

## **DEBRECEN COURT OF APPEAL**

Case No.: Pf.I.20.125/2009/4

### **IN THE NAME OF THE REPUBLIC OF HUNGARY!**

The Debrecen Court of Appeal, in the case initiated by the First Plaintiff (name, address), Third Plaintiff (name, address), Fourth Plaintiff (name, address), Fifth Plaintiff (name, address), and Sixth Plaintiff (name, address) – all represented by Morley Allen & Overy Law Firm (1075 Budapest, Madách Imre út 13-14. A. Building, III. floor, case handler: Dr Sahin-Tóth Balázs, attorney) – against the Defendant (name, address), represented by Dr V. K., legal counsel, for the determination of the violation of personal rights and non-pecuniary damages, hereby renders the following

### **JUDGMENT**

upon appeal No. 25, supplemented, filed by the First, Third, Fourth, Fifth, and Sixth Plaintiffs against Judgment No. 13.P.20.580/2008/24, delivered by the Borsod-Abaúj-Zemplén County Court on 26 January 2009, following a public hearing held on 19 November 2009:

The Court of Appeal does not affect the unappealed part of the first-instance judgment and upholds the appealed part.

The Court orders the Plaintiffs to pay, within fifteen (15) days, secondary litigation costs of HUF 5,000 (Five Thousand) per person to the Defendant.

No appeal shall lie against this judgment.

### **REASONING**

In a public interest action initiated by the E. H. H. Gy. Foundation, the Debrecen Court of Appeal, in its final judgment No. Pf.I.20.683/2005/7 of 9 June 2006, partially amending the first-instance judgment, established that the Defendant, by failing to implement the integration of school districts at the time of the administrative and financial integration of B. Elementary and M-A K. T. Ny. School with E. Elementary School and K.I. Elementary School, as well as the integration of K. Elementary School with F.H. Elementary School, and the integration of S. Elementary and M-A K. T. Ny. School and V. P. Institute with J.A. Elementary School on 1 July 2004, and only implementing it with effect from 30 August 2005, violated the right to equal treatment of Roma students represented by the Plaintiffs. Consequently, the Court ordered the Defendant to submit the operative part of the appellate judgment, including the names of the parties, to the M. T. Office.

The Second Plaintiff completed studies at the J.A. Branch School of the M. S. A-M K. T. Ny. School in the 2004/2005 academic year, the Third Plaintiff at the F.H. Branch School of the M. K. Elementary School in the 2004/2005 academic year, while the remaining Plaintiffs attended the latter elementary school in the 2005/2006 academic year.

Referring to the final judgment No. Pf.I.20.683/2005/7 of the Debrecen Court of Appeal, the Plaintiffs sought non-pecuniary damages from the Defendant without success. In their claim filed on 5 March 2008, they requested the Court to establish that the Defendant had violated

their personal rights, order the Defendant to provide appropriate redress by publishing a paid advertisement in two national daily newspapers, and order the Defendant to pay non-pecuniary damages of HUF 500,000 (Five Hundred Thousand) per Plaintiff, with default interest from 1 January 2008, along with litigation costs.

Among other arguments, they contended that the judgment of the Debrecen Court of Appeal had already established the fact of the infringement due to the incomplete implementation of school integration. In their view, this also established the legal basis for their damages claim, as further evidence was unnecessary to prove that they had been deprived of the opportunity to transfer to the main school, which provided a higher standard of education. They argued that as a consequence of the Defendant's unlawful conduct, their life opportunities had been adversely affected, and their quality of life had deteriorated.

Regarding the quantum of non-pecuniary damages, they claimed that the compensation sought was proportionate to the disadvantage suffered.

In its statement of defence, the Defendant sought dismissal of the claim, arguing that the mere establishment of a violation did not automatically entitle the Plaintiffs to damages. It asserted that the Plaintiffs were required to prove that they had suffered non-pecuniary harm causally linked to the unlawful conduct, warranting compensation.

Regardless of the legal basis, the Defendant also deemed the amount of non-pecuniary damages excessive, arguing that its administrative omission could not have caused such prejudice to the Plaintiffs as to justify a high award of damages. It further contended that the case law cited by the Plaintiffs as a basis for their claim involved substantially different facts, rendering any comparison inappropriate.

Following an evidentiary procedure, the first-instance court, in its judgment No. 24, terminated the proceedings concerning the Second Plaintiff (due to withdrawal) and ruled that the Defendant had violated the equal treatment rights of the First, Third, Fourth, and Fifth Plaintiffs by failing to implement the school district integration simultaneously with the financial integration of K. Elementary School and F.H. Elementary School on 1 July 2004, only implementing it with effect from 30 August 2005. Beyond this, the court dismissed the Plaintiffs' claim and ordered them to pay HUF 10,000 (Ten Thousand) each to the Defendant within fifteen (15) days as litigation costs. It also ruled that the unpaid court fees would be borne by the State.

In dismissing the claim for non-pecuniary damages, the first-instance court reasoned as follows:

It was incorrect to assert that the final judgment of the Debrecen Court of Appeal had already established the legal basis of the Plaintiffs' claim. Under the general rules of damages law, it was necessary to examine and prove that the Plaintiffs suffered a disadvantage sufficiently severe to justify an award of non-pecuniary damages.

The first-instance court found no basis to establish that the standard of education at F.H. Elementary School, as a branch school, was inferior to that of K. Elementary School, as the main school. The judgment of the Debrecen Court of Appeal contained no such finding, and the Plaintiffs failed to prove this assertion in the present proceedings. Based on an objective comparative assessment and expert opinions obtained in the case, the first-instance court concluded that, contrary to the Plaintiffs' arguments, the quality of education at the branch

school was adequate and "outstanding in terms of Roma student integration." Consequently, it determined that the Plaintiffs had suffered no compensable harm solely due to the delayed modification of school district boundaries in parallel with the economic integration.

The Plaintiffs appealed against this judgment, primarily seeking the granting of their claim for non-pecuniary damages and the Defendant's liability for both first- and second-instance litigation costs. Alternatively, they requested that the appellate court set aside the first-instance judgment and order a retrial, directing the first-instance court to conduct further evidence regarding the quality of education at the schools concerned.

The primary grounds for the appeal were substantiated as follows:

The violation of personality rights in itself establishes the basis for non-pecuniary damages. Therefore, the first-instance court erred in adopting the legal position that the violation of personality rights established in the judgment of the Debrecen Court of Appeal No. Pf.I.20.683/2005/7 only provided grounds for the establishment of the infringement itself and was unlawful in requiring the plaintiffs to provide further evidence to substantiate their claim for non-pecuniary damages against the defendant.

The first-instance court sought to support its erroneous legal position with a decision of the Supreme Court that is not applicable to the present case. In contrast, in a later and similarly themed decision published as BH. 2001.366, the Supreme Court established that the defendants' unlawful conduct in violating the prohibition of discrimination and the plaintiffs' human dignity resulted in detriment to the plaintiffs, which in turn justified an award of non-pecuniary damages.

Unlawful segregation constitutes a disadvantage in itself, thereby forming a basis for non-pecuniary damages. This legal stance is reinforced by the reasoning of the Budapest Court of Appeal in its judgment No. 9.Pf.20.931/2004/2 and the legal reasoning of the Supreme Court's decision No. Pfv.IV.20.936/2008/4. In the latter decision, the Supreme Court expressly stated: "The fact of unlawful segregation necessarily disadvantages the affected individuals. Therefore, separate proof of detriment was not required."

Additionally, the plaintiffs argued that non-pecuniary damage manifests as a diminution in the value of human personality. Such diminution is established when an individual's personal status deteriorates unfavourably compared to a prior state. In the present case, as a result of the defendant's unlawful conduct, the plaintiffs suffered a deterioration in their opportunities in life and a diminution in their quality of life. This occurred because the unaltered school district boundaries prevented them from continuing their studies in a higher-standard institution, which would have been the logical consequence of school integration.

The secondary grounds for the plaintiffs' appeal may be summarised as follows:

If further evidence of detriment is required for non-pecuniary damages, then the first-instance judgment is unfounded because the necessary evidence was not obtained. The court, relying on incomplete evidence, reached an erroneous and illogical conclusion in dismissing the claim for non-pecuniary damages due to a lack of legal basis.

The plaintiffs had specified in their claim the particular disadvantage forming the basis for their demand for non-pecuniary damages from the defendant. According to them, the unlawful

segregation caused by the defendant resulted in specific detriment by depriving them of the right to attend the better-quality K. headquarters elementary school. In assessing the claim for non-pecuniary damages, the key factual issue in dispute was whether the F. branch school was indeed inferior in quality to the K. headquarters school—a matter arising directly from the first-instance court’s erroneous legal standpoint.

Although the first-instance court examined this issue, it reached incorrect factual and legal conclusions due to multiple violations of evidentiary rules.

The procedural irregularities were as follows:

The first-instance court unlawfully excluded witness testimony regarding the difference in educational standards between the schools, reasoning that the subjective perceptions of the plaintiffs were irrelevant. However, non-pecuniary damage is inherently expressed in subjective feelings.

The court, in violation of procedural law, failed to conduct the objective evidentiary process it deemed necessary, as it arbitrarily omitted an on-site inspection of the schools and failed to appoint an expert witness.

The first-instance judgment was partially contrary to the evidence and partially illogical in concluding that the F. branch school provided an adequate standard of education and that there was no disadvantageous difference between its pedagogical programme and that of the K. headquarters school.

A mere formal comparison of the two schools’ pedagogical programmes and grading statistics was insufficient to resolve this critical factual issue. The first-instance court failed to conduct substantive evidentiary proceedings.

Even in its formal comparison, the court’s conclusion was contrary to the record, as it contradicted expert opinions, particularly the unequivocal findings of Dr Sz. J., an educational expert, in a report dated 28 September 2005. Contrary to the expert’s conclusions, the court found that the F. branch school’s educational standards were adequate and that there was no disadvantageous difference between the schools’ pedagogical programmes.

The expert analysis was inadequate as it was limited solely to document analysis. A proper expert investigation should have included an evaluation of the schools’ academic activities, classroom observations, and an assessment of the implementation of the pedagogical programme.

In its reasoning, the first-instance court acknowledged that different schools might offer varying levels of education. In light of this, its reasoning was illogical in asserting that the plaintiffs could not have suffered a disadvantage from the lack of opportunity to transfer because it was inconceivable that they would have achieved better academic results in the more rigorous school in their eighth year.

In its appeal response, the defendant sought the affirmation of the first-instance judgment and requested that the plaintiffs be ordered to bear the costs of the appeal.

The defendant contended that the plaintiffs’ appeal assertion—that a violation of personality

rights in itself establishes a claim for non-pecuniary damages—was contrary to specific legal provisions (namely, Section 75(1)(e) of the Civil Code) and judicial practice. Pursuant to the referring rule of Section 84(1)(e) of the Civil Code, Sections 339(1) and 355(4) of the Civil Code require concrete evidence of detriment for a claim of non-pecuniary damages to be established.

The defendant argued that the plaintiffs' claim was not supported by Constitutional Court Decision 34/1992. (VI.1.), and the cited BH. 2001.366 decision was inapplicable due to differing facts.

The defendant further cited judicial precedents supporting its position, including Supreme Court decisions published as EBH. 2000.302 and EBH. 2006.1398.

In elaborating its arguments, the defendant emphasised that the plaintiffs failed to prove during the proceedings that the unaltered school district boundaries prevented them from attending a higher-quality institution. Consequently, they did not establish a causal link between the specific disadvantage they alleged and the defendant's conduct, which is a fundamental prerequisite for damages.

According to the defendant, the plaintiffs failed to present any substantiated claim during the proceedings or in their appeal to demonstrate that they suffered any actual disadvantage. The alleged difference in educational standards between schools - assuming that such a difference existed, which the first-instance court found was not established - was irrelevant, as any claim for damages due to segregation could not be founded on this alone. In fact, the integration of the disadvantaged group to which the plaintiffs belonged was facilitated by the disputed measures. Furthermore, while the plaintiffs asserted that they attempted to transfer to the higher-quality headquarters school, they failed to prove this claim.

In their original claim, the plaintiffs sought a declaration of the violation of their personality rights, an order for the defendant to provide satisfaction, and an award of non-pecuniary damages. The defendant did not appeal the declaration of the violation, and the plaintiffs, in their appeal, did not contest the dismissal of their claim for satisfaction nor requested the modification of the first-instance judgment in this regard. Consequently, pursuant to Section 253(3) of the Code of Civil Procedure, the appellate court did not address these parts of the judgment and limited its review to the dismissal of the claim for non-pecuniary damages.

The plaintiffs' appeal is unfounded.

The first-instance court rendered a substantively correct decision without any procedural irregularity, and the grounds asserted in the appeal were insufficient to warrant its modification.

However, in light of the appeal, the reasoning of the correct substantive decision requires partial amendment and supplementation as follows:

The plaintiffs also based their claim for non-pecuniary damages on the final judgment of the Debrecen Court of Appeal in case Pf.I.20.683/2005/7, emphasising that this judgment had already established the legal basis of their claim by determining the respondent's liability for the infringement. This assertion by the plaintiffs, however, was unfounded, as correctly pointed out by the first-instance court in its reasoning.

In the aforementioned judgment, the Court of Appeal established that the respondent engaged in unlawful conduct by implementing unlawful segregation under Section 10(2) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act). Specifically, the respondent failed to integrate school districts at the time of the administrative and financial integration of the affected schools on 1 July 2004, only implementing such integration with effect from 30 August 2005. According to the final judgment, the infringement suffered by the Roma group represented by the public interest litigant was unlawful segregation, which, as per its statutory definition, does not require the presence of detriment. Thus, the correct interpretation is that the realisation of unlawful segregation (segregation) does not require any disadvantage suffered by the segregated group but merely the existence of segregation prohibited by law. This was also highlighted by the Equal Treatment Advisory Board in its Opinion No. 2/2007 (III. 23.), submitted as evidence by the plaintiffs under Exhibit No. 7. Even if the education provided in the unlawfully segregated setting was identical in quality and conditions, it would still constitute an unlawful act.

Consequently, even if it is established that the present plaintiffs were members of the Roma group protected under the final judgment of the Debrecen Court of Appeal in case Pf.I.20.683/2005/7, this alone does not lead to the conclusion that “the plaintiffs suffered detriment due to the incomplete implementation of integration.” Therefore, the first-instance court was incorrect in concluding that this fact had already been established by the Debrecen Court of Appeal in its judgment.

Accordingly, the determination of whether the unlawful segregation caused the plaintiffs, on an individual basis, such specific detriment as to justify the application of the subjective sanction of personality protection against the respondent had to be examined separately for each plaintiff in the present proceedings.

Contrary to the appellants’ arguments, the Court of Appeal concurred with the first-instance court’s legal position, which was based on the Constitutional Court’s Decision No. 34/1992 (VI. 1.) AB and the case law developed through the Supreme Court’s numerous precedents. Specifically, the mere infringement of personality rights, without any further proof of detriment, does not in itself provide grounds for the award of non-pecuniary damages. In response to the arguments raised in the appeal, the Court of Appeal makes the following observations.

The interpretation of Constitutional Court Decision No. 34/1992 (VI. 1.) AB, according to which an infringement of personality rights alone suffices to establish a claim for non-pecuniary damages and that only the quantum of damages remains a matter of judicial discretion, is incorrect. A claim for damages based on an infringement of personality rights is a civil liability claim. The substantive legal rules governing such civil liability are set out in Sections 339-360 of the Civil Code, pursuant to Section 84(1)(e) of the Civil Code. Under Section 339(1) of the Civil Code, unlawful conduct is only one of the prerequisites for establishing liability for damages. Another indispensable condition for the enforcement of a claim for damages is the occurrence of harm. Unlawful conduct does not in itself establish liability for damages in the absence of actual harm. Under Sections 355(1) and (4) of the Civil Code, the occurrence of non-pecuniary harm must also be proven for liability to be established.

Accordingly, if the aggrieved party fails to prove that, in addition to the infringement of their personality rights, they suffered actual detriment, non-pecuniary damages cannot be awarded solely on the basis that their personality rights were violated. [This position was affirmed by the Supreme Court in its review decision Pfv.IV.21.613/2008/5 and was similarly adopted by

the Szeged Court of Appeal in case Pf.III.20.136/2008/8 and the Debrecen Court of Appeal in cases Pf.I.20.158/2006/6 and Pf.II.20.695/2007/8.]

Pursuant to Sections 355(1) and (4) of the Civil Code, the party responsible for the harm is required to provide compensation only to the extent necessary to reduce or eliminate the pecuniary and non-pecuniary detriment suffered by the injured party.

In light of Sections 339(1) and 355(1) and (4) of the Civil Code, as well as Section 164(1) of the Code of Civil Procedure, the burden of proof was on the plaintiffs to individually establish in the proceedings that they had suffered non-pecuniary detriment personally as a direct consequence of the respondent's unlawful conduct. The Court of Appeal agreed with the first-instance court's finding that, although the plaintiffs attempted to do so, they failed to prove this in the proceedings. The correct reasoning for this finding is as follows:

The Roma group protected under the final judgment of the Debrecen Court of Appeal in case Pf.I.20.683/2005/7 suffered legal harm because the respondent, during the administrative and financial integration of the affected schools it maintained, failed to integrate school districts on 1 July 2004, only implementing such integration with effect from 30 August 2005.

Due to the failure to integrate school districts within the integrated schools, the protected group lost the opportunity to have their enrolment or transfer to K. Primary School—designated as a mandatory admission school under Section 66(2) of Act LXXIX of 1993 on Public Education—be compulsory.

In the present case, there was no dispute that this unlawful situation persisted from 1 July 2004 to 30 August 2005, as the respondent only abolished district boundaries among the three school sites after this period.

Pursuant to Section 66(1) of the Public Education Act, a student's legal relationship with a school arises through admission or transfer, both of which require an application.

However, in the case of the present plaintiffs, the rejection of an enrolment application was excluded, as they had already completed their primary education by the 2004/2005 and 2005/2006 academic years, respectively, meaning their student status was already established at a local primary school under the then-existing school districting rules.

Furthermore, the sixth plaintiff explicitly stated during the first-instance proceedings that he had not submitted a transfer request from F.H. Primary School to K. Primary School. Consequently, in his case, there was no basis for claiming that he had been unable to attend the allegedly higher-quality primary school due to the respondent's unlawful conduct.

The first, third, fourth, and fifth plaintiffs failed to prove, in the face of the respondent's denial and counter-evidence, that they had submitted specific transfer applications and had those applications rejected—despite the first-instance court's prior notification, in accordance with Section 3(3) of the Code of Civil Procedure, regarding the facts requiring proof, the burden of proof, and the consequences of failing to provide sufficient evidence. Moreover, their legal representative, when warned of the closure of the proceedings, declared that they had no further evidentiary motions. Under these circumstances, even if it were proven that the plaintiffs did not receive quality education and were unable to pursue further studies, this would still be insufficient to establish that, as a direct consequence of the respondent's unlawful conduct, they

suffered detriment beyond what objective sanctions could remedy, justifying an award of non-pecuniary damages.

Accordingly, it has not been proven that the defendant's conduct, which allegedly constituted an infringement of personality rights, bears a causal connection. The Court of Appeal notes that the available case records provide grounds for drawing the opposite conclusion concerning the first, third, fourth, and fifth plaintiffs. The first plaintiff himself stated that although he had been admitted to V. Vocational Secondary School, he later dropped out because he was unable to keep up with his peers. The third plaintiff, according to her own account, did not enrol in V. Vocational Secondary School—where she had been accepted—because she became pregnant. The fifth plaintiff, who had been admitted to X.Y. Vocational Secondary School, was unable to complete his secondary education at that institution due to being placed in pre-trial detention.

The Court of Appeal also rejected the plaintiffs' appellate argument that they were not required to prove a separate disadvantage in this case to claim non-pecuniary damages, relying on the Supreme Court's practice (Decision No. Pfv.IV.20.936/2008/4). That decision stated that the fact of unlawful segregation necessarily places the affected persons at a disadvantage. However, the term "disadvantage" is broader than "damage" in legal practice, and pursuant to Section 355(4) of the Civil Code, it encompasses personal disadvantages that do not qualify as non-pecuniary damage. Undoubtedly, certain types of harm, including non-pecuniary harm as defined under Section 355(4) of the Civil Code, may in some instances be established as a matter of common knowledge pursuant to Section 163(3) of the Code of Civil Procedure. However, the Supreme Court rendered the cited review decision in a personality rights case initiated by a public interest lawsuit, where the claimant neither asserted nor could have asserted a claim for non-pecuniary damages. Consequently, the appellate court's reliance on the guiding principles outlined in that decision is not applicable to the present case concerning the adjudication of a claim for non-pecuniary damages.

Based on the foregoing, the first-instance court did not err in finding that there was no basis for establishing that the defendant's unlawful conduct caused non-pecuniary harm to the plaintiffs. Nor did it breach any legal provision by dismissing the plaintiffs' claim for non-pecuniary damages as unfounded.

Accordingly, the Court of Appeal, pursuant to Section 253(2) of the Code of Civil Procedure, upheld the contested part of the first-instance judgment with modifications and supplements to its reasoning as set out above.

The plaintiffs, whose appeal was unsuccessful, are required to bear their own costs incurred at the second instance as legal fees. Furthermore, pursuant to Section 78(1) of the Code of Civil Procedure, they are also obligated to reimburse the defendant's legal fees incurred due to counsel's representation. The Court of Appeal determined the amount of such costs in accordance with Section 3(2)(a) and Section 3(5) of Decree No. 32/2003 (VIII.22.) of the Ministry of Justice on "Legal Costs Recoverable in Judicial Proceedings," while also taking into account that the plaintiffs' claims for a declaration and satisfaction were not subject to appellate review in the second-instance proceedings.

In view of the subject matter of the case, the parties were entitled to a fee deferral pursuant to Section 62(1)(f) of Act XCIII of 1990 on Duties. However, the Court of Appeal did not issue an order concerning the reimbursement of the deferred appellate procedural fees, as the plaintiffs, having been granted full personal cost exemption, cannot be retrospectively obliged



to reimburse state-advanced fees under Section 13(1) of Decree No. 6/1986 (VI.26.) of the Ministry of Justice.

Debrecen, on 19 November 2009.

Dr Urhegyi Béla, Presiding Judge  
Dr Riczu András, Judge-Rapporteur  
Dr Csikiné Dr Gyuranecz Márta, Judge

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