

In the lawsuit initiated by the plaintiff [plaintiff's name] (address: [plaintiff's address]), represented by attorneys Dr Farkas Lilla and Dr Kegye Adél ([address]), against the first defendant [first defendant's name] (address: [first defendant's address]), represented by attorney Dr Ulics Erika ([address]), the second defendant [second defendant's name] (address: [second defendant's address]), represented by attorney Dr Pápai Ákos ([address]), and the third defendant [third defendant's name] (address: [third defendant's address]) for the violation of personality rights, regarding the appeal lodged by the first defendant under No. 52 and by the second defendant under No. 51 against the judgment of the Eger Regional Court No. 12.P.20.351/2011/47, dated 6 December 2012, and the cross-appeal filed by the plaintiff under No. Pf. 3, the Budapest Court of Appeal has rendered the following

j u d g m e n t

The Budapest Court of Appeal does not alter the unappealed part of the first-instance judgment and upholds the appealed decision with the clarification that the obligation to cease and remedy the infringement shall also apply to the third defendant.

The parties shall bear their own costs incurred in the second-instance proceedings.

The appeal fee of 48,000 (forty-eight thousand) HUF and the cross-appeal fee of 24,000 (twenty-four thousand) HUF shall be borne by the Hungarian State.
No further appeal shall lie against this judgment.

R e a s o n i n g

The first-instance court established in its judgment that, except for the first-grade class launched in the 2012–2013 academic year, the school operated by the second defendant under the maintenance of the first defendant had unlawfully segregated students of Roma ethnic minority from those not belonging to the minority through its class assignment policy from 27 January 2004 onward.

The court further found that, from the same date, the unlawfully segregated students received a lower quality of education, thereby being disadvantaged at the school operated by the second defendant under the first defendant's maintenance.

The court ordered the first and second defendants to cease and eliminate the unlawful situation by ensuring that, from the academic year following the finality of the judgment, a method that excludes unlawful segregation is applied in class assignments concerning Roma and non-Roma students.

Beyond this, the plaintiff's claim was dismissed.

The court ordered the first and second defendants to pay HUF 50,000 each in litigation costs

to the plaintiff within 15 days.

In its reasoning, the court cited Sections 75(1) and 76 of the Civil Code and established that the plaintiff foundation had standing to sue under Section 20(1)(c) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities ("Equal Treatment Act"). The court also referred to the Constitutional Court's Resolution No. 61/1992 (AB) and Article XV(4) of the Fundamental Law.

Regarding the burden of proof, the court applied the special provisions of Sections 19(1) and (2) of the Equal Treatment Act, considering that under Section 28, the act's effective regulations allowed for the examination of only specific exceptions applicable to public education.

On the issue of unlawful segregation, the court examined whether students belonging to the Roma ethnic minority had been unlawfully segregated at the second defendant's school, which was maintained by the first defendant.

In this context, the court cited Sections 10(2), 8, 27(3)(a), and 19(1)–(2) of the Equal Treatment Act.

Following the evidentiary proceedings, the court concluded that the plaintiff foundation, as the public interest claimant, had met its burden of proof under Section 19(1) of the Equal Treatment Act, whereas the defendants failed to demonstrate circumstances that would exempt them from liability or prove that they had complied with the principle of equal treatment or were not legally obligated to do so in the given legal relationship.

The court held that the plaintiff had successfully demonstrated that students were directly discriminated against and unlawfully segregated at the second defendant's school based on their perceived Roma nationality, which is a protected characteristic under the Equal Treatment Act.

The court dismissed the defendants' argument that the second defendant's institution was not permitted to keep records of students' ethnic backgrounds, thereby claiming it had no knowledge of their ethnicity as a protected characteristic.

The plaintiff successfully proved that the affected students were perceived to belong to the Roma minority at the time of the violation and thus possessed the protected characteristic under Section 8(e) of the Equal Treatment Act.

As part of the evidence, the court evaluated the investigation and follow-up reports of the Parliamentary Commissioner for National and Ethnic Minority Rights, as well as the testimonies of witnesses 1 and 2.

The court also found that both the first and second defendants had explicit knowledge of the alleged Roma affiliation of the students attending the second defendant's institution. This conclusion was supported by the investigation report of the Educational Authority and the statement of witness 3.

Pursuant to Section 8 of the Equal Treatment Act, not only segregation based on actual knowledge but also perceived affiliation with the Roma ethnic group constitutes unlawful

segregation under Section 10(2) of the Equal Treatment Act. Accordingly, it was established that, based on the protected characteristic defined in Section 8(e) of the Equal Treatment Act, Roma students were segregated at the second defendant's school from individuals or groups in a comparable situation, without explicit legal authorisation.

The court noted that the defendants did not invoke any special exoneration rules, as their established position was that one of the statutory conditions—the existence of a comparable situation based on the cited protected characteristic—had not been proven by the plaintiff. However, the first-instance court held that the plaintiff had fully discharged its probative burden. Therefore, considering the special evidentiary rules applicable in the case and in the absence of a successful exoneration by the defendants, the unlawful segregation was established. The fact of unlawful segregation was further supported by the minutes of the Educational Authority dated 31 May 2007, which indicated that the school principal was aware of the Roma ethnicity of certain students.

Based on the evidentiary proceedings, the first-instance court concluded that, from 27 January 2004, the second defendant's school had unlawfully segregated Roma students through its class placement practices. This conclusion was corroborated by the class-level student enrolment data.

The content of the form titled "Supplementary Table for the Registration of First-Grade Students", as well as the statements made by the representative of the second defendant, confirmed that following an on-site inspection by the Educational Authority, the second defendant applied what it deemed an objective method for class assignment. However, the defendants were obliged to take action against even unintentional segregation, as unlawful segregation, constituting a violation of equal treatment, can be committed not only intentionally but also through omission. In this regard, the court dismissed the defendants' argument that they could not have recognised the unintentional ethnic segregation that had arisen.

The court found that the defendants had the opportunity to take concrete measures to eliminate the established unlawful segregation, based on the factual and numerical findings contained in the investigation and follow-up reports of the Parliamentary Commissioner for National and Ethnic Minority Rights. However, since the defendants failed to take any action, their liability for the actual maintenance of unlawful segregation was established.

The first-instance court further determined that the defendants committed discriminatory conduct by providing a lower standard of education to the unlawfully segregated students. The plaintiff had met its burden of proof under Section 19(1) of the Equal Treatment Act in this regard as well. The court noted that although the second defendant consistently denied the existence of unlawful segregation, it did not dispute that different classes implemented varying levels of professional education based on educational and pedagogical considerations.

The defendants failed to prove that this practice did not result in a lower standard of education, nor did they request the appointment of an educational expert to support such a claim. Consequently, they were unable to exonerate themselves from liability for the violation. The first-instance court's determination in this regard was based on Section 9 and Section 27(3)(b) of the Equal Treatment Act.

However, the court found the claim unfounded and dismissed the plaintiff's request for a finding of a violation regarding the multiple class placement of students with special educational needs. The court held that the defendants had not directly discriminated against these students, nor had they indirectly discriminated against the Roma students attending the second defendant's school in this regard.

Based on the evidentiary proceedings, the court concluded that the plaintiff had not met its burden of proof under Section 19(1) of the Equal Treatment Act in this regard. The court found that the investigation and follow-up reports prepared by the Parliamentary Commissioner for National and Ethnic Minority Rights were, on their own, insufficient to establish the alleged violation, particularly since no witnesses were heard and no other evidence was submitted.

Regarding the claim related to school ceremonies, the court did not find grounds to establish unlawful segregation, again due to the plaintiff's failure to meet its burden of proof.

The court also found no basis for establishing unlawful segregation concerning school meal arrangements. It accepted the second defendant's statement regarding the actual size of the school cafeteria, which, in the court's view, did not support a finding of unlawful segregation based on a protected characteristic.

Furthermore, the court noted that the Parliamentary Commissioner's report had not found any violations related to either school meal arrangements or the school opening ceremony. On the contrary, the Commissioner accepted the school principal's reasoning regarding the opening ceremony.

The court also dismissed the claim related to swimming lessons, ruling that no discriminatory treatment had occurred. It found that the second defendant lawfully required that students could only participate in swimming lessons as part of physical education classes if they possessed appropriate swimming gear. The second defendant was not obligated to provide this equipment. Moreover, the plaintiff failed to prove that any student who possessed the required swimming gear had been prevented from using the swimming pool due to their protected characteristic.

The court also rejected the claim that Roma students were indirectly discriminated against based on their ethnicity due to the requirement that only students with two working parents could be enrolled in after-school care. The court noted that this earlier decision had been revoked by the first defendant's representative body at its meeting on 19 December 2011. Based on the available evidence, the court concluded that under Section 9 of the Equal Treatment Act, there was no basis for finding indirect discrimination, as the plaintiff failed to demonstrate that the rule in question placed children with a protected characteristic at a disproportionate disadvantage compared to others in a comparable situation.

In addition to establishing the violations under Section 84(1)(a) of the Civil Code, the court also ordered the defendants to cease the established unlawful conduct in accordance with Section 84(1)(b) of the Civil Code. Furthermore, under Section 84(1)(d) of the Civil Code, the court upheld the plaintiff's request for an order requiring the defendants to eliminate the unlawful situation, as it held that the discriminatory treatment of the school's students had arisen in a

private law context, making it possible to remedy the violation through civil law measures.

Regarding litigation costs, the court ruled pursuant to Section 81(1) of the Code of Civil Procedure, taking into account Section 14 of Decree No. 6/1986 (VI. 26.) of the Ministry of Justice and Section 3(2) of Decree No. 32/2003 (VIII. 22.) of the Ministry of Justice.

The first and second defendants filed an appeal against the first-instance decision, seeking its reversal and the complete dismissal of the plaintiff's claim.

In its appeal, the first defendant argued that during the proceedings, neither unlawful segregation nor its continuation had been proven, nor was there evidence that the allegedly segregated children had received an inferior standard of education or had suffered discriminatory treatment as a result.

The first defendant contended that the plaintiff failed to establish that children attending the second defendant's school suffered any disadvantage due to the school's organisational structure. Moreover, it argued that even if any disadvantage had occurred, the affected child could just as likely have been a member of the Roma ethnic group or a student with a disability, rather than discrimination being based specifically on ethnicity.

The first defendant emphasised that until 2007, students were assigned to classes based on their abilities, and only after the Educational Authority's directive was this practice altered. Consequently, the claim for the period between 2004 and 2007 should be dismissed.

The first defendant argued that the opinions of the Educational Authority and the County Specialised Services confirmed that the school's decisions regarding enrolment and the formation of small classes for socially disadvantaged students with integration, academic, and behavioural difficulties were based on professional considerations. According to the Educational Authority, the random enrolment order was an ad hoc method that could be applied, while the County Specialised Services' opinion stated that the professionally grounded operation was reasonable, objective, and, therefore, lawful in achieving its intended purpose.

As evidence, the first defendant referred to a video recording available on YouTube, asserting that it demonstrated that Roma ethnicity was not a factor in class placement and that Roma students were not provided with a lower standard of education. Additionally, talented Roma students received special talent development programmes.

The first defendant contended that its practices would have disadvantaged Roma students only if a Hungarian student with the same special educational needs (BTMN classification) had been treated more favourably, for instance, by allowing a Hungarian student without swimming gear to participate in swimming lessons or by admitting a Hungarian child with unemployed parents into after-school care. However, no such data was presented in the proceedings.

Since students belonging to the Roma minority were not placed at a greater disadvantage than other students in a comparable situation, the first defendant argued that neither direct nor indirect discrimination occurred, and segregation could not be established.

In its appeal, the second defendant maintained that it was not the role of an educational institution to determine who belongs to a particular ethnic minority. Furthermore, under the applicable laws, the court itself had no jurisdiction to establish such classifications. The determination of whether unlawful segregation occurred would only be possible after resolving the preliminary question of who was Hungarian and who was not.

The second defendant also referenced Witness 2, who had falsely claimed to have received a list categorising students by ethnicity, noting that such a list was never produced. The second defendant considered it significant that class placements were conducted using a method recommended by the Educational Authority, which ensured equal conditions for all students' parents in determining whether their child would be placed in Class A or Class B.

Additionally, the second defendant stated that the estimate appearing in the Educational Authority's report had not been conducted by the school principal and that the Authority itself did not consider the data reliable, nor had it ordered any changes to be made at the institution. Regarding the issue of perceived or actual ethnic identity, the second defendant argued that the school principal's prior experiences, knowledge, and cultural background influenced their perception of where students should be placed. It maintained that the principal's statements clearly indicated that no segregation occurred.

The second defendant also asserted that the finding that unlawfully segregated students received a lower standard of education was erroneous, as objective educational data refuted this claim, and no such determination was made in the Educational Authority's inspections.

Plaintiff's Cross-Appeal and Counterclaim

In its cross-appeal and counterclaim, the plaintiff joined the successor of the first defendant to the lawsuit. The plaintiff requested the upholding of the favourable parts of the first-instance judgment and sought its modification to fully grant the plaintiff's original claim.

The plaintiff argued that the reasoning of the first-instance judgment was exemplary in establishing segregation based on presumed ethnic or national origin. However, the judgment violated the Equal Treatment Act in relation to Section 7(3), Section 8(e), Section 9, Section 10(2), and Section 19(2), as well as Section 206(1) of the Code of Civil Procedure, which governs the evaluation of evidence in the context of the defendants' exoneration.

The plaintiff maintained its position that segregation in meal arrangements was unlawful. It objected to the first-instance court's acceptance of the first defendant's defence concerning the cafeteria's size, arguing that the court failed to assess whether this justification was reasonable and lawful. The plaintiff further challenged the second defendant's defence, stating that it failed to explain why lunch could not be organised immediately after morning classes and why students of the same grade could not eat together, as is customary in other schools.

The plaintiff also reiterated its claim that students excluded from swimming lessons were subjected to direct discrimination by the first defendant. The discrimination did not lie in the fact that students without equipment were denied participation, but rather in the structuring of mandatory physical education lessons, where swimming was scheduled despite the fact that students from impoverished backgrounds—predominantly Roma children—could not afford the necessary swimming gear. The harm was not only that these children were excluded from

swimming lessons but also that they missed out on any physical education during that time. The plaintiff argued that the second defendant should have either provided the required equipment or offered swimming lessons as an extracurricular activity to comply with the principle of equal treatment.

The plaintiff further contended that the criteria for after-school care admissions resulted in indirect discrimination against Roma students. It argued that it was only required to establish a likelihood of discrimination rather than provide full proof, which it had done by demonstrating—based on the Ombudsman’s report—that very few Roma children attended after-school care, a direct result of the first defendant’s representative body’s decision. This decision significantly disadvantaged Roma students, who were excluded from after-school care at a disproportionately higher rate.

Based on this, the plaintiff asserted that the first-instance judgment violated Section 19(1) of the Equal Treatment Act, which governs the distribution of the burden of proof, and Section 9, which prohibits indirect discrimination.

In its counter-appeal, the plaintiff argued that the first defendant’s appeal was unfounded and based on a misinterpretation of the law. Regarding the second defendant’s appeal, the plaintiff asserted that the only relevant issue in the case was that, from 1 January 2013, the third defendant became the successor of the first defendant.

In its ruling under No. 10-I, the appellate court established that legal succession had occurred concerning the second defendant, whose successor was the third defendant, which would henceforth participate in the proceedings as the third defendant. In its ruling under No. 20, the appellate court confirmed that the first defendant’s successor was the third defendant in relation to both the maintenance and operational responsibilities of the educational institution.

The third defendant, in its counterclaim, also sought the dismissal of the plaintiff’s claim.

The appellate court found both the first and second defendants’ appeals, as well as the plaintiff’s cross-appeal, to be unfounded.

The Budapest Court of Appeal, pursuant to Section 253(3) of the Code of Civil Procedure, did not alter the first-instance court’s decision dismissing part of the claim—specifically, the request for a finding of unlawful segregation in connection with participation in school ceremonies—as no appeal was lodged in this regard.

The first-instance court correctly established the facts of the case, and the Budapest Court of Appeal concurred with its substantive decision, which was rendered following comprehensive evidentiary proceedings. The appellate court also agreed with the first-instance court’s legal position on unlawful segregation and discriminatory treatment.

Under Section 76 of Act IV of 1959 (the former Civil Code), a violation of personality rights includes breaches of the principle of equal treatment.

At the time of the events in dispute, Section 4/A(1) of Act LXXIX of 1993 on Public Education

("Public Education Act") required that all parties involved in the organisation, administration, operation, and implementation of public education uphold the principle of equal treatment in decisions and actions affecting students. Section 4/A(5) further stipulated that the provisions of the Equal Treatment Act must also be applied in the enforcement of this principle.

According to Section 7(1) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities ("Equal Treatment Act"), a violation of the principle of equal treatment includes, in particular, direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation, and any instruction to engage in such conduct, as outlined in Chapter III of the Act.

From 27 January 2004, Section 10(2) of the Equal Treatment Act defined unlawful segregation as any action that separates individuals or groups based on a protected characteristic listed in Section 8, without an objectively reasonable and justified cause. Following the amendment effective from 1 January 2007, the provision was modified to define unlawful segregation as any measure that separates individuals or groups possessing a protected characteristic from those in a comparable situation, without explicit legal authorisation. Prior to this amendment, Section 7(2) of the Equal Treatment Act provided that a measure based on a protected characteristic does not violate the principle of equal treatment if it is directly related to the legal relationship in question and is justified by an objectively reasonable cause.

Under Section 8(e) of the Equal Treatment Act, direct discrimination includes any measure that results in a person or group receiving less favourable treatment than a comparable individual or group based on actual or perceived membership in a national or ethnic minority.

Section 9 of the Equal Treatment Act defines indirect discrimination as a seemingly neutral provision that, while not constituting direct discrimination, places individuals or groups possessing a protected characteristic at a disproportionately greater disadvantage compared to those in a comparable situation. Following its amendment by Act CIV of 2006 (effective 1 January 2007), this provision was expanded to include the phrase "than another person or group in a comparable situation was, is, or would be".

Chapter III of the Equal Treatment Act sets forth specific provisions on education and training. Under Section 27(3)(a), unlawful segregation in an educational institution, including within specific departments, classes, or groups, constitutes a violation of the principle of equal treatment.

The central legal issue before the appellate court was whether the educational institution operated by the second defendant under the maintenance of the first defendant had implemented measures that violated the principle of equal treatment based on the protected characteristic in question.

Based on the evidence presented, including documentary evidence, witness testimony, and the Ombudsman's investigative report, the first-instance court correctly established the existence of unlawful segregation. The fact that, in the parallel classes of the second defendant's school, the proportion of Roma students was significantly higher in the "B" classes compared to the "A" classes, demonstrated that neither the school nor its maintainer fulfilled their obligation to promote integration. Instead, they perpetuated the situation that had developed due to spontaneous segregation.

In public education, unlawful segregation can also occur through the mere maintenance of

spontaneously developed segregation, in accordance with Sections 7(2) and 10(2) of the Equal Treatment Act.

The plaintiff's claim that the B classes received a lower standard of education was supported by the statement of the first defendant's principal. It was established as fact that the curriculum differed between the A and B classes. The Ombudsman's report dated 19 April 2011 contained a tabular analysis on page 27, which clearly demonstrated significant discrepancies in the proportion of Roma students in parallel classes, identifying certain B and C classes as effectively "Roma classes". The report further indicated that, according to the school principal, the teaching methodology and curriculum differed between the A and B classes, with the B classes focusing more on the compulsory subject minimum and less on supplementary material, whereas the A classes provided talent development from the first grade.

Accordingly, the first-instance court correctly found a violation under Section 84(1)(a) of the Civil Code and rightfully ordered the cessation and elimination of the unlawful segregation under Sections 84(1)(b) and (d) of the Civil Code. Since the violation was established based on unlawful segregation in class assignments and the provision of a lower standard of education to segregated students, the appellate court held that the judgment could be enforced without requiring a desegregation plan. Given that proper class assignment and the provision of an appropriate educational standard are clear obligations, general objective sanctions could serve as a basis for enforcement. However, the defendants' statements during the appellate proceedings, indicating that only one grade level still had two parallel classes, could impact how enforcement is carried out.

The appellate court also noted that school segregation arose in a public law context rather than a private law relationship, meaning that the rules of private law are not suitable for determining specific measures to eliminate segregation. The necessary remedial measures fall within the scope of public law, and public law instruments must be used to redress the violation.

The plaintiff's cross-appeal required the appellate court to determine whether the first-instance court erred in dismissing certain aspects of the claim, beyond its findings of unlawful segregation and discrimination and the application of objective legal consequences.

Under Section 19(1) of the Equal Treatment Act, in proceedings alleging a violation of the principle of equal treatment, the aggrieved party or an entity entitled to act in the public interest must demonstrate that:

- a) The aggrieved party or group suffered a disadvantage, or, in the case of public interest claims, there was an imminent risk of such a disadvantage; and
- b) The aggrieved party or group possessed a protected characteristic at the time of the violation, either actually or as perceived by the discriminator.

Under Section 19(2), if the plaintiff satisfies this initial burden, the burden shifts to the defendant to prove that:

- a) The alleged circumstances did not exist, or
- b) The principle of equal treatment was upheld, or the defendant was not obligated to uphold it in the given legal relationship.

The plaintiff failed to establish a likelihood that Roma students were excluded from swimming lessons based on their ethnicity. The evidence demonstrated that only students without proper swimming equipment were excluded, a requirement not linked to Roma ethnicity. The Ombudsman's report also did not support a finding of discrimination regarding swimming lessons.

The claimant also failed to substantiate unlawful segregation in relation to participation in school meals. Testimony confirmed that the school dining hall accommodates a specific number of groups. It is a general practice in every school that after lessons, a given class proceeds together to the dining hall. If, due to the size of the dining hall, it is not possible to serve lunch to all classes at the same time, there is no valid basis to claim discrimination. The claimant did not substantiate that the separation of Roma children from non-Roma children during meal times was directly linked to their protected characteristic.

According to the report of the Parliamentary Commissioner for National and Ethnic Minority Rights, the provision of the local council's resolution, stipulating that the after-school care may only be provided to students whose mothers are employed, could constitute indirect discrimination, as it is sociologically proven that the unemployment rate is significantly higher among Roma families than among non-Roma families, with a particularly large disparity in the employment rate of women.

The regulation was amended, now primarily those children whose both parents are employed are entitled to after-school care. According to the opinion of the second-instance court, after-school care should primarily be provided to children for whom home care or study cannot be ensured in any other way. The issue of unemployment is a societal problem, not an ethnic issue. It cannot be established that Roma children are subject to indirect discrimination based on sociological grounds, as the opportunity to access after-school care does not differentiate based on ethnic minority status.

The first-instance defendant municipality has exhibited unlawful behaviour with regard to its responsibilities in organising public education, as well as its maintenance, management, and oversight activities. The second-instance defendant educational institution has committed the violation through the establishment of criteria for class placement, the maintenance of spontaneous segregation, and the development of the educational programme.

As a result of a change in legislation following the decision, the obligation to terminate the violation and eliminate the discrimination now falls on the third-instance defendant, as the legal successor of the first and second-instance defendants, in accordance with the provisions of Section 6(1) and (2) of Act CLXXXVIII of 2012.

In light of the above, and with the necessary clarification due to the change in legislation, the second-instance court upheld the first-instance court's judgment under Section 253(2) of the Code of Civil Procedure.

The appeal of the defendants and the cross-appeal of the claimant were unsuccessful, and thus the parties bear their own second-instance litigation costs. Given the personal exemption from court fees of the claimant and the first, second, and third-instance defendants, the

advance court fees for the appeal and cross-appeal are borne by the Hungarian State, in accordance with Section 13(1) and Section 14 of Government Decree 6/1986 (VI. 26.) IM.

Budapest, 7 October 2014

Kizmanné Dr Oszkó Marianne
President of the Panel

Dr Hercsik Zita
Judge-Rapporteur

Dr Kisbán Tamás
Judge

Certifying the authenticity of the copy:
Clerk