Metropolitan Court of Budapest
...P..../2015/84.

The Metropolitan Court of Budapest

represented by Dr. Adél Kegye, lawyer (**lawyer's title)**
name of applicant (**applicant's address**.) **applicant**

represented by Dr. Ágnes Gulyás, lawyer (**defendant's address)**
name of defendant (**defendant's address**.) **against defendant I. r.**

in an action for **breach of the principle of equal treatment,** has decided as follows

J u d g m e n t

The Court finds that the defendant has infringed the requirement of equal treatment of pupils belonging to the Gypsy ethnic minority in the primary schools at the following address by maintaining and maintaining the segregation of Gypsy children from non-Gypsy children at school level from the 2003/2004 school year onwards.

1) in the Primary School of **School 1,** located at the **address of School 1,** as it is now known, from 27 January 2004 to 31 August 2012;

2) School 2, located at the **address of School 2**, currently known as **School 2** High School and Elementary School, from 27 January 2004 to 31 August 2012;

3) at the **address of School No. 3,** now known as **School No. 3** Primary School, from 27 January 2004 onwards;

4) at the **School** No. **4,** located at the **address of School** No. **4**, currently known as **School No. 4** Primary School, Vocational School and Technical College, from 1 September 2013 onwards;

5) **School No. 5 under its** current name of **School No. 5** Primary School and Secondary School from 27 January 2004 onwards;

6) in the Primary School of School 6, under **its** current name of School **6,** from 27 January 2004 onwards;

7) at **School 7 under its** current name, **School 7,** from 27 January 2004 onwards;

8) in the School No. **8** Primary and Vocational School under the **title of School No. 8** from 27 January 2004 until its closure on 30 June 2012;

9) at the School No. **9, under its** current name of **School No. 9** Primary School, from 1 September 2013 onwards;

10) at the **School 10** Elementary School, located at **School 10,** from January 27, 2004, until its

termination on August 11, 2011;

11) in School **11, under its** current name of **School 11** Day School, from 1 September 2014 onwards;

12) at the **School 12** Primary School and Primary Art School, located at **School 12, from** 1 September 2013 onwards;

13) at the **School of 13, under its** present name of **School of 13** Primary School, from 27 January 2004 onwards;

14) in the **School 14** Elementary School under the **title of School 14** from January 27, 2004 until its termination on August 31, 2009;

15) at the **School** No. **15,** now known as **School No. 15** Primary School, from 27 January 2004 onwards;

16) in the Primary School of School No **16,** currently known as **School No 16, with** effect from 1 September 2013,

17) at **School 17,** which operated under the **title of School 17,** from 27 January 2004 until its closure on 17 July 2006;

18) **School 18,** which operated under the **title of School 18** from 27 January 2004 until its closure on 31 July 2012;

19) in the **School 19** Primary School, which operated under the **title of School 19** from 27 January 2004 until its closure on 31 July 2012;

20) on the premises of School No. 20, which operated under the **address of School No. 20** from 27 January 2004 until its closure on 17 October 2016;

21) in the **School 21** Primary School, which operated under the **title of School 21** from 27 January 2004 until its closure on 31 August 2009;

22) **School 22,** which operated under the **title of School 22,** from 27 January 2004 until its closure on 1 July 2011;

23) in the Arany János Elementary School of the **School 23 under its** current name of School 23, from 1 September 2013 onwards;

24) **School 24** Elementary School and College, which operated under the **title of School 24** from January 27, 2004 until its termination on August 1, 2007;

25) in **School No. 25,** which operated under the **title of School No. 25** from 27 January 2004 until its closure on 1 August 2007;

26) at the **School No. 26, under its** current name of **School No. 26** Primary School, from 1 September 2014 onwards;

27) the **School 27** Primary School and Special School 27, which operated under the **title of School 27** from 27 January 2004 until its closure on 31 July 2007;

28) under the **title of School No. 28**, last known as Elementary School, Basic Art Education and Pedagogical - Vocational Service Institution, Unified Pedagogical Specialist Service from 27 January 2004 until its termination on 29 June 2012,

The defendant is ordered to instruct the public authorities with responsibility for the schools listed below not to start the first grade in the schools listed below, starting from the school year following the date on which the judgment becomes final.

1) at the **address of School 3**, currently known as **School 3** Primary School;

2) School No. **4**, located at the **address of School No. 4**, currently known as **School No. 4** Elementary, Vocational and Technical School;

3) School No. **5 under its** current name of **School No. 5** Primary and Secondary School;

4) in the Primary School under **the address of School 6**, now known as **School 6;**

5) School **7 under its** current name of **School 7**;

6) at the School No. **9**, currently known as **School No. 9** Primary School;

7) the **School 11** Day School, operating under the **title of School 11,** as it is currently known;

8) at the School 12 Primary School and Primary Art School, located at **School 12;**

9) in the Primary School under the **address of School No. 13**, now known as **School No. 13;**

10) in the Primary School under the **address of School** No. **15**, currently known as **School No. 15;**

11) in the Primary School under the present name of School No. **16, located at School No. 16;**

12) in the Arany János Elementary School of the School 23 under **the** current name of School **23;**

13) in the Primary School under the current name of **School 26, located at School No. 26.**

The Court orders the defendant to instruct the competent governmental authorities to establish the schooling district boundaries for **Municipality 2**, **Municipality 3**, Municipality **4**, Municipality **5**, Municipality **6**, Municipality **7**, **Municipality 8**, Municipality **9**, Municipality **10** and **Municipality 11** with regard to the above provision prohibiting first grade schooling.

The Court orders the defendant to bring the infringement to an end by instructing the public administration bodies exercising the rights of the maintainers of the schools and under their

control to draw up, with the assistance of an expert on equal opportunities in public education, a desegregation action plan for the integration of pupils from the school districts of the schools listed below, within three months of the judgment becoming final, and to publish it on its website.

1) located at the **address of School 3**, currently known as **School 3** Primary School;

2) School No **4**, located at the **address of School No 4**, currently known as **School No 4** Primary, Vocational and Technical School;

3) **School No. 5,** operating under its current name of **School No. 5** Primary and Secondary School;

4) **School No 6**, currently known as **School No 6** Primary School;

5) **School No 7**, currently known as **School No 7** Primary School and Primary Art Education Institution;

6) School No. **9**, currently known as **School No. 9** Primary School;

7) School 11, operating under the **title of School 11,** now known as **School 11** Day School;

8) School 12 Primary School and Primary Art School located at the **address of School 12;**

9) **School No. 13**, currently known as **School No. 13** Primary School;

10) **School** No. **15**, currently known as **School No. 15** Primary School;

11) School No. **16**, currently known as **School No. 16** Primary School;

12) the Arany János Elementary School of the **School 23 under the address of School 23**, as it is currently known.

13) School No. **26**, currently known as **School No. 26** Primary School.

Orders the defendant to monitor the implementation of the desegregation action plans and to publish its findings on its website for five years.

Orders the defendant to amend its "Criteria for official controls in relation to the requirement of equal treatment", to publish it on its website and to instruct the government agencies to carry out the controls on the basis of the amended criteria, as follows:

"Ethnic data processing based on perception for the purpose of investigating unlawful segregation in public education

The number and proportion of pupils in schools, school buildings and classrooms who are perceived or believed to be of Gypsy ethnicity can be determined by perception. For this perception, data should be collected from school principals, the elected or informal leader of

the local Gypsy community, public hearings in the Gypsy settlement, and school documents such as the local pedagogical programme, the equal opportunities situation analysis in public education, and estimates of the ethnicity ratio provided by the school in the national competence survey.

The following data from the elected or informal leaders of the local Gypsy community and from the participants of the public hearing in the Gypsy settlement are required to be collected and recorded in the minutes of the so-called weighted classification criteria:

1. locally known gypsy surnames: .....
2.the proportion of Roma children with multiple disadvantages: ..... %
3. the names of the streets (from and to house numbers, if necessary) belonging to the gypsy settlement or the areas inhabited by gypsies are known locally: .....
4. locally known gypsy first names: .....

An estimate of the number of Roma pupils per class should then be made on the basis of the school's pupil register, together with the elected or informal leader of the local Roma community, and should be refined during the on-site visit with him/her. For the purposes of the estimate, a gypsy shall be presumed to be a pupil who meets at least two of the criteria according to the weighted classification criteria.

The data must be recorded in the tabular form shown in the model below and signed by all (official) persons providing the data. The resulting spreadsheet must be handled by the investigating body in accordance with the rules on records management.

class symbol	building address	Number of pupils in class	number of Roma pupils estimated by the headmaster	number of Roma pupils estimated by the FNÖ/Gypsy community	estimated number of Roma pupils in school documents	Estimated number of Roma pupils in a competency test
1.a.	The building					
1.b.	Building B					
2.a.	The building					
2.b.	Building B					
etc.	etc.					
total	The building					
total	Building B					

The testing regime:
Step 1: Design of the survey programme for the monitoring of sociologically segregated primary schools/maintainers.
Step 2: Preliminary orientation of the settlement.
Step 3: Contact with the local Roma national self-government and public hearing.
Step 4: Contacting the primary schools of the municipality and asking them to make a declaration in order to determine the proportion of Roma pupils in the school.
Step 5: Identify the segregated school(s).
Step 6: Conduct a site visit to the school likely to be segregated.
Step 7: Declaration by the maintainer of the reasons for segregation.

Step 8: A decision on desegregation, specifying the precise way and timetable for desegregation.

The Court orders the defendant to pay within 15 days a fine of HUF 50,000,000 (fifty million) in the public interest, to be used for monitoring the implementation of the desegregation programmes by NGOs for a period of five years following the launch of the programmes.

The defendant is ordered to pay to the applicant within 15 days HUF 2,500,000.00 (two million five hundred thousand) + HUF 675,000.00 (six hundred and seventy-five thousand) VAT, totalling HUF 3,175,000.00 (three million one hundred and seventy-five thousand) as legal fees.

The HUF 1.500.000,- (one million five hundred thousand) procedural fee shall be borne by the Hungarian State.

An appeal against the judgment must be lodged in three copies with the Metropolitan Court of Appeal within 15 days of service of the judgment, and must be submitted to the Metropolitan Court of Justice.

In the event of an appeal before the Metropolitan Court of Appeal, legal representation is mandatory.
Before the expiry of the time limit for appeals, the parties may request that the appeal be heard by the court of appeal out of court.

If the appeal concerns only the amount of the costs of the proceedings, the time-limit for their payment or the payment of costs advanced by the State, or if the appeal is directed only against the grounds of the judgment, either party may request that the appeal be heard by the court of appeal.

R E A S O N I N G

Person 1 and **Person 2** In 2005, a list of segregated Gypsy primary schools was drawn up. They published the results of their research in a paper entitled **Person 1** and **Person 2**, 2005: **title of paper**, 2005 Higher Education Research Institute, Budapest, which already from its introduction shows that the authors used research from the years preceding the publication (the year 2000) to identify the primary schools that were teaching Roma pupils in segregated and inefficient ways. The study also recommended urgent government intervention.
The authors' research was carried out at the behest of the defendant (its predecessor), precisely in order to provide a basis for effective government action.
The study included specific, quantified and percentage data for 44 schools with a proportion of Roma children above 80 or 50 per cent. The study also explained that school segregation of Roma children is on the rise. The study also showed that educational segregation is associated with significantly lower standards of material conditions, pedagogical work and pedagogical services. They stressed that in schools and classes with a mixed social composition, children learn as much from each other as from teachers. Segregation excludes this possibility because of the homogeneous composition. The study also revealed that, with a few exceptions, the school authorities of the time not only did not abolish Roma-majority schools, but maintained them with unrealistically low pupil numbers.
The defendant's back office, the Education Office, has collected ethnic data, and its own reports

partly support the ongoing segregation in the schools involved in the lawsuit. It has become apparent that long-standing ethnic segregation is taking place in the schools concerned by the lawsuit in several ways. In the context of the so-called metropolitan segregation, it is typical that the school, despite the fact that it could solve the problem of the proportionate distribution of Roma children in classes or between several schools, does not even make use of this possibility. It is also a circumstance that creates and reinforces segregation when school district boundaries are set in order to segregate Roma children within schools. Another method of segregating Roma children within schools is to teach them in a segregated way, with a different curriculum (e.g. with reduced requirements), on the grounds of their integration and equal opportunities. It should be noted that it is generally known to the inhabitants of the municipalities and localities which schools are classified as 'Gypsy schools' and which are not. In many cases, the state or previously the municipality maintains a Roma school even if it is not operating economically, as the proportion of children of Roma origin in the total number of children of school age is a minority, so that a school with a lower number of pupils that is specifically reserved for them is not operating at full capacity. A further circumstance, implicitly addressed by the defendant, is that a larger proportion of the socially middle-class non-Roma population explicitly avoids schools with a high proportion of Roma children, thereby increasing segregation. This phenomenon can be explained by the right to free school choice, but it is also a major obstacle to desegregation.
The results of studies also show that the material and staffing conditions of segregated schools are worse than those of other educational institutions, if only because of the weakness of the schools' advocacy due to the lack of motivation and turnover of teachers and educators.
Separating children of Roma origin from their peers in school is a practice that violates the principle of equal treatment, as it results in a person or group being treated less favourably than other persons or groups in comparable situations, on the basis of certain criteria.
This disadvantage is reflected above all in the persistently and significantly lower quality of the education provided, which then becomes a barrier to students' further education and training opportunities. This is a serious obstacle to the successful integration of people of Roma origin into society, a factor which reproduces a life of unemployment and extreme poverty.

The applicant is an NGO that can bring a public interest litigation claiming the enforcement of a right of personality for breach of the requirement of equal treatment.

The defendant is an "apex body" of the public administration which, by virtue of its powers, directly and indirectly exercises a decisive management and control activity in relation to the institutions operating in the field of education and public education.

The plaintiff had already been involved in advocacy activities on behalf of segregated Roma children prior to the lawsuit. He noticed that in a very large number of primary schools Roma pupils are taught in a permanently segregated way, and under poorer than average staff and material conditions, on the basis of educational methods and programmes which do not help the social integration of children of Roma origin.
The action in the public interest was brought on the basis of the applicant's recognition that, on the basis of their civil initiatives, a complex situation involving all related sectors and a nationally uniform situation, which would achieve integrated education for Roma children on an equal basis with others, could not be achieved out of court without the involvement of all the relevant stakeholders.

In its application, as amended several times, the applicant sought a declaration that the

defendant had infringed Articles 92, 93 and 95/A(9) of Act LXXIX of 1993 on Public Education (Kot.), Articles 77(1) and (2)(k), 79(1)-(3), 83 of Act CXC of 2011 on National Public Education (Nkt.) and 27 July 2012 on the Klebelsberg Centre (Klebelsberg Központ).(KLIK Regulation), and § 76. §-In the elementary schools at the addresses listed below, and in the closed institutions until the date of the closure of the institution, the unlawful segregation of Roma children from non-Roma children at school level has been maintained since the 2003/2004 school year, in violation of Article 10(2) of Act CXVV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Ebktv):
1) in the Primary School of **School 1,** located at the **address of School 1,** as it is now known, from 27 January 2004 to 31 August 2012;

2) School 2, located at the **address of School 2**, currently known as **School 2** High School and Elementary School, from 27 January 2004 to 31 August 2012;

3) at the **address of School No. 3,** now known as **School No. 3** Primary School, from 27 January 2004 onwards;

4) at the **School** No. **4,** located at the **address of School** No. **4**, currently known as **School No. 4** Primary School, Vocational School and Technical College, from 1 September 2013 onwards;

5) **School No. 5 under its** current name of **School No. 5** Primary School and Secondary School from 27 January 2004 onwards;

6) in the Primary School of School 6, under **its** current name of School **6,** from 27 January 2004 onwards;

7) at **School 7 under its** current name, **School 7,** from 27 January 2004 onwards;

8) in the School No. **8** Primary and Vocational School under the **title of School No. 8** from 27 January 2004 until its closure on 30 June 2012;

9) at the School No. **9, under its** current name of **School No. 9** Primary School, from 1 September 2013 onwards;

10) at the **School 10** Elementary School, located at **School 10,** from January 27, 2004, until its termination on August 11, 2011;

11) in School **11, under its** current name of **School 11** Day School, from 1 September 2014 onwards;

12) at the **School 12** Primary School and Primary Art School, located at **School 12, from** 1 September 2013 onwards;

13) at the **School 13, under its** current name of **School 13** Primary School, from 27 January 2004 onwards;

14) in the **School 14** Elementary School under the **title of School 14** from January 27, 2004 until its termination on August 31, 2009;

15) at the **School** No. **15,** now known as **School No. 15** Primary School, from 27 January 2004

onwards;

16) in the Primary School of School No **16,** currently known as **School No 16, with** effect from 1 September 2013,

17) at **School 17,** which operated under the **title of School 17,** from 27 January 2004 until its closure on 17 July 2006;

18) **School 18,** which operated under the **title of School 18** from 27 January 2004 until its closure on 31 July 2012;

19) in the **School 19** Primary School, which operated under the **title of School 19** from 27 January 2004 until its closure on 31 July 2012;

20) on the premises of School No. 20, which operated under the **address of School No. 20** from 27 January 2004 until its closure on 17 October 2016;

21) in the **School 21** Primary School, which operated under the **title of School 21** from 27 January 2004 until its closure on 31 August 2009;

22) **School 22,** which operated under the **title of School 22,** from 27 January 2004 until its closure on 1 July 2011;

23) in the Arany János Elementary School of the **School 23 under its** current name of School 23, from 1 September 2013 onwards;

24) **School 24** Elementary School and College, which operated under the **title of School 24** from January 27, 2004 until its termination on August 1, 2007;

25) in **School No. 25,** which operated under the **title of School No. 25** from 27 January 2004 until its closure on 1 August 2007;

26) at the **School No. 26, under its** current name of **School No. 26** Primary School, from 1 September 2014 onwards;

27) the **School 27** Primary School and Special School 27, which operated under the **title of School 27** from 27 January 2004 until its closure on 31 July 2007;

28) under the **title of School No. 28**, last known as Elementary School, Basic Art Education and Pedagogical - Vocational Service Institution, Unified Pedagogical Specialist Service from 27 January 2004 until its termination on 29 June 2012.

He asked the court to apply the Civil Code. order the defendant, pursuant to Article 84(1)(d) of the Civil Code, to instruct the public administration bodies under its authority with responsibility for maintenance not to start a new first grade in the schools listed below, with effect from the school year following the date on which the judgment becomes final:

1) at the **address of School 3**, currently known as **School 3** Primary School;

2) School No. **4**, located at the **address of School No. 4**, currently known as **School No. 4**

Elementary, Vocational and Technical School;

3) School No. **5 under its** current name of **School No. 5** Primary and Secondary School;

4) in the Primary School under **the address of School 6**, now known as **School 6;**

5) School **7 under its** current name of **School 7**;

6) at the School No. **9**, currently known as **School No. 9** Primary School;

7) the **School 11** Day School, operating under the **title of School 11,** as it is currently known;

8) at the School 12 Primary School and Primary Art School, located at **School 12;**

9) in the Primary School under the **address of School No. 13**, now known as **School No. 13;**

10) in the Primary School under the **address of School** No. **15**, currently known as **School No. 15;**

11) in the Primary School under the present name of School No. **16, located at School No. 16;**

12) in the Arany János Elementary School of the School 23 under **the** current name of School **23;**

13) in the Primary School under the current name of **School 26, located at School No. 26.**

He requested that the court order the defendant to comply with the provisions of the Civil Code. 84(1)(d) of the Civil Code, to order the competent government authorities to set the school attendance boundaries of the following municipalities with regard to the injunction prohibiting the first class of the schools in the above-mentioned application (which seeks to prohibit the start of the class):

municipality 2, municipality **3**, municipality **4**, municipality **5**, municipality **6**, **municipality 7**, municipality **8**, **municipality 9**, **municipality 10** and **municipality 11**.

He requested that the court order the defendant to bring the infringement under the Civil Code. 84(1)(d) of the Civil Code by instructing the public administration bodies under its competent authority, within three months of the delivery of the final judgment, to draw up, with the assistance of an expert in equal opportunities in public education, a desegregation plan for the integration of pupils from the school districts of the schools listed below and to publish it on its website:

1) located at the **address of School 3**, currently known as **School 3** Primary School;

2) School No **4**, located at the **address of School No 4**, currently known as **School No 4** Primary, Vocational and Technical School;

3) **School No. 5,** operating under its current name of **School No. 5** Primary and Secondary School;

4) **School No 6**, currently known as **School No 6** Primary School;

5) **School No 7**, currently known as **School No 7** Primary School and Primary Art Education Institution;

6) School No. **9**, currently known as **School No. 9** Primary School;

7) School 11, operating under the **title of School 11,** now known as **School 11** Day School;

8) School 12 Primary School and Primary Art School located at the **address of School 12;**

9) **School No. 13**, currently known as **School No. 13** Primary School;

10) **School** No. **15**, currently known as **School No. 15** Primary School;

11) School No. **16**, currently known as **School No. 16** Primary School;

12) the Arany János Elementary School of the **School 23 under the address of School 23**, as it is currently known.

13) School No. **26**, currently known as **School No. 26** Primary School.

He requested that the court order the defendant to comply with the provisions of the Civil Code. 84(1)(d) of the Civil Code to monitor the implementation of the desegregation action plans and to publish the findings of the monitoring on its website for a period of five years.

He requested that the court order the defendant to comply with the provisions of the Civil Code. Pursuant to Article 84(1)(b) of the Civil Code, order the defendant to amend its guidelines on 'Criteria for the official control of the requirement of equal treatment', to publish them on its website and to instruct the government agencies to carry out the inspections on the basis of the amended criteria:

"Ethnic data processing based on perception for the purpose of investigating unlawful segregation in public education

The number and proportion of pupils in schools, school buildings and classrooms who are perceived or believed to be of Gypsy ethnicity can be determined by perception. For this perception, data should be collected from school principals, the elected or informal leader of the local Gypsy community, public hearings in the Gypsy settlement, and school documents such as the local pedagogical programme, the equal opportunities situation analysis in public education, and estimates of the ethnicity ratio provided by the school in the national competence survey.

The following data from the elected or informal leaders of the local Gypsy community and from the participants of the public hearing in the Gypsy settlement are required to be collected and recorded in the minutes of the so-called weighted classification criteria:

1. locally known gypsy surnames: .....
2.the proportion of Roma children with multiple disadvantages: ..... %
3. the names of the streets (from and to house numbers, if necessary) belonging to the

gypsy settlement or the areas inhabited by gypsies are known locally: .....
4. locally known gypsy first names: .....

An estimate of the number of Roma pupils per class should then be made on the basis of the school's pupil register, together with the elected or informal leader of the local Roma community, and should be refined during the on-site visit with him/her. For the purposes of the estimate, a gypsy shall be presumed to be a pupil who meets at least two of the criteria according to the weighted classification criteria.

The data must be recorded in the tabular form shown in the model below and signed by all (official) persons providing the data. The resulting spreadsheet must be handled by the investigating body in accordance with the rules on records management.

class symbol	building address	number of class	number of Roma pupils estimated by the headmaster	number of Roma pupils estimated by the FNÖ/Gypsy community	estimated number of Roma pupils in school documents	Estimated number of Roma pupils in a competency test
1.a.	The building					
1.b.	Building B					
2.a.	The building					
2.b.	Building B					
etc.	etc.					
total	The building					
total	Building B					

The testing regime:
Step 1: Design of the survey programme for the monitoring of sociologically segregated primary schools/maintainers.
Step 2: Preliminary orientation of the settlement.
Step 3: Contact with the local Roma national self-government and public hearing.
Step 4: Contacting the primary schools of the municipality and asking them to make a declaration in order to determine the proportion of Roma pupils in the school.
Step 5: Identify the segregated school(s).
Step 6: Conduct a site visit to the school likely to be segregated.
Step 7: Declaration by the maintainer of the reasons for segregation.
Step 8: A decision on desegregation, specifying the precise way and timetable for desegregation.

He asked the court to order the defendant to comply with the provisions of the Civil Code. 84(2) of the Civil Code and that the defendant should use it for the purpose of combating the segregation of Roma children in schools.
He also referred to Article 20(1)(c) and Article 27 of the Ebktv.

On the merits, the applicant submitted that the defendant is entitled and obliged to exercise its powers of control over the educational institutions and, following the nationalisation of the educational institutions, its powers of management of the public institutions. He pointed out that the defendant had and still has official knowledge of the estimated proportion of Roma pupils in the schools of the several municipalities where the action is brought, even during the

period prior to the period covered by the present action. The defendant also had and has official knowledge of the proportion of Roma pupils in other primary schools in a comparable situation to primary schools which are considered to be segregated. However, despite this knowledge, the defendant has not enforced the right to equal treatment of Roma children, i.e. it has not taken steps to ensure integrated education. In this regard, it criticised the defendant for not exercising its powers of control and giving instructions. The defendant is entitled to give indirect instructions before the nationalisation of the institutions and direct instructions afterwards in relation to the public institutions under its control. However, it has always had direct powers of control and direction over all the public education establishments. Thus, for the entire period under examination and in respect of all the institutions, the defendant is liable for maintaining discrimination.
He requested that it be taken into account that the defendant could not excuse itself from liability because it had not proved that segregation was not proven in the absence of ethnic data collection. Nor could the defendant exonerate itself from liability on the ground that the segregation it had also experienced was lawful, i.e. that an exception under Article 28(2) of the Ebktv was applicable.
He asked to take into account the court practice based on the judgment of the Curia Pfp.III.20.004/2016/4.
As a circumstance strengthening the defendant's liability, he requested that it be taken into account that after the nationalisation, the defendant did not take a decision on the reorganisation and closure of the segregated institutions, although it had direct powers to do so.
It explained that, as a result of its indirect power to issue control instructions, the defendant could at any time during the period under examination have instructed the public administration bodies with direct powers in the field of public education to carry out a specific task which it had defined. Nor did it exercise that power throughout the period under examination in relation to the change in the boundaries of the school enrolment districts.
Overall, the defendant, as a central state administrative body with professional and managerial powers throughout the period under investigation, continuously failed to eliminate the segregation of Roma children. It was also argued that the defendant should have taken active action against spontaneous segregation in the light of the legal provisions.
He requested that the court order the defendant to pay the costs incurred in the proceedings, within which he submitted a detailed account of the legal costs incurred by his legal representation and specified them in the gross amount of HUF 1,813,750.
The applicant is exempted from personal fees.

The defendant's counterclaim sought the dismissal of the action and an order that the applicant pay the costs.
He submitted that the defendant had only indirect competence in relation to the applications. These indirect powers cannot constitute a basis for the application of the legal consequences of the infringement in civil proceedings for the purposes of establishing the defendant's liability and its objective sanctions. Pursuant to Article 79 of Act CXC of 2011 on National Public Education (Nktv.), the Minister responsible for education performs certain of his or her tasks in the field of public education through the Office and the regionally competent school district centre. In its view, that wording is of particular importance in that the defendant does not and cannot exercise its functions in the field of public education independently.
He also argued that the amended action infringed the constitutional requirement of separation of powers, since the judgment upholding the action would require the execution of certain acts in the relations between the administrative organs of the State which are part of the executive branch. Moreover, it found the provisions of the judgment under appeal unenforceable in

practice.
The defendant also argued that in order to protect the right to privacy of personal data, the defendant does not keep ethnic origin records on anyone. However, in the absence of such a register, it is only on the basis of the registers of children with multiple disadvantages or disadvantaged children that the defendant can take action against the violation of the requirement of equal treatment, i.e. against discrimination. He asked that it be taken into account that a large proportion of disadvantaged children are also children of Roma origin, so that the conduct of the defendant in favour of disadvantaged children is also conduct in favour of Roma children. At the same time, you yourself did not dispute that in the absence of an ethnic-based register, you have no official knowledge of segregation or discrimination on the grounds of belonging to a Roma community. He asked for this to be assessed in the context of his responsibility discharge.

The action is well founded.
The court in Pp. 163. §-In the course of the evidentiary proceedings conducted pursuant to Article 163(1) of the Hungarian Constitution, the court took into account the documents and records provided by the parties to the court, in particular the study of **person 1 - person** 2, the report of the **Commissioner of the Commissioner of the European Communities, person 3**, and the report of the Commissioner of Data Protection of **person 4** on the findings of the investigation on the processing of ethnic data, documents generated by the defendant's inspection activities, the disclosure of student records issued by the Department of Education, and the testimony of witnesses interviewed in the lawsuit, including in particular **Witness 1**, **Witness 2**, **Witness 3**, and **Witness 4.**

With respect to the period covered by the lawsuit, according to Article 70/A (1) of the former Constitution, the Republic of Hungary shall guarantee human and civil rights to all persons residing in its territory, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Pursuant to Article 70/F (1), the Republic of Hungary shall ensure the right to education for its citizens. According to paragraph (2), the Republic of Hungary shall realise this right by extending and universalising public education through free and compulsory primary education (...).
According to Article XI (1) of the Basic Law, which entered into force during the period covered by the lawsuit, every Hungarian citizen has the right to education. Paragraph (2) provides that Hungary shall ensure this right by extending and universalising public education, by providing free and compulsory basic (...) education. According to Article XV(2), Hungary shall ensure fundamental rights for all without distinction of any kind, such as race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or other status. According to paragraph 4, Hungary shall take specific measures to promote equal opportunities and social integration. Article XVI(1) provides that everyone has the right to such protection and care as is necessary for his or her proper physical, mental and moral development. Paragraph 2 states that parents have the right to choose the education to be given to their children.
Article 1 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Ebktv), which states that on the basis of the requirement of equal treatment, natural persons and groups of natural persons residing in Hungary (...) shall be treated with equal respect and care, with equal consideration of individual aspects, in accordance with the provisions of this Act. Pursuant to Section 2, the provisions on the requirement of equal treatment laid down in special legislation shall be applied in accordance with the provisions of this Act. According to

Article 4, the scope of the Act extends to local authorities and bodies exercising official authority.
On this basis, the defendant, as a body exercising official authority, is covered by the Ebktv.
Pursuant to Article 8 (b), (c) and (e) of the Equal Treatment Act, direct discrimination is deemed to be a provision which results in a person or group being treated less favourably than another person or group in a comparable situation because of their race, colour, nationality or ethnic origin.
According to § 9, indirect discrimination is deemed to be a provision which does not constitute direct discrimination and which appears to meet the requirement of equal treatment, if it places certain persons or groups of persons with the characteristics defined in § 8 in a significantly more disadvantaged position than that in which another person or group in a comparable position was, is or would be in.

Based on the **Person 1 - Person** 2 study, the defendant must also have been aware that the schools identified therein were segregating children on the basis of gypsy ethnicity (whether real or perceived).
The defendant must also have been aware that the level of segregation in the designated schools exceeded fifty percent. This means that the proportion of gypsy children in the public school in question exceeded fifty per cent of the total number of children in education. In some schools, this percentage exceeds eighty per cent of the total number of Roma children. The defendant did not dispute the findings of the **Person 1 to Person** 2 study, since the defendant (its predecessor) had based its desegregation policy on that study. The study was carried out under the auspices of and commissioned by the defendant, using the results of research carried out in previous years and all other relevant empirical and scientific knowledge.
For reasons of data protection and with regard to the provisions of Article 8 of the Equal Treatment Act, the defendant did not keep and does not keep an ethnic register of children attending public education, but at the same time it detected the disadvantaged or cumulatively disadvantaged situation of Roma children, the unequal opportunities manifested in education, or at least the signs of such. He specifically asked **Person 1** and **Person 2 to** carry out the task in order to get an idea of the existence, extent and extent of discrimination against Gypsy children.
In the course of the proceedings, the defendant, at the request of the court, but also at the request of the plaintiff and voluntarily, submitted the results of its audits carried out during the period under investigation and the methodological guidelines on which the audit was based.
In addition, at the request of the applicant, the education office also provided him with data, which included documents containing educational, educational and performance data on the number of Roma children in public education. The applicant attached these to the documents.
All the documents and records confirmed that the public education institutions identified and searched by the applicant have a percentage of children of Gypsy origin or presumed to be of Gypsy origin in their schools of more than fifty percent, which, in view of the high number of children, makes it clear that these children do not participate in integrated education, since the school ratios do not reflect the national ratio of Gypsy and non-Gypsy children in the age group. In other words, Roma children are over-represented in their schools. It also follows that their segregation from other pupils in schools with more than fifty per cent Roma pupils is inevitable.
The defendant did not contest the veracity of the data, but the conclusions that could be drawn from it, and sought to excuse the defendant's liability arising from the findings by prohibiting the keeping of records based on ethnic perception. Accordingly, the defendant, while upholding its constitutional obligation, is not in a position to obtain a true picture of the segregated education of gypsy children, which is a necessary obstacle to its action against it. He cannot draw up a desegregation plan or give instructions to that effect unless he is in a position to

assess the extent, manner and nature of segregation.
The audit results attached by the defendant showed that the institutions subject to the audit had not carried out any investigations of a kind that could have led to findings based on the criteria listed in Article 8 of the Ebktv. However, it should be emphasised that the methodology of the individual educational institutions and their maintainers, which was annexed to the defendant's audit, was used and that this methodology is inherently unsuitable for the detection of ethnic segregation.

On the basis of the above, it was established that the defendant was aware of the existence of an unlawful situation in the schools concerned at the time of the receipt of the plaintiff's application at the latest, but, according to the evidence, also from its experience in the previous period, and that this situation continues to exist.
The court notes that, even without any records, it is common knowledge in the environment of the schools in question that the schools concerned by the lawsuit teach predominantly Roma pupils in a way that can be directly observed by anyone. If the defendant has failed to carry out an inspection, i.e. to record the findings of fact by means of a simple visual inspection, this is for the defendant to bear. The defendant has always had the use of the colour of the skin, according to Article 8(c) of the Ebktv, and the first name and surname inferences already developed by the experts as the guiding criteria for the search for segregation.

The **1-person-2-person** study also explored ways in which segregation can be achieved when the design of schooling districts allows segregation to take place unhindered.
According to Act CXC of 2011 on National Public Education. Pursuant to Article 50 (6) of the Act on the compulsory education of the CCEC of 2011 on the national education act, primary schools are obliged to admit and accept pupils of compulsory school age who live in the district of the primary school. If there are several primary schools in the municipality, the district of each primary school must be determined in such a way as to establish an even proportion of disadvantaged children in the educational institutions.
The above-mentioned legislative provision also explicitly establishes the obligation to determine the schooling district in relation to the equal proportion of disadvantaged children and is also contained in Articles 79-81 of Act CXC of 2011 on the definition of certain central and regional tasks of the Minister of Education in the field of public education.
The defendant is obliged to proceed in accordance with the law, even without any specific comments. The defendant is obliged by virtue of its duty to detect ex officio if the establishment of a district boundary leads to segregation, i.e. if the area covered by the school district is predominantly inhabited by gypsies, and the district establishment does not ensure adequate proportions of integrated schooling of gypsy and nongypsy children. The defendant, acting in the exercise of its functions, is therefore under an obligation to monitor the design of each school district in accordance with the principle of desegregation.

On the basis of the above, the court found that the defendant's failure to carry out an assessment of the pupils' skin colour, nationality and ethnicity on the grounds of the protection of personal data had allowed indirect discrimination to take place.

In view of the period covered by the lawsuit and the fact of the continuous infringement, Article 75(1) of the Civil Code Act IV of 1959 (old Civil Code), which provides that everyone is obliged to respect the rights of the person, applies. These rights are protected by law. According to § 76, a violation of personal rights means in particular a violation of the requirement of equal treatment. Under Article 84(1), a person whose personal rights have been infringed may apply to the courts for a declaration of the infringement, an order that the defendant cease the

infringement and an order that the defendant remedy the situation.
In the light of the above, the applicant was entitled to seek a declaration of infringement against the defendant, since the defendant had failed to eliminate the segregation which it did not deny, in breach of its legal obligation, by failing to exercise its management, its right to give instructions and its control activities.

Witness 1 confirmed in his testimony the actual implementation of the study of the type **1 person** 2 attached by the applicant for the period from the school year 2003/2004 to 2008. Before this period, the witness was specifically engaged as a Ministerial Commissioner in the implementation of the desegregation project. In his testimony, he stated that the defendant had sought to desegregate the school in light of the findings of the **Person 1 - Person** 2 Study. He explained in detail the nature of the measures taken in this connection and their effectiveness or ineffectiveness.
Person 1, one of the authors of the study already described, was also heard as a witness. In his testimony, he confirmed the findings of the study, which were specific to the individual schools involved in the lawsuit.
Witness **3,** who was questioned by the court, was able to give testimony based on personal experience of the **municipality**, which also supported the segregation practices and the practical consequences of segregation as shown in the documents.
Witness Witness **4** 2014. Since 1 July 2014, as a government commissioner, he has been responsible for monitoring the statutory operation of public education institutions, including the establishment of school districts, and said that there had been no changes in such areas during his operation, and that he had not received any such initiative from the schools under investigation, and confirmed, that no ethnic data collection is carried out in relation to school enrolment, and that the data on disadvantaged pupils (which at most only refer to the proportion of pupils of Roma origin) are generated on the basis of voluntary and conscious applications by the persons concerned and therefore do not provide a real basis for assessing the infringement in question. In the course of its work, it was not aware of any notarial initiative that would have indicated the emergence of segregation. He also stated that the investigation of disadvantaged status could not be linked to an ethnic investigation, which confirmed that during the period under examination there was no indirect investigation of ethnic (nationality) discrimination by the defendant.

The court stresses that the requirement of equal treatment under the National Public Education Act must be applied throughout the law.
In view of this, the defendant's claim that it acted in accordance with the law cannot be accepted. If the unlawful situation is shown to have remained unchanged, it can be concluded that the first respondent did not take effective measures to end the segregated education of the gypsy child.

The defendant's claim that it cannot keep records of the origin of pupils is unfounded.
Where several fundamental rights conflict in a given situation, it is possible to consider which fundamental right needs to be enforced in order to resolve the (unlawful) situation. In the context of segregation, the right to privacy of the individual pupil, the right to free choice of school (Article 16 of the Fundamental Law, Article 50(6) of the National Public Education Act) and the requirement of equal treatment as a personal right may be in conflict.
The right to free choice of school is not infringed in the case of the reorganisation or closure of a school per se, because all the schools concerned by the case can be changed to another school and the defendant is able to ensure that all pupils of compulsory school age have access to an appropriate school of their choice in the context of its desegregation measures. The right of free

choice of school is not an absolute right and can be exercised within limits. The limit is the desegregation requirement, i.e. the prohibition of discrimination.
The Constitutional Court's decision No 7/2014 also adopted the practice of the European Court of Human Rights, which is also contained in Article I (3) of the Fundamental Law, according to which in case of conflict of fundamental rights, an interest test must be applied, including the necessity-proportionality test. In other words, it must be weighed up which fundamental right is disproportionately more prejudicial, which fundamental right is of greater public interest in its enforcement. In making this determination, the court took into account the consequences of persistently segregated education, as demonstrated by the applicant's documents and studies. It is readily apparent that the segregation of students segregated on the basis of Roma origin, Roma affiliation (real or perceived), from non-Roma students of the peer group reinforces discrimination on the basis of skin colour and the stigma that this creates, both for the individual and the group.
The court also did not find it necessary to prove that the sociologically known tendencies related to race, nationality, ethnicity, wealth and cultural background lead to the disadvantage of students who are taught in segregated classes. This is, moreover, confirmed by the results of the competency tests, which the defendant has attached to the lawsuit. The reduction of the quality or quantity of the material taught to groups of children, the ineffectiveness of the catching-up of the groups thus segregated, leads to the destruction of the equal opportunities of the children thus treated. This is clear from the secondary school leaving figures produced by the applicant and not refuted by the defendant. It is a logical conclusion that a segregated group with a lower standard of education is less likely to be able to enter a secondary educational establishment and to continue their secondary education. This was confirmed by the testimony of **Witness 3.** The witness has personal experience of the educational catch-up of segregated pupils **in the municipality**, the failures and extreme difficulties of successful catch-up.

Within the meaning of Section 10(2) of the Act on the Protection of Individuals with regard to the Protection of Personal Data, a provision which, on the basis of the characteristics defined in Section 8, distinguishes certain persons or a group of persons from persons or a group of persons in a comparable situation to them, without being expressly permitted by law, constitutes unlawful segregation.
Pursuant to Section 27 (3) a) of the Equal Treatment Act, the unlawful segregation of a person or group in an educational institution or in a class, category or group established within it constitutes a violation of the requirement of equal treatment. However, it is not a violation of the requirement of equal treatment if, at the initiative of the parents and at their voluntary choice, religious or national education is organised in a public educational institution, the purpose or curriculum of which justifies the creation of separate classes or groups, provided that the participants in the education do not suffer any disadvantage as a result, and provided that the education meets the requirements prescribed by the State or supported by the State (Section 28(2)(a) of the Equal Treatment Act).
The defendant has not shown that in schools where nationality education is organised, the justification for the creation of separate classes or groups is based on the initiative and de facto voluntary choice of parents.
Nor has it been shown by the defendant that the participants in such education have suffered any disadvantage as a result, nor that the education meets the requirements approved, prescribed or subsidised by the State. Indeed, the evidence in the case showed that even in schools where gypsy children were also receiving national minority education, there was evidence of disadvantage to pupils who were segregated in this way. In the case of such schools and classes, both the competency tests and the data measuring the success of secondary school admissions indicated that the pupils received inadequate, reduced quantity and quality of education. This

was confirmed by the testimony of **Witness 1** and Witness **2, as** well as **Witness 3,** who unanimously reported that the teaching of Roma children in segregated schools was often deficient in terms of the use of appropriately qualified teachers, insufficient material resources and the lack of special methods. It was also confirmed that parents of the children concerned often contribute to this type of training without any real knowledge or information. Thus, their voluntary contribution is questionable, to say the least, when introducing national education.

The court also took into account the need for an effective, proportionate and dissuasive judicial remedy to redress this type of violation of rights, as interpreted in Article 15 of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive).
In this context, the defendant argued that the remedies sought by the applicant violate the legal principles of separation of powers, i.e. they require specific measures falling within the competence of the executive which the judiciary cannot decide or order in respect of the defendant in the present action.
In this context, the court took the view that if a central public administration is the legal subject of a civil action, the provisions of the Civil Code, in particular the rules on legal consequences, must also apply to such a defendant. Therefore, if the Civil Code. 84(1)(b) of the Civil Code, a person whose personal rights have been infringed may request an order to cease the infringement, or an order to remedy the situation under (d), the court must determine and determine the manner of doing so, taking into account the particularities of the case, in a manner which is proportionate to the need.
In the present case, the methodology of the defendant's audit, the guide to the conduct of the audit, the results of the audit, the study of the type **1** person-2 **person** attached to the plaintiff's application, which can be considered as professional material, as well as the data provided by the education authority in the light of the data of the competency test, all proved the inadequacy of the defendant's measures. The very fact that segregation persisted over a long period of time, and even increased, indicates that the instructions and decisions taken by the defendant are inadequate to put an end to the infringement and that its inspections are inadequate to detect it. Therefore, the court found that the plaintiff's specific request to prohibit the start of the first classes, to prepare a desegregation plan at the same time, and the modification requested by the plaintiff in relation to the control guidelines applied by the defendant, were well-founded.
In the latter, the court points out that the applicant had attached a data collection, obtained on the basis of the methodology it had proposed, which appeared to be suitable for a realistic mapping of the proportions of Roma children in public education. Inferring from its effectiveness, the court found that this guide could be suitable for a realistic exploration of the extent and nature of segregation. The court examined the elements of the amended guide point by point and found that they did not violate any law, but that the evidence showed that it was the most suitable for exploring the proportions of children in segregated education.
The Court also points out that the preparation of the desegregation plan gives the defendant public administration a high degree of autonomy, subject to a single limitation: the involvement of a specialist which the defendant would reasonably have used even without the court's decision. The court is officially aware that the defendant in the segregation case of the Primary School **No. 29, which is** also the plaintiff in the case, has engaged an expert, also accepted by the plaintiff foundation, to prepare a desegregation plan on the basis of a final decision. From this, the court concluded that the defendant voluntarily and at its own discretion was willing to develop the desegregation plan as requested by the plaintiff, based on the professional recommendations of the **expert, who was** also accepted by the plaintiff.
The provision for the closure of the first class in certain schools is closely linked to the

reorganisation of the school districts also imposed.

The court decision to cease and desist and to terminate the infringement thus constitutes a complex plan of action consisting of several interrelated elements, which together may be suitable for the application of the Civil Code. 84(1)(d) of the Covenant.

As to the defendant's argument that the civil law obligation of a public administration to cease and desist constituted a deprivation of executive power in the manner of ceasing the infringement, the court took the view that no civil action could be based on this principle to determine the actual concrete consequence of the infringement of a right relating to personality in the context of the claim for cessation of the infringement as a plaintiff's claim. This would lead to a situation in which the possibility of applying a legal consequence closely linked to the fact of the infringement would in fact become inapplicable to a public administration as a legal entity.
The court also considered it inappropriate to adopt a provision that would leave the defendant, who had failed to desegregate the area (for some 15 years of the period covered by the case), to seek an injunction by means of an "empty" or overly general obligation. It is precisely such a provision that would become an unenforceable provision, and the court found that the defendant was able to fulfil its legal obligation to desegregate education in the manner requested by the plaintiff, and that the court's decision was limited to the specific measures necessary and sufficient to remedy the infringement, leaving the defendant public administration with the power and authority to deal with all other regulatory issues that may arise.

The Court highlights the following with regard to the public interest fine requested by the applicant. Article 84(2) of the Civil Code provides that if the amount of damages awarded is not in proportion to the seriousness of the conduct for which the court is responsible, the court may also impose on the infringer a fine for a public interest purpose.
This rule refers back to the Civil Code. Article 84(1)(e) of the Civil Code, according to which a person whose personal rights have been infringed may claim damages under the rules of civil liability.
In the present case, given the nature of the action in the public interest, the applicant could not ask the court to order the defendant to pay damages. It is not the applicant who is the victim of the damage. There is therefore no damage on the part of the plaintiff which the defendant is liable to compensate. The defendant's unlawful conduct did not lead to any damage for the plaintiff in the present action, but the group represented by the plaintiff suffered very significant damage during the period under consideration. There is therefore injury, but not to the plaintiff, but to the group it represents. A fine in the public interest may compensate for part of this, provided that it benefits the group that suffered the wrongful conduct of the plaintiff under investigation.
The court found that the length of the period of segregation (a period of about fifteen years starting from the school year 2003/2004), the objective impossibility of compensating the pupils who had suffered from segregation during that period, the particularly large number of pupils affected and the negative social effects of segregation in general, all underlined the gravity of the defendant's unlawful conduct.
The court found the defendant's conduct in maintaining segregation to be imputable, since the defendant was aware of the existence of segregation. It was also aware of its illegality, disadvantages and consequences.
In the light of the above, the court found the fine to be justified.
The purpose of a public interest fine is to promote an objective of major importance to the community that can be understood in the context of the case.

In view of this, the court considered it appropriate that the fine in the public interest should be used by the defendant to monitor the implementation of the desegregation programmes by NGOs for a period of five years after the launch of the programmes. It is precisely the result of the present case, but also of other cases on similar issues, which shows that NGOs are specifically suited to detect the defendant's infringement and to enforce the disadvantaged group.
Therefore, the court determined the use of the public interest fine differently from the amended action, namely that it should be used by the NGO to monitor the implementation of the desegregation plan. The court leaves it to the discretion of the defendant as to which NGO to use the amount of the fine to support in this way. The court also found that the use of the fine for a public purpose of this nature was appropriate because it also constitutes a check on the defendant's conduct, which was found in the proceedings to constitute indirect discrimination within the meaning of Article 9 of the Equal Treatment Act, while apparently taking measures in accordance with the requirement of equal treatment. This apparently appropriate conduct consisted in the ordering of investigations and checks in accordance with the disadvantaged situation. The testimony of **Witness 4** confirmed, point by point, the operation of the model of the system managed by the defendant, which is incapable of detecting segregation: an operation which maintains school segregation on the basis of criteria which are inadequate to monitor the implementation of equal treatment, the elimination of which can be effectively monitored by external, civilian control.

According to the above, the defendant is obliged to bear the costs of the Pp. 78(1) of the lawsuit, the costs incurred by the plaintiff's legal representation and other litigation costs. The court determined this by taking into account the amount of the attorney's fees actually incurred, as indicated by the plaintiff, which, however, was significantly lower than the average hourly rate of attorney's fees known to the court and the high amount of the amount of the litigation, the social importance of the case and the corresponding degree of attorney's liability. In view of this, the court deviated from the actual attorney's fees specifically indicated by the plaintiff and determined the amount of attorney's fees to be paid in relation to the value of the subject-matter of the case at a higher amount pursuant to IM Regulation No. 32/2003 (VIII.22).
The registered fee for the proceedings, which is borne by the Hungarian State due to the defendant's exemption from paying the fee, was also a cost.

Budapest, 18 April 2018

. Schöck Beatrix s.k.
Judge