DEBRECEN COURT

No Pf.I.20.123/2019/16

The Debrecen Court of Appeal in the case of Plaintiff I (address) as First Plaintiff, Plaintiff II (address) as Second Plaintiff, Plaintiff III (address) as Third Plaintiff, Plaintiff IV (address) as Fourth Plaintiff, Plaintiff V (address) as Fifth Plaintiff, Plaintiff VI (address) as Sixth Plaintiff, Plaintiff VII (address) as Seventh Plaintiff, Plaintiff VIII (address) as Eighth Plaintiff, Plaintiff IX (address) as Ninth Plaintiff, Plaintiff X (address) as Tenth Plaintiff, Plaintiff XI (address) as Eleventh Plaintiff, Plaintiff XII (address) as Twelfth Plaintiff, Plaintiff XIII (address) as Thirteenth Plaintiff, Plaintiff XIV (address) as Fourteenth Plaintiff, Plaintiff XV (address) as Fifteenth Plaintiff, Plaintiff XVI (address) as Sixteenth Plaintiff, Plaintiff XVII (address) as Seventeenth Plaintiff, Plaintiff XIX (address) as Nineteenth Plaintiff, Plaintiff XX (address) as Twentieth Plaintiff, Plaintiff XXI (address) as Twenty-First Plaintiff, Plaintiff XXII (address) as Twenty-Second Plaintiff, Plaintiff XXIII (address) as Twenty-Third Plaintiff, Plaintiff XXIV (address) as Twenty-Fourth Plaintiff, Plaintiff XXV (address) as Twenty-Fifth Plaintiff, Plaintiff XXVI (address) as Twenty-Sixth Plaintiff, Plaintiff XXVII (address) as Twenty-Seventh Plaintiff, Plaintiff XXVIII (address) as Twenty-Eighth Plaintiff, Plaintiff XXIX (address) as Twenty-Ninth Plaintiff, Minor Plaintiff XXX (address) as Thirtieth Plaintiff, Plaintiff XXXI (address) as Thirty-First Plaintiff, Plaintiff XXXII (address) as Thirty-Second Plaintiff, Plaintiff XXXIII (address) as Thirty-Third Plaintiff, Plaintiff XXXIV (address) as Thirty-Fourth Plaintiff, Plaintiff XXXV (address) as Thirty-Fifth Plaintiff, Plaintiff XXXVI (address) as Thirty-Sixth Plaintiff, Plaintiff XXXVII (address) as Thirty-Seventh Plaintiff, Plaintiff XXXVIII (address) as Thirty-Eighth Plaintiff, Plaintiff XXXIX (address) as Thirty-Ninth Plaintiff, Plaintiff XL (address) as Fortieth Plaintiff, Plaintiff XLI (address) as Forty-First Plaintiff, Plaintiff XLII (address) as Forty-Second Plaintiff, Plaintiff XLIII (address) as Forty-Third Plaintiff, Plaintiff XLIV (address) as Forty-Fourth Plaintiff, Plaintiff XLV (address) as Forty-Fifth Plaintiff, Plaintiff XLVI (address) as Forty-Sixth Plaintiff, Plaintiff XLVII (address) as Forty-Seventh Plaintiff, Plaintiff XLVIII (address) as Forty-Eighth Plaintiff, Plaintiff XLIX (address) as Forty-Ninth Plaintiff, Plaintiff L (address) as Fiftieth Plaintiff, Plaintiff LI (address) as Fifty-First Plaintiff, Plaintiff LII (address) as Fifty-Second Plaintiff, Plaintiff LIII (address) as Fifty-Third Plaintiff, Plaintiff LIV (address) as Fifty-Fourth Plaintiff, Plaintiff LV (address) as Fifty-Fifth Plaintiff, Plaintiff LVI (address) as Fifty-Sixth Plaintiff, Plaintiff LVII (address) as Fifty-Seventh Plaintiff, Plaintiff LVIII (address) as Fifty-Eighth Plaintiff, Minor Plaintiff LIX (address) as Fifty-Ninth Plaintiff, Plaintiff LX (address) as Sixtieth Plaintiff, Plaintiff LXI (address) as Sixty-First Plaintiff, Plaintiff LXII (address) as Sixty-Second Plaintiff, Plaintiff LXIII (address) as Sixty-Third Plaintiff, represented by the law firm of Lengyel Allen & Overy (address, administrator: Dr. Balázs Sahin-Tóth, lawyer), the law firm of Gárdos Füredi Mosonyi Tomori (address, administrator: Dr. Péter Gárdos, lawyer), Dr. Eleonóra Hernádi Law Office (address, administrator: Dr. Eleonóra Hernádi, lawyer), and Dr. Adél Kegye, lawyer (address), and Defendant I (address), represented by Őszy Law Office (address, administrator: Dr. Tamás Őszy, lawyer), Defendant II (address of defendant II) Name (address) of Defendant II, and Defendant III in the action for infringement of personal rights in case, following the appeals brought by the applicants under No 407, by the defendant I under No 406, by the defendants II and III under No 409, and amended by the defendants II and III under Nos Pf. 5 and 7, against judgment No. 12.P.20489/2015/402 of the Eger Tribunal, the Court of First Instance has rendered the following

j u d g m e n t:

The Court of Appeal does not affect the unappealed part of the first-instance court's judgment, but partially modifies the appealed part as follows:

Establishes that Defendant I also violated the right to equal treatment of Plaintiffs II, IV, VI, VIII, IX, XI, XII, XIV, XVI, XVII, XXI, XXII, XXIV, XXIX, XXXIII, XXXIV, XXXVII, XXXIX, XLI, XLII, XLVI, XLVIII, L, LI, LIII, LVI, LVIII, LIX, and LXII by unlawfully segregating them during the 2012/2013 school year.

Establishes that Defendants I, II, and III violated the right to equal treatment of Plaintiffs III, X, and XIII by unlawfully segregating them during the 2012/2013 school year until January 21, 2013.

Establishes that Defendants II and III violated the right to equal treatment of Plaintiff LI by unlawfully segregating them during the 2015/2016 school year until January 25, 2016, and during the 2016/2017 school year until February 20, 2017.

Omits the establishment of the violation regarding Plaintiffs XIX and XX for the period following May 24, 2011.

Omits the establishment of the violation regarding Plaintiff XXV for the period until November 11, 2014, in the 2014/2015 school year.

Omits the establishment of the violation regarding Plaintiff XXXV for the 2011/2012 school year but establishes that Defendants I and II violated their right to equal treatment by unlawfully segregating them and providing lower-quality education during the 2010/2011 school year, and that Defendants I, II, and III unlawfully segregated them during the 2012/2013 school year.

Omits the establishment of the violation regarding Plaintiff XXXVII for the period until December 6, 2010, in the 2010/2011 school year.

Omits the establishment of the violation regarding Plaintiff XLI for the period from September 9, 2013, to September 24, 2013, in the 2013/2014 school year.

Omits the establishment of the violation regarding Plaintiff LVIII for the period from February 10, 2014, to April 2, 2014, in the 2013/2014 school year.

Omits the establishment of the violation regarding Plaintiff LXI for the period from December 18, 2011, in the 2011/2012 school year.

Increases the amount of non-pecuniary damages jointly imposed on Defendants I and II:

-- Against Plaintiff I to HUF 1,500,000 (one million five hundred thousand),

-- Against Plaintiff II to HUF 1,500,000 (one million five hundred thousand),

-- Against Plaintiff III to HUF 3,000,000 (three million),

-- Against Plaintiff IV to HUF 1,000,000 (one million),

-- Against Plaintiff VI to HUF 500,000 (five hundred thousand),

-- Against Plaintiff IX to HUF 1,500,000 (one million five hundred thousand),

-- Against Plaintiff X to HUF 500,000 (five hundred thousand),

-- Against Plaintiff XI to HUF 2,000,000 (two million),

-- Against Plaintiff XII to HUF 500,000 (five hundred thousand),

-- Against Plaintiff XIII to HUF 2,000,000 (two million),

-- Against Plaintiff XIV to HUF 1,000,000 (one million),

-- Against Plaintiff XIX to HUF 2,000,000 (two million),

-- Against Plaintiff XX to HUF 2,500,000 (two million five hundred thousand),

-- Against Plaintiff XXI to HUF 3,000,000 (three million),

-- Against Plaintiff XXII to HUF 1,500,000 (one million five hundred thousand),

-- Against Plaintiff XXIV to HUF 2,000,000 (two million),

-- Against Plaintiff XXVI to HUF 2,000,000 (two million),

-- Against Plaintiff XXVII to HUF 500,000 (five hundred thousand),

-- Against Plaintiff XXVIII to HUF 2,750,000 (two million seven hundred fifty thousand),

-- Against Plaintiff XXX to HUF 1,750,000 (one million seven hundred fifty thousand),

-- Against Plaintiff XXXII to HUF 1,500,000 (one million five hundred thousand),

-- Against Plaintiff XXXIII to HUF 500,000 (five hundred thousand),

-- Against Plaintiff XXXIV to HUF 1,000,000 (one million),

-- Against Plaintiff XXXV to HUF 500,000 (five hundred thousand),

-- Against Plaintiff XXXIX to HUF 2,000,000 (two million),

-- Against Plaintiff XLI to HUF 500,000 (five hundred thousand),

-- Against Plaintiff XLII to HUF 1,000,000 (one million),

-- Against Plaintiff XLIII to HUF 500,000 (five hundred thousand),

-- Against Plaintiff XLIV to HUF 1,500,000 (one million five hundred thousand),

-- Against Plaintiff L to HUF 2,000,000 (two million),

-- Against Plaintiff LI to HUF 1,000,000 (one million),

-- Against Plaintiff LIV to HUF 500,000 (five hundred thousand),

-- Against Plaintiff LVIII to HUF 500,000 (five hundred thousand),

-- Against Plaintiff LIX to HUF 500,000 (five hundred thousand),

-- Against Plaintiff LX to HUF 500,000 (five hundred thousand),

Orders Defendants I, II, and III to jointly pay within 15 days:

-- To Plaintiff III, HUF 150,000 (one hundred fifty thousand),

-- To Plaintiff X, HUF 150,000 (one hundred fifty thousand),

-- To Plaintiff XIII, HUF 150,000 (one hundred fifty thousand),

-- To Plaintiff XXXV, HUF 300,000 (three hundred thousand),

Increases the amount of non-pecuniary damages jointly imposed on Defendants II and III against Plaintiff LI to HUF 600,000 (six hundred thousand).

Reduces the amount of non-pecuniary damages jointly imposed on Defendants II and III against Plaintiff XXV to HUF 850,000 (eight hundred fifty thousand).

Reduces the amount of non-pecuniary damages jointly imposed on Defendants I and II:

-- Against Plaintiff XXXVII to HUF 350,000 (three hundred fifty thousand),

-- Against Plaintiff LXI to HUF 650,000 (six hundred fifty thousand),

Omits the obligation of Defendant III to pay compensation concerning Plaintiff LVII.

Reduces the amount of non-pecuniary damages jointly imposed on Defendants I, II, and III against Plaintiff LXII to HUF 300,000 (three hundred thousand).

Omits the obligation to reimburse legal costs for Plaintiffs I-IV, VI, VIII-XIV, XVI, XVII, XIX-XXX, XXXII-XXXV, XXXVII, XXXIX, XLI-XLIV, XLVI, XLVIII, L, LI, LIII-LVI, LVIII-LX, and LXII.

Establishes that the unpaid procedural fee to be borne by the state amounts to HUF

12,555,000 (twelve million five hundred fifty-five thousand).

For the rest, the judgment of the Court of First Instance is upheld.

Orders the applicants in Cases VII, XV, XXXI, XXXVI, XXXVIII, XLV, XLVII, XLIX, LII, LVII and LXIII to pay to the defendants in Cases I, II and III, as joint and several claimants, the costs of the proceedings at first instance in the amount of HUF 6,350 (six thousand three hundred and fifty) per person within fifteen days.

Orders the applicant in Case V to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 47 625 (forty-seven thousand six hundred and twenty-five) in respect of the costs of the proceedings at first instance.

Orders the applicant in VIII to pay to the defendants in I, II and III, as joint and several claimants, within 15 days, the sum of HUF 31 750 (thirty-one thousand seven hundred and fifty) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XVI to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 85 725 (eighty-five thousand seven hundred and twenty-five) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XVII to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 22 225 (twenty-two thousand two hundred and twenty-five) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XXIII to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 20 638 (twenty thousand six hundred and thirty-eight) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XXV to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 36 513 (thirty-six thousand five hundred and thirteen) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XXIX to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 31 750 (thirty-one thousand seven hundred and fifty) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XXXVII to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 33 338 (thirty-three thousand three hundred and thirty-eight) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XL to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 31 750 (thirty-one thousand seven hundred and fifty) in respect of the costs of the proceedings at first instance.

Orders the applicant in Case XLVI to pay to the defendants in Cases I, II and III, as joint and several claimants, the costs of the proceedings at first instance amounting to HUF 25 400 (twenty-five thousand four hundred and fifty) within 15 days.

Orders the applicant in Case XLVIII to pay to the defendants in Cases I, II and III, as joint and several claimants, the costs of the appeal proceedings in the amount of HUF 6350 (six thousand three hundred and fifty) within 15 days.

Orders the applicant in Case LIII to pay to the defendants in Cases I, II and III, as joint and several claimants, within 15 days, the sum of HUF 31 750 (thirty-one thousand seven hundred and fifty) in respect of the costs of the proceedings at first instance,

Orders the applicant in Case LV to pay to the defendants in Cases I, II and III, as joint and several claimants, the sum of HUF 15 875 (eighteen thousand eight hundred and seventy-five) within 15 days of the date of the application.

Orders the applicant in Case LVI to pay to the defendants in Cases I, II and III, as joint and several claimants, the costs of the proceedings at first instance amounting to HUF 12 700 (twelve thousand seven hundred) within 15 days.

Orders the applicant in Case LXI to pay to the defendants in Cases I, II and III, as joint and several claimants, the sum of HUF 17 463 (seventeen thousand four hundred and sixty-three) in respect of the costs of the proceedings at first instance within fifteen days.

Orders the applicant in Case LXII to pay to the defendants in Cases I, II and III, as joint and several claimants, the costs of the proceedings at first instance, within 15 days, amounting to HUF 6 350 (six thousand three hundred and fifty).

Orders the State to pay the appeal fee of HUF 9 288 000 (nine million two hundred and eighty-eight thousand).

There is no right of appeal against this judgment.

R e a s o n i n g

The defendant I was the maintainer of the defendant II primary school in **Gy** until 31 December 2012, when the defendant II was first maintained by the predecessor of the defendant III, the dismissed **K, from** 1 January 2013, and from 1 January 2017 by the defendant III.

By the 2003/2004 school year, it had spontaneously developed in the second grade school that pupils belonging to the Roma ethnic minority were separated from pupils not belonging to the Roma ethnic minority in the b classes. The defendant in Class II, and the defendant in Class I, as the respective maintainers, and the defendant in Class III and its predecessor in title, continued to maintain the unlawful segregation in Class b, with the exception of the first class which started in the 2012/2013 school year, and also provided lower quality education to the pupils in those classes from the 2011/2012 school year onwards.

On 17 October 2011, **E**, as the plaintiff representing the plaintiffs in the present action, brought an action in the public interest with the defendants in the first and second orders. By decision of the Egri Tribunal of 6 December 2012, 12.P.20.351/2011/47, the

Court of First Instance of the Republic of Egri, by judgment of 12.12.2011, found that, with the exception of the first class of the 2012/2013 school year, the first class of the school of the defendant, which is maintained by the defendant, Grade I, started on 27 January 2004. By maintaining the segregation of pupils belonging to the gypsy ethnic minority from pupils not belonging to the gypsy ethnic minority in the context of class assignment, the children belonging to the gypsy ethnic minority and those not belonging to that ethnic minority were unlawfully segregated from each other, and at the same time, from 27 January 2004, the children thus unlawfully segregated were discriminated against by being provided with a lower quality of education. It ordered the defendants in the first and second instance to cease and desist from those infringements and to cease and desist from the unlawful segregation of children of Roma ethnic origin and of non-Gypsy ethnic origin in the classroom from the school year following the date on which the judgment became final. The Court dismissed the action for further claims (unlawful multiple classing of pupils with special educational needs, unlawful segregation at school ceremonies and in the school canteen, discrimination in swimming lessons and in admission to day care).

In the appeal of the defendants I. and II. and in the appeal of the plaintiff's joinder, **K.** as the successor of the defendant I. was sued as the defendant III., and the Metropolitan Court of Appeal, in its decision of 7 October 2014, 2.Pf.20.305/2013/20 of the Court of First Instance did not affect the non-appealed part of the judgment of the Court of First Instance and upheld the order of the Court of First Instance, with the clarification that the obligation to cease and desist the infringement rests with the defendant in third instance. According to the grounds of the final judgment ('the final judgment in the main action'), from 27 January 2004 until the 2011/2012 school year, the school maintained the spontaneous unlawful segregation of pupils belonging to the Roma ethnic minority in class B of the school, while providing them with a lower quality of education.

The Curia, hearing the applicant's application for review, upheld the final judgment in its judgment of 25 March 2015 (hereinafter together referred to as the "previous proceedings") by judgment no.

The applicants are current and former pupils of the defendant in the second instance.

The first applicant was a pupil of class 1/b in 2008/2009, class 1/b in 2009/2010, class 2/b in 2010/2011 and class 2-3/d (combined) in 2011/2012.

The 2nd class plaintiff was a pupil in the 1-2/d in 2005/2006, in the 2-3/d in 2006/2007, in the 1-3-4/d in 2007/2008, in the 3-4-5/d in 2008/2009, in the 3-4/b in 2009/2010, in the 5/b in 2010/2011, in the 5-6/b in 2011/2012 and in the 5-6-7/b in 2012/2013.

Plaintiff III was in Class B from the 2006/2007 school year through the 2012/2013 school year until January 21, 2013 (from Class 1 through Class 7).

Plaintiff IV was in grade b in the 2010/2011, 2011/2012 and 2012/2013 school years (grades 5-7).

The applicant in grade V was in grade d in the school years 2004/2005, 2005/2006 and 2006/2007 (grades 1-3).

Plaintiff VI was in Class B from the 2011/2012 school year to the 2016/2017 school year (from Grade 1 to Grade 6).

Plaintiff VII was in Class B from the 2008/2009 school year through the 2011/2012 school year (from 1st grade through 4th grade).

Plaintiff VIII was in class b from the 2011/2012 school year to the 2016/2017 school year (from class 1 to class 6).

The IX Plaintiff was in Class B from the 2009/2010 school year until the 2013/2014 school year (from Class 1 to Class 4, including repeat classes).

Plaintiff X was a student in Class 1/b in the 2010/2011 school year, in Class 2-3/d in the 2011/2012 school year, in Class 3-4/b in the 2012/2013 school year until 21 January 2013, in Class 4/b in the 2013/2014 school year until 18 November 2013 and from 8 May 2014.

Plaintiff XI was in Class B from the 2008/2009 school year to the 2012/2013 school year (from Grade 1 to Grade 5).

Plaintiff XII was in class b in the 2011/2012, 2012/2013 and 2013/2014 school years (grades 1-3).

Plaintiff XIII was in Class B from the 2008/2009 school year through the 2012/2013 school year until January 21, 2013 (from Class 1 through Class 4, including repeat classes).

Plaintiff XIV was a pupil of class 1/b in 2009/2010, class 2/b in 2010/2011, class 2-3/d in 2011/2012 and class 3-4/b in 2012/2013.

Plaintiff XV was a student in class 1/b in the 2010/2011 school year.

Plaintiff XVI was in class d from the school year 2005/2006 to the school year 2009/2010 (from grade 1 to grade 5) and then in class b in the school years 2010/2011, 2011/2012 and 2012/2013 (repeated).

Plaintiff XVII was a pupil of the consolidated classes 1/b in the school year 2009/2010, 2/b in the school year 2010/2011, 2-3/d in the school year 2011/2012 and 3-4/b in the school year 2012/2013.

The XIXth applicant was a pupil in the 1-2/d class in the school year 2005/2006, in the combined classes 1/b in the school year 2006/2007, 2/b in the school year 2007/2008, 3-4-5/d in the school year 2008/2009, 3-4/b in the school year 2009/2010 and in the class 5/b in the school year 2010-2011 until 24 May 2011.

Plaintiff XX was in Class B from the 2006/2007 school year through the 2010/2011 school year until May 24, 2011 (from 1st grade through 5th grade).

The claimant in the XXIst class was in class b from the school year 2006/2007 to the

school year 2012/2013 (from class 1 to class 5, including repeated classes).

The XXII applicant was a pupil in the consolidated classes 1-4/b in 2008/2009, 1/b in 2009/2010, 2/b in 2010/2011, 2-3/d in 2011/2012 and 3-4/b in 2012/2013.

Plaintiff XXIII was a student in class 1/b in the 2011/2012 school year until 12 January 2012, then in class 5/b in the 2015/2016 school year and in class 6/b in the 2016/2017 school year.

The claimant in Class XXIV was in Class B from the 2008/2009 school year until the 2012/2013 school year (from Grade 1 to Grade 5).

Plaintiff XXV was a student in class 1/b in the 2010/2011 school year, in the 2011/2012 school year in the combined class 2-3/d, in the 2014/2015 school year from 11 November 2014 in class 4/b, in the 2015/2016 school year in class 5/b and in the 2016/2017 school year in class 6/b.

Plaintiff XXVI was in the consolidated class 1-2/d in the 2005/2006 school year, and then in class b from the 2006/2007 school year to the 2009/2010 school year (from class 1 to class 4, including repeated classes).

The applicant in Case XXVII was in Class 1/B in the 2003/2004 school year.

Plaintiff XXVIII was in Class B from the 2006/2007 school year through the 2011/2012 school year until January 12, 2012 (from 1st grade through 5th grade).

Plaintiff XXIX was in class b from the 2011/2012 school year to the 2016/2017 school year (from grade 1 to grade 6).

Plaintiff XXX was in grade b from the 2008/2009 school year through the 2011/2012 school year until January 12, 2012 (from grade 1 through grade 4).

Plaintiff XXXI was in Class B from the 2008/2009 school year to the 2010/2011 school year (from 1st grade to 3rd grade).

The XXXII applicant was in class 1/b in the school year 2003/2004, class d from the school year 2004/2005 to the school year 2009/2010 (from class 2 to class 5, including repeated classes), and then class b in the school years 2010/2011 and 2011/2012.

Plaintiff XXXIII was in Class B from the 2011/2012 school year to the 2016/2017 school year (from Grade 1 to Grade 6).

The XXXIV applicant was in class d from the school year 2006/2007 until the school year 2009/2010 (from class 3 to class 6) and then in class b in the school years 2010/2011, 2011/2012 (repeated) and 2012/2013.

Plaintiff XXXV was a pupil of class 1/b in the school year 2010/2011, class 2-3/d in the school year 2011/2012, class 3-4/b in the school year 2012/2013 and class 4/b in the school year 2013/2014.

Plaintiff XXXVI was a student in Class 1/b in the 2009/2010 school year.

Plaintiff XXXVII started the 2010/2011 school year in class 1/a, and from 6 December 2010 he was a student in class 1/b, in the 2011/2012 school year in class 2-3/d, in the 2012/2013 school year in class 3-4/b, and in the 2013/2014 school year in class 4/b.

Plaintiff XXXVIII was a student in the combined classes 6-7/b in the school year 2010/2011 and 7-8/b in the school year 2011/2012.

The XXXIXth applicant was in the consolidated classes 1-3-4/d in the school year 2007/2008 and then in class b from the school year 2008/2009 to the school year 2012/2013 (from class 2 to class 4, including repeated classes).

The XL applicant was in grade d in the 2008/2009 and 2009/2010 school years.

Plaintiff XLI was in class 1/b in the 2010/2011 school year, 2-3/d in the 2011/2012 school year, merged 3-4/b in the 2012/2013 school year, merged 3-4/b in the 2013/2014 school year until 9 September 2013, then 4/b from 24 September 2013, and then b until the 2016/2017 school year (repeated in class 4, then 5 and 6).

Plaintiff XLII was in Class B from the 2010/2011 school year to the 2016/2017 school year (from Grade 1 to Grade 6, including repeated grades).

Plaintiff XLIII was in grade 1/b in the 2011/2012 school year.

Plaintiff XLIV was in Class 1/b in the 2003/2004 school year, in Class d from the 2004/2005 school year to the 2009/2010 school year (from Class 2 to Class 6, including repeated classes), and in Class b in the 2010/2011 and 2011/2012 school years.

Plaintiff XLV was in Class B from the school year 2006/2007 to the school year 2011/2012 (from Grade 1 to Grade 6).

Plaintiff XLVI was in Class B from the 2011/2012 school year to the 2015/2016 school year (from Grade 1 to Grade 5).

Plaintiff XLVII was in Class B from the 2008/2009 school year to the 2011/2012 school year (from Grade 1 to Grade 4).

Plaintiff XLVIII was in Class B from the 2006/2007 school year to the 2012/2013 school year (from Grade 1 to Grade 6, including repeated grades).

Plaintiff XLIX was in class b from the 2009/2010 school year to the 2011/2012 school year (from grade 1 to grade 3).

The applicant in Class L was in Class B from the school year 2008/2009 to the school year 2012/2013 (from Grade 1 to Grade 5).

Plaintiff LI was in Class 1/b in the 2009/2010 school year, Class 2/b in the 2010/2011 school year, Class 2-3/d in the 2011/2012 school year, and then Class b from the 2012/2013 school year to the 2016/2017 school year (from Class 3 to Class 6, including

repeated classes), during which she was a private student from January 25, 2016 in the 2015/2016 school year and from February 20, 2017 in the 2016/2017 school year.

Plaintiff LII was in Class B from the 2003/2004 school year through the 2009/2010 school year (from 2nd grade through 8th grade).

Plaintiff LIII was in consolidated classes 1-3-4/d in the 2007-2008 school year, and then in class b from the 2008-2009 school year until the 2012-2013 school year (from class 1 to class 4, including repeated classes).

The LIV applicant was in class 2/b in the school year 2003/2004 and in class 2/d in the repeat school year 2004/2005.

Plaintiff LV was a student in class 1/b in the 2009/2010 school year, class 2/b in the 2010/2011 school year and in the 2011/2012 school year in the combined class 2-3/d.

The LVI Plaintiff was a student in grades 1, 2 and 3b in the 2011/2012, 2012/2013 and 2013-2014 school years.

Plaintiff LVII was in grade 1/b for the 2010/2011 school year.

Plaintiff LVIII was a student in class 1/b in the 2010/2011 school year, in the 2011/2012 school year in the combined class 2-3/d, in the 2012/2013 school year in class 3-4/b, in the 2013/2014 school year until 10 February 2014, and from 2 April 2014 in class 4/b, in the 2014/2015 repeat school year in class 4/b, and in the 2015/2016 school year in class 5/b.

The applicant, class LIX, was in class b from the school year 2011/2012 to the school year 2015/2016 (from class 1 to class 5).

The applicant, class LX, was in class 1/b in the 2003/2004 school year, then in class 1/d in the repeat school year 2004/2005 and in class 1-2/d in the 2005/2006 school year.

The applicant LXI was a pupil in the consolidated class 6-7/b in the school year 2010/2011 and in the consolidated class 7-8/b in the school year 2011/2012, during which he was a private student from 18 December 2011.

Plaintiff LXII was in grade 5/b in the repeat 2010/2011 school year, in the 2011/2012 school year in the consolidated grades 5-6/b, and in the 2012/2013 school year in the consolidated grades 5-6-7/b.

Plaintiff LXIII was a student in the 2nd, 3rd, and 4th grades of a consolidated B class in the 2008/2009, 2009/2010, and 2010/2011 school years.

In their application, all the applicants sought a declaration that the defendants in Orders I, II and III had infringed their right to equal treatment from 27 January 2004 by segregating them on the grounds of their nationality and providing them with a lower quality of education during those school years. In addition, the defendants were ordered to pay joint and several damages for non-material damage, as follows:

- First applicant: HUF 2 000 000 plus interest from 15 June 2012,
- Second applicant: HUF 4 000 000 plus interest from 14 June 2013,
- Third applicant: HUF 3 500 000 plus interest from 14 June 2013,
- Applicant in Case IV: HUF 1 500 000 plus interest from 14 June 2013,
- Applicant No V: HUF 1 500 000 plus interest from 15 June 2007,
- Applicant VI: HUF 3 000 000 plus interest from 15 June 2017,
- Applicant VII: HUF 2 000 000 plus interest from 15 June 2012,
- Applicant in Case VIII: HUF 3 000 000 plus interest from 15 June 2017,
- Applicant in Case IX: HUF 2 500 000 plus interest from 13 June 2014,
- Applicant X: HUF 2 000 000 plus interest from 13 June 2014,
- Applicant No XI: HUF 2 500 000 plus interest from 14 June 2013,
- Applicant in Case XII: HUF 1 500 000 plus interest from 13 June 2014,
- Applicant in Case XIII: HUF 2 500 000 plus interest from 14 June 2013,
- Applicant in Case XIV: HUF 2 000 000 plus interest from 14 June 2013,
- Applicant XV: HUF 500 000 plus interest from 15 June 2011,
- Applicant in Case XVI: HUF 4 000 000 plus interest from 14 June 2013,
- Applicant in Case XVII: HUF 2 000 000 plus interest from 14 June 2013,
- Applicant XIX: HUF 3 000 000 plus interest from 15 June 2011,
- Applicant in Case XX: HUF 2 500 000 plus interest from 15 June 2011,
- Applicant in Case XXI: HUF 3 500 000 plus interest from 14 June 2013,
- Applicant in Case XXII: HUF 2 500 000 plus interest from 14 June 2013,
- Applicant in Case XXIII: HUF 1 500 000 plus interest from 15 June 2017,
- Applicant in Case XXIV: HUF 2 500 000 plus interest from 14 June 2013,
- Applicant in Case XXV: HUF 2 500 000 plus interest from 15 June 2017,
- Applicant No XXVI: HUF 2 500 000 plus interest from 15 June 2010,
- Applicant in Case XXVII: HUF 500 000 plus interest from 15 June 2004,
- Applicant No XXVIII: HUF 3 000 000 plus interest from 15 June 2012,
- Applicant in Case XXIX: HUF 3 000 000 plus interest from 15 June 2017,
- Applicant XXX: HUF 2 000 000 plus interest from 15 June 2012,
- Applicant XXXI: HUF 1 500 000 plus interest from 15 June 2011,
- Applicant XXXII: HUF 4 500 000 plus interest from 15 June 2012,
- Applicant XXXIII: HUF 3 000 000 plus interest from 15 June 2017,
- Applicant XXXIV: HUF 3 500 000 plus interest from 14 June 2013,
- Applicant XXXV: HUF 2 000 000 plus interest from 13 June 2014,
- Applicant XXXVI: HUF 500 000 plus interest from 15 June 2010,
- Applicant XXXVII: HUF 2 000 000 plus interest from 13 June 2014,
- Applicant XXXVIII: HUF 1 000 000 plus interest from 15 June 2012,
- Applicant XXXIX: HUF 3 000 000 plus interest from 14 June 2013,
- Applicant XL: HUF 1 000 000 plus interest from 15 June 2010,
- Applicant XLI: HUF 3 500 000 plus interest from 15 June 2017,
- Applicant XLII: HUF 3 500 000 plus interest from 15 June 2017,
- Applicant XLIII: HUF 500 000 plus interest from 15 June 2012,
- Applicant XLIV: HUF 4 500 000 plus interest from 15 June 2012,
- Applicant XLV: HUF 3 000 000 plus interest from 15 June 2012,
- Applicant XLVI: HUF 2 500 000 plus interest from 15 June 2016,
- Applicant XLVII: HUF 2 000 000 plus interest from 15 June 2012,
- Applicant XLVIII: HUF 3 500 000 plus interest from 14 June 2013,
- Applicant No XLIX: HUF 1 500 000 plus interest from 15 June 2012,
- Applicant L: HUF 2 500 000 plus interest from 14 June 2013,
- Applicant LI: HUF 3 500 000 plus interest from 15 June 2017,

- Applicant LII: HUF 3 500 000 plus interest from 15 June 2010,
- Applicant LIII: HUF 3 000 000 plus interest from 15 June 2013,
- Applicant LIV: HUF 1 000 000 plus interest from 15 June 2005,
- Applicant LV: HUF 1 500 000 plus interest from 15 June 2012,
- Applicant LVI: HUF 1 500 000 plus interest from 15 June 2014,
- Applicant LVII: HUF 500 000 plus interest from 15 June 2011,
- Applicant LVIII: HUF 3 000 000 plus interest from 15 June 2016,
- Applicant LIX: HUF 2 500 000 plus interest from 15 June 2016,
- Applicant LX: HUF 1 500 000 plus interest from 15 June 2006,
- Applicant LXI: HUF 1 000 000 plus interest from 15 June 2012,
- Applicant LXII: HUF 1 500 000 plus interest from 14 June 2013,
- Applicant LXIII: HUF 1 500 000 plus interest from 15 June 2011.

In support of their application, they submitted that unlawful segregation had taken place in both classes b and d during the period covered by the final judgment in the previous proceedings and thereafter, and that the quality of education was also inferior, so that the HUF 500 000 per school year (within the limitation period) in compensation for non-material damage claimed was the minimum compensation for the disadvantages they had suffered, for which the school and its respective maintainer were jointly and severally liable.

The XVIIIth applicant withdrew his action: the court of first instance terminated the proceedings in his respect by its final order No 68/I.

The defendants counterclaimed for the dismissal of the applicants' action. They pleaded that the claim was partially time-barred, that the applicants had not suffered any proven prejudice and that they had not engaged in any unlawful conduct or infringed the applicants' rights as individuals during the period after the final judgment in the earlier action. Some of the plaintiffs themselves may have contributed to the possible disadvantage suffered by the plaintiffs through their omissions, but the development of the unproven disadvantages cannot be attributed solely to the role of the school, the assessment of which can be ascertained by examining the entire life histories of all the plaintiffs, since the loss/reduction of their standard of living and the frustrating effect of segregation can be proven, in part by expert means.

In the judgment under appeal, the Court of First Instance made the following findings and ordered the defendants to pay the non-material damages to certain of the applicants, with 15 days' notice:

Applicant I: From 27 January 2004 until 31 December 2012, in the school of the defendant I, which is maintained by the defendant III, and from 1 January 2013, in the school of the defendant II, which is maintained by the defendant III, the defendants I and II violated her right to equal treatment by unlawfully segregating her in the school years 2008/2009, 2009/2010 and 2010/2011 and by indirectly discriminating against her by providing her with a lower quality education. Ordered the defendants I and II jointly and severally to pay the applicant I the sum of HUF 1 200 000.

Plaintiff II: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and discriminating against him by providing him with a lower quality education in the 2009/2010, 2010/2011 and 2011/2012 school years, and

Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the Defendants I and II to jointly and severally pay the applicant in Class II the sum of HUF 1 200 000 and the Defendants II and III to jointly and severally pay the applicant in Class II the sum of HUF 300 000.

Third applicant: the First and Second Defendants infringed her individual right to equal treatment by unlawfully segregating her in the school years 2006/2007, 2007/2008, 2008/2009, 2009/2010, 2010/2011 and 2011/2012 and indirectly discriminating against her by providing her with a lower quality education. Ordered the defendants I and II jointly and severally to pay the applicant III the sum of HUF 2 400 000.

Plaintiff IV: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated her in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 800 000 and the defendants in Cases I, II and III to pay the sum of HUF 300 000.

Claimant VI: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2011/2012 school year, and Defendants II and III unlawfully segregated her in the 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017 school years. Ordered the Defendants I and II to jointly and severally pay the sum of HUF 400 000, the Defendants I, II and III to jointly and severally pay the sum of HUF 300 000 and the Defendants II and III to jointly and severally pay the sum of HUF 1 200 000.

Claimant VII: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 2 000 000.

Claimant VIII: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2011/2012 school year, and Defendants II and III unlawfully segregated her in the 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017 school years. Ordered the Defendants I and II to jointly and severally pay HUF 500 000, the Defendants I, II and III to jointly and severally pay HUF 300 000 and the Defendants II and III to jointly and severally pay HUF 1 200 000.

Plaintiff IX: Defendants I and II violated his individual right to equal treatment by unlawfully segregating and indirectly **discriminating** against him in the 2009/2010, 2010/2011, and 2011/2012 school years by providing him with a lower quality education, and ordered Defendants II and III to jointly and severally pay him HUF 100,000,
Claimant XI: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated her in the 2012/2013

school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 600 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Plaintiff XII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2011/2012 school year, and Defendants II and III unlawfully segregated him in the 2012/2013 and 2013/2014 school years. Ordered the Defendants I and II to jointly and severally pay HUF 400 000, the Defendants I, II and III to jointly and severally pay HUF 300 000, and the Defendants II and III to jointly and severally pay HUF 300 000.

Claimant XIII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 600 000.

Claimant XIV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2009/2010 and 2010/2011 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 800 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Claimant XV: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her in the 2010/2011 school year and indirectly discriminating against her by providing her with a lower quality education. Ordered the defendants I and II to pay jointly and severally the sum of HUF 500 000.

Plaintiff XVI: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 000 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Plaintiff XVII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2009/2010 and 2010/2011 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 000 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Applicant XIX: the defendants I and II infringed her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the school years 2006/2007, 2007/2008, 2009/2010

and 2010/2011. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 600 000.

Applicant XX: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the school years 2006/2007, 2007/2008, 2008/2009, 2009/2010 and 2010/2011. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 2 000 000.

Claimant XXI: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2006/2007, 2007/2008, 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years, and Defendants II and III by unlawfully segregating him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 2 400 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Claimant XXII: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2008/2009, 2009/2010 and 2010/2011 school years, and Defendants II and III unlawfully segregated her in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 800 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Claimant XXIII: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2011/2012 school year until 12 January 2012, and Defendants II and III unlawfully segregated her in the 2015/2016 and 2016/2017 school years. Ordered the defendants in Cases I and II to pay jointly and severally HUF 250 000 and the defendants in Cases II and III to pay jointly and severally HUF 600 000.

Claimant XXIV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 600 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Claimant XXV: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her in the 2010/2011 school year and indirectly discriminating against her by providing her with a lower quality education, and Defendants II and III unlawfully segregated her in the 2014/2015, 2015/2016 and 2016/2017 school years. Ordered the 1st and 2nd defendants jointly and severally to pay HUF 500 000 and the 2nd and 3rd defendants jointly and severally to pay HUF 900 000.

Claimant XXVI: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and discriminating against her by providing her with a lower quality education during the 2006/2007, 2007/2008, 2008/2009 and 2009/2010 school

years. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 600 000.

Claimant XXVII: the defendants I and II infringed his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education from 27 January 2004 onwards in the 2003/2004 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 200 000.

Claimant XXVIII: The 1st and 2nd defendants violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the school years 2006/2007, 2007/2008, 2008/2009, 2009/2010 and 2010/2011 and in the school year 2011/2012 until 12 January 2012. Ordered the defendants I and II to pay jointly and severally the sum of HUF 2 200 000.

Claimant XXIX: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2011/2012 school year, and Defendants II and III unlawfully segregated her in the 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017 school years. Ordered the Defendants I and II to jointly and severally pay HUF 500 000, the Defendants I, II and III to jointly and severally pay HUF 300 000 and the Defendants II and III to jointly and severally pay HUF 1 200 000.

Applicant XXX: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years until 12 January 2012. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 400 000.

Claimant XXXI: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her and indirectly discriminating against her by providing her with a lower quality education in the 2008/2009, 2009/2010 and 2010/2011 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 500 000.

The applicant XXXII: the defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the school year 2003/2004 from 27 January 2004 and in the school years 2010/2011 and 2011/2012. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 000 000.

Plaintiff XXXIII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2011/2012 school year, and Defendants II and III unlawfully segregated him in the 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017 school years. Ordered the Defendants I and II to jointly and severally pay the sum of HUF 400 000, the Defendants I, II and III to jointly and severally pay the sum of HUF 300 000 and the Defendants II and III to jointly and severally pay the sum of HUF 1 200 000.

Plaintiff XXXIV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 800 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Plaintiff XXXV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him in the 2011/2012 school year and indirectly disadvantaging him by providing him with a lower quality education, and Defendants II and III unlawfully segregated him in the 2013/2014 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 400 000 and the defendants in Cases II and III to pay jointly and severally the sum of HUF 300 000.

Claimant XXXVI: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2009/2010 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 500 000.

Plaintiff XXXVII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 school year, and Defendants II and III unlawfully segregated him in the 2012/2013 and 2013/2014 school years. Ordered the Defendants I and II to jointly and severally pay HUF 500 000, the Defendants I, II and III to jointly and severally pay HUF 300 000, and the Defendants II and III to jointly and severally pay HUF 300 000.

Claimant XXXVIII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 and 2011/2012 school years. Ordered the defendants I and II jointly and severally to pay the sum of HUF 1 000 000

Plaintiff XXXIX: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 600 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Plaintiff XLI: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him in the 2010/2011 school year and indirectly disadvantaging him by providing him with a lower quality education, and Defendants II and III unlawfully segregated him in the 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017 school years. Ordered the Defendants I and II to jointly and severally pay the sum of HUF 400 000, the Defendants I, II and III to jointly and severally pay the sum of HUF 300 000 and the Defendants II and III to jointly and severally pay the sum of HUF 1 200 000.

Plaintiff XLII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017 school years. Ordered the Defendants I and II to jointly and severally pay the sum of HUF 800 000, the Defendants I, II and III to jointly and severally pay the sum of HUF 300 000 and the Defendants II and III to jointly and severally pay the sum of HUF 1 200 000.

Claimant XLIII: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her in the 2011/2012 school year and indirectly discriminating against her by providing her with a lower quality education. Ordered the defendants I and II to pay jointly and severally the sum of HUF 400 000.

Claimant XLIV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education from 27 January 2004 in the 2003/2004 school year and in the 2010/2011 and 2011/2012 school years. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 000 000.

Claimant XLV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the school years 2006/2007, 2007/2008, 2008/2009, 2009/2010, 2010/2011 and 2011/2012. Ordered the defendants I and II jointly and severally to pay the sum of HUF 3 000 000.

Plaintiff XLVI: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2011/2012 school year, and Defendants II and III unlawfully segregated him in the 2012/2013, 2013/2014, 2014/2015 and 2015/2016 school years. Ordered the Defendants I and II to jointly and severally pay HUF 500 000, the Defendants I, II and III to jointly and severally pay HUF 300 000 and the Defendants II and III to jointly and severally pay HUF 900 000.

Claimant XLVII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 2 000 000.

Plaintiff XLVIII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2006/2007, 2007/2008, 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 3 000 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Claimant XLIX: Defendants I and II violated his individual right to equal treatment by

unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2009/2010, 2010/2011 and 2011/2012 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 500 000.

Claimant L: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 600 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Plaintiff LI: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education during the 2009/2010 and 2010/2011 school years, and Defendants II and III unlawfully segregated him during the 2012/2013 and 2013/2014 school years. Ordered the Defendants I and II to pay jointly and severally HUF 800 000, the Defendants I, II and III to pay jointly and severally HUF 300 000, and the Defendants II and III to pay jointly and severally HUF 300 000.

Applicant LII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him from 27 January 2004 in the 2003/2004 school year and then indirectly discriminating against him by providing him with a lower quality education in the 2004/2005, 2005/2006, 2006/2007, 2007/2008, 2008/2009 and 2009/2010 school years. Order the defendants in Cases I and II to pay jointly and severally the sum of HUF 3 500 000.

Claimant LIII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2008/2009, 2009/2010, 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 2 000 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 300 000.

Claimant LIV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education during the 2003/2004 school year, starting on 27 January 2004. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 200 000.

Claimant LV: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education during the 2009/2010 and 2010/2011 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 000 000.

Plaintiff LVI: Defendants I and II violated her individual right to equal treatment by unlawfully segregating her in the 2011/2012 school year and indirectly discriminating against her by providing her with a lower quality education, and Defendants II and III

unlawfully segregated her in the 2012/2013 and 2013/2014 school years. Ordered the Defendants I and II to jointly and severally pay HUF 500 000, the Defendants I, II and III to jointly and severally pay HUF 300 000 and the Defendants II and III to jointly and severally pay HUF 300 000.

Claimant LVII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 school year. Ordered the defendants I, II and III jointly and severally to pay the sum of HUF 500 000

Plaintiff LVIII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 school year, and Defendants II and III unlawfully segregated him in the 2012/2013, 2013/2014, 2014/2015 and 2015/2016 school years. Ordered the Defendants I and II to jointly and severally pay HUF 400 000, the Defendants I, II and III to jointly and severally pay HUF 300 000 and the Defendants II and III to jointly and severally pay HUF 900 000.

Claimant LIX: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2011/2012 school year, and Defendants II and III unlawfully segregated him in the 2012/2013, 2013/2014, 2014/2015 and 2015/2016 school years. Ordered the Defendants I and II to pay jointly and severally HUF 400 000, the Defendants I, II and III to pay jointly and severally HUF 300 000 and the Defendants II and III to pay jointly and severally HUF 900 000.

Applicant LX: the defendants I and II infringed his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education from 27 January 2004 in the 2003/2004 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 200 000.

Claimant LXI: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 and 2011/2012 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 000 000.

Plaintiff LXII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education in the 2010/2011 and 2011/2012 school years, and Defendants II and III unlawfully segregated him in the 2012/2013 school year. Ordered the defendants in Cases I and II to pay jointly and severally the sum of HUF 1 000 000 and the defendants in Cases I, II and III to pay jointly and severally the sum of HUF 400 000.

Claimant LXIII: Defendants I and II violated his individual right to equal treatment by unlawfully segregating him and indirectly discriminating against him by providing him with a lower quality education during the 2008/2009, 2009/2010 and 2010/2011 school years. Ordered the defendants I and II to pay jointly and severally the sum of HUF 1 500 000.

It dismissed the applicants' action as unfounded.

50 800 HUF for the plaintiff of class I, 158 750 HUF for the plaintiff of class II, 69 850 HUF for the plaintiff of class III, 25 400 HUF for the plaintiff of class IV, 92 500 HUF for the plaintiff of class V, 69 850 HUF for the plaintiff of class VI, and 69 850 HUF for the plaintiff of class VIII. rendű felperest 63 500 Ft, a IX. rendű felperest 44 450 Ft, a X. rendű felperest 92 500 Ft, a XI. rendű felperest 38 100 Ft, a XII. rendű felperest 31 750 Ft, a XIII. rendű felperest, 57 150 Ft, a XIV. rendű felperest 57 150 Ft, a XVI. order 171 450 Ft, order XVII 44 450 Ft, order XIX 89 900 Ft, order XX 31 750 Ft, order XXI 50 800 Ft, order XXII 88 900 Ft, order XXIII 41 275 Ft, order XXIV. rendű felperest 38 100 Ft, a XXV. rendű felperest 57 150 Ft, a XXVI. rendű felperest 57 150 Ft, a XXVII. rendű felperest 19 050 Ft, a XXVIII. rendű felperest 50 800 Ft, a XXIX. rendű felperest 63 500 Ft, a XXX. order 38 100 Ft, order XXXII 225 250 Ft, order XXXIII 69 850 Ft, order XXXIV 152 400 Ft, order XXXV 82 550 Ft, order XXXVII 57 150 Ft, order XXXIX. Order 69 850 HUF, Order XL. plaintiff 63 500 HUF, Order XLI. plaintiff 101 600 HUF, Order XLII. plaintiff 76 200 HUF, Order XLIII. plaintiff 6 350 HUF, Order XLIV. plaintiff 222 250 HUF, Order XLVI. plaintiff 6 350 HUF, Order XLIV. plaintiff 222 250 HUF, Order XLVI. rendű felperest 50 800 Ft, a XLVIII. rendű felperest 12 700 Ft, az L. rendű felperest 38 100 Ft, az LI. rendű felperest 133 350 Ft, az LIII. rendű felperest 44 450 Ft, az LIV. rendű felperest 50 800 Ft, az LV. rendű felperest 31 750 Ft, az LVI. Order the I, II and III in favour of the defendants.

In the grounds of the judgment, the court stated that pursuant to Article 8(1) and (2) of Act CLXXVII of 2013 on the transitional and enabling provisions in connection with the entry into force of Act V of 2013 on the Civil Code (hereinafter: Civil Code), the rules of Act IV of 1959 on the Civil Code (hereinafter: Civil Code 1959) shall apply to the claim of the plaintiffs. Therefore, as the legal background to the plaintiff's claim, the plaintiff has set out the provisions of the Civil Code of 1959. 75(1) of the 1959 Civil Code and the fact that, as of 27 January 2004, Article 76 of the 1959 Civil Code also provides for a violation of equal treatment. He also cited Articles 67(1), 70/A(1) and 70/F(1) of the Constitution, Articles X, XI and XV(2) of the Fundamental Law and Article XV(2) of the Constitution, and the Constitutional Court's decisions 61/1992 (20.11.1992), 9/1990 (25.4.1992) and 9/1990 (25.4.1992).(20.11.1992), the relevant case-law of the European Court of Human Rights (Willis v. the United Kingdom, DH and others v. the Czech Republic) and the relevant international treaties (International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention for the Protection of Human Rights and Fundamental Freedoms), and cited the 2003 Act of the Constitutional Court on Equal Treatment and the Promotion of Equal Opportunities for All (ECHR), which provides for the implementation of the Convention on the Rights of the Child. CXXV of 2003 (hereinafter referred to as the "Equal Treatment Act"), Articles 8(e), 9 and 10(2).

In relation to the final judgment in the earlier action, he explained that the final judgment did not establish that the defendants had directly discriminated against pupils with special educational needs and indirectly discriminated against children of Roma origin in the education of pupils with special educational needs as a result of the multiple classing provided for by the legislation, nor that there had been unlawful segregation during celebrations, in the canteen or during swimming lessons.

The 2011/2012 school year is the last school year covered by the judgment in the previous case, and therefore decided on the basis of the evidence in the case for subsequent school years. To do so, the plaintiffs had to prove that they had been in class 'b' from the end of the 2011/2012 school year, but from the 2012/2013 school year onwards, the trial court found that, although the unlawful segregation was maintained, the plaintiffs were no longer provided with a lower quality of education. After the judgment in the previous action became final, the defendant only took measures to examine the class placement practice of the defendant II in October 2015 with the assistance of an expert, **Ms B.Zs. R.,** and subsequently adopted a pedagogical programme changing the previous practice of the defendant II at a meeting of the Board of Education on 22 June 2016.

The defendants cited the 1959 Civil Code. 326(2) of 1959, according to which if the claimant is unable to enforce the claim for an excusable reason, the claim may be enforced within one year of the cessation of the bar, or within three months if the limitation period is one year or less, even if the limitation period has already expired or is less than one year or three months.

The case-law fairly establishes the conditions for the suspension of the limitation period; and since the action in the action in the public interest was a multi-claim action, and the application for review in the previous action was also intended to satisfy it, the limitation period was suspended until the final decision of the Curia, on 25 March 2015, and the application was lodged on 4 December 2015.

It also found, contrary to the defendant's objection, that the plaintiff's representative was entitled to bring an action in the public interest under Article 20(1)(c) of the Civil Procedure Act and to represent the plaintiffs in the present action.

On the basis of an examination of the active and passive legitimacy of the action, it concluded that the actions of the applicants in Cases V and XL were unfounded in their entirety, since the years of study in class 'd' covered by their claims could not be included in the scope of the earlier action. However, each of the defendants had passive standing to bring the action, since the public interest litigation had been brought against the defendants in Orders I and II, but the predecessor of the defendant in Order III in the present action had also participated in the action as an Order III defendant (as the successor in title to the Order I defendant in the area of maintenance). It emphasised that the domestic legal provisions (Fundamental Law E. (3), Article Q(3), §§ 1 and 2 of Act CXC of 2011 on National Public Education (Nkt)) and the case law of the European Court of Human Rights (e.g. Horváth and Kiss v Hungary, **C** and **o** v United Kingdom).

As to the joint and several liability of the defendants, he cited the 1959 Civil Code. 344(1) of the 1959 Act, according to which, where several persons jointly cause damage, their liability is joint and several as against the victim and apportioned in proportion to the blame for their conduct. However, taking into account the fact that there was a succession in the period from 2003 to 2017 and that therefore not all defendants can be held liable for the whole period and for all academic years, the Court of First Instance found for the liabilities established up to 31 December 2012 against the defendants in Classes I and II and for the liabilities established thereafter against

the defendants in Classes II and III.

In the assessment of unlawful segregation as a legal claim, he cited Section 7(1) of the Equal Treatment Act, according to which unlawful segregation also constitutes a violation of the requirement of equal treatment, while the provisions of Section 7(2) in force until 31 December 2006 provide that the provision of Section 8 of the Equal Treatment Act does not violate the requirement of equal treatment. §-He also referred to the provisions of Article 10(2) of the Equal Treatment Act and explained Article 27(3)(a), according to which the unlawful segregation of a person or group in an educational institution or a class or group within a class or group within an educational institution or a subsection thereof constitutes a breach of the requirement of equal treatment.

From the school year 2003/2004 to the school year 2011/2012, the defendants could not successfully argue that they did not infringe the right to equal treatment of the applicants concerned, since, according to the final judgment, they unlawfully segregated the applicants concerned by failing to maintain the separation of pupils belonging to the Roma ethnic minority from pupils not belonging to that minority in the class classification.

With regard to the subsequent academic years, it cited Article 28(2)(a) of the Ebktv, along the lines of which it examined, on the basis of the master files submitted, whether the defendants had complied with their obligation to cease the infringement of personality based on the final judgment of the first instance in the previous action (6 December 2012), and found that they had not. On the basis of the documentary evidence available, it could be established beyond doubt in which class the applicants had been studying during the 5 school years concerned.

In the context of the applicability of indirect discrimination as a cause of action, he also referred, in addition to the legal validity of the judgment in the previous action, to the fact that there was no substantive evidence on the part of the defendants in the previous action, but that it was established as a fact, on the basis of the statement of the principal of the second defendant, that the same curriculum was not taught in classes A and B. The final judgment also referred to the report of the Parliamentary Commissioner for National and Ethnic Minority Rights of 19 April 2011 and, although the second and third defendants offered evidence on the merits in this action and the witnesses called for questioning denied any form of discrimination, the final judgment in the public interest litigation did not allow them to challenge on the merits the fact that they had provided a lower standard of education from the 2011/2012 school year onwards. However, for the period thereafter, the Court of First Instance did not find evidence that the applicants, who were still unlawfully segregated, were also provided with a lower standard of education.

In this respect, it cited the rules of the Ebktv. on evidence (19. §-(1) and (2)): in proceedings for infringement of the requirement of equal treatment, the aggrieved party or the person entitled to assert a claim in the public interest must establish that the aggrieved person or group has suffered a disadvantage or, in the case of an assertion of a claim in the public interest, that there is an imminent threat of such a disadvantage, and that the aggrieved person or group possessed, at the time of the infringement, in fact or according to the assumption of the infringer, a characteristic as defined in

Section 8. In the case of probable cause, it is for the other party to prove that the circumstances alleged by the aggrieved party or the person entitled to assert a claim in the public interest did not exist or that the requirement of equal treatment was not observed or was not required to be observed in the legal relationship in question.

Although the plaintiffs met their burden of establishing probable cause, the relief sought by the Class II and Class III defendants was effective, and the requirement of equal treatment was upheld. In this respect, he cited Section 10(3)(a) of Act LXXIX of 1993 on Public Education (hereinafter: Public Education Act), Section 7(2) and (3) of the Ebktv. and also referred to Section 27 of the Ebktv. and then referred back to the decisions of the Second and Third Parties to the proceedings of the Court of First Instance of the European Communities. The Court referred to the preparatory documents and summary documents submitted separately by the defendants in Grade II, III and IV for each of the applicants and noted that the evidence showed that during that period the teachers with the appropriate qualifications had in fact provided the teaching required by law and had provided the necessary developmental teaching. Although defendants II and III also requested forensic educational administration expert evidence, the available documents and testimony established that the appropriate level of education was provided for this period (the private expert called by defendant III, **Ms R.Zs., was** examined as a witness, as were several teachers and principals of defendant II: **P.E.**, **B.I.**, **S.N.K.**, **D. E**, **Mrs L.K.M.**).

With regard to the years of study to be taken into account, it anticipated that the classes 'a' and 'c' were not the subject of the action; the applicants claimed the years spent in classes 'b' and 'd'. It was established from the testimony of the principal of the defendant II, **M.K.,** that class "d" did not start every school year, and that it was primarily the level of funding that determined how many classes the defendant II was able to start. The applicants were unable to satisfy their burden of establishing probable cause under Article 19(1) of the Ebktv in respect of class 'd' and their claims based on that were therefore unfounded.

As regards the repeated school years, he explained that the school years at the end of which the applicants had received an unsatisfactory grade or equivalent, or had been allowed to repeat a year at the request of their legal representative, had to be taken into account. It is irrelevant for what reason the applicants repeated the class in question; what is relevant is the letter grade in which they were enrolled, since when they were in class 'b', at least one of the two grounds was found to be a breach of their individual right to equal treatment.

In the context of grouped classes, it pointed out that the law allowed for the organisation of grouped classes and that the judgment in the previous case did not attribute any legal relevance to whether or not the pupils were in a grouped class, but only to the fact that the applicants were in class 'b'. The mere fact that they were in a grouped class did not affect the quality of education, since a lower quality of education could be provided in a non-grouped class.

In the context of the assessment of years of private schooling, cited in the Nkt.) § 45 (5), § 46 (6), § 50 (1) of the Act, and § 59. §-Paragraph 3(3) of the Law of the European Union on private schooling and the relevant sectoral rules, and concluded that private school pupils are also pupils and that the fact that one of their legal representatives

submitted a written application for private school status cannot be regarded as legally irresistible conduct on the part of the applicants concerned as victims, and that it is therefore appropriate to take into account those school years, since the headmaster of the school is not obliged to authorise private schooling.

In assessing the number of absences, he cited the provisions governing the obligation for pupils to attend, and then pointed out that the pupils were still pupils despite the absences, the number of absences could not be assessed in the context of the legal basis for the non-pecuniary damages, and therefore those school years had to be taken into account, but the effect on the amount of the damages was assessed for each applicant.

[translator's note: omission in the original]
the element of discrimination, i.e. the nature of the infringement itself is the cause of the disadvantage.
He also cited the Civil Code in the context of the legal basis for compensation for non-material damage, then referred to the similarity between the practice based on the Civil Code and the Civil Code of 1959 (BDT2011.2576.), after which he went into detail on the regulation and practice regarding the violation of equal treatment. As part of this, he made particular reference to the judgment of the Supreme Court of Justice in Case No. Pf.IV.20.510/2010/3, which stated that the concept of disadvantage
As to the prejudice caused, it pointed out that the plaintiffs did not consider it reasonable to conduct a full evidentiary hearing for all plaintiffs, while the trial court had granted the defendants in the second and third classes documentary and witness evidence to counter-prove the prejudice. At the same time, it rejected the motion for the appointment of a forensic psychologist/psychiatrist expert, as the very extensive evidence conducted allowed it to reasonably reach a conclusion as to whether the plaintiffs suffered an actual prejudice that the defendants were required to remedy. The claimants claimed the minimum amount of HUF 500 000 per academic year, which they claimed was the minimum, whereas the defendants argued that individualisation was justified and necessary. The Court of First Instance pointed out that the case-law accepts certain non-material damage as a matter of common knowledge on the basis of the first sentence of Paragraph 163(3) of Act III of 1952 on the Code of Civil Procedure (hereinafter 'the 1952 Code'). However, in the view of the court of first instance, it was not reasonable to take as established as a matter of common knowledge that the ethnic segregation alleged by the applicants had caused them to feel inferiority, frustration and humiliation, but it accepted as established on the basis of the documentary evidence and testimony available that those non-material harms had occurred. The development of these psychological changes is clearly attributable to the violation of personality rights committed by the defendants. Although the lower quality of segregated education was not proven in the case of 5 school years, the lower quality of education provided in the school years covered by the public interest litigation indirectly discriminated against the plaintiffs concerned. Indirect discrimination, as a terminus technicus, includes the word disadvantage. It is a fact that, according to the final judgment, the curricula taught in classes A and B were not the same and the lower quality of education resulted in disadvantages which justify an award of non-material damages in order to mitigate those disadvantages. In the case of the school years covered by the final judgment in the previous action, the defendants could not effectively dispute that the disadvantages alleged by the applicants in this context had occurred: they were unable to develop their personalities properly because of the

competences they had not acquired, they were unable to participate in social life with adequate and sufficient recognition, and their chances of obtaining employment with a decent income were lost/reduced.

In the context of the compensatory function of non-material damages, it was assessed that the monetary benefit thus granted could also fulfil its indirect compensatory function in the sense that it could help to alleviate the psychological effects of the personal infringement and to create a sense of calm for the plaintiffs. In the view of the Court of First Instance, in determining the amount, it was also necessary to take account of the preventive aspects of the legal content of the secondary criminal function: it was necessary to ensure that, in addition to individual prevention, its effect could be felt in relation to all public education establishments operating in Hungary. The infringement committed by the defendant is particularly serious, since the 60 applicants have had their rights as individuals infringed on two counts, in connection with which Hungary, as a party to international treaties, is subject to obligations. In addition, it assessed the repetitive nature of the infringement of personality rights, since the defendants' convictions covered a total of 14 academic years. However, it also assessed that the infringement had a serious impact on the applicants' families, who should be taken into account as the applicants' environment, since the applicants' parents also realised the disadvantages that could result from the non-integrated education of their children.

The Court did not find any justification for the application of the 1959 Civil Code. 340(1) of the 1959 Act. Although § 77(3) of the Public Education Act and § 59(3) of the Civil Code do not preclude it, the defendant in the second instance did not prove that the plaintiffs' damage was caused by an unavoidable cause outside the scope of its operations, but it could not prove it either, since it had itself violated the relevant legislation. He also pointed out that he had heard as witnesses **N.I.**, **H.G.**, **Dr. F.K.R.**, **Dr. K.T.** and **D.G.,** who had expressed their professional views on the issue of integrated and segregated primary education and the opportunities and obligations of the larger community, society and the families of the individual pupils, in addition to the school. The Second and Third Defendants expressly referred to the obligations of the pupil, but the Court of First Instance held that the number of hours per pupil was not in itself legally relevant, and that the Court of First Instance assessed the number of unexcused absences, if any, in the light of the other evidence in the case, in order to determine whether it was appropriate to take that into account in the context of the apportionment of damages. Nevertheless, it can be concluded that the role of the primary school in strengthening or, if necessary, creating the motivation of pupils is also of paramount importance, since the possible existence of multiple disadvantages of pupils, which may already exist and may be attributable to a number of different causes, can be eliminated, or at least reduced, by a primary school where children like to go, developing their sense of responsibility and their need for knowledge.

It also pointed out that it had taken into account the value at the time of the assessment and therefore did not order the defendants to pay default interest.

The judgment then went on to give specific details of the applicants' personal circumstances: which applicant, in which year, in which class, how long he had spent in class B, whether he had special educational needs, whether he required special care, how many absences he had, whether he had continued his education after

primary school. Having regard to those circumstances, it determined the amount of the compensation for non-material damage to be awarded to each of the applicants, with the exception of those in Classes V and XL, and the scope of the infringements found, taking into account the period spent in Class B.

As regards the costs of the proceedings, it was pointed out that, by virtue of the total personal legal aid of the applicants and the personal exemption of the defendants from the payment of fees, the State would bear the fee of HUF 1 500 000 recorded in respect of the single application. As regards the costs of the proceedings, it took into account that the applicants were represented free of charge and therefore did not incur any costs. Since it allowed the action for subjective sanctions in respect of only 12 of the applicants, allowed it in part in respect of 48 of the applicants and dismissed the action of 2 of the applicants, the latter 50 applicants were ordered to pay the defendants' costs.

All parties appealed against the judgment.

In their appeal, the applicants sought the alteration of the judgment of the Court of First Instance in so far as it ordered the payment of an additional HUF 800 000 to the applicant in first instance, an additional HUF 2 500 000 to the applicant in second instance, an additional HUF 1 100 000 to the applicant in third instance, an additional HUF 400 000 to the applicant in fourth instance, an additional HUF 1 500 000 to the applicant in fifth instance, and an additional HUF 1 500 000 to the applicant in sixth instance additional 1 100 000 Ft, to the applicant in eighth instance an additional HUF 1 000 000, to the applicant in nineth instance an additional HUF 700 000, to the applicant in tenth instance an additional HUF 1 500 000, to the applicant in eleventh instance an additional HUF 600 000, to the applicant in twelfth instance an additional HUF 500 000, to the applicant in thirteenth instance an additional HUF 900 000, to the applicant in fourteenth instance an additional HUF 900 000, to the applicant in sixteenth instance an additional HUF 2 700 000, to the applicant in seventeenth instance an additional HUF 700 000, to the applicant in nineteenth instance an additional HUF 1 400 000 Ft, to the applicant in twentieth instance an additional HUF 500 000, to the applicant in twenty-first instance an additional HUF 800 000, to the applicant in twenty-second instance an additional HUF 1 400 000, to the applicant in twenty-third instance an additional HUF 650 000, to the applicant in twenty-forth instance an additional HUF 600 000, to the applicant in twenty-fifth instance an additional HUF 1 100 000, to the applicant in twenty-sixth instance an additional HUF 900 000, to the applicant in twenty-seventh instance an additional HUF 300 000, to the applicant in twenty-eighth instance an additional HUF 800 000, to the applicant in twenty-nineth instance an additional HUF 1 000 000, to the applicant in thirtieth instance an additional HUF 600 000, to the applicant in thirty-second instance an additional HUF 3 500 000, to the applicant in thirty-third instance an additional HUF 1 100 000, to the applicant in thirty-forth instance an additional HUF 2 400 000, to the applicant in thirty-fifth instance an additional HUF 1 300 000, to the applicant in thirty-seventh instance an additional HUF 900 000, to the applicant in thirty-nineth instance an additional HUF 1 100 000, to the applicant in fortieth instance an additional HUF 1 000 000, to the applicant in forty-first instance an additional HUF 1 600 000, to the applicant in forty-second instance an additional HUF 1 200 000, to the applicant in forty-third instance an additional HUF 100 000, to the applicant in forty-forth instance an additional HUF 3 500 000, to the applicant in forty-sixth instance an additional HUF 800 000, to the applicant in forty-eighth instance an

additional HUF 200 000, to the applicant in fiftieth instance an additional HUF 600 000, to the applicant in fifty-first instance an additional HUF 2 100 000, to the applicant in fifty-third instance (based on the specification at the second instance trial) an additional HUF 1 000 000, to the applicant in fifty-forth instance an additional HUF 800 000, to the applicant in forty-fifth instance an additional HUF 500 000, to the applicant in fifty-sixth instance an additional HUF 400 000, to the applicant in fifty-eighth instance an additional HUF 1 400 000, to the applicant in fifty-nineth instance an additional HUF 900 000, to the applicant in sixtieth instance an additional HUF 1 300 000, to the applicant in sixty-second instance an additional HUF 100 000 in non-material damages, payable jointly and severally and a declaration that the defendants had infringed their right to equal treatment by segregating them on the grounds of their nationality and by providing them with a lower quality education throughout the years 2004 to 2017. The applicants in VII, XV, XXXI, XXXVI, XXXVIII, XLV, XLVII, XLIX, LII, LVII, LXI and LXIII instances sought the alteration of the judgment of the Court of First Instance by requesting that all three defendants be ordered to pay the amount of the judgment in their favour. The order dismissing the claim for interest was accepted, but the defendants sought, by way of amendment of the judgment, the waiver or, in the alternative, reduction of their liability to pay costs and the award of costs against the defendants.

In the grounds of appeal, it was submitted that, in the case of the applicants in VI, VII, X, XXVI, XXVII, XXXII, XXXIX and XLI instances, the facts of the judgment were vitiated by a mistake in the part of the judgment relating to the years of study in which the applicant was in Class B or D.

In their application for a joint and several injunction, they argued that the continuous legal relationship requires a uniform treatment and that it was therefore arbitrary and unfounded to link the injunction to a change in the person of the maintainer, especially since there had been no change in the applicants' perspective and the rule of joint and several liability for joint and several damages protects the injured parties.

In their view, there is no reason to treat the school years starting from 2012/2013 separately, as no data emerged during the extremely detailed and extensive evidentiary procedure that the quality of education had actually changed or improved during this period, as the defendants have not proved either, that they took any concrete measures to put an end to the infringement found in the previous proceedings, and if they did, what concrete results they achieved, nor did they prove that the shortcomings of the applicants from the previous period were corrected, that they were caught up or that they were given special attention. On the contrary, the applicants concerned, their legal representatives and the witnesses considered the whole period as a single and continuous period. Not only is this the case by virtue of the final judgment in the public interest litigation, but it is also proven (not merely probable) by the record of the litigation, but it is also contradicted by the data of the competency measurements.

Among the school years spent in class 'd', it was explained that the creation of such classes was only for administrative and financial reasons, but that they were fully equivalent to class 'b'. The judgment quoted the testimony of **Mr M.K.,** according to whom the extent of the financial funding determined primarily the number of classes the school could start in an academic year, but that the applicants could not fall victim

to such administrative and financial operations, of which they were unaware. It cannot be established from the case-file what the criterion for classification in class 'd' was, and it is therefore necessary to examine primarily whether there was a substantive difference in the composition and content and quality of the education provided between the 'b' classes concerned by the earlier judgment and the 'd' classes which are only known in the present proceedings: there is no such difference. It was noted that the Ombudsman's report on which the previous case was based did not mention the 'd' classes, although the Minority Commissioner's staff had visited all the classes, so presumably they existed only on paper. There is ample evidence that these classes were also attended mainly by Roma pupils. Reference was made to the Education Office's minutes of an on-site inspection of 31 May 2007, which included a table showing a combined class 2-3/d in which the school headmaster said 11 out of 11 pupils were of Roma origin. However, this evidence was not taken into account by the court of first instance. In addition, the plaintiffs' representatives repeatedly referred to the fact that the "d" classes were also Roma-majority, but the logbooks annexed by the defendants also testify to this. For example, the majority of the pupils in the merged 'd' classes 3-4-5 in the 2008/2009 school year were also the plaintiffs (8 out of 14 plaintiffs), and the remaining 6 were also percipiently Roma pupils, based on their surname and first name. In addition, pupils in class 'd' were only intermittently placed there, where pupils in class 'a' were not placed. In so doing, the applicants had complied with their obligation to establish probable cause under Article 19(1) of the Ebktv. In addition, the 'd' classes operated as a combined class, in several cases combining lower and upper classes. According to Principal **M.K.**, the primary criterion for the classification was to make the composition of the class as homogeneous as possible, which also applied to classes 'a', 'b' and 'd'. However, the pursuit of homogeneous composition contradicts pedagogical-professional rationality in several respects. In addition, a significant proportion of the applicants (39%) had been in 'd' classes, mostly for one or two years, and the applicants' statements suggest that these classes existed only 'on paper', as none of the applicants who had been in 'd' classes could remember being in 'd' classes. It is therefore no coincidence that the applicants could not clearly state which year they were in which class. Therefore, the defendants should have excused their responsibility by stating that the composition of the pupils in the 'd' classes was heterogeneous.

As regards the amount of damages, it was submitted that the court of first instance did not accept the claim assessed as a lump sum, but it appears from the judgment that it took the amount of HUF 400 000 per school year as a starting point and individualised it upwards (if it assessed that the claimant had fulfilled his learning obligations) or downwards (if it took into account the failure to fulfil his learning obligations to the detriment of the pupil), with HUF 300 000 per school year being the starting point for the school years starting from 2012/2013. However, the evidence cannot result in a downward individualisation, because the requested HUF 500 000 per school year is a minimum amount that is also available to a claimant whose negative circumstances (family and other) outside school have also exacerbated the effects of segregated education. The judgment erred in holding that the applicants had to prove disadvantage, as the judgment also found that discrimination was conceptually disadvantageous. The trial court also applied apportionment of damages, but the judgment does not always disclose facts, circumstances or other reasons that reduce the defendants' liability, and the judgment also states that the trial court did not see the possibility of applying apportionment of damages in principle. In the area of costs, it

was submitted that the defendants should be ordered to pay costs because, although the lawyer's services were provided free of charge, this pecuniary benefit was not granted to the defendants. They invoked the 1952 Pp. 81(2) of the 1952 Act, and submitted that the legal representatives had acted in a uniform manner and that, since the total amount of the claims was not manifestly excessive, the award of costs was unfair to the applicants who were not aware that they were in class 'd'.

In his appeal, the defendant in first instance and in the alternative requested that the judgment of the Court of First Instance be set aside and that the Court of First Instance be ordered to make a new decision, in the third alternative requested that the relevant applications be dismissed and the provisions against him be changed in their entirety, in the fourth alternative requested that his sentence be reduced to a compensation of HUF 100 000 per academic year, and in the fifth alternative requested that compensation in kind be ordered instead of monetary compensation. In the event that his third and fourth heads of claim were upheld, he also sought an order that the applicants be ordered to pay the costs of the proceedings.

The main ground for setting aside the judgment of the Court of First Instance was that the Court of First Instance had infringed essential procedural requirements. It violated the provisions of the 1952 Pp. The Court of First Instance infringed Article 3(3) of the First Instance Act, as the applicants had not proved that they suffered damage as a result of psychological injury and loss of life prospects from the end of the 2011/2012 school year, but the court of first instance had not even extended the burden of proof in this regard. Nor did the Court of First Instance assess the burden on the applicants that they did not even plausibly establish that the unlawful segregation found in the previous action had been implemented in the 2012/2013 school year, but the Court of First Instance did not examine this either, although the statement of **M.K. was** available, according to which the infringements identified in the Ombudsman's report had been continuously eliminated from 2011 onwards, the interchangeability between classes A and B had been implemented, and the parallel class B had been eliminated in the 8th grade in the 2012/2013 school year.

The trial court also denied the First Defendant's motion for expert evidence, and the available evidence did not establish psychological injury. Nor was there any evidence of loss of the will to live, which the defendants had just proved and demonstrated, precisely because all the plaintiffs who wanted to continue their studies had done so. He also criticised the instruction on the burden of proof: the order No 32 contained information only in relation to the applicants, but the Court of First Instance did not assess the failure to prove against the applicants. The burden of proof on the applicants was on the defendants in Orders II and III, but the applicants failed to prove that they had not acquired the competences set out in the National Curriculum. The evidentiary procedure was exhausted by the partial statement of the plaintiffs who had reached the age of majority, but it was also not clear what damage and how the plaintiffs who had entered grade B in the lower school years could have suffered from the loss or reduction of their quality of life during this period, when this only became apparent years later, at the age of 16 or 17. Nor does the order number 32 contain any information as to what facts the court considers it necessary to prove, and on the part of which party, for the school years not covered by the judgment in the previous action. Furthermore, the Court of First Instance went beyond the scope of the application, since it also assessed the negative impact on the families of the applicants concerned,

i.e. it also awarded non-pecuniary damages to the applicants' relatives, whereas the applicants had only claimed damages for the infringement suffered by them, but non-pecuniary damages can only be claimed personally. In addition, the court of first instance examined a number of circumstances which had not been put before the court by the parties, but did not inform the parties of the importance it would attach to them, in relation to which the defendants could not be held liable for the failure to submit evidence. Nor did it properly assess the fact that, under the relevant legislation, the indication of the class letter is not a mandatory element of the content of the certificate, but the Court of First Instance attributed to the defendants the fact that some certificates did not contain it. Although the final judgment in the previous proceedings did not dispute the finding of indirect discrimination, which included the term 'disadvantage', the assessment of the extent of the disadvantage would have required the appointment of an expert. In the course of the evidence led by the applicants, no witness with psychological or psychiatric expertise was examined, either generally or in relation to the condition of the individual applicants, no evidence of such disadvantage was adduced, nor did even witnesses described as 'educational experts' suggest that there was likely to be disadvantage at an individual level. The same applies to the loss of life chances, where the only unsubstantiated assumptions were those derived from the competency assessment. On the other hand, the defendant has demonstrated the life course of the applicants during their secondary education, so that the damage remains unproven. The fact that the defendant did not request an expert in the previous proceedings is not a reason for not having sought expert evidence, since in that case too, the introduction of an expert would have been justified from the 2012/2013 school year onwards. The Court of First Instance disregarded the testimony of **Dr F.K.R.** and **Dr K.T., who** were expert witnesses and who, as teachers with academic degrees, had pointed out aspects which the court had not examined in the context of loss of life or had examined but not in accordance with professional standards and not on the basis of established practice. Not only these witnesses, but all of them agreed that school progress and school performance also depend to a considerable extent on other circumstances outside school, and therefore a court decision that ignores this is unprofessional from an educational and pedagogical point of view. The defendant's teachers in Grade II have always complied with the legal requirements, and their personal habits and motivation were described in their testimonies, which the court of first instance ignored. It was also emphasised by the witnesses who had been called and, in some cases, by the witnesses requested by the plaintiff that the issues raised were partly of a technical nature.

He also criticised the weighing of evidence, as the trial court did not give weight to the concerns about the veracity of the plaintiffs' statements, even though the evidentiary procedure revealed on several occasions that the plaintiffs did not remember or did not remember the evidence in the case, which the defendants had elaborated in detail in their preparatory documents, but the trial judgment did not even mention these contradictions. It also pointed out that the statements of the individual plaintiffs/ their legal representatives could have been taken into account as evidence and testimony in the assessment of the other plaintiffs' claims.

All the expert witnesses stated that the family background and social environment have a fundamental influence on the applicants' academic progress, the detailed statements of the defendant in the second instance in this connection were not refuted by the applicants, nor was any evidence adduced to the contrary, but it is not clear from the

judgment at first instance what significance the court of first instance attached to either the social circumstances or the family background, nor to the documents obtained from the child welfare department and the family assistance service. Furthermore, the court of first instance only addressed questions to the applicants concerning employment and family status. In the appeal, it cited the testimonies of **N.I.**, **H.G.** and **D.G.,** who were examined as 'expert witnesses', which confirmed that family background and social circumstances also had a significant influence on academic performance. In that context, he referred to the parallel career path of the applicants in Cases XXVII and LIV, for whom, despite the significant difference in family background and its supporting influence, he imposed the same fines on Cases I and II for the 2003/2004 academic year. Moreover, the applicants have not adduced any evidence, beyond the results of the competency test described in the application, the applicants' declarations and the evidence of the 'expert witnesses', to show or at least to establish that they did not receive the 'relevant knowledge'. Nor did the applicants dispute that it was possible to investigate and for the applicants to prove how much lower the standard of education was, because it was merely a matter for judgment that the education provided in 2011/2012 was not of the same standard as that provided in the previous year. It was only a matter of judgement that the quality of education in the 'b' classes was lower until the end of the school year 2011/2012/2012, and the defendant has demonstrated that even if the quality of education was lower, it was not to such an extent as to cause harm, and the fact that the applicants' academic results could have been better was not examined at all in the proceedings, and no applicant's life history has demonstrated that it was not possible to continue education at the defendant's second-tier school, since remedial classes were also taught in addition to the requirements of the National Curriculum. However, the judgment of the Court of First Instance does not contain any assessment of the testimonies in this connection. In addition, the court of first instance arbitrarily assessed the amount of the non-pecuniary compensation without appointing a psychologist/psychiatrist and a pedagogical/educational/educational expert, in breach of Article 206(3) of the 1952 Civil Code.

In the alternative appeal, it was submitted that the facts established were undocumented, unreasonable and logically contradictory. For example, the XXXV applicant was awarded non-pecuniary compensation of HUF 400 000 for the 2011/2012 school year, even though he was in class 'd'. In addition, the judgment at first instance reached the conclusion, without reason and without documentary evidence, that the fact that the applicants were pursuing secondary education did not substantially refute the fact that they had not acquired the necessary competences, since the condition for admission to a higher grade is the acquisition of the level of competence for that year. He also referred to the lack of evidence of loss of the right to life.

In its third ground of appeal, it upheld its plea of limitation in the case of the applicants in Cases XXVI, XXVII and XXXVI, and referred back to the submissions made by the defendants in Cases II and III at first instance, according to which the applicants had already become aware of the facts necessary for the assertion of their claim after the judgment of the first instance in the earlier proceedings, after which no facts or circumstances had become identifiable that the applicants had not been aware of their loss. This is evidenced by a number of contents available on video-sharing sites, news portals and websites available on the Internet, according to which the foundation representing the claimants informed the claimants/ their legal representatives of the

outcome of the prior litigation. However, the Court of First Instance did not examine the merits of the limitation plea, except for the statute of limitations, even though the damage was immediately due when it occurred and the maintenance of the class as a harmful conduct was carried out on the first day of the first school year, while the lower quality of education was considered as a conduct that ended at the end of the school year. In the case of a continuing legal relationship, the limitation period starts to run on termination of the legal relationship, which, according to the relevant commentary, does not apply to compensation for damages caused outside the contract.

In addition, the claim relating to an academic year in which the applicant was subject to a different curriculum, which he repeated for reasons not attributable to the defendants, in which he accumulated significant truancy, in which he was a private student at the request of his parents, is unfounded as regards its legal basis. In the context of the different curriculum, he stated that it had been established that the applicants, for whom the expert committee had ordered different curricula (with various twists), were not to be taught in accordance with the standard curriculum part of the national curriculum in force at the time, but in accordance with the ministerial decree containing the guidelines for the education of pupils with special educational needs. Nevertheless, the judgment at first instance found against the defendant in Case I in respect of the applicants XXVI, XXVII, XXXI, XXXIII, XXXIX, XLII, XLIII, XLVI and XLIII. The defendant I cited the sectoral rules on the education of pupils with special educational needs and also pointed out that the unlawfulness of the classification of the applicants XXVI, XXXI and LXIII in class b was also questionable because in their case the expert opinion had prescribed educational segregation (in today's terms, special education), i.e. they were not placed in class b because of a learning disability.

In relation to the repetition of a particular year, it referred to the fact that it was due to failure to fulfil the obligation to study, but if the applicants in question did not attend classes, there could not conceptually be a disadvantage, and if they had to repeat the academic year, it was only due to their failure to fulfil their obligations, and there was no evidence that any of the applicants had to repeat a year because the defendant in the second instance had failed to fulfil, or had failed to fulfil lawfully, its educational obligations. Referring to the 1959 Civil Code in the context of the apportionment of damages, the Court of First Instance held that the defendant had not been entitled to claim damages for the loss of the right to education. 340(1) of the 1959 Act and to Opinion No 36 of the PK, it was explained that if a particular plaintiff was required to repeat a year, he or she was most likely not acting in a manner that could be expected in the circumstances: such were the case with several years of education of the plaintiffs I, V, IX, XIII, XVI, XXI, XXXI, XXXIV, XXXVIII, XXXIX, XLVIII, LIII and LXI.

For the same reasoning, the years of study in the preparatory classes cannot be taken into account in the case of the applicants XXII, XLII and XLIII.

A significant number of absences (certified and un-certified) is a breach of the student's obligations. Since the applicants could only have suffered a disadvantage if they had actually participated in the education provided, dismissal of the action is justified in the case of the applicants I, II, IV, VII, XI, XIII, XVI, XVII, XXI, XXXIV, XXXVIII, XLIV, LIII, LV, LVIIII and LXII with more than 150 hours of default and in the case of the applicants XXI, XXII, XXXI and XXXIV with more than 250 hours of default.

He also stressed that the applicant LXI was a private student in the 2011/2012 school year, for which he was not entitled to compensation, since according to Article 23 (2) of the Decree of the Ministry of Education and Cultural Affairs No. 11/1994 (8.VI.) on the operation of educational institutions, if the student fulfils his/her study obligation as a private student, the parent shall ensure his/her preparation, or the student shall prepare individually. The principal of the defendant in Case II had no discretion in that regard, but if, according to the grounds of the judgment, he had not been obliged to grant that status, the Court of First Instance, by its decision, first, went beyond the scope of the application, second, examined aspects which were not covered by the evidence and, third, disregarded the fact that the views of the guardianship authorities had been obtained in order to reach that decision. The LXI applicant did not attend any lessons as a private student, while the II defendant provided him with textbooks containing the same syllabus as the A class.

In the third ground of appeal, the appellant also referred to the unfoundedness of the amount of the plaintiff's claim, since the court of first instance referred to satisfaction and prevention as a function of non-material compensation, the legal basis of which, however, was not derived, but was based on the 1959 Civil Code. 355(1) and (4) of the 1959 Civil Code does not refer to a criminal law approach to this function of the legal instrument. The trial court also referred to documentary evidence and witness statements as the basis of proof, but there was no evidence of nonpecuniary damage, but only general statements by the plaintiffs/lawyers, some of whom did not even know the meaning of the words "frustration" or "feeling of inferiority". It noted that the applicants had also made statements about the use of toilets, the lack of community programmes and the limited access to clubs, which were contradicted by the evidence adduced. In his view, the testimony of Mr **N.I.**, Mr **D.G.** and Mr **G.P. did** not show any prejudice, nor did the applicants' behaviour in the negotiations (talking, shouting, laughing) suggest that they were frustrated or suffering from a sense of inferiority. The expert reports submitted in respect of each of the applicants show no evidence of such non-material harm, even though psychological testing is part of such testing. Likewise, the applicants have not proved any loss of life, and the only thing that can be deduced from the previous judgment is that there was a shift of emphasis between the parallel classes, that in class 'a' there was a gifted and talented teacher from class 1, but that the curriculum in class 'b' also complied with the relevant legal requirements, and that no actual harm was identified in the proceedings.

The court of first instance also placed international commitments before domestic legislation in an unjustified manner, which is incompatible with the Fundamental Law and the provisions of Act CXXX of 2010 on Legislation. The reference to the repetitive nature of the harm was also unjustified, since the defendant had demonstrated the measures taken to remedy the situation deemed harmful after the first instance judgment was delivered, and since the Court of Appeal of the Capital delivered the second instance judgment in the previous case on 7 October 2015, it had to be implemented from the 2015/2016 academic year. According to the submissions made by the defendants II and III, the practice of class assignment was changed, parallel classes were abolished with the exception of one class with parallel classes, but the remaining parallel class did not show the discrepancy for which the violation of the requirement of equal treatment was found in the previous lawsuit, which was also supported by the statement of **M.K.,** but also that interchangeability between classes was ensured, contrary to some of the submissions of the plaintiffs.

In the fourth ground of appeal, it summarised the dispersion of the damages awarded to each of the applicants and also pointed out that the penalty was not specified as to which part of the damages compensated for "psychological injury" and which part compensated for "loss of livelihood". He pointed out that, for the 2012/2013 school year, an amount of HUF 300 000 had been awarded to all the applicants concerned, with the exception of the applicant in Grade LXII (HUF 400 000), but that aspects of this could not be ascertained from the judgment at first instance, in the absence of which the defendant in Grade I was not given the opportunity to present its position in detail, even though it had been demonstrated that all the applicants had acquired the basic competences and had not been excluded from further education. He also pointed out, by way of example (e.g. in the case of the VII applicant), that the trial court had wrongly stated that there was no room for apportionment of damages (not even for the period in question in the case of this applicant), but also that, for example in the case of the VIII applicant, the judgment did not contain any relevant reasoning. The decision in respect of the applicant in Case LXIII is manifestly ill-founded, since he was a pupil with special educational needs and a different curriculum (mildly mentally handicapped), and the court of first instance, lacking specialised knowledge, misinterpreted the terms and thus drew the wrong conclusions and made an unlawful decision. There is also a huge discrepancy between the individual claimants in relation to the generalised amount of 300 000 HUF for the school year 2012/2013. In its conclusion, the amount of the fine imposed on the applicants is excessive, since the non-material damage caused by the breach of the defendant's obligations as a first-tier defendant has not been proven to an extent that would justify it, and may amount to up to HUF 100 000 per school year - compensation in kind.

As regards the fifth ground of appeal, it submitted that the judgment of the court of first instance did not contain any reasoning as to why it did not order compensation in kind, whereas the Civil Code 1959. 355(2) of the 1959 Civil Code. According to the case-law cited by the court, it is for the court to decide what is the most appropriate means of repairing the situation prior to the damage, and the court is not bound by the parties' request in this respect. He also referred to the fact that the court of first instance had not laid down any guarantees to ensure that the amount of the compensation for non-material damage would serve to compensate for the damage suffered.

In their appeals, the defendants in the second and third forms of order sought, in the first and second place, annulment of the judgment and an order that the court of first instance should make a new decision, and, in the third place, dismissal of the actions in question, with a complete amendment of the provisions against them, and, in the fourth place, reduction of the amount of the non-material damages awarded against them, and an order that they should be ordered to pay compensation in kind instead of monetary damages in the event of their being sentenced to death. He also sought an order that the applicants be ordered to pay the costs of the proceedings at second instance.

In the main appeal, it was submitted that the essential rules of the procedure at first instance had been infringed, and that the court of first instance had infringed the provisions of the 1952 Pp. (3) of the 1952 Act, the first instance court in its order No. 32 gave information only to the plaintiff in relation to the burden of proof. It then wrongly accepted the applicants' submissions on the presentation of evidence and was not

satisfied with the attachment of the master sheets, but insisted on the attachment of the class registers. Although the onus of proof was on the applicants and the relevant legislation provides that the master file and the transcript are a central part of the educational record, the defendant in the second instance attached the relevant documents in good faith and in advance of the costs of doing so on behalf of the applicants. The Court of First Instance could only have given its judgment on the basis of the facts covered by the information provided in Order No 32, in relation to which it imposed a penalty on the defendants in Cases II and III for the school years (from 2012/13) in respect of which they had not been informed of the evidence, but on the ground that the counter-proof of the defendants had not been provided and that the reason for their penalty was the failure of the counter-proof. The applicants based their application on the final judgment in the previous action, but did not make any factual submission as to what, other than the finding in the final judgment, demonstrated that the Second and Third Defendants had also unlawfully segregated any of the applicants from the 2012/2013 academic year onwards. The Court of First Instance did not supplement or modify its Order No. 32, but it expressly stated that the special rules of evidence of the Ebktv. did not apply. However, it did examine several issues that the applicants had not brought before the court (e.g. the composition of the 'b' classes in the school years 2012/2013 and subsequent years, the educational circumstances of the applicants' parents), while it did not examine several circumstances that the defendants had brought before the court (e.g. secondary education, family environment, social situation, learning difficulties, compensation in kind). The Court of First Instance also failed to appreciate that the applicants had not submitted any requests for evidence in respect of a number of relevant circumstances, and that their statements and evidence were submitted with considerable delay, which did not allow it to be established, contrary to what was required by Order No 32, that each of the applicants had suffered the damage specified in the order for each of the years of study.

The applicants' application was partly for a declaration of unlawful segregation, but the last such declaration was made in the Ombudsman's report of 19 April 2011 and his follow-up report of December 2011, whereas the Education Office had carried out an inspection before that on 31 May 2007. There is no provision in the final judgement in the previous lawsuit that would allow a finding of unlawful segregation for grades 1 that started before the 2012/2013 school year for grades higher than the 2011/2012 school year. Thus, neither the report on the investigation of the infringement of the right to equal treatment in respect of the 2012/2013 school year and the first classes starting after that year, nor the evidence prior to the 2012/2013 school year, had any probative value, and the applicants have not demonstrated that there is any evidence to support their claim of unlawful segregation other than the judgment in the previous action. It is an extension beyond the scope of the application that the trial court included in its scope of proof the environmental impact on the plaintiffs' family and also examined the circumstances under which the plaintiffs' legal representatives continued their primary school education, all in the absence of a motion. Since it included the negative impact on the applicants' families in its assessment, it extended the application to the applicants' family members, but Hungarian procedural law does not recognise peremptory challenges. It also went beyond the scope of the application when it examined whether the application for private tuition had been lawfully assessed, a matter over which the civil court has no jurisdiction.

They also referred to the fact that it could not be established from the previous lawsuit to what extent a disadvantage had been caused by the maintenance of the class classification and the lower quality of education, and the Civil Code of 1959 does not contain any provision, even at the level of justification, which would equate the concepts of disadvantage and damage. Therefore, the defendants in Orders II and III were prepared to make the necessary evidentiary submissions in the context of the counter-proof to which the defendants were entitled, which were constantly contested by the plaintiffs. However, the Court of First Instance, without appointing an expert and, moreover, without taking into account the available private expert opinion obtained by the defendants, only took its decision after hearing the plaintiffs and their legal representatives in person (contradicted by documents and witness statements) and after hearing the witnesses, even though they had submitted their motions for expert evidence on numerous occasions. Even if unlawful segregation causes a disadvantage at the level of the individual, its identification presupposes knowledge of the discipline of psychology or pedagogy, which is not refuted by the testimonies of Mr **N.I.**, Mr **D.G.** and **Mr H.G.** It was not a question of how the standard of teaching in class 'a' compared with the standard of teaching in class 'b', but of what, on an individual basis, would have been the best that could have been achieved and what standard was provided in relation to that; this is a matter for the experts. And no one has made a presentation that even suggests that any applicant would not know how to interact with people from other social groups. There were a number of technical issues, both in relation to the pastoralists and in relation to the subsequent validation, which were not examined in the previous litigation, but the lack of evidence should have been assessed against the claimants. The principle of equality between the parties was also infringed, since the applicants were also required to have access to documents relating to their education, but were not prevented from obtaining these documents from the defendant in the second instance.

In the context of not taking expert evidence, reference was made to the AB Decision 3024/2019 (II.4.), according to which if a factor can be identified that requires independent medical (and not merely legal) expert examination and evidence in the course of the proceedings, the failure to take expert evidence violates the fundamental principle of the right to a fair trial.

In their opinion, it was a violation of § 206 of the 1952 Civil Code that the court of first instance ignored the testimonies of **Dr. F.K.R.** and **Dr. K.T.,** who had been called for questioning by the defendant in the first instance, as well as the private expert's opinion, and only attributed importance to the date of the latter, but ignored the date of the expert's opinion of the defendant in the second instance. He also failed to assess the written statement of the defendant in first instance of 5 January 2018, which showed in detail that the classification in parallel classes was in compliance with the legal requirements after the 2012/2013 school year. The Court of First Instance also committed a serious breach of law by attributing to the 'integrated' education provided for in certain expert opinions not its actual content (co-education) but the content of nationality with a different meaning. That serious professional error is borne out by the fact that the judgment of the Court of First Instance omitted to include an expert opinion on the limited learning capacity of the applicant in Grade XXIX, a matter which was decided by the final judgment in the earlier public interest litigation (the factual basis for the classification in Grade B), thus also infringing the principle that the action must be brought on the basis of a request for a declaration of lack of competence. Similarly,

the finding in relation to the applicant in Case XXXI, which wrongly filled in the word 'integrated' with a nationality connotation, is erroneous. All the applicants were in possession of expert opinions on integrated education in the file and could not have been prejudiced by the fact that they were classified in Class B, which the Court of First Instance presumably assessed against the defendants. The same is true of the applicants in Cases XXXII, XXXIII, XXXIV, XXXIX, XLI, XLII, XLIV, since the co-education required by the expert opinion was achieved, the court's conclusion to the contrary is not correct, and the judgment at first instance therefore seriously infringes the law by not giving the terms appearing in the expert opinion the content of the relevant discipline, but the court of first instance did not see any need to appoint an expert. The court of first instance did not attach sufficient importance to the social background and living conditions of the pupils, nor to the documents of the official and guardianship procedures containing information on the care taken with regard to their studies, and accepted the statements of the applicants and their legal representatives without criticism, even in the case of obvious errors and untruths. It also failed to take account of the fact that some of the applicants had entered into a legal relationship during the course of the year, but also wrongly concluded that the legal provisions in force from 27 January 2004 allowed for the reorganisation of classes, since a class could be reorganised during the school year only in the narrow circumstances provided for by the legislation. The Court of First Instance also assessed the loss of opportunity for the XLVII plaintiff against the defendants, in that he did not receive the same level of giftedness as the children in class 'a', which was not in fact the subject of the evidence, and the Court of First Instance also failed to take expert evidence in that regard, and therefore the Court of First Instance's 'discretion' was arbitrary.

The Court of First Instance also disregarded the plea of limitation without justification, and the argument that the limitation period had been suspended for the entire period of the earlier proceedings, i.e. until the date of the judgment in the review proceedings, which was requested to be taken into account in respect of the applicants in Cases XXVI, XXVII and XXXVI, is incorrect. It was also submitted in particular that the claim relating to the years spent in the 'd' classes was in any event time-barred, since the last such class finished its school year in June 2012, but the reference to that fact only appeared in the application of the applicants concerned after a period of 5 years.

In the context of the third and fourth grounds of appeal, it was submitted that the first instance court erred in its assessment of the fact that the defendant's private expert was asked to adopt a new pedagogical programme in October 2015, whereas the second respondent was asked to adopt a new pedagogical programme on 22 June 2016. The Court of First Instance, however, did not distinguish, even at the level of reasoning, between the Defendants in Grade II and III and their respective functions, even though neither is entitled to take away the functions and powers of the other. As a public education establishment, the defendant in Grade II is a separate legal person in professional terms, and the court of first instance failed to examine the specific scope of action of the defendant in Grade III. Contrary to what was accepted by the Court of First Instance, the defendant in the second instance had demonstrated in detail and documented in exemplary fashion during the proceedings at first instance the conduct, attention and care shown towards each of the applicants, and the Court of First Instance ignored the fact that the teacher was entitled to professional independence. The same curriculum was taught in the 'b' classes as in the 'a' classes. The fact that the second defendant had corrected its classing practice from the 2012/2013 school

year onwards and that the question of whether the classing was unlawful was not a matter for the first instance court. The obligation of the defendant III as the maintainer arising from the judgment in the preceding judgment only covers the cessation of the infringement and the termination of the infringement, but the fulfilment of this obligation was not considered by the court of first instance to be subject to examination and assessment, although the defendant III was not obliged to take any further action in the matter of the infringement. The first instance court did not assess the fact that the defendant in the first instance did not assess the fact that the defendant in the third instance had already created the conditions for integration as the maintainer from the school year 2013/2014, for which the head of the institution **M.K.** made a detailed declaration, and the defendant in the third instance supported the processes started by requesting an educational expert and conducting a targeted investigation in the school year 2015/2016. Nor did the Court of First Instance take into account the fact that the defendant in the third instance could not withdraw the powers of the defendant in the second instance, nor did it examine whether the grading methodology applied in practice from the 2012/2013 school year was in conformity with the provisions of the previous proceedings. It was shown at the trial that 10 plaintiffs were reclassified to Class A, but the defendant's private expert confirmed that the unlawful classification practice was not maintained. As regards the liability of the defendant in Class II, the fact that it does not have an independent budget is a liability on the part of the defendant in Class III, which is not sufficient reason to hold the defendant in Class III liable. The third defendant had jurisdiction to do so in only three respects: first, to examine the practice of class classification, which was done; second, to determine the number of classes to be started at the beginning of the school year and the number of classes to be started per class; and third, to hear the appeal of a pupil who contested the decision to classify a class (no such appeal was brought). In all of these respects, it also cited the law on the duties of the maintenance authority. In addition, the statements made at first instance, even in the absence of the rejected expert evidence, demonstrate that, within its jurisdiction, the procedure followed by the defendant in Grade III complied with the legal requirements. They also referred to the fact that it had already been proved in the proceedings at first instance that those for whom the expert committee had prescribed different curricular instruction (with various twists) had to be taught and assessed not according to the standard curriculum but according to the Ministerial Decree containing the guidelines for the education of pupils with special educational needs: they were plaintiffs XXVI, XXVII, XXXI, XXXI, XXXIII, XXXIX, XLII, XLIII, XLVI and LXIII and their respective school years, in respect of which they seek the dismissal of the action.

They also argued that, as from the 2012/2013 school year, the penalty was also unfounded because the applicants had not proved any unlawful conduct, damage or causal link between the two. Although it was established at first instance that the final judgment in the earlier proceedings did not cover that period, despite the information on the burden of proof, which was addressed exclusively to the plaintiffs, no evidence was provided by the applicants, whereas the defendants in Cases II and III submitted detailed arguments and documents to prove their lawful conduct, although no expert evidence was provided, despite their request. Thus, the Court of First Instance granted the applications without taking any evidence, on the basis of the mere designation of the class as class 'b'. They also referred to the fact that the evidentiary procedure did not include an examination of the composition of the pupils in the parallel classes, the applicants relying only on the report of the Education Office of 31 May 2007. In the

previous proceedings, the court took this into account and based its judgment in part on it, so that its examination in the present proceedings is now excluded. The Ombudsman's report also relates solely to the 2010/2011 school year, but the determination there was also based solely on the perception of the investigator. They contested the applicants' submission that they had not proved that the applicants' segregation had been lifted, since the head of the defendant II. in a document dated 5 May 2018, and had already submitted at first instance a breakdown of the data (not nationality) that they had managed for the parallel classes of the 2016/2017 and 2017/2018 school years, but the defendant institution in Grade II could lawfully only know and manage this information in relation to individual pupils. The statement of the head of the defendant II institution was also supported by the private expert's opinion, which the court of first instance erred in its assessment. Since the plaintiffs also failed to comply with their duty of probable cause, the claim for class b classification for the 2012/2013 school year and thereafter could not be well founded.

With regard to the fifth ground of appeal, they took the same position as the first respondent, adding that the applicants were a very heterogeneous group, many of whom had indicated that their intention to continue their studies and professional training remained unchanged.

The Second and Third Defendants (along the lines of the arguments also raised by the First Defendant) also made their legal submissions separately as plaintiffs, emphasizing that none of the plaintiffs had suffered any prejudice.

As part of this, they asked for:
- disregard the preparatory/repeated academic years of the applicants in Orders I, IV, IX, XIII, XVI, XXI, XXII, XXXI, XXXIV, XXXVIII, XXXIX, XLI, XLII, XLIII, XLVIII, LIII, LVIII, LXI and LXII,
- the waiver of the private schooling period for the applicants LI and LXI,
- disregard the academic years of substantial default of the applicants I, II, IV, VII, VIII, XI, XII, XIII, XVI, XVII, XXI, XXII, XXXI, XXXIV, XXXVIII, XLI, XLII, XLIV, LIII, LV, LVIII, LIX and LXII,
- disregard of the period of ineligibility of the applicant XLI.

In addition, a separate statute of limitations objection was raised in the cases of Plaintiffs XXVI, XXVII, XXXII, XXXVI, LII, LIV and LX.

They further submit that, in addition to the above, the Court of First Instance assessed the facts available in relation to the applicants' education and career in the case of the following applicants in an incomplete, undocumented and contradictory manner: I, II, III, IV, VI, VII, IX, X, XI, XIII, XIV, XV, XVII, XIX, XX, XXIII, XXIV, XXV, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, L, LI, LII, LIII, LIV, LV, LVI, LVII, LVIII, LIX, LX, LXII and LXIII.

Defendants II and III also filed a motion to compel discovery of the educational institution involved in the further education of Plaintiffs VII, VIII, X, XIII, XV, XXX, XXXV, XXXVII, XLVI, LVI, and LVII to discover the further education of these Plaintiffs.

In their amended cross-appeal at the appeal hearing, the applicants sought

confirmation of the judgment in their favour. In their view, the limitation period is also suspended by the final judgment in the earlier proceedings, since it affected their rights as individuals which were the subject-matter of the proceedings, even without their participation in the earlier proceedings. In addition, the 'd' classes existed only 'on paper' (as evidenced by the certificates produced by some of the applicants at the hearing) and they were also forced to bring proceedings in order to obtain full knowledge of their educational records. As regards the evidentiary procedure and the assessment of the disadvantages suffered, the applicants'/legal representatives' submissions are considered to be authoritative, and there is a case-law on the award of non-pecuniary damages in compensation for the humiliation caused by discrimination without the appointment of an expert. In the context of the disadvantage suffered, they cited the judgment of the Supreme Court of Justice in Case No Pfv.IV.20.510/2010/3, also cited in the judgment at first instance, according to which disadvantage is a conceptual element of discrimination. The liability of the defendants for the harm caused by segregation is objective, against which the defendants have not proved an inevitable cause outside the scope of the defendant's activities in the second instance. The liability of the maintainer exists even if it only contributes by its omission to the maintenance of the infringing situation, against which it is conceptually inconceivable to excuse liability. Furthermore, the defendants are clearly not capable of providing compensation in kind for non-material damage. In the context of repeated school years, it is argued that individual circumstances are irrelevant because the harm caused will not be greater or less because of the way in which the subsequent life course develops. The concept of disadvantage expresses a relative relationship. As regards the question of interference, they referred to the testimonies of Mr **N.I.**, **Dr.F.K.** and Mr **G.P., who** said that the school must create a situation which makes it attractive to pupils.

In their cross-appeal, Defendants I, II and III sought "dismissal" of the Plaintiffs' appeal and an award of costs to the Plaintiffs in the second instance. It was submitted that the appeal of the applicant LIII went beyond the scope of the application. It was emphasised that the applicants could not challenge the authenticity of the teaching records and, although they had repeatedly alleged that certain elements of the records did not reflect the true factual situation, they could not rebut the statutory presumption of authenticity, but no such fact or circumstance had been established, nor did the fact that the Ombudsman's investigation did not concern the 'd' classes. It was further submitted that the statutory conditions for a joint and several penalty were not met, but neither was it necessary to protect the interests of the applicants. They cited the 1959 Civil Code. 37(1) of 1959 1959 Civil Code and the provisions of the Civil Code. 3:406 of the Law on Civil and Commercial Matters and, since the injunction concerns a budgetary body, the payment of compensation for non-material damage cannot be waived. In addition, the defendant (or its predecessor in title) did not exist before the 2012/2013 school year and could not have engaged in any damaging conduct, and as of 1 January 2013 it took the necessary measures to remedy the situation. For the purposes of universality, the case-law also requires at least a minimum degree of willfulness and/or a minimum degree of concurrence. In addition to the foregoing, reference was also made to the applicants' intervention and delay, citing the 1959 Civil Code. § 344(3)(a) and (b) 1959. With regard to the factual clarification part of the plaintiffs' appeal, they reiterated the points made in their appeals concerning the change in the practice of class ranking, the legal significance of the combined classes, the periods not covered by the pupil status, the repeated years, the effect of the final

judgment in the previous action, the mid-year reclassification and the availability of the curriculum to the plaintiffs. Since the evidence in the previous proceedings was adduced up to 6 December 2012, the Court of First Instance was right not to find that the defendant had been penalised for the low quality of teaching in the period from the beginning of the 2012/2013 school year. The teachers who they had asked to be questioned clearly distinguished the two periods in their testimonies, but also stressed that they had provided the same quality of education in all periods. The applicants also referred without foundation to the extremely detailed and extensive evidence and its outcome, in relation to which the defendants repeated the arguments put forward in their appeals, noting that the defendants in the present action did not have to prove how the quality of the education provided by the defendant in Grade II had changed, but that the education was in accordance with the National Curriculum in force at the time. It was stressed that the finding in the previous action was based on the Ombudsman's inquiry of April 2011, which did not, however, examine the professional work carried out between 2004 and 2017, and that the judgment could not therefore be expanded, if only because the acquisition of the competences laid down in the National Curriculum and the development of talent are different tasks for public education. Accordingly, where the appellants' appeal alleges catching up, the term 'lower educational standard' can only make sense in relation to class 'a', but no equivalence can be drawn between lower standards of talent management and the fact that the applicants have not acquired the necessary competences. With regard to the years of study in class 'd', it is primarily emphasised that the court of first instance did not take a substantive position on their limitation objection, but nevertheless made a well-founded decision in respect of classes 'd'. The last 'd' class ended its activities on 20 June 2012, but the first claim for damages for 'd' class was brought on 27 June 2017. In addition, the final judgment in the previous action does not cover class 'd' and the applicants have not adduced any evidence in that respect, so that there is no evidence available to examine the merits of this issue in the proceedings at second instance. The applicants have misinterpreted the statement of **Mr M.K.,** also quoted in the cross-appeal, and it is a question of fact that the composition of the 'd' classes was not examined in the proceedings, whereas the class classification as a decision on the pupil status cannot be legally challenged in the present proceedings. It was common and accepted professional practice in the period leading up to the end of the 2011/2012 school year to give preference to small, homogeneous class sizes. Witness **G.P., who,** in addition, made an undocumented declaration as to which applicants he had been in contact with, but did not have the necessary competence, also accepted other professional opinions. The plaintiffs have wrongly claimed that the defendants were responsible for the fact that the certificates did not include the letter of the class classification, as the sectoral rules do not make it compulsory. The fact that Mr **P. E. did** not remember the functioning of the 'd' classes is also possible, 10 to 12 years later, because there was no parallel 'd' class in the lower grades in which he taught. As regards the flat-rate compensation and the proof of the extent of the damage, they reiterated the arguments put forward in their appeals. As regards the costs of the action, they stressed that they had not given rise to the action and showed in detail that the injunction had been complied with without delay: partly by changing the practice of class classification and partly by the defendant in Grade II classifying certain applicants in Class 'a'. It was the plaintiffs who did not act in accordance with the standard of care in providing the information necessary to bring the action, and the defendants were therefore required to conduct a detailed proof of their position which was not consistent with their position. They also attached a summary table to their

counterclaim.

The appeal of applicants I, II, III, IV, VI, VIII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XIX, XX, XXI, XXII, XXIV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXII, XXXIII, XXXIV, XXXV, XXXVII, XXXIX, XLI, XLII, XLIII, XLIV, XLVI, XLVIII, L, LI, LIII, LIV, LVI, LVIII, LIX, LX and LXII, is well founded in part, the other applicants' appeals are unfounded and the appeals of the defendants I, II and III are well founded in part.

In the absence of an appeal, the Court of First Instance did not affect the judgment dismissing the interest claim.

The Court of First Instance corrected the judgment of the Court of First Instance in so far as the claim of the claimant in Case III was not HUF 3 000 000 but HUF 3 500 000, the claimant in Case LIII also sought a declaration of infringement in respect of the 2007/2008 school year, and the starting date of his claim for interest was 14 June 2013 instead of 15 June 2013, while the claim for interest of the claimant in Case LXIII was not until 15 June 2011 but from that date.

On the basis of the educational documentation submitted by the defendants, the Court also specified for the applicants in Classes III, VI, VII, X, XIII, XIX, XX, XXV, XXVI, XXVII, XXXII, XXXV, XXXVII, XXXIX, XLI and LVIII the period during which they were in Class B or D and for the applicants in Classes LI and LXI the period during which they were private school pupils.

The Court of First Instance also established the facts necessary for a proper assessment of the merits of the case, and reached a largely correct conclusion as to the merits of the claims, but the Court of First Instance did not agree with the decision of the Court of First Instance and its reasoning in all respects.

The defendants' appeal for annulment was unfounded.

Although the court of first instance informed the parties of their obligation to provide evidence in an incomplete manner, and incorrectly informed them of their obligation to provide evidence (order no. 32), contrary to the defendants' plea, this did not affect the merits of the case. On the one hand, the defendants were aware of the above-mentioned provisions of the Ebktv. relating to the burden of proof without being informed of them (e.g. Article 19 of the Ebktv. was also cited by the defendant I on page 9 of its submission No 392), and on the other hand, the 100s of submissions made by the defendants, as well as the defendants' appeals and cross-appeals (e.g. II, III, pages 12, 37 and 39 of the defendants' appeal, page 73 of the second supplement to this appeal, page 16 of the cross-appeal), it can be concluded that they were aware that they had the obligation and the opportunity to prove/rebut certain facts relating to both the segregation and the quality of education, depending on the scope of the final judgment in the previous proceedings: e.g. on pages 15, 18-19 of the application No 375, No 396, No 31 and No 397, they explicitly refer to the possibility of excusal, on page 26 of the preparatory document of the defendant in the second instance (No 71), No 213/A/2, they state that the court of first instance did not take into account the fact that the defendant was not in the first instance in the second instance (No 32), and on page 26 of the preparatory document of the defendant in the second instance (No 71), No 213/A/2, they state that the court of first instance did not take into

account the fact that the defendant was in the first instance in the second instance (No 32). On page 26 of the first instance preparatory document, the court of first instance also placed the burden of proof on the respondent, contrary to the order of the court of first instance No. 292/A/2, but also summarised separately on pages 6 and 19 of the application No. 292/A/2 and the document No. 231 that the respondent had the burden of proof to prove that the second and third orders of the court of first instance were not in fact in breach of the provisions of the first instance order. Defendants II and III did not, either during the period covered by the final judgment in the prior action or in subsequent years, engage in any wrongful conduct that caused the plaintiff (in the pleading, Class XXII) "mental harm" or deprived him of his "life chances", or, if he proves wrongdoing, he can show that he acted as would normally be expected in the circumstances. Accordingly, the defendants (in particular, the defendants in Orders II and III) have submitted documentary and other evidence and a motion to take evidence in respect of all the plaintiffs at first instance, in a scope significantly exceeding the court's invitation, but have also submitted multiple expert evidence as part of this motion.

Pursuant to point 3 of PK Opinion 1/2009 (24.VI.) on certain issues related to the application of the rules of the Code of Civil Procedure on the obligation to provide information, the court must provide information if the facts to be proved are already known and it can be established that the party is not sufficiently aware of the content of the obligation to provide evidence.

In order No 32, the court of first instance wrongly informed the parties that the special rules of evidence laid down in Article 19(1) and (2) of the Ebktv., cited in the judgment at first instance, were not applicable, since according to paragraph (3), these rules were not applicable only in criminal and misdemeanour proceedings. However, as stated above, the defendants were aware of their burden of proof, notwithstanding this misrepresentation, and therefore there was no ground for setting aside the judgment on the ground of inadequate information alone.

It is also necessary to emphasise that the liability of the defendant in the second instance, which has a contractual relationship with the plaintiffs, is objective (Section 77(3) of the Public Education Act, Section 59(3) of the National Act), whereas the final judgment in the previous proceedings found the failure to maintain the property as a breach of contract due to the existence (continuation) of the unlawful situation.

Moreover, the defendants - even in the absence of the above, at least in the light of the judgment of the first instance - did not submit any substantive evidence in their appeal which (as explained below) could have been used to establish a different factual situation and draw a legal conclusion.

It is irrelevant that, in the defendants' view, they were also called upon to execute documents which the plaintiffs must also have had. In addition to the expedient lead, it was reasonable for the defendants to provide a complete set of all the educational documents available in respect of the applicants, which, in the absence of which, would not constitute a breach of essential procedural requirements at first instance.

The fact that the court of first instance did not take evidence of the actual harm suffered by the applicants to the extent they claimed, but also did not take the expert evidence

proposed by the defendants, was not in breach of the rules on the procedure for taking evidence and the weighing of evidence. The Court of First Instance also wrongly took the view that, in relation to the infringements at issue in the present action, there was no common knowledge of any harm which the applicants had suffered without any specific evidence. That harm, precisely because it is common knowledge, cannot be dismissed merely because the applicants did not seek to prove a greater harm and expressly opposed expert evidence.

The 1952 Pp. 163 (3) of the 1952 Act, the court may accept as true facts which are known to it.

According to the consistent judicial practice, in the case of a claim for compensation for non-material damage (in practice, most often compensation for detention lawfully but unfoundedly completed), only damage beyond the well-known and recognised non-material damage must be proven (e.g. Debrecen Court of Appeal decision Pf.I.20.449/2018/6), as there are some infringements affecting the personality that are associated with well-known damage. In the case at hand, both infringements involve a well-known non-pecuniary detriment, as explained below, which in itself justifies an order for non-pecuniary damages. The court of first instance correctly referred to the judgment of the Supreme Court of Justice in Case No Pfv.IV.20.510/2010/3, according to which "... the conceptual element of the statutory definition of discrimination under Section 9 of the Equal Treatment Act is 'disadvantage', i.e. the existence of the infringement itself causes the disadvantage, and therefore no further proof of the infringement is required beyond the finding of the infringement."

The defendants also argued without foundation that the extent of the lower standard of education could not be determined on the basis of the previous judgment.

The judgment of the Court of First Instance in the previous case (p. 15) expressly referred to the provisions of Article 27. §-(3)(b), according to which it is a breach of the requirement of equal treatment in particular to restrict a person or group of persons to education, to establish or maintain an educational system or institution whose standard does not reach the level of the professional requirements laid down in the professional standards issued or does not comply with the professional rules and which, as a result, does not provide the possibility of the preparation and preparation normally expected for the continuation of studies and the taking of state examinations.

The final judgment in the previous lawsuit found (page 10) that the same curriculum was not taught in grades "a" and "b". The substantive validity of the judgment in the previous action, which was binding on all parties (Pp. 229 of 1952. §-(1) of the Law of 1952), it is now beyond dispute that in the academic years covered by the judgment, the teaching provided was of a standard which did not meet the professional requirements laid down in the professional standards issued or did not comply with the professional rules and, as a result, did not provide the preparation and preparation which is generally expected for the continuation of studies and the taking of the state examinations. Contrary to the defendant's submission, the evidence adduced in the proceedings could not have established this, even if the decision in the previous proceedings in that regard had been expressly based on the defendant's failure to act. Therefore, the court of first instance did not even have to examine the reasons why some of the plaintiffs fulfilled their curricular requirements/learned more despite the

lower standard of education (e.g. extra effort by the plaintiffs, the standard of the examinations, etc.). For the same reason, the defendants also wrongly argued that the lower standard of education was justified for some of the applicants, since, as a result of the final judgment, these applicants also received a lower standard of education than that which was directed to them (to the extent described above).

Since the plaintiffs explicitly referred to the disadvantages they were known to suffer, it was unnecessary to fully explore the entire life history of each plaintiff and to prove in detail what other facts and circumstances (e.g. individual abilities, family and social background, significant life events, etc.), which were not disputed by the plaintiffs, had/may have contributed to the plaintiffs' social standing.

The Court of First Instance was therefore correct to adjudicate on the applicants' application without granting any further requests for evidence, and did not go beyond the scope of the application.

According to the case law (BDT2011.2576.), the gravity of the infringement cannot be disregarded when determining the amount of the non-material damages. And the fact that the court of first instance also referred in this context to the effects manifested in the family environment of each plaintiff did not constitute a peremptory challenge (which in any event presupposes the "disposition" of the party and not of the court) or a finding of prejudice outside the scope of the plaintiffs, but the well-known disadvantages of unlawful segregation/under-education on the basis of ethnicity, which society as a whole (e.g. of the National Social Inclusion Strategy, § 1 (1) of the Nkt) to ensure education that breaks the perpetuation of such disadvantages.

The appeals of the defendants also lacked reason to evaluate the examination of the "expert witnesses" and the opinion of the private expert. First, the court of first instance included the latter in the scope of the assessment and, second, the 'expert witnesses' (**G.P.**, **N.I.**, **H.G.**, **Dr F.K.R.**, **Dr K.T.**, **D.G.** and the private expert, **Ms B.Zs. R,** who was also heard as a witness) expressed their opinions on technical matters which, as explained below, were not necessary for the assessment of the minimum handicap. The 1952 Pp. 167 (1) of the 1952 Act of the Court of Justice of the Republic of Poland provides that a witness shall give an opinion on facts, and if special expertise is necessary to establish or assess a fact or other circumstance of importance in the case (which the court does not have), an expert appointed by the court shall give an expert opinion (1952 Act of the Court of Justice of the Republic of Poland. Therefore, the court of first instance unjustifiably questioned the above witnesses about their opinions, since if a technical issue had arisen, the court of first instance should have appointed a forensic expert and assessed his opinion (even if it was in conflict with the opinion of the private expert). As regards the testimony of Mr **G. P., both** the defendant in the second instance (preparatory document 228/A/2, pp. 8-9) and the other defendants (response to the appeal, p. 23) correctly argued that a significant number of the plaintiffs identified in his testimony as being known to him were either not pupils at the school during the period in question, were in 'A' class or had learning difficulties.

However, it was not disputed by the applicants that the impact of the school plays a part in their social integration. However, even without a precise assessment and justification of this impact, it is common knowledge that there is a disadvantage resulting from unlawful segregation and inferior quality of education.

Contrary to the defendant's argument, the language used by the plaintiffs/legal representatives to express the well-known disadvantage experienced by the plaintiffs as minors (or perceived by the legal representative depending on the success of the communication) during their personal interview is irrelevant. It is significant that both the unlawful segregation and the lower quality of education, particularly for a minor belonging to a national minority, as described above, are harmful.

Nor is it relevant, in relation to the school years covered by the final judgment in the previous proceedings which is the subject of the defendants' appeal, that the teachers who were called to be heard (**P.E.**, **M.K.**, **B.I.**, **S.N.**, **...**, **L.M.K**, **D.E.**) had probative value as regards the adequacy of the standard of education, since the legal validity of the judgment by default in this respect could not be affected by their testimony, while the court of first instance had established the adequacy of the standard of education for the following period.

In fact, (as correctly detailed in the preparatory documents of the Second and Third Defendants), a significant part of the statements of the Plaintiffs/ their legal representatives were contradictory, which contradictions were not considered by the trial court. However, this was also irrelevant, since the harms known to the injured party are still suffered even if he subsequently fails to remember certain factual elements indirectly linked to those harms or makes statements that are expressly untrue. The statements made by the applicants/legal representatives who were heard as parties cannot be assessed as testimony, since they were not heard as witnesses.

In the context of the reference to the fact that the facts established by the court of first instance were undocumented, unreasonable and logically contradictory, it should be emphasised that, by the present judgment, the Court of First Instance corrected the unfounded provisions and findings of the judgment of first instance, which could not in themselves have led to the judgment of first instance being set aside. The separate appeal arguments concerning the further education of some of the applicants and their conduct during the first instance hearings also do not undermine the fact that the applicants suffered the disadvantages assessed below as a result of the unlawful segregation/ lower quality of education.

The application for annulment of the defendants in Cases II and III was also unfounded on the ground that the court of first instance had failed to examine the fulfilment of the application for private schooling in the absence of a request for action and lack of jurisdiction. The judgment of the Court of First Instance agreed with the appellants' submissions on the merits of the private tutor status application and it is therefore irrelevant that the judgment of the Court of First Instance also contains a related finding as to the content of the discretionary power of the headmaster in the assessment of such applications.

It is a fact that the court of first instance wrongly assessed the integrated education provided for in the pedagogical expert opinions of some of the applicants as integration according to nationality, but this alone did not serve as a basis for setting aside the judgment. It is beyond the scope of the assessment of the infringement expressly identified by the applicants and the assessment of the scope of the harms known to the public whether, in addition to the unlawful segregation according to nationality, the

requirements of integrated education in the field of education may also have been infringed. Nor did it justify setting aside the judgment of the Court of First Instance on the ground that the 'b' classes existing on 27 January 2004, the date on which the Ebktv. entered into force, could be reorganised, nor did it justify setting aside the Court of First Instance's assessment (unnecessarily in the context of the disadvantages known to the public) of the individual circumstances of each of the applicants.

For the reasons set out above, the Court of First Instance considered the parties' appeal on the merits and, following the structure of the judgment at first instance, made the following findings on the basis of the points contested in the appeal.

The court of first instance was correct in its view that the relevant part of the plaintiff's claim was time-barred (1959 Civil Code. The Court of First Instance held that, unlike the defendant's reference to the 'd' classes, it was of no material significance when the applicants had specified that the designation of certain classes referred to as segregated was 'd' instead of 'b', since, even without that clarification, the substance of their application sought a declaration of the infringement suffered by them during the period in question and compensation for the harm suffered.

Of particular significance for the suspension of the limitation period was the fact that the plaintiffs in the present action did not participate in the previous action and that they granted a power of attorney to their representative who had acted as plaintiff in the previous public interest action only after the final conclusion of the public interest action, in May, October and November 2015 (powers of attorney attached to the application). Furthermore, it cannot be ignored that the application for a declaration of the public interest in the previous action and the subsequent application for review brought by the applicants' representative as applicant also sought to explore and establish the requirement of equal treatment more fully (day care, swimming lessons, lunch). The Court of First Instance also took into account the fact that the representative of the applicant had requested the defendant in Grade II on 18 May 2015 to provide the information necessary for the submission of the application (for the academic years concerned) in respect of the applicants whom he had already represented in May 2015 (Annex to the application, No 1/F/36), following which several of the persons represented did not bring proceedings (e.g. Gina Baranyi, István Ofcsák, Tünde Vanger).

In the case of disadvantages affecting minor victims, which are not unambiguous, it is also relevant that, for the purposes of the expiry of the limitation period, it is important when the victim has been put in a position to enforce his claim in all respects, when he has fully obtained the information necessary for the enforcement of his claim (ECHR 2004, 1120).

The Court of Justice of the European Union has long taken the same position as the plaintiffs in the present case (own forum system, public interest litigation, broad substantive and procedural protection), but in the case of consumers who are essentially concerned only with their property relations, that a party cannot be prejudiced by its disadvantage in its ability to enforce its claims (judgment in case Oceáno Groupo Editorial and Salvat Editores), a view which is not unknown in judicial practice (Budapest Capital Court of Appeals, 18.Pf.20.437/2014/8).

Since the applicants were only put in a position to pursue their claims after the review proceedings in the previous action, the Court of First Instance shared the view expressed by the Court of First Instance on the limitation period for bringing actions.

The trial court reached a reasonable inference as to the admissibility of the third defendant. The third defendant cited Government Decree No 202/2012 (VII. 27.) on K, the provisions of which (Section 7 (1) (a)), in force since 1 January 2013, refer back to Section 83 (2) of Nkt., also cited in the appeal. As part of this, the appeal also cites point (e) of this paragraph, according to which the maintainer may, inter alia, monitor the legality of the operation of the public education institution, while point (i) provides that the maintainer shall monitor the pedagogical programme.

According to the second sentence of Article 1(2)(2) of the Act, the whole of public education is defined by the moral and spiritual values of knowledge, justice, order, freedom, equity, solidarity, equal treatment and education for sustainable development and healthy lifestyles.

This, combined with the fact that the defendant in the third instance (or its predecessor in title) had knowledge of the II. and the fact that the final judgment in the prior action required the respective maintainer to cease and desist from the infringements already found in the first instance judgment, result in the maintenance of any infringement found in the prior action constituting a culpable failure of the maintainer to exercise its control functions, which is the result of the judicial practice (Budapest Capital Court of Appeals, 9.Pf.20.931/2004/2) also establishes the tortious liability of the maintainer. The third defendant also raised the unfounded defence that it was under an obligation to cease/terminate the infringement after the judgment in the previous action had become final. Contrary to its position, the final judgment in the previous action did not legalise the infringement, which had been continuing for almost a decade. Moreover, the defendant III itself submitted (e.g. preparatory document No 222, p. 7) that it had taken measures to remedy the classification in class b, i.e. that it had "leeway" to eliminate the unlawful segregation, contrary to the arguments on appeal. In other respects, the Court of First Instance also refers back to the part of the judgment at first instance which cites the relevant legislation and case-law.

Since (as explained below) the unlawful segregation continued in the "b" classes from the 2012/2013 school year onwards, the court of first instance also rightly concluded that, due to the change of the maintenance provider in the middle of the 2012/2013 school year, the joint and several punishment of all three defendants was justified for this school year (the court of first instance imposed this punishment - without justification - only on the plaintiffs concerned, III, X and XIII, since they were no longer pupils of the defendant II after 21 January 2013).

The Court of First Instance has already pointed out that, contrary to this, the Court of First Instance found an infringement of the law for the 2012/2013 school year only for the defendants in Classes II and III for unlawful segregation, whereas the defendant in Class I was the maintainer for the first four months of that school year, and therefore the Court of First Instance dismissed all the applicants in Class B for that school year (II, IV, VI, VIII, IX, XI, XII, XIV, XVI, XVII, XXI, XXII, XXIV, XXIX, XXXIII, XXXIV, XXXVII, XXXIX, XLI, XLII, XLVI, XLVIII, L, LI, LIII, LVI, LVIII, LIX and LXII), the defendant I also infringed the provisions of the Civil Code of 1959 (C.P.C. 1959, para. 84(1)(a) of the

1959 Act), and for each of the above-mentioned fractional years in the case of plaintiffs III, X and XIII.

In the context of maintenance and classification tasks, it was also wrongly claimed that it was not possible to reorganise the departments in the meantime (either because of the entry into force of the Ebktv or because of the final judgment in the previous lawsuit) due to the sectoral legal provisions. It is the responsibility of the defendant in the second instance and of its respective maintainer to decide how to act in the context of the competition between the sectoral legislation on classification and the rules of civil law (and also those of public education) on the protection of individual rights. Even so, according to the testimony of **Mr M.K.**, the principal of the defendant in the second instance (report, No 81, p. 18), a change of class could have taken place in the middle of the year, even in November, on the recommendation of the head of class. The fact that the plaintiff in class XXXVII was transferred from class 1/a to class 1/b on 6 December 2010 for the 2010/2011 school year is a corresponding fact (the Court of First Instance therefore reversed the judgment of the Court of First Instance in the case of this plaintiff as regards the temporal scope of the infringement and ordered the defendants in classes I and II jointly and severally to pay HUF 350 000, reduced by HUF 150 000, in proportion to the HUF 500 000 in non-material damages awarded by the Court of First Instance).

The Court of First Instance also correctly concluded that the defendants were joint and several, which can be clearly distinguished for each school year, with the 2012/2013 school year being the dividing line. Apart from the fact that some of the applicants (e.g. I., V) wrongly requested that all defendants be held jointly and severally liable when the school years in which they were pupils in class b preceded the school years in class III. The Court agreed with the reasoning of the first instance judgment that even in the case of continuous periods (interrupted only by school holidays), the method of imposition of the penalty (in particular the fact that it is the defendant III who is liable instead of the defendant II) does not infringe the plaintiffs' right to compensation as victims. 3:406 of the Civil Code of 1959, which constitutes a statutory guarantee of the obligation to pay. According to § 344(3)(a) of the 1959 Civil Code, the court may dispense with the assessment of joint and several liability and may impose a penalty on the tortfeasors in proportion to their contribution, provided that this does not jeopardise or substantially delay the compensation of the damage.

For all of these reasons, the court of first instance correctly ruled on the joint and several liability of all defendants only for the 2012/2013 school year, which concerned the operation of both maintenance providers, and in other respects ruled on the joint and several liability of the defendants for the maintenance period.

The Court of First Instance also correctly concluded that the unlawful segregation of the applicants concerned in the 'b' classes did not cease after the 2011/2012 school year. Contrary to what is stated in the appellant's appeal, the Court of First Instance's assessment of the evidence was not arbitrary, but the reasons for the judgment of the Court of First Instance need to be supplemented as follows.

Among the changes in respect of the "b" classes, the defendants' evidentiary motion, in addition to the evidence concerning the private expert, included the (re)examination of **M.K. as** a witness (Report No. 213, p. 4, submission attached as 213/A/6). However,

neither the private expert nor the statements (partly documentary - line 228/A/2) of the director of the defendant II were sufficient to prove the facts of the defendant's appeal.

The continuity of the ethnic composition of the "b" classes is itself indicated by the defendants' counter-appeal (p. 27), which claims that, even if they are not allowed to keep data on the ethnicity of the pupils, they have transferred pupils from "b" classes to "a" classes, which only reduces the number of pupils, not the ethnic ratio. In addition, however, several statements and testimonies of the defendants refute the elimination of unlawful segregation. In its substantive counterclaim dated 2 February 2016, filed under No. 11/A/5 (page 4), Defendant III expressly requested dismissal of the case on the ground that the voluntary performance of the obligation imposed on Defendant III by the final judgment in the prior action had commenced, but that the claim for its completion was premature and that the claims for its termination were then being filed by Defendants II and III. The legal representative of the Class II and III Defendants reiterated at the hearing of 4 March 2016 (page 7 of the transcript of the record, number 17) that they had not had enough time to prepare for the implementation of the final judgment and, contrary to this, they have already reported in all their submissions since the submission of the 27th Submission in April 2016 (page 12) that they have eliminated segregation as of the 2013/2014 school year. The declaration of 5 January 2018 by **Mr M.K.** (subject to the limitations of data management), also cited in the appeal, did not provide data on the composition of parallel classes based on nationality but on educational categories (line 228/A/2).

In addition to this, teacher **P.E.** explicitly reported in her testimony that in the 11 years before her retirement on 1 November 2016 she had taught only pupils of Roma origin, such classes, while the "a" classes that ran parallel to her "b" class for 11 years had always been mixed classes (81. Teacher **I. B.** reported in her testimony of 7 December 2016 (Minutes No 86, p. 5) that gifted Roma pupils were allowed to transfer from the pure Roma class to her mixed class and that "this possibility still exists today". Teacher M.**L. K.** reported a one-way transfer from class 'a' to class 'b' in her testimony (Report No 292, p. 3), while the other witnesses interviewed on this point did not recall or gave evasive testimony regarding class classification or nationality.

The defendant's appeals also referred to the private expert's opinion without any basis, since the anthropological assessment of the ethnic composition of a class was not a matter for a (private) educational expert, but could have been proved, for example, by questioning the pupils of the classes concerned as witnesses. Secondly, in addition to what the Court of First Instance assessed, it is also necessary to emphasise that, according to the summary annexed to the private expert's report (page 2 et seq.), annexed to the private expert's report under No 228/A/2 (page 2 et seq.), the private expert examined the development of the classes from the 2011/2012 school year onwards, and the development of the classes since 2016. In the period from 2012/2012 to 24 February 2016, three pupils changed classes, otherwise there was a class merger, and in other respects (page 3) the criteria for class selection were not (24 February 2016) based on predetermined principles set out in the document.

By this addition to the statement of reasons, the court of first instance also found that the unlawful segregation in the "b" classes for the period after the 2011/2012 school year was well founded and ordered the defendants concerned to be fined.

However, the Court of First Instance did not agree in all respects with the judgment of the Court of First Instance as regards the finding and the penalty from 27 January 2004. The applicants concerned by the 2003/2004 school year (XXVII, XXXII, XLIV, LIV., LX), although their application for a declaration of infringement had remained unchanged from the outset in that they sought a declaration of infringement in accordance with the time-limit laid down in the final judgment in the previous action (application, p. 17), the application for a declaration of failure to fulfil obligations was amended in that it was limited to the whole of the 2003/2004 school year. Even though the Ebktv entered into force on 27 January 2004, the legal provisions prohibiting discrimination can be traced back to a period prior to that date. Already the AB Decision No. 9/1990 (IV. 25.) gave the interpretation of Article 70/A (1) of the Constitution prohibiting discrimination that it should be applied accordingly to violations of human dignity and that the law should treat everyone as a person of equal dignity, which was also reflected in subsequent decisions (e.g. 34/1992. (The Civil Code of 1959, from its entry into force, already provided in Article 81(2) that any discrimination based on sex, nationality or religion constitutes a violation of the personal rights of citizens. This provision (in line with the current terminology) was introduced by the 1959 Civil Code. Article 76 of the 1959 Civil Code also provided, at the beginning of the academic year 2003/2004, that any discrimination against individuals on grounds of sex, race, nationality or religion, and any violation of human dignity, among others, constitutes a violation of the rights of the person. Accordingly, several decisions are known from the case-law from the period before the entry into force of the ECHR in relation to discrimination on grounds of origin (e.g. ECHR 2001.515, ECHR 2002.625). The general formulation of the plaintiff's appeal, that the infringement was sought from 2004 to 2017, went beyond the scope of the application and the Court of First Instance upheld the relevant provisions of the judgment of the Court of First Instance, as the consistent statement of the defendant was that the quality of education was (also) unchanged during the relevant period, the applicants concerned were in class 'b' for the whole of the school year, the Court of First Instance took into account the whole of the 2003/2004 school year in respect of the abovementioned applicants and increased the amount of the penalty for each of them to HUF 500 000 for that year, in accordance with the criteria set out below.

The Court of First Instance shared the view of the Court of First Instance on the issue of inferior education that the defendants could only challenge the applicants' submission in relation to the period not covered by the final judgment in the previous action, but did not share its view that the applicants had satisfied their duty of probable cause (and then the defendants' duty of excuse) in this respect. It cannot be overlooked that in the earlier proceedings a judgment by default was expressly made in this respect, the legal force of which (including to the extent of the extent of the judgment by default within the meaning of Article 27(3)(b) of the Ebktv cited above) bound the parties and the court. On the contrary, the defendants argued without foundation that some of the plaintiffs had to be provided with a different 'standard' of education because of their special needs. Indeed, the final judgment now established beyond dispute that all the pupils concerned in class 'b' received a lower standard of education in their own right to the extent detailed above.

For the period following the entry into force of the final judgment, the plaintiffs failed to comply with their obligation of plausibility by the numerous contradictory statements of the plaintiffs'/legal representatives contested by the defendants, e.g. the legal

representative of the plaintiffs XLIX and L (the latter was in class "b" in the 2012/2013 school year), Krisztina Csemer, did not experience any educational disadvantage (report no. 52, page 6). Although **G. P.,** who was in direct contact with each of the applicants, reported in his testimony, which has already been partially assessed above, that he had held sessions for 25-30 children in **Gy** in the context of voluntary work and had observed a gap in their knowledge, it was not possible to establish from this general testimony that the gap "experienced" by the witness was due to the education starting from the 2012/2013 school year or before, or to any personal or other circumstances. The applicants did not have any other evidence or evidence to that effect, and they expressly opposed expert evidence (e.g. submission No 25, p. 5). Thus, in the absence of specific expert evidence, they generally relied without foundation on the results of the competency assessment annexed to the application. Although Mr **N. I.** presented his 'opinion' in this connection as part of his testimony, which was, for the reasons set out above, irrelevant for the purposes of the assessment of the case (from page 20 of the report, file no. 86), the report of the Court of First Instance, Nos II and III. The defendants in Case II, III and III correctly argued that a more in-depth assessment of the results of the competency assessment, which could be applied to the individual plaintiffs, and as part of that assessment the composition of the pupils, would have required special expertise and expert evidence (page 12 of the 113th written submission).

In contrast to this, the defendants had fully produced the relevant teaching documents (as a matter of counter-evidence) and the testimonies of the teachers interviewed (**P.E.**, **M.K.**, **B.I.**, **S.N.**, Ms M.A. and **Ms L.K.M.**) were unanimous in their belief that they provided education in accordance with the National Curriculum, taking into account the specific needs of each applicant.

The court of first instance was right to exclude the school years in class "d" from the years of the infringement, but the reasons for the judgment of the court of first instance need to be supplemented as follows. The final judgment in the previous proceedings found unlawful segregation and inferior quality of education only in respect of the years of study in class 'b'. Therefore, the applicants also had the burden of proof (burden of probability) in relation to their allegations concerning class 'd'. In this context, however, essentially only the statement of the applicants/ their legal representatives contested by the defendants was in dispute, and their pleas on appeal were unfounded as regards the other evidence. In particular, they relied without foundation on the fact that they only became aware of the existence of the 'd' classes during the course of the litigation. The existence of the 'd' Classes was already the subject of the examination in the earlier proceedings and the representative of the applicants, as plaintiff, himself referred to the existence of the 'd' Class in the earlier proceedings (e.g. Egri Tribunal 12.P.20.351/2011/48, p. 5), but the final judgment in the previous case also expressly dealt with the 'd' classes (first instance judgment, p. 13). The applicants themselves referred to the 'd' class on page 15 of the application, citing the findings of the Education Office.

The applicant's appeal also expressly refers to the Education Office's report of the on-site inspection of 31 May 2007, according to which, according to the school principal's statement, all 11 pupils in class 2-3/d of the school year 2006/2007 were of Roma origin. However, according to the report, that was, first, an estimate and, second, according to the report, that class 'd' was, like class 'c', which is not challenged in the

present action, a class grouped together on the grounds of dyslexia and dysgraphia. However, in the final judgment in the earlier proceedings, the application seeking a declaration that 'the defendants in the earlier proceedings had directly discriminated against pupils with special educational needs and indirectly against children of Roma origin in the education of pupils with special educational needs as a result of the multiple classing provided for by law' (page 16 of the judgment at first instance) was partially dismissed (page 16), V, XVI, XXXII, XXXIV and XLIV) were pupils of this class, the upper class of which is the consolidated 'd' class 3-4-5 of the 2008/2009 school year referred to in the appeal.

As for the "d" classes, not only the testimony of **M.K.,** evaluated by the court of first instance, was available, because **Ms. M.L.K.** herself reported that the "d" class was a development class (page 3 of the report, line 292), while according to the testimony of Ms. **D.E.** (page 5 of the report, line 197), the "b" class was the Roma class. It is also irrelevant that there were teachers who did not remember the existence of class 'd' (e.g. **P.E.**), because the applicants have not yet satisfied their burden of establishing probability. It is also irrelevant that the Ombudsman's report (which referred the court to the 1952 Pp. 4(1) of the 1952 Act) makes no mention of a 'class d' at the time of the investigation. The investigation, which was conducted in March 2011 and closed on 19 April 2011, took place in the second half of the 2010/2011 school year, during which, according to the available school records, there was no 'd' class, just as all the applicants concerned in that school year were in 'b' class (and any possible classification of pupils other than the applicants in 'd' class would be outside the scope of the case). Subsequently, a "d" class was created in the 2011/2012 school year which started in September 2011 (classes 2/d and 3/d), but this was in the period of the Ombudsman's follow-up investigation in December 2011, the follow-up investigation (in the previous lawsuit 12.P.20.351/2011/15) no longer specifically examined how many and which departments were in operation, the follow-up report explicitly states (p. 31) that no further visits or file analysis were necessary at that time.

Therefore, in addition to the additional reasoning, the Court of First Instance dismissed the claims for the years of study in the "d" classes.

He also correctly stated (and referred to the relevant legislation) that the claim is well founded also in the case of repeated/pre-school years. Contrary to the defendant's position, it is not relevant for what reason the school year in question was repeated (even if it was because the defendant in the second instance did not provide the quality of education required for the completion of the school year within the meaning of Section 27(3)(b) of the Ebktv), which reason does not result in the consent of the minor plaintiff to the harm suffered by him, but merely that the defendant's unlawful conduct and its harmful effect also occur in the repeated school year.

The court of first instance also reached the right conclusion on the issue of the merged classes, since it was not relevant whether the II. whether the defendant in the first instance had created merged classes within the statutory limits (which was not challenged by the final judgment in the previous action), but whether the merged classes were 'b' or 'd' classes, i.e. segregated classes or merged classes for other reasons, an argument which the plaintiffs shared (Report No 108, p. 5).

The Court of First Instance did not agree with the reasoning of the Court of First

Instance on the issue of private schooling. The correctness of the defendants' appeal (but the position taken by these applicants during a substantial part of the proceedings - page 4 of their submission, line 25 - and amended only at the last stage of the proceedings - page 14 of their submission, line 376) was that the fact that the applicants concerned (LI. and LXI. (in the 'b' classes which had already started in the school years concerned) during their private school status, would have justified the grant of the applications only if they had also attended the 'b' classes during their private school period and had in fact suffered the alleged infringements in the course of that period.

The applicant LI was a private student from 25 January 2016 for the 2015/2016 school year and from 20 February 2017 for the 2016/2017 school year. However, the Court of First Instance did not find, even in the case of the position it had taken, that the defendants in Orders II and III had infringed the law by unlawful segregation for those two school years, and therefore the Court of First Instance found that the defendants in Orders II and III had infringed the law by unlawful segregation for those two school years, for the period not covered by the private schooling. In addition, instead of the first instance penalty, which was also not imposed, the Court of Appeal ordered the defendants to pay a total of HUF 300 000 in non-pecuniary damages for these two fractional (almost entire, in terms of scope) school years (as explained below), in addition to the HUF 300 000 that they were liable for in respect of the 2013/2014 school year.

The applicant LXI was a private pupil from 18 December 2011 in the school year 2011/2012, therefore the Court of First Instance did not find an infringement from that date and reduced the amount of damages to be paid to the defendants I and II for that school year to HUF 150 000 (as explained below), which, together with the HUF 500 000 awarded for the school year 2010/2011, amounted to HUF 650 000.

The Court of First Instance did not share the view of the Court of First Instance (e.g. in the case of the claimant in Case XXII) on the effect of the omissions (absences) in terms of apportioning the damages. It should be noted that the case-law has long been consistent in holding that there is no possibility of apportionment of damages in the case of non-pecuniary damages, but that the relevant factors must be taken into account when determining the amount of damages (BDT2001, 357). In this context, the defendants correctly cited the legal provisions detailing the (attendance) obligations of the students, but there was no room for a reduction of the non-pecuniary damages on the basis of the argument that the applicants could not have suffered any prejudice during the period of absence. Although the applicants physically attended classes (weekday mornings) in the 'b' classes, they were included in the unlawfully segregated and sub-standard class as a group not only during the classes but for the whole school year (not including fractional years), the onerous effect of which was the discrimination(s) (extreme absence, i.e. not counting absence for the whole school year) irrespective of the actual time spent there. It is a fact that the applicants concerned 'withdrew' from learning in the school building during the periods of absence, but the making up of the absences outside school was also necessarily linked to the quality of education provided in the school system. Moreover, the Court of Justice anticipates that the resulting handicaps, which are generally accepted, do not represent a definite loss of a certain level of knowledge, but rather a difficulty in acquiring the knowledge that should have been acquired in primary school. However,

in the context of compensation, as argued by the defendant, the non-attendance at the school causing the harm constitutes compensation, but all this leads to such an absurd result that it should also be considered a breach of the duty to prevent harm if a plaintiff may have been aware of the harmful effects of segregated and inferior education, but attended the education anyway. In that case, however, it should also have been examined whether the absentee plaintiffs' absence was not due to their recognition of the harmful effects of their segregated education (in addition to what was stated in the plaintiffs' statement of opposition to the appeal, e.g. as stated in the testimony of **Ms L.K.M.**: whether the student feels punished if he is not allowed to attend or if he is allowed to attend school - Report No 292, p. 4).

The Court of First Instance therefore did not include the number of absences in its assessment, but found that the amount of non-pecuniary compensation justified on the basis of the extent of the harm known to the public was also awardable for the academic years concerned.

In addition to this assessment, the Court of First Instance also took into account (partially correcting the findings of the Court of First Instance) the period of the school year in which the applicant was in class B, which also determined the finding of infringement. However, where the period of absence, either because of its length or because of its timeliness (falling in the middle of the school year), could not have had a marked effect on the injurious effect of the school year in question, the Court of First Instance disregarded the amount of the non-material damage (e.g. although the LVIII. The Court of First Instance did not take into account the fact that the claimant, LVIII, did not attend class 4/b between 10 February and 2 April 2014, i.e. for less than 2 months, as he attended class 4/b for the majority of the school year and started and finished the school year there, the Court of First Instance disregarded this period when determining the amount of damages).

The defendants correctly pleaded failure to state reasons in relation to the compensation in kind, which the Court of First Instance substituted as follows. Paragraph 355(1) of the Civil Code 1959, correctly cited, allows the restoration in kind of the situation prior to the damage as a reparative function in the context of material damage, whereas compensation for non-material damage, which is typically irreparable, is achieved by means of the compensatory function of damages. The "reparation in kind" for the violation of moral rights is found in the context of the objective sanctions for such violations (e.g. the 1959 Civil Code, the "Ptk. In any case, the function of non-material compensation is not to exempt the injured party from monetary reparation by choosing the most favourable form of compensation for the damage, but to provide monetary compensation for the non-material damage suffered by the injured party. It is also irrelevant that some of the claimants have stated that they intend to use the compensation for their own upward mobility and, contrary to the defendant's expectation, the claimants do not have to guarantee that the compensation will be used for their own intellectual development, since the victim is in a contractual relationship with the tortfeasor, in which he has no obligation to provide services (just as the owner of an injured vehicle is entitled to decide for himself whether to use the compensation paid as repair costs to repair the vehicle or to use the vehicle damaged or sell it).

The Court of First Instance clarifies what the Court of First Instance predominantly

rightly referred to in the determination of the amount of the non-material damages, in that the primary function of the non-material damages is, as explained above, to compensate the infringement indirectly by means of material satisfaction; in addition to this compensatory function, the obligation to pay compensation clearly can/has a preventive function, since, like all sanctions, the purpose of this sanction is to deter or 'dissuade' the infringer (the obligation to pay non-material damages, as a legal consequence detrimental to the infringer, is also a repressive sanction), but the purpose of non-material damages is not to 'punish' the infringer.

Contrary to the defendants' arguments, the 1952 Pp. 163(3) of the 1952 Act, facts which are known to the court as common knowledge (essentially on the basis of general experience) constitute a separate legal category from facts of which the court has official knowledge (e.g. from another lawsuit), and therefore there was no obstacle to the plaintiffs' defence (and to the position of the court of first instance) to bring their claim for damages by expressly invoking the common knowledge doctrine. This was also consistent with the position of the defendants in the second and third forms of proceedings at first instance that it was common knowledge that ethnic discrimination was "wrong" (113, p. 4), supplemented by their acknowledgement that segregation on the basis of nationality could have negative consequences (p. 34 of the same submission).

The Court accepted as a well-known disadvantage of unlawful segregation that it results in a feeling of inferiority, humiliation and makes it difficult to compensate for the socio-cultural disadvantages of the applicants, which are psychologically stressful and harmful even without any actual change in the healthy psyche (especially in the case of minors).

The well-known disadvantage of lower quality education (without needlessly repeating the above discussion of its extent) is not only its humiliating nature (regardless of the class in which it is part of the National Curriculum), the fact that the person concerned falls behind in acquiring the knowledge that is made available to others in everyday life, in further studies or in future employment, and that, although he or she can overcome this disadvantage by making an extra effort, in the absence of such an effort the disadvantage is perpetuated. That disadvantage, as the applicants rightly submit in their response to the appeal, is relative to the individual applicants, since they are lagging behind in relation to persons in a relatively similar situation to themselves.

Precisely for the latter reasons, the fact that some of the applicants also pursued secondary education does not negate the existence of a disadvantage, because their individual diligence (and other individual circumstances) may have played a role in this (in a way that does not need to be clarified for the purposes of assessing the disadvantages known to the public), but it cannot be proven with absolute certainty what life path the applicants could have followed (as a result of the influence of numerous other circumstances).

All of these disadvantages associated with lower quality, segregated education (to an extent that cannot be justified due to the unprovable cumulative effect of the numerous circumstances that may influence it) constitute a deficit in the harmonious spiritual and intellectual development of a minor, in the development of his/her abilities, skills, emotional and volitional qualities, education, and thus also in the development of a

moral, responsible, independent way of life (see Nkt. Although the applicants have pleaded that they have suffered more than these disadvantages, they have correctly pointed out that there is a 'minimum' part of these disadvantages which they have suffered in any event without specific proof (such as pain in the case of a broken bone or discomfort during the treatment).

It is a fact that the applicants have had/do have different life histories, but contrary to the defendant's defence, they are not a heterogeneous group in several respects: they all belong to a minority and suffered the infringement(s) as minors. Because of this status, it was possible to make a uniform assessment of the harm they were known to suffer.

Taking also into account the amount of non-pecuniary damages awarded for a single breach of equal treatment in judicial practice (see the above-mentioned judgments of the higher courts: e.g. under ECHR 2001, 515 and ECHR 2002, 625, 100 000 HUF), the Court did not find the amount of 500 000 HUF per school year up to the school year 2011/2012, in which the applicants concerned suffered the disadvantages of both breaches, excessive in relation to the requirement of reasonableness.

However, in the subsequent period, when the quality of education was adequate and the applicants concerned were subject to a violation of the law, unlawful segregation and its disadvantages, the Court of First Instance agreed with the discretion of the Court of First Instance on the ground of lesser disadvantage and upheld the decision of the LXII. The Court of First Instance upheld the amount of HUF 300 000 per academic year (HUF 100 000 for the 2013/2014 school year for the applicant in Grade X) imposed on all applicants except the applicant in Grade X, and reduced the amount of HUF 400 000 awarded to the applicant in Grade LXII for the 2012/2013 school year to HUF 300 000.

Furthermore, the Court of First Instance (without repeating the above-mentioned principles) partially changed the finding regarding the time period of the infringement in the case of certain applicants, the amount of the fine, along the lines explained above, and the scope of the defendants, based on the educational documentation submitted:
- the applicants in Classes III, X and XIII were in Class B at the defendant in Class II until 21 January 2013 in the 2012/2013 school year, which justifies the imposition of a fine of HUF 150 000 on the defendants in Classes I, II and III,
- the applicants in Cases XIX and XX were no longer students of the defendant in Case II as from 24 May 2011, but the subsequent period of absence did not justify a reduction of the fine,
- the applicant in Case XXV was in class B from 11 November 2014 in the 2014/2015 school year; the Court reduced the amount of HUF 300 000 awarded for that school year by HUF 50 000 to HUF 250 000, due to the period of absence, and as a result reduced the total amount of HUF 900 000 for the defendants in Cases II and III to HUF 850 000,
- the XXXVth applicant in the 2010/2011 school year in 1/b, in the 2011/2012 school year in 2-3/d, 3-4/b in the school year 2012/2013 and in the school year 2013/2014 in class 4/b, the Court of First Instance therefore did not find that an infringement had occurred in the school year 2011/2012, but found that the infringement had occurred in classes I and II. The Court increased the amount of HUF 400 000 awarded against

the defendants I and II for the school year 2011/2012 to HUF 500 000 for the school year 2010/2011 and ordered the defendants I., II and III to pay HUF 300 000,
- the applicant in Class XLI was not in education from 9 September 2013 to 24 September 2013 in the 2013/2014 school year, but this period of absence did not justify a reduction of the penalty,
- the LVII applicant was in class B in the 2010/2011 school year, and the Court therefore excluded the III defendant from the HUF 500 000 damages awarded against him.

The compensation of HUF 500,000 per school year for the school years spent in the "b" classes (without repeating the above), which was awarded to the 1st and 2nd defendants for the school years from the 2011/2012 school year onwards, necessitated a partial reversal of the judgment of the first instance, as follows, for which school years the court of first instance awarded a lower amount of compensation (unreasonably proportional in relation to a fraction of a school year):
- in favour of the applicant in first instance, for the school years 2008/2009, 2009/2010 and 2010/2011, 3 x HUF 500 000 instead of 3 x HUF 400 000, i.e. HUF 1 500 000,
- in favour of the applicant in Grade II, the sum of HUF 1 500 000 instead of the sum of HUF 3 x 400 000, i.e. HUF 1 200 000, for the 2009/2010, 2010/2011 and 2011/2012 school years,
- in favour of the third applicant, the sum of HUF 3 000 000 instead of the sum of HUF 2 400 000 awarded for 6 school years from the 2006/2007 to the 2011/2012 school year,
- HUF 1 000 000 instead of the HUF 800 000 awarded to the applicant IV for the school years 2010/2011 and 2011/2012,
- HUF 500 000 instead of the HUF 400 000 awarded to the applicant VI for the 2011/2012 school year,
- HUF 1 500 000 instead of the HUF 1 200 000 awarded to the applicant IX for the 3 academic years 2009/2010 - 2011/2012,
- HUF 500 000 instead of the HUF 400 000 awarded to the applicant X for the 2010/2011 school year,
- HUF 2 000 000 instead of the HUF 1 600 000 awarded to the applicant XI for 4 school years from the 2008/2009 to the 2011/2012 school year,
- HUF 500 000 instead of the HUF 400 000 awarded to the applicant XII for the 2011/2012 school year,
- in favour of the XIIIth applicant, the sum of HUF 2 000 000 instead of the sum of HUF 1 600 000 awarded for 4 school years from the 2008/2009 to the 2011/2012 school year,
- in favour of the applicant XIV, the sum of HUF 1 000 000 instead of the sum of HUF 800 000 for the 2009/2010 and 2010/2011 school years,
- in favour of the applicant XIX, the sum of EUR 2 000 000 instead of the sum of EUR 1 600 000 for the school years 2006/2007, 2007/2008, 2009/2010 and 2010/2011,
- the amount of HUF 2 500 000 instead of the HUF 2 000 000 awarded to the applicant XX for 5 school years from the 2006/2007 to the 2010/2011 school year,
- in favour of the applicant XXI, for the school year 2006/2007 to 2011/2012, for 6 school years, for an amount of HUF 3 000 000 instead of HUF 2 400 000,
- in favour of the applicant XXII, for the school year 2008/2009 to 2010/2011, for 3 school years, the sum of HUF 1 500 000 instead of HUF 800 000,
- the amount of HUF 2 000 000 instead of the HUF 1 600 000 awarded to the applicant XXIV for 4 school years from the 2008/2009 school year to the 2011/2012 school year,

- in favour of the applicant XXVI, the sum of HUF 2 000 000 instead of the sum of HUF 1 600 000 awarded for 4 school years from the 2006/2007 to the 2009/2010 school year,
- in favour of the applicant XXVIII, the sum of HUF 2 750 000 instead of the sum of HUF 2 200 000 awarded pro rata (correctly assessed at HUF 250 000) for 5 school years from the school year 2006/2007 to the school year 2010/2011 and for the school year 2011/2012 until 12 January 2012,
- the sum of HUF 1 400 000 awarded in favour of the applicant XXX for 3 school years from the school year 2008/2009 to the school year 2010/2011 and for the school year 2011/2012 until 12 January 2012, pro rata, for an amount of HUF 1 750 000 (including HUF 250 000 for the fractional year),
- HUF 1 500 000 instead of the HUF 1 000 000 awarded to the applicant XXXII for the school years 2003/2004, 2010/2011 and 2011/2012,
- HUF 500 000 instead of the HUF 400 000 awarded to the applicant XXXIII for the 2011/2012 school year,
- HUF 1 000 000 instead of the HUF 800 000 awarded to the applicant XXXIV for the school years 2010/2011 and 2011/2012,
- in favour of the XXXIXth applicant, the sum of HUF 2 000 000 instead of the sum of HUF 1 600 000 awarded for 4 school years from the 2008/2009 to the 2010/2011 school year,
- in favour of the applicant XLI, the sum of HUF 500 000 instead of the sum of HUF 400 000 fixed for the school year 2010/2011,
- HUF 1 000 000 instead of the HUF 800 000 awarded to the applicant XLII for the school years 2010/2011 and 2011/2012,
- HUF 500 000 instead of the HUF 400 000 awarded for the 2011/2012 school year to the applicant XLIII,
- in favour of the applicant XLIV, the sum of HUF 1 500 000 instead of the sum of HUF 1 000 000 awarded for the school years 2003/2004, 2010/2011 and 2011/2012,
- the amount of HUF 2 000 000 instead of the HUF 1 600 000 awarded to the applicant L, for 4 school years from the 2008/2009 to the 2011/2012 school year,
- HUF 1 000 000 instead of the HUF 800 000 awarded to the applicant LI for the 2009/2010 and 2010/2011 school years,
- HUF 500 000 instead of the HUF 400 000 awarded to the applicant LVIII for the 2011/2012 school year,
- HUF 500 000 instead of the HUF 400 000 awarded to the applicant LIX form for the 2011/2012 school year.

The judgment of the Court of First Instance was upheld.

The subject-matter of the action was infringement of personal rights and non-pecuniary damages, in addition to which, with the exception of the claims of the applicants V and XL, which were entirely unfounded, the claims of the other applicants were not manifestly excessive, and the Court of First Instance therefore, with the exception of these 2 applicants, altered and set aside the provisions of the 1952 Civil Code requiring the applicants to bear the costs of the action. The applicants, however, sought to have the defendants awarded costs without any basis. The 1952 Pp. 78(1) of the 1952 Act and § 1(1) of IM Decree No. 32/2003 (VIII.22) on the attorney's fees that may be assessed in court proceedings (hereinafter: R.), the litigation costs actually incurred, including the attorney's fees actually incurred, may be charged as expenses against the opposing party. The lawyers representing the applicants, however, provided the

representation without remuneration and, since the applicants did not incur any legal costs, they are not entitled to charge attorneys' fees. The legal representative does not enter into a legal relationship with the opposing party in the civil action and cannot therefore bring a claim against him.

Furthermore, the Court of First Instance corrected the judgment of the Court of First Instance by stating in the operative part of the judgment, instead of stating the reasons for the judgment, that the State bears the unpaid levy, and by also determining the amount of the levy in accordance with the provisions of Art. (1)(a) Act No. XCIII of 1990 on the Law on the Recovery of Taxes on Income and Expenditure ('the Law'), the first instance court wrongly determined the maximum amount of the tax at HUF 1 500 000, on the basis of the highest amount claimed by the applicants as joint plaintiffs but separately.

The Court of First Instance refused to grant the defendants' requests for evidence in the appeal proceedings, since the well-known disadvantages made it unnecessary to disclose the further life history of the applicants concerned.

For the reasons stated, the Court of First Instance partially altered the judgment of the Court of First Instance pursuant to Article 253(2) of the 1952 Civil Code.

The Court of First Instance took the following into account in the calculation of the costs of the proceedings at second instance.

The appeal of the applicants VII, XV, XXXI, XXXVI, XXXVIII, XLV, XLVII, XLIX, LII, LVII, LXI and LXIII sought to extend the scope of the joint and several injunction as an indeterminable amount of the action, and the Court of First Instance, accepting the activity of the defendant's representative in the amount of 2 hours of work, set the amount of the fine at HUF 5,000 + VAT for the I., II and III jointly and severally by reason of the same legal representative, on the basis of Article 3(3) and (4) and Article 4/A(1) of the Rules of Procedure. In the case of the LXI applicant, this amount of HUF 6 350 shall be added to the costs of the appeal at second instance to which he is entitled on the basis of a successful appeal by the defendant. Furthermore, in the case of the applicants V, VIII, XVI, XVII, XXIII, XXV, XXIX, XXXVII, XL, XLVI, XLVIII, LIII, LV, LVI and LXII, the appeal was so excessive that, unlike the other applicants, it was not possible to apply the provisions of the 1952 Pp. 81(2) of the 1952 Act. In addition, the defendant's appeal (taking into account the virtual assessment of the value of the action within the non-material damages sought) was partially successful in relation to the applicants XXV, XXXVII, LXI and LXII. The Court of First Instance therefore ordered those applicants to pay part of the costs of the proceedings, consisting of the fees of the defendants' joint legal representative, in accordance with the provisions of the 1952 Civil Procedure Code, by taking into account the amount of those unfounded appeals and the value of the defendants' appeals, which resulted in a partial reduction of the fine (by adding HUF 6,350 for the applicant in Case LXI). 81(1) of the 1952 Act, at the rate of 2.5% plus VAT pursuant to § 3(2)(a), (5) and § 4/A(1) of the Rules of Procedure.)

The State shall pay the unpaid appeal fees calculated pursuant to Article 46(1) of the Act on the Application of Legal Aid in Court Proceedings, pursuant to Article 13(1) and Article 14 of Decree 6/1986 (VI. 26.) of the IM on the Application of Legal Aid in Court Proceedings.

Debrecen, 16 September 2019

Dr. Pál Bakó (Sr.), President of the Chamber, Dr. Krisztián Árok (Sr.), Judge-Rapporteur, Dr. Tibor Tamás Molnár (Sr.), Judge

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Debrecen Court of Appeal
No Pf.I.20.123/2019/18

The Debrecen Court of Appeal in the case of Plaintiff I (address) as First Plaintiff, Plaintiff II (address) as Second Plaintiff, Plaintiff III (address) as Third Plaintiff, Plaintiff IV (address) as Fourth Plaintiff, Plaintiff V (address) as Fifth Plaintiff, Plaintiff VI (address) as Sixth Plaintiff, Plaintiff VII (address) as Seventh Plaintiff, Plaintiff VIII (address) as Eighth Plaintiff, Plaintiff IX (address) as Ninth Plaintiff, Plaintiff X (address) as Tenth Plaintiff, Plaintiff XI (address) as Eleventh Plaintiff, Plaintiff XII (address) as Twelfth Plaintiff, Plaintiff XIII (address) as Thirteenth Plaintiff, Plaintiff XIV (address) as Fourteenth Plaintiff, Plaintiff XV (address) as Fifteenth Plaintiff, Plaintiff XVI (address) as Sixteenth Plaintiff, Plaintiff XVII (address) as Seventeenth Plaintiff, Plaintiff XIX (address) as Nineteenth Plaintiff, Plaintiff XX (address) as Twentieth Plaintiff, Plaintiff XXI (address) as Twenty-First Plaintiff, Plaintiff XXII (address) as Twenty-Second Plaintiff, Plaintiff XXIII (address) as Twenty-Third Plaintiff, Plaintiff XXIV (address) as Twenty-Fourth Plaintiff, Plaintiff XXV (address) as Twenty-Fifth Plaintiff, Plaintiff XXVI (address) as Twenty-Sixth Plaintiff, Plaintiff XXVII (address) as Twenty-Seventh Plaintiff, Plaintiff XXVIII (address) as Twenty-Eighth Plaintiff, Plaintiff XXIX (address) as Twenty-Ninth Plaintiff, Minor Plaintiff XXX (address) as Thirtieth Plaintiff, Plaintiff XXXI (address) as Thirty-First Plaintiff, Plaintiff XXXII (address) as Thirty-Second Plaintiff, Plaintiff XXXIII (address) as Thirty-Third Plaintiff, Plaintiff XXXIV (address) as Thirty-Fourth Plaintiff, Plaintiff XXXV (address) as Thirty-Fifth Plaintiff, Plaintiff XXXVI (address) as Thirty-Sixth Plaintiff, Plaintiff XXXVII (address) as Thirty-Seventh Plaintiff, Plaintiff XXXVIII (address) as Thirty-Eighth Plaintiff, Plaintiff XXXIX (address) as Thirty-Ninth Plaintiff, Plaintiff XL (address) as Fortieth Plaintiff, Plaintiff XLI (address) as Forty-First Plaintiff, Plaintiff XLII (address) as Forty-Second Plaintiff, Plaintiff XLIII (address) as Forty-Third Plaintiff, Plaintiff XLIV (address) as Forty-Fourth Plaintiff, Plaintiff XLV (address) as Forty-Fifth Plaintiff, Plaintiff XLVI (address) as Forty-Sixth Plaintiff, Plaintiff XLVII (address) as Forty-Seventh Plaintiff, Plaintiff XLVIII (address) as Forty-Eighth Plaintiff, Plaintiff XLIX (address) as Forty-Ninth Plaintiff, Plaintiff L (address) as Fiftieth Plaintiff, Plaintiff LI (address) as Fifty-First Plaintiff, Plaintiff LII (address) as Fifty-Second Plaintiff, Plaintiff LIII (address) as Fifty-Third Plaintiff, Plaintiff LIV (address) as Fifty-Fourth Plaintiff, Plaintiff LV (address) as Fifty-Fifth Plaintiff, Plaintiff LVI (address)

as Fifty-Sixth Plaintiff, Plaintiff LVII (address) as Fifty-Seventh Plaintiff, Plaintiff LVIII (address) as Fifty-Eighth Plaintiff, Minor Plaintiff LIX (address) as Fifty-Ninth Plaintiff, Plaintiff LX (address) as Sixtieth Plaintiff, Plaintiff LXI (address) as Sixty-First Plaintiff, Plaintiff LXII (address) as Sixty-Second Plaintiff, Plaintiff LXIII (address) as Sixty-Third Plaintiff, represented by the law firm of Lengyel Allen & Overy (address, administrator: Dr. Balázs Sahin-Tóth, lawyer), the law firm of Gárdos Füredi Mosonyi Tomori (address, administrator: Dr. Péter Gárdos, lawyer), Dr. Eleonóra Hernádi Law Office (address, administrator: Dr. Eleonóra Hernádi, lawyer), and Dr. Adél Kegye, lawyer (address), and Defendant I (address), represented by Őszy Law Office (address, administrator: Dr. Tamás Őszy, lawyer), Defendant II (address of defendant II) Name (address) of Defendant II, and Defendant III in the action for infringement of personal rights, the Court of First Instance has given the following

o r d e r:

The operative part of the judgment of the Court of First Instance No. 16 **is corrected** as regards the applicant LXI, as follows: 'as regards the applicant LXI, the finding of infringement for the **2011/2012** school year is not made as from 18 December 2011'.

An appeal may be lodged against the order within 15 days from the date of service, in writing, in three copies, addressed to the Court of Appeal, but lodged at the Debrecen Court of Appeal.

R e a s o n i n g

The Court of First Instance found that the operative part of its judgment contains a clerical error in relation to the applicant LXI, because the school year 2011/2012 was incorrectly indicated, the 2nd digit is missing, and the correct year is not 2011/201 but 2011/2012, and therefore it corrected it pursuant to Article 224(1) of the 1952 Civil Procedure Act.

Debrecen, 18 September 2019

Dr. Pál Bakó (sk.), President of the Chamber, Dr. Krisztián Árok (sk.), Judge-Rapporteur, Dr. Tibor Tamás Molnár (sk.), Judge

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