

The Kaposvár Regional Court

No 11.P.21.553/2013/70

Kaposvár Regional Court, in the lawsuit initiated by the plaintiff, represented by Dr. Adél Kegye, attorney-at-law (.....), residing at [plaintiff's address], against the first defendant, represented by Dr. Margit Kökény, legal counsel, residing at [first defendant's address], the second defendant, represented by Dr. Róbert Boda, attorney-at-law (.....), residing at [second defendant's address], the third defendant, represented by Dr. Attila Szijártó, attorney-at-law (.....), residing at [third defendant's address], and the fourth defendant, represented by Dr. Beáta Borovszki, legal counsel, residing at [fourth defendant's address], in a lawsuit concerning the violation of the requirement of equal treatment, delivered the following

j u d g m e n t:

The court establishes that the first defendant unlawfully segregated Roma students from other students of the city during the determination of the school district boundaries for the Street Branch School.

The court establishes that the second defendant, as the maintainer of the Street Branch Institution and the legal successor of the municipality's public education responsibilities from [date], committed an omission by failing to eliminate the ongoing unlawful situation at the school in question and maintaining the unlawful segregation of students based on ethnicity, socio-economic status, race, and skin colour from students attending other schools.

The court establishes that the third defendant, between [date] and [date], failed to terminate the unlawful segregation at the school in question, thereby sustaining the unlawful segregation of students based on their ethnic and socio-economic status, race, and skin color from those attending the main school and other branch schools.

The court establishes that the fourth defendant, from [date], failed to take all necessary measures to eliminate the unlawful segregation at the school in question, did not instruct the public

education authorities under its supervision to cease the unlawful segregation, and thus maintained the unlawful segregation of Roma students at the school in question.

The court partially upholds the plaintiff's claim and orders the first, second, and fourth defendants to cease the violation of rights.

The court dismisses the plaintiff's claim for the termination of the unlawful situation based on Section 84(1)(d) of the Civil Code.

The procedural costs incurred during the first-instance proceedings that were not covered remain the responsibility of the state.

The parties shall bear their own litigation costs.

An appeal against this judgment may be submitted in writing, in six copies, to the Budapest-Capital Regional Court within 15 days from the date of service, addressed to the Pécs Court of Appeal.

R e a s o n i n g:

The [County] Court, in its judgment No. [...], dated [...], established that the defendant, from the 2003/2004 academic year, unlawfully segregated students belonging to the Roma ethnic minority in an educational institution, currently the Street Branch School of Primary School, and discriminated against them by providing an education that resulted in a higher repetition rate, a higher dropout rate, more absences, lower results in the national competency assessments, and a lower rate of further education compared to regular curriculum primary schools maintained by the defendant. The court ordered the defendant to cease the violation of rights but dismissed the plaintiff's additional claims. The third defendant was the defendant in this lawsuit, as it concerned the period before [date], which was before the nationalization of schools.

Upon appeal, the [...] Court of Appeal, in its judgment No. [...], dated [...], partially modified the first-instance decision and confirmed that, since the 2003/2004 academic year, the unlawful segregation of Roma students in the Street Branch School of Primary School violated the requirement of equal treatment.

The court omitted the finding of indirect discrimination from the first-instance judgment.

In addition to ordering the cessation of the violation, the court also ordered the defendant to eliminate the unlawful segregation.

The Supreme Court of Hungary, as the review court, in its judgment No. [...], dated [...], partially annulled the final judgment, including the ruling on first-instance litigation costs, and upheld the first-instance judgment's dismissal of the claim seeking the elimination of the unlawful situation. Beyond this, it maintained the final judgment. It ruled that, under Section 10(2) of the Equal Treatment Act, unlawful segregation was established, as persons or groups of persons were segregated from comparable persons or groups without explicit legal authorization. It was established as a fact, irrespective of intent, that Roma students at the school in question were unlawfully segregated based on their characteristics defined in Section 8 of the Equal Treatment Act without explicit legal authorization. The court found that the defendant failed to fulfill its integration obligations, allowing and maintaining a situation that resulted in spontaneous segregation at the school. The Supreme Court pointed out that this omission constituted a breach of Section 7(2) of the Equal Treatment Act and Section 10(2), which established the defendant's liability.

Subsequently, the plaintiff filed a lawsuit with the Budapest-Capital Regional Court, claiming violations of Sections 76 and 84 of the Civil Code, as well as Sections 8(b), (c), (e), and (q) and Sections 10(2) and 27 of the Equal Treatment Act, alleging a breach of the requirement of equal treatment and seeking its legal consequences. In the statement of claim, the plaintiff argued that, despite the final judgment establishing the unlawful segregation at the Street Branch School, the defendants continued to maintain the segregation of Roma students at the school. In the three years since the final judgment, the number of students had steadily decreased, but the ethnic composition remained unchanged. The defendants took no steps to eliminate the unlawful situation despite the plaintiff's inquiries. Given that nationalization and the determination of school district boundaries had become the competence of the government office, the public law obstacles that had previously prevented the enforcement of the court-ordered legal consequences had been removed. Currently, the determination of school district boundaries falls within the administrative competence of governmental bodies rather than elected representatives. The plaintiff amended the statement of claim multiple times (No. 9, No.

30) and ultimately submitted the final and clarified statement of claim under serial number 45.

The Plaintiff's Claim:

Pursuant to Section 146(1) of the Code of Civil Procedure, the plaintiff modified its claim as follows (changes indicated in italics):

1. Establish that the first defendant, by determining the school district boundary of the Street Branch School (....., hereinafter "disputed branch school") in such a way that the majority of the area of the settlement, predominantly inhabited by Roma people, belonged to the disputed school, unlawfully segregated Roma students from the rest of the city's students;
2. Establish that the second defendant, as the maintainer of the Central Primary School (....) Street branch institution and as the legal successor of the Municipality's public education responsibilities from ..., by failing to eliminate the continuously existing unlawful situation in the disputed school, unlawfully segregated the students of the disputed school based on their ethnic and socio-economic status, race, and skin color from those attending the main school and other branch schools;
3. Establish that the third defendant, as the maintainer of the Central Primary School Street branch institution, between and, by failing to eliminate the unlawful situation in the disputed school, unlawfully segregated the students of the disputed school based on their ethnic and socio-economic status, race, and skin color from those attending the main school and other branch schools;
4. Establish that the fourth defendant, by failing to decide on the closure of the disputed branch school after and failing to instruct the competent educational authorities to identify and eliminate the unlawful segregation following the plaintiff's notification, maintained the unlawful segregation of Roma students at the disputed school. Furthermore, following the amendment of the Public Education Act, the fourth defendant failed to order the closure of the disputed branch school within its own competence;
5. Order the defendants to cease the violation by prohibiting the establishment of new first-grade classes at the disputed branch school and preventing further violations;
6. Order the defendants, under Section 84(1)(d) of the Civil Code, to eliminate the unlawful situation as follows:
 - 6.1. *The plaintiff's primary claim seeks that the court eliminates the violation by ordering the defendants to implement the modified desegregation plan annexed due to the nationalization,*

through the following measures:

- Order the second defendant to immediately prohibit the establishment of a new first-grade class at the Street Branch School upon receipt of the final judgment;*
- Order the second defendant to immediately prepare a record of students enrolled at the Street Branch School (including the number of school-age children per family and school preferences) upon receipt of the final judgment;*
- Order the second defendant to inform the legal representatives of the students at the disputed school about the desegregation process;*
- Order the second defendant to ensure the personnel and organizational conditions for desegregation, prepare receiving schools for integration, promote an inclusive attitude, and conduct conflict resolution training for students of the segregated school by May 31 following the final judgment;*
- Order the first defendant to redistribute the school district of the Street Branch School among other state schools in the city, designating receiving primary schools;*
- Order the second defendant to organize a school bus service for students from the Street Branch School to the designated receiving schools, immediately upon designation by the first defendant;*
- Order the second defendant to assess the mathematical and reading comprehension skills of students directly involved in the desegregation process (students of receiving schools and former students of the Street Branch School) by September 31 following the final judgment;*
- Order the second defendant to annually evaluate the academic performance and social integration of the affected students, including mathematical and reading comprehension skills, as well as their social relationships, using sociometric tools, and publish the results annually until the former students of the Street Branch School complete their primary education;*
- Order the second defendant to commence the professional training and sensitization of teachers at the receiving schools for the integration and education of students from the Street Branch School immediately upon receipt of the final judgment;*
- Order the second and third defendants to implement compensatory programs in the primary schools and kindergartens under their maintenance immediately upon receipt of the final judgment;*
- Order the second defendant to monitor the student composition of receiving schools*

annually to prevent the recurrence of segregation, examining how many students from the area are enrolled in primary schools maintained by the Municipality of Kaposvár.

6.2. Alternatively, the plaintiff requests that the court order the second and fourth defendants to close the Street Branch School by May 31 following the final judgment and integrate its students into primary schools under the second defendant's maintenance by September 1 following the final judgment. Additionally, the plaintiff requests that the court mandate the defendants to engage a public education equal opportunity expert to develop a desegregation plan within 30 days of the final judgment receipt.

6.3. As a third alternative, the plaintiff requests the cessation of the violation by ordering the second and fourth defendants to close the Street Branch School by May 31 following the final judgment and integrate its students into primary schools under the second defendant's maintenance by September 1 following the final judgment.

The plaintiff also submitted a request for **interim measures**, asking the court to prohibit the second defendant from establishing new first-grade classes from the 2014/2015 academic year and to order the first defendant to designate a primary school ensuring mandatory admission for first-grade students residing within the current school district of the Street Branch School.

The defendants requested the rejection of the interim measures.

The court (record No. 15), after obtaining detailed statements and requests from the parties, dismissed the plaintiff's request for interim measures in its ruling. The court established that the situation contested by the plaintiff had existed for a long time and that no circumstances had arisen posing an immediate risk of damage to anyone or creating a direct emergency. Therefore, the conditions set forth in Section 156(1) of the Code of Civil Procedure were not met. The court also determined that a decision on the request for interim measures, which was already part of the statement of claim, could only be made in a substantive ruling after the completion of the evidentiary process when all evidence submitted and referenced by both the plaintiff and the defendants would be available.

The Pécs Court of Appeal, in its ruling No. Pkf.III.20.207/2014/3, dated June 10, 2014, upheld the first-instance court's decision. It found the plaintiff's appeal unfounded, stating that for the request for interim measures to be justified, the plaintiff should have demonstrated that, since

the final judgment, the situation had essentially remained unchanged, but that a significant negative change had occurred before the submission of the statement of claim, or that such disadvantages were likely to arise, which would justify immediate legal protection in a case requiring extensive evidence regarding the means of eliminating segregation. The immediate transfer of newly enrolled students to other schools without preparation—given that no substantial measures had been taken for their reception and such measures were not expected within the two-month summer break before the school year—would likely impose greater disadvantages on the affected students and their environment than the advantages sought through the measure.

Under serial number 45, the plaintiff proposed initiating a preliminary ruling procedure under Section 150/A(2) of the Code of Civil Procedure. The request related to the interpretation of Article 15 of Council Directive 2000/43/EC of June 29, 2000, concerning the principle of equal treatment irrespective of racial or ethnic origin. The defendants requested the dismissal of the request for a preliminary ruling procedure.

The Budapest-Capital Regional Court, in its ruling No. 53, rejected the plaintiff's request for a preliminary ruling procedure. The court essentially reasoned that in lawsuits concerning the violation of personal rights, it could not only establish the violation but also determine the means of terminating the violation if the plaintiff's claim met the requirements set forth in Section 121 of the Code of Civil Procedure. Neither case law nor legislation precluded a decision on the means of termination, provided that the claim for cessation was specific and enforceable. The same stance was adopted by the Supreme Court in the previous case when, in its reasoning for judgment No. Pfv.IV.21.568/2010/5 (pages 11 and 12), it stated that the claim was assessed based on the applicable Civil Code and procedural laws. The court found no need for the interpretation of EU law by the European Court of Justice. The Supreme Court considered it indisputable that, under Section 84(1) of the Civil Code, the court must provide effective, dissuasive, and proportionate remedies for the elimination of segregation, as required by Article 15 of the cited directive. However, this requires a realistic, enforceable, and executable condemnation claim in personal rights litigation. The Supreme Court also found that ordering a preliminary ruling procedure was unnecessary.

As part of its claim, the plaintiff cited the reversed burden of proof rules set forth in Section 19 of the Equal Treatment Act, arguing that the plaintiff only needed to demonstrate the likelihood

of segregation, while the burden was on the defendants to prove that the alleged circumstances did not exist. The plaintiff bore the burden of proving that students of the Street Branch School possessed the protected characteristics under Section 8 of the Equal Treatment Act and that they were physically separated from the city's other students.

The first defendant's liability was based on maintaining the unlawful situation, considering that until January 1, 2013, local governments determined school district boundaries, while from that date onward, it became the responsibility of government offices. It was of fundamental importance to designate not one but multiple integrated educational institutions for students from ethnically segregated areas to ensure the proportional distribution of Roma students.

The second defendant's liability was requested to be established from January 1, 2013, onwards, as it had taken no measures to eliminate the unlawful situation, and its failure to act was continuous.

The third defendant's liability was claimed to have existed until December 31, 2012, since the nationalization process followed thereafter. From July 1, 2009, the third defendant ceased operating schools within the association and continued to manage them as branch institutions of the Central Primary School. Consequently, a new institutional maintenance association was formed. The Supreme Court, in its ruling, established the third defendant's liability and ordered the cessation of the violation. Its liability lay in the failure to implement desegregation.

Regarding the fourth defendant, the plaintiff argued that the closure of the branch school was essential. Under Section 84(7) of the Public Education Act, effective from May 10, 2013, the Minister responsible for education decides on the closure of institutions maintained by the second defendant. The fourth defendant's liability lay in its failure to act.

The plaintiff identified the necessary measures to eliminate the unlawful situation based on the desegregation plan developed by a public education expert and updated in October 2014. Since January 1, 2013, institutions and their governing bodies under state maintenance could be compelled to take specific actions, including the closure of educational institutions. The plaintiff contended that closing the school was the only prerequisite for successful desegregation. Given the drastically declining number of school-age children, such a measure appeared necessary regardless.

The legal basis of the claim was Article XVI(1) of the Fundamental Law, which guarantees the right of children to appropriate physical, intellectual, and moral development, ensuring the child's best interests. Read in conjunction with the right to education and the prohibition of discrimination, this right guarantees children the right to non-discriminatory education.

The National Public Education Act of 2011 (Act CXC) establishes at a fundamental level that the entire public education system is determined by the principle of equal treatment (Section 1(2)). The content of the equal treatment requirement and the scope of those obligated to comply with it are defined by the Equal Treatment Act of 2003 (Act CXX). According to Section 10(2) of the Equal Treatment Act, unlawful segregation constitutes any provision that, based on the characteristics defined in Section 8, segregates individuals or groups of individuals from others in a comparable situation without explicit legal authorization.

According to Section 24(1) of Decree 20/2012 (VIII.31.) of the Ministry of Human Resources, government offices must obtain the opinions of municipal governments by the last day of November each year when determining school district boundaries. These opinions must include data from municipal records on the number of disadvantaged students attending primary schools, broken down by institution and branch institution.

Pursuant to Section 4(1) of Act CLXXXVIII of 2012, concerning the state maintenance of certain municipal public education institutions, municipal-maintained public education institutions were transferred to state maintenance as of January 1, 2013. The state exercises its institutional maintenance rights through the second defendant.

According to Section 7(1)(d) of Government Decree 212/2012 (VII.27.), the KIMC (Klebensberg Institution Maintenance Centre) submits proposals to the Minister responsible for education regarding decisions on the establishment, reorganization, closure, or modification of the scope of activities of public education institutions and participates in the preparation of such decisions. Thus, the responsibilities previously within the purview of municipal maintenance authorities have, since January 1, 2013, been divided among the President of the KIMC, its regional school districts, and the heads of public education institutions. In its claim, the plaintiff also referred to the international legal obligations binding on the Hungarian State and cited a decision of the European Court of Human Rights. It pointed out that in the first Segregation

Case, the Supreme Court found the defendant liable for maintaining segregation due to its failure to fulfill its integration obligations, tolerating and sustaining the situation that had arisen at the disputed school through spontaneous segregation.

Under serial number 64, the plaintiff requested the cessation of the ongoing unlawful segregation. The primary issue in the case, according to the plaintiff, is determining who is responsible for eliminating the segregation of Roma children in schools and how this can be achieved. The plaintiff maintained that closing the school and integrating the children into other schools in the city is the only effective way to end segregation. It emphasized that primary school district boundaries should be drawn to ensure a balanced distribution of disadvantaged children across educational institutions. The plaintiff argued that disproportionate school district allocations based on socio-economic status (e.g., eligibility for regular child protection benefits) violate the equal treatment requirement, as do those based on other protected characteristics listed in Section 8 of the Equal Treatment Act.

Defendants' Counterclaims:

The first defendant requested the dismissal of the claim and sought reimbursement of legal costs. It argued that, in determining school district boundaries, it complied with the requirements regarding the proportion of disadvantaged students as set out in Section 50(6) of the Equal Treatment Act and Section 24(2) of the Ministry of Human Resources Decree. The first defendant stated that it is not authorized to collect or use data on nationality or ethnicity when establishing school district boundaries. It also emphasized that preparing and submitting the public education development plan falls under the jurisdiction of the Education Office, with government offices playing only an assisting role. The first defendant asserted that it had taken no action violating the principle of equal treatment. For the 2014/2015 academic year, it modified the school district boundaries, transferring two streets from the disputed branch school's district to another institution (... Street, ... Street). The defendant also pointed out that, of the 126 students currently attending the school, 77 came from the designated school district, while 49 enrolled under the right to free school choice. It stated that it lacked the authority to update the attached desegregation plan or implement measures related to the personnel and organizational requirements for desegregation, which fall under the responsibility of the school principal and the institution's maintainer. The first defendant also noted that regulations regarding disadvantaged and multiply disadvantaged students changed as of September 1, 2013.

Under the current legal framework, determining whether a child is disadvantaged or multiply disadvantaged requires a voluntary parental declaration. While the law introduced additional conditions affecting the proportion of students classified as such, the primary determinant remains the willingness of parents to submit such declarations. The first defendant pointed out that several public education institutions in the county had a high proportion of disadvantaged and multiply disadvantaged students. It further emphasized that targeted and specific proposals had been made to support disadvantaged groups, going beyond those included in the development plans of most counties nationwide.

The second defendant also requested the dismissal of the claim and sought reimbursement of legal costs. It argued that parents enrolled their children in the Street Branch School under the right to free school choice, as provided in Section 72(2) of the National Public Education Act of 2011 (Act CXC). According to the second defendant, students at the school do not receive less favorable treatment than those at the main school or other branch schools, as defined under Section 8 of the Equal Treatment Act. The second defendant became an institutional maintainer center as of January 1, 2013. It also emphasized that, in addition to the principle of free school choice, the local community unanimously supports the school's maintenance, primarily for geographical reasons. The defendant deemed the plaintiff's claim unenforceable, arguing that several measures sought—including parental notifications, student preparation, and teacher sensitization—cannot be enforced through judicial execution due to their voluntary nature. It also pointed out that, despite changes in district boundaries, many parents already choose schools other than their designated district school. At the Street Branch School, 91 students come from within the designated school district, while 52 students come from outside the district. The defendant also cited Section 28(2) of the Equal Treatment Act, which states that the principle of equal treatment is not violated if a public education institution, at the parents' initiative and voluntary choice, organizes additional ethnic or religious education that justifies the formation of separate classes or groups. The defendant noted that Roma – Gypsy nationality education has also been organized at the school.

The third defendant also requested the dismissal of the claim and sought reimbursement of legal costs. It denied that it had unlawfully segregated students based on ethnicity, socio-economic status, race, or skin color between and, arguing that schools are not permitted to keep records of students' ethnic backgrounds. It noted that district boundaries had been adjusted

multiple times during the period in question, with several streets reassigned to the enrollment districts of neighboring branch schools. Regarding school bus services, the third defendant stated that it had no legal obligation to provide them. It also argued that the plaintiff's proposed redistribution of students would create inequality among students by placing them at significantly different distances from their schools, which could not be remedied even by school bus services. The defendant claimed that closing the school and redistributing its students would be practically unfeasible through judicial means. Furthermore, it argued that forcing students to leave their local school and attend another based on their ethnicity contradicts laws prohibiting racial and ethnic discrimination. It submitted statements from 69 parents, dated January 30, 2014, indicating their preference for their children to continue attending the disputed branch school, affecting 113 students in total. Additionally, the defendant submitted statements from parents of children attending the Central Kindergarten regarding their preferred future schools and a declaration from the City Roma Nationality Self-Government expressing its commitment to maintaining and operating the Street Branch School. The statement, dated January 28, 2014, emphasized that the school provides Roma nationality education, Beás language instruction, and optimal accessibility for students, without imposing additional financial or time burdens on parents. It also noted that the school's teachers had been accepted and respected by the parent community and that the school ensured effective, fair, and successful education for their children.

The fourth defendant also requested the dismissal of the claim and sought reimbursement of legal costs. It argued that the plaintiff's dual claim—seeking both the cessation and prohibition of the violation and the elimination of the unlawful situation through updating the desegregation plan and closing the Street Branch School—was unfeasible. Citing the Supreme Court's review ruling No. Pfv.IV.21.568/2010/5, the fourth defendant warned that closing the school would have unforeseeable legal and social consequences. It claimed that the proposed remedies were unenforceable and could not be executed through judicial means. According to the fourth defendant, the plaintiff's claim did not specify a realistic and enforceable method for eliminating segregation, making it impossible to implement. The defendant acknowledged that it had not decided to close the school but argued that the mere failure to do so does not constitute unlawful conduct. It further stated that neither the National Public Education Act of 2011 (Act CXC) nor Government Decree 229/2012 (VIII.28.) on the implementation of the National Public Education Act explicitly or implicitly sets out the conditions under which a school must be closed. The closure of an educational institution falls within the Minister's competence and

is exercised based on the KIMC's recommendations. The fourth defendant pointed out that it had repeatedly informed and urged the second defendant to ensure that education policies comply with the principle of equal treatment, to incorporate measures into district-level equal opportunity plans, and to propose necessary reorganizations.

The plaintiff's claim is partially substantiated.

Article 70/A(1) of the Constitution prohibits discrimination based on "race, color, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status."

According to Section 76 of the Civil Code, a violation of personal rights particularly includes breaches of the requirement of equal treatment, violations of freedom of conscience, unlawful restrictions on personal liberty, violations of physical integrity and health, as well as infringements on honor and human dignity.

Under Section 84(1) of the Civil Code, a person whose personal rights have been violated may, depending on the circumstances, assert the following civil claims:

- a) request a judicial declaration of the violation;
- b) demand cessation of the violation and prohibition of further infringements;
- d) require the elimination of the harmful situation at the violator's expense, including destruction or removal of the infringing object.

Pursuant to the amended Section 76 of the Civil Code, as modified by Section 37 of the Equal Treatment Act, a violation of personal rights includes breaches of the requirement of equal treatment. Section 10(2) of the Equal Treatment Act defines unlawful segregation as conduct that, based on characteristics specified in Section 8, separates individuals or groups from those in a comparable situation without explicit legal authorization. The Act precludes general justification under Section 7(2) for such segregation, except where expressly permitted by law, such as under Section 28.

According to Section 27(1) of the Equal Treatment Act, the requirement of equal treatment applies to all forms of education, training, and instruction:

- a) conducted according to state-approved or prescribed requirements; or

b) receiving direct normative state funding.

Section 27(3) further specifies that a violation of equal treatment particularly includes the

a) unlawful segregation of individuals or groups within an educational institution or in a designated division, class, or group within such an institution.

Section 10(2) of the Equal Treatment Act refers back to Section 8, which states that direct discrimination occurs when an individual or group receives less favorable treatment based on:

b) racial origin;

c) skin color;

e) nationality;

q) socio-economic status, compared to other comparable individuals or groups.

Pursuant to Article XXVIII of the Fundamental Law, courts must interpret legal texts in line with their objectives and the Fundamental Law. The interpretation of the law must presume that they serve a reasonable, moral, and economically sound purpose aligned with the public good. Accordingly, the court must assess the provisions of the Equal Treatment Act on unlawful segregation in alignment with its objective and the Fundamental Law, presuming they serve a reasonable and ethical purpose for the public good. Section 10(2) of the Equal Treatment Act defines unlawful segregation as a regulation that separates individuals or groups based on characteristics outlined in Section 8, without explicit legal authorization.

Under Section 19(1) of the Equal Treatment Act, which governs the rules of evidence, in proceedings related to alleged violations of equal treatment, the burden of proof lies with the injured party or the entity entitled to enforce public interest claims to demonstrate that they suffered harm or faced an imminent threat due to the violation. Additionally, they must show that they possessed a protected characteristic under Section 8 at the time of the violation.

Unlawful segregation inherently constitutes harm; therefore, its likelihood alone is sufficient to establish the violation. Following such demonstration, under Section 19(2) of the Equal Treatment Act, the burden shifts to the defendants to prove that the circumstances asserted by the injured party did not exist or that they upheld the requirement of equal treatment or were not obligated to do so within the given legal relationship.

The court heard witness testimony from Witness 6, the director general of 12 district schools, who confirmed awareness of the Supreme Court's previous final judgment and subsequent

decisions but did not characterize them as desegregation measures. The witness could not confirm whether any measures had been taken since the ruling to eliminate the unlawful situation. It was noted that boundary changes had been minimal and that, in the witness's opinion, addressing spontaneous segregation was a societal issue. The witness stated that nationality education was provided at the Street Branch School but emphasized parents' right to free school choice. According to data, as of January 15, 2015, of the 142 students enrolled at the Street Branch School, one was classified as disadvantaged and 11 as multiply disadvantaged. However, records indicated that the highest number of multiply disadvantaged students was at the Branch School (21 out of 293 students), followed by the Branch School (18 out of 322 students), and the Street Branch School (16 out of 142 students). The court noted that, in percentage terms, the Branch School had the highest concentration of multiply disadvantaged students.

The court also heard Witness 2, the headmaster of the disputed school, who had held this position for 15 years and had worked at the school for 35 years. The witness stated that teachers were doing everything possible for the students and that both students and parents were satisfied. However, the witness acknowledged that academic performance was below average. The witness further confirmed that not all district-assigned children attended the school. It was emphasized that nationality education had been continuously provided at the school for a long time.

Based on the evidence presented, including testimony from school principals and the defendants' submissions, it remains established that the segregated education at the Branch School is unlawful and that local public education authorities (defendants) have not rectified the unlawful situation.

The measures taken by the defendants did not initiate the expected desegregation process. The third defendant committed an omission-based violation from to, while the first, second, and fourth defendants committed the same from January 1, 2013, onwards.

The plaintiff did not request a determination regarding the quality of education at the branch school, and thus, the court did not conduct an evidentiary examination on this matter. However, it was undisputed that the school's performance, in certain metrics, was weaker compared to other schools in the city and national averages. Therefore, the court established that unlawful

segregation occurred, as the first defendant only partially modified the school district boundaries from January 1, 2013, and the third defendant only did so until January 2013, thereby allowing segregation to persist at the branch school.

The second and fourth defendants, by failing to eliminate the unlawful situation at the school from January 1, 2013, and by maintaining segregation, contributed to preserving the original unlawful condition.

The defendants violated the requirement of equal treatment through unlawful segregation. It was established as a fact—irrespective of the reasons or circumstances of its development—that Roma students at the disputed school were unlawfully segregated from comparable students attending other schools in the city based on their characteristics as defined in Section 8 of the Equal Treatment Act, without explicit legal authorization.

The defendants failed to fulfil their integration obligations and tolerated the continuation of a situation that resulted from spontaneous segregation at the disputed school, despite a final judicial decision having already established the existence of segregation and ordered the cessation of the violation against the previous defendant.

The defendants cited Section 28(2)(a) of the Equal Treatment Act, which states that the principle of equal treatment is not violated if, at the initiative and voluntary choice of parents, an educational institution organizes nationality education that justifies the formation of separate groups, provided that participants do not suffer any disadvantages as a result.

Article 14 of the United Nations Convention on the Rights of the Child, promulgated by Act XLIV of 1991, affirms the right of children to freedom of thought and religion and acknowledges parents' rights to guide their children's legal representation in accordance with their maturity.

Article XXVI(2) of the Fundamental Law states that parents have the right to choose the education provided to their children. Section 72(2) of the National Public Education Act grants parents the freedom to choose kindergartens, schools, and dormitories based on their children's abilities, interests, religious and ideological beliefs, and nationality affiliation. This provision ensures parents' right to select the most suitable institution for their child's education.

Parents were not and are not currently barred from enrolling their children in other schools or

kindergartens in the city if they believe that a different institution offers better conditions for their child's education. The right to free school choice must be respected, and the prohibition of unlawful segregation cannot override the rights of parents who believe that the given school provides the best education for their children. Additionally, the school's accessibility is a significant factor.

The defendants' arguments for exoneration were insufficient. Therefore, under Sections 84(1)(a) and (b) of the Civil Code, the court established the violation and ordered the first, second, and fourth defendants to cease the unlawful conduct. An order to cease an infringement, without specifying concrete measures, is generally not an enforceable judgment. However, in this case, given the circumstances and the nature of the violation, an order to cease the infringement may, in some instances, constitute an enforceable ruling regarding the specific manner of cessation. Such an injunction typically guides the parties towards lawful behavior after the violation. (Supreme Court ruling Pfv.IV.21.568/2010/5, page 10.)

The court, however, rejected the plaintiff's request under Section 84(1)(d) of the Civil Code concerning the specific manner of eliminating the unlawful condition. The objective sanction provided by Section 84(1)(d) may be enforced within its limitations by any plaintiff, including the public-interest plaintiff in this case. Accordingly, a properly submitted claim under this provision may lead to a court order requiring the violator to eliminate the harmful condition, regardless of any underlying public law relationship.

Nevertheless, the court found that the plaintiff's detailed claim did not provide a basis for granting this request.

In its ruling Pfv.IV.21.568/2010/5 (page 11), the Supreme Court noted that generally, a court order requiring the redistribution of children to other schools or the closure of the school, as a potential consequence, cannot be issued. Without specific determinations, such an order would be unenforceable and could have unforeseeable consequences.

In this case, beyond rigid integration measures, the plaintiff also sought the closure of the branch school and the integration of students into other schools based on a desegregation plan supported by a private expert.

Pursuant to Section 220(1) of the Code of Civil Procedure, the written judgment must include:

d) The operative part of the judgment and its reasoning, etc. The operative part of the judgment concisely states the court's decision regarding the claims and counterclaims. The formulation of the operative part must adhere to the requirement of clarity. It must be drafted in a clear, comprehensible, and unequivocal manner to avoid difficulties in enforcement. Special attention should be given to ensuring that the operative part does not cause complications during execution. It must always be worded in such a way that it serves as a basis for enforcement. However, conciseness should not come at the expense of clarity. The provisions must follow a logical sequence, and distinct provisions should be separated accordingly.

Under Section 13(1) of the Act on Judicial Execution, an enforceable document can only be issued if the enforceable decision:

- a) Contains an obligation or condemnation;
- b) Is final or provisionally enforceable and the deadline for performance has expired.

The Act on Judicial Execution sets numerous requirements for enforceable decisions serving as the basis for an enforceable document. The operative part of the judgment must be formulated in such a way that it does not cause difficulties during enforcement. A judgment does not meet this requirement if the operative part can only be understood by referring to the reasoning section. Consequently, the reasoning section cannot serve as a basis for ordering enforcement. The operative part must be clear and unequivocal to avoid difficulties during enforcement.

The plaintiff submitted an expert opinion updated in October 2014 and the court also heard the expert as a witness during the hearing.

The expert stated that the segregation definitively established at the Branch School could only be eradicated through a desegregation program based on the closure of the institution. The expert outlined a step-by-step process for implementing desegregation.

Key stakeholders, including school principals, civil society actors, and Roma leaders, must be involved in the planning process. A crucial element in implementation is organizing communication. This includes preparing the teaching community for desegregation, both through sensitivity training to shape their attitudes toward integrated education—such as through IMR training—and through methodological support to help them apply innovative

pedagogical methods to assist academically struggling students. A central issue in implementation is coordinating the transfer and reception of students. The implementation phase must begin at least six months before student relocation. In the absence of a political decision, the expert stated that a court ruling could generate the initiation of the program. However, the expert also noted that segregation tendencies were emerging in multiple schools beyond the branch institution. Finalizing the desegregation action plan requires discussion and approval by members of the Equal Opportunities Roundtable.

The school district boundaries must be modified. The expert analyzed in detail how the faculty at the receiving schools should be prepared, as well as how both the transferring and receiving students should be prepared. The expert emphasized that unless political decision-makers support the desegregation program and ensure that it is adequately structured, rigid integration would occur, which might not necessarily have a positive impact on the children's lives. The expert explained that the study primarily defined the framework, while specific measures should be determined locally with the agreement of local professionals. The expert further highlighted that rigid integration alone would be insufficient, as it would not prevent resegregation. The expert's position was that the transformation of the entire school system in Kaposvár would be the only truly effective and lasting solution.

Within the legal framework described above and based on the statutory requirements, the court determined that the plaintiff's claim regarding the elimination of the harmful situation could not be included in the operative part of the judgment. At the same time, under Section 13 of the Act on Judicial Execution, such a ruling would be unenforceable. The expert stated that the study provided a framework to guide desegregation, but that its specific content and measures should be developed locally with the involvement of local professionals. The expert emphasized that transforming the entire school system in Kaposvár would be the only effective solution and that rigid integration would not yield satisfactory results for the children. Without the inclusion of political elements, professional principles, and expert participation, the proposed desegregation plan could not be implemented through a judicial ruling. Consequently, the court dismissed this part of the plaintiff's claim.

Due to the parties' exemption from legal fees, the court ruled on unpaid fees under Section 14 of Decree 6/1986 (VI.26.) of the Ministry of Justice. Regarding litigation costs, in accordance with Section 81(1) of the Code of Civil Procedure, the parties shall bear their own costs.

Kaposvár, 11 November 2015

Dr. András Pálincás,

Judge