

No. Pfv.IV.20.068/2012/3.

The Curia, acting upon the petition for review submitted under No. 39 by the claimant, represented by Dr Lilla Farkas, against the respondent, Municipality of Győr, City with County Rights, represented by Dr Zoltán Rákosfalvy, in proceedings initiated before the Győr-Moson-Sopron County Court under case number 3.P.20.950/2008, and concluded by the final judgment of the Győr Court of Appeal under case number Pf.V.20.416/2010/3, without holding a hearing, has rendered the following

j u d g m e n t :

The Curia partially annuls the contested provision of the final judgment and upholds the first-instance court's finding of a violation of rights, with the clarification that the respondent also breaches the requirement of equal treatment by maintaining the unlawful segregation of children based on their financial status within the educational institution. Beyond this, the final judgment remains in force.

The Curia orders the respondent to pay HUF 10,000 (ten thousand forints) in review procedure costs to the claimant within 15 days.

The unpaid procedural fee for the review, amounting to HUF 36,000 (thirty-six thousand forints), shall be borne by the State.

No legal remedy is available against this judgment.

R e a s o n i n g

According to the facts relevant to the review, the respondent municipality operates a primary school that provides education for children with special educational needs, children with learning disabilities, and children residing both within and outside the school district, including those commuting from rural areas. The ethnic composition of the school's catchment area has significantly changed since the 1970s, with an

increasing proportion of students belonging to the Roma ethnic group. By 2004, the majority of the city's Roma population resided within the operational area of the school. The school's 2003/2004 annual report, its 2004 pedagogical programme, and the deputy mayor's 2005 report on the performance of educational institutions under municipal maintenance confirmed that more than two-thirds of the students in the school in question belonged to the Roma ethnic group. The deputy mayor's 2005 report, the 2007 Equal Opportunity Programme for Public Education in Győr, and the school's 2008 Equal Opportunity Plan for Public Education recorded that the proportion of multiply disadvantaged students in the school was extremely high compared to the citywide average. In January 2009, the respondent amended the school's district boundaries to ensure compliance with legal requirements regarding the proportion of multiply disadvantaged children. The public was duly informed of the district changes; however, due to the parents' right to freely choose a school, the composition of students remained unchanged. No first-grade classes were launched at the school in the 2010/2011 academic year.

The claimant, initiating personality protection proceedings as part of a public interest action, in its amended claim, sought a declaration that, compared to other schools maintained by the respondent, Roma and multiply disadvantaged children had been unlawfully segregated from non-Roma and non-multiply disadvantaged children at the school maintained by the respondent since 1 February 2004, the second semester of the academic year. The claimant requested that the respondent be ordered to cease the violation and to eliminate the unlawful situation by refusing to establish classes in which Roma and multiply disadvantaged children are in the majority.

The respondent requested the dismissal of the claim. As a primary defence, it contested the claimant's entitlement to bring a public interest action. On the merits, it argued that the provision of Roma ethnic minority education at the school in question, catering to demand, could not be considered unlawful segregation. It further contended that the existing situation was the result of conscious parental choice, as evidenced by the parental declarations submitted in the proceedings. As for multiply disadvantaged children, the respondent argued that segregation could not be established in light of the modified district boundaries.

The first-instance court established in its judgment that, from the second semester of the 2003/2004 academic year, i.e., from February 2004, the respondent violated the requirement of equal treatment by maintaining the unlawful segregation of children belonging to the Roma ethnic minority and multiply disadvantaged children in an educational institution, the Kossuth Lajos

Primary School. The court ordered the respondent to cease the violation and eliminate the unlawful situation. Beyond this, the claim was dismissed. The judgment also included provisions regarding the costs and fees of the first-instance proceedings.

According to the reasoning of the first-instance court, the claimant's right to initiate a public interest action was established under Section 20(1) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act). The claimant met its burden of proof in accordance with Section 19(1) of the Equal Treatment Act, as in force until 31 December 2006 and from 1 January 2007, by demonstrating that, during the period in question, the proportion of Roma and multiply disadvantaged students in the educational institution at issue was significantly higher than in other schools operated by the respondent. The respondent, however, failed to meet its burden of proof under Section 19(2) of the Equal Treatment Act in its defence and was unable to successfully establish that the voluntary separation of students, as alleged by parental declarations submitted in the proceedings, excluded the existence of an unlawful practice under Section 28(2) of the Equal Treatment Act. The first-instance court found that, from 1 February 2004, institutional-level segregation of Roma and multiply disadvantaged children took place at the school in question. The respondent was held liable for maintaining this unlawful situation under Section 10(2) of the Equal Treatment Act. Consequently, the first-instance court established the violation under Section 84(1)(a) of the Civil Code, ordered the respondent to cease the violation under Section 84(1)(b), and mandated the elimination of the harmful situation under Section 84(1)(d). The court explained that it did not specify the means of eliminating the harmful situation as requested in the claim because the unlawful segregation arose within a public law context, and therefore, the necessary measures must also be determined within the framework of public law. The elimination of the unlawful situation could only be achieved through the implementation of a professionally designed programme exceeding the scope of the lawsuit, requiring a comprehensive review of the institutional and financial system of public education. The rehabilitation of the affected urban district was ongoing, and the organisation of schools, the designation of school district boundaries, and the maintenance of the education system at a broader territorial level fell within the competence of the municipality.

Upon the respondent's appeal, the second-instance court partially modified the appealed provision of the first-instance judgment, fully dismissing the claim regarding multiply disadvantaged children and eliminating the respondent's obligation to eliminate the unlawful situation. Beyond this, the first-instance judgment was upheld. The second-instance court

also ruled on the costs and fees of the appellate proceedings. According to the reasoning of the final judgment, the first-instance court correctly established the facts based on the evidence presented and drew the proper legal conclusions regarding the respondent's liability for the violation. However, the respondent's appeal was successful to the extent that the claimant did not have standing to bring a public interest action concerning multiply disadvantaged children under Section 20(1) of the Equal Treatment Act. The legal category of "multiply disadvantaged status" is defined in Section 121(1)(14) of Act LXXIX of 1993 on Public Education, which relates partly to children taken into long-term foster care and partly to the financial and income status of the child's family or the educational level of the parents. Consequently, multiply disadvantaged status is not an essential characteristic of a person's identity, even if family circumstances and social background may, in the long term, influence a person's development in some way. In Decision 96/2008 (VII.3.), the Constitutional Court explicitly identified only religious belief and minority status as characteristics defining a person's essential identity. Thus, contrary to the respondent's erroneous argument, the claimant did not lack standing because the group of affected persons was precisely identifiable but because the definition of multiply disadvantaged status under the Public Education Act cannot be considered an essential personal characteristic. However, beyond this, the first-instance court correctly established the respondent's violation concerning students of Roma ethnicity and ordered the respondent to cease the violation. Under Section 84(1)(d) of the Civil Code, the elimination of the harmful situation may be requested depending on and within the limits of the circumstances of the case. However, the claimant did not submit a specific claim for eliminating the harmful situation that would meet the requirements of clarity and enforceability necessary for a judgment imposing an obligation. The claimant's request that the court order the respondent to refuse to establish classes where Roma and multiply disadvantaged children are in the majority can only be interpreted within the scope of ceasing the violation. However, regarding existing student enrolments, the unlawful situation does not cease merely because no further classes are established. In view of these considerations, the appellate court, partially modifying the contested provisions of the first-instance judgment, dismissed the claim concerning multiply disadvantaged children due to the claimant's lack of standing and, in the absence of a specific claim, omitted ordering the respondent to eliminate the unlawful situation.

The claimant filed a petition for review against the final judgment, primarily seeking the annulment of the provisions dismissing the claim and requesting that the respondent be fully obligated as sought in the claim. Alternatively, the claimant

sought to have the case remanded for a new trial by the first-instance court. In its petition for review, the claimant argued that the final judgment violated Sections 8 and 20 of the Equal Treatment Act by determining that the claimant lacked standing to file a public interest claim concerning children attending the school in question based on their financial status, on the grounds that financial status is not an essential characteristic of personality. The claimant further asserted that the final judgment violated Section 16 of the Equal Treatment Act, Section 84(1)(d) of the Civil Code, and Article 15 of Directive 2000/43/EC of the European Council by failing to order the respondent to eliminate the unlawful situation. The claimant cited prior Supreme Court rulings in similar cases, stating that where a properly formulated claim is presented, the court may, regardless of the public law relationships involved, order the violator to eliminate the harmful situation. During the first-instance proceedings, the respondent voluntarily initiated integration by refusing to establish first-grade classes at the school in question, thereby facilitating the "dispersion" and integration of Roma and multiply disadvantaged children into surrounding schools. In light of this, the claimant amended its claim, making it clear, enforceable, and realistically feasible, thus meeting the criteria set out by the Supreme Court.

The respondent did not submit a counter-petition for review.

The Curia, reviewing the final judgment within the scope of the petition for review under Section 275(2) of the Code of Civil Procedure, did not affect the final judgment's finding regarding the unlawful segregation of Roma ethnic minority children and the related objective legal consequences, as no legal remedy was sought against that part of the ruling.

The petition for review is partially well-founded for the following reasons.

Under Section 76 of the Civil Code, the violation of personal rights includes, among others, a breach of the requirement of equal treatment. The Equal Treatment Act regulates the substantive elements of this violation and the conditions for public interest enforcement. Pursuant to Section 20(1)(c) of the Equal Treatment Act, a social advocacy organisation may initiate a personality rights lawsuit before a court—subject to additional conditions—if the violation of the requirement of equal treatment or the direct threat thereof is based on a characteristic that is an essential aspect of an individual's personality. In its claim, the claimant identified the protected characteristic of the affected group as both their Roma ethnicity and their multiply disadvantaged status. However, the violation of the requirement of equal treatment, including unlawful segregation (Section 10(2) of the Equal Treatment Act), may only

be established if the differentiation is based on a characteristic listed in Section 8 of the Equal Treatment Act. The list of protected characteristics in Section 8(a)-(t) does not include the concept of multiply disadvantaged status.

According to Section 121(14) of the Public Education Act, a child or student is considered disadvantaged if the notary has established their eligibility for regular child protection benefits due to their family circumstances or social situation. Within this group, a child or student is classified as multiply disadvantaged if their legal guardian—according to their declaration—has completed no more than the eighth grade of primary school, or if the child has been placed in long-term foster care. The final judgment correctly established, based on the Public Education Act's definition, that multiply disadvantaged status fundamentally relates to the financial and income situation of the child's family as well as the educational attainment of the parents. However, it erroneously concluded that the financial and social situation of the children affected by the lawsuit does not constitute an essential aspect of their personality, which would establish the claimant's right to initiate a public interest claim. The definition of multiply disadvantaged status under the Public Education Act substantively corresponds to the concepts of "social origin" under Section 8(p) of the Equal Treatment Act and "financial status" under Section 8(q) of the same act.

The Curia concurred with the claimant's argument, refined in its petition for review, that the right to initiate a public interest claim also applies based on the financial situation of the group of children affected by the lawsuit. As elaborated by the Supreme Court in judgment No. Pfv.IV.20.037/2011/7, social origin and financial status represent a form of social determination that defines an individual's relationship with the surrounding world and their position and role within it. The social conditions that shape an individual significantly influence their personality and their perception of both the world and themselves. Therefore, for the purposes of applying Section 20(1) of the Equal Treatment Act, social origin and financial status are considered essential aspects of an individual's personality. The evidence in the case unequivocally supported that the unlawful segregation affected a large group of children belonging to the Roma ethnic minority and those living in severe financial hardship (multiply disadvantaged children). Thus, the claimant, as a social advocacy organisation, is entitled to pursue public interest enforcement under Section 20(1)(c) of the Equal Treatment Act on behalf of individuals possessing protected characteristics under Sections 8(e) and 8(q) of the same act. For this reason, the Curia annulled the provision of the final judgment that had dismissed the claim concerning multiply disadvantaged children, pursuant to Section 275(4) of

the Code of Civil Procedure. By applying Section 253(2) of the Code of Civil Procedure accordingly, the Curia upheld the first-instance court's ruling that had correctly established the violation regarding the affected children, with the clarification that the term "multiply disadvantaged status" should be interpreted in line with Section 8(q) of the Equal Treatment Act as referring to financial status.

However, the Curia, albeit with different reasoning, concurred with the final judgment's lawful rejection of the claim seeking the elimination of the harmful situation.

When establishing the violation of personal rights, the court ensures the application of the sanctions required under Article 15 of Directive 2000/43/EC on the principle of equal treatment between persons, regardless of racial or ethnic origin, through the objective and subjective legal consequences set out in Section 84(1) of the Civil Code. Under this provision, the court may also order the elimination of the harmful situation or the restoration of the pre-violation state. However, the rules in Section 16 of the Equal Treatment Act, cited by the claimant concerning the application of legal consequences, pertain to the procedures of the administrative authority responsible for monitoring compliance with the requirement of equal treatment.

The final judgment determined that the claim specifying the method for eliminating the harmful situation had already been fulfilled within the scope of ceasing the violation under Section 84(1)(b) of the Civil Code. Therefore, in the absence of a claim under Section 84(1)(d) of the Civil Code, it omitted the first-instance judgment's order requiring the respondent to eliminate the unlawful situation. The Curia held that the claimant's request to compel the respondent to refuse to establish classes in which Roma and multiply disadvantaged children form the majority was, in fact, a request for the elimination of the harmful situation and, therefore, should have been assessed under Section 84(1)(d) of the Civil Code.

The objective sanctions outlined in Sections 84(1)(a)-(d) of the Civil Code may be applied depending on and within the limits of the circumstances of the case. As the Supreme Court has already elaborated in its rulings in similar cases, an enforceable judgment requiring the elimination of the unlawful situation under Section 84(1)(d) of the Civil Code can only be issued based on a specific, realistic, and feasible claim that clearly determines the precise method of elimination and is enforceable within the framework of a personality rights lawsuit (Pfv.IV.21.568/2010/5., Pfv.IV.20.037/2011/4.).

It is beyond doubt that in the present case, the claim specifying the method for eliminating the harmful situation is concrete, clear, and possibly even formally enforceable. However, a judgment granting the claim and imposing liability in accordance with it cannot be executed without endangering the operation of the school in question and infringing upon the parents' right to free school choice, as ensured by Section 13(1) of the Public Education Act. It is evident that if the respondent was unable to eliminate the unlawful situation by modifying the school district boundaries, given the local circumstances, the composition of students in the newly established classes will not change in the future either. In this situation, if the judgment were to prohibit the establishment of classes with a composition that results in segregation, the operation of the school itself would ultimately become impossible. Since—as the claimant's argument itself acknowledges—prohibiting the establishment of classes that do not meet the legal conditions for integrated education necessarily leads to the "scattering" of children to other schools in the city, the claim (in its essence) fundamentally aims at imposing such an obligation. However, the Supreme Court, in a similar case (judgment No. Pfv.IV.21.568/2010/5.), already pointed out that in a civil dispute, no ruling can be made on the elimination of the unlawful situation by redistributing students to other schools or—ultimately, as a possible consequence—closing the school. Therefore, such a claim does not define a realistic and enforceable method for eliminating segregation within the framework of a personality rights lawsuit. Furthermore, as the final judgment correctly noted, the method for eliminating the harmful situation sought in the claim does not eliminate the state of unlawful segregation that has already materialised and continues to exist within the educational relationships. Thus, it is not a suitable means for eliminating the harmful situation. In view of all these considerations, the Curia upheld the final judgment's dismissal of the claim seeking the elimination of the harmful situation under Section 275(3) of the Code of Civil Procedure.

Considering the claimant's partial success in the lawsuit, the Curia ruled on the allocation of litigation costs under Section 81(1) of the Code of Civil Procedure. Pursuant to Sections 3(3) and (5) of Decree No. 32/2003 (VIII. 22.) of the Ministry of Justice, the Curia ordered the respondent to bear the claimant's legal representation costs incurred in the partially successful review procedure. No review procedure costs were incurred that could be transferred to the respondent. Given the personal exemption from fees for both parties, the costs of the review procedure shall be borne by the state in accordance with Sections

13(1) and 14 of Decree No. 6/1986 (VI. 26.) of the Ministry of Justice.

Budapest, 16 May 2012

Dr András Baka, Presiding Judge, Dr Zsuzsanna Kovács, Judge-Rapporteur, Dr Katalin Böszörményiné Kovács, Judge

*Responsible for the authenticity of the copy:
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Official Clerk