Budapest Court of Appeal

Case No. 8.Pf.20.817/2021/4

The Budapest Court of Appeal, in the case initiated by the Plaintiff, represented by Dr Adél Kegye, Attorney-at-Law (Plaintiff's address), against the Defendant, represented by Buczkó Law Firm (Defendant's address, handling attorney: Dr Péter Buczkó, Attorney-at-Law), for the determination of a violation of personality rights and the application of legal consequences, upon the appeal filed by the Defendant under docket number 46 against the judgment of the Budapest-Capital Regional Court issued on 22 September 2021 under case number 27.P.20.939/2020/44, has rendered the following:

j u d g m e n t

The Budapest Court of Appeal does not alter the unappealed portion of the first-instance judgment but partially modifies the appealed provision and establishes that the Defendant, from September 2015 onwards, violated the personality right of children removed from their families solely due to their poor financial situation, specifically their right to equal treatment, by failing to provide professional methodological guidance ensuring the enforcement of the prohibition on removing children from their families solely for financial reasons.

The Defendant is obligated to issue methodological guidance within 12 months to ensure compliance with the prohibition on the removal of children from their families solely for financial reasons.

The amount of litigation costs awarded in favour of the Plaintiff at first instance is reduced to HUF 54,000 (Fifty-Four Thousand Forints). The Plaintiff's claim is otherwise dismissed.

Each party shall bear their own costs incurred in the appellate proceedings.

The unpaid appellate court fee of HUF 48,000 (Forty-Eight Thousand Forints) shall be borne by the State.

No further appeal may be lodged against this judgment.

R e a s o n i n g

[1] The Plaintiff foundation conducts domestic and international research on the integration of national minority children and provides individual legal protection to such children and their families in Hungary and other European countries in cases where the removal of children from their families may have been based on financial vulnerability or ethnic discrimination.

[2] The Defendant is a central budgetary agency that, pursuant to Section 1 (3) of Government Decree No. 331/2006 (XII. 23.) on the Performance of Guardianship Duties and Powers and the Organisation and Jurisdiction of Guardianship Authorities (the "Gyvr."), exercises legality and professional oversight functions within the sectoral administration of child protection in relation to the guardianship and child protection functions of metropolitan and county government offices.

[3] The domestic child protection system operates at two levels: basic care and specialised care. The latter provides child protection services within the framework of family and child protection centres, which include the removal of children from their families in cases where problems cannot be resolved within basic care. Removal from the family is to be applied only as a last resort.

[4] Several organisations and studies, both internationally and domestically, have examined the practice of removing children—especially national minority children—from their families in Hungary.

[5] The reports titled "[Title of Report 1]" (2007) and "[Title of Report 2]" (2011), prepared by the Plaintiff, concluded that national minority children are removed from their families at a disproportionately higher rate than their population share. This phenomenon is primarily attributed to the deep poverty of their families and, secondarily, to prejudices against national minorities.

[6] The United Nations Committee on the Rights of the Child, in its reports on Hungary (dated 27 January 2006, 14 October 2014, and 7 February 2020), urged the resolution of deficiencies in the removal of children from families due to financial hardship and national minority status. The first report expressed concern over the proportion of national minority children in institutions, the second called on the State to ensure that children are not separated from their parents due to poverty or lack of housing, and the third reiterated the need for State measures to prevent child removals based on economic circumstances. The latest report also urged the strengthening of efforts to eliminate discrimination against national minority children, including within child protection services.

[7] Based on the Plaintiff’s call for applications, the association conducted research between September 2015 and January 2016 under the title "Children in Special Care in [County Name]" with the approval of the Directorate-General for Social Affairs and Child Protection. The research utilised data sheets, partially incorporating the Defendant’s comments. The core question of the research was whether national minority children in the county were disproportionately placed into special care and whether their removal from families was primarily due to financial reasons, including extreme poverty and ethnic background, potentially leading to discriminatory treatment. The research was based on statistical and institutional data analysis, as well as documentation from the Child Protection Services, supplemented by interviews with members of the child protection alert system, child welfare services, administrative bodies, and special care professionals. The final study concluded that, over several decades, there has been a strong correlation between extreme poverty, severe deprivation, and the placement of children into special care. Children from national minority backgrounds and large families at exceptionally high risk of poverty were found to be

significantly overrepresented in the county's special care system. Approximately 80% of children removed from their families were of national minority or mixed national minority descent, a phenomenon that could not be explained solely by the proportion of the national minority population within the county or by the prevalent deep poverty in affected villages.

[8] Following an investigation initiated in 2008, the Commissioner for Fundamental Rights issued Report No. AJB-2026/2017 in December 2017, covering specific municipalities as well as [County 2, County 3, County 4, and County Name]. The report examined how children's rights, proportionality, and the principle of gradual intervention were upheld in procedures related to placement into child protection services and family separation. The Ombudsman's report stated that in 2016, 90 children in the county were referred to special care, of whom 44 children (38.63%) were placed into foster care. In 17 cases (18.88%), the referral was due to financial vulnerability, including parental homelessness, lack of income, eviction, and inadequate housing conditions. The report noted that according to data provided by the child protection services, "the reasons for referral were almost always complex, as financial and social problems often underpinned all other difficulties within the family." The report further included data from a child welfare association, which stated that in 2016, 154 recommendations for family separation were made nationwide, but in not a single case was financial vulnerability cited as the primary reason for removal. The report summarised research findings from the association, indicating that nearly one-third of children were unable to remain with their biological families primarily due to financial vulnerability. It concluded that child protection services alone could not resolve the issue and that only coordinated and continuous social policy measures could address this complex problem. In response to the findings, the Ombudsman recommended that the Defendant: Assess institutional deficiencies on a county-by-county basis and take targeted steps to increase the availability of temporary care facilities, foster parents, and family transition homes; Ensure that child welfare services provide adequate support to prevent family separation due to financial hardship; Consider establishing a professional working group to determine how financially driven child removals—in line with international standards and the principles of necessity and proportionality—could be prevented or addressed through social policy measures.

[9] On 21 September 2017, the State Audit Office (ÁSZ) issued a report titled "Audit of the Child Protection System." The report examined the regulatory functions of the Defendant (as supervisory authority), the Directorate-General for Social Affairs and Child Protection (as central provider), and a sample of municipalities regarding: compliance with regulatory obligations; the lawfulness of decision-making by child protection authorities; the implementation of measures related to child welfare and child protection services; the Defendant's coordination of child protection administration in its role as sectoral minister. The report concluded that the Defendant, as central supervisory authority, failed to establish measurable indicators and target values for monitoring the implementation of tasks outlined in national child protection strategies, making it impossible to assess progress. The report also criticised the Defendant for setting objectives without establishing corresponding performance indicators or monitoring their implementation.

[10] The Hungarian Central Statistical Office, in the "[Title of Publication]" (Vol. 11, 2014), published findings under the title "[Title of Article]", indicating that children of low-educated,

unemployed, large-family, and national minority parents were more likely to be placed into temporary child care or family transition homes compared to children from other family backgrounds.

[11] Between 2013 and 2020, the Defendant, in exercising its sectoral oversight over child protection, implemented several measures, including:

- Developing nationwide child protection supervision plans for metropolitan and county government offices' social and guardianship departments;
- Conducting nationwide inspections regarding:
    - The adequacy of children's nutrition, clothing, mental health, and medical care in child protection services (6 December 2013);
    - The provision of free school meals and textbooks for foster children and young adults in aftercare (8 December 2015);
    - The regulation and implementation of child protection guardianship (18 November 2016);
    - The spatial and material conditions of child placement, comprehensive care, outdoor activities, and artistic and sports participation (31 October 2017);
    - The quality of education, housing, and recreational rights of children in care (10 December 2017);
    - The adoption, foster care, and temporary placement procedures (25 October 2018).
- Issuing the 2021 National Supervision Plan (2 November 2020), which prioritised reviewing temporary child placements, particularly assessing compliance with children's right to live in a family environment.

In addition to supervisory plans, in 2016, the State Secretary for Social Affairs and Social Inclusion issued guidance to all county government offices' guardianship and justice departments and all family and child welfare centres regarding amendments to child protection laws, which came into effect on 1 January 2017, aimed at enhancing child safety and protection.

[12] In 2017, the Defendant issued a professional recommendation on the operation and management of the child and family welfare service's detection and reporting system, setting out regulations for identifying situations of endangerment affecting children, as well as the obligations and cooperation of members of the reporting system. Based on this recommendation, in August 2017, a protocol was issued, followed by additional protocols concerning family and child welfare services related to child protection and the processes of social family support work within these services. Also, in August 2017, the Defendant issued a methodological guide on the operation of the child protection detection and reporting system, specifically addressing the identification and prevention of child abuse. On 21 November 2017, the Defendant prepared an interim report titled "Comprehensive Supervision of the County Government Office's Authority Department, Social and Guardianship Department, and the

Municipal District Office's Employment, Family Support, and Social Security Department, Rehabilitation Services and Expert Department for 2017", which examined the activities of the child protection authorities related to monetary and in-kind benefits and special care. In 2018, the State Secretary contacted the Prime Minister's Office requesting data provision on the implementation of the recommendations made in the Ombudsman's report. In the same year, a new social further training system was introduced, along with the implementation of social support activities in kindergartens and schools. In February 2019, a professional recommendation was published for specialized service providers within the Child Protection Detection and Reporting Readiness Service.

[13] The Budapest-Capital Regional Court, in judgment No. 27.P.24.736/2017/43, partially upheld the Plaintiff's claim. However, the Budapest Court of Appeal set aside this judgment by way of an order, remanding the case for retrial and a new decision by the first-instance court.

[14] In the repeated proceedings, the Plaintiff, in its modified claim (I.), requested a declaration that since 27 January 2004, the Defendant had failed to exercise its powers under Section 9 (e)-(i) of Act XXXVIII of 1992 on Public Finances (Old Áht.), as well as Section 1 (3) of Government Decree 331/2006 (XII.23.) on the Exercise of Child Protection and Guardianship Functions and the Organisation and Jurisdiction of Guardianship Authorities (Gyvr.), in particular:

a) Despite scientific research and signals from domestic and international institutions indicating a likelihood of financial-based child removals, the Defendant failed to conduct targeted assessments or inspections within child protection institutions to determine the extent, causes, and consequences of this phenomenon.

b) Despite such indications, the Defendant failed to develop an action plan aimed at preventing and eliminating the practice of financial-based child removals.

c) The Defendant failed to develop professional guidelines or protocols for child protection professionals on how to prevent the removal of children from their families based on financial circumstances.

d) The Defendant failed to ensure financial and integrated family support measures within basic child protection services that specifically aim to keep financially vulnerable families together.

e) The Defendant failed to provide targeted tools within basic child protection services to assist professionals in addressing housing crises affecting families.

[15] According to the Plaintiff, the Defendant's omissions sustained the existing practice within its subordinate institutions, which resulted in the removal of an indeterminate number of children from their families due to their social origin, financial status, or income level, or at least created a direct risk thereof. The Defendant's actions constituted direct discrimination against the removed children based on their social origin and financial or income status in comparison to children removed for legally permitted reasons. By doing so, the Defendant violated Sections 8 (p) and (q) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act).

[16] The Plaintiff, in its second (II.) statement of claim, primarily (II. A.) sought a declaration that, despite an ostensibly neutral practice regarding affiliation, within the group of children specified in the first statement of claim, national children are removed from their families at a significantly higher rate compared to their proportion in the county's national child population than non-national children who are in a comparable situation and have been removed solely due to financial endangerment. In doing so, the Defendant engages in indirect discrimination against the removed national children based on their national affiliation, in violation of Section 9 of the Equal Treatment Act, by failing, since 27 January 2004, to exercise its professional supervisory, legality, and professional competence powers that are expressly aimed at ensuring compliance with the prohibition of discriminatory removals in the context of its child protection and guardianship responsibilities as set out in Section 93(1)(d), (f), (g), and (h) of the former Act on Public Finances, as well as Section 9(e)-(i) of the Act on Public Finances, and Section 1(3) of the Child Protection Decree, specifically:

a) Despite scientific research and reports from international human rights institutions suggesting or substantiating the overrepresentation of national children in the child protection system, the Defendant failed to conduct a survey among child protection professionals to determine the causes of this phenomenon;

b) Despite scientific research and reports from international human rights institutions suggesting or substantiating the overrepresentation of national children in the child protection system, the Defendant failed to develop a protocol for the anonymous collection of ethnic data and did not issue an order for the statistical collection of ethnic data of children in professional care.

[17] The Plaintiff's secondary (II. B.) request is substantively identical to the primary request, with the sole difference that, alternatively, the group of children in a comparable situation to the disadvantaged children is defined as county non-national children who have not been removed from their families.

[18] The Plaintiff, in its first and second statements of claim, sought the establishment of the infringement from the date of entry into force of the Equal Treatment Act, i.e., from 27 January 2004.

[19] As a further objective sanction for the infringement, the Plaintiff requested that the Defendant be ordered to cease the infringement and to eliminate it in the following manner:

a) The court shall order the Defendant to commence, within two months of the finality of the judgment, the collection of statistical data on the national affiliation of children in county child protection basic and professional care in a manner that excludes the identification of the affected individuals, based on the perceptions of child protection professionals; the Defendant shall analyse the collected data annually for five years from the finality of the judgment, particularly concerning trends in the increasing or decreasing number of national children, the possible causes thereof, and the necessary interventions; the analysis shall be shared with the Plaintiff for five years.

b) Within two months of the finality of the judgment, the Defendant shall conduct a survey in the county concerning temporary child protection services, including temporary homes

for families and children as well as substitute parent institutions; the survey shall cover the currently available and actual needs, taking into account the specific demographic, geographical, settlement structure, housing, and poverty indicators of the county, and the extent of any discrepancies; the Defendant shall share the survey results with the Plaintiff.

c) Within one month of the finality of the judgment, the Defendant shall convene a professional working group comprising civil organisations and experts to prepare a problem map outlining the known causes of removals based on national affiliation and/or financial reasons; the Defendant shall include the Plaintiff's representative in this working group; the problem map shall be made public within five months of the finality of the judgment.

d) Within six months of the finality of the judgment, the Defendant shall also assign the professional working group established under point (c) to develop professional guidelines for child protection professionals on preventing removals based on financial endangerment and/or national affiliation; the guidelines shall specify the financial circumstances that cannot serve as a basis for removing a child from their family; the Defendant shall instruct the child protection bodies under its supervision to apply the guidelines.

e) Within six months of the finality of the judgment, the Defendant shall prepare an action plan in accordance with international child rights and fundamental rights standards, based on the surveys conducted under points (a)-(d), to eliminate county removals based on national affiliation and/or financial reasons, and shall implement it within eighteen months of the finality of the judgment. The Plaintiff requested that the Defendant be ordered to publish the action plan and the report on its implementation on its website.

[20] Finally, the Plaintiff requested that the Defendant be ordered to bear the costs of the proceedings, which it determined to be HUF 802,125 based on a contract of engagement.

[21] In its amended defence, the Defendant primarily sought the dismissal of the action pursuant to Section 157(a) and Section 130(1)(b) and (g) of the Code of Civil Procedure, and on the merits, requested the full rejection of the claim and the Plaintiff's liability for costs. According to its cost statement, the Defendant calculated first-instance litigation costs in the amount of HUF 38,100.

[22] The Defendant based its request for the dismissal of the action, on the one hand, on the lack of jurisdiction of the court, arguing that the claim essentially seeks a review of the legality of proceedings concluded by final administrative decisions, which is not possible in a personality rights lawsuit. On the other hand, it argued that the Plaintiff lacks standing, contending that, according to its founding charter, the Plaintiff is a civil organisation dedicated to protecting the rights of national minorities. In the Defendant's interpretation, the Plaintiff is not entitled to initiate a personality rights lawsuit for the protection of those in poor financial circumstances, as the protection and assistance of this disadvantaged group (i.e., persons living in poverty) is not included in the foundation's objectives. Therefore, under Section 3(1)(e) and Section 20(1)(c) of the Equal Treatment Act, the Plaintiff is not entitled to assert a personality rights claim on their behalf.

[23] The Defendant raised a statute of limitations defence, asserting that the Plaintiff's claims concerning the period prior to 2012, i.e., more than five years before the submission of the

statement of claim, were time-barred. It further argued that the Plaintiff had initiated proceedings against an improper Defendant, as the lawsuit was not brought against the authority vested with the statutory duties and powers in question. The Plaintiff challenged administrative decisions concerning the removal of children from their families, which falls under the competence of the guardianship authority rather than the Defendant. Consequently, the Defendant cannot be sued due to a lack of competence. The Defendant contended that decisions of the guardianship authority could be appealed and subjected to judicial review. Thus, if a child had been removed from their family solely for financial reasons in violation of statutory prohibitions, this would be attributable to the decision-making of the guardianship authority or the court, in which the Defendant had no role. Accordingly, there was no adequate causal link between the Defendant's actions and the allegedly unlawful practice described by the Plaintiff.

[24] The Defendant further objected that the claim sought an unenforceable order, making it unsuitable for adjudication and non-compliant with Section 121(1)(c) and (e) of the Code of Civil Procedure. It also considered the Plaintiff's proposed means of eliminating the infringement problematic insofar as the court is not authorised to prescribe tasks related to the Defendant's professional activities as a public law and governmental entity.

[25] The Defendant maintained that the amended claim remained deficient, arguing that the Plaintiff had still not identified a comparable individual or group to whom the disadvantaged group it represents was subjected to less favourable treatment. Regarding the first statement of claim, the Defendant argued that the Plaintiff did not define the comparison based on a protected characteristic as set out in Section 8 of the Equal Treatment Act but rather on the disadvantage suffered in the application of the law (illegality). Consequently, the definition of the disadvantaged group and the comparable group was purely hypothetical. As for the second statement of claim, the Defendant asserted that the Plaintiff's determination of the disadvantaged group and the comparable group was logically and numerically refutable. This, according to the Defendant, follows from the Plaintiff's own assertion that children removed for financial reasons and those removed for other reasons were of nearly identical proportions of national origin, making it impossible that the affected children suffered disadvantage in child protection care due to their national origin.

[26] The Defendant argued that it had fulfilled its obligations in the exercise of its child protection-related duties and powers. It emphasised the significant development of the child protection basic service system, the expansion of temporary homes for families and children, the improvement of temporary care institutions, and the strengthening of the child endangerment detection system, all of which had significantly improved the situation of children from families under child protection supervision. Furthermore, the Defendant highlighted that the Plaintiff was attempting to use the litigation to resolve a complex societal issue that extended beyond the scope of the case and could not be addressed through the Plaintiff's legal action.

[27] The first-instance court partially upheld the claim and ruled that the Defendant had violated the right to equal treatment of county children removed solely due to poor financial circumstances since 27 January 2004 by failing to provide professional methodological

guidance on enforcing the prohibition of child removal based solely on financial reasons and by failing to conduct targeted inspections of child protection authorities' practices in this regard. It further ruled that the Defendant had violated the right to equal treatment of county children of national origin who had been removed solely due to poor financial circumstances since 27 January 2004 by failing to conduct a targeted examination of the extent and causes of the disproportionately high percentage of children of national origin removed under such circumstances. The court ordered the Defendant to cease the infringement.

The court also ordered the Defendant to examine, for five consecutive years, the number of children removed from their families in the county who, based on perception, could be considered of national origin, and to publish the results of these examinations and any measures taken based on them on its website by 31 March of the calendar year following the reporting year.

The court further ordered the Defendant to conduct a targeted inspection within twelve months regarding compliance with the prohibition of discrimination based on poor financial circumstances and national origin in county child removal cases and, within the same period, to prepare an action plan based on the findings of this inspection, with the implementation of the plan to be reviewed after eighteen months. The court also required the Defendant to publish the action plan upon the expiry of the deadline and the report on the review of its implementation within thirty days of its completion.

Beyond this, the court dismissed the remainder of the claim and ordered the Defendant to pay HUF 192,380 in litigation costs incurred by the Plaintiff. It also ruled that HUF 36,000 in court fees would be borne by the state.

[28] The first-instance court found the Defendant's request for dismissal due to lack of jurisdiction (under Section 157(1)(a) and Section 130(1)(b) of the Code of Civil Procedure) to be unfounded, reasoning that the Plaintiff's claim was based on Section 3(1)(e), Section 8, and Section 20(1)(c) of the Equal Treatment Act. As a civil and advocacy organisation, the Plaintiff's founding charter established its mandate to protect and support disadvantaged groups with protected characteristics as defined by law. The Plaintiff was therefore entitled to initiate a personality rights lawsuit on behalf of persons affected by discrimination based on a legally protected characteristic, and such lawsuits fall under the jurisdiction of the regional court pursuant to Section 23(1)(g) of the Code of Civil Procedure. The court determined that the Plaintiff had not based its claim on individual unlawful administrative decisions but rather on omissions by the Defendant that had enabled or maintained discriminatory practices in county child removal proceedings based on poverty and national origin.

[29] The court also found the Defendant's request for dismissal based on the Plaintiff's lack of standing to be unfounded. It rejected the Defendant's argument that the Plaintiff's founding charter only designated the protection of national minorities' rights as its foundation's objective, thereby precluding it from initiating proceedings on behalf of persons suffering other disadvantages, such as those in poor financial circumstances. The court, in line with the appellate court's reasoning, pointed out that under Section 20(1)(c) of the Equal Treatment Act, the Plaintiff was entitled to pursue the present public interest claim, as the

law did not impose a restriction preventing civil organisations advocating for national minorities from initiating personality rights lawsuits solely for equal treatment violations directly affecting only their represented group. Consequently, in accordance with Section 3(c) of the Equal Treatment Act, the Plaintiff had standing to file the claim.

[30] The first-instance court formally classified the Defendant's further argument—namely, that the Plaintiff initiated the lawsuit against an improper party, i.e., an entity without the statutory duties and powers in question—as a statement of defence, but substantively considered it as a ground for dismissal. The court reiterated that the subject of the lawsuit was not whether the principle of equal treatment had been violated in individual decisions but rather whether the authorities' practice, as a result of the Defendant's omissions, violated the principle of equal treatment. The court emphasised that the Defendant did not dispute that its duties and powers included defining the operational framework for social, child welfare, and data protection authorities and that it was obligated to provide methodological support to facilitate law enforcement. Since the Defendant's responsibilities included providing methodological guidance to facilitate law enforcement and supervising the legality of administrative practices, it had passive standing concerning claims based on violations of the principle of equal treatment arising from deficiencies in these responsibilities, meaning it could be sued.

[31] Turning to the Defendant's statute of limitations defence, the court, referring to Section 75(1) of Act IV of 1959 on the Civil Code (former Civil Code), explained that personality rights are of an absolute nature and that civil claims concerning objective sanctions for violations of personality rights do not lapse due to limitation.

[32] Regarding the substantive assessment of the statements of claim, the court first noted that the present case concerns a lawsuit filed by the Plaintiff, a civil organisation entitled to bring public interest claims under Section 3(1)(e) of the Equal Treatment Act, based on Sections 8(p) and (q) of the Equal Treatment Act. The court stated that, pursuant to Section 8(2) of Act CLXXVII of 2013 on the transitional and authorising provisions related to the entry into force of Act V of 2013, the provisions of the former Civil Code applied to the case. Accordingly, based on Sections 75(1), 76, and 84(1)(a), (b), and (d) of the former Civil Code, and in light of the appellate court's decision, the court found that the claim met the requirements set out in Sections 121(1)(c) and (e) of Act III of 1952 (former Code of Civil Procedure). The court clarified that the case was not about an overall evaluation of the child protection system but rather about determining whether the Defendant's conduct, as alleged by the Plaintiff, had violated the personality rights of the individuals concerned in relation to equal treatment.

[33] The first-instance court did not find merit in the Defendant's argument that the Plaintiff had merely assigned general duties and powers to the Defendant without specifying the contested conduct. The court also rejected the Defendant's argument that it had no obligation to conduct control investigations or provide methodological guidance in connection with child removals. The court determined that the Plaintiff had precisely identified, in accordance with statutory requirements and the appellate court's ruling, the specific acts and omissions of the Defendant that allegedly violated the equal treatment rights of the

individuals represented by the Plaintiff. Thus, the substantive adjudication of the claim was not hindered.

[34] The court agreed with the Plaintiff's argument that the contested conduct of the Defendant was derived from its statutory duties and powers, as detailed in the following legal provisions. Under Section 1(3) of Government Decree No. 331/2006 (XII. 23) on the performance of child protection and guardianship responsibilities and the organisation and competence of the guardianship authority, the minister responsible for child and youth protection exercises professional supervisory powers, legality, and professional competence oversight over county and capital government offices in connection with child protection and guardianship responsibilities. Pursuant to Section 2(1)(e)-(h) of Act XLIII of 2010 on central government agencies and the legal status of government members and state secretaries, the Defendant, in exercising its legality and supervisory powers, may require reports or accounts from the bodies under its control. Under Section 101(1) of Chapter XV of Act XXXI of 1997 on the Protection of Children and Guardianship Administration (CPA), the minister leading the Defendant is responsible for the sectoral supervision of child protection tasks. According to Section 101(2), the minister's sectoral responsibilities include, among others: (a) defining the professional and qualification requirements for child protection tasks, as well as the system for legality and professional oversight; (c) supervising and directing the professional activities of guardianship authorities; (g) coordinating and organising the data and information system necessary for the uniform operation of the child protection system; and (k) approving and publishing on the ministry's website methodologies for child abuse prevention, child abuse investigations, and the operation of the child protection alert system.

[35] The first-instance court found that the Plaintiff's refined claim appropriately defined both the affected group and the comparator group in accordance with Sections 8 and 9 of the Equal Treatment Act.

[36] Given the complex social nature of the issue, the first-instance court concluded that the claim was not unfounded. The fact that even the full performance of the Defendant's duties would not solve the problems of national and non-national children living in poverty did not mean that the Defendant could be relieved of its obligations. The problem of extreme poverty among children, who are disproportionately of national origin, could only be resolved through broad societal cooperation and coordinated fulfilment of state responsibilities. Accordingly, the Defendant could be held accountable for its omissions, which resulted in affected individuals experiencing discrimination based on their poor financial situation and national origin.

[37] Regarding the first statement of claim, the court disagreed with the Defendant's interpretation that the Plaintiff had not defined the disadvantage as poverty but rather as the illegality of child removal decisions. The Defendant had argued that the alleged "disadvantage" was not the result of a protected characteristic under Section 8 of the Equal Treatment Act but rather an erroneous administrative or judicial decision and that there was no final decision confirming that a child had been removed solely for financial reasons. Contrary to the Defendant's position, the court found that both groups consisted of "county

children removed from their families," meaning they shared an objectively assessable characteristic and were therefore comparable. The Plaintiff had also clearly identified the disadvantaged group as "county children removed solely for financial reasons, i.e., unlawfully." The Plaintiff further asserted that the "poor financial situation," as defined under Section 8(q) of the Equal Treatment Act, was the protected characteristic forming the basis of the alleged discrimination. Additionally, the comparator group—"county children removed lawfully for reasons other than financial circumstances"—was also defined with sufficient precision.

[38] The first-instance court, contrary to the Defendant's interpretation, found that children had been removed from their families based on their financial situation, which not only violated the principle of equal treatment but was also independently unlawful under Section 7 of the Child Protection Act, which explicitly prohibits the removal of a child from their family solely for financial reasons. The distinction between the compared groups was therefore not based on the legality of the removal but rather on its underlying reason—poverty—which constituted the protected characteristic at the core of the discrimination.

[39] The first-instance court also found that the primary (II.A.) claim under the second statement of claim properly defined both the affected group and the comparator group. Both groups consisted of "county children removed solely for financial reasons," meaning they shared an objectively assessable, comparable characteristic. The court held that the Plaintiff had precisely defined the disadvantaged group as "county children of national origin removed solely for financial reasons" and that "social origin," as defined under Section 8(p) of the Equal Treatment Act, was the protected characteristic forming the basis of the alleged discrimination.

[40] The first-instance court, agreeing with the Plaintiff, found that approximately 75% of children removed solely for financial reasons were of national origin, even though only about 34% of county children were of national origin. This meant that children of national origin were removed at a rate more than twice their population proportion. In contrast, only about 25% of the comparator group—children removed solely for financial reasons—were non-national, despite their 64% population proportion. This demonstrated that non-national children were removed for financial reasons at a rate more than twice lower than their population proportion. Thus, the fact that 75% of all children removed for non-financial reasons were also of national origin was irrelevant, as the Plaintiff had not defined either the affected or comparator group based on non-financial removals of national children.

[41] Given that the first-instance court established the validity of the primary claim (II.A.) within both the first and second statements of claim concerning the definition of the comparator group, it did not examine the alternatively submitted (II.B.) claim.

[42] The first-instance court, based on Sections 19(1) and (2) of the Equal Treatment Act, set out the facts that the Plaintiff was required to substantiate, and the Defendant was required to prove. The court emphasised that the Plaintiff bore the burden of substantiating all relevant facts in the proceedings, including the causal link between the contested conduct of the Defendant and the violation of the affected individuals' right to equal treatment. It concurred with the Defendant's position, which was based on a Supreme Court decision, that

the Plaintiff's burden of substantiation exceeded mere factual assertion but did not reach the level of full proof (Kfv.III.37.156/2021/3.). The court accepted as substantiated those facts that fell within the "possible – not excluded" interpretative scope (Pfv.IV.20.667/2019/8.). It considered substantiated the inference that, since the number of children placed into care at a specific location and time was exceptionally high and they were exclusively children of national origin living in extreme poverty, it could be reasonably concluded that their removal from their families was based on discrimination due to poverty and national origin (Pfv.IV.20.553/2019/8.).

[43] The court highlighted that the findings of the association's study titled "Children in Professional Care in the County" were based on data sheets issued during the research, interviews with child protection professionals (especially child protection guardians), and statistical analysis. Contrary to the Defendant's concerns, the court emphasised, based on witness testimony, that the draft of the data sheets had been reviewed by the Defendant's child protection department, and some of its suggestions had been incorporated. The first page of the data sheet was completed by administrative staff of the County Child Protection Service, while the second page was completed by child protection guardians. The data sheets and the data recorded during the interviews with guardians were handed over to researchers, who did not participate in completing the data sheets and did not have access to the decisions on child removals. Nevertheless, the first-instance court did not find it disputable, contrary to the Defendant's arguments, that the data recorded on the first page regarding the reasons for child removal were accurate. This was despite the testimony of the Defendant's guardianship department head, who stated that the terms recorded on the data sheets were not commonly used in guardianship practice and that multiple reasons typically justified a child's removal. Since the researchers did not have access to the guardianship authority decisions that formed the basis of the first page of the data sheets, the first-instance court concluded that the reason for care placement recorded on the first page corresponded with the official records maintained by the authorities. This supported, rather than contradicted, the Plaintiff's claim, particularly given that the Defendant's guardianship head admitted that even guardianship professionals themselves did not consider the official registration of child removal reasons to be reliable. This reflected a fundamental methodological uncertainty that was unacceptable in cases involving child removal.

[44] Based on witness testimony, the first-instance court also found that the research data sheet was developed based on standard child protection data sheets and that some of the Defendant's observations and opinions were incorporated before finalisation. Regarding the omitted questions, the court noted that the Defendant's objections were legal and data protection concerns rather than professional ones. It pointed out that both the Defendant and the Social and Child Protection Directorate, which authorised the research, had the opportunity to ensure compliance with legal requirements related to the data sheets. If they had not done so at the time, this did not render the data sheets subsequently objectionable. The court also highlighted that the Defendant's omitted observations did not concern the data on the reasons for care placement, and the Defendant had not raised objections in this regard. The court accepted the testimony of a child protection guardian as evidence that the concern raised by the Defendant—that guardians filling out the second page of the data sheets had not seen the first page—was irrelevant.

[45] The first-instance court found it problematic from a data protection perspective that the Defendant had access to basic and professional care records containing personal data of children, as this violated the principle of equality of arms. Additionally, the court emphasised that the pages of the data sheets recorded information from different time points: the first page documented data related to the child's placement into professional care, while the second page reflected the situation at the time of data collection. Based on this, the court rejected the Defendant's request for evidentiary verification, which sought to compare the content of randomly selected data sheets with guardianship decisions and to appoint a forensic expert. The court ruled that such a measure would have violated the personality rights of the affected children and would have constituted an intrusion into the freedom of scientific research, as it would not have addressed a specific expert question but rather would have involved reviewing the findings of a research study.

[46] The first-instance court found it substantiated that the children represented by the Plaintiff had suffered discrimination based on their financial status and social origin, as defined under Sections 8(p) and (q) of the Equal Treatment Act. The Plaintiff's substantiation was deemed effective based on the findings of the association's final study submitted in the underlying proceedings. The study determined that 78% of the children were of national or mixed-national origin, indicating a strong correlation between extreme poverty, severe deprivation, and placement into professional care. The overrepresentation of children of national origin in care could not be explained solely by their high population proportion within the county or by the deep poverty prevalent in the villages where they lived. The study concluded that in present-day Hungary, the vast majority of children are placed into professional care due to extreme poverty. The proportion of children of national origin in care was approximately 80%, and their situation was further exacerbated by widespread discrimination affecting all areas of life, including housing, employment, and education. The court found it proven that a significant proportion of children removed from their families in the county were placed into care solely due to financial reasons and that children of national origin were disproportionately affected. Additionally, the court deemed well-founded the Plaintiff's further references to reports by the UN Committee on the Rights of the Child between 2006 and 2020, the ombudsman's report, and the testimonies of five witnesses presented at the Plaintiff's request. These sources all corroborated that a large proportion of children were removed from their families solely for financial reasons.

[47] The first-instance court assessed the Plaintiff's burden of substantiation regarding the unlawfulness of the Defendant's contested conduct and the causal link between the Defendant's omissions and the discrimination suffered by the children represented by the Plaintiff. It found that the Plaintiff had partially succeeded in meeting this burden. The court deemed partially substantiated the Defendant's omissions, their unlawfulness, and the resulting discrimination against the children, based on the legal provisions governing the Defendant's duties and powers. These provisions established that the Defendant was responsible for supporting and supervising the lawful operation of state administrative bodies and institutions handling child protection matters, particularly guardianship authorities. Consequently, the Defendant was required to promote the uniform interpretation and application of child protection laws, including the statutory provision prohibiting child removal solely for financial reasons. The Defendant was also obliged to ensure that national

origin-based discrimination was not practised in child protection proceedings. The court emphasised that the Defendant had claimed it had no obligation to conduct inspections, targeted investigations, or provide methodological guidance on child removals. However, the Defendant had acknowledged its responsibility to define the operational framework of the social, child welfare, and child protection system—including professional child protection care—and to provide methodological support to assist law enforcement. The court rejected the Defendant's argument that issuing methodological guidance to guardianship authorities on child removals would encroach on their decision-making powers. By definition, methodological guidance pertains to general practices and legal interpretation rather than specific case decisions.

[48] The first-instance court, citing the Debrecen Court of Appeal's judgment Pf.I.20.214/2020/10, referred to judicial practice establishing that the Defendant could be held liable for omissions in exercising its oversight and professional guidance functions, which resulted in violations of equal treatment. Since the Defendant was expressly authorised by law to conduct professional inspections, establish necessary professional protocols, and oversee their implementation, it bore responsibility for its omissions in these duties, which led to breaches of equal treatment.

[49] Based on witness testimony, the first-instance court upheld the Plaintiff's first declaratory claim under points (a), (b), and (c). It found that the Defendant was aware that guardianship decisions did not explicitly cite financial reasons for child removal but that, in practice, removals were indirectly based on poverty. The Defendant should have provided methodological guidance to distinguish financial endangerment from other risk factors. The court ruled that, given the Defendant's prior issuance of a methodological guide on child abuse detection, it was both necessary and feasible to develop detailed methodological guidance on assessing risk factors in child protection cases.

[50] However, regarding points (d) and (e) of the first statement of claim, the first-instance court found the Plaintiff's claim to be unfounded. The Defendant, as a central administrative authority, has responsibilities in education, healthcare, and the social sector; therefore, an assessment of the use of budgetary resources allocated to these tasks would require a comprehensive review of the entire activities of the Defendant's ministry, which exceeds the scope of this litigation. Since the claim pertains not to basic child welfare services but to the right to equal treatment of children placed in professional care, i.e., removed from their families, the court found that the alleged omissions related to basic child welfare services could not substantiate the claim.

[51] Regarding points (a) and (b) of the second statement of claim, the first-instance court found the Plaintiff's allegations to be largely substantiated. Institutional investigations and scientific research indicated that 75-80% of children placed in county professional care were of national origin. Neither the high proportion of national population within the county (approximately 34%) nor the widespread extreme poverty affecting the majority of this population could explain the disproportionate rate of child removals. Concerning the failure to conduct the survey mentioned in point (a), the court determined that, due to its supervisory obligations, the Defendant was required to examine the high proportion of children of

national origin removed from their families for financial reasons and to oversee the relevant practices of child protection authorities, but it had failed to do so. Regarding the omission of developing a protocol for the anonymous collection of ethnic data as mentioned in point (b), the court also largely upheld the Plaintiff's claim, noting that without determining the number and proportion of national children in care, neither the magnitude of the issue nor the child protection authorities' practices in this regard could be properly assessed, nor could appropriate measures be implemented. However, the court found it unnecessary to specify retroactively the exact method (such as anonymous statistical data collection) that the Defendant should have employed to fulfil this obligation. Since ethnic data constitutes a special category of personal data under Section 3(3) of Act CXII of 2011 (Infotv.), its collection is generally prohibited. Nevertheless, an exceptional circumstance under Section 5(2)(b) applied, as data collection was essential and proportionate for implementing an international treaty obligation, specifically to enforce the prohibition of discrimination enshrined in Articles 8 and 14 of the Rome Convention, promulgated by Act XXXI of 1993. The court also cited the Debrecen Court of Appeal's judgment Pf.I.20.214/2020/10, which stated that in administrative procedures aimed at fulfilling international treaty obligations, the Defendant's ministry could only act appropriately if it knew the number and proportion of the affected children.

[52] The court also found the causal link between the Defendant's omissions and the discrimination suffered by the Plaintiff's represented group to be probable, adopting its reasoning from the first statement of claim. In summary, the court concluded that the Defendant's omissions resulted in indirect discrimination against county children of national origin who were removed from their families solely for financial reasons, as defined under Sections 8(p) and 9 of the Equal Treatment Act. While the Defendant's failure to fulfil its supervisory and professional guidance obligations ostensibly affected all children removed from their families solely for financial reasons, the children of national origin were disproportionately disadvantaged due to their social origin as a protected characteristic. Consequently, the court found that the omissions constituting the primary claim (II.A.) were established and unlawful.

[53] In a separate section of its judgment, the first-instance court evaluated the Defendant's evidence. It determined that, since the Plaintiff had substantiated the discrimination suffered by the children based on poverty and national origin and had linked this discrimination to the Defendant's omissions, the Defendant was required, under Section 19(2) of the Equal Treatment Act, to disprove these circumstances. However, the counter-evidence presented by the Defendant was unsuccessful. The court interpreted the Defendant's documentary evidence regarding inspections, procedural regulations, and professional guidelines to mean that the case did not concern a general evaluation of the Defendant's child protection activities. The evidence provided by the Defendant failed to refute the facts substantiated by the Plaintiff and merely demonstrated the Defendant's fulfilment of responsibilities outside the scope of the lawsuit. The Defendant itself acknowledged that since 2019, it had been "monitoring" guardianship activities concerning the temporary placement of children, meaning only that this issue was now included as an investigative objective in the annual national inspection plan. While this represented progress, the court noted that the Defendant had still not implemented specific measures aimed at ensuring compliance with the

prohibition of discrimination based on poverty and national origin in child removal practices. Therefore, the Defendant's omissions remained ongoing. The court found that many of the Defendant's inspections defined their objectives and key areas in broad terms, making it theoretically possible that they covered the issue in question. However, the Defendant had not referred to any relevant findings or measures resulting from such inspections.

[54] Evaluating witness testimony, the first-instance court also found the Defendant's omissions to be proven. It highlighted the testimony of child protection expert witness 6, who confirmed that there was no methodological guidance specifically addressing procedures or protocols for mitigating or addressing risk factors linked entirely or partially to financial circumstances. Witness 7 testified that children living in extreme poverty could only be removed from their families if financial hardship posed an immediate life-threatening risk. Witness 8, the head of the district office in Settlement 2, pointed out that financial problems were commonly an underlying factor in other deficiencies affecting children, such as inadequate hygiene and nutrition. The witness also noted that no methodological guidance existed to determine, for instance, whether a particular level of material deprivation constituted financial endangerment. Due to the complexity of these cases, the witness argued that methodological guidance was impractical. However, the court found this reasoning problematic, as it meant that decisions on financial endangerment were made based on personal judgment and professional experience rather than objective criteria. Additional witnesses 9 and 10 confirmed that competent professionals relied on their own perceptions and experiences to assess whether a child's endangerment was due to financial reasons. The court considered this practice unacceptable, given that guardianship decisions on child removal fundamentally affected families' lives. The court reasoned that if financial endangerment was established, children should not be removed from their families, and families should be entitled to state assistance. Conversely, if financial endangerment could not be established, authorities would be obligated to remove the child in their best interest. Given the gravity of such decisions, the court concluded that financial endangerment assessments should be based on a consistent and well-founded methodological framework. The court ultimately held that the Defendant was responsible for the deficiencies outlined in the first statement of claim, as it had the statutory authority and duty, as the sectoral supervisor of child protection, to develop a uniform methodology for identifying and assessing financial endangerment. By failing to do so, the Defendant had contributed to the unlawful practice of child protection authorities in the county, resulting in child removals based solely on financial reasons.

[55] Regarding the second statement of claim, the court highlighted witness 6's testimony, who did not consider it typical that children of national origin were overrepresented in child endangerment cases relative to their population proportion. The witness did not assess whether children in the cases they handled were of national origin and therefore had no data on this issue at either a personal or national level. Witness 7 testified that they observed positive discrimination towards children of national origin, making it unlikely that a child's removal would be based on either their national origin or solely on poverty. Witness 8 stated that it was impossible to determine whether children of national origin were overrepresented among those removed from their families. The court interpreted these testimonies collectively to conclude that child protection professionals did not exhibit discriminatory

attitudes against children of national origin but rather sought to assist them. The witnesses working under the Defendant's sectoral supervision also shared the Defendant's general position that discrimination based on national origin was not present in child protection services, including professional care.

[56] However, the court found that the witnesses' personal experiences and professional opinions were insufficient to refute the statistical evidence provided by the Plaintiff. The court also considered statistical analyses conducted by the association and findings from the UN Committee on the Rights of the Child spanning decades. Although witnesses did not personally observe discrimination against children of national origin, this did not contradict the Plaintiff's allegations at a broader level. Since recognising the problem required data collection on the extent of the issue, the failure to collect such data was attributable to the Defendant's ministry, not frontline child protection professionals.

[57] The first-instance court found the Defendant's argument, based on the Supreme Court's judgment Pfv.IV.20.533/2019/8, to be unfounded. The Defendant had argued that no serious error in legal application, omission, or misjudgment could be attributed to it that would establish its liability and, consequently, a violation of personality rights. The first-instance court determined that the cited case fundamentally differed from the present proceedings, as it concerned the assessment of a specific individual administrative decision and whether the authority involved had violated personality rights. In contrast, the present case concerns public interest litigation. The court emphasised that the Supreme Court had found, in paragraph [54] of its judgment, that in the affected locality and time period, only children of national origin living in extreme poverty had been removed from their families, which in itself indicated a likelihood of discrimination based on poverty and national origin.

[58] The first-instance court established the Defendant's unlawful omissions and, concerning the legal consequences sought, made the following determinations.

[59] Regarding the order to cease the violation, the first-instance court ruled in favour of the claim, citing the Supreme Court's judgment Pfv.IV.21.568/2010/5, which stated that such a ruling serves to guide the parties in adopting lawful conduct following a violation.

[60] Concerning the Plaintiff's request for the Defendant to be ordered to cease the violation, the first-instance court explained that the judgment could contain a non-enforceable declaratory ruling merely emphasising the obligation to cease the violation or an enforceable ruling as well. Accordingly, under Section 13 of Act LIII of 1994 on Judicial Enforcement (Vht.), the court was required to issue an enforceable order specifying not only the general obligation but also the concrete measures necessary to cease the violation. The court rejected the Plaintiff's position that the judiciary's role was to "put an end to the matter," as well as the Defendant's assertion that "in a democracy, it is absurd for the judiciary to impose obligations on executive bodies or government agencies based on a petition by a foundation."

[61] The first-instance court found the Plaintiff's request under point (a) of the claim for cessation of the violation to be largely well-founded. Based on the prohibition of discrimination on grounds of origin and the corresponding obligations under international

treaties, the court upheld the Plaintiff's request that the Defendant assess the number of affected children of national origin based on the perceptions of child protection professionals. However, the court declined to specify in its ruling the start date, details, or methodology of the data collection, as such data collection could only take place within a lawful framework, and the claim did not propose an enforceable method. The court also found no basis to extend this requirement to basic child welfare services, as the claim was limited to professional care. However, the court ordered the Defendant to publish the findings of the assessment on its website by 31 March of the year following the subject year to ensure the timeliness and transparency of its actions.

[62] The first-instance court found the claims under points (b), (c), and (d) of the request for cessation of the violation to be unfounded. It ruled that the study required under point (b) within two months exceeded the scope of the case and did not meet the requirement of enforceability. The obligation under point (c) to convene a working group was also deemed unenforceable, and the court found it impermissible to order the Defendant, in general terms, to convene civil and professional organisations based on a judgment in a civil lawsuit. Additionally, the term "problem map" lacks a commonly accepted definition in legal or general language. Since point (d) was connected to the working group described in point (c), the court also found the claim under this point to be unfounded. The court emphasised that under Section 84(1)(d) of the Civil Code, the sanction of ordering the cessation of a violation could only apply to concrete measures aimed at rectifying the unlawful omissions, falling within the Defendant's duties and powers, and meeting the requirement of enforceability.

[63] The first-instance court largely upheld the claim under point (e), in which the Plaintiff sought to compel the Defendant to develop an action plan within six months. The court set a 12-month deadline for conducting the assessment, carrying out inspections, and issuing the action plan. It stated that this ruling adhered to the principle of adjudicating claims as submitted, per Section 3(2) of the Code of Civil Procedure. However, the court rejected the Plaintiff's request that it specifically determine which assessments the Defendant should base its measures on. Regarding the proposed six-month deadline for implementing the action plan, the court found that setting a deadline for the execution of an action plan of unknown content was impossible and unrealistic, given that it concerned a complex issue persisting for decades. Thus, the court required the Defendant to review the implementation 18 months after the action plan was issued. The court supported this legal consequence by referencing the judgments of the Pécs Court of Appeal (20.004/2016/4) and the Supreme Court (20.085/2017/9), highlighting that the Pécs Court of Appeal did not define specific mandatory elements of the action plan, as such matters could only be determined based on local conditions.

[64] The court also found the Plaintiff's claim well-founded in establishing that the violation had persisted since 27 January 2004, the date the Equal Treatment Act entered into force. The court held that the Plaintiff had sufficiently substantiated, with the UN Committee on the Rights of the Child's 2006 report, the Ombudsman's report, the association's final research study, and findings from the 2007 study titled "Report Title 1," as well as witness 4's testimony, that the Defendant's omissions had existed at the time the Equal Treatment Act came into force.

[65] The first-instance court determined the proportion of success and failure in the lawsuit to be 80% in favour of the Plaintiff. Accordingly, based on the cost summary submitted under Decree 32/2003 (VIII.22.) of the Ministry of Justice and in view of the referenced but not attached engagement contract, the court awarded the Plaintiff litigation costs in the amount of HUF 250,000, instead of the HUF 802,125 originally sought. This amount included HUF 10,000 in litigation costs determined by the Budapest Court of Appeal. The court ordered the Defendant to pay 80% of this sum, amounting to HUF 200,000, while the Defendant was entitled to recover 20% of its HUF 38,100 litigation costs. Following set-off, the Plaintiff was entitled to the attorney's fee specified in the operative part of the first-instance judgment.

[66] The Defendant appealed the judgment, requesting its reversal and the complete dismissal of the claim based on Section 253(3) of the former Code of Civil Procedure. Alternatively, under Section 252(2) of the Code of Civil Procedure, the Defendant sought the annulment of the judgment and a remand to the first-instance court for new proceedings and a new decision. The Defendant submitted its litigation cost claim for both first- and second-instance proceedings under Section 3 of the Ministry of Justice Decree, including VAT.

[67] The Defendant argued that the first-instance court had violated the following legal provisions: Sections 75(1), 76, and 84(1) of Act IV of 1959 (former Civil Code); Sections 2:42(1) and (2), 2:43(c), and 2:51(1)(a), (b), and (d) of Act V of 2013 on the Civil Code (new Civil Code); Sections 8(e), (p), and (q) and 19(1) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities; Section 8(2) of Act CLXXII of 2013 on transitional and authorising provisions related to the new Civil Code; Sections 3(3) and 5(1), (2)(a), and (b) of Act CXII of 2011 on Information Self-Determination and Freedom of Information; and various provisions of government decrees and budget laws.

[68] The Defendant continued to dispute the Plaintiff's standing under Section 20(1)(c) of the Equal Treatment Act and Section 3 of its founding document. It argued that since the foundation's primary purpose was the human rights protection of national minorities, it was not entitled to represent children living in poor financial conditions generally. Therefore, under Section 130(1)(g) and Section 157(a) of the former Code of Civil Procedure, the case should have been dismissed.

[69] The Defendant maintained its jurisdictional objection, arguing that civil courts lack jurisdiction to adjudicate a claim that, in essence, seeks a review of the legality of administrative proceedings concluded by final administrative decisions. The Defendant further pointed out that the first-instance court erroneously disregarded the fact that the Plaintiff had sued the wrong party, as the lawsuit was not brought against the authority with the statutory duties and powers to decide on the removal of children from their families. The decision-making in such cases falls within the competence of guardianship authorities operating within the organisational framework of government offices.

[70] Substantively, the Defendant primarily argued that the first-instance court unjustifiably rejected its statute of limitations objection under Section 75(1) of the former Civil Code. The Defendant asserted that for the Plaintiff to establish that the alleged violation had existed since 27 January 2004, it would have been necessary to prove both the commencement of

the violation on this date and its continuous existence until the issuance of the judgment. The Defendant emphasised that under Section 19(1) of the Equal Treatment Act, the Plaintiff could only rely on probability regarding: (a) whether the affected person or group suffered a disadvantage, or—in the case of public interest litigation—faced an imminent risk thereof; and (b) whether the affected person or group had, at the time of the alleged violation, actually possessed (or was presumed to possess) a protected characteristic by the Defendant. However, general rules of evidence applied to the timing of the alleged disadvantage, and mere probability presented by the Plaintiff was insufficient in this regard.

[71] The Defendant highlighted that the study relied upon by the Plaintiff was conducted long after 2004. The association only conducted research between September 2015 and January 2016 on children in county professional care, and its final report was issued in February 2016. The UN Committee on the Rights of the Child's report on Hungary was issued on 14 October 2014, and the Ombudsman's report was published in December 2017. Therefore, the claimed decades-long correlation between extreme poverty, severe deprivation, and the placement of children in professional care was merely a general reference that did not satisfy the requirement of proving the timing of the alleged violation. The Defendant also emphasised that the documents cited by the Plaintiff were created after the new Civil Code entered into force, and the specific instances recorded therein remained unverified and unproven. Consequently, the first-instance court, on the one hand, accepted without factual basis that the Defendant had engaged in unlawful practices for decades, and, on the other hand, erroneously applied the provisions of the former Civil Code. Moreover, under Section 2:51(1) of the new Civil Code, sanctions independent of fault could only be applied within the five-year limitation period.

[72] The Defendant also argued that, at the time of the alleged violation on 27 January 2004, it did not yet exist as an entity. It objected to the fact that the first-instance court failed to examine whether the statutory provisions cited by the Plaintiff actually existed in 2004 and whether they were continuously in force. Specifically, Government Decree No. 331/2006 (XII. 23.) and Act XLIII of 2010, both relied upon by the Plaintiff, were not in force in 2004.

[73] The Defendant further challenged the Plaintiff's definition of the comparative groups. Contrary to the first-instance court's view, the groups presented by the Plaintiff as comparable were, in fact, not suitable for comparison. In the first claim, the Plaintiff defined the allegedly disadvantaged group as county children removed solely due to poverty, meaning unlawfully removed children, and identified as a comparable group county children removed for reasons not solely related to financial circumstances, meaning lawfully removed children. The Defendant argued that the Plaintiff used tautological reasoning—defining the groups in a circular manner—by comparing those who allegedly suffered harm due to unlawful decisions with those who did not suffer harm, rather than establishing truly comparable groups.

[74] The Defendant pointed out that children removed solely for financial reasons did not, in fact, exist, as there was always another basis justifying their removal. It asserted that child protection professionals who testified as witnesses in the case, according to the first-instance court's own findings, did not exhibit any discriminatory attitude against children of national

origin. The Defendant concluded that the classification used by the Plaintiff and the alleged financial discrimination could only be substantiated if certain children had been automatically removed from their families solely due to financial circumstances, without any individual assessment or administrative decision. However, child removal decisions are made through individual administrative or judicial rulings, which are subject to legal remedies. The Defendant contended that such decisions did not constitute discrimination against those whose cases resulted in a lawful decision. It also argued that the Plaintiff's classification was flawed because, according to the Plaintiff's allegations, the Defendant's omissions affected all children in professional child protection services. If any child from Nógrád County had suffered harm, it would not have been directly due to their financial status but rather because the official handling their case made an incorrect decision. Under this logic, every decision-making body could be accused of direct discrimination simply for making correct and incorrect decisions. The Defendant emphasised that, in individual cases, there was no causal link between the potential incorrectness of a decision and the financial situation of the affected child. If an erroneous decision was made, the harm resulted not from financial status but from the incorrect assessment of financial circumstances during case adjudication. The Defendant argued that the first-instance court's erroneous ruling stemmed from its failure to apply the test established by the European Court of Human Rights (ECtHR) in the Belgian linguistic cases [ECtHR, Belgian Linguistic Case No. 2 (1474/62, 1677/62, etc.), 23 July 1968]. According to the ECtHR's jurisprudence, a violation exists only if a distinction is not justified by objective and reasonable grounds, which requires consideration of the measure's purpose, effects, and the fundamental principles of democratic societies.

[75] The Defendant further stressed that, contrary to the Plaintiff's assertions, no appeal proceedings had ever revealed that a child was removed from their family solely for financial reasons. Thus, such a decision was not found unlawful. Even if such a difference in treatment existed, it was objectively justified based on the measure's purpose and effects, as well as the fundamental principles of democratic societies.

[76] Regarding the second claim, the Defendant also objected that the Plaintiff failed to establish proper comparative groups, as it compared children of national origin removed for financial reasons with non-national children removed for financial reasons, and based its discrimination claim on the higher proportion of children of national origin among county-removed children. The Defendant highlighted that, according to the Plaintiff's own data, children of national origin comprised 34.3% of the county's total child population, 78% of all removed children, and 74% of those allegedly unlawfully removed solely for financial reasons. Meanwhile, non-national children accounted for 22% of all removed children and 26% of the allegedly unlawfully removed children. From this, the Defendant concluded that children of national origin were not removed from their families in such high proportions due to financial status alone, but rather for other reasons. It argued that the correct comparative group should be all children removed from their families for any reason. If the proportion of children of national origin was already higher among all removed children than in the general county population, that would constitute a more relevant basis for comparison.

[77] The Defendant contended that the Plaintiff's argument was based on the false assumption that children who were both poor and of national origin were more likely to be removed from their families than those who were either not poor or not of national origin. However, the Plaintiff failed to even establish this likelihood. Child removals always result from a combination of factors and serious endangerment to the child. While extreme poverty may be one of those factors, no child has ever been removed solely because of national origin. The Defendant asserted that no case data supported such a claim, nor was there any evidence that poor but non-national children were removed at lower rates than their national-origin counterparts.

[78] The appellant further argued that the first-instance court erroneously deemed the Plaintiff's probability argument successful while considering the defendant's evidence unsuccessful, partly due to the misapplication of evidentiary rules and partly due to an incorrect evaluation of the evidence. The appellant asserted that the first-instance court violated procedural rules by disregarding the expert evidence proposed by the defendant. It was also objected to that the first-instance court accepted the factual findings of the Plaintiff's study as true and unquestionable without further examination, despite the defendant's objections. The appellant found the reasoning of the first-instance judgment erroneous in stating that the data sheets could not be compared with the case files containing the personal data of the children concerned and that expert evidence could not be derived from the content of the research data sheets due to the principle of academic freedom. The appellant maintained that it was possible to establish a data protection framework that would not have hindered the verification of the authenticity of the data sheets. It was also found contradictory that while the first-instance court raised concerns about data protection at this point, it still ordered the defendant to examine the number of children considered to be of a particular national origin, thereby effectively requiring the defendant to register children based on their perceived ethnicity. Furthermore, the appellant criticised the first-instance court for disregarding the testimonies of child welfare professionals, who provided the basis for the findings of the Plaintiff's study, by categorising them as subjective. However, despite emphasising this, the court still concluded that these professionals did not exhibit a discriminatory attitude.

[79] In its appeal, the defendant questioned the probative value of the data sheets and alleged contradictions with the case files. The defendant referred to documentary evidence submitted on 18 March 2019, in which it randomly selected 12 cases out of the 308 chosen by the Plaintiff and obtained the full case files related to the children's placement in specialised care. Based on this, the defendant asserted that the reasons for removal recorded in the data sheets did not correspond to the actual reasons. For instance, in the case of data sheet No. 52, the stated reason for removal was that the parent had not provided care for the child, whereas the documents revealed that the child had not had contact with the parents for ten years and did not wish to be reunited with them. In data sheet No. 354, page 1, housing problems were indicated as the reason for care placement, while on the reverse side, it was stated that the child had no chance of returning to the family because the father was in prison, the mother had abandoned the child, and the grandparent was homeless. Regarding case No. 176, the defendant highlighted that, according to the data sheet, the child was removed due to the parent's housing problems, but the case file confirmed that the father himself requested

temporary care due to the child's health condition, while the mother was serving a prison sentence. Based on these discrepancies, the defendant concluded that the researchers who compiled the study worked according to a value system outlined on page 52 of the study, which was unknown to those filling out the data sheets.

[80] The defendant further contested the validity of the first-instance judgment, arguing that during the formulation of the questionnaires, discussions took place between the litigating parties, yet the Plaintiff did not incorporate the corrections suggested by the defendant. Specifically, questions numbered 34 and 37 were omitted from the data sheets submitted in the proceedings, and the study's authors failed to provide sufficient justification for their exclusion. The defendant also objected that, based on the testimony of 11 witnesses, the first-instance court only recorded that child protection guardians did not examine the first page of the data sheets, only the second page which they completed themselves. However, the witness also stated that guardians had not been informed in advance about the categorisation of removal reasons, and thus, the referenced 47 categories were not specified.

[81] The defendant further argued that compliance or non-compliance with statutory requirements did not affect the fact that the data sheets were improperly designed and recorded. The erroneous research findings were not solely due to the omission of certain observations that directly affected the recording of removal reasons but also because the disregarded observations led to the misrepresentation of removal reasons in the data sheets. The defendant emphasised that no law was violated during the examination of the individual case files. It was also objected that the first-instance court failed to explain the criteria by which it distinguished between the findings of the experts involved in the Plaintiff's study and the subjectivity and probative value of the defendant's expert witnesses.

[82] The appeal further challenged the first-instance court's conclusion that the study supported the inference that children were removed from their families solely due to financial hardship. The appellant argued that this was a mere assumption and was not substantiated by the excerpts from the study. In fact, the court itself highlighted from the association's final study that financial hardship was not explicitly stated in the decisions but rather appeared as a background factor. This was consistent with the testimony of the defendant's witnesses, who asserted that no child was removed from their family purely due to poverty.

[83] Additionally, the defendant pointed out that the first-instance court unjustifiably disregarded the Curia's judgment No. Pfv.IV.20.553/2019, which found that there was a sufficient degree of factual similarity between cases to apply established case law. According to this case law, only exceptionally serious legal misapplications, omissions, or errors in discretion by administrative bodies could establish an infringement of the Plaintiffs' personality rights.

[84] In its appeal, the defendant also contested the first-instance court's determination of a rights violation based on the defendant's alleged omission. The defendant maintained that the Plaintiff failed to specify a concrete legal obligation that had been breached. Instead, the Plaintiff merely cited legal provisions imposing general obligations on all budgetary bodies within the state administration to ensure responsible financial management. The first-

instance court, in the defendant's view, subjectively and erroneously interpreted the general supervisory and legality control duties set forth in Section 1(3) of Government Decree No. 331/2006 (XII. 23.) (Gyvr.). The defendant contended that none of these regulatory provisions required it to conduct targeted assessments or inspections of child protection institutions based on international and domestic institutional alerts.

Furthermore, the first-instance judgment acknowledged that a child's endangerment due to financial or other reasons could not always be clearly delineated, which justified the development of methodological guidelines or protocols by the defendant. The defendant interpreted this as an implicit recognition by the first-instance court that the issue arose at the level of legislation rather than due to the defendant's alleged omission. The defendant argued that there was no causal link between its purported omission and the harm cited by the Plaintiff. It was further emphasised that no legal provision explicitly required the defendant to issue methodological guidelines or conduct targeted inspections specifically addressing the removal of children from families due to financial hardship. Such an imperative rule did not exist. The defendant did not find this assertion contradictory to its statement that, in exercising its supervisory authority, it could and should provide methodological support. However, the specific content and format of such support were within the defendant's professional discretion. The defendant underscored that the supervisory and oversight functions concerning child welfare services and specialised child protection care were carried out through the government offices. The defendant regularly issued guidelines, opinions, and informational materials to the first- and second-instance authorities, and, under Section 7(1) of Government Decree No. 66/2015 (III. 30.), it also prepared national inspection plans outlining the minimum professional requirements for inspection plans drawn up by the organisational units responsible for social, child protection, and guardianship duties within the Budapest-Capital and county government offices. Although no unified methodological guideline specifically addressing financial endangerment had been issued due to the absence of a legal obligation, the defendant asserted that it had fulfilled its duties. The defendant submitted national supervisory inspection plans for recent years, and the first-instance court unjustifiably disregarded this evidence in assessing the defendant's fulfilment of its supervisory and control obligations. The defendant maintained that supervisory and control activities could only be interpreted comprehensively and that a civil court lacked jurisdiction to qualitatively review these measures. Otherwise, a situation could arise where the central authority would be held liable for allegedly erroneous decisions of administrative bodies, and the civil court would formulate professional directives in a personality rights lawsuit.

[85] The defendant emphasised that the removal of a child from their family is a discretionary decision made by the competent authorities, based on the individual circumstances of each case. Therefore, it is impossible to establish a uniform methodological guideline, as required by the Plaintiff and the first-instance court. The defendant likened this to requiring the Curia or the National Office for the Judiciary to issue methodological guidelines on the circumstances in which a civil organisation's claims of discrimination against final judicial decisions could be upheld.

[86] Contrary to the position of the first-instance court, the defendant argued that Section 5(2)(b) of the Information Act merely provides an option for data processing and does not impose a mandatory obligation on the defendant. Moreover, the processing of special categories of personal data is not necessarily required for the implementation of the international treaty promulgated by law and would, in any case, be disproportionate.

[87] Regarding the alleged causal link, the appeal argued that beyond the assumptions based on statistical ratios, the Plaintiff failed to present any conduct or circumstances attributable to the defendant that would substantiate that children of a particular national background in the county were subjected to direct or indirect discrimination due to their financial situation, racial, or ethnic affiliation in a manner causally linked to the defendant's actions. The appeal also challenged the burden of probability imposed on the Plaintiff by the first-instance court, citing the Curia's judgment No. Kfv.III.37.156/2021/3, which states that probability does not reach the level of proof but must go beyond mere assertion. However, the first-instance court followed an earlier judicial principle, accepting as probable facts that merely fell within the "possible – not excluded" range of assessment.

[88] The defendant cited the first-instance court's own acknowledgment that the complex social issue at hand could be attributed to multiple factors beyond the defendant's alleged omission. This, in itself, substantiated the lack of causality, whether assessed under the *conditio sine qua non* theory of causation or the theory of adequate causality. Consequently, the defendant's alleged omission was not a necessary causal condition for the alleged discrimination and was not directly related to it.

[89] The appeal further argued that a uniform, generally applicable methodological guideline could not be devised, and even the first-instance court acknowledged that any potentially unfounded child protection decisions could not be attributed directly or exclusively to the defendant's actions—precisely due to the complexity of the social phenomenon and issue, as recognised by the first-instance court.

[90] Beyond the finding of a rights violation, the defendant deemed the further provisions of the judgment unlawful and unenforceable. First, it argued that any assessment of the number of children of a particular national background based on perception would require someone to record their ethnicity based on visual observation, but the judgment failed to specify how this should be done. Second, decisions regarding the removal of children from their families are made by child protection offices, whose staff do not belong to the defendant's organisational structure. The judgment's scope, therefore, does not extend to child protection offices under government offices. The defendant also objected that while its alleged omission was based on the failure to provide professional and methodological guidance, the judgment did not order it to develop such a methodology but rather to assess the number of children removed from families in the county who were deemed to belong to a particular national background and to publish both this result and its corresponding measures on its website. Thus, the first-instance court did not order the defendant to remedy the omitted activity but rather imposed an entirely different obligation. The defendant further argued that the judgment was unenforceable because it failed to designate (as it was impossible to do so) a forum capable of objectively assessing what would constitute an adequate action plan.

Regarding the review of compliance after 18 months, the defendant emphasised that even the first-instance court acknowledged in its judgment that this requirement was merely declaratory and not enforceable. However, the Code of Civil Procedure does not provide for declaratory obligations. Accordingly, the five-year obligation imposed was also unjustifiably and disproportionately long, lacking both a factual and legal basis.

[91] The defendant also highlighted that the Civil Code exhaustively enumerates the objective sanctions applicable to personality rights violations, and the legal consequences imposed by the judgment were not among them. Therefore, the first-instance judgment amounted to judicial law-making. The defendant stressed that, as a public law governmental body, it is not within the court's competence to prescribe tasks related to its professional activities or to impose content-related requirements.

[92] In its appeal, the defendant asserted that the first-instance court exceeded the scope of the claim when it stated that the proportion of children of a particular national background among those removed from their families for financial or other reasons was more than twice their proportion in the general population. The court then concluded that discrimination against these children was a general issue, not only present in cases where children were removed due to financial reasons. However, the Plaintiff had not alleged that all children removed from their families were subjected to discrimination. Furthermore, this assertion was factually unfounded, as children of a particular national background constituted 78% of those removed from their families for any reason (including lawful grounds), whereas they accounted for a lower proportion—74%—among those allegedly unlawfully removed due to financial reasons. This contradicted the first-instance court's finding of discrimination.

[93] As a procedural violation, the appeal also challenged the rejection of the request for expert evidence. The expert evidence was not intended to evaluate the research findings but merely to compare and verify the removal reasons recorded in the data sheets against the actual reasons in the case files. The defendant also deemed unlawful the omission of an examination of the individual case files concerning the children removed from their families.

[94] The defendant further objected to the determination of the ratio of success and failure in the proceedings and the allocation of litigation costs. Since the claim was initially inadmissible before it was amended, the defendant argued that even if the claim was granted in full, the Plaintiff's litigation success could not exceed 60%. Additionally, the defendant challenged the first-instance court's justification for awarding higher litigation costs than those prescribed by the Ministry of Justice regulation, arguing that the longer duration of the proceedings was attributable to the Plaintiff's defective claim. The defendant asserted that the case was not an exceptionally complex personality rights dispute requiring the application of legal provisions beyond the Civil Code and the Equal Treatment Act. Therefore, if any adjustment were to be made regarding litigation costs, it should have favoured the defendant.

[95] The Plaintiff moved for the first-instance judgment to be upheld and requested litigation costs to be determined in accordance with the referenced Ministry of Justice regulation, without VAT.

[96] The Plaintiff agreed with the assessment of the claim under the old Civil Code, which precluded the application of a limitation period to legal consequences. Based on the evidence submitted during the first-instance proceedings, the Plaintiff maintained that the violation had been ongoing since 2004. The Plaintiff reaffirmed its statements regarding the defendant's liability, citing judgments from other cases as precedents, and continued to assert that the defendant was liable for its past violations. In addition to studies and reports as objective evidence, the Plaintiff highlighted that witness testimonies suggested that professionals lacked systemic experience regarding child removals due to financial hardship. Therefore, the defendant's failure in professional oversight could be established. The Plaintiff agreed with the first-instance court's classification approach and its finding that children of a particular national background were disproportionately subjected to direct rights violations. The Plaintiff further emphasised that the defendant was capable of developing comprehensive methodological guidelines, citing the example of the methodological guide on abuse. Moreover, the complexity of the social issue did not preclude a finding of the defendant's failure.

[97] The appeal did not contest the part of the first-instance judgment dismissing the claim, and thus, this aspect was not subject to review by the second-instance court.

[98] The defendant's appeal was partially upheld.

[99] The Court of Appeal first examined the procedural objections raised by the defendant, concurring with the first-instance court for the following reasons.

[100] In response to the arguments regarding lack of jurisdiction, the present case does not constitute an administrative lawsuit under Chapter XX of the former Code of Civil Procedure, as it does not concern the judicial review of a specific administrative decision or a dispute related to the amendment or breach of an administrative contract. Consequently, pursuant to Sections 22(1) and (2) and Section 23(1)(g) subpoint (ga) of the Code of Civil Procedure, jurisdiction over the claim, which is limited to the objective sanctions for personality rights violations, falls within the competence of the regional court. The jurisdiction of the regional court is not based on subpoint (b) of the same section, given that no claim for non-pecuniary damages or compensation for grievance has been made.

[101] Regarding prematurity under Section 130(1)(f) of the Code of Civil Procedure, the Commentary references claims for condemnation, which generally can only be brought when the claim has matured. If the claim is premature, meaning it has not yet matured, the Plaintiff does not yet have the right to enforce the claim, and the statement of claim must be rejected without issuing a summons, or the proceedings must be terminated pursuant to Section 157(a). The mandatory provisions of the Code of Civil Procedure do not recognise the concept of "partial prematurity." Since the subject matter of the case concerns an omission-based rights violation persisting from a specific date, the appellate court, in its further substantive reasoning, will evaluate the Plaintiff's alleged rights violation for the period preceding the establishment of the defendant.

[102] The Budapest Court of Appeal did not concur with the defendant's position that the Plaintiff was not entitled to initiate the present lawsuit. The starting point is that no

legislation defines who is entitled to bring proceedings for a violation of the principle of equal treatment, unlike in personal status cases. Whether the Plaintiff has *locus standi* and the right to bring the claim is a substantive issue of the case. In this regard, the appellate court prefaces its relevant substantive position by stating that, according to its founding document, the Plaintiff provides legal protection and financial support for national victims of human rights abuses and represents individuals of a particular nationality before national and international courts. However, this does not imply that the Plaintiff foundation may only provide representation in cases of discrimination based on nationality where nationality is explicitly the ground for discrimination. Whether nationality is the basis for discrimination is also a substantive issue of the case. The Budapest Court of Appeal upholds its previous position expressed in ruling No. 32.Pf.20.749/2019/7-II, according to which the Plaintiff qualifies as a civil and interest-representing organisation under Section 3(1)(e) of the Equal Treatment Act. The foundation's statutory objectives include promoting social equality and integration for groups defined by a protected characteristic—nationality—and protecting human and civil rights for such groups. Furthermore, the Plaintiff's standing in the lawsuit is supported by the claim's factual basis, which, referencing the cited research findings, asserts that the affected individuals facing discrimination are poor, and within this group, a significant proportion are of a particular national background. Therefore, the appellate court maintains its previous conclusion that the disadvantage suffered by the national children represented by the Plaintiff arises from the intersection of their poverty and their national background, which are inseparable characteristics. The modified claim forming the basis of the present appellate judgment asserts that children removed from their families in the county suffered discrimination due to both their national (i.e., social) background and their financial, income-related status (i.e., poverty) compared to other children in the county who were removed from their families for legally permissible reasons unrelated to nationality or poverty. Claim II, sections A and B, differ in their comparative groups: Section II.A primarily asserts that among children removed from families due to financial endangerment, national children suffered discrimination compared to non-national children. Section II.B alternatively asserts that national children removed from their families suffered disadvantages compared to non-national children who were not removed from their families. Following the appellate court's annulment ruling, the amended claim and factual allegations continue to support the appellate court's position that the children represented by the Plaintiff are affected by both poverty and national background, and these characteristics cannot be separated based on the wording of the claim or the presented and proven facts. Their characteristics are closely interrelated. As a civil organisation under Section 20(1)(c) of the Equal Treatment Act, the Plaintiff acts in defence of the rights of national individuals and is therefore entitled to pursue claims in the public interest. The law does not impose a restriction that would limit the organisation's ability to initiate personality rights lawsuits only in cases where the violation of equal treatment directly affects the entirety of the group it represents.

[103] The appellate court also rejected the defendant's argument that the lawsuit was brought against the wrong defendant, finding no grounds for either terminating the proceedings or dismissing the claim on this basis. Under Section 130(1)(g) of the Code of Civil Procedure, lawsuits may only be initiated against persons specified by law, such as divorce proceedings,

which can only be initiated between spouses, or guardianship proceedings, where the only possible Defendant is the person subject to guardianship. However, the Equal Treatment Act does not specify which individuals or entities may be sued for claims arising from violations of equal treatment. The applicability of Section 4 of the Act, which defines its scope, is a legal question relating to the substance of the case, as is the evaluation of the allegedly wrongful conduct or omission and the assessment of the facts that must be established through probability or proof. Determining whether the defendant sued by the Plaintiff is the entity whose omission is causally linked to the alleged discrimination against the represented group is a substantive issue of the case. At this stage, the appellate court merely notes that the complexity of the social problem underlying the claim, and the fact that its resolution cannot be solely attributed to the defendant, does not exempt the defendant from fulfilling its obligations as correctly established by the first-instance court. The appellate court acknowledges the defendant's argument that it does not participate in individual proceedings concerning the removal of children from their families, does not issue decisions in such cases, does not adjudicate appeals against such decisions, and is not involved in their judicial review. However, the omission alleged in the claim does not relate to these proceedings. The further substantive findings of the appellate judgment will address this matter.

[104] The Plaintiff's amendment to the claim fully complied with Section 121(1) of the former Code of Civil Procedure and the appellate court's annulment ruling, which considered the specific nature of claims under the Equal Treatment Act. The Plaintiff clearly articulated the contested conduct, and the claim for establishing the rights violation, as well as the additional legal consequences sought, were procedurally sound and met the requirements for a specific claim. The appellate court's substantive reasoning for its decision on these further issues is set out below.

[105] The appellate court also dismissed the defendant's concerns regarding the claim exceeding its original scope. Under Section 215 of the Code of Civil Procedure, the judgment is logically confined to the operative part of the decision. Since the ruling is contained within the dispositive section of the judgment, any conclusions drawn in the reasoning do not constitute an overreach beyond the claim.

[106] The appellate court, contrary to the arguments presented in the appeal, did not find the allegations regarding the failure to provide sufficient reasoning to be well-founded. The first-instance court fully complied with its duty to provide reasoning under Section 220(1)(d) and Section 221(1) of the former Code of Civil Procedure, addressing all legal and factual matters comprehensively. The omission of expert evidence was justified in detail by the first-instance court, and without reiterating its reasoning, the appellate court fully concurs with its position.

[107] The first-instance court assessed the content and, consequently, the probative value of the data sheets with the knowledge that, based on witness testimony, it could also be determined who participated in completing the data sheets and with what knowledge of the facts. It is certain that neither the professionals who completed the first page based on the records of the Child Protection Service nor the child protection guardians who completed the second page based on the data of the Territorial Child Protection Service were familiar

with the case files of the underlying individual administrative proceedings. Instead, the professionals responsible for record-keeping, who completed the first page of the research data sheets, acted based on their own records rather than on decisions regarding placement in specialised care and the case files forming their basis. As a result, the reasons recorded for placement in specialised care were not necessarily the same as those stated in the individual decisions cited for comparison in the appeal. However, a comparison of the recorded reasons with those in the decisions revealed that they were not contradictory or mutually exclusive but rather corresponded to one another despite differences in terminology. Moreover, the data sheets submitted under file number 24.736/2017/19 contained a total of eight fields for indicating the reason for placement, and in some cases, multiple reasons were recorded. Thus, the first-instance court correctly concluded—supported by the testimony of Witness No. 8—that the simplification and summarisation of the complex and multifaceted circumstances considered in the administrative proceedings led to the designation of one or more reasons on the data sheets. The first-instance court also correctly determined that the uncertainty in the child protection records regarding the reasons for removal from the family was attributable to the defendant's omission. Additionally, the first-instance judgment provided a sound explanation for the discrepancies between the data on the first and second pages of the data sheets, noting that the first page contained data recorded at the time of placement in specialised care, whereas the second page reflected the status of the child at the time the guardians provided their statements. The issue of text interpretation is not a specialised matter but falls within the competence of the court, as it pertains to the evaluation of evidence. Consequently, the task of comparing the records, interpreting the text, assessing the evidence, and drawing appropriate factual conclusions is a judicial function that cannot be delegated to an expert. Since the defendant had access to the full case files of all affected administrative proceedings concerning placement in specialised care, there was no impediment to it conducting a comparative analysis and presenting its conclusions to the court. Given that the first-instance court based its judgment not only on the final study and data sheets but also on additional evidence, including a significant number of witness testimonies, the judgment cannot be deemed unfounded.

[108] In light of the above, the appellate court found no grounds to annul the first-instance judgment under Section 252(2) or (3) of the former Code of Civil Procedure, as it was subject to substantive review.

[109] The Budapest Court of Appeal first examined the appellate arguments concerning the starting date of the alleged rights violation, as this issue was decisive for assessing the statute of limitations, the applicable legal provisions, and the defendant's standing in the proceedings. The first-instance court held that the violation began in 2004 and was ongoing, necessitating the application of the former Civil Code, under which the personality rights claim would not be time-barred. However, the appellate court agreed with the defendant's argument in the appeal that the determination of 2004 as the starting date of the violation was not appropriate for the following reasons.

[110] It is undisputed that, under Section 19 of the Equal Treatment Act in force at the time the claim was filed, the Plaintiff bore the burden of demonstrating that the affected group suffered harm and that it possessed the protected characteristic at the time of the alleged

violation. In contrast, the defendant's burden of exculpatory evidence depended on the Plaintiff's ability to establish a prima facie case. Contrary to the first-instance court's finding, the appellate court determined that the Plaintiff had not provided sufficient evidence to support the probability that the alleged harm had persisted since 2004. The defendant correctly pointed out that the documents forming the basis of the Plaintiff's allegations were created much later.

[111] The association's final study's conclusion—that over several decades, there had been a close link between extreme poverty, severe deprivation, and children's placement in specialised care—along with the 2006 UN report on the overrepresentation of national and large-family children in county specialised care, was insufficient to establish the defendant's liability in the specific matter before the court. The relevant question in the case was whether, due to the defendant's omissions, the children represented by the Plaintiff—who were removed from their families solely due to financial hardship—suffered a violation of their right to equal treatment. The earliest available data directly related to this issue came from the association's research conducted between September 2015 and January 2016. Therefore, the appellate court determined that the earliest possible starting date for the alleged violation was September 2015.

[112] Given this starting date, the applicable law was not the former Civil Code but Act V of 2013 (the new Civil Code), which has been in force since 15 March 2014 and treats personality rights claims as subject to limitation. However, by September 2015, the other laws applied by the first-instance court—including the Child Protection Act and the relevant government decree—were already in effect, meaning the first-instance judgment's legal foundation was sound. Since the statement of claim was filed on 20 December 2017, and considering the determined start date of the alleged violation (2015), the statute of limitations does not apply. The defendant's standing in the case is also beyond doubt, as the Ministry of Education and Culture, the Ministry of Health, the Ministry of Social and Family Affairs, and the sports policy division of the Ministry of Local Government were merged into a single entity in 2010.

[113] Based on the above, the appellate court must conduct its review under the provisions of the new Civil Code, which, in substance, are largely identical to those of the former Civil Code. The relevant provisions are Section 2:43(c) and Section 2:51(1) of the Civil Code. Thus, the partial modification of the first-instance judgment is not due to the application of the new Civil Code but rather to the appellate court's differing factual conclusions. The first-instance court correctly established the facts, accurately applied legal provisions beyond the designation of the applicable Civil Code, and provided thorough reasoning for its decision, although the appellate court diverged from its conclusions as outlined below.

[114] In its annulment ruling, the appellate court, referencing Section 8 of the Equal Treatment Act, instructed the Plaintiff to specify the comparative group against which the group it represents experienced less favourable treatment based on a particular characteristic. In the repeated proceedings, the first-instance court correctly found that the Plaintiff had adequately identified the comparable groups in each claim without tautology. In Claim I, the distinction was not based solely on the unlawfulness of administrative decisions but on

poverty as a reason for removal. In Claim II.A, among children removed for financial reasons, the Plaintiff alleged discrimination against national-origin children compared to non-national children. In Claim II.B, the alleged disadvantage concerned national-origin children removed from their families due to financial reasons, in comparison to non-national children who had not been removed.

[115] The Court of Appeal also concurred with the first-instance court's reference to a hypothetical comparative situation, citing the Curia's summary opinion. On page 52 of the opinion, the Curia expressed the view that *"in cases of direct or indirect discrimination, as indicated by the wording 'would receive' in Section 8 of the Equal Treatment Act, the factual basis may still exist even in the absence of an actual comparator group, provided that, hypothetically, the complainant would have been disadvantaged in comparison to such a group (i.e., a hypothetically comparable person or group)."* The Curia further noted that the Equal Treatment Act does not explicitly require the identification of a comparator group or person among the facts to be established through probability. Consequently, such identification is only expected from the Plaintiff if, given the nature of the alleged harm, it would be impossible to establish probability without a comparator group. Thus, discrimination may be determined even without specifying an actual comparative group. Accordingly, contrary to the arguments in the appeal, it cannot be stated that there are no children who have been removed from their families solely for financial reasons. As the appeal correctly noted, other circumstances may also justify removal (e.g., abuse, neglect). However, in assessing financial hardship or its consequences as grounds for removal (such as unemployment, malnutrition, neglect, housing problems, or deteriorating health), professionals can only rely on the individual assessment of each case. Therefore, as highlighted in the cited testimony of Witness No. 3, the prohibition of removal solely on financial grounds presents significant practical challenges for professionals due to the defendant's omission.

[116] The first-instance court correctly found it probable, based on the submitted documents, that the persons represented by the Plaintiff possessed a protected characteristic under Section 8(q) of the Equal Treatment Act, namely financial status (i.e., poverty), and that they suffered harm as a result, which was causally linked to the defendant's conduct. While the complexity of the issue means that discrimination cannot be attributed exclusively to the defendant's omission, under the doctrine of adequate causality, the evidence—including witness testimonies—demonstrates that professional uncertainty arose due to the lack of methodological guidance. The consequences of this are reflected in the findings of the reports titled *"Report Title 1"* and *"Report Title 2"*, which indicate that, in addition to national origin, extreme poverty is a primary reason for placement in specialised care. This causal link is further supported by the results of the association's research referenced in the first-instance judgment, the reports of the UN Committee on the Rights of the Child from 2014 and 2020, and the findings of the Ombudsman's report. In this respect, the reasoning behind the first-instance court's decision to disregard a comparison between individual administrative case files and research data sheets is irrelevant, as the appellate court has already provided detailed reasoning in response to the appeal's objections concerning the omission of evidence. Similarly, the defendant's claims regarding alleged deficiencies in the data sheets are immaterial. Firstly, the defendant's argument does not justify excluding the

data sheets as evidence or render them unsuitable for proof. Secondly, the defendant's argument falls outside the scope of its evidentiary burden under the Equal Treatment Act. The absence of an examination into the questions the defendant considers relevant does not affect the findings, as the research was conducted with the approval of the Directorate-General for Social and Child Protection, but it was not undertaken on behalf of or as a substitute for the defendant's duties. The research was independent of the defendant's activities, making its agreement or disagreement with the findings irrelevant. The defendant remains free to obtain any data necessary for fulfilling its duties independently of research conducted by other organisations.

[117] Contrary to the arguments in the appeal, the first-instance judgment correctly identified the legal provisions imposing obligations on the defendant and rightly concluded that the defendant failed to fulfil them. The Court of Appeal emphasises that, under Section 101(1) of Act XXXI of 1997 on Child Protection and Guardianship Administration (*CPA*), the defendant, as the responsible minister, is charged with sectoral management of child protection tasks. According to Section 101(2)(a), the defendant is responsible for defining the professional and qualification requirements for child protection tasks and the framework for their legal and professional supervision. Furthermore, under Section 101(2)(c), the defendant oversees and manages the professional supervision of guardianship authorities. As noted earlier, the evidence—particularly the testimony of Witness No. 3 and other witnesses, as well as the findings of the Ombudsman's investigation—demonstrates that the difficulties in determining financial endangerment in child protection practices stem primarily from challenges in interpreting legal provisions. The concept of financial endangerment is not sufficiently precise and allows for subjective interpretation, despite prior warnings to the defendant about these concerns. Accordingly, the appellate court rejects the defendant's argument that the Plaintiff's classification of affected groups was flawed on the basis that the defendant's omission did not impact all children placed in child protection care. The appellate court emphasises that the issue at hand concerns removal from the family due to poverty, meaning the alleged unlawfulness relates not to the judicial review of administrative decisions but to a violation of the prohibition of discrimination. Under the principle of adherence to claims, the assessment of the defendant's omission is based on its unlawfulness in relation to this issue.

[118] Based on the above, the Budapest-Capital Regional Court correctly determined that, under the statutory provisions, the defendant, as the authority responsible for sectoral management, should have developed professional guidelines and methodological support to address the practice of removing children solely due to financial hardship. Although the law does not explicitly list the specific activities that constitute sectoral management, including defining the framework for legal and professional supervision of child protection tasks or overseeing guardianship authorities, the defendant—while denying the existence of such regulatory obligations—submitted numerous pieces of evidence to demonstrate compliance with its duties. This confirms that providing professional methodological guidance falls within the defendant's statutory obligations. This obligation was also fulfilled in August 2017 when the defendant issued a methodological guide on *"Sector-Neutral Unified Principles and Methodology for Identifying and Addressing Child Abuse within the Child Protection Notification and Signalling System"* (third revised edition). Consequently, the

first-instance court correctly concluded that the defendant was equally obliged to prepare a similar methodological guide in the present case to eliminate or mitigate discrimination.

[119] The Court of Appeal agrees with the first-instance court's finding that, while progress has been made in recognising the need to examine the administrative practice of temporary placement, there is still no methodological guide specifically assisting child protection authorities in enforcing the prohibition of discrimination based on financial status and national origin. The monitoring plans referenced in the first-instance judgment, as well as the professional recommendations, protocols, and monitoring plans developed in 2017, do not serve this purpose. Furthermore, no subsequent measures have been taken by the defendant to directly address the specific discrimination at issue in this case.

[120] Contrary to the arguments in the appeal, the court's assessment focused on the unlawfulness of the defendant's conduct rather than the accuracy of the group classification. The appellate court found that, contrary to the first-instance court's position, the relevant statutory provisions do not impose an obligation on the defendant to conduct a targeted examination, nor can such an obligation be inferred logically. This conclusion is supported by the legal provisions cited and the defendant's measures taken between 2013 and 2020. Consequently, this finding led to the rejection of the first-instance judgment's partial ruling in favour of Claim II.A. Furthermore, in defining the Plaintiff's group under Claim II.A., the appellate court considered the lack of evidence for discrimination based on national origin. Witness testimonies, as the defendant correctly pointed out in the appeal, indicated that the affected children were not subjected to discrimination on the basis of national origin. Therefore, the appellate court found no basis for establishing a violation or imposing further objective legal consequences concerning the lack of targeted monitoring specific to national children.

[121] In addition to the declaratory claim under Claim I, which was found to be partially well-founded, the Court of Appeal omitted the provision under Section 2:51(1)(b) of the new Civil Code requiring the cessation of the violation. This was because the legal consequence under Section 2:51(1)(d) sufficiently defined both the content and purpose of the remedy and provided a detailed specification of the conduct required for the cessation and elimination of the unlawful omission.

[122] As a legal consequence of the established violation, pursuant to Section 217(2) of the former Code of Civil Procedure, the Court of Appeal ordered the defendant to rectify the harmful situation within a 12-month period. This deadline was justified in light of the nature of the obligation and the time required to prepare a substantiated and well-developed professional methodological report. The Court of Appeal found no grounds to grant further requests for the cessation of the violation, as these were either linked to rejected claims, exceeded the scope of the violation established by the first-instance court, or fell outside the range of enforceable civil law claims.

[123] Since the version of Section 101 of the Child Protection Act (CPA) in force at the time the violation began did not impose any obligation beyond the preparation of a professional methodological guide, and discrimination based on national or other ethnically unspecified origins was not proven, the Court of Appeal modified the first-instance judgment and

dismissed the claims regarding a five-year monitoring process, the publication of its results, the implementation of targeted inspections, the development of an action plan, and its publication on the defendant's website. The defendant's own supervisory obligations could not be inferred from the cited provisions of the CPA. Under Section 101(1)(a), the defendant is only responsible for determining the supervisory framework, and under Section 101(1)(d), it may instruct the probation service to conduct inspections.

[124] The issuance of a methodological guide and the determination of its content align with the established violation and serve to rectify the harmful situation strictly within the framework of the defendant's obligations. This does not constitute judicial law-making, as argued in the appeal, since the imposed legal consequence is in line with Section 2:51(1)(d) of the Civil Code. The Budapest Court of Appeal found no issue with requiring the defendant, as a sanction for the personality rights violation, to fulfil its duties within its professional domain.

Similar to the desegregation action plan mandated by the Pécs Court of Appeal in judgment No. Pf.III.20.004/2016/4, it would be both impossible and unnecessary to provide a detailed judicial directive on the content of the methodological guide within the judgment's operative part. The Curia's judgment (Pfv.IV.20.085/2017/9), which upheld that ruling, did not share concerns regarding its enforceability. Consequently, the Court of Appeal found no grounds to amend the relevant provision of the first-instance judgment.

The Budapest Court of Appeal endorsed the reasoning of the Pécs Court of Appeal, which held that judicial decisions are confined to legal questions, while the fulfilment of the judgment's operative provisions is the defendant's obligation and responsibility. It also considered the Curia's ruling in Pfv.IV.21.568/2010/5, which established that enforceability is ensured only when the court compels compliance with a specific, clear directive based on a concrete claim. In the present case, further specification of the defendant's conduct would not be warranted.

[125] Regarding the decisions cited in the appeal, the Court of Appeal notes the following: The Curia's judgment No. Pfv.IV.21.274/2016/4 was based on a factual background where the defendant's omission resulted in harassment of the group represented by the Plaintiff. Therefore, in that case, defining a comparative group was unnecessary. Similarly, in the judgment of the Budapest Court of Appeal No. Pf.21.062/2019/9, the Plaintiff did not suffer discrimination merely because others gained an unlawful advantage while the Plaintiff did not benefit from it. Consequently, these decisions are not relevant to the present legal issue.

The Court of Appeal also disregarded the reference to the Curia's judgment No. Pfv.IV.20.068/2012/3, as its factual background concerned direct discrimination rather than a regulatory omission.

[126] Based on the above, the Court of Appeal partially modified the first-instance judgment pursuant to Sections 253(1)-(2) of the former Code of Civil Procedure. As a result, the proportion of success and failure in the litigation, as determined in the first-instance proceedings, was also adjusted.

While the first-instance court had found that the Plaintiff prevailed in the case at an 80-20% ratio in its favour, the claim was ultimately upheld to a lesser extent than initially determined. A more appropriate starting point would have been an equal 50-50% split. However, given the partially well-founded nature of the defendant's appeal, this ratio was modified in favour of the defendant to 30-70%.

Since the first-instance court correctly determined the Plaintiff's entitlement to legal costs for attorney's fees under Section 3(2)(a) of Ministry of Justice Decree No. 32/2003 (VIII.22.), and also correctly calculated an increased amount pursuant to Section 3(6), the Court of Appeal followed the same approach. Even in the event of complete success, the Plaintiff would have been entitled to no more than HUF 250,000. However, under Section 81(1) of the former Code of Civil Procedure, the defendant is only required to pay 30% of this amount, or HUF 75,000, to the Plaintiff.

Conversely, the defendant is entitled to 70% of the HUF 30,000 awarded under the same decree, amounting to HUF 21,000. The final litigation cost allocation, as determined by the Court of Appeal, reflects these offsets.

[127] The defendant's appeal was approximately 50% successful. Since no advance payment of costs was required in the appellate proceedings, each party shall bear its own appellate costs pursuant to Section 81(1) of the Code of Civil Procedure.

[128] The Plaintiff is granted full personal exemption from court fees under Section 5(f) of Act XCIII of 1990, while the defendant is granted the same under Section 5(c). Accordingly, the state shall bear the court fees for both instances pursuant to Sections 39(3)(b)-(c), 42(1)(a), and 46(1) of the Act XCIII of 1990.

Budamegye 2, 22 March 2022

Dr Terézia Lesenyei, Presiding Judge

Dr Margarita Karaszi, Judge-Rapporteur

Dr Tímea Mózsik, Judge