

The Budapest Court of Appeal, in the lawsuit initiated by the plaintiff [plaintiff's name] (address: [plaintiff's address]), represented by attorney Dr. Adél Kegye (address), against the defendant [defendant's name] (address: [defendant's address]), represented by legal counsel [legal counsel's name], for violation of the principle of equal treatment, following the appeal submitted by the defendant under numbers 85 and 88 against the judgment No. 40.P.23.675/2015/84 rendered by the Budapest-Capital Regional Court on 18 April 2018, has made the following

j u d g m e n t:

The Budapest Court of Appeal partially alters the judgment of the court of first instance and annuls the defendant's obligation to:

- Instruct the administrative bodies exercising supervisory rights over the schools listed in the operative part of the first-instance judgment to refrain from opening first-grade classes from the school year following the finality of the judgment;
- Instruct the competent government offices to determine the school district boundaries concerning ..., ..., ..., ..., ..., ..., ... and ... in consideration of the provision prohibiting first-grade enrolment;
- Monitor the implementation of the desegregation action plans and publish its findings on its website for five years;
- Amend the guide titled “...” to reflect the content specified in the operative part of the first-instance judgment, publish it on its website, and instruct government offices to conduct investigations based on the revised criteria;
- Allocate the public interest fine to the monitoring of desegregation programmes by civil organisations for five years following the launch of the programmes.

The court reduces the first-instance litigation costs payable by the defendant to the plaintiff to HUF 1,060,000 (one million sixty thousand) plus VAT.

In all other respects, the first-instance judgment is upheld.

The defendant is ordered to pay the plaintiff HUF 16,000 (sixteen thousand) plus VAT as second-instance litigation costs within 15 days.

The court establishes that the unpaid appellate fee of HUF 48,000 (forty-eight thousand) shall be borne by the Hungarian State.

No appeal shall be lodged against this judgment.

## Reasoning

In its judgment, the court of first instance established that the defendant violated the principle of equal treatment concerning students of Roma ethnic minority origin by maintaining and continuing school-level segregation of Roma students from non-Roma students at the general schools located at the following addresses from the 2003/2004 school year onwards:

1. ..., ..., current designation as ..., from 27 January 2004 to 31 August 2012;
2. ..., ..., current designation as ..., from 27 January 2004 to 31 August 2012;
3. ..., ..., current designation as ..., from 27 January 2004 onwards;
4. ..., ..., current designation as ..., from 1 September 2013 onwards;
5. ..., ..., current designation as ..., from 27 January 2004 onwards;
6. ..., ..., current designation as ..., from 27 January 2004 onwards;
7. ..., ..., current designation as ..., from 27 January 2004 onwards;
8. ..., ..., from 27 January 2004 until its closure on 30 June 2012;
9. ..., ..., current designation as ..., from 1 September 2013 onwards;
10. ..., ..., from 27 January 2004 until its closure on 11 August 2011;
11. ..., ..., current designation as ..., from 1 September 2014 onwards;
12. ..., ..., from 1 September 2013 onwards;
13. ..., ..., current designation as ..., from 27 January 2004 onwards;
14. ..., ..., from 27 January 2004 until its closure on 31 August 2009;
15. ..., ..., current designation as ..., from 27 January 2004 onwards;
16. ..., ..., current designation as ..., from 1 September 2013 onwards;
17. ..., ..., from 27 January 2004 until its closure on 17 July 2006;
18. ..., ..., from 27 January 2004 until its closure on 31 July 2012;
19. ..., ..., from 27 January 2004 until its closure on 31 July 2012;
20. ..., ..., from 27 January 2004 until its closure on 17 October 2016;
21. ..., ..., from 27 January 2004 until its closure on 31 August 2009;
22. ..., ..., from 27 January 2004 until its closure on 1 July 2011;
23. ..., ..., current designation as ..., from 1 September 2013 onwards;
24. ..., ..., from 27 January 2004 until its closure on 1 August 2007;
25. ..., ..., from 27 January 2004 until its closure on 1 August 2007;
26. ..., ..., current designation as ..., from 1 September 2014 onwards;
27. ..., ..., from 27 January 2004 until its closure on 31 July 2007;
28. ..., ..., last designated as ..., from 27 January 2004 until its closure on 29 June 2012.

The court of first instance ordered the defendant to instruct the administrative bodies exercising supervisory rights over the listed schools to refrain from opening first-grade classes from the school year following the finality of the judgment.

1. at ..., currently designated as ..., ...;
2. at ..., currently designated as ...;
3. at ..., previously designated as ..., currently designated as ...;
4. at ..., currently designated as ...;
5. at ..., currently designated as ...;
6. at ..., currently designated as ...;
7. at ..., currently designated as ...;

8. at ..., ...;
9. at ..., currently designated as ...;
10. at ..., currently designated as ...;
11. at ..., currently designated as ...;
12. at ..., currently designated as ...;
13. at ..., currently designated as ....

The defendant was also ordered to instruct the competent government offices to determine the school district boundaries for ..., ..., ..., ..., ..., ..., ..., ..., ..., ... and ... in consideration of the prohibition of first-grade enrolment.

Furthermore, the defendant was ordered to cease the violation by instructing the administrative bodies exercising supervisory rights over the affected schools, under its control, within three months from the finality of the judgment, to prepare desegregation action plans for students enrolled from the respective school districts with the involvement of an expert in equal opportunities in public education and publish them on its website.

1. at ..., currently designated as ..., ...;
2. at ..., currently designated as ...;
3. at ..., previously designated as ..., currently designated as ...;
4. at ..., currently designated as ...;
5. at ..., currently designated as ...;
6. at ..., currently designated as ...;
7. at ..., currently designated as ...;
8. at ..., ...;
9. at ..., currently designated as ...;
10. at ..., currently designated as ...;
11. at ..., currently designated as ...;
12. at ..., currently designated as ...;
13. at ..., currently designated as ....

The defendant was further ordered to:

- Monitor the implementation of the desegregation action plans and publish its findings on its website for five years;
- Amend the guide titled “...” to reflect the specified content, publish it on its website, and instruct government offices to conduct investigations based on the revised criteria;
- Ensure that ethnic data collection based on perception is conducted for the examination of unlawful segregation in public education.

The number and proportion of students perceived or likely to be of Roma nationality in schools, school buildings, and classrooms can be determined based on perception. Data for this perception must be collected from school principals, elected or informal leaders of the local Roma community, public hearings held in Roma settlements, and the following school documents: the local pedagogical programme, public education equal opportunities situation

analysis, and the school's estimates on ethnic proportions provided within the framework of the national competence assessment.

From the elected or informal leader of the local Roma community and participants of public hearings in Roma settlements, the following data from the so-called weighted classification criteria must be collected and recorded in an official report:

1. Locally known Roma family names: .....
2. The proportion of multiply disadvantaged children among Roma children: ..... %
3. Names of streets commonly associated with Roma settlements or areas inhabited by Roma (including house numbers where necessary): .....
4. Locally known Roma first names: .....

Subsequently, based on student records requested from the school, an estimate of the number of Roma students per class must be made in collaboration with the elected or informal leader of the local Roma community. This estimate must be verified during an on-site inspection conducted jointly. A student shall be presumed to be Roma if they meet at least two criteria from the weighted classification criteria.

The data must be recorded in a tabular format, as shown in the sample template, and signed by all (official) persons providing the data. The resulting table must be handled in accordance with document management regulations by the investigating authority.

class symbol	building address	Number of pupils in class	number of Roma pupils estimated by the headmaster	number of Roma pupils estimated by the FNÖ/Gypsy community	estimated number of Roma pupils in school records	Estimated number of Roma pupils in competence assessment
1.a.	The building					
1.b.	Building B					
2.a.	The building					
2.b.	Building B					
etc.	etc.					
total	The building					
total	Building B					

#### Investigation Procedure:

1. Step: Compilation of the investigation programme for the supervision of primary schools that are sociologically segregated and their maintaining bodies.
2. Step: Preliminary familiarisation with the municipality.
3. Step: Contacting the local Roma nationality self-government and holding a public hearing.
4. Step: Requesting statements from the primary schools of the municipality to determine the proportion of Roma students.
5. Step: Identification of the segregated school(s).

6. Step: Conducting an on-site inspection at the school(s) suspected of segregation.
7. Step: Requesting a statement from the maintaining body regarding the reasons for segregation.
8. Step: Issuing a decision on the elimination of segregation, prescribing its exact method and schedule.

The defendant was ordered to pay a public interest fine of HUF 50,000,000 within 15 days, to be used for monitoring the implementation of desegregation programmes by civil organisations over a period of five years following the launch of such programmes.

Furthermore, the defendant was ordered to pay the plaintiff HUF 2,500,000 plus HUF 675,000 VAT, amounting to a total of HUF 3,175,000 as attorney's fees and litigation costs.

The court established that the procedural fee of HUF 1,500,000 recorded in the case shall be borne by the Hungarian State.

The court cited the provisions of Article 70/A (1), 70/F (1) and (2) of the Constitution, Article XI, Article XV (2) and (4), Article XVI (1) and (2) of the Fundamental Law, as well as the provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act), including Sections 1, 2, 4, 8 (b), (c), (e), 9, 10 (2), and 27 (3) (a). It also referred to the Act CXC of 2011 on National Public Education (Public Education Act), Section 50 (6), and Sections 79-81, as well as the old Civil Code, Sections 75 (1), 76, and 84 (1), and Constitutional Court Decision No. 7/2014. (III. 7.).

The court emphasised that, based on the study available in the proceedings, the defendant should have been aware that children in the designated schools were being educated in a segregated manner based on their Roma ethnic affiliation, whether real or perceived. The degree of segregation in the designated schools exceeded 50%, meaning that more than 50% of the students in these institutions were Roma children, with some schools exceeding an 80% Roma student ratio. The defendant did not dispute the findings of the study, as its legal predecessor had formulated desegregation plans based on this study.

For reasons of data protection and in accordance with Section 8 of the Equal Treatment Act, the defendant does not maintain an ethnic-based register of children in public education.

However, it was aware of the disadvantaged and severely disadvantaged status of Roma children, as well as the educational inequalities affecting them. ... and ... specifically commissioned the study to assess the existence, nature, and extent of discrimination against Roma children.

The results of the inspections conducted during the examined period, the methodology guiding the inspections, and documents from the Educational Authority containing data on the proportion and educational performance of Roma students confirmed that the designated public education institutions taught Roma or presumably Roma students in a proportion exceeding 50%. This clearly demonstrated that these children did not participate in integrated education, as the school demographics did not reflect the national ratio of Roma and non-Roma students. Roma students were overrepresented in these schools.

The defendant did not challenge the accuracy of the data but disputed the conclusions drawn from it and sought to evade responsibility based on the prohibition of ethnic-based record-keeping.

The defendant's submitted inspection results confirmed that the inspected institutions had not conducted examinations that considered the criteria listed in Section 8 of the Equal Treatment Act. The methodology used by the educational institutions and their maintaining bodies followed the defendant's inspection guidelines, which were unsuitable for detecting ethnic-based segregation.

The defendant was informed of the unlawful situation at the latest upon receiving the plaintiff's lawsuit. The court found that the unlawful segregation had persisted in the affected schools.

Regardless of record-keeping, it was common knowledge in the surrounding areas of these schools that they primarily educated Roma students. The defendant bears responsibility for failing to conduct on-site inspections and failing to document factual findings based on simple observation.

The criteria outlined in Section 8 (c) of the Equal Treatment Act, including skin colour and the use of first and last names as indicators, had always been available for identifying segregation.

The ... study also revealed that segregation was facilitated by the way school catchment areas were designated. Based on Section 50 (6) and Sections 79-81 of the Public Education Act, the court pointed out that the defendant was obligated to act in compliance with the law, even in the absence of specific complaints. The defendant, by virtue of its duties, was required to detect segregation resulting from the delineation of school districts, particularly in areas predominantly inhabited by Roma residents. The defendant was responsible for ensuring that school district boundaries provided for a balanced integration of Roma and non-Roma students.

The defendant's failure to conduct assessments based on students' ethnicity, citing the protection of personal data, resulted in the continuation of indirect discrimination.

Given these circumstances, the plaintiff rightfully sought the establishment of a violation of law, as the defendant failed to eradicate the undisputed segregation through its management, regulatory, and supervisory activities.

**Witness 1** confirmed that the ... study had been implemented in practice from the **2003/2004 academic year to 2008**, during which period the witness worked explicitly on projects aimed at eliminating segregation. **Witness 2**, one of the study's authors, supported its findings through testimony. **Witness 3**, based on personal experience, confirmed the existence of segregation in the schools in question. Another witness, ... testified that since 1 July 2014, no changes had been made to the school district boundaries, nor had any requests been received for modifications in the affected school areas. The witness confirmed that no ethnic data collection was conducted during school enrolment, and data on disadvantaged status was based on voluntary declarations, making them unreliable indicators for assessing the contested violation.

The first-instance court emphasised that the requirement of equal treatment must be observed throughout the Public Education Act. Thus, the defendant's argument that it acted in accordance

with the law was unacceptable. If an unlawful situation demonstrably persisted, it could be concluded that the defendant failed to take effective measures to end the segregated education of Roma children.

When fundamental rights conflict, it is necessary to assess which right takes precedence in order to remedy the unlawful situation. In the case of segregation, a conflict arises between the individual's right to privacy regarding personal data, the right to free school choice, and the requirement of equal treatment as a fundamental right.

The right to free choice of school is not infringed in the case of the reorganisation or closure of a school per se, because all the schools concerned by the case can be changed to another school and the defendant is able to ensure that all pupils of compulsory school age have access to an appropriate school of their choice, in the context of its desegregation measures. The right of free choice of school is not an absolute right and can be exercised within limits. The limit is the desegregation requirement, i.e. the prohibition of discrimination. According to the Constitutional Court's decision 7/2014 (7.III.) AB, in the case of a conflict of fundamental rights, a balancing of interests must be carried out, applying the test of necessity and proportionality. It must be weighed up which fundamental right is disproportionately more prejudicial, which fundamental right is of greater public interest to be enforced.

It pointed out that the segregation of students based on Roma origin or belonging to the Roma community, separating them from their non-Roma peers, reinforces discrimination based on skin colour and the resulting stigmatisation, both on an individual and group level.

It does not require further proof that sociologically recognised trends related to skin colour and nationality lead to the academic lag of students subjected to segregated education. This is also supported by the results of the attached competency assessments. The reduction in the quality or quantity of the taught material and the failure of catch-up programmes for such segregated groups lead to the destruction of equal opportunities for these children. This is also evident in the statistics on secondary education enrolment.

The defendant failed to prove that in schools where nationality-based education is organised—justifying the formation of separate classes or groups—this was done at the parents' initiative and based on their genuinely voluntary choice. Neither did it prove that participants in such education suffered no disadvantage, nor that the education complied with state-approved, state-mandated, or state-supported requirements. The evidence in the case confirmed that even in schools where Roma children received nationality-based education, the disadvantage of segregated students was still apparent. In such schools and classes, competency assessments and secondary school admission success rates indicated that students received inadequate, reduced-quantity and lower-quality education. This was also corroborated by the testimonies of **Witness 1, Witness 2, and Witness 3.**

Consideration was also given to the interpretation of Article 15 of Directive 2000/43/EC of the European Union, which requires an effective, proportionate, and dissuasive judicial remedy to address such legal violations.

It was held that the provisions of the Civil Code must also be applied concerning the defendant as a central administrative body, particularly regarding the rules on legal consequences. If the party whose personality rights have been violated seeks an injunction to cease the violation and

eliminate the harmful situation, the court must determine and establish the means to achieve this, considering the specific circumstances of the case and the necessity of such measures.

The defendant's monitoring methodology, guidelines for conducting inspections, their results, the ... study, and the data provided by the Education Office all demonstrated the inadequacy of the defendant's measures. The prolonged persistence and intensification of segregation indicate that the defendant's instructions and decisions were ineffective in terminating the violation, and its inspections were inadequate in uncovering it. Consequently, the claimant's request to prohibit the initiation of new first-grade classes, simultaneously require the preparation of a desegregation plan, and amend the defendant's monitoring guidelines was well-founded.

The methodology proposed by the defendant could be effective in realistically mapping the proportion of Roma children within the public education system. This guideline may be suitable for accurately identifying the extent and nature of segregation. The elements of the modified guideline do not violate any legal provisions while being the most appropriate means of assessing the proportion of segregated students.

The preparation of a desegregation plan grants the defendant administrative body a high degree of autonomy, limited only by the requirement to involve an expert. In the ... segregation case, the defendant engaged an expert accepted by the claimant in the preparation of the desegregation plan to be developed based on the final judgment. Thus, the defendant, voluntarily and at its own discretion, was willing to devise a structured plan for eliminating segregation as requested by the claimant.

The order requiring the closure of first-grade classes in certain schools is closely related to the reorganisation of school catchment areas.

The decision to cease and eliminate the violation thus constitutes a complex action plan composed of multiple interconnected measures, which, together, may be suitable for remedying the violation. Accepting the defendant's argument that a civil law injunction on an administrative body's actions would constitute an encroachment on the executive power's authority would mean that civil litigation could not determine the actual and specific consequences of a violation of personality rights within the framework of eliminating the violation. Consequently, the possibility of applying legal consequences closely linked to the violation would be eliminated in the case of an administrative body as a legal entity.

The court deemed it necessary to avoid issuing a ruling that would leave the elimination of the violation to the defendant, which had previously failed in addressing segregation, through an overly broad or excessively general obligation.

Regarding the public interest fine, it was noted that, considering the nature of public interest litigation, the claimant could not seek an order compelling the defendant to pay damages. The claimant itself did not suffer a loss for which the defendant could be held liable. However, the group represented by the claimant suffered significant harm during the period under review. The public interest fine could serve as partial compensation for this harm, provided it benefits the affected group.

The prolonged duration of segregation, the objective impossibility of retroactively compensating the affected students for their suffering, the particularly large number of impacted students, and the generally negative societal impacts of segregation all underscore the severity of the defendant's unlawful conduct. The defendant's role in maintaining segregation was found



to be blameworthy, as it was aware of the situation, fully understood its unlawfulness, detriment, and consequences.

The court determined the allocation of the public interest fine differently from the amended claim. It left it to the defendant's discretion to decide which civil organisation to support with the fine. This use of the fine for a public purpose also serves as a form of oversight regarding the conduct of the defendant as established in the case.

The court ruled on the allocation of litigation costs pursuant to Section 78(1) of the Code of Civil Procedure.

The defendant filed an appeal against the first-instance judgment, seeking its modification, the dismissal of the claimant's claim, and an order requiring the claimant to bear the litigation costs.

The defendant argued that the first-instance judgment violated Article C(1) of Hungary's Fundamental Law by breaching the constitutional principle of separation of powers. It also contended that the ruling was unenforceable under the rules of civil enforcement set out in Act LIII of 1994 on judicial enforcement. Furthermore, it claimed that the judgment violated Section 1(2) and Section 11 of Act CLXXIX of 2011 on the rights of nationalities by infringing upon the self-determination rights of individuals participating in the administrative inspections as determined by the court, concerning their national identity.

The first-instance judgment was deemed to violate the constitutional requirement of separation of powers, as set out in Article C(1) and Article 25 of the Fundamental Law, by not ordering the state administrative bodies with direct responsibility and jurisdiction to exercise their legally prescribed powers to eliminate the unlawful situation. Instead, it imposed an obligation (an injunction) dictating the content of administrative instructions within their chain of command. In doing so, the court prescribed specific actions to be carried out within the relationships between administrative bodies forming part of the executive power.

Additionally, the first-instance judgment was unenforceable, as the underlying claim did not meet the judicial practice requirement that the method of remedying the violation must be clear and enforceable.

The ... decision, which upheld the ... judgment, was the first judicial ruling in the established case law to prohibit the initiation of new first-grade classes for the second and fourth defendants as a means of eliminating the unlawful situation. However, this decision cannot be invoked analogously in the present litigation to terminate the violation.

In the so-called ... case, only one public education institution was affected, whereas in the first-instance judgment challenged by the appeal, the court issued a decision prohibiting the establishment of first-grade classes in ... public education institutions. In the so-called ... case, a previous final judgment had already established a violation of the requirement of equal treatment concerning the affected school and had obliged the defendants with the relevant powers and responsibilities to cease the unlawful situation. In the lawsuit that concluded with a judgment from the Curia, the courts had to examine whether the defendants had taken the measures within their competence or whether the unlawful segregation persisted in the school unit in question even after the final judgment was issued. In that proceeding, not only the ministry but also the administrative bodies with direct powers and responsibilities as determined by the judgment were involved as defendants. The final judgment ordered the second defendant,

which held the maintaining rights, and the fourth defendant, which had decision-making authority under the law (defendant's name), not to establish new first-grade classes. Furthermore, the first defendant, the government office, was required to determine the enrolment district boundaries for schools providing mandatory admission, while the second and third defendants were obliged to develop a desegregation action plan.

However, the challenged judgment issued an order based on the defendant's authority derived from its governance role without the participation in the proceedings of the administrative bodies directly responsible for the task under the law. It required the defendant to issue specific instructions to the administrative bodies under its supervision to eliminate the unlawful situation.

The defendants acting as administrative bodies with direct powers and responsibilities regarding the plaintiff's claim were dismissed from the case, leaving only a defendant that had indirect or no competence concerning the claims in the lawsuit.

Pursuant to Section 79 of the Act on National Public Education, the Minister responsible for education carries out certain tasks within the scope of public education through the relevant office and regional district centres.

The prohibition on initiating first-grade classes, according to public education terminology, means the prohibition of launching an academic year, which ultimately equates to the phased closure or restructuring of an institution, its site, or a school unit. In the case of institutions maintained by the affected district education centres, the Minister responsible for education can make such a decision based on the recommendation of the relevant ... and ...

Under the statutory right to make recommendations, the operative part of the first-instance judgment essentially required the defendant to instruct the competent administrative bodies to propose the restructuring of the affected public education institutions. However, this contradicts the prohibition on the withdrawal of powers.

If, in the long term, there is no intention to discontinue the educational institution, no authority exists for such a decision, as only the maintaining authority, in this case, the relevant ..., has the power to make such a determination.

Section 50(8) of the Act on National Public Education states that defining enrolment districts falls under the competence of the public education authority, meaning no directive authority exists in this regard. The competent government office determines the enrolment districts annually and, in the event of a school closure or a discontinued grade level, ensures that students are assigned to schools providing mandatory admission.

A decision on enrolment district boundaries is only made if the competent ... disagrees with the decision of the public education authority. Thus, the first-instance judgment's requirement to instruct the government office to modify the enrolment boundaries is unenforceable.

The preparation of a desegregation plan is not regulated by sectoral law. However, the drafting of an equal opportunity action plan is addressed in Section 21 of Government Decree No. 229/2012 (VIII. 28.) on the implementation of the Act on National Public Education.

Accordingly, the relevant ... has the right to monitor compliance with measures ensuring equal opportunities within the institutions it maintains. The public education authority (government office) can conduct official inspections to examine compliance with equal opportunity regulations.

The first-instance court thus required the issuance and enforcement of an order within a governance framework that has no statutory basis.

The obligation under the first-instance judgment not only lacks a legal foundation but also raises enforcement concerns, as any failure to comply would effectively mean that a central administrative body, which is part of the executive branch, would be forced to exercise its governance powers to carry out a specific task.

Sections 79(2) and (3) of the Act on National Public Education, along with Section 38(1)(a) of Government Decree No. 229/2012 (VIII. 28.) on the implementation of the Act on National Public Education, indicate that sectoral legislation contains no provisions regarding the methodology for official inspections. The rules for conducting such inspections are determined by the administrative procedural law in force at the time, and the Minister responsible for education cannot issue directives to government offices in this regard.

It is a serious violation of the law for a judgment to impose an obligation on executive bodies to conduct an official inspection based on perception. Under Sections 1(2) and 11 of the 2011 Act CLXXIX on the Rights of Nationalities, in the absence of a declaration deriving from the self-determination rights of the affected individuals, data concerning Roma nationality cannot be part of an official inspection. The contested obligation seriously infringes upon the right to self-determination regarding ethnic affiliation, which derives from human dignity, for individuals who would be subject to the future official inspections. However, the first-instance court did not conduct a constitutional review related to this issue.

The methodology prescribed in the first-instance judgment does not ensure the principles of voluntariness and self-declaration as stipulated in the law on the rights of nationalities. Furthermore, the tabulated form of records specified in the judgment severely infringes upon the right to national identity.

There is a commitment to strive for a balanced organisation of student composition, the elimination of segregation, and the promotion of equal opportunities to enhance social cohesion and educational effectiveness. However, the achievement of free school choice cannot be sacrificed.

The court cannot be vested with the authority to make decisions on school closures based solely on data while disregarding the local educational organisation context and circumstances entirely.

The first-instance court determined the attorney's fees for the plaintiff's legal representation in an amount higher than the specific legal costs indicated by the plaintiff, which was excessive. A request was made to reduce it in accordance with Section 3(6) of Decree No. 32/2003 (VIII. 22.) of the Ministry of Justice.

In its counter-appeal, the plaintiff requested the affirmation of the first-instance judgment and the defendant's liability for litigation costs.

The plaintiff argued that the first-instance court conducted a comprehensive and thorough evidentiary procedure covering all relevant issues, correctly assessed the available evidence, and drew appropriate conclusions.

The first-instance judgment took into account the most recent domestic and international judicial practice, the applicable EU and other international requirements, as well as the practices of other relevant authorities, particularly the Commissioner for Fundamental Rights and the Equal Treatment Authority. The judgment also led to a transformation of the entire public education oversight system by obligating the defendant to abandon its "colour-blind" approach and address ethnic discrimination as an actual ethnic issue, taking into consideration the perceived ethnic affiliation of students in its inspections.

The defendant, in its appeal, did not dispute the facts established by the first-instance court or the fact of unlawful segregation. The core issue in the case was not whether Roma students were segregated in the affected school, but rather who was responsible for it and what measures should or could be taken to eliminate it, assuming there was any such intention on the part of the state.

During the lengthy first-instance proceedings, the defendant failed to take effective measures regarding the affected schools. The government office inspections it eventually ordered had no consequences, meaning the defendant did not issue a single directive to eliminate segregation in any of the segregated schools.

The defendant, as the ministry responsible for overseeing the public education sector, possesses specific powers and responsibilities concerning the supervision and enforcement of lawful operations within subordinate administrative bodies. Moreover, it has a positive obligation to enforce the principle of equal treatment.

Under Section 93(4) of the previously applicable Public Education Act and Sections 77(1)-(4) of the currently applicable Act on National Public Education, the defendant has a concrete right to issue instructions to subordinate administrative bodies in the field of public education. Additionally, as an entity subject to the Equal Treatment Act, it is obliged to observe the requirement of equal treatment in establishing legal relationships, within its legal relationships, and in its procedures and actions.

The defendant had a positive, proactive anti-discrimination obligation in connection with exercising its sectoral governance authority.

The Curia interpreted the defendant's powers and responsibilities in this manner in the segregation lawsuit concerning ...

The ... Court of Appeal did not merely declare the ministry's responsibility but also imposed obligations on it regarding the cessation of the unlawful situation. There is no fundamental difference between the case concerning the ... school and the present case, as segregation persists, which the defendant does not dispute.

The defendant cannot claim to be powerless against subordinate administrative bodies that fail to comply with its instructions. Such an argument contradicts both the law and the principle of legal certainty. Therefore, the enforcement of the judgment cannot be obstructed by the fact that the obligations were not imposed directly on the bodies with immediate responsibility and competence.

The first-instance court did not violate the law by ordering the modification of an already existing methodological guide, as this guide is currently in use by the government offices and does not constitute statutory law. The defendant's argument that only the general administrative procedural code should govern the examination methods is unfounded. The general anti-discrimination obligation set out in Section 4 of the Equal Treatment Act also restricts the range of investigative methods and determines their direction and methodology.

Regarding the defendant's concerns about perception-based ethnic data collection, it was pointed out that the first-instance court correctly considered the methods and practices already applied in public administration. From a fundamental rights perspective, it is difficult to challenge the approach taken by the Commissioner for Fundamental Rights, which was also

included in the plaintiff's claim.

The defendant's appeal was partially justified.

The Budapest Court of Appeal did not fully agree with the substantive decision and legal conclusions of the first-instance court, and therefore, pursuant to Section 253(2) of the Code of Civil Procedure, partially modified the first-instance judgment.

The core argument of the defendant's appeal was a request to modify the first-instance judgment and reject the plaintiff's claim. Consequently, regardless of the fact that the defendant's appeal primarily contested the judgment's provisions concerning the elimination of the unlawful situation, the appellate court was also required to review the decision establishing the violation.

The first-instance court outlined the relevant legal provisions in the reasoning of its judgment, which need to be supplemented by noting that the assessment of the alleged violation concerning ... must be based on the provisions of the new Civil Code, as the plaintiff claimed that segregation occurred in this school from 1 September 2014 onwards.

Pursuant to Section 75(1) of the Civil Code, everyone is obliged to respect personality rights, which are protected by law. Section 76 stipulates that violations of personality rights include, in particular, breaches of the requirement of equal treatment, infringements on freedom of conscience, unlawful restrictions on personal liberty, and violations of physical integrity, health, honour, and human dignity. The wording of Section 76 in this form has been in effect since 27 January 2014, following the entry into force of the 2003 Act CXXV on Equal Treatment and the Promotion of Equal Opportunities, and the plaintiff sought to establish the violation for most of the schools from this date onwards. The new Civil Code's Sections 2:42 and 2:43 do not contain provisions that would alter the legal assessment of the case.

According to Section 8 of the Equal Treatment Act, direct discrimination occurs when a provision results in a person or group being treated less favourably due to their real or perceived nationality or affiliation with a nationality than another person or group in a comparable situation. According to Section 9, indirect discrimination is defined as a provision that appears to comply with the requirement of equal treatment but which, without constituting direct discrimination, places certain individuals or groups with the characteristics specified in Section 8 at a significantly greater disadvantage than other individuals or groups in a comparable situation.

Pursuant to Section 10(2), unlawful segregation occurs when a provision separates certain individuals or groups based on the characteristics specified in Section 8 from other individuals or groups in a comparable situation—unless expressly permitted by law.

According to Section 19(1)(a) and (b), in proceedings initiated for violations of the requirement of equal treatment, the injured party or the entity entitled to bring a public interest claim must demonstrate that the injured person or group suffered a disadvantage or, in the case of a public interest claim, that there was an imminent risk of such harm, and that at the time of the violation, the injured person or group—either in reality or as assumed by the violator—possessed one of the characteristics defined in Section 8.

Under Section 19(2)(a) and (b), once the plaintiff has made this demonstration, the burden of proof shifts to the other party to show either that the alleged circumstances did not exist or that the requirement of equal treatment was observed or was not legally required in the given legal

relationship.

According to Section 27(3)(a) and (b), in the field of education, a violation of the requirement of equal treatment particularly includes the unlawful segregation of an individual or group within an educational institution or a division, class, or group within such an institution. It also includes restricting individuals or groups to an education that does not meet the prescribed professional standards or rules, thereby failing to ensure the necessary preparation and opportunity to continue studies or take state examinations.

At the time the plaintiff filed the lawsuit, the 1993 Act LXXIX on Public Education was in force. From 1 September 2012, the 2011 Act CXC on National Public Education came into effect, with Section 1(2) codifying the fundamental principles that define the backbone of the public education system's operation. One of these fundamental principles is the requirement of equal treatment, which the defendant must observe in exercising its statutory powers.

These fundamental principles must play a decisive role in the assessment and resolution of any issue, even if they are not explicitly detailed elsewhere in the law.

The defendant, referring to the ... study, the results of the investigations it ordered for the relevant period, and the documents of the Educational Authority containing data on the proportion of Roma children in public education and their educational performance, was aware that in the primary schools specified in the lawsuit, the proportion of Roma or presumed Roma children exceeded 50%. Consequently, these children did not receive integrated education, and Roma children were overrepresented in these public education institutions.

The European Court of Human Rights, in *D.H. and Others v. the Czech Republic*, held that when examining the impact of a measure or practice, properly recorded statistical data obtained through appropriate methods and thorough investigation can provide sufficient evidence to decide the case. The court established that indirect discrimination can be proven even without statistical data. In such cases, the state bears the burden of proving that the differential treatment in effect does not actually constitute discrimination.

The available evidence in the case—including the ... study, the investigation results, and data from the Educational Authority—provides sufficient information for adjudication and adequately substantiates that segregation occurred in the schools concerned by the lawsuit.

Segregation is a state that results from an action, omission, or failure to act, regardless of intent. It does not require the segregated group to be treated less favourably, as segregation itself constitutes a disadvantage.

In this case, even the mere passive maintenance of segregation can establish a violation of the law. It is irrelevant how segregation emerged in the specific case. Within the legal relationship of public education, segregation is realised even through the preservation of spontaneously developed segregation.

The European Court of Human Rights has also pointed out in its judgments that in certain circumstances, a state's failure to take corrective action to address an existing inequality through differentiated treatment may in itself constitute a violation of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits discrimination (*Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium* (Merits), Judgment of 23 July 1968, Series A no. 6).

In the present case, the defendant was aware of the existence of segregation in the schools affected by the lawsuit. However, despite having statutory powers under the Nkt. in relation to sectoral governance and public education tasks—partly exercisable through the relevant office and regional district centre—it failed to act accordingly. It did not enforce compliance with the law through its statutory powers under the Public Education Act, nor did it ensure the integration of Roma children. By maintaining segregation—regardless of the reasons behind it—the defendant committed a legal violation.

Under the powers granted by the Public Education Act, the defendant had the opportunity to take effective and genuinely result-oriented measures to eliminate segregation and ensure integration. By failing to take such effective measures and maintaining a passive "observational" stance, it contributed to the continuation of the unlawful situation. Since the unlawful situation was demonstrably present and continues to exist, the establishment of the violation was legally justified.

Based on the existence of the violation, the plaintiff is entitled to demand the cessation of the unlawful situation under both Section 81(1)(d) of the old Civil Code and Section 2:51(1)(d) of the new Civil Code.

The appellate court concurs with the plaintiff's argument that only a specific claim and a clear, precise judicial order can lead to the cessation and rectification of the violation and, where necessary, the enforcement of the judgment.

The objective legal consequences specified in Section 81(1)(a)-(d) of the Civil Code can only be applied in accordance with the specific circumstances of each case. The Curia has emphasised in multiple similar cases that the elimination of an unlawful situation can only be ordered in an enforceable judgment if it is based on a claim that explicitly defines the manner of cessation, is realistically implementable, and can be enforced within the framework of a personality rights lawsuit. (Pfv.IV.20.068/2012/3., Pfv.IV.20.037/2011/4., Pfv.IV.21.568/2010/5.)

Thus, enforceability is ensured only if the court, based on a specific claim, issues a clear and precise ruling that compels the termination of the unlawful situation.

However, in issuing an order for the termination of the unlawful situation, it cannot be ignored that the administrative bodies under the defendant's supervision are subject to specific regulations, and the decision-making process in public education is governed by the *Act on National Public Education* (Nkt.) and its supplementary regulations. The elimination of segregation, which has developed and been maintained, can only be achieved within the framework of public law. When applying the legal consequences under Section 84(1)(d) of the Civil Code, the public law rules cited by the defendant must be considered, as overriding the jurisdictional rules and decision-making processes set out in those regulations regarding governance, territorial, and central functions could result in the unenforceability of a court ruling.

In civil litigation, therefore, no ruling may be issued that disregards the applicable public law regulations and is incapable of terminating the unlawful situation. (Pfv.IV.21.568/2010/5.)

In the case concerning the ... school, which the plaintiff has frequently referred to (... Court of Appeal ..., Curia ...), the final judgment—prohibiting the present defendant, as the fourth

defendant, and the second defendant from launching first-grade classes in the school unit from the 2017-2018 academic year, requiring the redrawing of enrolment district boundaries accordingly, and ordering the second and third defendants to prepare a desegregation action plan—was deemed enforceable because, by the time of the judicial review, the key aspects of the decision had already been implemented. No first-grade class was launched in September 2017, the enrolment district boundaries had been redrawn, and a specific desegregation plan had been prepared. However, the Curia emphasised that in all similar cases, a detailed examination of the specific circumstances is indispensable, and the legal requirements can only be met by ordering measures that are both in line with the applicable legal provisions and adapted to the local conditions.

The Budapest Court of Appeal is convinced that, in general, without a case-specific examination based on individualised criteria—even if a ruling complies with the jurisdictional and procedural rules set out in the Act on National Public Education and its related regulations—no order can be issued to terminate the unlawful situation by requiring the defendant to instruct certain schools not to launch first-grade classes, which would ultimately lead to the gradual closure of the affected primary school. For a request to prohibit the launch of first-grade classes to be an effective, proportionate, and enforceable objective sanction, a detailed, case-specific examination of the local conditions is necessary, the first step of which is the preparation of a desegregation action plan addressing the specific circumstances of the case.

Only with knowledge of and after an investigation into the local characteristics of the affected municipalities can a position be taken on whether segregation can actually be eliminated by prohibiting the launch of first-grade classes or whether successful integration can also be ensured effectively through other means and measures.

The implementation of a desegregation programme requires the involvement not only of professional decision-makers but also of political leaders. A thorough investigation of the segregation situation is necessary, as precise planning can only be ensured based on such an examination. Preparing the plan is a multi-stakeholder process that may require the involvement of an equal opportunity expert in addition to members of the administrative apparatus. Preparing teachers, segregated and non-segregated children, and parents for desegregation is also crucial. The coordination of student transfers and integration, clarification of everyday logistical issues (e.g., transportation), cost assessment, and resolution of legal matters are key factors. To avoid so-called "cold integration," achieving an appropriate level of social consensus on the necessity of the intervention is particularly important. Without these elements, desegregation and the possible closure of a school would only lead to a temporary and administrative success.

In light of this, and in the absence of a desegregation action plan, the plaintiff's request for a prohibition on launching first-grade classes is unfounded.

In this context, the Budapest Court of Appeal also found no legal basis to order the defendant to issue an instruction concerning the definition of enrolment district boundaries. The determination of new district boundaries falls within the competence of the district offices of county seats, and this is inherently linked to the order prohibiting the launch of first-grade classes, the feasibility of which likewise depends on the preparation of a desegregation action plan.



However, the first-instance court lawfully ordered the defendant to instruct the administrative bodies exercising maintaining rights over the designated schools to prepare desegregation action plans. Based on the foregoing, integration can only be successful with appropriate preparation and transition, for which the development of a desegregation plan with expert involvement is essential.

The defendant correctly argued that the term "desegregation action plan" is not recognised in sectoral legislation, and the development of an equal opportunity action plan falls within the competence of the ... Pursuant to Section 21 of Government Decree No. 229/2012 (VIII. 28.) on the Implementation of the Act on National Public Education, the ... is responsible for creating the district-level equal opportunity action plan for the provision of state public education, taking into account the local equal opportunity programme of the municipal government.

However, in the absence of explicit regulatory provisions or prohibitions, the defendant is not precluded from instructing the bodies under its supervision to prepare a desegregation action plan. In the view of the appellate court, this does not violate the principle of separation of powers and meets the requirement of enforceability, particularly if it ensures the effective implementation of measures to eliminate the established violation.

Pursuant to Section 79 of the Act on National Public Education, the Minister responsible for education performs certain tasks within the scope of public education through the relevant office and the competent ... This does not constitute a withdrawal of competence or functions, nor does it violate the principle of separation of powers if the defendant issues instructions to these bodies, particularly when this is necessary to implement measures aimed at eliminating segregation.

The enforcement of the prepared plan falls within the competence of the government office and the ..., so the defendant cannot be directly ordered to oversee the implementation of desegregation action plans or to publish the findings of such oversight.

There is no legal basis for the court to order the defendant—within the framework of eliminating the unlawful situation—to amend the guide titled “...” in accordance with the content requested in the claim.

The scope of the present legal dispute is defined by the established violation, and the objective legal consequences stipulated in Section 84(1)(d) of the Civil Code and Section 2:51(1)(d) of the new Civil Code—which pertain to the elimination of the unlawful situation—can only be applied within these boundaries.

The case required a determination of the appropriate, effective, and enforceable measures and methods for eliminating the unlawful situation in the schools affected by the claim. However, the plaintiff's requested order extends generally to all schools subject to government offices' investigative jurisdiction, establishing rules for examining unlawful segregation, as well as for assessing—based on perception—the number and proportion of students who are Roma or presumed to be Roma within schools, school buildings, and classrooms. The available data confirm the existence of segregation in the schools concerned in this case. However, modifying the content of the guide for schools and public education institutions not involved in the lawsuit exceeds the scope of a personality rights lawsuit, given its specific nature.

In summary, the appellate court concluded that the effective elimination of the unlawful situation can only be achieved through the implementation of a comprehensive programme, developed as a result of a professional examination into the necessary conditions and based on the desegregation action plans. Such an approach extends beyond the framework of the present personality rights lawsuit.

The Budapest Court of Appeal agreed with the imposition of the public interest fine.

Pursuant to Section 84(2) of the Civil Code, in the event of a violation of personality rights, if the amount of compensation awarded is disproportionate to the severity of the culpable conduct, the court may impose a fine on the violator, which can be allocated for public interest purposes.

When the injured party does not seek compensation, but the violation is unjustifiably severe, and the conduct leading to it is culpable, and when liability for damages cannot be ruled out in the event of proper legal action, the conditions for imposing a public interest fine are met in the same way as if the amount of compensation awarded were disproportionate to the culpable conduct. (BH1982.236, BH2003.150)

The evidence in the case confirmed the defendant's violation. Given the severity of the defendant's culpable conduct and the large number of Roma children affected by segregation, imposing a public interest fine was an appropriate sanction with a deterrent effect for the future. The substantial financial burden placed on the defendant's budget is intended to encourage effective measures to eliminate segregation.

However, the Budapest Court of Appeal omitted the first-instance court's provision that required the defendant to allocate this amount to the monitoring of desegregation programmes by civil organisations for a period of five years, as there is no legal basis for such an obligation concerning the allocation of the fine.

The appellate court found the appeal regarding the legal costs payable to the plaintiff to be justified.

Pursuant to Section 78(1) of the Code of Civil Procedure, the losing party is liable for the legal costs of the prevailing party, except where Sections 80-83 provide otherwise or where a specific legal provision assigns the costs to another party, independent of the case outcome.

According to Section 79(1), the court determines the amount of legal costs based on the information presented and verified by the party concerned. The court cannot award more than the amount claimed by the party. If a party has not claimed or substantiated costs, the court may determine the costs ex officio based on other available case data.

The plaintiff detailed its claim for legal costs in document No. 82, attaching a cost statement as supporting evidence.

The total amount claimed for legal costs was HUF 1,813,750 gross.

In contrast, the first-instance court ordered the defendant to pay HUF 2,500,000 + VAT (a total of HUF 3,175,000) in legal fees as litigation costs, which does not comply with the second sentence of Section 79(1) of the Code of Civil Procedure, as it significantly exceeds the amount

claimed by the party. Additionally, due to the appellate ruling, the proportion of success and failure in the first-instance proceedings shifted, with the defendant now bearing liability in an 80-20% ratio.

In view of the above, the Budapest Court of Appeal reduced the amount of first-instance legal costs payable by the defendant to the plaintiff—accepting the plaintiff’s cost statement—to HUF 1,060,000 + VAT.

The defendant’s appeal was only partially successful, and in the appellate proceedings, the success-to-failure ratio remained 80-20% against the defendant.

Based on this proportion, the defendant is also liable for the plaintiff’s appellate legal costs pursuant to Section 81(1) of the Code of Civil Procedure, which applies through Section 239.

The plaintiff’s appeal-related costs consisted of legal representation fees, which the Budapest Court of Appeal determined through an assessment based on Sections 3(2) and (5) and Section 4/A of Decree No. 32/2003 (VII. 22.) of the Ministry of Justice.

Since both the plaintiff and the defendant are exempt from court fees (pursuant to Section 5(c) and (f) of Act CXIII of 1990 (Duties Act), the unpaid appellate court fee is borne by the Hungarian State, in accordance with Section 39(3)(c) and Section 46(1) of the *Itv.*, as well as Section 14 of Decree No. 6/1986 (VI. 26.) of the Ministry of Justice.

Budapest, 14 February 2019

Zita Hercsik

Presiding Judge

Dr. Éva Kovács

Judge-Rapporteur

Dr. Péter László Fintha-Nagy

Judge

Responsible for the authenticity of the copy:  
Clerk