

Pécs Court of Appeal
Case No. Pf.III.20.004/2016/4

The Pécs Court of Appeal, in the case initiated by the plaintiff (name and address), represented by attorney Dr. Adél Kegye, against the first defendant (name and address), represented by legal counsel K., the second defendant (name and address), represented by attorney Dr. Róbert Boda, the third defendant (name and address), represented by attorney Dr. Attila Szijártó, and the fourth defendant (name and address), represented by legal counsel B., for establishing a violation of the requirement of equal treatment and the application of legal consequences, initiated before the ... Regional Court, upon the appeals filed under serial number 74 by the plaintiff, serial number 72 by the first defendant, serial number 71 by the third defendant, and serial number 73 by the fourth defendant, with reasoning submitted under serial number 75, against the judgment No. .../70, dated 11 November 2015, has rendered the following

j u d g m e n t:

The appellate court clarifies the first-instance judgment in the appealed part and establishes that the first, third, and fourth defendants violated the requirement of equal treatment by maintaining the unlawful segregation of students belonging to the Roma ethnic minority in an educational institution, the ... Branch School, with the third defendant responsible for the period from 25 November 2010 to 31 December 2012, and the first and fourth defendants from 1 January 2013 onwards.

The appellate court partially modifies the clarified first-instance judgment in the appealed part and prohibits the second and fourth defendants from establishing a first-grade class at the ... Branch School from the 2017/2018 academic year onwards.

The court orders the first defendant to determine the enrolment district boundaries of compulsory admission schools accordingly by 31 January 2017.

The court orders the second and third defendants to prepare a desegregation action plan, with the involvement of an expert in public education equal opportunities, for the integration of students enrolling from the district of the ... Branch School by 31 March 2017 and to publish it on their websites by the same date.

The court dismisses the claim beyond this extent.

In all other appealed aspects, the appellate court upholds the first-instance judgment.

The court orders the defendants to pay the plaintiff, within 15 days, a total of HUF 200,000 (two hundred thousand) per person as joint first- and second-instance litigation costs.

No further appeal is allowed against this judgment.

R e a s o n i n g

The ... Court, in its judgment No. .../35, dated 30 November 2009, established that the defendant (currently the third defendant in this case) had unlawfully segregated and discriminated against students belonging to the Roma ethnic minority at an educational institution, the present Branch School, since the 2003/2004 academic year. The court found that the education provided to these students resulted in higher grade repetition rates, higher dropout rates, increased absenteeism, lower national competence test results, and lower progression to further education compared to students attending other general schools maintained by the defendant. The court ordered the defendant to cease the unlawful conduct but rejected the plaintiff's claims beyond this.

The ... Court of Appeal, in its judgment No. .../7, dated 20 May 2010, partially modified the first-instance judgment and established that, since the 2003/2004 academic year, the defendant had violated the requirement of equal treatment by maintaining the unlawful segregation of students belonging to the Roma ethnic minority at the present Branch School. The appellate court omitted the first-instance judgment's reference to indirect discrimination and, in addition to ordering the cessation of the unlawful conduct, also obligated the defendant to eliminate the violation.

The Supreme Court of the Republic of Hungary, acting as the court of review, in its judgment No. .../5, dated 24 November 2010, partially annulled the final judgment, upheld the first-instance court's dismissal of the claim for the elimination of the violation, and otherwise maintained the final judgment.

The plaintiff, in a claim submitted on 16 December 2013 and subsequently amended multiple times during the proceedings, requested the court to establish that the first defendant unlawfully segregated Roma students from other students in the city by determining the enrolment district boundaries of the branch school in such a way that the predominantly Roma-populated segregated settlement, the ... area, largely belonged to the branch school. The second defendant, as the maintainer of the Branch Institution and the legal successor of the Municipality of ..., responsible for public education since 1 January 2013, unlawfully segregated the students of the branch school based on their ethnicity, socio-economic status, race, and skin colour by failing to eliminate the continuously existing unlawful situation at the branch school. The third defendant, as the former maintainer of the Branch Institution between 25 November 2010 and 31 December 2012, unlawfully segregated the students based on their ethnicity, socio-economic status, race, and skin colour by failing to eliminate the unlawful situation at the branch school. The fourth defendant maintained the unlawful segregation of Roma students at the branch school by failing to decide on its closure after 1 January 2013 and by not instructing the relevant educational authorities to address and eliminate the unlawful segregation despite the plaintiff's notifications. Furthermore, the fourth defendant failed to order the closure of the branch school within its own competence.

The plaintiff sought a court order requiring the defendants to cease the violation by prohibiting the establishment of new first-grade classes at the branch school and preventing further violations. Additionally, the plaintiff requested the court to mandate the elimination of the unlawful situation in accordance with the revised desegregation plan by implementing the following measures:

- Order the second defendant to immediately prohibit the establishment of new first-grade classes at the disputed branch school from the next academic year upon receiving the

final judgment.

- Immediately prepare a register of the students of the disputed branch school upon receiving the final judgment.
- Inform the legal representatives of the students of the disputed school about the desegregation process.
- Ensure the necessary personal and organisational conditions for desegregation, prepare the students of the receiving schools by strengthening an inclusive attitude, and conduct conflict management training for the students of the segregated school by 31 May following the final judgment.
- Together with the fourth defendant, decide on the closure of the disputed branch school by 31 May following the final judgment.
- Organise a school bus service to transport students of the disputed branch school to the designated receiving schools immediately upon their designation.
- Assess the mathematical and reading comprehension skills of students directly involved in the desegregation process by 30 September following the final judgment.
- Annually assess the academic performance and social integration of affected students, including basic mathematical skills and reading comprehension development, and monitor the evolution of their social relationships using sociometric methods. The results should be published annually until the former students of the ... Street branch school complete their primary education.
- Immediately begin professional training and sensitisation of the teachers at the receiving schools to prepare them for the reception and education of students from the disputed branch school upon receiving the final judgment.
- Together with the third defendant, implement compensatory education programmes in the general schools and kindergartens they maintain immediately upon receiving the final judgment.
- Monitor the composition of students at the receiving schools to prevent segregation mechanisms by annually examining how many students living in the ... settlement are educated in the general schools maintained by the second defendant.
- Order the first defendant to redistribute the enrolment district of the ... Street branch school among the city's other state schools, thereby designating the receiving primary schools.

As a secondary request, the plaintiff sought a court order: Requiring the second and fourth defendants to close the ... Street branch school by 31 May following the final judgment. Requiring the second defendant to integrate the students of the ... Street branch school into the general schools it maintains from 1 September following the final judgment. Requiring the second defendant to determine the specific measures necessary for integration (preparing a desegregation plan) within thirty days of receiving the final judgment with the involvement of an expert in public education equal opportunities.

As a tertiary request, the plaintiff sought the elimination of the unlawful segregation by: Requiring the second and fourth defendants to close the ... Street branch school by 31 May following the final judgment. Requiring the second defendant to integrate the students of the ... Street branch school into the general schools it maintains from 1 September following the final judgment.

The defendants requested the dismissal of the claim, disputing the existence of unlawful segregation and emphasising that the remedies sought by the plaintiff in the lawsuit could not

be ordered by a court judgment, as their enforcement could not be compelled.

The first-instance court established that the first defendant unlawfully segregated Roma students from other students in the city when determining the enrolment district boundaries of the ... Street branch school. The second defendant, as the maintainer of the ... Street branch school and the legal successor of the Municipality of ... responsible for public education since 1 January 2013, committed a passive violation of the law by failing to eliminate the ongoing unlawful situation at the disputed school, thereby maintaining the unlawful segregation of the school's students based on ethnicity, socio-economic status, race, and skin colour, distinguishing them from students attending other schools. The court also established that the third defendant, between 25 November 2010 and 31 December 2012, committed a violation by failing to eliminate the unlawful situation at the disputed school, thereby maintaining the unlawful segregation of students based on ethnicity, socio-economic status, race, and skin colour, distinguishing them from students at the main school and other branch schools. The fourth defendant, from 1 January 2013 onwards, failed to take all necessary measures to eliminate the unlawful segregation at the disputed branch school, did not instruct the relevant public education authorities to eliminate the unlawful segregation, and thereby maintained the unlawful segregation of Roma students at the school. The court ordered the first, second, and fourth defendants to cease the violation but dismissed the plaintiff's claim for the complete elimination of the unlawful situation. In its reasoning, the court emphasised that unlawful segregation in itself constitutes a disadvantage, and therefore, the plaintiff only needed to make a *prima facie* case. Once the *prima facie* case was established, the burden of proof shifted to the defendants to demonstrate that the circumstances alleged by the aggrieved party or the public interest claimant did not exist, that they had complied with the requirement of equal treatment, or that they were not obliged to comply in the given legal relationship. Based on the submitted documents and witness testimonies, the first-instance court concluded that the defendants had failed to fulfil their integration obligations. They tolerated and maintained the segregation that had developed at the disputed school due to spontaneous segregation, despite a final court ruling that had already established the existence of unlawful segregation and ordered the third defendant to cease the violation. As the unlawful segregation at the disputed school persisted, the defendants—specifically, the third defendant from 25 November 2010 to 31 December 2012, and the first, second, and fourth defendants from 1 January 2013 onwards—committed passive violations of the law. Regarding Section 28(2)(a) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, the first-instance court did not accept the defendants' arguments in their defence. Consequently, the court established the occurrence of the violation and ordered the first, second, and fourth defendants to cease the violation. However, it dismissed the plaintiff's claim for the elimination of the unlawful situation. The court reasoned that the measures sought by the plaintiff to eliminate the violation could not be included in the operative part of a court judgment under Act III of 1952 on the Code of Civil Procedure and Act LIII of 1994 on Judicial Enforcement, as their enforcement could not be compelled. The court highlighted that the only effective solution would be a systemic transformation of ...the school system. It noted that so-called "rigid integration" would not yield appropriate results in the best interests of the children. The court concluded that desegregation could not be achieved solely through a judicial decision without the involvement of political stakeholders and educational experts.

The plaintiff, as well as the first, third, and fourth defendants, appealed against the first-instance judgment.

The plaintiff requested the partial modification of the first-instance judgment, the granting of their claim for the elimination of the unlawful situation, and the ordering of the defendants to bear the full costs of the first- and second-instance proceedings. Simultaneously, the plaintiff submitted a request under Section 155/A(1) of the Code of Civil Procedure to initiate a preliminary ruling procedure before the Court of Justice of the European Union regarding the interpretation of Article 15 of Directive 2000/43/EC (the Racial Equality Directive) on the application of the principle of equal treatment irrespective of racial or ethnic origin. According to the appeal, a prior final judgment had already established the fact of segregation at the disputed branch school. However, the courts dismissed the plaintiff's claim for the elimination of the unlawful situation solely because no realistic and enforceable claim for eliminating the violation had been presented. To comply with this requirement, the plaintiff submitted a claim based on a professional plan developed by one of the country's most renowned experts, which was realistic, clear, and enforceable. There was no evidence in the proceedings suggesting that any other effective measure existed beyond closing the segregated institution to eliminate the unlawful situation. The plaintiff also demonstrated during the proceedings that closing the school would be a suitable remedy for the harm suffered. Nevertheless, the first-instance court once again failed to order the defendants to eliminate the violation. As a result, the segregated children of ... were once again deprived of effective legal redress, and beyond merely declaring the segregation, the court did not provide any substantive assistance to the current and potential victims in ensuring compliance with the requirement of equal treatment in their education. Therefore, the first-instance judgment violates the constitutional right to effective legal remedy and contradicts the applicable EU norm in the case. Under Article 15 of the Racial Equality Directive, Member States must apply effective, proportionate, and sufficiently dissuasive sanctions to ensure compliance with their obligations under the directive. The Equal Treatment Act transposed this directive into Hungarian law, but it does not specify what constitutes an effective legal remedy in cases of discrimination. In this respect, the relevant EU case law and the principle expressed in Constitutional Court rulings must be considered, which require that sanctions be proportionate to the level of constitutional protection, sufficiently severe, and effective. The first-instance court's decision fails to meet these requirements. It deprived the public interest plaintiff of the opportunity to obtain real, tangible, and effective legal redress for the individuals they represent, beyond merely establishing the violation. If the first-instance court deemed that the requested judicial order—mandating the closure of the segregated school, the integration of children based on a professionally developed action plan, and the implementation of measures to facilitate their integration—was inconsistent with previous judicial practice, it should have disregarded any substantive or procedural legal provisions that, in practice, limited the enforcement of rights, following the case law of the Court of Justice of the European Union. Moreover, the reasoning of the first-instance judgment fails to explain why and to what extent the plaintiff's claim was deemed unsuitable for inclusion in the judgment's operative part or its enforcement. The plaintiff primarily sought the implementation of the measures outlined in the desegregation plan, which consisted of ten main actions, each specifying what each defendant was required to do within a specific deadline. In comparison, the secondary and tertiary claims contained three and two separate measures, respectively. The necessity of specific legal consequences in a given case primarily depends on the nature of the violation and the complexity of its elimination. Therefore, a relatively extensive operative part should not be an obstacle to eliminating the violation. Concerns regarding enforceability are also unfounded under existing legal provisions, as the plaintiff's claim clearly defined what should be done, by whom, and by when. The obligation to eliminate the violation constitutes a form of liability, with each element explicitly and understandably outlined in the alternative claims. It would clearly violate the rule of law if the court made desegregation contingent upon the political will of the defendants. The political stance of the defendants regarding the subject

matter of the case is irrelevant, as the court must decide on a legal issue without considering any potential political consequences. Regarding the request for a preliminary ruling procedure before the Court of Justice of the European Union, the plaintiff argued that if domestic practice or regulations appeared to preclude the application of the only effective measure, the first-instance court should have initiated the procedure to clarify the content of Article 15 of the Racial Equality Directive and whether Hungarian legal provisions comply with this requirement.

The first, third, and fourth defendants requested the partial modification of the first-instance judgment, the dismissal of the claim brought against them, and the ordering of the plaintiff to bear the costs of both the first- and second-instance proceedings.

The first defendant argued in the appeal that the first-instance court failed to sufficiently consider the statutory framework governing its authority in determining school enrolment districts. It asserted that it fully complied with the requirements set out in Section 50(6) of Act CXC of 2011 on National Public Education (Public Education Act), ensuring an even distribution of students from socially disadvantaged backgrounds until 31 December 2013, and from 1 January 2014 onwards, of disadvantaged students in general. In exercising its authority, the first defendant adhered to Section 24(1) of Decree No. 20/2012 (VIII.31.) of the Minister of Human Resources (MHR) regarding the operation of educational institutions and the use of names by public education institutions. Accordingly, it relied on data provided by the municipal clerk regarding the proportion of disadvantaged students in each institution. The first defendant contended that the court based its finding of unlawful segregation on unsubstantiated evidence. Specifically, it did not take into account that the defendant was not legally authorised to collect data on students' ethnicity, nor were such data available in the accessible databases. The only available data concerned the proportion of disadvantaged and multiply disadvantaged students, which does not necessarily correlate with Roma ethnicity. While the proportion of disadvantaged and multiply disadvantaged students was indeed the highest at the disputed branch school, the court could not infer from this fact that Roma students were unlawfully segregated from the rest of the city's students. In the 2014/2015 academic year, out of 126 students enrolled in the school, 77 resided within the designated school district, while 49 were from outside the district. The branch school was required to prioritise the admission of disadvantaged students after fulfilling its compulsory enrolment obligations. Therefore, considering the right of parents to freely choose schools for their children, the first defendant maintained that it ensured an even distribution of disadvantaged students when establishing the school districts and that there was no evidence of unlawful segregation of Roma students in the institution.

The third defendant disputed the first-instance court's finding that, as the maintainer of the disputed branch school between 25 November 2010 and 31 December 2012, it had unlawfully segregated students by failing to integrate them into the main school or other branch schools. The third defendant argued that parents made enrolment decisions under the option provided by Section 50(6) of the Public Education Act, and the school maintainer neither kept nor was legally permitted to keep records of the ethnicity of students enrolled in the branch school. Furthermore, the third defendant highlighted that parents of students at the disputed branch school had not only exercised their right to free school choice through enrolment but had also submitted written statements after the lawsuit commenced, expressing their desire for the institution to remain open. The third defendant also emphasised that the existence of the school did not violate the requirement of equal treatment, as it provided ethnic minority education. At

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the request and with the voluntary consent of those affected, the school offered instruction in Roma language and culture, which required specific organisational conditions that could not be effectively implemented in a fragmented manner across multiple institutions. Thus, the parental statements supporting the school's continued operation represented not only an exercise of their right to free school choice but also their right to ethnic minority education.

The fourth defendant argued that it had taken all legally available measures to cease the violation and could not be held liable for any omission. It informed the second defendant about the lawsuit and urged it to ensure that the requirement of equal treatment was prioritised in district-level equal opportunity action plans and to propose necessary restructuring measures. However, no proposal for restructuring or closure was received from the second defendant, which, under Sections 83(3) and (4) of the Public Education Act, would have been a prerequisite for exercising the powers granted under Section 77(2)(k) of the Public Education Act. The fourth defendant also cited a planned EU-funded development programme for desegregation measures during the 2014-2020 period, which included the establishment of an anti-segregation working group for equitable education. This group was tasked with addressing the segregation issue at the disputed school. The first-instance judgment did not specify what specific omission by the fourth defendant constituted a failure to act.

The plaintiff's appeal was partially well-founded, while the appeals of the defendants were unfounded.

The appellate court supplemented the factual findings of the first-instance court based on the case data as follows:

The ... Branch Institution, located in Educational District No. 12 of ... city, was transferred from the third defendant's maintenance to the second defendant's maintenance on 1 January 2013. Educational District No. 12 covers the eastern part of the city, including a socially disadvantaged and deteriorated urban area, which is physically separated from the rest of the city and predominantly inhabited by Roma residents. This area includes ... Street, ... Street, ... Street, ... Street, ... Street, ... Street, and ... Street.

In the 2012/2013 academic year, the total student population at the disputed branch school was 137, of which: 100% were socially disadvantaged, 9.5% were multiply disadvantaged. At the main school, out of 652 students, the proportion of: Socially disadvantaged students was 23.77%. Multiply disadvantaged students was 0.61%. In the 2012/2013 academic year, 20 children enrolled in first grade, all of whom had attended the ... Branch Kindergarten. Of these, eight were from outside the district, specifically from ... streets, which had been affected by a district modification implemented by the first defendant in 2008. 100% of the enrolled students in first grade belonged to the Roma ethnic minority. The vast majority of students at the disputed branch school were of Roma origin or from mixed marriages, with approximately 87% being of Roma descent.

Taking into account the above supplementary factual findings, the appellate court agreed with the first-instance court's legal assessment regarding the maintenance of unlawful segregation in the scope covered by the appeal.

With the entry into force of Act V of 2013 on the Civil Code, the transitional and authorising provisions of Act CLXXVII of 2013 apply, pursuant to Section 8 of the latter. Consequently, Section 75(1) of Act IV of 1959 on the Civil Code (1959 Civil Code) is applicable, which

stipulates that personal rights must be respected by all, and these rights are protected by law. Under Section 76, a violation of personal rights includes, in particular, the infringement of the requirement of equal treatment, the violation of freedom of conscience, the unlawful restriction of personal liberty, as well as violations of physical integrity, health, honour, and human dignity. Pursuant to Section 7(1) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act), a violation of the requirement of equal treatment includes direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation, and instructions to carry out these acts. According to Section 10(2) of the Equal Treatment Act, unlawful segregation is defined as a provision that, based on the characteristics specified in Section 8, separates certain individuals or groups of individuals from others in comparable situations without explicit legal authorisation. Under Section 27(3)(a) of the Equal Treatment Act, a violation of equal treatment particularly includes the unlawful segregation of individuals or groups within an educational institution, or within a specific division, class, or group within such an institution. However, Section 28(2)(a) of the Equal Treatment Act states that equal treatment is not violated when an educational institution, at the initiative and voluntary choice of parents, organises religious or ethnic minority education, provided that such segregation does not disadvantage students in any way and complies with state-approved or state-mandated educational requirements.

The final judgment in the previous lawsuit established that the third defendant in the present case, as the maintainer of the disputed branch school until 31 December 2012, had violated the requirement of equal treatment since the 2003/2004 academic year by maintaining the unlawful segregation of Roma ethnic minority students at the present ... Branch School.

According to the case data from the previous lawsuit, during the first semester of the 2008/2009 academic year, there were 224 multiply disadvantaged children in ... city, of whom 56 (26%) attended the disputed branch institution. Among the 165 students at the school, 90% were disadvantaged, and approximately 85% were of Roma descent. Regarding the third defendant's defence, the courts stated that even if the segregation had arisen spontaneously and unintentionally, the maintainer was obligated to take action against it. The unlawful situation was perpetuated merely by the defendant's passive maintenance of segregation, without any active intervention. Concerning Section 28(2)(a) of the Equal Treatment Act, the courts held that Roma cultural education could be provided not only in minority educational institutions but also in integrated general education schools. Additionally, it was not established that parents had made their school choices with full awareness and voluntariness, as there was insufficient evidence that they had access to all necessary information when making their decisions.

Based on the plaintiff's lawsuit filed on 16 December 2013, the key issue in the present case was whether, following the findings of the previous lawsuit, the third defendant and, from 1 January 2013 onwards, all defendants, had fulfilled their legal obligations to eliminate the unlawful segregation.

Given the appeals submitted by the first, third, and fourth defendants, the appellate court primarily needed to determine whether the unlawful segregation still existed at the disputed branch school following the final judgment in the previous case. If it did, the court needed to assess whether the failure or active conduct of the appealing defendants contributed to its continuation.

Upon reviewing the additional factual findings and comparing them with the data from the previous lawsuit, it became clear that there had been no significant change in the proportion of

disadvantaged and multiply disadvantaged students, nor in the proportion of Roma students at the disputed branch school. The appellate court did not consider the changes in the proportion of disadvantaged and multiply disadvantaged students after 1 September 2013 to be significant, as these changes were clearly attributable to amendments in Section 67/A of Act XXXI of 1997 on the Protection of Children and Guardianship Administration. These amendments affected all educational institutions, not just the disputed branch school. Beyond the statistical data, additional evidence supporting the unchanged nature of the previous segregation included: Testimony from the head principal of the twelve ... branch schools, who stated that no desegregation plan had been implemented. Correspondence between the fourth defendant and the second defendant, in which, as late as December 2014, the fourth defendant urged the second defendant to adopt educational practices that complied with the requirement of equal treatment at the disputed branch school.

Regarding the first defendant, the first-instance court found it liable for unlawfully segregating Roma students from the rest of the city's students when determining the enrolment district boundaries for the disputed branch school.

In contrast, the first defendant argued that it had fully complied with the applicable legal provisions when establishing the school districts. It also contended that it had no official records of students' ethnic backgrounds and that it was not legally permitted to collect such data.

The main criteria for determining primary school district boundaries are defined in Section 50(6) of Act CXCV of 2011 on National Public Education (Public Education Act) and Section 24 of Decree No. 20/2012 (VIII.31.) of the Minister of Human Resources (MHR) regarding the operation of educational institutions and the use of names by public education institutions. The appellate court agreed with the first-instance court's conclusion that the first defendant was required to consider not only these legal provisions but also the requirement of equal treatment when establishing the school district boundaries. Section 1(2) of the Public Education Act explicitly states that the entire public education system must be permeated by the requirement of equal treatment. Additionally, under Section 4(c) of the Equal Treatment Act, organisations exercising administrative authority must comply with the requirement of equal treatment when establishing legal relationships, as well as in all their procedures and measures. Furthermore, under Section 38(1)(a) of Government Decree No. 229/2012 (VIII.28.), which implements the National Public Education Act, the first defendant was also responsible for conducting official inspections to ensure compliance with equal treatment within public education institutions.

The requirement of equal treatment is violated not only when school district boundaries are drawn in a manner that disproportionately disadvantages students based on socio-economic status, but also when such districting disregards the protected characteristics listed in Sections 8(b)-(e) of the Equal Treatment Act, which constitutes a violation of the law.

The appellate court did not accept the first defendant's argument that it lacked the legal authorisation to collect data on students' ethnic backgrounds and that such data were unavailable in the accessible databases. First and foremost, the first defendant had access to the final judgment in the previous lawsuit, which clearly established the ethnic composition of the student body. Additionally, the educational authority possessed data on the estimated proportion of Roma students at the disputed branch school and had provided these as part of a public interest data request to the plaintiff. Thus, there was no obstacle preventing the first defendant from accessing this information as well. Moreover, the 2008 anti-segregation plan—which the first defendant was also aware of—explicitly identified the segregated nature of the area where the disputed school was located, noting that it was a predominantly Roma neighbourhood physically separated from the urban fabric. Further corroboration came from an email exchange

on 18 February 2014, in which the second defendant informed the city clerk that the residents of the streets within the disputed school district were likely of Roma descent. The first defendant was therefore also aware of this fact. Additionally, the first defendant could have applied the so-called "weighted criteria system", which analyses students' and their mothers' surnames, their status as multiply disadvantaged students, residential addresses, socio-economic status, and first names (Supreme Court Decision .../8). This methodology would have allowed the first defendant to infer the ethnic composition of the student body at the disputed branch school.

Based on the above findings, the appellate court determined that the first defendant failed to apply the requirement of equal treatment when defining the school district boundaries. Consequently, it contributed to the maintenance of unlawful segregation.

The first-instance court found that the third defendant's unlawful conduct lay in failing to eliminate the ongoing unlawful segregation at the disputed school.

As the former maintainer of the disputed branch school until 31 December 2012, the third defendant was bound by Section 4/A(1) of Act LXXIX of 1993 on Public Education, which required compliance with the requirement of equal treatment when organising, managing, and operating public education institutions. Additionally, under Section 4/A(5), the third defendant was obligated to apply the provisions of the Equal Treatment Act when fulfilling these responsibilities.

Despite this legal obligation, the third defendant consistently invoked Section 28(2)(a) of the Equal Treatment Act—both in the previous lawsuit and in the current proceedings and appeal—as a defence for its failure to act.

However, no new evidence emerged in the case to justify a different conclusion from the previous judgment's findings regarding the possibility of providing Roma minority education in an integrated setting, or regarding the voluntariness and awareness of parental school choice.

The defendants argued that parents have a constitutional right to freely choose their children's school, as guaranteed under Article XVI(2) of the Fundamental Law of Hungary and Section 72(2) of the Public Education Act. The appellate court highlighted the importance of Article I(3) of the Fundamental Law, which states that fundamental rights may be restricted only to the extent necessary to protect another fundamental right or constitutional value, in a proportionate manner, while respecting the essential content of the restricted right.

Additionally, Article XV(2) of the Fundamental Law affirms that Hungary guarantees fundamental rights to all individuals without discrimination, including on the basis of nationality, social origin, economic status, birth, or other circumstances.

From Article XV(1) of the Fundamental Law, which states that all persons are equal before the law, it follows that discrimination is prohibited. However, this prohibition does not apply to positive discrimination, which is not forbidden. The principle of non-discrimination requires that the law treat all individuals equally, but it also grants the state the right—and the duty—to consider actual differences among people when enacting legislation. As part of this obligation, the state must institutionally ensure the legal protection of disadvantaged individuals, one of the key instruments for this being the Equal Treatment Act. Furthermore, Article XVI(4) of the Fundamental Law explicitly states that Hungary promotes equal opportunities and social inclusion through special measures. This includes upholding the requirement of equal treatment in public education, as emphasised in the goals and principles of the Public Education Act. From

this, it follows that the right of parents to freely choose a school for their child can be restricted if necessary to ensure the child's fundamental rights, special interests, and equal opportunities. However, no such restriction applied in the present case, as there was no evidence that parents had made their school choices with full awareness and complete access to necessary information.

Regarding the third defendant's argument concerning the obstacles to determining the proportion of Roma students, the appellate court reiterated the reasoning it had previously outlined in response to the first defendant's appeal.

Additionally, the appellate court noted a letter dated 24 February 2014, written by the titular chief notary of the third defendant and sent to the first defendant, which indicated that the third defendant had consistently opposed any redirection of students from the disputed branch school to other schools or any modification of the district boundaries for such a purpose.

Examining the fourth defendant's liability, the first-instance court found that it failed to instruct the relevant public education authorities to eliminate the unlawful segregation and, in general, did not take all necessary measures to remedy the unlawful situation at the disputed branch school.

Under Section 83 of the Public Education Act, decisions regarding the restructuring of public education institutions and the related administrative tasks fall within the maintainer's authority. This is supplemented by the special provision in Section 77(2)(k) of the Public Education Act, which stipulates that decisions on restructuring or closing public education institutions maintained by the central government are made by the minister responsible for education, following a consultation and recommendation procedure under Sections 83(3)-(4) of the Public Education Act. Furthermore, under Section 79(1) of the Public Education Act, the minister responsible for education carries out certain public education tasks through their office and the state institution-maintaining centre. According to Section 79(2), the government office conducts official inspections to ensure that public education institutions operate in compliance with legal requirements, while Section 79(3) clearly defines the measures that can be taken to remedy any irregularities identified during these inspections. In its appeal, the fourth defendant did not dispute that it had been aware of the situation at the disputed branch school since the final judgment in the previous lawsuit. According to the case records, the fourth defendant repeatedly urged the second defendant to prioritise compliance with the requirement of equal treatment in district-level equal opportunity action plans and to propose the necessary restructuring measures. The fourth defendant sent letters to the second defendant on 25 July 2013 and again on 13 December 2014, seeking a resolution of the unlawful situation, but these actions did not yield the desired results. After experiencing the ineffectiveness of these warnings, the fourth defendant should have exercised the powers granted to it under Section 79(3) of the Public Education Act to ensure the elimination of the unlawful situation.

The fourth defendant's argument that restructuring under Section 83 of the Public Education Act could not proceed due to the absence of a proposal from the second defendant was unfounded.

According to Section 1 of Government Decree No. 202/2012 (VII.27.), the institution-maintaining centre operates under the authority of the minister responsible for education. Therefore, beyond its powers under Section 79 of the Public Education Act, the fourth defendant had additional means to enforce compliance by the second defendant.

The fact that unlawful segregation at the disputed school remains ongoing clearly demonstrates

that the fourth defendant did not adequately exercise its powers and that the measures it implemented were ineffective in eliminating the unlawful situation.

Overall, the appellate court established that the first, third, and fourth defendants—the third defendant between 25 November 2010 and 31 December 2012, and the first and fourth defendants from 1 January 2013 onwards—violated the requirement of equal treatment by maintaining the unlawful segregation of Roma students at the present ... Branch School. The specific acts and omissions of the defendants that contributed to the maintenance of unlawful segregation are detailed in the reasoning of the judgment. Therefore, the appellate court, within the scope of the appeal, clarified the first-instance judgment concerning the findings made under Section 84(1)(a) of the 1959 Civil Code.

The appellate court found merit in the plaintiff's appeal to the extent that it challenged the first-instance court's dismissal of the claim for eliminating the unlawful situation.

Under Section 84(1)(d) of the 1959 Civil Code, a person whose personal rights have been violated may demand—depending on the circumstances—that the unlawful situation be eliminated or that the pre-violation status be restored, either by the violator themselves or at their expense.

Article XXVIII(7) of the Fundamental Law guarantees the right to legal remedy, which, according to Constitutional Court case law (e.g., Decisions 23/1998 (VI.9.), 50/2003 (XI.5.), and 3/2007 (II.13.)), European Union obligations (Article 15 of the Racial Equality Directive), and Court of Justice of the European Union (CJEU) case law, means that individuals must have access to a legal remedy that is sufficiently effective, capable of providing real redress, and able to eliminate the consequences of the violation. In the CJEU's decision in ... Case C-54/07, the court imposed an obligation on Member States to implement measures that ensure an effective, proportionate, and dissuasive judicial remedy as required by Article 15 of the Racial Equality Directive. Moreover, in ... Case C-81/12, the CJEU clarified that when a situation falls within the scope of an EU directive, national courts must interpret national law as far as possible in light of the wording and purpose of the directive to achieve its objectives.

In the previous lawsuit, the Curia (Supreme Court) dismissed the plaintiff's claim for eliminating the unlawful situation, reasoning that the claim lacked the necessary specificity. The Kúria emphasised that ordering the elimination of an unlawful situation necessarily entails an enforceable obligation, which must be clear and executable to meet procedural requirements. However, the Curia also stated that the mere fact that the violation occurred within a public law context rather than a private law relationship did not automatically justify dismissing a claim for eliminating the violation. If a claim is properly formulated, the court may order the defendant to eliminate the unlawful situation, regardless of the public law nature of the case.

The Curia's decision upheld the lower courts' order requiring the defendant to cease the violation, noting that, depending on the circumstances—particularly the nature of the violation—an order to cease the violation could, in itself, serve as an enforceable remedial measure. Nevertheless, the Curia highlighted that both prohibitory and cessation orders serve to guide the parties toward compliance after the violation has been established.

Based on the final judgment in the previous lawsuit, both the third defendant, as the former maintainer of the disputed branch school, and the other defendants, who assumed responsibilities in public education following the legislative changes effective from 1 January

2013, should have been fully aware of the existence of the unlawful segregation and their obligation to eliminate it. However, despite the time that has elapsed since 2010, no measures have been taken to eliminate the unlawful situation. This means that the actors in national public education have not only failed to comply with the final court decision but have also violated their obligations under the Equal Treatment Act and the National Public Education Act.

The plaintiff's claim, which was amended and refined multiple times based on the evidentiary proceedings, identified the closure of the disputed branch school as an essential measure to remedy the unlawful segregation, along with the implementation of specific actions outlined in the desegregation plan prepared by expert Sz..

According to the "Framework for a Desegregation Program to Eliminate Unlawful Segregation", two fundamental paradigms exist for implementing desegregation. However, in this case, the so-called "opening paradigm" was not applicable. This paradigm seeks to make the segregated school more attractive to parents from higher socio-economic backgrounds and the majority society. However, this approach was deemed unfeasible for the disputed branch school, as it was classified as a "ghetto school" that had become severely stigmatized. The local middle class would not be attracted to the school, regardless of any intervention, and the oversized nature of the ... public education system—where the number of primary school places significantly exceeds the number of students—further hinders this approach.

Therefore, the only viable solution to eliminate the segregation confirmed by the final judgment was to implement a desegregation program based on the closure of the institution. The desegregation plan proposed two possible methods: Immediate closure, which would require the rapid relocation of all students to other schools. Phased closure, whereby first-grade admissions would be discontinued, leading to the gradual elimination of segregation.

The appellate court concluded that, without proper preparation, the immediate closure of the school and the swift relocation of all students would not only impact the students, parents, and teachers of the branch school but would also cause disruptions for students, teachers, and parents in other schools across the city. By contrast, a phased closure would initially only require the placement of approximately twenty students, which, given the available school places, would not present an insurmountable challenge for the defendants. Additionally, the appellate court recognised that students who had already started their education at the disputed branch school—particularly those in upper grades—could face unexpected difficulties when transitioning to a new school, even with the necessary support programs. Testimony from Witness 5 confirmed that encouraging older students to engage in learning is particularly difficult, and the plaintiff and the author of the desegregation plan highlighted that in schools similar to the disputed one, teachers tend to have lower expectations for students compared to other institutions. This could further hinder the integration of upper-grade students. However, this does not mean that students in upper grades and their parents must be forced to continue attending a segregated school. In fact, as positive experiences with integration become evident, families would have the option to voluntarily transfer to other schools. Similarly, a phased closure does not prevent public education authorities from making an earlier decision to close the school entirely.

Considering these factors, the appellate court prohibited the second defendant, as the maintainer of the disputed branch institution (under Section 4(1) of Act CLXXXVIII of 2012 on the State Takeover of Certain Municipal Public Education Institutions), and the fourth defendant, as the authority responsible for restructuring, closure, modification of core educational tasks, and

transfer of maintenance rights under Section 77(1)(k) of the Public Education Act, from initiating first-grade classes at the disputed branch school from the 2017/2018 academic year onwards.

As a necessary consequence, the first defendant is obligated to take the court's decision into account when defining school district boundaries and to exercise its authority under Section 50(6) of the Public Education Act and Section 24 of EMMI Decree No. 20/2012 (VIII.31.) in a manner that ensures that students who can no longer enrol in the disputed branch school from the next academic year are provided with alternative school placements. In setting the deadline for compliance with the obligations related to the establishment of new school districts, the appellate court also considered the deadlines set out in Section 24(1) of the EMMI Decree.

The case records indicate that desegregation, followed by integration, can only be successful if adequate preparation and a transitional period are provided. This requires the development of a comprehensive desegregation action plan. The action plan must define the following elements: a communication strategy, tasks related to the preparation of teaching staff at receiving schools, decisions on student mentoring, designation of Roma pedagogical assistants, who would help with accompanying students to school, minimizing absenteeism, liaising with families, managing conflicts, defining specific steps to ensure the academic and social inclusion of students and the preparation of parents, organising transportation for students to the receiving schools. The court of second instance found that without a desegregation action plan, integration would be unfeasible, or its potential negative effects could outweigh its benefits (rigid integration). Consequently, it ordered the second defendant, as the maintainer of the institution affected by unlawful segregation, to develop a desegregation action plan with the involvement of an expert in equal opportunities in public education and to make it public. However, the elimination of segregation is not merely an educational-organisational issue but also necessitates addressing local social problems and managing conflicts. Therefore, considering the obligations set out in Section 31 of the Equal Treatment Act and in points 8), 8a), and 16) of Section 13(1) of Act CLXXXIX of 2011 on Local Governments of Hungary, the court of second instance also obliged the third defendant, along with the second defendant, to develop the desegregation action plan. In setting deadlines, the court of second instance took into account that, according to the action plan submitted in the proceedings, the implementation phase must commence approximately six months before the relocation of students, ensuring adequate preparation time for students, their parents, and teachers.

However, the court of second instance did not specify the mandatory substantive elements of the desegregation action plan. This is because decisions regarding the specific measures necessary for the successful execution of integration can only be made with knowledge of local conditions. Thus, the national public education stakeholders and the local government must determine how to inform the students and parents of the institution concerned and the receiving institutions, how to prepare teachers, what kind of support system should be established, whether school bus services are necessary, or whether other means of facilitating transportation would suffice. Defining the specific measures required to remedy the unlawful situation—including incorporating elements to prevent further segregation—falls within the obligations and responsibilities of the second and third defendants, considering that the court may only rule on legal matters and is not competent to resolve social issues.

The court of second instance found it unnecessary to initiate a preliminary ruling procedure before the Court of Justice of the European Union. It determined that the measures ordered under Section 84(1)(d) of the 1959 Civil Code are suitable for ensuring an effective remedy as

required under Article 15 of the Racial Equality Directive.

In view of the above, the court of second instance partially modified the first-instance judgment in the appealed part pursuant to Section 253(2) of the Code of Civil Procedure. It clarified the provisions concerning the declaration of the violation against the first, third, and fourth defendants and ordered the defendants to remedy the violation as stipulated in the operative part of the judgment.

With the decision of the court of second instance, the claimant was predominantly successful in both the first-instance and appeal proceedings. Therefore, under Section 78(1) of the Code of Civil Procedure, the defendants were ordered to pay the claimant the combined legal costs of the first and second instances, consisting of attorney's fees. The court of second instance determined the amount based on Section 3(3), (5), and (6) of Decree No. 32/2003 (VIII.22.) of the Ministry of Justice, also considering the extensive preparation and significant time investment required by the claimant's legal representative. Since the defendants were granted personal exemption from court fees, the appellate court fees were to be borne by the state under Section 4(1) of Act XCIII of 1990 on Duties and Section 14 of Decree No. 6/1986 (VI.26.) of the Ministry of Justice on the application of cost exemption.

Pécs, 13 October 2016

Dr. Szentpéterné Dr. Bán Erzsébet, Presiding Judge, Dr. Kutasi Tünde, Judge-Rapporteur, Dr. Imre Zita, Judge