DEBRECEN COURT OF APPEAL

Pf.II.20.509/2009/10

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Court of Appeal, in the case initiated by the first and third plaintiffs, represented by Dr Lilla Farkas, attorney-at-law (Budapest, Lónyai Street 34, III Floor, No. 21), against the first defendant, represented by Dr Zsuzsanna Oláh, attorney-at-law (Nyíregyháza, Dózsa György Road 4-6, II Floor, No. 5), the fourth defendant, Szabolcs-Szatmár-Bereg County Municipality (Nyíregyháza, Hősök Square No. 5), represented in the appellate proceedings by legal counsel Dr ... (Nyíregyháza, Hősök Square No. 5), and the fifth defendant, also represented by Dr Zsuzsanna Oláh, in a lawsuit concerning the violation of personal rights and damages, against the judgment of the Szabolcs-Szatmár-Bereg County Court (Case No. 3.P.20.035/2008/20), following the appeals submitted by the fourth defendant under No. 21 and supplemented under No. 3 in the appellate proceedings, and by the first defendant under No. 23, has rendered the following

j u d g m e n t :

The Court of Appeal partially dismisses the claim, does not affect the non-appealed part of the first-instance judgment, modifies the appealed part, and rejects the plaintiffs' claim against the first and fourth defendants. The Court of Appeal also annuls the first-instance court's order obliging the first and fourth defendants to pay the first-instance legal costs and state-advanced costs.

The Court of Appeal orders the first and third plaintiffs to pay the first defendant the amount of HUF 93,750 (ninety-three thousand seven hundred fifty), including HUF 18,750 (eighteen thousand seven hundred fifty) value-added tax, and to pay the fourth defendant HUF 75,000 (seventy-five thousand) as the total costs of the first- and second-instance proceedings, within 15 days.

No appeal may be lodged against this judgment.

REASONING:

The lawsuit was initially initiated by three plaintiffs, and the first-instance court consolidated the cases. At the time of filing, the original first defendant operated a specialist committee within the Pedagogical Services examining learning abilities, but during the proceedings, Szabolcs-Szatmár-Bereg County Municipality dissolved the institution, and the fifth defendant became its legal successor. Following the consolidation, the proceedings continued under Case No. P.21.847/2006. During the proceedings, the third defendant, an educational institution identified as "Guszevi" Primary School, ceased to exist without a legal successor. Therefore, following the termination of procedural suspension, in Case No. P.20.035/2008, the first-instance court, in its fourth order, terminated the lawsuit initiated by the plaintiffs against the third defendant. Subsequently, in its decision dated 11 February 2009, Case No. 3.P.20.035/2008/13, the first-instance court also terminated the lawsuit between the

second plaintiff and the first, second, and fourth defendants due to the second plaintiff's withdrawal of the claim.

The first plaintiff, who identifies as belonging to the Roma ethnic group, was born on 22 August 1994 and remains a student at the first defendant's institution. On 19 April 2001, the ... Kindergarten requested an assessment of the school-age first plaintiff by the expert committee examining learning abilities, citing indications of intellectual and social underdevelopment below age level, especially in logical operations, illustrative activities, and communication. An accompanying educational counseling opinion confirmed deficiencies in the plaintiff's general awareness, task engagement, and comprehension of instructions, and noted a tendency toward fatigue and anxiety. His personality development was described as infantile, and it was suggested that his weak performance might be exacerbated by high anxiety levels.

A specialist report dated 17 May 2001 diagnosed the first plaintiff with mild intellectual disability. His IQ was measured at 64 using the Budapest Binet method, with a Raven test score indicating a ten-percentile deviation, yielding an IQ of 83, while his drawing Q value was set at 67. He was characterized as having a cognitive delay of two and a half years, with neurotic tendencies worsening his condition. The expert recommendation stated that he should commence compulsory education under the curriculum for mildly intellectually disabled students, with required cognitive, logical, and graphomotor development. The first defendant's special education school was designated as his educational institution.

A review assessment on 28 April 2005 determined that the first plaintiff's Raven IQ was 61. The committee reaffirmed his classification as a child with learning disabilities and special educational needs. Further development areas included elementary perception and analytical-synthetic abilities.

As a result of the review conducted on 20 March 2007, the expert opinion determined the Raven test result to be 69, reiterating that the first plaintiff suffers from mild mental retardation, which continues to warrant special educational needs. It was recommended that the first plaintiff continue studies at the institution of the first defendant and that further development of visual analysis-synthesis ability and analogical thinking should remain a priority.

The initial and first review expert opinions were signed by the chairman of the committee, and the 2007 review was conducted by two special education teachers. Among the expert recommendations, the document dated 17 May 2001 bears the signature of the first plaintiff's father; however, the section of the form indicating whether the parent agrees with the expert opinion or consents to the child commencing studies at the designated school is not completed. The two review recommendations do not bear parental signatures, but official records indicate that the parent was notified in both instances.

During the hearing held on 4 July 2007, the first plaintiff personally stated that the sixth grade was successfully completed with good results at the institution of the first defendant. The first plaintiff aspires to become a dance teacher, following in the footsteps of the father, who teaches Roma folk dance at the Guszevi School in Nyíregyháza. The first plaintiff understands that attendance at the first defendant's

school was determined based on an assessment conducted during kindergarten, which concluded that cognitive abilities were limited. However, the first plaintiff has never been ridiculed for this reason. The first plaintiff believes that upon completing the first defendant's school, further studies can be pursued in the same manner as those attending the Huszár Square mainstream curriculum school. The first plaintiff's legal representative stated in the litigation that the first examination was attended together with the first plaintiff and could not explain why the legal procedure was initiated. The parents were not permitted to be present during the examination. Upon receiving the results, it was communicated that the child was malnourished and therefore not suitable for attending a mainstream school. No detailed explanation was provided, nor was any information given regarding legal remedies. The legal representative recalls being required to sign the document in advance, before the child was even called in for the examination. The lawsuit was initiated to enable the first plaintiff to be removed from the first defendant's institution as soon as possible and to attend a mainstream school anywhere within the city.

The third plaintiff (formerly known as ...) was born on 27 February 1992 and identifies as belonging to the Roma ethnic group. The third plaintiff is currently a student at the ... (majority) Vocational School. Having attended kindergarten for three years, the third plaintiff commenced primary education at the No. 13 Primary School. In its submission dated 14 December 1999, the school requested an expert examination of the third plaintiff due to poor academic performance, fatigue, and an attention span of only 5-10 minutes during school activities. The third plaintiff was assessed as weak in independent learning, having a limited vocabulary, a poor abstract understanding of numbers up to five, and difficulty solving tasks even with aids. Speech was characterised by imprecise concept formation, with difficulties in phonetic segmentation and letter blending. The third plaintiff's IQ was determined to be 73. The school suspected a hearing disorder and requested an examination in that regard as well.

On 4 January 1999, the Educational Counselling Service examined the third plaintiff and concluded that the learning deficiencies and difficulties stemmed from a socio-cultural disadvantage, and therefore, efforts to catch up could be attempted within the framework of mainstream primary education. The third plaintiff required additional support and differentiated treatment. At No. 13 Primary School, the third plaintiff studied under the "Step by Step" programme, aimed at reducing school dropout rates and overcoming disadvantages. However, after the first quarter, based on the continued weak performance in school activities, No. 13 Primary School again recommended an expert examination.

Following an examination on 15 May 2000, the expert committee determined that the third plaintiff had a mild intellectual disability and recommended placement in a school with a modified curriculum. The committee's personal examination found that the third plaintiff exhibited an intellectual delay of more than three years, attributing mild intellectual disability to genetic factors. The Budapest Binet method assessed the third plaintiff's IQ at 63, while the Raven test result was 83. As a measure, the committee determined that the education and academic progress of the third plaintiff could be ensured with a good prognosis under the curriculum for students with mild intellectual disabilities, designating No. 22 ... Primary School for this purpose. (According to the first defendant's website, No. 22 Primary School was a "therapeutic educational

institution" until 2001 and relocated in 2001 from ... Street to the premises of the now-defunct B Primary School, adopting the name ... Primary School, and thus is identical to the first defendant.)

As a rehabilitation recommendation, the committee suggested strengthening attention span and developing analytical-synthetic skills. The expert opinion noted that the parent did not accept the child's transfer to the designated school and insisted on remaining in the majority school.an explanation for the initiation of the lawsuit.

The parents of the third plaintiff did not accept the expert opinion; nevertheless, the third plaintiff continued his studies at the first defendant's school. During a follow-up examination conducted on 14 December 2002, the expert committee recorded in the minutes that no change had occurred in the condition of the third plaintiff, who remained mildly intellectually disabled.

A detailed personal re-evaluation conducted in 2005, based on the Raven test results, determined the third plaintiff's IQ as 71. It was established that while most of his elementary perceptual processes were reliable, his analogical reasoning was underdeveloped, and he encountered significant difficulties with tasks requiring abstract thinking. In consideration of his special educational needs, his continued education at the first defendant's institution was recommended.

According to a declaration included in the recommendation dated 15 May 2000, the mother of the third plaintiff disagreed with the expert opinion and did not consent to her child continuing his studies at the designated school. The expert opinions issued during the re-evaluations contained only official records indicating that the parent had been notified thereof.

At the hearing held on 2 May 2007, as evidenced by the minutes of case number 3.P.21.850/2006/11., the third plaintiff personally stated that he had attended the first defendant's primary school since the second grade and had won numerous certificates over the past six years, participated in recitation and sports competitions, and had been an outstanding student until the seventh grade. In the first semester of the 2006/2007 academic year, he received two grades of four in different subjects. He identified the main difference between his former school, General School No. 13, and the first defendant's school as follows: at the "Guszevi" school, tasks were expected to be completed even if students did not understand them, whereas at the first defendant's school, assignments were explained clearly and patiently. However, he noted that further education was easier from General School No. 13 due to its standard curriculum, whereas progression from the first defendant's school was more challenging. He explained that during the first semester of the eighth grade, when he had to indicate his career choice, he initially selected the profession of car mechanic. However, his class teacher advised him against choosing this profession, stating that it was not possible from his school due to his declining grades. He believed that his academic performance deteriorated not only due to reduced studying. As an alternative, the class teacher recommended vocational training organised by the ... Company, specifically in shoemaking or leather craftsmanship. Should he continue his studies in the ninth and tenth grades at the first defendant's school, he could pursue training in ornamental plant cultivation, retail sales, baking, or painting and decorating. He ultimately chose the painting and decorating profession. His academic performance

in the first semester of the eighth grade declined due to spending less time studying. He considered it likely that had he remained at the "Guszevi" General School and studied properly, he may not have achieved excellent results but could have obtained good or very good grades, allowing for easier further education. He had not experienced any teasing due to attending the first defendant’s school, particularly in recent times.

In August 2005, the first and third plaintiffs participated in a children's camp in F., where 61 Roma children of various ages and different curricula backgrounds were assessed for their intellectual abilities. The assessment was conducted by BI, a clinical psychologist and public education expert, as well as P.B. and T.B., both special education teachers.
The examination of the children was carried out at the request of M.V., a Member of the European Parliament, and the parents.

Regarding the first plaintiff, it was established that, although he scored below average (IQ 83) on the Coloured Raven intelligence test, he did not achieve a result indicative of intellectual disability. However, his performance on the Bender B test was weak, suggesting possible neurological immaturity based on the test results and his behaviour. Nevertheless, the first plaintiff was presumed to be a child with normal cognitive abilities who could be educated in a standard school class, although with a probable neurological immaturity that might lead to learning and behavioural difficulties.

As for the third plaintiff, it was determined that he achieved a score of 90 on the Coloured Raven intelligence test. The MAVGYI-R intelligence test indicated a general intelligence level of 79, a verbal intelligence score of 91, and a performance intelligence score of 67. According to the Bender B test results, neurological involvement was suspected, suggesting potential difficulties in form and spatial perception, motor planning, hand-eye coordination, and possible dyslexia. The third plaintiff was classified as a child with normal cognitive abilities suitable for education in a standard school, with the presumption that his actual intellectual capacity might be higher than measured. However, he was found to suffer from neurological immaturity, attention deficits, and dyslexia (dysgraphia).

The experts recommended urgent official intervention to ensure the third plaintiff's education was aligned with his abilities, including his transfer to a normal school class. It was deemed appropriate to organise this transition following a thorough pedagogical assessment, with an individual progress plan, sensory integration support, developmental educational activities, and psychological assistance. Given the third plaintiff’s age and abilities, the reduced curriculum should and could be supplemented until the completion of primary school to prevent any academic delay.

The pedagogical-psychological expert opinion regarding the first plaintiff partially contained findings consistent with those recorded in the summary report on the children's camp assessments. Specifically, it was observed that although the intelligence test results showed a consistent trend, the category classifications demonstrated surprisingly large discrepancies. Children who scored higher in one test (adult and Coloured Raven) generally performed well in the other test (MAVGYI-R) as well, but in certain cases, significant variations were found between the two intelligence

assessments. These discrepancies were identified as requiring further examination and interpretation in the future. Moreover, in certain observations and "speculative explanations," the reasons for these differences were defined as follows:

The Raven test is regarded in academic literature as culturally independent; however, it is acknowledged that it measures within a relatively narrow range of intelligence and provides limited data on the structure of intelligence.

A further revision of the MAVGYI-R children's intelligence test is necessary in the future, as certain tasks within it have become outdated, and the tasks measuring verbal intelligence are culturally dependent.

The knowledge required for verbal intelligence tests differs so significantly from the home lifestyle and knowledge base of the examined children that the results are, at a minimum, questionable.

The examiners are convinced that in culturally appropriate tasks, the children would perform even better than measured in the examination. It is reasonably assumed that children from the majority society would also struggle with tasks derived from the culture of Roma children, which the latter could solve with ease.

Intelligence tests show a strong correlation with educational attainment. Therefore, the fact that a child has studied a reduced curriculum in a school with a different syllabus can significantly negatively affect the measured intelligence level at ages 13–14.

The examined children generally presented a far less favourable impression in their appearance and/or behaviour regarding their intellectual level than their actual intelligence would suggest. Out of the 61 children, 17 were found who would have been or could be educated in a regular school setting, with their intelligence levels ranging between 70 and 110.

The claimants, in their lawsuit, sought a declaration that:

- The expert panel of the fifth defendant, by failing to comply with the procedural laws applicable to its proceedings during the conduct and disclosure of expert examinations and by repeatedly issuing incorrect expert recommendations that suggested placement of the claimants in institutions not suited to their abilities, violated the claimants’ personal rights. In this regard, they referenced Section 76 of the Civil Code, Section 4(7)(b) and Section 10(3) of Act LXXIX of 1993 on Public Education (hereinafter "Public Education Act"), as well as Decree 14/1994 (VI. 24.) of the Ministry of Culture and Education.
- The fifth defendant directly discriminated against the claimants by classifying them as mildly intellectually disabled instead of placing them in regular education based on their ethnic origin, social, and economic status. The legal basis for this claim includes Section 4(7) of the Public Education Act (as in force until 27 January 2004) and, after 2004, Sections 8(b), (c), and (e), and Section 27(2)(a) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "Equal Treatment Act").
- The fourth defendant, by failing to exercise its supervisory authority over the fifth defendant in a manner reasonably expected in the given circumstances and by failing to provide the necessary resources for the activities of the fifth defendant

under its maintenance, violated the claimants' personal rights (Civil Code Section 76, Public Education Act Section 4(7)(d) and Section 10(3)) and, by acting within its administrative authority, caused damage to the claimants (Civil Code Section 349).

Based on the foregoing, the claimants requested that the court order the defendants jointly and severally to rectify the detrimental situation at their own expense, restore the prior lawful condition (remedial education), and jointly and severally pay each claimant HUF 1,000,000 in non-pecuniary damages, pursuant to Section 84(1)(d) of the Civil Code.

The request for joint and several liability was also based on Section 77(3) of the Public Education Act, Section 4(7)(b), Section 10(3), and Section 76 of the Civil Code.
Regarding the first claimant, the claim identified as unlawful the fact that no medical diagnosis had been made, and the differing IQ levels measured in the assessments indicated that the claimant was not intellectually disabled. During the expert examinations, the parents waiting in the hallway were asked to pre-sign documents, and the expert recommendation did not contain the parent's signature or any information about their notification. There was no reference to whether the parents had been informed or whether they had received a copy of the expert opinion. The expert panel failed to fulfil its obligation under Section 15 of Decree 14/1994 (VI. 24.) of the Ministry of Culture and Education to inform the parents of their right to appeal. The parents also did not understand the technical terminology used by the panel. The documents do not indicate who conducted the reviews or what the detailed findings were. The parents were not notified in advance of the examination, nor was any relevant entry made in the first claimant’s school record. The first claimant aspires to become a dance teacher but can only apply to a secondary school offering such qualifications after completing remedial education.

The documentation of the first claimant’s expert examinations does not contain the signature of their legal representative or any indication of what explanations were provided regarding the complex professional matters. Despite the legal provisions in force after 2004, the parents were not informed of their right to appeal, nor were they advised that, after attending the first defendant’s institution, the first claimant could only pursue further education in a regular secondary school following remedial education and an equivalency examination.

Regarding the third claimant, the lawsuit highlighted that no medical diagnosis had been conducted in this case either, but the differing IQ levels measured suggested that the third claimant was not intellectually disabled (Raven IQ 83). In May 2000, the examination was conducted solely by a single special education teacher. The third claimant’s mother was not allowed to be present during the examination, and although she did not accept the expert panel’s recommendation, the panel failed to inform her of the right to appeal under Section 15 of the Ministry of Culture and Education Decree. Similar omissions were identified in the records of two subsequent reviews, as none of these documents clarified whether the parent had agreed with the panel’s recommendation or what information they had received, including the fact that students completing education in a special school, due to the reduced curriculum, could only pursue a very limited and non-competitive range of vocational training courses.

As a result, the third claimant was taken by surprise during career counselling when they discovered that they could not train as a car mechanic but could only choose from non-competitive professions offered by the first defendant. The third claimant also faces ridicule in their residential area, Guszev Estate, due to attending the first defendant's institution.

The claim highlighted, with regard to both plaintiffs, that during the expert examination, the expert committees worked based on the measurement tools and tests they selected. However, it is a well-known fact among experts that numerous measurement tools produce false disabilities in the case of children from (multiply) disadvantaged backgrounds and Roma children. Several studies have been conducted on this subject, and the Ministry of Education (MOE) itself launched a programme to reintegrate falsely diagnosed disabled children into regular primary schools. It is the responsibility of educators, who, according to both expert standards and statutory requirements, must be familiar with the symptoms of the specific intellectual disability in question, to ensure that only children who genuinely lack full intellectual capacity are educated in special needs or disabled classes and schools.

The staff of the first defendant, possessing the requisite expertise and practical experience in detecting the symptoms of intellectual disability, ought to have recognised that they were in fact educating children who were not intellectually disabled.

The plaintiffs 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, delivered in Strasbourg on 13 November 2007, in which the Court found against the Czech Republic for the practice of placing children in segregated educational environments due to their social disadvantage. The Court established that a general policy or measure may constitute discrimination if it has a disproportionately adverse effect on a particular group, even if it was not explicitly intended to target that group. Furthermore, the Court found the statistical data submitted by the applicants to be compelling, as they clearly illustrated a dominant trend showing that Roma students were significantly overrepresented in special schools compared to their proportion in the general population. The Court pointed out that, where a legal provision has such a discriminatory effect, it is not necessary for the competent authorities to prove a discriminatory intent in order to establish a strong presumption of indirect discrimination in the context of public education relationships. Given that the tests assessing children's learning abilities and difficulties are contradictory and remain the subject of scientific research and debate, the results obtained through such tests are not suitable for providing a valid objective and reasonable justification for exemption from the prohibition of discrimination. In the absence of such justification, it has not been proven that factors independent of ethnic origin led to the statistical disparities observed in the data. It is evident that these tests were designed for the majority population, disregarding the specific characteristics of Roma children. Several independent organisations have raised concerns regarding these tests, arguing that children who are not intellectually disabled were, in reality, placed in special schools due to actual or presumed linguistic and cultural differences between the Roma and the majority community. Therefore, there is a need for consistent, objective, and comprehensive tests to assess children's actual abilities. In the absence of such tests, there is a risk that the currently used tests are biased and fail to take into account the

particular characteristics and special traits of Roma children when evaluating test results. The Court also emphasised that parental consent to differential treatment in education must be disregarded, as it would amount to a waiver of rights that would absolve the authorities of their obligation to ensure equal treatment. If such a waiver is to be permitted at all, it can only be valid if it is unequivocal and given with full knowledge of the facts, meaning it must be the result of informed consent. Furthermore, it cannot be established whether the parents, often from low-education and disadvantaged backgrounds, were capable of fully comprehending the situation and the consequences of their consent when signing pre-filled forms. These forms did not contain information about the available alternatives or the differences in curricula between special and regular primary schools. The Court also found it indisputable that Roma parents faced a dilemma under such a system: they had to choose between a regular primary school unprepared to accommodate their children's social and cultural differences and a special school attended predominantly by Roma children, thereby exposing their children either to exclusion and stigmatisation in the former case or segregation in the latter.

The plaintiffs further referred to proceedings pending before the Bács-Kiskun County Court under case number 12.P.20.392/2008, where, at a hearing held on 20 May 2008, SG, Deputy Head of the Equal Opportunities Department of the Ministry of Education and Culture, and KA, a psychologist, were heard as witnesses. The court records from that hearing were submitted as evidence. According to SG's testimony, an investigation into expert committees was launched in 2001 by the educational ombudsman, when 25 expert committees were in operation; currently, 33 are functioning. The investigation found severe capacity shortages, particularly in the availability of psychologists and specialist doctors. The Ministry of Education and Culture's 2007 publication, "Equity in Education," concluded that one method of Roma segregation was directing them into special classes. Data from the "From the Back Row" programme indicated that while the number of students was declining, the number of those classified as disabled was increasing. There was no uniform procedural framework or examination method in either legislation or the work of expert committees.

In his testimony, KA highlighted that the examination procedures for special educational needs must adhere to professional expectations, international psychological standards, and ethical rules. This requires differentiated diagnostics and a complex approach incorporating special education, neuropsychology, and psychiatry, tailored to the child's individual needs, cultural, and linguistic background.

All three intelligence tests currently in use are problematic. The Budapest Binet method relies heavily on culture-specific, purely verbal questions, making it suitable only for testing exceptionally gifted children or as a supplementary examination. The Coloured Raven test is less culture-dependent but remains problematic as it cannot be used in cases of visual perception disorders. The non-verbal Cattell test was originally designed to be culture-neutral in the early 20th century. However, recent years have cast doubt on whether the so-called G-factor, or fluid intelligence, is a reliable indicator of general intelligence and its application. According to the witness, there is no culture-independent method that can yield reliable results for all individuals, and a child's abilities can only be identified through a constructive approach. The lack of an established protocol allows individual attitudes to play a greater role in the

assessments carried out by experts and teachers, potentially leading to issues of discrimination and prejudice. The standardisation and maintenance of normative values for tests used in 1999-2000 were not conducted, rendering these examinations outdated. Referring to socio-cultural disadvantage in expert opinions is effectively an implicit reference to a child's ethnic origin and socialisation differing from school expectations, which in turn challenges the notion of disability as an organically determined, irreversible condition. If socio-cultural disadvantage is referenced in an expert opinion, it must be considered in the evaluation of the results, given that 30% of test content is independent of socio-cultural background.

During these proceedings, the Bács-Kiskun County Court also heard NI, the head of the expert committee appointed in the present case, who testified that no test is culture-independent in the sense that upbringing conditions and social background inevitably influence the assessment and development of children's abilities at any given stage. The examiner may perceive ethnic origin but must only apply positive discrimination, which is a fundamental requirement. The cumulative disadvantage of children must be considered, and the content of complex examinations has always been determined by legislation. A protocol on examination procedures and methods was established in 1975, requiring a comprehensive assessment that accounts for disadvantages. Since 2000, continuous monitoring and strict control examinations have been introduced. From 2004, a codified procedural framework and protocol have been in place, with new standardised procedures developed based on representative samples.

In their defence, the first and fourth defendants sought the dismissal of the claim, arguing that they had not engaged in unlawful or harmful conduct, and thus, the legal basis of the claim was lacking. The first defendant was statutorily obligated to provide education based on the decision of the learning ability assessment committee. The fourth defendant, as the maintaining authority, was responsible for ensuring financial resources, which it had fulfilled, even providing additional funding to support the work of an independent expert.

In this case, at the same hearing, the Bács-Kiskun County Court also heard N.I., the head of the expert committee appointed in the present proceedings. In his testimony, he stated that there is no culturally neutral test in the sense that upbringing conditions and social background inevitably influence the assessment of children, the development of their abilities, and their level of advancement at a given time. The examiner may perceive ethnic affiliation; however, only positive discrimination is permitted in this regard, which is a fundamental requirement. The examination must take into account the cumulative disadvantages faced by the child, and the content of the complex examination has always been determined by legal regulations. As early as 1975, the committees developed a protocol regarding examination procedures and methods, the essence of which is that a complex examination must be conducted, and the disadvantaged status must be assessed. From 2000 onwards, a system of continuous monitoring and strict control examinations was introduced, and since 2004, a legally prescribed procedural framework and protocol have been in place, incorporating new standardised procedures based on representative samples. In previous years, expert committees did not have an accredited training system; instead, professional exchanges took place at further training sessions and events. Furthermore, no formalised method existed for tracking a child's progress or determining the forms of special education. A systemic error certainly persisted in that

alternative procedures should have been applied, and the methods should have been updated. When problems surfaced, such as in connection with the "From the Back Row" programme, the need arose to tighten the legal framework. Based on these lessons, a new protocol was established, and regulatory amendments are currently in progress.

The first and fourth defendants, in their defence, requested the dismissal of the claim, arguing that they had not engaged in any unlawful or harmful conduct, and therefore, the legal basis for the claim is lacking. The first defendant was legally obliged to provide education for the claimants based on the decision of the Learning Ability Examination Committee. The fourth defendant, as the maintaining authority, was responsible for ensuring financial resources, an obligation it fulfilled. Moreover, the fourth defendant provided additional financial support to facilitate the work of the independent expert.

The court of first instance ordered expert evidence in the case. As a result of the personal special education, psychological, and medical examinations of the first and third claimants, the Eötvös Loránd University Practice Centre for Special Education Services, National Expert and Rehabilitation Committee for Practice, established that the Committee's opinion that the claimants should pursue their studies in a school with a curriculum different from the general one was not unfounded in either case. In the case of the first claimant, the comprehensive special education, psychological, and medical opinion determined that the first claimant had a mild intellectual disability associated with organic nervous system anomalies of unclear origin. Nonetheless, the first claimant was found to be well-adapted, motivated to perform tasks, and socially responsive. At the same time, the claimant was classified as a child with special educational needs requiring special care and special education support.

According to the comprehensive opinion summarising the examination of the third claimant, the third claimant was not intellectually disabled. However, due to persistent disturbances in cognitive functions (such as information processing and working memory), which resulted in underorganisation of perception, working memory, and various sensory-perceptual processes, as well as weaker learning abilities attributed to inadequate learning strategies, combined with socio-cultural disadvantages, the third claimant was considered to have learning difficulties. At present, the third claimant had significant gaps in acquired knowledge, relatively well-developed social maturity, and adaptive behaviour. The third claimant was also classified as a child with special educational needs requiring special care and special education support.

The expert opinion recommended that the future education of the first claimant take place in a special vocational school. Regarding the third claimant, it was recommended that further education be pursued within a special vocational school framework with developmental activities, additional remedial teaching, and the involvement of special education and developmental teachers. Additionally, it was advised that for the purposes of class size calculation, the third claimant should be considered as two students.

The expert committee determined that, from a professional standpoint, the examinations leading to the placement of both claimants in a general school with a modified curriculum were justified. The examinations were conducted in accordance with both the claimants' ages and the nationally accepted examination trends at that

time. The assessment of abilities was overall realistic, based not only on the results measured at the time but also on the developmental process of the children. Regarding the Coloured Raven Test results, the committee pointed out that, based on the test instruction manual, an IQ score could not be derived from this procedure. Therefore, the inclusion of Raven IQ scores in the expert opinions was incorrect, and percentile scores should have been provided instead, along with a summary of the qualitative error analysis results. However, this was deemed a formal deficiency, as the information obtained from the Raven test at the time of administration had been incorporated into the expert opinion in the assessment of intelligence. The expert opinion also noted the absence of medical opinions in the committee's expert opinions and stated that the mention of a genetic cause of the third claimant's disability was unfounded, as no genetic examination had been conducted. Furthermore, in both claimants' cases, it should have been indicated that socio-cultural factors had played a significant role in their condition from an early age.

Mandatory follow-up reviews, based on consensus, do not necessarily require a personal examination. Expert committees generally request pedagogical opinions, character assessments, and documentation from schools proving the child's progress, supplemented by developmental analysis. A detailed individual examination is only necessary in cases of significant changes, while otherwise, the child's status is recorded in a review report.

According to the records, the first claimant's development was monitored, and neither the parents nor the school indicated a need to change the child's status. The expert committee's examination also did not observe any developmental changes that would have justified discontinuing education in the special school. The third claimant underwent a more detailed individual examination because, in the sixth grade, during the scheduled review on 27 April 2005, the claimant was performing relatively well in school. However, at that time, the school reaffirmed in its recommendation that no change should be made to the child's schooling status. The Progressive Raven Intelligence Test did not show improvement in the claimant's mental performance, and therefore, the expert opinion again recommended continued education in a general school with a modified curriculum. The third claimant's development was also monitored and did not exhibit such significant changes as to warrant discontinuation of special education.

Pursuant to the Public Education Act and Decree No. 14/1994 of the Ministry of Culture and Public Education, as well as professional consensus, the assessment of educational needs must be conducted through a comprehensive special education, psychological, and medical examination at an authorised public education institution. In the claimants' cases, the examination conducted at the Felsőtárkány children's camp did not meet these requirements. Although the current protocol was not yet in force at the time, since 1975, strict guidelines have been prescribed for conducting such examinations.
The examination conditions at the camp did not comply with the standard requirements outlined in the manuals for psychological tests, as the children had opportunities to discuss the nature and results of the tasks. The psychological and pedagogical examination records submitted contained deficiencies and errors of such magnitude that they called into question the reliability of the examinations. For instance, a Raven test intended for a younger age group was administered to the examined children, and

no qualitative performance analysis was conducted. Concerning the Bender-B test, the record only provided a result without referring to objective data necessary for qualitative analysis. The record did not reflect that the examination ensured complexity.

The expert examination conducted on behalf of the claimants did not substantiate that the claimants were attending a type of school inconsistent with their abilities. The designation of the appropriate school is governed by statutory provisions (e.g., the Public Education Act), thereby permitting the selection of a school for special education and upbringing only if its founding document includes the special personal and material conditions necessary for the student's development. While educational conditions with a different curriculum can be provided in an integrated manner, if no general school in the child's place of residence meets these requirements, only the designated district school providing special education may be appointed. In the present case, the designation of the school for both claimants was conducted in accordance with their personal rights and the local possibilities. Consequently, the claimants were educated under conditions appropriate to their abilities.

The legal representative of the claimants, in his observations on the expert opinion, did not dispute that the experts and expert institutions, including the court-appointed expert institution, faced difficulties in preparing expert opinions. This is because, in the territory of the Republic of Hungary, the standard for assessing learning abilities is set based on average children, thereby failing to take into account special educational needs. However, there may be children with special educational needs who cannot be classified under the continuously changing interpretative provisions of Section 121 of the Public Education Act but rather on the basis of their ethnic origin or extreme poverty. Nevertheless, this cannot restrict their statutory and constitutional rights to participate in education. The distinction arises in the methodology used to assess learning abilities—whether it is based solely on intelligence tests, takes into account other disabilities, or considers ethnic culture and extreme poverty.

In the clarification of Statement of Claim No. 15, reference was made to the fact that the expert opinion issued by the court-appointed expert institution in the present proceedings classified the third claimant as having normal intellectual abilities. However, the opinion failed to mention that the review had been mandated by law and neglected to evaluate that, based on the applicable provisions of Section 121 of the Public Education Act as of 27 April 2005, the third claimant was not considered a child with special educational needs. The claimants cannot interpret the statement in the expert opinion asserting that they suffer from learning disabilities due to their socio-cultural background, given that none of the cited factors have an organic origin and can be counterbalanced through adequate development and capacity-building. This responsibility rested with the first defendant. Had the third claimant, who is not intellectually disabled and is a good student, received education suitable to his abilities, he should have attained subject knowledge appropriate to his age. Reference was also made to an independent assessment conducted by multiple experts under the auspices of the Roma Education Fund concerning the misdiagnosis of Roma children, which explicitly highlighted the overlap between segregated education and the classification of special educational needs. This assessment also confirmed the overrepresentation of Roma children in special schools within the Republic of Hungary.

The first-instance court, in its judgment, established that the defendants violated the

claimants' rights to equal opportunities and freedom of educational choice. Consequently, the court held the first to fifth defendants jointly and severally liable for the payment of non-pecuniary compensation in the amount of HUF 1,000,000 per claimant, payable within fifteen days, as well as HUF 100,000 per claimant in litigation costs. Furthermore, the first to fifth defendants were jointly and severally ordered to reimburse the expert costs advanced by the state.

The court emphasised that the subject of the proceedings was not to determine the justification for segregated or integrated education but rather to assess whether the defendants fulfilled their obligations under Article 70/A of the Constitution of the Republic of Hungary. The Constitution recognises the right to education as a secondary fundamental right, encompassing access to secondary and higher education based on individual abilities. Article 70/G(1) of the Constitution stipulates that the Republic of Hungary respects and supports academic freedom.

Section 121 of the Public Education Act, despite annual regulatory amendments, explicitly defines the competencies related to the maintenance and operation of the public education system. Furthermore, Section 3(3) delineates the scope of the state and local governments in their institutional maintenance activities.

According to Section 121, as established by Section 9(1)(h) of Act XVII of 2004, the institutional maintainer is responsible for preparatory measures for integration, the organisation of education and upbringing that ensures equal opportunities through the implementation of the educational programme issued by the competent minister, and the adoption of measures to offset disadvantages arising from students' social situations or levels of development. This must be executed in such a way that the proportion of these students relative to others does not exceed the limit prescribed by law. Additionally, paragraph 28 of Section 121, as introduced by Act LXI of 2003 and later amended by Act CXLVIII of 2005, defines the conditions necessary for the education and upbringing of children with special educational needs.

The definition of special educational needs underwent multiple changes during the period relevant to these proceedings. However, even the statutory provisions in force in 2001 already provided a definition. The regulatory provisions effective from 1 September 2001 did not alter the requirement that schools and expert committees assessing educational capacities must determine, on an individual basis, the underlying cause of special educational needs and, depending on its type and severity, establish the necessary specialised education and teaching aids for the child concerned.

The documents of the legal predecessor of the Fifth Defendant, the examination conducted at the Felsőtárkány camp, and the expert opinion obtained in the judicial proceedings leave no doubt that, in the case of the Plaintiffs, the process of individualisation, including the determination of the type and severity of disability, was omitted. Furthermore, the committee responsible for assessing learning abilities failed to determine the range of necessary professional services for the Plaintiffs.

Section 4/A of the Public Education Act, effective as of 27 January 2004, stipulated that all participants in the organisation, management, and operation of public education, as well as those executing its functions, were obliged to observe the

principle of equal treatment. The violation of this requirement, pursuant to Section 4/A (4), could result in the enforcement of personal rights through judicial proceedings.

Section 126 of the Public Education Act, effective as of 10 July 2007, prescribed that, by 31 December 2007, committees were required to conduct ex officio reviews of all students previously classified as having special educational needs due to severe and permanent impediments in the learning process caused by psychological disorders. The objective of such reviews was to ascertain whether these difficulties were attributable to organic causes. Those children for whom this condition was not met were to be removed from the category of special educational needs students by 31 August 2008.

Upon analysing the referenced statutory provisions and their amendments during the relevant period of the lawsuit, the court of first instance concluded that, in the case of the First and Third Plaintiffs, neither the initial examination nor subsequent reviews clarified why the Plaintiffs required special education under the given circumstances or whether their learning difficulties were attributable to organic causes.

The court of first instance determined that, due to the ongoing restructuring and expansion of the committee, as well as the lack of sufficient staff and professionals, the procedure for assessing learning abilities was disrupted, and the committees were unable to conduct continuous review examinations.

Based on these findings, the court held that the Fourth Defendant, by failing to carry out supervisory control and exercise its regulatory authority, did not detect that the committee responsible for assessing learning abilities, along with the First Defendant, failed to inform the parents about the measures taken and omitted to provide information on available remedies. In doing so, the Fourth Defendant breached its obligation under Section 102 (2) of the Public Education Act, which required it to ensure the legality of the operation of public education institutions. The notary of the maintaining municipality (or the notary of the county municipality) had been vested with appropriate regulatory powers in the administration of public education. Pursuant to Sections 86 and 87 of the Public Education Act, it was the obligation of the Fourth Defendant to organise the lawful supervision of the committees' operations in such a manner that the expert opinions complied with the principles of individualisation already outlined.

During the proceedings, the Defendants did not dispute the "historical fact" that the process of individualisation, the provision of information to parents on legal remedies, and the continuous review of the Plaintiffs' status had not been ensured. Moreover, the head of the committee, in a statement, admitted that the continuous review process had not been maintained.

Consequently, the court of first instance established that the Defendants committed an infringement of the personal rights enshrined in Section 76 of the Civil Code by violating the principle of equal treatment. Their conduct was unlawful, and since the Plaintiffs suffered harm to their self-esteem, self-respect, and personal identity due to the different curriculum and school system they were subjected to, they had legitimate grounds to seek a declaration of the infringement and to claim non-pecuniary damages to remedy the disadvantage suffered. The Plaintiffs had demonstrably not received the

pedagogical services that would have met their special needs.

The Defendants were unable to exonerate themselves from liability for the unlawful damage caused. Moreover, due to the lack of proper information on legal remedies, the damage suffered by the Plaintiffs could not be averted through legal redress. As the Defendants' conduct resulted in interconnected and inseparable harm, they were held jointly and severally liable for the damage caused pursuant to Section 344 of the Civil Code.

The court of first instance disregarded the judgment of the European Court of Human Rights as evidence, noting that the Defendant in that case was the Czech Republic as a state, and therefore, the legal principles and conclusions contained therein could only be considered indirectly in assessing the claims brought against the educational institutions and their maintaining authorities in the present case. The court further declined to consider arguments related to educational impediments arising from socio-cultural disadvantage, as the subject of the lawsuit was the determination of whether the Plaintiffs' special educational needs were attributable to organic causes. The court did not take a position on the issues of extreme poverty and socio-cultural disadvantage, noting that these categories are not regulated by civil law.

In its appeal against the judgment of the court of first instance, the Fourth Defendant sought its reversal, the dismissal of the Plaintiffs' claims, and the determination of litigation costs.

The Fourth Defendant argued that the judgment was unfounded, asserting that the court of first instance erroneously treated as undisputed the alleged failure to conduct the process of individualisation and to determine the type and severity of disability in the Plaintiffs' cases. The court of first instance, in this regard, failed to consider that, according to the expert opinion appointed in the proceedings, the committee's assessments were not unsubstantiated and did not provide a justification for its decision that was contrary to the expert's findings.

The court of first instance erred in its interpretation and application of several provisions of the Public Education Act, as it applied an impermissible analogy and interpreted said provisions in an extensive manner. The committee responsible for assessing educational needs cannot be deemed a public educational institution or an educational and training institution; rather, it is essentially an institution providing pedagogical professional services within the framework of public education. Consequently, due to the specific tasks assigned to the committee, the notion of legal supervision over its activities is inapplicable. There exists no statutory provision that assigns the organisation of said committee to the responsibility of the Fourth Defendant. Furthermore, the opinion of the committee does not constitute an administrative or public authority matter, and therefore, the procedural rules of administrative proceedings are not applicable to the committee's actions. The Fourth Defendant could not have been in default regarding the supervision of the committee's or the First Defendant's actions, as the governing and maintaining authority of the First Defendant was not the Fourth Defendant but rather the Municipality of Nyíregyháza, a city with county rights. Accordingly, the Fourth Defendant cannot be held liable for any failure, and consequently, no liability for damages arises.

In its appeal, the First Defendant also sought the modification of the first-instance judgment, the dismissal of the Plaintiffs' claim, and an order requiring the Plaintiffs to bear the litigation costs.

The court of first instance itself noted in its judgment that the expert committees' opinions regarding the Plaintiffs' personality development supported the necessity of their education in a special school. Even while respecting the constitutional fundamental rights and the rights set forth in the Public Education Act, as elaborated in the judgment's reasoning, only the First Defendant's educational institution was capable of providing education commensurate with the Plaintiffs' abilities.

The present proceedings required an examination of the extent to which the concept of a student with special educational needs, as defined in the Public Education Act, aligned with the opinions of the expert committees, and whether the First Defendant fulfilled its obligations under the Constitution of the Republic of Hungary and the Public Education Act, namely, whether the Plaintiffs received education appropriate to their abilities. In this context, it was of decisive importance to determine what constitutes the more appropriate approach in the context of the right to equal opportunities and the right to choose one's education: for a student with special educational needs to successfully complete a special school with good results and a sense of achievement, or for them to struggle with significantly poorer academic performance and a lack of success in an unsuitable educational institution.

In this regard, consideration was given to the fact that, despite the First Plaintiff's intellectual delay of 2.5 years, his infantile personality development exacerbated by neurotic tendencies, and his neurological immaturity, he achieved good results at the First Defendant's educational institution. Similarly, according to the examination results from 2008, the Third Plaintiff, despite a developmental delay of 2-3 years relative to expected age norms, also achieved good results at the First Defendant's educational institution.

The court of first instance erred in establishing unlawful conduct on the part of the First Defendant. In light of the expert opinions, the First Defendant had no alternative but to provide the Plaintiffs with an education suited to their learning difficulties. This course of action cannot be deemed unlawful, nor could it have evidently infringed upon the Plaintiffs' self-esteem, self-respect, or identity.

The appeal of the Fifth Defendant was dismissed ex officio by the Court of Appeal by way of its ruling No. 4 due to lateness.

In their counterclaim, the Plaintiffs requested the upholding of the first-instance judgment. They argued that the court of first instance correctly established the facts and that its legal conclusions were well-founded. In response to the arguments raised in the Defendants' appeals, they pointed out that the first-instance judgment was not contrary to the case file, as the committee's records indeed lacked elements of individualisation concerning the Plaintiffs, including the determination of the type and severity of their disabilities. During the review procedures, the Plaintiffs were not personally examined by the committee, and in the case of the Third Plaintiff, misdiagnosis was evident. Between 2003 and 2008, there was no statutory definition of special educational needs; hence, the expert opinion obtained in the proceedings

determined, in the absence of legislative provisions, that even during this period, the placement of the Third Plaintiff in the First Defendant's school and his education according to the curriculum for students with special educational needs would have been lawful.

The first-instance judgment is also correct in finding that the Fourth Defendant, as the maintaining authority, was responsible for the operation of the institution incorporating the expert committee, which was subject to continuous structural integration changes. The Fourth Defendant failed to submit any document proving that it conducted the necessary supervision, whereas the committee's records demonstrated that the Fourth Defendant did not provide the essential conditions for the committee's operation.

Sections 102 to 108 of the Public Education Act regulate the responsibility of the maintaining authority concerning the supervision of public educational institutions, including institutions involved in pedagogical professional services. The expert committee, during the relevant period, functioned within the framework of an educational institution, so the terminological distinction does not affect the substantive adjudication of the legal dispute.

The procedural rules governing the committee's operation and the remedies against its decisions were subject to multiple amendments under the Public Education Act. However, these amendments consistently vested the authority to decide on the placement of students with mild intellectual disabilities within the jurisdiction of administrative authorities, including the notaries acting in administrative capacity and higher-level expert institutions functioning as administrative specialised agencies. Thus, this constituted a special administrative procedure.

The First Defendant should have provided education to the Third Plaintiff, who possessed normal intellectual abilities, according to a standard curriculum. The Third Plaintiff consistently achieved outstanding academic results; if he did not meet the criteria of the expert test, this cannot be attributed to his diligence or capabilities. The teachers of the First Defendant had daily contact with the Plaintiff and possessed the necessary expertise to assess intellectual abilities. It was therefore expected of them to recognise the Plaintiff's actual abilities, just as the expert group involved in the litigation did. Nevertheless, they failed to initiate the review process, a duty that, apart from the legally unqualified parents, rested solely with them.

Pursuant to Section 253(3) of the Code of Civil Procedure, in the absence of an appeal and considering the ex officio rejection of the Fifth Defendant's appeal, the Court of Appeal did not address the part of the first-instance judgment dismissing, in part, the claim for the restoration of the status quo ante (remedial education) and upholding the claim against the Fifth Defendant regarding the establishment of a legal violation and the payment of non-pecuniary damages. The factual findings established by the court of first instance were corrected and supplemented in accordance with the reasoning set forth in the first part of this judgment, and the Court of Appeal found the appeals of the First and Fourth Defendants to be well-founded for the reasons detailed below.

Based on the rectified and supplemented statement of facts, the Court of Appeal did not concur with the legal position of the court of first instance, particularly in view of the fact that although the first-instance judgment attempted to review the frequently

changing statutory provisions in force during the relevant period, it failed to draw relevant conclusions therefrom, disregarded the findings of the expert opinion obtained in the proceedings, and, in violation of Section 211(1) of the Code of Civil Procedure, did not provide a justification for this omission.

The claimants based their legal action on the assertion that, during the existence of their student legal relationship, the defendants discriminated against them on grounds of their ethnic origin, social, and financial status, both through the measures they adopted and through their failure to take measures within their competence. As a result, the claimants, despite their rights guaranteed under the Public Education Act, did not receive education appropriate to their abilities.

The statutory provisions defining the content of the claimants' personality rights related to their student legal relationship underwent several changes during the relevant period. At the commencement of the student legal relationship, in addition to the Constitution, Section 4(7) of the then-effective Public Education Act and Section 76 of the Civil Code, also in force at that time, prohibited discrimination in public education on grounds of a child's colour, sex, religion, national or ethnic origin, or other special characteristics. However, these provisions did not contain detailed regulations on the matter.

On 27 January 2004, Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "Equal Treatment Act") entered into force, establishing, on a general level, definitions for equal treatment, discrimination, harassment, unlawful segregation, and retaliation within the entire legal system, as well as setting out the rules governing procedures for the enforcement of equal treatment violations. Upon its entry into force, the Equal Treatment Act amended, inter alia, Section 76 of the Civil Code and the provisions of the Public Education Act, thereby essentially ensuring uniform terminology and providing a coherent legal framework for addressing violations of the principle of equal treatment.

Accordingly, it is established that the prohibition of discrimination remained a continuously applicable requirement throughout the duration of the claimants' student legal relationship.

Despite the parallel legal regulations, the provisions of the Public Education Act, even after the amendments on 27 January 2004, were to be applied only in annulment proceedings within the competence of the authority responsible for educational tasks, as regulated under Section 4/A(4) and Sections 83(7)-(15) of the Public Education Act. Meanwhile, pursuant to Section 4/A(4), in proceedings concerning the enforcement of personality rights before the courts, the provisions of Section 12 of the Equal Treatment Act were applicable, even in cases where the violation of personality rights resulted from non-compliance with obligations prescribed by the Public Education Act.

In light of the then-effective provisions of Sections 8 and 10(2) of the Equal Treatment Act, the court in the present case had to determine whether the claimants, having pursued their primary school education in the educational institution designated by the expert and rehabilitation committee on the basis of its primary and review expert opinions—an institution that now operates within the framework of the fifth defendant—suffered discrimination under points b), c), and e) of Section 8 of the Equal Treatment

Act due to their racial origin, skin colour, or affiliation with an ethnic minority. Pursuant to Section 19 of the Equal Treatment Act, it was for the claimants to prove that they had suffered disadvantage and that they possessed the characteristics defined under Section 8, while the burden of proof rested on the defendants to demonstrate that, despite the measures they took or omitted to take during the claimants' student legal relationship, they nonetheless observed, or were not required to observe, the principle of equal treatment in the given legal relationship. In this context, the provisions of Section 27 of the Equal Treatment Act also had to be taken into account, as they set out, in a non-exhaustive manner, activities in the field of education and training that violate the principle of equal treatment. Additionally, Section 7(2) of the Equal Treatment Act stipulates that a provision based on any characteristic listed in Section 8 shall not be deemed to violate the principle of equal treatment if it has a directly related, reasonable justification in light of the specific legal relationship.

The detailed statutory provisions concerning the content of the claimants' student legal relationship, as well as the rights and obligations arising therefrom, were partly governed by the Public Education Act and partly by the frequently amended provisions of Decree No. 14/1994 (VI. 24.) of the Minister of Culture and Education.

An analysis of the interim amendments to the Public Education Act reveals that, as of 1 September 1996 and 1 January 2001, respectively, Section 30, as well as Section 121, initially under point 18/b and later under point 20/b, classified as "other disabled" those children or students who, based on the expert opinion of the expert and rehabilitation committee, suffered from learning and performance disorders due to other disturbances in psychological development and, as a result, were permanently hindered in their development and educational progress. This statutory provision provided an illustrative, non-exhaustive list of some of these conditions. These provisions were supplemented by the provisions of the Ministerial Decree, beginning with Section 10, which set out regulations concerning the provision of education for "other disabled" students, including procedural rules regarding the examination of "other disabilities."

With effect from 1 September 2003, Act LXI of 2003 amended the Public Education Act, replacing the term "disabled child, student" with "child, student with special educational needs." Until 31 December 2006, Section 121(29/b) classified as belonging to this category those children or students who, based on the expert opinion of the expert and rehabilitation committee, were permanently and severely hindered in the educational process due to psychological developmental disorders, again listing some of these conditions as examples.

With effect from 1 January 2007, Section 121, point 29/b of the Public Education Act was repealed by Act CXXI of 2006. The definition of children and students facing learning and behavioural difficulties was supplemented to include those who are permanently and severely hindered in the educational process due to psychological developmental disorders. These students were removed from the category of children and students with special educational needs, with the stipulation that they would henceforth receive the necessary support for their development within the framework of educational counselling. The justification for Section 7 of the Act explicitly emphasised that no expert opinion should henceforth recommend that these children or students be educated in segregated schools. However, the legislation contained no

further specific provisions in this regard, as the provision inserting Section 126 of the Public Education Act, which defined the duties of expert committees and educational counselling services, was set to come into force only on 1 January 2008. Nevertheless, Act LXXXVII of 2007, which also amended the Public Education Act and came into force on 1 September 2007, redefined the concept of special educational needs and, pursuant to Section 28 (7), precluded the entry into force of the provision inserting Section 126.

Act LXXXVII of 2007 amended Section 121 (1), point 29/b of the Public Education Act with effect from 1 September 2007, stipulating that only those children and students who suffer from a severe and permanent disorder of cognitive functions or behavioural development that cannot be attributed to organic causes would henceforth be classified as having special educational needs. The justification for the amendment noted that the previous regulation did not provide clear criteria for distinguishing students whose entitlement to special care was based on psychological developmental disorders. Therefore, in light of professional experience gained in recent years, the amendment replaced the existing definition with the term "severe and permanent disorder of cognitive functions and/or behavioural development." Accordingly, the new wording of Section 121, point 29 of the Public Education Act classified as children with special educational needs those who, based on the expert opinion of the specialist committee, suffered from a severe and permanent disorder of cognitive functions or behavioural development attributable to organic causes, and those whose disorder was not attributable to organic causes.

The same Act established the new Section 126 of the Public Education Act under Section 21, requiring expert and rehabilitation committees to review, by 31 December 2007, all students who had previously been classified as having special educational needs due to severe and permanent hindrance in the educational process caused by psychological developmental disorders. The review aimed to determine whether the student indeed suffered from a severe and permanent disorder of cognitive functions or behavioural development, and whether such a disorder could be attributed to organic causes. If it could not, the student’s records were to be forwarded to the educational counselling service by 15 March 2008, to facilitate rehabilitation-focused education pursuant to the amended Section 30 (7) of the Public Education Act. Consequently, the development of students suffering from severe and permanent disorders of cognitive functions or behavioural development not attributable to organic causes was to be handled by educational counselling services.

It follows that from 1 January to 1 September 2007, Section 121, point 29 of the Public Education Act lacked a sub-point (b), and the legislation in force during this period did not contain detailed provisions regarding the further procedures of educational institutions and pedagogical support services.

During this period, Ministerial Decree 7/2007 (II.13.) of the Ministry of Education and Culture inserted Section 26/A into the Decree with effect from 18 February 2007. This section mandated that between 31 March and 30 November 2007, expert committees were to conduct official reviews of students whose special educational needs had previously been determined based on psychological developmental disorders. According to the new regulation, special educational needs could only be maintained if justified by a disorder of cognitive functions or behavioural development. Therefore,

from 1 January 2007 onwards, special educational needs in proceedings initiated due to psychological developmental disorders could only be established if supported by evidence of a disorder of cognitive development, substantiated by psychological, special educational, paediatric neurology, or child and adolescent psychiatric specialist opinions. However, the provisions of subsections (1) and (2) of this section remained in force only until 12 January 2008, as from 13 January 2008, Ministerial Decree 43/2007 (XII.29.) of the Ministry of Education and Culture amended the previous provisions. Consequently, expert committees were required to determine, based on the results of official reviews conducted between 31 March and 10 July 2007, whether the existence of special educational needs was caused by a severe and permanent disorder of cognitive functions or behavioural development attributable to organic causes or not, and whether the student exhibited difficulties in integration, learning, or behaviour.

Upon examining the foregoing legislative amendments, albeit not exhaustively, it is evident that these modifications were primarily driven by developments in related scientific disciplines, research, and assessment outcomes. At the same time, it is undeniable that monitoring legislative changes during this period posed an almost insurmountable challenge for legal practitioners.

Furthermore, it is noted that intellectually disabled students, including those with mild intellectual disabilities, have always been classified as "disabled," and from 1 September 2003 onwards, as "students with special educational needs," regardless of legislative amendments.

In assessing the liability of the defendants in light of the above legislative provisions, the Court of Appeal made the following determinations:

First and foremost, it notes that the claimants initiated the proceedings on 13 November 2006, and the claim was consistently based on alleged infringements of personal rights committed by the defendants before the filing of the claim. Accordingly, in the appellate proceedings—taking into account the limitations of appeals—the Court of Appeal assessed the legality of the defendants' actions solely on the basis of legislative provisions in force prior to the initiation of the proceedings.

During the period of the claimants' student status, the expert and rehabilitation committee designated the first defendant as the receiving institution in all initial and review opinions. Section 66 (2) of the Public Education Act, which remained unchanged throughout the relevant period, required the designated school to admit compulsory school-age students, rejecting admission only in cases of capacity constraints. The designation of the school by the expert committee— as indicated in the justification to Section 30 of the Public Education Act—essentially restricted the parents' right, regulated in Section 13 of the Act, to freely choose an educational institution.

A change in this respect occurred only from 3 July 2008, when Act XXXI of 2008 amended the Public Education Act to ensure that schools responsible for mandatory admissions would not segregate students based on origin or social status. It established proportionality requirements between disadvantaged students and those not in this category, though implementation was scheduled for the 2010/2011

academic year.

Thus, by accepting the claimants in accordance with the expert committee’s opinion and establishing a student relationship with them, the first defendant complied with its statutory obligations, and no illegality can be established in this regard.

The claimants also unjustifiably contend that the first defendant’s teachers failed to initiate further reviews or relocation recommendations. The expert opinions were issued at intervals prescribed by ministerial decree. The prescribed review intervals were evidently set in accordance with scientific knowledge, which suggested that significant developmental progress justifying reassignment was unlikely within a shorter period. Consequently, it is not objectionable that the first defendant’s employees saw no grounds for terminating the claimants’ classification as students with special educational needs.

Furthermore, the expert opinion obtained in the proceedings expressly confirmed the expert committee’s assessment that, throughout the period of their student status, the first claimant belonged to the category of "disabled" students or, under the later definition, "students with special educational needs."

In the case of the third plaintiff, the expert opinion obtained during the proceedings did not establish the existence of mild intellectual disability. Therefore, in this respect, the diagnosis of the expert committee was indeed found to be inaccurate. However, according to the expert opinion obtained in the proceedings, it is indisputable that the third plaintiff, due to the persistent impairment of cognitive functions, reduced learning ability, and socio-cultural disadvantage, was also classified as having special educational needs, thereby requiring special care and remedial educational support. The expert opinion obtained in the proceedings recommended that the third plaintiff continue their education within the framework of a specialised vocational school provided by the first defendant. Consequently, no unlawful conduct attributable to the first defendant can be established in relation to the third plaintiff that would give rise to liability for damages.

The claim brought against the fourth defendant was based on the assertion that the fourth defendant's liability for damages arose from an unlawful omission in the exercise of supervisory control as the maintaining authority.

Under the provisions of the Public Education Act (hereinafter "Public Education Act") that were in force throughout the period relevant to the proceedings, the expert and rehabilitation committee responsible for assessing learning abilities functioned as an institution of the educational support services within the public education system. However, it also operated as one of the types of public educational institutions.

Article 102(2) of the Public Education Act, previously under point (c) and, from 1 September 2003, under point (d) as established by Act LXI of 2003, set out the competencies that the maintaining authority was required to exercise in respect of all public educational institutions, including expert committees. These provisions imposed an obligation on the maintaining authority to conduct regular reviews of the lawfulness of the operation of public educational institutions. According to the explanatory memorandum attached to this provision, supervisory control by the maintaining

authority did not extend to professional oversight.

However, in the context of monitoring the lawfulness of operations, the fourth defendant was clearly obliged to regularly review the legality of the procedures conducted by the expert and rehabilitation committee it maintained, including compliance with procedural rules set out in the relevant Ministry of Education regulation. The fourth defendant correctly argued that the supervision of public educational institutions by the maintaining authority does not fall under the scope of Act IV of 1957 (Administrative Proceedings Act) or the currently applicable Act CXL of 2004 (General Administrative Proceedings Act).

The obligation to ensure the operation of a public educational institution is a public law duty regulated by legislation, imposed on the fourth defendant as the maintaining authority. Consequently, contrary to the plaintiffs' position, any potential insufficiency in providing the necessary human and material resources does not establish civil liability for damages on the part of the maintaining authority. However, failure to monitor the lawfulness of operations, particularly given that no authority was expressly assigned the responsibility of overseeing compliance with the special procedural rules governing expert committee proceedings under the MOE regulation, may, in principle, establish the fourth defendant's liability for damages due to the existence of an indirect causal link.

Although the first-instance judgment ruling against the fifth defendant became final due to the dismissal of the fifth defendant’s appeal ex officio, the provisions of Articles 227-230 of the Code of Civil Procedure did not preclude the appellate court from examining the fundamental and review procedures conducted by the fifth defendant in the context of assessing the fourth defendant's liability for damages. This examination aimed to determine whether the fifth defendant’s proceedings complied with statutory requirements. Any unlawful conduct identified, along with a failure to take necessary corrective measures, would, based on the considerations set out above, be attributable to the fourth defendant.

The plaintiffs objected to certain practices of the expert committees, which were by then operating within the institutional framework of the fifth defendant. Specifically, they raised concerns that medical specialists had not participated in issuing expert opinions, that expert examinations had been conducted without the presence of the parent, and that the committees had failed to inform parents of their findings or to notify them of available legal remedies.

Regarding these objections, the appellate court found as follows:

Despite amendments over time, the provisions of the MOE regulation in force during the period relevant to the proceedings did not specify the required qualifications or expertise of the professionals composing an expert committee in individual cases concerning the assessment of learning abilities. Under the provisions of the MOE regulation concerning the qualifications of personnel employed within the educational support services institution, direct engagement with children and students had to be conducted by certified pedagogical professionals, whose work could, if necessary, be supported by other qualified professionals, such as medical specialists. However, the use of the conditional form in the regulatory text does not support the conclusion that

the presence of a medical specialist was mandatory in every expert examination. On the contrary, the wording of the regulation indicates that the committee itself had the discretion to decide whether to involve a medical specialist in the examination.

Annex 1 of the MOE regulation mandated the employment of at least one medical specialist within expert and rehabilitation committees, specifically to support educational and teaching activities. However, neither the Public Education Act nor the MOE regulation adequately delineated professional competencies, failing to clarify the respective roles of pedagogical professionals, special education teachers, psychologists, specialised psychologists, and medical specialists. Furthermore, Article 26/A(3) of the MOE regulation, effective from 18 February 2007, also did not provide a precise delineation, merely stipulating that, for the determination of special educational needs, the expert opinion of the expert committee had to include a psychological, special education, and child neurology, or child and adolescent psychiatry specialist's opinion, without specifying their respective roles. From this, it cannot be concluded that the expert evaluations conducted in the plaintiffs' cases were unlawful solely due to the absence of a medical specialist from the committee.

Until 28 July 2004, Article 11 of the MOE regulation did not grant parents the right to be present throughout the expert examination. The previously applicable Article 13(2) merely required the parent's presence at the commencement of the examination and mandated their cooperation. This wording clearly implied that it was also within the discretion of the expert committee to determine whether the parent's continuous presence was necessary during the examination. It was only with the amendment introduced by Ministry of Education Decree 19/2004 (VI. 14.), effective from 29 July 2004, that Article 13(2) granted parents the right to remain present throughout the examination, provided their presence did not cause disruption.

From the documents submitted in the proceedings by the expert committee, it cannot be determined whether the committee informed the plaintiffs' attending parent of this possibility during the reviews conducted after 29 July 2004, nor is there any evidence that the parents intended to exercise this right. The burden of proof regarding this matter in the lawsuit rested with the fourth and fifth defendants. While the defendants failed to prove in the proceedings that such notification had taken place, the expert committee's procedure in this regard cannot be deemed lawful. Furthermore, the fourth defendant acted unlawfully by failing to fulfil its supervisory duty prescribed within the scope of its responsibility as the maintaining authority, thereby failing to detect the omission and consequently not taking measures to eliminate the unlawful practice.

Following its amendment by Decree No. 19/2004 (VI.14.) OM, the MOE Decree stipulated that the expert committee was obliged to inform the parent, alongside its recommendation, about the possible consequences based on the examination results, as well as the parent's rights concerning the examination and its findings. During the relevant period of the case, the MOE Decree further imposed a mandatory obligation on the expert committee to inform the parent about available legal remedies. Until 28 July 2004, the parent could initiate an administrative procedure with the notary competent for the child's place of residence; thereafter, if the parent disagreed, the head of the expert committee was required to initiate an administrative procedure before the notary concerning the fulfilment of compulsory education. According to the documents submitted in the case, the expert committee failed to fulfil this statutory

obligation, and the fourth defendant, due to its failure to comply with its supervisory duty, also failed to take measures in this regard.

The unlawfulness of the expert committee's procedures, as detailed above, thus substantiates the finding of unlawful omission by the fourth defendant within the scope of its responsibilities for maintaining authority and supervision.

However, it can also be established that the plaintiffs did not suffer damages as a result of this unlawful conduct.

Based on the medical expert opinion obtained in the proceedings, the plaintiffs received education and upbringing appropriate to their abilities. The expert opinions issued by the expert committee, from the perspective that during the period in question both plaintiffs, regardless of legislative changes, were consistently to be considered as having special educational needs, were explicitly supported by the forensic expert opinion obtained in the case.

The plaintiffs' argument, which challenges the professional position of the expert committees by referring to their origin and socio-cultural disadvantage, does not establish the fourth defendant's liability for damages.

From the witness testimonies heard in the proceedings before the Bács-Kiskun County Court, the documents submitted by the plaintiffs—particularly the evaluative summary prepared by the Roma Education Fund—and the expert opinions obtained in the present case, it is established that the initial and review expert opinions issued in respect of the plaintiffs met the applicable national professional standards at all times, both in terms of the methods applied to assess learning abilities and in substantiating the special educational needs.

The evaluation report of the Roma Education Fund itself highlights that before 2004, the nationwide threshold for placement in institutions with an adapted curriculum was set at an IQ of 85. Only from 2004, as a result of related research and changes in protocol, was this threshold lowered to a maximum IQ of 70. Concurrently, an evidently prolonged process began in the educational administration to achieve the plaintiffs' intended goal—that Roma children, who inherently start with socio-cultural disadvantages, should not be enrolled in segregated institutions in cases where borderline intellectual disability (pseudo-dementia) is indicated by test results, but the results are, in reality, attributable to socio-cultural background and potentially concomitant disadvantages (cumulative disadvantages). To prevent such Roma children from being placed in segregated institutions in the future, legislative changes, as described, were necessary, along with the development of new diagnostic methods that consider the children's cultural and linguistic background and social circumstances. However, according to the available data, the diagnostic methods (tests) expressly serving this purpose, as referenced by the plaintiffs, are not yet available, even at present. Consequently, their absence cannot be held against educational institutions or pedagogical service providers for the period under review in the lawsuit.

It follows that the assignment of the plaintiffs to a special curriculum school was based solely on the determination of their special educational needs according to

examinations conducted in accordance with the professional consensus prevailing at the time, which adhered to nationally accepted protocols. The placement was due to their persistent and severe impairment in the learning process and severe and persistent disorders in cognitive functions. The measure was therefore unrelated to the plaintiffs' specific characteristics as outlined in Sections 8(b), (c), and (e) of the Equal Treatment Act.

In view of the foregoing, the plaintiffs did not suffer the form of discrimination prohibited under the Equal Treatment Act, and consequently, their personal rights were not violated, meaning their claim for damages is unfounded.

For the reasons set out above, the Court of Appeal modified the judgment of the court of first instance in the contested part pursuant to Section 253(2) of the Code of Civil Procedure.

As a result of the modification of the first-instance judgment, the first and fourth defendants prevailed at both levels of the proceedings; therefore, in accordance with Section 78(1) of the Code of Civil Procedure, the Court of Appeal waived their obligation to pay the first-instance litigation costs and the costs advanced by the state. Under the same provision, the plaintiffs were ordered to pay the first and fourth defendants' first- and second-instance litigation costs, the amount of which was determined pursuant to Sections 75(1) and (2) of the Code of Civil Procedure and Decree No. 32/2003 (VIII.22.) IM.

Despite their loss in the case, the plaintiffs were not ordered to reimburse the state-advanced procedural fees and expert costs due to their personal exemption from costs; thus, these expenses remain borne by the state pursuant to Sections 13(1) and 14 of Decree No. 6/1986 (VI.26.) IM.

Debrecen, 5 November 2009

Dr Péter Csiki, Panel Chair
Dr Erzsébet Süliné Tőzsér, Judge-Rapporteur
Dr Zoltán Veszprémy, Judge

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