DEBRECEN COURT OF APPEAL

Case No. Pf.I.20.361/2007/8

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Debrecen Court of Appeal, in the lawsuit initiated by the plaintiff [Name of Plaintiff] (address), represented by Dr Lilla Farkas, attorney-at-law (1093 Budapest IX, Lónyai u. 34. III/21.), against the first defendant [Name of First Defendant] (address), the second defendant [Name of Second Defendant] (address), and the third defendant [Name of Third Defendant] (address), all represented by Dr Ferenc Ács, attorney-at-law (4025 Debrecen, Simonffy u. 57.), for the alleged violation of the principle of equal treatment, adjudicates upon the appeal lodged by the first to third defendants under case number 52, substantiated under case number 54, as well as the cross-appeals submitted by the plaintiff under case numbers Pf. 4 and Pf. 6, and renders the following

j u d g m e n t :

The Court of Appeal does not alter the unappealed part of the first-instance judgment and partially modifies the appealed part as follows:

It establishes that the first, second, and third defendants have discriminated against Roma students by holding the classes attended predominantly by Roma students in school buildings with lower-quality facilities compared to other school buildings. The court orders the defendants to cease this practice.

At the same time, the court omits the declaration of unlawful segregation and the prohibition thereof.

The court orders the first defendant to send the operative part of this judgment, including the names of the parties, to the Hungarian News Agency. Simultaneously, the court omits the obligation to issue a statement of regret.

The amount of first-instance litigation costs payable by the defendants to the plaintiff is reduced to HUF 120,000 (one hundred twenty thousand forints). The court declares that each party shall bear its own costs for the appellate proceedings.

No further appeal is permitted against this judgment.

R e a s o n i n g :

In the city of H., the second and third defendants, which are independent legal entities, operate primary schools maintained by the first defendant.

In the 2006/2007 academic year, the second defendant had 868 students, of whom 484 attended the main building on Sz.D. Street, 157 attended the building on R. Street, and 227 attended the building on K. Street.

The third defendant had 848 students in the 2006/2007 academic year, of whom 748 studied in the main building on J. Street, 52 in the building on Sz.G. Street, and 48 in the building on F.

Street.

The main building and annexes of the second defendant's school are located 800 meters to 1 kilometre apart.

In the main building, some classes offer bilingual education, others provide advanced-level language instruction and IT training, while all classes follow an integration or talent-development programme. In the building on K. Street, one class offers advanced IT education, while the others provide Hungarian-language Roma ethnic education and/or integration or talent-development training. Students placed in the classes in the K. Street building were those whose parents chose the Roma cultural programme or expressly requested, orally or in writing, that their child be placed in these classes, sometimes considering a specific teacher. Additionally, students with limited preschool attendance who required a remedial programme under the Roma cultural education initiative were also placed there.

In the R. Street building, 13 classes were established across grades 1 to 8, all offering special education for children with special educational needs based on expert opinions from professional and rehabilitation committees.

The capacity of the main building does not allow for the accommodation of all students, and special education classes have traditionally operated in the R. Street building.

The annexes of the third defendant's school are located 1.5 to 2 kilometres from the main building. In both the Sz.G. Street and F. Street buildings, four small-sized classes operate, offering talent-development and Roma ethnic education. Meanwhile, the main building houses normal-sized classes, with no talent-development or Roma ethnic education available.

The reason for the small-sized classes was that students identified by the educational counselling service as having adjustment, learning, or behavioural difficulties, and recommended for small-group education in a written opinion, as well as those whose parents explicitly requested this in writing, were placed in these classes. The Sz.G. Street building hosts lower-grade classes, while the F. Street building hosts upper-grade classes.

The overall student body could not be accommodated in the main building, and the allocation of certain classes to offsite buildings was based on the availability of smaller classrooms suitable for small-group instruction.

In its amended claim, the plaintiff requested a declaration that the first defendant and the second and third defendants, which operate under its maintenance, unlawfully segregate Roma students from non-Roma students in offsite school units and subject them to direct discrimination by providing them with inferior educational facilities and resources. The plaintiff sought an order requiring the defendants to cease these violations and refrain from similar future misconduct. Additionally, the plaintiff requested the first defendant to issue a public statement of regret via the Hungarian News Agency, for the second and third defendants to eliminate the segregated system by implementing a desegregation plan developed by an educational expert, and for the first defendant to tolerate this plan's implementation.

The defendants primarily sought the dismissal of the lawsuit and, in their substantive defence, requested the rejection of the plaintiff's claims.

Following an extensive evidentiary procedure, including expert opinions and witness testimonies, the first-instance court found that the second and third defendants, operating under the first defendant's maintenance, unlawfully segregated Roma students in offsite school buildings and directly discriminated against them by providing them with inferior educational conditions and resources. The court ordered the defendants to cease this discriminatory practice and prohibited them from engaging in similar conduct in the future. It further mandated the second and third defendants to rectify the discriminatory situation by the start of the 2007/2008 academic year and required the first defendant to tolerate these changes. The first defendant was also ordered to issue a statement of regret via the Hungarian News Agency. Beyond these rulings, the court dismissed the remainder of the claim. The defendants were held jointly liable to pay the plaintiff HUF 390,540 in litigation costs within 15 days.

In its reasoning, the first-instance court referred to Section 20(1)(c) of Act CXXV of 2003, which grants social and advocacy organisations standing to bring personality rights lawsuits for violations of the principle of equal treatment where the discrimination is based on a characteristic essential to personal identity and affects a broadly defined group of individuals. The plaintiff, as a foundation, qualifies as a social organisation dedicated to the legal protection of Roma and disadvantaged children. The claim was based on ethnic discrimination, which falls under the Equal Treatment and Equal Opportunities Act. The affected individuals were Roma students attending offsite units of the second and third defendants' schools. Since the number and identity of affected students change each school year, the discrimination concerns an imprecisely defined large group. Furthermore, ethnic affiliation is an essential characteristic under Hungarian judicial and constitutional practice, justifying the plaintiff's standing to bring the claim. The special right to sue in such cases is independent of the will or intent of affected individuals. Therefore, the fact that most parents of affected students requested the plaintiff to withdraw the claim, along with the similar resolution adopted by the local Roma Minority Self-Government during the proceedings, was deemed irrelevant. The plaintiff represented a clearly identifiable community, namely individuals belonging to the Roma ethnic minority in Hungary, whose defining characteristic is their actual or perceived affiliation with this ethnic group. Consequently, the claim was assessed under Section 8(e) of the Equal Treatment Act, which recognises ethnic minority status as a protected characteristic. References to skin colour and race were deemed secondary and irrelevant in this case.

Based on the expert opinion appointed in the proceedings, the court determined the proportion of the ethnic minority population. This assessment was conducted by the expert in cooperation with the local Roma Minority Self-Government, ensuring that the determined percentages accurately reflect, with a maximum deviation of 1%, the proportion of individuals who either actually belong to the Roma ethnic group or are reasonably considered as such by the Roma community.

Accordingly, the court established that out of the 868 students enrolled in the second defendant's primary school, 54% were of Roma ethnicity, with 28% in the main building, 96% in the R. Street building, and 86% in the K. Street building.

In the third defendant's school, 32% of the total student body belonged to the Roma ethnic group, with 22% in the main building and 100% in both the Sz.G. Street and F. Street buildings.

The court held that, pursuant to Section 7(1) of the Act on the Rights of National and Ethnic Minorities, an individual's declaration of minority affiliation is an exclusive and inalienable right, and no one may be compelled to make a statement regarding their ethnic affiliation.

However, in the present proceedings, it was not feasible to obtain individual declarations from the affected persons regarding their ethnic identity, as they could not be compelled to do so, and obtaining such declarations from all 1,716 affected individuals would have been impracticable. The determination of the aforementioned statistical proportions was indispensable for assessing the merits of the plaintiff's claim. Given that the appointed expert's methodology ensured anonymity, the data collection did not violate data protection regulations.

Based on the expert opinion, the court found that the proportion of students belonging to the Roma ethnic group, whether perceived or actual, was disproportionately high in the offsite school units of the second and third defendants, exhibiting a stark contrast compared to the main school buildings. This disparity substantiated the existence of segregation. The segregation was linked to the protected characteristic cited by the plaintiff and, in itself, constituted a disadvantage.

In considering the defendants' justification, the court examined whether the placement of a high proportion of Roma students in the offsite school units was justified by an objective and reasonable ground directly related to the given legal relationship, independent of the protected characteristic, or whether it was the result of minority education organised at the initiative and voluntary choice of parents, whose purpose or curriculum warranted such segregation and did not place the students at a disadvantage. The court held that the defendants failed to prove such circumstances. It reasoned that the allocation of school buildings and their facilities could not, in terms of equal treatment, be considered an objective and reasonable justification for exemption from the prohibition of segregation. Nor could long-standing tradition justify such segregation. Furthermore, economic considerations or financial constraints preventing changes did not provide a lawful exemption. The organisation of ethnic education did not inherently necessitate the creation of separate classes, nor did the placement of students in different buildings based on their participation in such education find justification in parental initiative, curriculum objectives, or educational content.

Regarding the facilities available in each school building, the court noted that the second defendant's main building was equipped with five subject-specific classrooms, nine classrooms designed for small-group instruction, a gymnasium, a sports field, four portable computers, three projectors, two video cameras, two photocopiers, and a library. In contrast, neither the K. Street nor the R. Street buildings had subject-specific classrooms, small-group instruction rooms, a gymnasium, a sports field, portable computers, projectors, video cameras, or a library. Additionally, the R. Street building lacked even a photocopier. Consequently, students in offsite school buildings were either entirely deprived of access to these facilities or could access them only to a lesser extent due to the physical distance from the main building, placing them at a disadvantage compared to students in the main building.

Similarly, in the third defendant's school, the main building housed seven subject-specific classrooms, a small gymnasium, two gymnasiums, a sports field, four portable computers, two projectors, two video cameras, three photocopiers, and a library. In contrast, the offsite school units lacked all these facilities. Students at the F. Street building spent one day per week at the main building, during which they could access the available resources, but otherwise, students in offsite buildings either lacked access to these resources entirely or were at a disadvantage due to the distance.

Given that the deprivation or limited access to these resources disproportionately affected Roma students enrolled in offsite buildings, this disadvantage was inherently linked to their unlawful

segregation. Since the defendants failed to justify the segregation, the court also held that this constituted a violation of equal treatment.

The court considered the expert opinions submitted by the defendants, which had been prepared at their request, as part of their defence but found that these reports failed to provide data, facts, or evidence that could refute the findings of the court-appointed expert or raise valid concerns about its reliability. The court rejected the defendants' request to appoint a different expert, as it had already accepted the findings of the appointed expert as the basis for its decision. It also denied the defendants' request for an extension to submit additional parental statements, as such declarations could not affect the plaintiff's standing to bring the lawsuit.

The court based the operative part of its judgment on the authority granted by Section 12 of the Equal Treatment Act, in conjunction with Section 84(1)(a), (b), (c), and (d) of the Civil Code.

The court dismissed the plaintiff's request to order the second and third defendants to implement a desegregation plan and to compel the first defendant to tolerate its implementation. The court reasoned that eliminating the current segregation and the associated discriminatory conditions could be achieved through multiple means, and it was therefore unnecessary to prescribe a specific method for remedying the unlawful situation. Furthermore, it noted that, concerning the third defendant, offsite education was likely to be discontinued at the end of the academic year.

The defendants appealed the judgment, while the plaintiff filed a cross-appeal.

In their appeal, the defendants primarily sought to have the first-instance judgment set aside and the proceedings dismissed. Alternatively, they requested that the judgment be altered and the plaintiff's claim dismissed, or, in the further alternative, that the first-instance judgment be set aside and the case remanded for a new trial, with an order for the plaintiff to bear the litigation costs. The defendants argued that the first-instance court had failed to establish the facts properly and had drawn incorrect legal conclusions, rendering the judgment unlawful. They contended that the plaintiff's special right to bring the claim under Section 20(1)(c) of the Equal Treatment Act did not apply, as the number of affected individuals was precisely determinable and had, in fact, been specified by the first-instance court for both schools. They further argued that the methodology used to determine ethnic proportions was unlawful and that the data collected in this manner could not be used as evidence. The defendants also objected to the appointment of the court expert, arguing that the plaintiff had suggested the expert, whom the defendants opposed, requesting a different expert instead. The first-instance court denied this request and unjustifiably disregarded parental declarations and the opinion of the Roma Minority Self-Government regarding the lawsuit.

As detailed grounds for their appeal, the defendants argued that the first-instance court erroneously justified the plaintiff's legal standing by claiming that the number and identity of the affected group, as well as the group's size and the nature of the case, could not be precisely determined in advance. The applicable legal provisions contain no such temporal limitation. The complexity or ease of determining the precise number is irrelevant, as in the present case, the number of students attending the schools in question and the number of Roma students enrolled in each school and its respective branch units can be clearly established each academic year. A parent who self-identifies as Roma may be considered to have a child belonging to the Roma ethnic group, but if a parent does not make such a declaration—which they cannot be compelled to do—their child cannot be classified as Roma. According to the reasoning of the

first-instance judgment, it would be necessary to obtain declarations from 1,716 individuals to determine their ethnic identity, and the court established this number ex officio. If it were accepted that the exact number of affected individuals could not be determined at the time of initiating the lawsuit and that the statistical data relied upon during the evidentiary process were not based on the identification of specific individuals, then the content of the injunction imposed on the defendants to eliminate unlawful segregation would also be indeterminate. For lawful enforcement, such an order must apply to specific (Roma) students. In the absence of legal standing, the plaintiff's claim should have been dismissed outright without issuing a summons, or the proceedings should have been terminated.
The defendants also disagreed with the claim that the special right to bring a lawsuit was independent of the intent or will of the members of the affected group, or even of the majority of them. They asserted that the submitted parental declarations and the opinion of the Roma Minority Self-Government (RMSG) were significant in this regard. In the branch units of the second defendant's school, 98–99% of the parents voluntarily signed the submitted declarations, while in the branch units of the third defendant's school, 70% of the parents did so. It was also not insignificant that no member of the RMSG supported the plaintiff's lawsuit, meaning that even the representatives and defenders of Roma minority interests did not consider the alleged segregation to be unlawful.

The first-instance court also disregarded the statements of the parents, as the legal representatives of the students, in which they declared their satisfaction with the education provided at the institutions, objected to the termination of education in the branch buildings, and protested against the determination of their children's ethnic identity without their consultation or consent. The procedure violated the right to self-determination enshrined in Article 54(1) of the Constitution by initiating litigation on behalf of the students despite the parents' explicit opposition and without considering their views.

The appeal also contested that the first-instance court applied a legal amendment retroactively to the detriment of the defendants and in favour of the plaintiff. The judgment was not based on the legal provisions in force at the time the lawsuit was initiated but rather on amendments to procedural rules that significantly favoured the plaintiff while placing the defendants at a severe disadvantage. The closing provisions of Act CIV of 2006, which entered into force on 1 January 2007, contained no provision requiring the application of the amendments to pending cases.

With regard to the expert, the appeal maintained its objection that the plaintiff had already cited the opinion of T.T. in its statement of claim and that the defendants had opposed his appointment during the first-instance proceedings, requesting the appointment of a different expert. The first-instance court rejected their request to exclude the expert. The appeal argued that the court acted unlawfully in appointing the expert, as it granted the plaintiff an unwarranted advantage, given that T.T.'s prior opinions indicated a foreseeable stance on the matter. Determining ethnic affiliation based on a declaration is not a specialised expert task, and given the expert's decade-long professional background in Hajdúhadház, it was reasonable to suspect bias regarding the case. Before the lawsuit was filed, the expert had already referred to a segregation crisis, and the plaintiff explicitly cited this in its statement of claim.

The methodology used to determine ethnic proportions was also unlawful, even though it was prescribed by the first-instance court. The expert relied on records compiled by the Roma Minority Self-Government, which documented individuals' national and ethnic minority affiliations without parental consent or consultation. The handling and maintenance of such

records by the minority self-government, as well as the expert's reliance on this data, violated Sections 2, 3, 4, 7, and 8 of Act LXIII of 1992 on Data Protection and Freedom of Information.

Furthermore, the first-instance court violated Sections 7(1) and (2) of the Act on the Rights of National and Ethnic Minorities, as no individual may be compelled to make a declaration regarding their ethnic identity, nor may anyone else—including the minority self-government—make such a declaration on their behalf. Evidence based on such declarations is unlawful and null and void. In this regard, the defendants also referred to the opinions of Ombudsman1 and Ombudsman2.

The first-instance court did not conduct an evidentiary procedure regarding actual ethnic affiliation, and even the expert opinion it accepted as the basis of its judgment acknowledged that Roma children were present in varying numbers in all main-building classes. Consequently, the assertion that ethnic minority students were segregated in the annex buildings contradicts the documentary evidence, as Roma students were present in nearly every class.

The organisation of minority education was carried out in accordance with legal requirements, thereby fulfilling the conditions for voluntary separation. This, by definition, excludes the characterisation of segregation as a disadvantage. The first-instance judgment's determination that Roma children had access to lower-quality and disadvantageously available educational resources was both contrary to the evidence and unfounded. The court failed to examine the list of mandatory equipment specified in Annex 11 of Decree 11/1994 (VI. 8.) MKM. Therefore, referencing the absence of certain educational tools in the judgment was unfounded, as their availability was not mandated by law, nor were these resources used directly by students in the learning process but rather served administrative and other operational functions for the teaching staff and school employees.

Attached to the defendants' appeal was a declaration signed by the legal representatives of students attending the second and third defendants' institutions. This declaration primarily sought the termination of the proceedings on the grounds that the plaintiff lacked standing to initiate the lawsuit and, secondarily, requested the reversal of the first-instance judgment and the dismissal of the claim, asserting that no unlawful segregation existed in the town's educational institutions. The justification of the submission largely aligned with the arguments presented in the legal representative's appeal, while also rejecting any efforts by the plaintiff to secure a favourable judgment by questioning the parents' ability to assess the situation. The declaration emphasised that there was no unlawful segregation in their town.

In its cross-appeal, the plaintiff requested the modification of the second paragraph on page 8 of the first-instance judgment's reasoning to state:
"The plaintiff disputed that the text of the written declaration urging the plaintiff to withdraw its claim originated from the signing parents. The proceedings established that the declaration was prepared by Witness 1. Although teachers at the second defendant's branch schools and some parents had already protested against the closure of these branch schools for financial reasons at the municipal council meeting on 15 February 2007, the declaration did not reflect this. The signatures were collected by Witness 1, as well as by the heads and teachers of the branch schools. The declaration was transferred to the third defendant's school by unknown means. Witnesses 2, 3, 4, 5, and 6, who were heard by the court, stated that they were unaware of the content of the plaintiff's claim, that they supported the joint education of Roma and non-Roma children, and that, except for Witness 6, they signed the declaration at the request and in the presence of the teachers of the branch schools, intending to protest against the planned

closure of these schools. Consequently, the declaration was based on a misunderstanding, and the resolution of the Roma Minority Self-Government (RMSG) was issued at the request of parents who were misled. Declarations based on such misunderstandings are not suitable for undermining the plaintiff's legal standing in the lawsuit."

The plaintiff requested that the fifth paragraph on page 8 be modified as follows: *"The definitions and relationships between race, skin colour, and ethnic affiliation are interpreted in Article I of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in New York on 21 December 1965 and promulgated by Act 8 of 1969. According to this convention, the term 'racial discrimination' encompasses any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, equal enjoyment, or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, or any other public sphere. Therefore, in assessing ethnic affiliation, factors such as skin colour, descent, and race must be considered. Skin colour and descent correlate with ethnic origin and race. The legal concept of race does not, of course, refer to distinct biological species."*

Regarding the second sentence of the sixth paragraph on page 8, the plaintiff requested replacing the word *"although"* with *"in view of this,"* supplemented by *"primarily."* Additionally, the section continuing on page 9 should be modified to read:
"Regarding the group affected by the violation under Section 20(1)(c) of the Equal Treatment Act, skin colour and descent were considered secondary but nevertheless essential characteristics for external observers, warranting inclusion in the examination. In the present case, the determination of ethnic proportions also involved considerations of skin colour and descent. Thus, in this case, individuals belonging to the same ethnic group generally share the same skin colour (the majority Hungarian ethnic group typically has lighter skin, while the minority Roma ethnic group generally has darker skin), whereas individuals from different ethnic groups tend to have distinct skin tones (in contrast to the lighter skin of the majority Hungarian ethnic group, the minority Roma ethnic group generally has darker skin)."

The plaintiff requested modifying the second paragraph on page 10 as follows: *"Given the applicable legal framework, obtaining statements from the affected individuals (or their legal representatives) regarding their minority status was not a viable method of evidence in the proceedings. First, because such declarations could not be compelled under legal provisions; second, because this would be impossible for potential victims in the future, as the specific children affected were not even identified; and third, because gathering declarations would be necessary for all students who had been segregated in education since 1994. The collection of ethnic data, as proposed by the defendants, was also unnecessary because, under Section 19 of the Equal Treatment Act, segregation can be established based on the assumption of a protected characteristic by the alleged perpetrator."*

The plaintiff requested that the third paragraph on page 10 be supplemented as follows: *"The court notes that, based on the provisions of the Public Education Act (PEA) and the Nationality Education Act (NEA) concerning Roma minority education, there exists a legal presumption that where Roma minority education is conducted, Roma children are being educated. Under Section 43(4) of the Public Education Act, such education is initiated upon the request of eight parents belonging to the same minority group. In H., Roma minority education is conducted in all classes of all branch schools, and, according to the defendants' assertion—uncontested by the plaintiff—99% of parents requested Roma minority education. If*

such education is initiated at the request of parents belonging to the same minority, then children enrolled in Roma minority education must be presumed to be Roma. Since Roma minority education does not take place in the main buildings, similar presumptions cannot be made under the Public Education Act and the Nationality Education Act. Consequently, students in the branch schools must be presumed to be Roma."

Based on documentary evidence and witness testimonies, the court further established that it is a matter of common knowledge in H. who belongs to the Roma ethnic group and who does not. H.J., President of the Roma Minority Self-Government (RMSG), stated that Roma ethnicity can be assessed visually based on external characteristics and that there are still so-called "Roma streets" in H. where the population consists exclusively of individuals of Roma descent. For example, Á. Street and N. Street are entirely Roma-inhabited streets. This is common knowledge in H., and thus the local government and teachers are also aware of it. (Minutes of 9 March 2007, p. 7)

The plaintiff requested that the third paragraph on page 14 of the judgment be modified as follows:
"In considering the defendants' exculpation, under the statutory provisions in force until 31 December 2006, only the specific exemption set out in Section 28(2)(a) of the Equal Treatment Act (ETA) was applicable as lex specialis in examining segregation in education. Given that the plaintiff's claim was based on segregation between different school buildings, the scope of evidence extended to whether the placement of a high proportion of Roma students in offsite school units resulted from the exercise of the right to Roma minority education under Section 28(2)(a) of the Equal Treatment Act. The court examined whether the education provided in the offsite school units was the result of minority education organised at the initiative and voluntary choice of parents, where its purpose or curriculum justified such segregation, and whether the affected students suffered no disadvantage as a result. The defendants failed to substantiate these circumstances in the proceedings. This method of examining exculpation also ensures compliance with EU law. The definition of direct discrimination—which includes segregation as a specific form—derives from the Racial Equality Directive (Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin), particularly Article 2(2)(c) and the provisions on material scope in Article 3, as well as the sole justification provided in Article 4. Consequently, direct discrimination in the field of education cannot be justified, except in the case of ethnic minority education. Under the ruling of the European Court of Justice in the Marshall case (C-152/84), any provision of an EU directive that has not been transposed into national law, or has been transposed incorrectly, has direct effect in proceedings against state authorities (including publicly funded, municipally maintained schools performing public functions), provided that the provision is unconditional and sufficiently precise to be invoked by an individual against the state (paras. 46–56). Under the Supreme Court's guiding case law (BH 2006.14.), Hungarian domestic legal provisions could also be interpreted as allowing a broader scope for justification than that permitted under directly applicable EU law until 1 January 2007."

The plaintiff further requested that, subject to the above modifications, the fourth paragraph on page 15, extending onto page 16, be omitted.

The plaintiff requested that the first paragraph on page 15 be modified as follows: *"Regarding equal treatment, the allocation of school buildings and the distribution of educational resources (specialist classrooms, ability-grouping, classroom sizes) do not constitute a justification that would exempt the defendants from liability for violating equal*

treatment and, consequently, for unlawful segregation. The court noted that the defendants' claim regarding the size and capacity of classrooms was contradicted by the fact that, prior to September 2006, the second defendant had educated 100 students in the Sz.G. Street branch school, whereas now only 50 students are enrolled there. This indicates that more than 50 students could be accommodated in that building. The professional justifications for small-class education presented by the defendants were refuted by expert T.T., who stated that, first, if students are not successfully reintegrated into mainstream classes by the end of fourth grade, small-class education loses its purpose; and second, that students in small classes have the greatest need for access to modern educational equipment, which is not provided in the branch buildings. Furthermore, neither longstanding tradition nor financial constraints preventing change can serve as grounds for exemption. The burden of proof in this regard rested with the defendants, who failed to submit detailed data or evidence to the county court demonstrating the professional or financial impossibility of an alternative class organisation. The general arguments presented in support of exculpation were also deemed inadmissible, as they were not substantiated by the defendants with specific, detailed evidence and were contradicted by the evidence available in the case. Ethnic education (as a justification under Section 28 of the Equal Treatment Act) cannot serve as an exemption, as the facts and data established in the case, as well as the current legal framework, do not justify the formation of separate classes, nor is the placement of students in different buildings warranted by parental initiative, curriculum objectives, or educational content. In view of the legal presumption regarding ethnic affiliation under Section 43(4) of the Public Education Act (PEA), the defendants' claim that ethnic minority education was only provided in the branch schools and that students who transferred from the branch schools to the main buildings never requested to continue such education supports the conclusion that both student placement and the exclusive provision of such education in the branch schools were determined primarily by students' ethnic affiliation. Given that the grounds for exemption were presented by the defendants as outlined above, the court established that no circumstances existed that would justify an exemption from liability."

In its response to the defendants' appeal, the plaintiff emphasised that ethnic segregation and discrimination were also based on the assumed ethnic affiliation of the affected Roma children as perceived by the defendants. This assumption, supported by the available evidence, was a matter of common knowledge in H. and had to be taken into account during the evidentiary process. The information provided by the Data Protection Commissioner was not relevant in this case, as it was of a general nature.

The plaintiff requested the appointment of T.T. as an expert solely based on the court's guidance. The legal representatives were under a misapprehension when signing their declarations, and the Roma Minority Self-Government entered into a cooperation agreement with the plaintiff. The plaintiff also made submissions regarding the definition of segregation and the feasibility of integration.

In their counter-appeal, the defendants reiterated part of their appeal arguments and, in response to the plaintiff's cross-appeal seeking to amend the reasoning of the judgment, requested that the first-instance court's reasoning remain unchanged.

The Court of Appeal, within the limitations set by Section 253(3) of the Code of Civil Procedure, did not alter the parts of the first-instance judgment that dismissed certain aspects of the claim.

The defendants' appeal was found to be partially well-founded, while the plaintiff's cross-

appeal was partly unenforceable due to the differing reasoning in the appellate judgment's operative part and was otherwise unfounded.

The Court of Appeal first had to determine whether the plaintiff was indeed entitled to bring a public interest lawsuit in this case or whether the defendants' objection in this regard was justified.

Pursuant to Section 20(1) of the Equal Treatment Act, a social or advocacy organisation may initiate a personality rights lawsuit if the violation of the principle of equal treatment or its imminent risk is based on a characteristic that constitutes an essential aspect of an individual's identity and affects a larger group of persons whose exact identities cannot be determined. In the present case, the plaintiff, which is undisputedly a social organisation, filed the lawsuit based on a violation affecting a larger, indeterminate group of students attending two primary schools in H., whose composition continued to change during the course of the proceedings. Therefore, the defendants' objection challenging the plaintiff's legal standing was unfounded, and the first-instance court did not violate the law in accepting the statement of claim as having been submitted by a party with the requisite standing. In this regard, the fact that an estimated number of affected individuals was determined at a certain stage of the proceedings for expert evidence purposes was irrelevant.

A dispute arose between the parties regarding which version of the Equal Treatment Act should be applied in adjudicating the case—whether the version in force until 31 December 2006 or the one introduced by Act CIV of 2006, which took effect on 1 January 2007. In light of the Court of Appeal's substantive decision, this issue ultimately lost its significance. However, given the content of the appeal and the counter-appeal, it was necessary to clarify that in the absence of an explicit provision granting retroactive effect, newly enacted legal provisions cannot be applied to previously initiated lawsuits, particularly in the assessment of conduct that carries potential sanctions.

Subsequently, the Court of Appeal examined the validity of the factual findings of the first-instance court. In doing so, it noted that, although both the statement of claim and the operative part of the first-instance judgment referred to the violations allegedly committed by the defendants in a single sentence, two distinct violations—defined separately under Sections 8 and 10 of the Equal Treatment Act—were actually at issue, and these could not be examined together without conflating their legal definitions. Discrimination does not necessarily imply unlawful segregation, and vice versa. Discrimination can occur without unlawful segregation, while segregation can still be unlawful even if the affected group does not suffer additional disadvantage. Furthermore, the legislature expressly differentiates between the two statutory violations. While discrimination requires a specific provision (Section 8 of the Equal Treatment Act), unlawful segregation is defined in the statutory text as a type of conduct (Section 10(2) of the Equal Treatment Act). According to the interpretative approach adopted by the Court of Appeal, the term "conduct" cannot be limited to active actions alone—unlawful segregation may also be effected through omission (Debrecen Court of Appeal, Case No. Pf.I.20.683/2005/7, Judicial Bulletin 2006.115). The specific nature of the remedies available for personality rights violations (Section 84(1)(a)–(d) of the Civil Code) implies that the conduct giving rise to legal consequences does not necessarily have to be culpable. However, the party claiming a legal injury must still refer to a specific act and identify the perpetrator of that act to ensure that a clear and enforceable judgment can be rendered in the lawsuit they initiated. The Court of Appeal found that the first-instance court's finding that the defendants unlawfully segregated Roma students was unfounded. Until it was unequivocally established

what specific conduct or omission by the defendants constituted the alleged violation, it was inappropriate to examine the alleged consequences of that violation (i.e., the relevant numerical proportions) or the potential justifications for the segregation. The plaintiff did not present specific evidence regarding the defendants' allegedly unlawful conduct. The evidence presented in the proceedings did not indicate that the defendants took measures to influence the ethnic composition of classes, assigned students to schools based on ethnic affiliation, refused admission applications from prospective students, or engaged in any similar actions. The Court of Appeal held that the determination of whether unlawful segregation occurred in the defendants' schools was a question of fact, not a matter requiring expert determination. Statistical data examined by the expert could not substitute for direct evidence in a judicial proceeding.

The fluctuation of numerical data can be influenced by several factors, including residential dispersion within the municipality, parental choices, the physical and intellectual abilities of incoming students, and their academic interests.

The statistical data compiled during the expert examination does not clearly indicate that the distribution of students identified as Roma among the various school locations resulted from an effort to implement segregation. According to the records, the number of students in the examined group attending the two schools in the 2006/2007 academic year was 743, of whom 317 were enrolled in the main buildings, which were considered to have superior facilities. The dynamics of these figures also indicate a counteracting trend against segregation: in the 2006/2007 academic year, more than twice as many first-grade students from the examined group were enrolled in the main building of the second defendant's school than in the previous year (29:13). Furthermore, it is recorded in the case file of the first-instance proceedings (Exhibit 36 of the defendants' submission) that the defendants, nearly simultaneously with the initiation of the lawsuit, entered into a cooperation agreement with SN Kht. to provide integration-focused preparation aimed at enhancing the academic success of students facing multiple disadvantages.

In the view of the Court of Appeal, the defendants' commitment to integration is incompatible with the conclusion that they engaged in unlawful segregational conduct.
Since it was not proven that the statutory elements of unlawful segregation were met by the defendants, the necessity of the rebuttal evidence prescribed under Section 19(2) of the Equal Treatment Act (ETA) did not arise.

On this issue, the Court of Appeal deems it necessary to clarify that the unfounded nature of the claim based on segregation does not render the plaintiff's further efforts toward integration unjustified. However, the success of these efforts is not necessarily enforceable through the means of personality protection in civil law.

The Court of Appeal concurred with the first-instance court's conclusion regarding the existence of discrimination.

Discrimination was proven concerning the availability of facilities, as supported by expert opinions. The defendants' justification in this regard was insufficient. It is indisputable that students in the main school buildings had access to better facilities than those in the so-called annex buildings, where Roma students were predominantly enrolled.

Pursuant to Section 76 of the Civil Code, the violation of the requirement of equal treatment

constitutes an infringement of personality rights. Under the Equal Treatment Act, the legal dispute must establish whether the defendants engaged in discriminatory treatment against the community represented by the plaintiff. If discrimination is found, the defendants bear the burden of proving circumstances that would exempt them from complying with the principle of equal treatment.

Section 4(b) of the Equal Treatment Act mandates that local and minority governments, as well as their bodies, must uphold the requirement of equal treatment in the establishment of legal relationships, as well as in their proceedings and measures.

According to Section 7(1), a violation of the requirement of equal treatment includes direct discrimination, indirect discrimination, harassment, unlawful segregation, victimisation, and instructions to engage in such conduct. Under Section 7(2), unless otherwise provided by law, conduct, measures, conditions, omissions, instructions, or practices do not violate the principle of equal treatment if they impose a restriction on the fundamental rights of the disadvantaged party that is necessary to ensure the realisation of another fundamental right, provided that the restriction is appropriate and proportionate to achieving the objective, or if there is an objectively reasonable justification directly related to the legal relationship in question.

The Constitutional Court has repeatedly established, based on Article 54(1) and Article 70/A of the Constitution, that a particular conduct does not constitute discrimination if it satisfies the necessity-proportionality test in relation to fundamental rights, or, in all other cases, the reasonableness test.

Under Section 8(e) of the Equal Treatment Act, direct discrimination occurs when a provision results in a person or group receiving less favourable treatment due to their actual or perceived national or ethnic minority status compared to another person or group in a comparable situation.

It is undeniable that there is a disparity in the quality of facilities between the main school and the annex schools, and that Roma students are significantly overrepresented in the annex schools.

The Court of Appeal agreed with the first-instance court’s ruling on discrimination and its reasoning. The defendants have the opportunity to rectify this violation by ensuring the equitable allocation of resources.

The first-instance court correctly ruled that, in addition to establishing the violation and ordering the cessation of the unlawful situation, it was also justified to require the defendants to provide redress. However, in determining the form of redress, the court overlooked the fact that this case concerned a public interest lawsuit, in which the plaintiff did not suffer a personal injury, nor were the affected individuals specifically identified. An apology or expression of regret must have an intended recipient, which, for the aforementioned reasons, cannot be the plaintiff. Therefore, an appropriate form of redress is the publication of the operative part of the final judgment. (A similar stance was taken by the Court of Appeal in a previously cited case.) The plaintiff’s cross-appeal became moot following the modification of the legal reasoning. Furthermore, regarding references to international legal norms, the Court of Appeal fully concurred with the reasoning provided by the first-instance court.

Based on the foregoing, the Court of Appeal partially modified the first-instance judgment in

accordance with the operative part, pursuant to Section 253(2) of the Code of Civil Procedure.

Considering the changed ratio of success in the litigation, the court reduced the amount of the first-instance litigation costs while taking into account the expert fees advanced by the plaintiff and the remuneration stipulated in the contract of engagement.

In the appellate proceedings, given the failure of the cross-appeal and the partial success of the defendants' appeal, the Court of Appeal ruled, pursuant to the second sentence of Section 81(1) of the Code of Civil Procedure, that each party shall bear its own costs.

Both the plaintiff and the defendants benefited from personal exemption from court fees, and therefore, the unpaid procedural fees shall be borne by the state in accordance with Sections 13(1) and 14 of Decree 6/1986 (VI. 26.) of the Ministry of Justice.

Debrecen, 13 December 2007

Dr Béla Urhegyi, Panel Chair
Dr Márta Csikiné Dr Gyuranecz, Judge-Rapporteur
Dr Lajos Szűcs, Judge

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