Ny. Street, M. Zs. Street, N. Street, Cs. Street, H. Street, and B. Street. The final judgment noted that in the 2012/2013 academic year, the branch school in question had 137 students, all of whom were disadvantaged, with 9.5% classified as multiply disadvantaged. By contrast, in the same academic year, among the 652 students attending the main school, 23.77% were disadvantaged, and only 0.61% were multiply disadvantaged. That year, 20 children were enrolled in the first grade at the branch school, eight of whom were from outside the district, having applied from streets affected by the school district modification implemented by Defendant I in 2008. Of the



newly enrolled students, 100% belonged to the Roma ethnic minority. The vast majority of students at the branch school were of Roma origin or from mixed marriages, with approximately 87% of students being of Roma descent.

[18] Considering all circumstances, the final judgment upheld the first-instance court's finding that unlawful segregation persisted. (Equal Treatment Act, Section 7(1), Section 10(2), Section 27(3)(a).)

[19] According to the interpretation of the final judgment, the essence of the present case was to determine whether Defendant III, and from 1 January 2013 onwards, all defendants, had fulfilled their statutory obligations to eliminate the unlawful situation established in the preceding case and whether they had terminated the unlawful segregation. It considered as a key issue whether the unlawful segregation continued to exist at the branch school in question following the issuance of the final judgment, and if so, whether the persistence of this situation could be attributed to the omissions or actions of the appealing defendants.

[20] The final judgment then examined in detail the conduct of each defendant and any failures in their responsibilities. Concerning Defendant I, the court concluded that in determining the school district boundaries, Defendant I should have taken into account not only the directly applicable legal provisions but also the requirement to uphold the principle of equal treatment. It further noted that, beyond merely designating school district boundaries, Defendant I was also responsible for administrative oversight tasks related to ensuring compliance with equal treatment in public education institutions. The final judgment held that the disproportionate formation of school districts based on economic and social status, as well as the disregard of the protected characteristics listed under Sections 8(b)-(e) of the Equal Treatment Act during district formation, constituted a violation of the principle of equal treatment. The final judgment rejected Defendant I's argument that it was not authorised to collect data on ethnic affiliation and that the databases did not contain such information. It noted that Defendant I had access to the judgment from the preceding case, from which ethnic proportions could be determined. The educational authority possessed data estimating the proportion of Roma students attending the branch school in question and had provided these to the claimant via a public interest data request, meaning there was no barrier to Defendant I obtaining them as well. Ultimately, the final judgment found that Defendant I had failed to uphold the principle of equal treatment when determining the school district boundaries, thereby contributing to the maintenance of unlawful segregation.

[21] Regarding Defendant III, the final judgment established that, as the maintainer of the branch institution until 31 December 2012, it was (or should have been) similarly obliged to uphold the principle of equal treatment. The judgment found that Defendant III's justification for exemption was inadequate, as no evidence was presented that would warrant conclusions deviating from previous judicial findings concerning the possibility of integrated Roma nationality education or the voluntariness and informed nature of parental declarations. With respect to the right of parents to freely choose schools, the final judgment elaborated that, under Article I(3) of the Fundamental Law, fundamental rights may be restricted only to the extent strictly necessary to protect the enforcement of another fundamental right or a constitutional value, provided that the essential content of the right is respected. It reiterated that the concept of discrimination is enshrined in Article XV(2) of the Fundamental Law, which stipulates that the law must treat everyone equally. The state has both the right and the obligation to consider the actual differences between people when legislating and must institutionally ensure the protection of those whose rights have been infringed. One such mechanism for this is the enforcement of the Equal Treatment Act. In conclusion, the judgment determined that the right of parents to freely choose schools may be restricted to ensure the fundamental rights and equal opportunities of the child, even if the parents exercised their right with full knowledge of all necessary information. The final judgment also highlighted that Defendant III had access to data on the proportion of Roma students.

[22] Regarding Defendant IV, the final judgment emphasised that it was undisputed that Defendant IV was aware of the situation at the branch school in question, as evidenced by the final judgment in the preceding case. In this context, Defendant IV had repeatedly called upon Defendant II to take action to establish an educational organisation practice that complied with the principle of equal treatment and to propose the necessary restructuring measures. These requests were unsuccessful. The final judgment found that Defendant IV subsequently failed to exercise the powers available to it. It determined that Defendant IV's obligation to take action was not contingent upon Defendant II making a proposal, as Defendant II is an authority subordinate to Defendant IV. The judgment concluded that the continued existence of unlawful segregation at the school in question demonstrated that Defendant IV had not adequately exercised its powers. The measures it adopted were ineffective in eliminating the unlawful situation.

[23] In summary, the final judgment determined that maintaining segregation constituted a violation of the principle of equal treatment. It justified the clarification of the operative part

of the first-instance judgment by stating that the details of the specific conduct of each defendant leading to the maintenance of unlawful segregation belonged in the reasoning section rather than the operative part of the judgment.

[24] The final judgment partially upheld the claimant's request for the imposition of specific measures to eliminate the unlawful situation. It deemed it a key issue to determine whether specific measures could be mandated for the elimination of the adverse situation.

[25] The reasoning of the final judgment established that, based on the final judgment in the preceding case and the Supreme Court's decision, the defendants should have been fully aware of the existence of the unlawful situation and their obligation to take measures to eliminate it. Despite this, no measures were implemented since 2010 that effectively aimed at remedying the unlawful situation.

[26] The final judgment conducted a detailed examination of the desegregation action plan prepared by ... expert submitted during the proceedings. Taking this into account, it concluded that the desegregation resulting from the final determination of segregation could only be achieved through the closure of the institution. If this closure were to be implemented as a single act, it would mean that all students attending the school would have to be placed in other schools within a relatively short period. Alternatively, if the process were to be phased out progressively, segregation could be eliminated step by step by prohibiting the initiation of first-grade classes.

[27] According to the reasoning of the final judgment, the immediate closure of the school without full preparation would leave not only the students, parents, and teachers of the branch institution unprepared but also those in other schools across the city. By contrast, a phased elimination approach would initially require relocating only around twenty students, which, based on available data, would not constitute an insurmountable obstacle for the defendants. The final judgment also acknowledged that students who had begun their primary education at the branch school might face unforeseen difficulties in transferring to another school, even with the implementation of the necessary support programmes. It further stated that students in upper grades and their parents could voluntarily choose to transfer to another school and that the phased elimination approach did not prevent stakeholders in public education from deciding to close the school at an earlier stage. In light of the above, Defendant II (Defendant V), as the maintainer, and Defendant IV, as the authority responsible for restructuring, closure, and the transfer of maintaining rights concerning the branch institution, were prohibited from

launching a first-grade class at the branch school from the 2017/2018 academic year onwards. Consequently, Defendant I was obliged to consider the court's decision when determining school district boundaries and to exercise its powers in a manner that ensures the placement of students who, due to this decision, could no longer enrol in the branch school from the following academic year.

[28] The final judgment concluded that desegregation, followed by integration as the ultimate goal, could only be successful with adequate preparation and a transitional period, necessitating the development of a desegregation action plan. It deemed such a plan indispensable, arguing that without it, integration would be unfeasible, and its potential negative consequences could outweigh its benefits. Therefore, the judgment required the maintainer to develop a desegregation action plan with expert involvement and to publish it publicly. It emphasised that the elimination of segregation was not solely a matter of educational organisation but also required addressing local social issues and conflict resolution. Consequently, it imposed obligations on Defendants II and III in this regard.

[29] However, the final judgment did not specify the mandatory content of the desegregation action plan. It reasoned that only a thorough understanding of local circumstances could determine the precise measures necessary for the most effective execution of integration. Accordingly, it was left to local public education stakeholders and the local municipality to decide how the branch institution and receiving institutions should inform students, parents, and teachers, what type of support systems should be established, whether school bus services were necessary, or whether alternative transportation support methods would suffice. The final judgment held that defining the specific measures required to eliminate the unlawful situation was both the obligation and the responsibility of Defendants II and III.

[30] The appellate court deemed it unnecessary to initiate a preliminary ruling procedure before the Court of Justice of the European Union. It held that the measures ordered under Section 84(1)(d) of Act IV of 1959 (the former Civil Code) were adequate to provide effective legal remedies under Article 15 of the Race Equality Directive.

## **Review Applications and Counterclaims**

[31] Defendants I, II (with Defendant V as its successor), and III filed review applications against the final judgment. Defendant I, in its review application, requested the annulment of the appellate court's judgment and the upholding of the first-instance judgment, along with a ruling on litigation costs. It

argued that it had acted in accordance with Section 24(1) of Government Decree No. 20/2012 (VIII.31.) on the Regulation of School District Boundaries. It further contended that the deadline imposed in the final judgment was inconsistent with this legal provision and objected to the fact that its specific obligations were outlined only in the reasoning rather than in the operative part of the judgment. Defendant I claimed that, in the section concerning its obligations, the final judgment lacked the necessary legal precision.

[32] In its request for judicial review, Defendant II also sought the annulment of the final judgment and the reinstatement of the first-instance judgment. The defendant primarily objected to the prohibition on launching a new first-grade class. It maintained that Defendant II had not committed any violation and argued that among constitutional fundamental rights, the right to choose education and the right to free school choice should take precedence. It emphasised that, in its view, even if the final judgment were enforced, neither the children nor the parents would be placed in a better position. It also pointed out that there is no hierarchical relationship among constitutional fundamental rights. It referred to the Supreme Court's judgment in the preceding case, which stated that the court could not issue a ruling on the redistribution of students because it would have unforeseeable consequences. Defendant II contended that the final judgment was unenforceable, conflicted with the provisions of Section 13 of the Execution Act, and lacked the necessary specificity and clarity for implementation.

[33] Defendant III also requested the annulment of the final judgment and the complete dismissal of the claim. It emphasised that parents have the right to freely choose their children's school and reiterated that no single constitutional fundamental right takes precedence over others. It specifically cited a petition signed by 69 parents in 2014, expressing their wish to keep the school open. Defendant III argued that the final judgment infringed upon the fundamental rights of parents and students regarding their choice of education and access to primary education. It asserted that the redistribution of students would cause greater disadvantages than maintaining the current situation. According to Defendant III, P. Street Branch School provided high-quality education in an easily accessible location, with teachers highly valued by both students and parents. By contrast, in the event of redistribution, many of the alternative schools would be located far away and difficult to reach. Furthermore, no impact study had been conducted on the potential effects of redistribution. Defendant III also argued that the reasoning of the final judgment was legally flawed, asserting that no procedural law allows for the judicial review of a prior judgment's enforcement. It referred once again to the Supreme Court's ruling in the previous case, which determined

that a judgment ordering redistribution could not be issued due to its unforeseeable consequences. Defendant III contended that the present case was no more suitable for enforcement than the claim rejected in the earlier proceedings.

[34] The defendants requested the suspension of the enforcement of the final judgment, but the Curia rejected this request.

[35] The claimant, in its counterclaim for judicial review, requested the upholding of the final judgment. It argued that the final judgment provided an effective legal remedy, noting that only once before had a court ordered the preparation of a desegregation plan in an administrative lawsuit. The claimant emphasised that the defendants had failed to implement the obligation to cease the infringement, as required by the judgment in the preceding case. In its counterclaim dated 23 May 2017, the claimant acknowledged that the defendants had partially complied with the judgment by modifying the school district boundaries and preparing the so-called desegregation plan. However, the claimant maintained that it was still necessary to uphold the final judgment to solidify the changes, ensuring that parents, teachers, and students were not left in a state of uncertainty.

### **The Curia's Decision and Legal Reasoning**

[36] The Curia found the requests for judicial review to be unfounded and upheld the final judgment pursuant to Section 275(3) of the Code of Civil Procedure.

[37] Under Section 275(1) of the Code of Civil Procedure, evidence cannot be introduced in a judicial review proceeding. The Curia made its decision based on the existing case file. Pursuant to Section 275(2), the Curia may only review the final judgment within the scope of the judicial review requests and counterclaims. Thus, the scope of the Curia's review was determined by the claims of the defendants and the counterclaim of the claimant. Defendants I, II, and V, while disputing that they had committed any violation, requested the reinstatement of the first-instance judgment, which established the infringement but did not contain specific enforcement measures. Since Defendant I sought the complete dismissal of the claim, the Curia also had to examine whether unlawful segregation persisted. Additionally, the Curia was required to assess the conflict between different constitutional fundamental rights and the enforceability of the judgment.

[38] The previously applicable Constitution (Act XX of 1949) provided in Section 70/A(1) that the Republic of Hungary guarantees human and civil rights to all individuals residing within its territory without discrimination based on race,

colour, gender, language, religion, political or other opinions, national or social origin, economic status, birth, or other circumstances. Under Section 70/F(1), the Republic of Hungary guarantees its citizens the right to education. Section 70/F(2) stipulated that this right must be ensured through the expansion and generalisation of public education, free and compulsory primary education, accessible secondary and higher education based on individual ability, and financial support for students. Similarly, under Article XI(1) of the Fundamental Law, every Hungarian citizen has the right to education. Article XI(2) provides that Hungary guarantees this right through public education expansion, free and compulsory primary education, free and accessible secondary education for all, and higher education accessible based on individual ability, as well as financial support for students as prescribed by law. Furthermore, Article XV(2) of the Fundamental Law states that Hungary ensures fundamental rights for all individuals without discrimination based on race, colour, gender, disability, language, religion, political or other opinions, national or social origin, economic status, birth, or other circumstances. Article XV(4) declares that Hungary takes special measures to promote equal opportunities and social inclusion. Under Article XVI(1), every child has the right to protection and care necessary for their physical, intellectual, and moral development. Article XVI(2) affirms that parents have the right to choose the education their child receives.

[39] According to Section 1 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act), the requirement of equal treatment mandates that natural persons residing in Hungary, their groups, as well as legal persons and organisations without legal personality, must be treated with the same respect and consideration, ensuring equal recognition of individual circumstances as prescribed by the Act. Under Section 2, provisions on equal treatment set out in other laws must be applied in accordance with this Act. According to Section 4, the Act also applies to local governments and entities exercising administrative authority. Under Section 8, direct discrimination occurs when a provision results in a person or group being treated less favourably than another comparable person or group due to actual or perceived racial origin, skin colour, nationality, or national affiliation (points b, c, d, e). According to Section 9, indirect discrimination refers to an ostensibly neutral provision that does not qualify as direct discrimination but places persons or groups with the protected characteristics specified in Section 8 at a significantly greater disadvantage compared to other comparable persons or groups.

[40] According to Section 50(6) of Act CXCV of 2011 on National Public Education, a primary school is required to admit or

transfer any school-age child residing in its district on a permanent basis. If multiple primary schools operate within a settlement, school districts must be determined in a manner that ensures an even distribution of disadvantaged children across educational institutions.

[41] The responsibilities of the Minister of Education in public education at both central and regional levels are set out in Sections 79-81 of the same Act. The obligations and rights of the school maintainer—in this case, first Defendant III, then Defendant II, and later Defendant V—are regulated in Sections 83-85/A.

[42] Given the timeframe in which the alleged violations occurred, the provisions of Act IV of 1959 (the former Civil Code) must also be applied. According to Section 75(1) of the former Civil Code, everyone is obliged to respect personal rights, which are protected by law. Under Section 76, violating the principle of equal treatment constitutes an infringement of personal rights. Section 84(1) states that, depending on the circumstances, a person whose personal rights have been violated may request the court to establish the infringement (point a), order the defendant to cease the infringement (point b), and require the defendant to eliminate the adverse situation (point d). The Civil Code does not provide an exhaustive list of how this elimination should occur. The Curia held that the law does not prohibit specifying a method for eliminating the infringement. In the preceding case, the Supreme Court did not see grounds for ordering specific measures, but since then, the situation had substantially changed, as the same judgment obliged the defendants to eliminate the unlawful situation. However, the defendants failed to comply with this obligation. The final judgment correctly established, without violating legal provisions, that the available data clearly demonstrated that the unlawful situation persisted.

[43] According to established judicial practice, a judicial review procedure does not involve reconsideration of the evidence or a reassessment of factual findings. An exception to this rule applies only if the evaluation of evidence was manifestly illogical or fundamentally inconsistent with the rules of logic. However, the Curia did not find such circumstances (BH.2013.119).

[44] The requirement of equal treatment must be upheld throughout the entire National Public Education Act. Accordingly, the Curia did not accept Defendant I's argument that no violation had occurred, nor its claim that it had fully complied with all applicable legal provisions. Since the unlawful situation demonstrably persisted, the Curia found that Defendant I had failed to take effective measures to implement the previous final



judgment. The Curia also rejected the defendants' claim that they did not keep records on students' ethnic backgrounds, noting that they had become aware of the unlawful situation at the latest when the previous judgment was issued—even in the absence of official records—given that it was widely known that the school in question was located in a segregated Roma settlement with a predominantly Roma student population.

[45] The defendants argued that the final judgment violated the right to free school choice (under Article XVI of the Fundamental Law and Section 50(6) of the National Public Education Act). The Curia dismissed this argument, stating that: Parents still retained the option to choose among multiple remaining schools. The right to free school choice is not absolute, as school mergers or closures may still occur in the future. The Curia acknowledged that the Fundamental Law does not establish a hierarchy between constitutional fundamental rights. However, it also noted that when fundamental rights conflict, courts must conduct an interest-balancing analysis using the necessity-proportionality test, as provided in Article I(3) of the Fundamental Law and recognised in the case law of the European Court of Human Rights, which has also been adopted by the Constitutional Court in several rulings (e.g., Decision 7/2014 AB). Thus, it is legitimate to assess which fundamental right is disproportionately infringed and which fundamental right serves a greater public interest.

[46] The Curia held that, in the present case, priority was rightly given to the elimination of segregation over the right to free school choice, considering Hungary's international legal obligations to combat discrimination.

[47] The Curia disagreed with the argument that the final judgment was unenforceable in this particular case. The defendant, in its uncontested counterclaim for judicial review, stated that the relevant aspects of the judgment had already been implemented, meaning that no new first-grade class was launched in September 2017, the new school district boundaries had been designated, and the specific desegregation plan had been prepared. The actual effects of these measures, however, could only be properly evaluated over a longer period. It was undeniable that the process could impact certain interests, but the complex implications of the decision had to be considered as well. In similar cases, it is essential to conduct a detailed examination of the unique circumstances and to analyse the specific characteristics of the situation.

[48] Based on the foregoing, the Curia upheld the judgment, finding that it was in line with the applicable laws, took local circumstances adequately into account, and ordered effective measures. The Curia ordered Defendants I, III, and V to pay the

costs of the judicial review proceedings. Since the losing defendants were exempt from litigation fees, the unpaid judicial review fees of HUF 70,000 per defendant were borne by the state.

## **Applicable Laws and Legal Precedents**

[49] The following legal provisions and judicial practices were applied: Act XX of 1949 (former Constitution): Section 70/A(1), Section 70/F(1), (2) Fundamental Law of Hungary: Article I(3), Article XV, Article XVI(2), Act IV of 1959 (former Civil Code): Section 75(1), Section 76, Section 84(1)(a), (b), (d), Act CXC of 2011 on National Public Education: Section 50(6), Section 72(2), Act CXXV of 2003 on Equal Treatment (Equal Treatment Act): Section 1, Section 2, Section 4, Section 8(1)(b), (d), (e), Code of Civil Procedure: Section 78(1), Section 206(1), Section 275(3), Ministerial Decrees: 32/2003 (VIII.22.) IM Decree, 6/1986 (VI.26.) IM Decree (Sections 13(2) and 14), Act XCIII of 1990 on Duties and Fees: Section 5(1)

## **Closing Section**

[50] The Curia adjudicated the judicial review request in a hearing at the claimant's request. The defendant applicants lost the case and were therefore ordered to pay litigation costs to the prevailing claimant. However, as the losing defendants were exempt from personal litigation fees, the state covered the unpaid judicial review fees.

Budapest, 4 October 2017

Dr. András Baka, Presiding Judge, Dr. Árpád Pataki, Rapporteur Judge, Dr. Zsuzsanna Kovács, Judge

Responsible for the authenticity of the document:  
AM

Clerk