

**SZEGED COURT OF APPEAL**  
**No. Pf.II.20.898/2013/3**

The Szeged Court of Appeal, in the case initiated by the plaintiffs, Foundation for Disadvantaged Children, represented by attorney Dr. Lilla Farkas, as the first plaintiff, and the Jászság Roma Civil Rights Association, as the second plaintiff, against the defendants, the first defendant represented by the Balla and Kecskeméti Law Firm (legal representative: attorney Dr. Péter Balla), and the second defendant, the Zana Sándor Imre Educational and Training Public Benefit Foundation, represented by attorney Dr. Gabriella Makai, for the declaration of invalidity of a contract, based on the appeal submitted by the plaintiffs under serial number 6 against the judgment No. 16.P.20.904/2013/5, delivered by the Szolnok Regional Court on 24 September 2013, rendered the following

**J U D G M E N T :**

The appellate court does not alter the unappealed part of the first-instance judgment but modifies its appealed provisions in part by reducing the amount of first-instance litigation costs payable jointly by the first and second plaintiffs to the second defendant to HUF 25,000 (twenty-five thousand).

In all other respects, the appellate court upholds the first-instance judgment.

The recorded appellate court fee of HUF 40,000 (forty thousand) remains at the expense of the state.

No further appeal may be lodged against this judgment.

**R E A S O N I N G**

Until September 2003, in (name of the municipality), only the (name of the first primary school) operated, maintained exclusively by the first defendant municipality, in such a manner that lower-grade students were taught in the renovated central building located at (central building address), while upper-grade students attended classes at the building located at (second building address). On 18 September 2001, two private individuals and two business entities established the second defendant foundation for the purpose of providing primary education. Subsequently, the representative body of the first defendant decided, at its session held on 12 March 2002, to lease part of the school complex at (central building address) to the second defendant foundation to facilitate the operation of the foundation-maintained (name of the second primary school) and to transfer furnishings and equipment. Furthermore, the representative body authorised the mayor to conclude the lease agreement and determined the division of the (central building) school premises between the municipal and foundation schools.

On 18 March 2002, a lease agreement was concluded between the defendants, whereby the first defendant leased a 1,744.13 m<sup>2</sup> portion of the general school complex located at (municipality name, central building address), owned by it, to the second

defendant for a ten-year period commencing on 1 July 2002 for the operation of a primary school. The agreement stipulated that the rental fee of HUF 1,000,000 payable for the first two years covered utility costs (water, electricity, gas). Based on an operating licence, the second defendant commenced operation of the foundation school on 1 August 2003, where tuition fees were charged. Simultaneously, the municipal school continued to educate 1st to 3rd-grade students in the (central building) premises. The second defendant financed the foundation school's operation through support from the Hungarian State Treasury, its founders, and the first defendant, as well as other revenues.

The plaintiffs, in the framework of a public interest enforcement action, filed a personality protection lawsuit against the defendants. In their statement of claim submitted on 23 June 2007, they sought a declaration that the first defendant unlawfully segregated and discriminated against Roma students of disadvantaged and severely disadvantaged backgrounds attending primary schools in the municipality, thus violating the principle of equal treatment. They also requested that the court establish the unlawfulness of segregation concerning the full-day kindergarten. The plaintiffs sought an order compelling the first defendant to cease the infringement, refrain from further violations, gradually restore the pre-1 August 2002 situation, and pay HUF 1,000,000 as public-interest compensation. Additionally, they requested the court to declare the lease agreement concluded between the defendants null and void and to restore the original state, obliging the second defendant to tolerate this restoration. According to the plaintiffs' claim, the lease agreement, which ostensibly regulated property relations, fundamentally affected the educational equality of the affected group of children. By leasing and partitioning the school premises it maintained and withdrawing the headmaster's authority to assign students to classes, the first defendant physically segregated Roma students, who were predominantly from severely disadvantaged backgrounds, from their wealthier peers attending the foundation school within the same school building. This segregation, which started at the class level in the 2002-2003 school year and later expanded to school-wide segregation, was not based on free choice by students or their parents, as most parents of municipal school students could not afford the foundation school's tuition fees. The first defendant, by providing materially inferior educational conditions and quality in the segregated municipal school, directly discriminated against these students. The comparable status of the two schools was established by the first defendant's quasi-maintainer role in relation to the foundation school.

According to their position, the lease agreement is invalid under Section 215 (1) and (3) of the Civil Code due to the absence of the consent of the (municipality name) Roma Minority Self-Government, and additionally under Section 75 (3) and Section 200 (2) of the Civil Code for violating the personal rights of Roma and impoverished children, specifically the requirement of equal treatment.

The defendants requested the dismissal of the claim, contesting the plaintiffs' legal standing in seeking the declaration of invalidity of the contract. They argued that the two educational institutions were legally separate, that the second defendant's school was not maintained by the first defendant, and thus the two schools were not in a comparable situation, making a violation of equal treatment untenable. They stated that parents exercised their choice under the Public Education Act by enrolling their children in the given school, which accepted all applicants. They further contended that the division of the school premises and the conclusion of the lease agreement were

lawful and that this arrangement prevented students from leaving the municipality.

The first-instance court dismissed the claim. Upon appeal by the plaintiffs, the Debrecen Court of Appeal, in its judgment No. Pf.I.20.095/2010/6 of 12 October 2010, altered the contested part of the first-instance decision by reducing the litigation costs payable by the plaintiffs to the defendants to HUF 250,000 while upholding the remainder of the first-instance judgment.

The Supreme Court, acting upon the petition for review submitted by the claimants, in its partial judgment No. Pfv.IV.20.037/2011/4, dated 29 June 2011, annulled the contested provision of the final judgment—including with respect to the allocation of litigation costs and fees—partially modified the first-instance judgment, and established that the first defendant, by maintaining the state created by the contract concluded with the second defendant, as a result of which the students enrolled in (name of primary school 1) operated by the first defendant are physically segregated from the students enrolled in (name of primary school 2) operated by the second defendant within the same building, unlawfully segregates the students of its own school based on their ethnic minority status and financial situation, thereby violating the requirement of equal treatment. The court ordered the first defendant to cease the unlawful conduct and prohibited it from committing similar violations in the future. Furthermore, the first defendant was ordered to communicate in writing, within 15 days, to the Hungarian News Agency the operative parts of this partial judgment establishing the violation, obliging the first defendant to cease the unlawful conduct, and prohibiting it from committing further violations.

The first-instance judgment's provision rejecting the plaintiffs' claim to restore the pre-violation state was annulled, and the first-instance court was instructed to conduct a new procedure and issue a new decision in this regard. The Supreme Court upheld the final judgment's rejection of claims exceeding those of the plaintiffs. The plaintiffs were ordered to jointly pay HUF 120,000 in first- and second-instance legal costs and HUF 60,000 for the review procedure to the second defendant within 15 days. The review costs were determined at HUF 24,000 for the plaintiffs and HUF 60,000 for the first defendant. In its reasoning, the Supreme Court emphasised that physical segregation of students was established and that the first defendant's ownership of the (central building) premises created a comparable situation for students in both schools. As the owner, the first defendant leased part of the premises to the second defendant, resulting in an objectively unlawful state for which it was responsible. The first-instance court was tasked with clarifying how the plaintiffs sought to remedy the violation and restore the pre-violation state. The Supreme Court noted that if no solution protecting the children's interests was available, the foundation school's presence in the (central building) premises had to be terminated to restore the prior state.

During the repeated proceedings conducted by the first-instance court, the first defendant submitted an amendment to the lease agreement concluded between it and the second defendant on 26 June 2009, which extended the lease term until 30 June 2019. The amendment did not affect other provisions of the contract. As of 1 January 2013, the operation of (first primary school name) was taken over by the Klebelsberg Institution Maintenance Centre.

At its board meeting on 29 May 2013, the second defendant decided to discontinue

funding for the foundation school, leading to its closure from the 2013-2014 academic year onwards.

In their modified claim during the repeated proceedings, the plaintiffs sought a declaration that the lease agreement concluded between the defendants on 1 September 2003 and extended in 2009 violated Section 5 and Section 75 (3) of the Civil Code, rendering it null and void under Section 200 (2) as contrary to good morals. In light of the foundation school's closure, they withdrew their request for remedial measures and maintained only their request for a declaration of invalidity of the contract.

The first and second defendants sought the dismissal of the modified claim, maintaining their arguments from the original proceedings. They contended that the contract was not unlawful at the time of its conclusion, and that a violation of Section 5 of the Civil Code was conceptually impossible. They argued that an agreement enabling school operations could not contravene fundamental principles of the Civil Code or constitute an abuse of rights. They disputed the claim that the contract violated good morals, asserting that the foundation school's establishment served a beneficial purpose. The second defendant further highlighted that the lease agreement did not affect personal rights and, therefore, could not have violated Section 75 (3) of the Civil Code, nor did it infringe upon any moral norms. They emphasised that (second primary school name, foundation) ceased operations on 1 August 2013, resulting in the termination of the lease agreement. The first defendant subsequently regained control of the (central building) school premises, where (first primary school name) students are currently housed, with the building now under the use of the Klebelsberg Institution Maintenance Centre.

As a result of the repeated proceedings, the Regional Court dismissed the claim of the first and second plaintiffs and ordered them to jointly pay HUF 100,000 in litigation costs to the second defendant within 15 days, while each party bore its own additional legal costs. In its reasoning, the court highlighted that the harmful situation forming the subject of the lawsuit, namely the division of the (central building) school premises, had ceased to exist. Therefore, it examined whether the plaintiffs' claim for the invalidity of the terminated lease agreement was well-founded. The court pointed out that third parties not party to a contract can only seek its invalidation if they meet the conditions outlined in Section 123 of the Code of Civil Procedure. However, the plaintiffs failed to demonstrate any protected legal interest justifying their request to declare the expired contract null and void, thus precluding a substantive review of their claim. Consequently, the first and second plaintiffs' standing in the case was extinguished.

The plaintiffs appealed the first-instance judgment, requesting its reversal and a decision upholding their modified claim. In the alternative, they sought a court declaration ex officio that the lease agreement between the defendants was null and void. They also requested a reduction of the litigation costs imposed upon them.

The plaintiffs maintained that under Section 123 of the Code of Civil Procedure, they were entitled to file an independent declaratory action. They emphasised that the purpose of the first plaintiff foundation was to promote equal educational opportunities for disadvantaged children, including Roma students, ensuring their access to quality education by eliminating school segregation and promoting integration. The second plaintiff's legal advocacy focused on representing the interests of Roma communities

in the Jászág region. They argued that the 2003 CXXV. Equal Treatment Act allowed civil organisations to bring public interest lawsuits even in the absence of direct legal injury or personal involvement. Consequently, civil organisations established to protect the interests of a protected group were entitled to file declaratory claims in equal treatment cases and could act similarly to a public prosecutor in discrimination cases. They asserted that they represented the public interest and were thus entitled to submit a declaratory claim.

The plaintiffs further contended that Section 239/A (2) of the Civil Code was unconstitutional in so far as it did not allow persons other than a public prosecutor to request the invalidation of contracts violating the public interest. They requested that the court initiate a constitutional review to declare this provision of the Civil Code unconstitutional. They underscored that the first plaintiff's litigation sought to conduct public interest proceedings against educational institutions implementing school segregation and, subsequently, to represent affected children in compensation lawsuits. However, such claims for damages could only be pursued after the final resolution of public interest litigation and upon the establishment of the contract's invalidity due to its violation of good morals. Moreover, they argued that declaring the defendants' lease agreement null and void would have forward-looking consequences, affirming that contracts creating and maintaining segregation are inherently contrary to good morals.

In the event that the court did not accept their above arguments, the plaintiffs requested that, in addition to supplementing the established facts, the court declare the lease agreement null and void ex officio pursuant to Section 234 (1) of the Civil Code.

They argued that the first-instance court had violated their right to a fair trial and their right to have the case concluded within a reasonable time. They pointed out that they had submitted their amended claim on 27 April 2012 and subsequently requested a judgment in their submission dated 23 November 2012. Nevertheless, the first-instance court did not issue a substantive decision at that time or at the next hearing. In their view, the first defendant repeatedly and unjustifiably delayed submitting documents related to the transfer of its school management rights to the state, failed to inform the court that the foundation school had already been closed as of 21 March 2013, and the first-instance court failed to sanction these omissions with fines.

The plaintiffs also objected to the cost ruling, emphasizing that the court disregarded the fact that the protracted litigation resulted largely from the defendants' omissions and delays, as well as factors within the court's own sphere of responsibility. They argued that, given their partial success in the repeated proceedings, the litigation costs should be apportioned between the state and the defendants.

The defendants did not submit a counter-appeal.

The appeal is **unfounded**.

The first-instance court correctly established the facts, and its legal conclusions and substantive decision were also correct. Accordingly, the appellate court upheld the judgment on its proper grounds, with the following clarifications in light of the appeal.

In their modified claim, the plaintiffs sought a declaration that the lease agreement between the defendants, including its amendments, was contrary to good morals and therefore invalid. Accordingly, the first-instance court correctly first examined whether the plaintiffs were entitled to file a declaratory action and whether they had legal

standing to enforce their claim.

A lawsuit to establish the invalidity of a contract can be initiated either under Section 239/A of Act IV of 1959 (hereinafter “Civil Code”) or under the conditions set out in Section 123 of the Code of Civil Procedure.

Section 239/A (2) of the Civil Code allows not only contracting parties but also prosecutors and other persons authorized by specific legislation (e.g., organizations designated under Section 209/B (1) of the Civil Code) to file lawsuits for the invalidation of contracts. However, in the present case, the plaintiffs did not have the statutory authorization required to seek a declaration of invalidity of the contract between the defendants. Consequently, they were not entitled to bring a lawsuit on this ground. While the terms of a contract, including the rights and obligations stipulated therein, primarily concern the contracting parties, they may, in certain cases, affect the interests of third parties or the public interest. In such cases, Section 239/A (2) of the Civil Code grants the prosecutor the right to initiate legal proceedings. If the plaintiffs believed that the contract in question harmed the interests of a minority group, they could have petitioned the prosecutor's office to take action. Moreover, the plaintiffs had access to effective legal tools to fulfil their minority protection functions under the Equal Treatment and Equal Opportunities Act of 2003 (hereinafter “ETA”). In view of these considerations, the appellate court found no constitutional concerns with the fact that Section 239/A (2) of the Civil Code grants only contracting parties, prosecutors, and specifically authorized organizations the right to request a court ruling on the invalidity of a contract to which they were not parties. Therefore, the appellate court rejected the plaintiffs’ request for a constitutional review.

The first-instance court also correctly determined that the plaintiffs could not bring a claim for the invalidity of the lease agreement under Section 123 of the Code of Civil Procedure. This provision stipulates that a declaratory action can only be initiated if two conjunctive conditions are met: the necessity of legal protection and the impossibility of demanding performance. If either condition is missing, a declaratory action cannot be brought (eBDT2005. 1250). It is a fact that after the initiation of the proceedings, the lease agreement contested by the plaintiffs and the foundation school operating under it had both ceased after the initiation of proceedings, the plaintiffs could not seek performance in connection with the lease agreement, meaning that their request to restore the pre-contractual state was clearly inadmissible.

However, they were able to bring an action for annulment in order to achieve the objective they sought to achieve by declaring the lease null and void, namely to prevent and remedy the segregation of Roma children, by bringing an action for damages in a personal law action seeking a declaration of breach of the requirement of equal treatment and the application of the other legal consequences of the breach set out in the judgment. The plaintiffs have made use of this possibility, and on the basis of their original application the Supreme Court of Justice has established the infringement by its judgment no. Pfv.IV.20.037/2011/7, so the plaintiffs are not prevented from making the above decision widely public in order to achieve the preventive objective they have stated, and at the same time to provide satisfaction to the Roma community that has suffered harm.

Moreover, the other essential condition for filing a declaratory action—namely, the plaintiffs' legally protected interest in the declaration of the contract's invalidity—cannot be established. The plaintiffs' cited objectives, such as preventing the discrimination of Roma children, promoting equal opportunities, ensuring access to quality education, eliminating school segregation, fostering integration, and representing the interests of the Roma community in Jászág, do not constitute legally protected interests that would justify their claim for the declaration of invalidity of the lease agreement between the defendants. While these objectives are undoubtedly important considerations in minority protection, their realization cannot be achieved through the invalidation of an already terminated lease agreement. The Equal Treatment and Equal Opportunities Act provides appropriate legal instruments for achieving these goals under Section 20 (1), allowing advocacy organizations to bring personality rights lawsuits in cases of discrimination. If successful, such lawsuits may result in a court ruling establishing the violation, prohibiting future similar violations, and compelling the infringer to provide restitution or damages. These legal instruments enable minority protection organizations to pursue their advocacy and minority protection objectives effectively. In contrast, a lawsuit seeking the declaration of a contract's invalidity would result only in a ruling stating that the contract is void, with the reasons for its invalidity being explained solely in the judgment's reasoning. Given these considerations, the provisions of the ETA ensure effective legal remedies for entities advocating for the public interest or minority protection.

The plaintiffs, in their appeal, requested that the court declare the lease agreement null and void *ex officio*. However, procedural law does not permit such an action. Under Section 3 (2) of the Code of Civil Procedure, courts are bound by the claims submitted by the parties unless otherwise provided by law. This provision establishes the fundamental principle of litigation: courts may only adjudicate disputes based on the claims submitted by the parties and cannot act *ex officio*. This principle is not contradicted by the court's obligation under Section 234 (1) of the Civil Code to recognize the invalidity of a contract *ex officio*, as this obligation merely requires the court to dismiss a claim for enforcement if it finds that the contract is void, even if neither party has raised the issue of invalidity (1/2005. (VI.15.) PK opinion). However, even in such cases, procedural law does not allow the court to declare a contract's invalidity in the operative part of its judgment based on a claim submitted by a party lacking standing to enforce such a claim.

The plaintiffs also raised a procedural objection in their appeal, arguing that the first-instance court failed to fulfil its fundamental obligation to conclude the proceedings within a reasonable time and did not sanction the defendants for delaying the litigation. Under Section 254 of the Code of Civil Procedure, the appellate court reviews not only the first-instance judgment but also other rulings issued during the proceedings, except for those that are not subject to appeal or that may be challenged separately. However, procedural objections do not fall within this scope, meaning that the appellate court cannot examine them on the merits in an appeal. The appellate court's review is limited to determining whether the first-instance judgment was lawful. Section 114/A of the Code of Civil Procedure specifies the cases in which a complaint about procedural delays may be filed, and Section 114/B (1) requires such complaints to be submitted to the court where the alleged delay occurred. That court must rule on the complaint, and it can only be forwarded to the appellate court if it is found to be unfounded. Consequently, the plaintiffs should have raised their procedural objections during the

first-instance proceedings, as they cannot be considered in the present appeal. Furthermore, the appellate court notes that the plaintiffs repeatedly modified their claim, most recently in 2013, making it necessary to conduct proceedings regarding the amended claim. As a result, the plaintiffs' own conduct also contributed to the delay in the proceedings.

Considering the above, the appellate court found the first-instance judgment to be substantively well-founded and upheld it.

Regarding the determination of litigation costs, reference is made to the fact that the Supreme Court, in its decision, ruled on the litigation costs incurred in connection with the partial judgment under its review. Therefore, in the present case, which is also subject to appeal, and given the dismissal of the claim, only the litigation costs payable by the plaintiffs to the second defendant could be determined. The subject matter of the case concerns the declaration of invalidity of the contract, and thus, the value in dispute corresponds to the annual rental fee specified in the lease agreement among the case documents, which is HUF 500,000 (Code of Civil Procedure Section 24 (2) (c)). As the plaintiffs lost the case, the first-instance litigation costs chargeable to them, based on the value in dispute and in accordance with Section 3 (1) and (2) of Decree 32/2003 (VIII.22.) of the Ministry of Justice, amount to HUF 25,000. Under Section 78 (5) and Section 85 (2) of the Code of Civil Procedure, these costs cannot be imposed on the state or the defendant, as no omission within the court's sphere of responsibility justifying cost-bearing by the state was identified. Additionally, the plaintiffs did not specify any particular procedural action taken unreasonably by the second defendant that would justify holding the defendant liable for costs. Consequently, the appellate court, adjusting to the value in dispute, reduced the first-instance litigation costs payable by the plaintiffs and, in this regard, partially modified the first-instance judgment pursuant to Section 253 (2) of the Code of Civil Procedure, while leaving its substantive provisions unchanged.

The plaintiffs' appeal did not succeed; therefore, given their personal exemption from fees under Section 5 (1) (d) and (f) of the Act on Duties, the recorded appellate procedural fee shall be borne by the state pursuant to Section 78 (1) of the Code of Civil Procedure, Section 4 (1) of Act XCIII of 1990, and Section 14 of Decree 6/1986 (VI.26.) of the Ministry of Justice.

Szeged, 13 May 2014.

Dr. Katalin Szeghő  
Presiding Judge

Dr. Nóra Bereczkyné Lengyel  
Judge-Rapporteur

Dr. Erzsébet Zanóczné Ocskó  
Appellate Judge