SZEGED COURT OF APPEAL
Case No. Pf.III.20.627/2008/3

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Szeged Court of Appeal, in the second-instance proceedings initiated upon the appeal lodged under serial number 22 by the first claimant (name, address), represented by Dr Lilla Farkas, attorney-at-law, the second claimant (name, address), represented by Dr Lilla Farkas, attorney-at-law, and the third claimant (name, address), represented by Dr Lilla Farkas, attorney-at-law, against the first defendant (name, address), represented by Dr Marianna Pelsőczi Kovács Spádáné, attorney-at-law, and the second defendant (name, address), represented by Dr Marianna Pelsőczi Kovács Spádáné, attorney-at-law, challenging the judgment No. 12.P.20.392/2008/21 of the Bács-Kiskun County Court, rendered on 31 October 2008, has issued the following

JUDGMENT:

The court upholds the first-instance judgment with the clarification that the amount of the unpaid procedural fee remaining at the expense of the state is correctly determined as HUF 360,000 (Three Hundred Sixty Thousand Forints).

The claimants are ordered to pay HUF 10,000 (Ten Thousand Forints) each to the first and second defendants within 15 days as second-instance litigation costs.

No appeal shall lie against this judgment.

REASONING:

The first defendant is an educational institution providing education for children with special needs, operating under supervision and in accordance with the pedagogical programme adopted by the local municipality's representative body. The first to third claimants attended this institution for several years. The first claimant was enrolled at the institution upon the request of their guardian and upon the recommendation of the second defendant's expert committee. The second and third claimants were also enrolled upon similar recommendations from their previous educational institutions and, in the case of the third claimant, at the request of their parent.

The first claimant currently attends the eighth grade at the first defendant's school, the second claimant is in the third grade at Secondary School 1 in [City 1], and the third claimant has been attending the preparatory year for vocational training at Secondary School 2 in [City 1] since autumn 2007, where they were admitted without an entrance exam under an integrated educational framework but are required to repeat the academic year.

The first claimant underwent their initial expert examination at the age of five or six upon the request and with the participation of their grandparent. Prior to this, the hospital's special education expert, who had been treating the claimant for asthmatic issues since infancy, observed that the claimant required special educational development under specific kindergarten conditions. The claimant had not previously received institutional education and was placed in the first defendant's institution for

preparatory education upon the recommendation of the second defendant. Subsequent mandatory control examinations confirmed the claimant's school status, with no legal guardian requests for changes. Based on psychometric and socio-adaptive behavioural criteria, the first claimant falls within the spectrum of mild intellectual disability, demonstrating a generally underdeveloped cognitive structure. When compared to age-related normative values, the first claimant's overall development level corresponds to that of a nine-year-old, with the weakest area (verbal working memory-executive function) corresponding to a level of ages three to five. The only area in which the claimant achieved age-appropriate performance was spatial reasoning, while cognitive motivation remained low.

The second claimant was initially enrolled in a mainstream primary school but had to restart the first grade at the age of eight after interrupting the second semester. The third grade was repeated, prompting an initial expert examination. At that time, normal school progression was recommended despite borderline intellectual performance. However, experts suggested that if the claimant continued to struggle, they should be transferred to a special curriculum primary school upon failure at the end of the year. The third grade was repeated three times, after which, at the age of eleven, the claimant was placed in the fourth grade of the first defendant's school upon the recommendation of the second defendant. The claimant achieved consistently excellent academic results under the adapted curriculum before moving on to a specialised vocational school to train as a painter. Although the second claimant's general intellectual abilities fall within the normal range, they are close to the threshold of mild intellectual disability. The claimant's cognitive profile is highly uneven, with memory functions in both verbal and spatial dimensions being relatively better but still lagging three to four years behind the normative level. Their cognitive flexibility is limited, making it difficult to transfer knowledge to new situations. They perform relatively well on straightforward and familiar tasks but struggle with abstract and generalised thinking, often requiring interpretative assistance. While their social and adaptive behaviour does not indicate any integration difficulties, their ability to acquire higher knowledge is constrained by cognitive limitations. A control committee review in 2004 confirmed this assessment through a personal examination. Subsequent control examinations did not result in any change in the claimant's school status, nor were any legal guardian requests or expert recommendations made in this regard.

The third claimant's legal representative did not attend the pre-enrolment examination. A specialist opinion dated 26 November 1999 recommended enrolment in the first defendant's institution, which the claimant's parent accepted in writing. Subsequent control examinations confirmed the claimant's school status, with no legal guardian requests or expert recommendations made for changes. The third claimant's general intellectual abilities fall below average, within the spectrum of mild intellectual disability. From a special education perspective, the claimant requires targeted support for effective learning. Their thinking is primarily concrete, based more on practical experience than on understanding causal relationships. While their verbal skills and independence are relatively stronger than their cognitive abilities, their mild intellectual disability necessitated education under a special curriculum, with further vocational training also requiring additional support. Although their ability to participate in society is not expected to be significantly hindered due to their practical adaptability, their cognitive limitations affect their learning success.

In September 2005, during a ten-day camp in [City 2], a psychologist and two special education experts assessed multiple children, concluding in a general report that all three claimants were of normal intelligence and could be educated in mainstream school classes.

During the control examinations conducted by the second defendant, apart from the previously mentioned instances, no personal examinations were performed. Instead, a questionnaire was obtained from the first defendant's institution, detailing the effectiveness of developmental interventions, the need for further support, and the opinions of teachers regarding any required changes to the claimant's school status. Based on document analysis, the second defendant issued an expert recommendation, which was communicated in writing to the claimants' legal representatives. However, before initiating the present proceedings, the legal representatives had not received written notification of their right to appeal against the expert recommendations. Nevertheless, they had signed, in most cases, the questionnaires confirming the unchanged school status, and the expert recommendations recorded that the parents or legal representatives had agreed to them.

The findings of the follow-up examinations concerning the Claimants—considering their current status—were accurate, and they were placed in educational institutions appropriate to their abilities. The Budapest Binet test, a mixed-profile test used for the examination of the First Claimant, is less influenced by cultural factors, as it primarily assesses elementary practical knowledge. The widely used Cattell Intelligence Test applied to the Second Claimant is culture-neutral, measuring cognitive functions independently of academic knowledge and social environment. The Coloured Raven Test, used in the case of the Third Claimant, is a non-verbal procedure appropriate for different cultural backgrounds. In the selection and evaluation of the measurement methods applied to the Claimants, no separate assessment was conducted regarding their social background or Roma-specific characteristics; however, no negative discrimination occurred.

The First Defendant commenced and continued the education, upbringing, and development of the Claimants in accordance with the expert opinions. The Claimants consistently participated in the educational development determined by the school and in line with their grade levels. The First Claimant received rehabilitation-focused developmental education annually within the framework of the rehabilitation development schedule, which continues to be provided. The Second Claimant, as evidenced by the school records, has progressed in accordance with the curriculum requirements, but in the last two academic years spent at the educational institution of the First Defendant, he was not specifically identified for rehabilitation development. The Third Claimant received individual or small-group rehabilitation development in each academic year.

In their amended statement of claim, the Claimants sought a declaration that the Second Defendant failed to comply with the legal provisions governing its procedures in conducting and communicating the expert examinations. They further claimed that due to the repeatedly erroneous expert recommendations, the Claimants were suggested for placement in an educational institution that was not suited to their abilities, thereby violating their personal rights. Additionally, they alleged that the First

and Third Claimants suffered direct discrimination, as they were classified as mildly intellectually disabled rather than being placed in regular education, based on their ethnic origin. The Claimants requested a declaration that the First Defendant is jointly and severally liable with the Second Defendant for their improper education placement. They further sought a court order requiring the Defendants to eliminate the detrimental situation at their own expense, in accordance with Section 84 (1) (d) of the Civil Code, and to restore the status quo ante by providing the Claimants with compensatory education. Moreover, they demanded that the Defendants be held jointly and severally liable to pay non-pecuniary damages in the amount of HUF 1,000,000 per Claimant, along with statutory default interest from the date of filing the claim, pursuant to Section 77 (3) of the Public Education Act, Sections 84 (1) (e), 339, and 348 of the Civil Code, based on the violation of their personal rights, including the breach of the principle of equal treatment, and, with respect to the First Defendant, also for damages arising from the public education relationship. To support their claim, they referred to the judgment of the Grand Chamber of the European Court of Human Rights in the case of D.H. and Others v. the Czech Republic, issued on 13 November 2007, emphasising that the Second Defendant's staff failed to consider the Claimants' different ethnic backgrounds and the specific needs arising therefrom during their assessments and evaluations. They argued that ethnic discrimination was evident and that parental consent, given without sufficient information, could not exempt the authorities from the obligation to ensure equal treatment.

The Defendants requested the complete dismissal of the Claimants' claims and sought to have them ordered to bear the costs of the proceedings. The First Defendant argued that the Claimants were placed in the educational institution based on expert recommendations and that the institution fully complied with the applicable legal regulations, pedagogical methods, and expectations. The institution provided the Claimants with appropriate education, and they suffered no damages on any legal basis. The First Defendant concurred with the expert findings based on its own observations in practical education. The Claimants were students with learning disabilities and special educational needs, who were taught with appropriate expertise and differential development tailored to their abilities.

The Second Defendant argued that the Claimants, due to their mild intellectual disabilities, were students with learning difficulties and special educational needs who attended the most suitable institutions offering the best available special education services for them. As a result of the education and development provided, their skills improved, their knowledge expanded, and their personalities developed positively, which was attributable to the pedagogical activities conducted by the First Defendant. The educational institution attended by the Claimants issued primary school diplomas, thereby allowing them to pursue further studies in any secondary school in accordance with the law, with admission depending on their individual capabilities. The Second Defendant also noted that the Claimants' parents or legal representatives were aware of the type of institution their children were placed in, did not seek legal remedies, did not request reintegration or transfer, and had not requested a review for reassignment at any time. It denied that the Claimants suffered any disadvantage due to their race, nationality, or membership of an ethnic minority, or that they suffered any other violation of their personal rights.

The court of first instance dismissed the Claimants' claim and ordered them to bear the

costs of the proceedings. The court stated that it was not its role to take a position on general education and social policy issues, such as whether integrated or segregated education was more effective. It pointed out that while the prohibition of discrimination under the Rome Convention, promulgated by Act XXXI of 1993, was considered in the adjudication of the case, the assessment of the alleged violation could only be conducted based on domestic law, as derived from Articles 13 and 41 of the Convention. The court also noted that the judgments of the European Court of Human Rights are not binding on Hungarian courts; rather, they contribute to shaping Hungarian law through legal harmonisation, but they do not have direct applicability or mandatory effect in Hungarian judicial proceedings. Regarding the burden of proof, the court held that since the Hungarian State is not a defendant in the present case, the provisions of the Strasbourg judgment cited by the Claimants in a specific case cannot be taken into consideration in this respect. The liability of the Defendants can only be established on the basis of a concrete infringement committed against the Claimants under the asserted legal grounds. In this context, the court examined Sections 75 (1), 76 (1), and 76 (3) of the Civil Code, as well as the provisions of Act LXXIX of 1993 and Decree 14/1994 (VI.24.) of the Ministry of Culture and Education. The court also took into account the provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities. The court found that the legal representatives of the Claimants acknowledged and agreed with the expert opinion issued by the Second Defendant regarding the school status of the Claimants and did not initiate any proceedings challenging it for more than a year after the issuance of the expert opinion dated 15 September 2005, which recommended normal school education. Regarding issues in the proceedings requiring specialised expertise, the court appointed the National Expert and Rehabilitation Committee of the Eötvös Loránd University Special Education Service Institute as an expert. Based on the supplementary expert opinion issued by the five-member panel of experts covering multiple fields, the court concluded that the Claimants were all placed in educational institutions suitable to their abilities, the recommendations of the follow-up examinations were found to be accurate in light of their current status, and no negative discrimination occurred on the part of the Defendants in relation to the applied assessment methods. The court further established that all three Claimants exhibited a general cognitive impairment, which accounted for their persistent learning difficulties in school subjects. Consequently, remedial education aimed at reaching the academic level corresponding to their age was not feasible. There was no evidence indicating that the First and Third Claimants suffered any disadvantage due to their ethnic origin or Roma descent, whether in relation to the assessment methods applied or for any other reason. Although the follow-up expert opinions lacked specific references to developmental areas, the questionnaire used as a basis for issuing the opinions explicitly addressed areas of special pedagogical support. At the educational institution of the First Defendant, the students received education and upbringing in compliance with the applicable laws. The court also considered as evidence the pedagogical-psychological expert opinion prepared by a private psychologist on 15 September 2005, which the Claimants submitted as an objective investigative report. However, this private expert opinion was based on a personal examination conducted over a short period, whereas the expert opinion prepared upon the court's appointment was based on a comprehensive assessment framework, including a review of the Claimants' entire school progress over several years, in addition to personal examinations. From the testimony of the psychologist, who did not personally know the Claimants, the court accepted the argument that a complex diagnostic approach adapted to the specific characteristics,

cultural, and linguistic background of the examined children would best meet professional expectations. However, the supplementary expert opinion and the procedural evidence demonstrated that in the course of pedagogical development, the Claimants were subject to continuous monitoring. Furthermore, any temporary poor performance caused solely by social circumstances would have been identified in the educational setting, but no evidence suggested that this was the case for the Claimants. A witness, identified as the Deputy Head of the Equal Opportunities Department of the Ministry of Education and Culture, provided only general statements about the unjustified classification of children as disabled and their subsequent placement in special schools, mentioning the segregation of Roma children as one of its forms. While research findings indicated a significant increase in the proportion of Roma students among those classified as disabled, the witness lacked specific data regarding Bács-Kiskun County but noted that this county was not among the areas with a high concentration of Roma residents. The reports of the European Commission against Racism and Intolerance (ECRI) generally highlighted the issue of Roma children being placed in schools for children with mental disabilities. However, when considered collectively, these data did not provide sufficient grounds to establish, as argued by the Claimants, that in Bács-Kiskun County or within the enrolment process of the First Defendant’s educational institution, there was such an overrepresentation of Roma students that would shift the burden of proof onto the Defendants regarding the legal basis of the Claimants' claim.

Nothing in the case indicated that the Claimants were placed in the First Defendant’s educational institution due to their social disadvantages. No difference in treatment based on ethnic origin or any other factor was identified, nor was there any indication that the Claimants were subjected to adverse treatment without an objective and reasonable justification. The court found no justification for further supplementing the expert opinion and rejected the Claimants' request to appoint another expert witness. The court deemed the supplemented forensic expert opinion credible and convincing, and accepted it as the basis of its decision, emphasising that procedural errors identified in the follow-up examinations, and the occasional omission of personal examinations, did not undermine the correctness of the Claimants’ placement in the First Defendant’s educational institution. Upon assessing all the evidence, the court did not find it established that the Defendants violated the Claimants’ right to education appropriate to their abilities or their right to equal treatment. It did not find that the First and Third Claimants were subject to adverse discrimination based on their ethnic origin or that the First Defendant provided the Claimants with an education that did not correspond to their abilities. Despite the learning difficulties encountered, the Claimants' academic progress since the initiation of the lawsuit, including their continued education beyond the First Defendant’s institution, demonstrated their ability to move towards independent living within their capabilities. Section 77 (3) of the Public Education Act contains a specific provision regarding the basis of liability for damages. Accordingly, in conjunction with Section 339 (1) of the Civil Code, an educational institution or the organiser of practical training can only be exempted from liability if it proves that the damage was caused by an unforeseeable and unavoidable external factor beyond its operational scope. Regarding non-pecuniary damages, the assessment of unlawful conduct is particular in that the unlawfulness is based on the fact that the law protects personality rights. Under Section 84 (1) (e) of the Civil Code, a party suffering harm may only claim non-pecuniary damages if they prove the occurrence of a disadvantage justifying compensation. However, in the present case, no personality rights violation by the Defendants was established in respect of any of

the Claimants, nor was any related disadvantage proven. Therefore, an award of damages was not possible. Due to the lack of legal grounds for liability, the court did not conduct additional evidence proceedings regarding the amount of damages.

The Claimants lodged an appeal against the judgment, requesting that the first-instance court's decision be reversed and that the Defendants be held liable in accordance with the claims set out in the statement of claim. They argued that the first-instance court had failed to apply the reversal of the burden of proof as stipulated in Section 19 of Act CXXV of 2003. The Claimants contended that they had fulfilled their obligation to provide prima facie evidence regarding the assessments conducted, and the testimony of witnesses employed by the Second Defendant supported their claim that they suffered a disadvantage when their ethnic and social background was not expressly considered in the selection of assessment tools and the evaluation of assessment results. The first-instance court based its decision on an expert opinion that disregarded significant deficiencies in the data concerning the Claimants' development. The relevant issue in the case was not whether the assessments were conducted based on ethnic origin but whether the differing ethnic backgrounds and the resulting specific needs were considered in the assessments and evaluations. It was evident that the employees of the Second Defendant did not take ethnic origin into account, as confirmed unequivocally by the testimonies of Witness 1 and Witness 2. The assessment, particularly the document-based review, failed to meet the professional standards summarised by Psychologist [Name 2]. According to the Claimants, the expert appointed by the court and Psychologist [Name 2] defined the requirements of an effective and professionally expected comprehensive examination differently. The Second Defendant never personally re-examined the Claimants, despite this being a professional expectation. It was not an acceptable excuse that there were insufficient human resources. The Claimants suffered a disadvantage when their ethnic and social status was not expressly considered in the selection of assessment tools and the evaluation of results. Their position was further supported by the reasoning of the Strasbourg judgment they had also cited in the first-instance proceedings. The methodology of the assessments was flawed, and beyond this, the Second Defendant's conduct did not meet the professional expectations related to the evaluation of the assessment results. Witness testimony from the Second Defendant's employees clearly demonstrated that their procedure did not take into account the Claimants' Roma ethnic origin or their severely disadvantaged social status. There was also a risk in this case that the tests were biased and that the evaluation of test results failed to consider the specific characteristics of Roma children. Thus, the disputed tests could not serve as justification for the differential treatment at issue. The Claimants also pointed out that the assessments did not meet the professional expectations outlined by Psychologist [Name 2]. Only intelligence tests were used for the Claimants, the assessments were conducted on a one-time basis, and no observations were made in their natural environment. The assessments should have met the professional standards known in the early 2000s, but this could not be established. The reliability of the expert opinion was also questionable, as it only took into account data and regulations from 2005–2007, while earlier documents were not available at the time of examination and were therefore not reviewed by the experts.

The First and Second Defendants requested that the first-instance judgment be upheld, maintaining all their previous statements made in the first-instance proceedings. They emphasised that the Hungarian State was not a defendant in this

case. The first-instance court correctly applied the rules on the burden of proof, as the Claimants failed to prove any differential treatment. The Claimants had been professionally assessed and were placed in an educational institution appropriate to their condition, receiving education and upbringing through suitable educational methods. The Defendants performed their duties in full compliance with all applicable regulations, rendering the claim unfounded and making any modification of the first-instance judgment unjustified.

The Claimants' appeal was **unfounded**.

Under Article 70/A (1) of the Constitution—in connection with the right to human dignity ensured under Article 54 (1)—the State is obliged to respect and protect the equal dignity of all individuals throughout the entire legal system. The prohibition set out in Article 70/A (1) extends beyond fundamental human and civil rights and applies to the entire legal system when discrimination infringes upon human dignity (Constitutional Court Decision 61/1992 (XI.20.)). Discrimination violates human dignity if it is arbitrary, meaning that it lacks an objectively reasonable justification (Constitutional Court Decision 35/1994 (VI.24.)). Article 70/A (3) of the Constitution establishes the constitutional foundations for the promotion of equal opportunities. The requirement of equal treatment and the promotion of equal opportunities are reflected not only in the general legal framework but also in specific areas of law, including the Civil Code, which contains relevant provisions (Section 76 of the Civil Code). To ensure consistent terminology and provide appropriate tools for addressing violations, the Parliament enacted Act CXXV of 2003 (the "Equal Treatment Act") on equal treatment and the promotion of equal opportunities. This Act not only lays down substantive legal provisions but also provides procedural rules for addressing violations. All organisations performing public functions are obliged to observe the requirement of equal treatment in all their legal relationships (Section 4 of the Equal Treatment Act). The Equal Treatment Act contains anti-discrimination provisions that explicitly prohibit adverse differential treatment. Article 70/A (1) of the Constitution prohibits discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Section 8 of the Equal Treatment Act elaborates on the constitutional provision by providing a more detailed, open-ended list of prohibited grounds for discrimination. The second chapter of the Equal Treatment Act contains procedural rules on the available legal remedies for violations of the principle of equal treatment.

Section 12 of the Equal Treatment Act expressly states that claims related to equal treatment violations may particularly be enforced in personality rights lawsuits. To facilitate the enforcement of such claims, the Equal Treatment Act sets out specific procedural rules, thereby allowing a deviation from the general rules on the burden of proof as established by the Code of Civil Procedure. In proceedings initiated for the violation of the principle of equal treatment, the aggrieved party must establish a prima facie case that they suffered a disadvantage and that, at the time of the alleged infringement, they possessed one of the characteristics defined in Section 8 of the Equal Treatment Act. If these circumstances are established on a prima facie basis, the burden of proof shifts to the other party, who must demonstrate either that the circumstances alleged by the aggrieved party do not exist, that they complied with the requirement of equal treatment, or that they were not obliged to comply with it in the given legal relationship (Section 19 of the Equal Treatment Act). In lawsuits aimed at

enforcing anti-discrimination claims, the courts, applying the *lex specialis* principle, must primarily determine whether the disadvantage has been established on a prima facie basis and whether one of the characteristics defined in Section 8 of the Equal Treatment Act exists. If so, this results in a significant procedural consequence: the burden of proof shifts to the Defendant. The violation of the requirement of equal treatment must be based on a characteristic that is considered an essential feature of a person's identity. Regarding the First and Third Claimants, the case data supported the conclusion that they could be considered of Roma descent, meaning that their ethnic origin qualifies as an essential characteristic of their identity. However, with respect to the Second Claimant, the Claimants did not specify any such essential characteristic, and based on the available evidence, only their disadvantaged social status could be established. While it is possible, under judicial practice and the open-ended enumeration of the Equal Treatment Act, to recognise characteristics not explicitly listed as being closely related to a person's identity and thereby constituting "other status or characteristics" under Section 8 (t) of the Equal Treatment Act, the appellate court held that disadvantaged social status does not fall within this category. As a result, in the case of the Second Claimant, due to the absence of one of the conjunctive statutory conditions, the special procedural rules of anti-discrimination law could not be applied. Thus, the first-instance court correctly applied the general procedural rules governing the enforcement of personality rights claims under Section 76 of the Civil Code, including the allocation of the burden of proof.

For the First and Third Claimants, the special procedural rules of the Equal Treatment Act could be applicable, as the factual allegations in the claim support the prima facie establishment of a disadvantage and Roma ethnic identity (a higher level of certainty or strict burden of proof is not required). However, the appellate court held that for reasons to be detailed later, even if the burden of proof were assessed in light of the special provisions, the claim could not succeed. The enforcement of the principle of equal treatment and the promotion of equal opportunities fundamentally require state measures—primarily state action, legislation, and other interventions to ensure the necessary framework under the Equal Treatment Act. The requirement of equal treatment imposes a negative obligation on the obligated parties, meaning that they must not violate the equal human dignity of others. However, merely ensuring that disadvantaged individuals are formally treated equally to others may reinforce their disadvantage. Therefore, it is not sufficient to grant them the same rights as others; instead, positive measures are necessary to mitigate or eliminate the disadvantages arising from their circumstances. Under Article 70/A (3) of the Constitution, the primary obligation to take such positive measures rests with the State. The most explicit form of this obligation is the enactment of laws that align with these objectives. In light of the current regulatory framework, the alleged rights violations and disadvantages claimed by the Claimants could not be substantiated. The circumstances accepted as prima facie established were not supported by the evidence, and no violation of the requirement of equal treatment by the Defendants could be established. The private expert opinion cited by the Claimants, prepared by Psychologist [Name 2], did not cast doubt on the forensic expert opinion used in the proceedings, and the Defendants would still be exempt from liability even if the burden of proof had been reversed.

Sections 27-29 of the Equal Treatment Act mandate compliance with the requirement of equal treatment and the promotion of equal opportunities in educational relationships. Section 4/A of the Public Education Act of 1993 (Act LXXIX of 1993), in

alignment with the Equal Treatment Act, establishes the obligation of those involved in performing public education tasks to uphold the principle of equal treatment. Furthermore, the law also stipulates that each child must receive all necessary support to develop their abilities, talents, and personality and to update their knowledge in a personalised manner (Section 4 (7) (b) of the Public Education Act). Sections 30 (1) and (2) of the Public Education Act regulate the right of children and students with special educational needs to receive pedagogical, special education, or conductive education appropriate to their condition as part of special care from the moment their entitlement is established. The entitlement to such special care is determined under Section 30 (3) of the Public Education Act and Decree 14/1994 (VI.24.) of the Ministry of Culture and Education (the "Implementation Decree") on training obligations and pedagogical services. According to these regulations, the entitlement of children with special educational needs must be determined by expert committees. This regulatory framework indicates that in educational relationships and in cases where special educational needs form the basis for participation in education, both the relevant provisions of the Equal Treatment Act and the Public Education Act and Implementation Decree must be observed. The appellate court concurred with the first-instance court's finding that the choice between integrated and segregated educational models and the question of the effectiveness of these educational forms do not fall within the jurisdiction of the judiciary. Instead, this is a matter for state authorities, which must take a position on the issue and provide the necessary legal framework through appropriate legislation. Furthermore, if the statutory provisions governing public education allow for the special education of children with special educational needs under a curriculum different from the general one, the existence of such a system in itself cannot serve as a basis for establishing an infringement of personality rights.

It is undisputed that no ad hoc expert was appointed in the proceedings to assess the ratio of the Roma population in relation to the proportion of children educated at the First Defendant's educational institution within the specific educational legal relationship. However, the testimony of [Witness Name], Deputy Head of the Equal Opportunities Department of the Ministry of Education and Culture, heard in the repeated proceedings, indicated that Bács-Kiskun County is not among the regions with a higher proportion of Roma residents. Consequently, no inference could be drawn from any alleged overrepresentation of the Roma population regarding the basis for their classification as children with special educational needs.
The appellate court held that statistical data alone cannot, in and of themselves, prove the necessary occurrence of disadvantages. At most, they may serve as an initial reference point for such findings. However, in the present case, even the indirect statistical data presented did not substantiate the factual claims of the Claimants. The supplementary expert opinion provided by the panel of experts appointed in the proceedings clearly established that the determination of the Claimants' entitlement to special educational needs status was justified and that their education and upbringing within an appropriate special educational legal relationship were in accordance with that entitlement. The court appointed experts in the civil proceedings because the court itself does not possess the requisite expertise in this specialised field (Section 177 (1) of the Code of Civil Procedure). The court's role in relation to experts is to pose questions regarding relevant facts or circumstances in the case (Section 180 (2) of the Code of Civil Procedure). However, it is not within the competence of the court to direct experts on the methods they use. The appellate court found that the supplementary expert opinion, provided by a panel of experts, adequately explained why the

assessment methods used by the Second Defendant in evaluating the Claimants were deemed appropriate. The Claimants objected to these methods and submitted a private expert opinion to support their position. However, mere differences in expert opinions do not render a well-reasoned and professionally substantiated expert opinion unreliable. Expert findings based on several years of monitoring provide a more comprehensive and reassuring picture of the Claimants' educational and developmental needs than those derived from a one-time assessment, even if conducted using a different methodology. A new expert may only be appointed if the existing expert opinion appears to be contrary to proven facts or if there are serious doubts regarding its accuracy (Section 182 (3) of the Code of Civil Procedure). The first-instance court correctly evaluated the private expert opinion submitted by the Claimants, which was intended to support their position through objective fact-finding. However, even this piece of evidence did not cast doubt on the findings of the forensic expert opinion prepared during the proceedings.

The issues raised by the Claimants extend beyond the legal relationship between the parties in the case. References to general education policy issues and critiques of the existing regulatory framework had no substantive relevance to the present dispute. Such matters may only be examined in legal relationships between the State and its citizens. However, the appellate court emphasised that there was no evidence in the present case to suggest that the Claimants were placed in the First Defendant's educational institution on the recommendation of the Second Defendant due to their social disadvantages. Nor was there any indication that the First and Third Claimants were subjected to discrimination based on their ethnic origin. Regarding the conduct of the First and Second Defendants, there was no breach of the principles of necessity, proportionality, or reasonableness. Prior to the Claimants' enrolment in the First Defendant's educational institution, it was necessary to assess their educational and developmental needs through the expert examination conducted by the Second Defendant. The determination of their entitlement to special educational needs justified their placement in the First Defendant's institution. There was no evidence suggesting that they were treated unfavourably in the admission process or during their studies without an objective and reasonable explanation.

In view of the above, the appellate court upheld the first-instance court's decision on the merits pursuant to Section 253 (2) of the Code of Civil Procedure. However, the appellate court observed that the prior judgment No. 12.P.21.843/2006/44 had been annulled due to a procedural violation under Section 252 (2) of the Code of Civil Procedure. As a result, pursuant to Section 51 (1) of Act XCIII of 1990, no appellate court fee payment obligation arose in the repeated proceedings. Nevertheless, this did not exempt the first-instance court from its obligation to rule on the costs of the previously annulled judgment, which had been prepaid by the State due to the Claimants' personal cost exemption. This ruling was omitted. As regards court fees, under Section 253 (3) of the Code of Civil Procedure, the appellate court is required to issue a ruling regardless of the limitations of the appeal rights. Accordingly, the appellate court corrected the first-instance court's decision regarding the allocation of court fees and determined that the unpaid procedural fee borne by the State amounted to HUF 360,000. Since the Claimants were also unsuccessful in the appellate proceedings, they were ordered to bear the litigation costs under Section 78 (1) of the Code of Civil Procedure. The litigation costs include the legal representation fees incurred by the First and Second Defendants, as determined by the appellate court in

accordance with Section 3 (2) (a), (4), (5), and (6) of Decree No. 32/2003 (VIII.22.) of the Ministry of Justice, in proportion to the legal work performed by the Defendants' legal representatives during the appellate proceedings, excluding VAT.

Szeged, 30 March 2009

Dr Ágnes Kissné Dr Koch, Panel Chair
Dr Katalin Simonné Dr Gombos, Judge-Rapporteur
Dr Zsuzsanna Rakita, Appellate Judge