

**Győr-Moson-Sopron County Court**

**3.P.20.950/2008/36.**

**ON BEHALF OF THE REPUBLIC OF HUNGARY!**

The Győr-Moson-Sopron County Court, in the lawsuit initiated by the Chance for Children Foundation ("Esélyt a Hátrányos Helyzetű Gyermeknek Alapítvány"), Budapest, represented by Dr. Lilla Farkas, attorney-at-law, as plaintiff, against the Municipality of Győr, a county-level city, represented by Dr. Zoltán Rákosfalvy, attorney-at-law, as defendant, for the establishment of the violation of the requirement of equal treatment, has rendered and announced the following

**j u d g m e n t :**

The County Court establishes that, from the second semester of the 2003/2004 academic year, i.e., from February 2004, by maintaining the unlawful segregation of children belonging to the Roma ethnic minority and those in a multiply disadvantaged situation in a single educational institution, namely Kossuth Lajos Primary School, the defendant violates the requirement of equal treatment.

The court orders the defendant to cease the unlawful practice and to eliminate the unlawful situation.

Beyond this, the court dismisses the plaintiff's further claims.

The court orders the defendant to pay the plaintiff HUF 60,000 (Sixty Thousand Forints) in litigation costs within 15 days.

The court fees amounting to HUF 21,000 shall be borne by the state.

An appeal may be filed against this judgment within 15 days from the date of service at the Győr-Moson-Sopron County Court in three copies, addressed to the Győr Court of Appeal. Legal representation is mandatory in the appeal proceedings before the Győr Court of Appeal.

The appellate court may decide on the appeal without a hearing if:

- The appeal concerns only the payment of interest, the costs of the proceedings, or the amount thereof, as well as the unpaid fee or the state-advanced costs;
- The appeal is directed only against the reasoning of the judgment;
- The parties have requested so.

If the appellant or the respondent requests a hearing either in the appeal or upon the appellate court's request, the appeal shall be decided in a hearing.

**R e a s o n i n g:**

The County Court, based on the statements of the parties, the content of the submitted documents, and the testimonies of witnesses AA, BB, CC, DD, EE, FF, JJ, KK, and LL, established the following facts:

## I.

Kossuth Lajos Primary School is one of the oldest primary schools in Győr, with a history of more than 130 years. In the early 1980s, approximately 800-850 children studied at the school, with 4-5 classes per grade. Its catchment area includes the districts of Pinnyéd, Sziget, and Újváros. The school operated special programmes in mathematics, German language, and advanced-level physical education. At that time, public schools primarily operated in Győr, with one school each run by the Lutheran and Roman Catholic churches.

The ethnic composition of the population in the school district changed significantly over the past decades, and similar changes occurred in Újváros, which formed the school's primary base. In the 1970s, the city dismantled a Roma settlement on the outskirts of Újváros along Bécsi út, leading Roma families to move into the Újváros district. Over time, new Roma families moved into rented apartments, increasing the proportion of Roma students in the designated district school. Consequently, the number of students in the school declined, as many parents exercised their right to choose schools and enrolled their children elsewhere. The expansion of church-run schools also influenced this trend.

Following the regime change, the primary school became municipally maintained. The school caters to children with special educational needs (SEN), those with learning disabilities, and both local and non-local students.

According to the 2003/2004 school report, the social composition of the student body was as follows: 67% Roma, 75% disadvantaged, and 24% at risk. The proportion of disadvantaged and at-risk students was notably high.

The Educational and Cultural Committee of the Municipality of Győr, a City with County Rights, approved the boundaries of the district of Kossuth Primary School by its Resolution No. 4/2005. (II.1.) OKB. The district includes designated streets of Újváros and Sziget, as well as the entire area of Pinnyéd. /6/1./.

A 14 August 2004 expert evaluation of the school's pedagogical programme found that the majority of the city's Roma population and over 50% of families in marginalised situations reside in the school's operational area. Consequently, two-thirds of the students are of Roma origin, and the number of socially disadvantaged or at-risk children is extremely high. The school has long relied on small-sized development classes since 1989. For grades 1-5, instruction is provided in a school-home framework, while study halls are organised for upper grades. A growing proportion of students face social disadvantages. Currently, 67% of students are Roma, and this proportion continues to increase. Most of these children come from families with low educational attainment. /No.22/

Deputy Mayor Dr. KA's report on the educational institutions' 2005 performance highlighted:

That over 70% of students at Kossuth Lajos Primary School are of Roma origin, and the proportion of disadvantaged students exceeds 72%. The school prioritises addressing learning difficulties, integration challenges, and minority education. The proportion of at-risk students stands at 27%. The average class size is 12.9 students per class. The average number of days of excused absences per student is 21. Due to absenteeism, 22 students were deemed ungradable. The failure rate was particularly high in mathematics (23 cases), and the overall grade repetition rate was 7.8%. However, there were no failures in the lower grades, thanks to effective remedial education. The school is committed to improving student work ethic and implementing a school health programme.

The institution makes concerted efforts to ensure equal opportunities for Roma and economically disadvantaged students. Special programmes involving speech therapists, developmental educators, and

psychologists support this objective. From this academic year, one first-grade class introduced integrated education alongside existing integration efforts. In core subjects, the school employed “co-teaching”, where a developmental teacher assisted the class teacher. Of the school's graduating students, 89% applied for further education. The school's key events included an invitational football tournament, "Football Against Racism," Human Rights Day, and interdisciplinary days for lower grades. Additionally, a Roma dance and singing festival was organised in partnership with a school in Tatabánya. The faculty adapted to changing circumstances and demonstrated innovation in handling students with special educational needs. It remains essential to ensure that integration does not lead to segregation in practice.

The 2007 Public Education Equal Opportunities Programme of Győr, a City with County Rights, includes a situational analysis, demographic indicators of the settlement, a nearly 30% decrease in the number of children, the stability of the last two periods, and the balanced migration ratio in the case of Győr. In the city, regular child protection benefits are claimed for 2,462 children, of whom the parents of 399 children have declared their multiply disadvantaged status, while 501 children have parents who did not make such a declaration. From 1 September 2008, preschool education must be provided from the age of three for multiply disadvantaged (MD) children. Nearly all municipally maintained urban kindergartens have registered disadvantaged (D) children, with the highest number recorded at Szigeti Kindergarten, while the majority of multiply disadvantaged (MD) children are enrolled at Újvárosi Kindergarten (62 children), representing 51.7% of the city's MD population. The highest number of children with special educational needs (SEN) was found in the four named kindergartens, with the highest concentration at Újvárosi Kindergarten (13 children, 14.8% of the city's total).

According to the Public Education Equal Opportunities Programme, the city of Győr provides primary school education in 31 municipally maintained institutions. Additionally, the task is supported by three church-run schools, three foundation schools, a university-run practice school, and a county-maintained institution that serves students with moderate intellectual disabilities at the county level. The total number of primary school students in the city is 10,219, of whom 13% are disadvantaged (D), 2.5% are multiply disadvantaged (MD), and 7.4% have special educational needs (SEN). The average proportion of commuting students in the city's schools is 16%, but at Kossuth Primary School, this percentage is lower due to the high number of multiply disadvantaged students. Two schools, Kossuth Lajos Primary School and Kovács Margit ÁMK, have undertaken minority programmes. During competency assessments, many of Győr's educational institutions performed well above the national average, even surpassing the county average. However, in line with national trends, there are significant differences between individual schools' results, though discrepancies among students within the same institution are considerably smaller. Several schools have shown a declining trend in performance, including Kossuth Primary School in mathematics. In the 2006 reading comprehension competency assessment, Kossuth and E. School achieved the weakest results.

Examining the further education indicators, it is evident that a high proportion of multiply disadvantaged (17%) and disadvantaged (26%) students at E. and Kossuth Primary Schools do not continue their education after completing eighth grade. The dropout rate varies significantly between schools in Győr, with students from the city's peripheral districts being the most affected by grade repetition, absenteeism, and private student status. The rate of students repeating a grade in Győr is 3.2% (273 students), exceeding the national average. The grade repetition rate is particularly high in three schools, including Kossuth Primary School, where it is several times the national average. Most students repeating a grade belong to the disadvantaged (D) student group. Thirty-five percent of institutions have either occasional or regular cooperation with the Roma Minority Self-Government. Kossuth Primary School maintains regular contact with the minority self-government and the Family Support Institute (6/A/18./).

The 2007 Public Education Equal Opportunity Programme of the city states that Decree No. 6/2007. (III.14.) OKSB amended the primary school district boundaries. This modification may contribute to improving the situation of students attending institutions with an unproportionally high number of disadvantaged (D) and multiply disadvantaged (MD) students, particularly in Újvárosi Kindergarten and Kossuth Primary School. According to the expert committee's recommendation, the proportion of integratedly educable children is high in several primary schools in Győr, including Kossuth Primary School. These institutions have been prepared to accommodate certain types of special educational needs (SEN) students and have admitted such students from across Győr. Kossuth Primary School has developed expertise in dealing with behavioural disorders and hyperactivity, and designated child protection officers work specifically with D and MD students. A key objective of the equal opportunity plan is the integration of SEN students. Schools located in peripheral areas of the city, where academic results tend to be lower, typically have exceptionally high numbers of D and MD students. To ensure long-term educational equity, these institutions—especially Kossuth Primary School and B. Primary School—require special attention and targeted interventions. Kossuth Primary School plays a leading role in Győr in implementing competency-based education, which is particularly crucial for D and MD students. The municipality of Győr's territorial development strategy seeks to eliminate geographical disparities that have resulted in certain schools concentrating disproportionately high numbers of D and MD students. Addressing these inequalities is vital for ensuring equal educational opportunities across Győr. /6/A/18./

The establishment of district boundaries did not result in a significant change in the composition of students at Kossuth Primary School.

The development plan was formulated between October 2007 and 30 March 2008, with its implementation ongoing from the 2008/2009 academic year. The background section of the development plan states that the institution's role has significantly changed, as it currently educates and nurtures children from marginalised sections of society, including Roma students. Due to the parents' way of life, lack of education, different culture, and customs, an increasing number of children can be classified as disadvantaged or at risk. Some parents are illiterate, making their situation particularly unique. The current student body consists of 222 students, of whom 105 are disadvantaged, 71 are at risk, and 80% are of Roma origin. A total of 58 students with special educational needs (SEN) receive integrated education. Various teaching methods are used to ensure students meet curriculum requirements and remain motivated. Even the acquisition of minimum requirements requires much more effort than in an average school. Often, due to the limited Hungarian vocabulary of Roma students, task instructions must be translated from Hungarian into simpler Hungarian. Persistence and intensive effort are not characteristic of the students. The lower performance in competency assessments can be attributed to multiple factors, including the specific student population of the institution (Roma students, students with weak academic backgrounds, behavioural issues, learning difficulties, and lack of parental support). /6/A/7./

Since the 2006/2007 academic year, the number of students has remained around 200, with a fluctuation of plus or minus 30 students. Lower-grade students continue to be housed in the Márvány Street building, while upper-grade students attend classes in the Kossuth Street building.

The difference between D (disadvantaged) and MD (multiply disadvantaged) classification lies in parental education levels. In the case of the latter, the parents (or the single parent) have not completed eight years of primary education. While some criteria are objectively measurable, the classification is primarily based on a voluntary parental declaration regarding education levels. /Act LXXIX of 1993 on Public Education, Section 121, Point 14/. Based on this, the number and proportion of MD-classified children in the city are determined relative to the total number of compulsory school-age children.

According to educational experts, the number of students meeting the MD classification criteria does not necessarily align with the number officially recorded as such.

The 2007 Public Education Equal Opportunities Programme of the city, in accordance with legal regulations, stipulated that "the requirement of equal treatment and desegregation as a fundamental condition of equal opportunity must be upheld both among institutions of the same type operating within the settlement, their branch institutions, service locations, and within institutions among groups of the same age. The difference in the proportion of MD students between institutions must not exceed 25%." /6/A/18, page 17/.

Before this regulation, the MD classification system was not implemented with sufficient oversight and was not realistically structured. The system "expected" individuals who had not completed eight years of education to go to the mayor's office to register. Despite extensive parental education and information efforts, shortcomings in record-keeping were evident. Even though the decision regarding regular child protection benefits (RCBP) contained information on MD classification conditions and administrative procedures, and from 2009, the education department also informed schools about the number of MD students, making the system more efficient remained a relevant goal. The issue of voluntary parental declarations persisted, affecting all school maintainers, including the defendant. Due to these record-keeping problems, the actual number of MD students and those officially recorded as such likely did not fully align. Schools kept records of students receiving RGYK benefits and informed those in need about available support options. At Kossuth Primary School, the proportion of students paying for school meals and textbooks was the lowest.

When determining school district boundaries, the rule that "the proportion of MD students must not exceed the city average plus 25%" should have been applied. Before the boundary changes in January-February 2009, the education cabinet was inconsistent in establishing district boundaries at Kossuth Primary School and other municipally maintained schools in Győr. Every school was required to admit students from outside the district if places were available, based on parental freedom of school choice. This right applied across state, municipal, church, and foundation schools. Due to the gradual decline in student numbers, all schools became interested in enrolling applicants, and after legal amendments, in cases of "excess applications" for out-of-district places, priority was given to disadvantaged students.

Kossuth Primary School is the only school in Újváros with a designated district. In this school, the number and proportion of MD students have consistently been significantly higher than elsewhere.

In the Újváros-Sziget district, a significant proportion of school-age children within the district enrol in schools outside their designated school zone. /As evidenced by KK's testimony attached to the statement of claim, information dated 29 April 2008, and the testimony of witness JJ./

As the school maintainer, the municipality has no direct and accurate information on the Roma ethnicity of students, nor can it. However, during the last census in 2001, many residents of the Újváros district identified themselves as following a Roma lifestyle. Both the local Roma minority government and educational policymakers were aware that the proportion of Roma children at Kossuth Primary School was high. The preservation of minority traditions and culture is consciously promoted at an elevated level in the school. Witness JJ speaks the predominant languages of the local population at a conversational level and is well-regarded in the community. /As evidenced by KK's testimony attached to the statement of claim, information dated 29 April 2008./

At Kossuth Primary School, there is an advanced physical education programme, numerous extracurricular activities, and nationality education conducted in Hungarian. The children are continuously encouraged through various programmes. Teachers participate in continuous training, are familiar with the most modern teaching methods, and regularly visit families. Ninety-eight percent of

the students apply to vocational training schools, with most students learning construction and bodywork locksmith trades, while the girls continue their education at the vocational section of Kossuth Secondary School in fields such as hairdressing, cosmetology, and dressmaking. The dropout rate is significant, with several girls leaving school due to starting a family or other reasons. Only one or two students apply to secondary schools offering A-level diplomas.

The Roma Minority Self-Government is familiar with the pedagogical programme of Kossuth Primary School and supports the Roma minority education conducted there. The relationship between the school and the minority self-government is regular. The institution does not provide language education but integrates Roma cultural studies into various subjects. /35/A/I - A/6-7., 6/A/17. 21/A/4. 35/A/6-7./.

## II.

The Public Education Equal Opportunities Action Plan adopted by Kossuth Primary School on 4 February 2009 aimed to facilitate and support the integration of disadvantaged (D), multiply disadvantaged (MD), and special educational needs (SEN) students. The school has a capacity of 448 students, with 217 currently enrolled. Competency assessment results are significantly below the national average in all areas. The high proportion of students struggling with learning difficulties indicates that a large number of students cannot acquire the necessary skills without individual development. Dropout rates also significantly exceed the national average, and grade repetition is the highest at this school. The majority of students typically opt for vocational education, with a participation rate of 18–27%. Since the 2003/2004 academic year, no student has continued their education in a secondary school leading to an A-level diploma. A very high number of students have discontinued their education, mostly for family formation reasons. All students at the institution participate in the Roma ethnic minority education programme. /Action Plan attached under No. 26./

In January 2009, the municipality modified the school district boundaries of Kossuth Primary School, implementing the "25% MD rule" when defining the district boundaries by removing several streets from the school district to ensure compliance with the prescribed proportion of MD students. The public was informed of the boundary changes via municipal communication channels and on noticeboards at all local institutions. Parents of prospective students were informed separately and in writing. However, the composition of students at the school did not change significantly as a result of the boundary modifications, and students who were already attending the school but later fell outside the new district boundaries continued their education there. The principle of parental free choice of school was upheld.

The regulations on setting a 25% MD threshold for district boundaries are not effectively applied when parents enrol their children in schools outside the district, resulting in the proportion of MD students exceeding the city average by more than 25%. In the Újváros-Sziget district, a significant proportion of school-aged children continue to enrol in schools outside their designated district.

From 1 July 2009, the school's core activities expanded beyond the education of primary school students with special educational needs in a full-time system to include the full-time education of national and ethnic minority students. /Founding document under No. 21/A/5./

The modified and supplemented pedagogical programme adopted on 9 December 2009 at Kossuth Primary School includes advanced physical education, German language instruction, Roma minority education, and the integrated education of SEN students. Minority education follows the 32/1997 (XI.5.) MKM decree, Section 1/D, Point 3/b, with classes conducted in Hungarian through subject integration. For grades 1–4, 18 hours per year are incorporated into the Hungarian language and literature

curriculum; for grades 5–6, 37 hours per year are embedded in non-specialised education; and for grades 7–8, 37 hours per year are integrated into Hungarian, society, and social studies, along with teaching Roma history and culture. Artistic subjects such as music, drawing, and media studies also incorporate Roma cultural elements. /Attached under No. 26./

The rehabilitation plan for Újváros, including Kossuth Street, is currently being developed. One of the central elements of this rehabilitation is the school, whose renovation is expected to take at least 1.5 to 2 years. A two-group kindergarten has already been established in the Márvány Street building of Kossuth Primary School, where children are cared for in mixed-age groups. The next step involves merging this kindergarten with the Szigeti Kindergarten, which is currently separated by a fence, thereby creating an integrated early education facility with six kindergarten groups in one location. This integration would allow children and parents to familiarise themselves with each other before school enrolment, gradually fostering a situation in which local children from better socio-economic backgrounds also remain in the school, thereby facilitating the integration of disadvantaged children. On a long-term basis, by 15 May 2011, the city administration plans a broader integration initiative, which would place T. Primary School in the Révfalu district, R. Primary School in the city centre, and Kossuth Primary School under a single general directorate, integrating both schools and kindergartens. This would provide the largest territorial distribution and resolve the current issue at Kossuth Primary School, namely that there is no other municipally maintained school with a designated district in its vicinity.

As part of the rehabilitation of Újváros, numerous new apartments and buildings are being constructed, leading to continuous demographic changes in the population. The development includes both privately owned and low-rent housing to prevent unintended demographic shifts. The Újváros district is already undergoing significant transformation, with its population composition continuously evolving.

From 1 September 2009, the school joined the IPR (Integrated Pedagogical System), initially implemented for grades 1 and 5.

During the 2009 autumn enrolment, only three parents selected the school as their first choice. However, due to active efforts by the teachers, the first-grade class eventually started with 10 students, later increasing to 12.

The demographic shift and the persistent decline in student numbers have been observed across all municipally maintained schools in Győr, including Kossuth Primary School. Alongside demographic factors, the establishment of church-run and foundation schools following the political transition has also contributed to this trend. In the 2010/2011 academic year, no first-grade class was launched at Kossuth Primary School.

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In its amended claim, **the claimant** requested a declaration that, compared to other municipally maintained schools, the defendant unlawfully segregates Roma and multiply disadvantaged children from non-Roma and non-disadvantaged children at Kossuth Lajos Primary School, maintained by the defendant, from 1 February 2004, during the second semester, by maintaining the existing system.

The claimant sought an order requiring the defendant to cease the unlawful conduct and requested that the court mandate the elimination of the unlawful situation by requiring the defendant to refuse to

establish classes in which Roma and multiply disadvantaged children form the majority. /Amended claim under No. 29./

According to the claimant, institutional segregation has been implemented at Kossuth Primary School compared to other city schools, and the claimant has not taken effective steps to eliminate it. The modification of district boundaries occurred after the initiation of the lawsuit, but it did not substantially change the contested situation. The claimant acknowledged that the non-establishment of the first grade in the 2010/2011 academic year was a correct step towards eliminating spontaneous segregation; however, the unlawful situation persists in the school for grades 2–8. Further municipal measures are necessary to achieve the complete elimination of spontaneous segregation.

**The defendant** requested the dismissal of the claim.

The defendant disputed the claimant's right to bring the action. Following the initiation of the lawsuit, parents voluntarily signed declarations stating that they did not wish for the claimant to assert the claims in the lawsuit on behalf of the students as their legal representatives. /Declarations attached under No. 12/A/1./

The defendant denied engaging in conduct resulting in the segregation of students based on ethnicity or multiply disadvantaged status.

Since 2004, the school in question has received parental requests under Decree 32/1997 (XI.5.) of the Ministry of Culture and Public Education (MKM) to conduct education in accordance with the national ethnic minority education guidelines. /35/A/1-5./ The content and time allocation of minority education comply with statutory requirements, and Roma cultural studies have been integrated into the curricula of Hungarian language and literature, history, geography, environmental studies, art, music, technology, homeland studies, and form teacher sessions. The subject integration of Roma minority education has been implemented.

The current students at Kossuth Primary School freely chose the institution from among many other primary schools. Parents have been continuously informed about educational opportunities. Many parents explicitly prefer the school despite their child not being a district student. From 1 January 2009, district boundaries were modified, and the newly established district boundaries comply with legal requirements.

The defendant referred to an inspection conducted by the Educational Authority on 8 March 2010, involving an expert in public education, which found no irregularities regarding SEN students. /31/A/1./

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The Claimant's Case is Partially Well-Founded, as Follows:

The Claimant's Right to Bring the Action:

The claimant's foundation is engaged in promoting integration and equal opportunities and combats discrimination. Its public-benefit activities include child and youth protection, representation of children's and youth interests, promoting social equality for disadvantaged groups, and protecting human and civil rights. /Foundation charter attached to the statement of claim./

Based on this, the claimant qualifies as a foundation within the meaning of Section 3(e) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "Equal Treatment Act"). Public interest enforcement allows the claimant to bring an action without individual plaintiffs, as the lawsuit concerns a group of individuals whose rights have been violated or are at risk due to non-compliance with the principle of equal treatment. The claim also seeks collective legal protection for members of this group and future individuals potentially affected by the unlawful practice, along with appropriate sanctions. Public interest enforcement remains available even if it is not possible to identify every affected individual, provided that the majority of the group shares the relevant characteristic.

Since the relevant period of the claim, starting from 1 February 2004, the exact number and identity of Roma students at Kossuth Primary School, maintained by the defendant, cannot be established. Parents have not made declarations regarding their children's ethnic affiliation, as such data qualifies as sensitive personal information under Section 2(2)(a) of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Public Interest Data (hereinafter "Data Protection Act").

In assessing standing, the court relied on Section 20(1)(c) of the Equal Treatment Act, which provides that an association or representative organisation may bring a personal rights lawsuit in cases of violations of the principle of equal treatment or a direct threat thereof, where the violation is based on a characteristic that is an essential trait of the individual, and where the violation or threat affects a larger group of persons whose precise identities cannot be determined. According to Section 20(2) of the Equal Treatment Act, such an organisation may also initiate administrative proceedings before the relevant authorities if the conditions specified in subsection (1) are met. The cited provision of the Equal Treatment Act is consistent with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (hereinafter "Racial Equality Directive"), particularly Recital 19 of the preamble and Article 7(2) of the Directive.

The claimant's founding document includes the protection of the rights of Roma and disadvantaged children as an objective. In its claim, the claimant based the alleged violation of the principle of equal treatment on a protected characteristic, specifically referencing Section 8(b), (c), (e), (p), and (q) of the Equal Treatment Act concerning racial origin, skin colour, ethnic minority status, and social and economic status, which form the basis of segregation at the school. The claim concerns the student community of Kossuth Primary School, a larger group of individuals whose exact identities cannot be determined, thereby establishing the claimant's right to bring the action.

The defendant's defence based on Section 18(1) of the Equal Treatment Act is not relevant, as the claimant is not acting as a representative of natural persons in the lawsuit but is asserting a public interest claim in its own right.

#### Legal Basis, Implementation of the Racial Equality Directive, and Rules of Evidence

Under Section 76 of the Civil Code, a violation of the right to equal treatment constitutes an infringement of personal rights. The Equal Treatment Act defines the substantive elements of the violation, the conditions for proving it, and the possibility of exemption from legal consequences. The Act came into force on 27 January 2004, and with this, Section 76 of the Civil Code was supplemented to include the requirement of equal treatment. The period covered by the claim begins on 1 February 2004, from the second semester.

According to Section 4/A(1) of the 1993 Act LXXIX on Public Education (hereinafter "Public Education Act"), those involved in the organisation, management, operation, and execution of public education tasks must adhere to the principle of equal treatment when making decisions and taking actions concerning children and students. Under Section 4/A(5), the provisions of the Equal Treatment Act must also be applied in this context. Furthermore, according to Section 4(g) of the Equal Treatment Act,

educational institutions must comply with the principle of equal treatment when establishing legal relationships, conducting procedures, and making decisions.

Under Section 7(1) of the Equal Treatment Act, violations of the principle of equal treatment include, particularly as defined in Chapter III, direct and indirect discrimination, harassment, unlawful segregation, retaliation, and instructions leading to these actions.

The version of Section 10(2) of the Equal Treatment Act in force between 27 January 2004 and 1 January 2007 classified as unlawful segregation any conduct that, based on the characteristics listed in Section 8, separates individuals or groups from others without a reasonable and objective justification. According to Section 7(2), a provision based on a characteristic listed in Section 8 does not violate the principle of equal treatment if it has a reasonable justification directly related to the legal relationship.

From 1 January 2007, the amended Section 7(2) and (3) of the Equal Treatment Act (amended by Act CIV of 2006) no longer permitted general justifications in cases of discrimination and unlawful segregation. Accordingly, from this date, Section 10(2) states that unlawful segregation occurs when individuals or groups are separated from comparable individuals or groups based on a characteristic listed in Section 8 without explicit legal authorisation.

The specific rules applicable to education and training are set out in Sections 27–30 of the Equal Treatment Act. Under Section 27(3)(a), the principle of equal treatment is violated in particular if an individual or group is unlawfully segregated within an educational institution, or in a specific section, class, or group within the institution. However, according to Section 28(2)(a), the principle of equal treatment is not violated when, at the parents' initiative and by voluntary choice, religious, ideological, minority, or nationality-based education is organised within a public education institution, provided that participants do not suffer any disadvantage as a result and the education complies with state-approved and state-supported requirements.

The claimant argued that the version of the Equal Treatment Act in force until 31 December 2006 did not comply with EU Council Directive 2000/43/EC ("Racial Equality Directive") due to Hungary's accession to the EU on 1 May 2004. The claimant relied on the decision of the European Court of Justice in the Marshall case (C-152/84) to argue that the relevant provisions of the Racial Equality Directive became directly applicable in Hungary from 1 May 2004. According to the claimant, due to international legal obligations—specifically Article 4 of the Racial Equality Directive—the defendant could only justify ethnic minority education initiated with parental consent under Section 28(2)(a) of the Equal Treatment Act. Additionally, under Article 8 of the Racial Equality Directive, the claimant had the obligation to present a prima facie case of discrimination from the date of Hungary's EU accession. The defendant did not accept this legal interpretation.

The Court's Position on this Legal Dispute:

Under Article 249 of the Treaty establishing the European Community, directives are a specific source of Community law that are "binding upon each Member State to which they are addressed as to the result to be achieved, while leaving the choice of form and methods to the national authorities." Directives establish a regulatory framework but do not prescribe the precise legislative measures that Member States must adopt to achieve the intended objectives.

The principles developed by the European Court of Justice concerning Community law—especially direct and indirect effect and the supremacy of Community law—allow the objectives set out in directives to be enforced individually in Member States, even if a State has not fully or properly transposed the directive.

Section 65(f) of the Equal Treatment Act states that the law contains provisions compatible with the Racial Equality Directive, indicating that it was intended to transpose the directive into Hungarian law. The directive primarily sets out objectives, while the method of implementation remains within the

discretion of Member States. During the development of Community law, the question arose as to whether, and if so, how a directive could be invoked before a national court. The direct effect of directives was first established by the European Court of Justice (ECJ) in the Van Duyn case. In response to a preliminary reference, the ECJ ruled that Article 3(1) of the directive (which concerns measures based on public order clauses) had direct effect. The Court also stated that directives do not automatically have direct effect in their entirety; rather, each provision must be examined individually, and only provisions that clearly and precisely define individual rights can have direct effect. Furthermore, directives have only vertical direct effect, meaning they can be invoked against the state or state bodies but not in disputes between private individuals. The court agrees with the claimant that the ECJ has significantly broadened the concept of a state body, extending it to any entity entrusted with a public service function under state authority or control. The defendant's role in public education qualifies as such a public function.

In its judgment Pfv.IV.20.936/2008/4, the Supreme Court of Hungary ruled that since Hungary's accession to the European Union (1 May 2004), Hungarian courts have been entitled (and in some cases required) to seek a preliminary ruling from the ECJ under Article 234 of the Treaty Establishing the European Community, as incorporated by Act XXX of 2004 on Accession to the European Union, Section 3. However, in Case C-302/04 (Y Kft v NN), the ECJ ruled that it lacked jurisdiction to interpret EU law in cases where the relevant facts arose before the accession date. Since the facts of the present dispute predate Hungary's accession (1 February 2004), no preliminary ruling procedure was initiated (BH2006/215).

Nevertheless, according to the Supreme Court's cited ruling, this does not preclude the Hungarian court from considering the principles of the Racial Equality Directive, which served as the basis for the relevant Hungarian law, particularly regarding its framework for positive discrimination (Equal Treatment Act, Section 65(f)).

The amendment of the Equal Treatment Act effective from 1 January 2007 (via Act CIV of 2006) was intended to further align Hungarian law with the Racial Equality Directive. It also sought to clarify issues that had arisen in judicial practice and in the application of the Act by the Equal Treatment Authority, without altering its fundamental principles. The claimant referenced Case C-152/84 (Marshall), where the ECJ interpreted the principle of equal treatment in the context of gender discrimination under Directive 76/207/EEC.

Based on these considerations, the County Court ruled that for the period 1 February 2004 – 31 December 2006, the then-applicable provisions of the Equal Treatment Act must be applied. Under Section 19(1) of the Equal Treatment Act, the party asserting a public interest claim must prove that:

- a) The affected individual or group suffered a disadvantage, and
- b) At the time of the violation, the affected individual or group actually possessed or was presumed to possess one of the characteristics listed in Section 8.

According to Section 19(2), if these conditions are established, the burden of proof shifts to the defendant, who must demonstrate that:

- a) It complied with the principle of equal treatment, or
- b) It was not required to comply with the principle of equal treatment in the given legal relationship.

As a general defence, the defendant may rely on the justification clause in Section 7(2) of the Equal Treatment Act (in force until 31 December 2006), which states that an action based on a protected characteristic listed in Section 8 does not constitute discrimination if it is directly related to the legal relationship and has a reasonable justification.

As a specific defence, the defendant may prove that the education at the school was organised at the request of parents and based on their voluntary choice, in accordance with Section 28(2)(a) of the Equal Treatment Act. The court informed the parties of this defence (13th hearing, page 6).

The amendment of the Equal Treatment Act, effective from 1 January 2007, eliminated the general justification clause under Section 7(2) in cases of unlawful segregation. From this date, segregation is considered unlawful unless explicitly permitted by law (e.g., Section 28 of the Equal Treatment Act). Section 10(2) now explicitly defines unlawful segregation as a practice that separates individuals or groups based on characteristics listed in Section 8 from comparable individuals or groups—unless expressly authorised by law. For the period from 1 January 2007 onward, the County Court applied the amended Equal Treatment Act and informed the parties of its implications for the burden of proof (3rd hearing, page 4).

#### Unlawful Segregation

Based on the evidence, the County Court concluded that Kossuth Primary School predominantly educates students of Roma ethnicity and/or multiply disadvantaged backgrounds. This conclusion was drawn from a detailed evaluation of the following evidence:

The 2003/2004 school report states that 67% of students were Roma, 75% were disadvantaged, and 24% were at risk. In a 2005 assessment by Deputy Mayor Dr. KA, it was reported that more than 70% of students were of Roma origin.

The institutional development plan supporting competency-based education recorded that out of 222 students, 105 were disadvantaged, 71 were at risk, 80% were Roma, and 58 were students with special educational needs (SEN). (6/A/7./)

The 2007 Public Education Equal Opportunities Programme of Győr reported that, among the 10,219 primary school students in the city: 13% were disadvantaged, 2.5% were multiply disadvantaged, and 8% had special educational needs (SEN). Only two schools (Kossuth Primary School and K ÁMK) participated in a minority education programme. The proportion of D and MD students was particularly high at Kossuth and E. Primary Schools, and these students were significantly less likely to continue their education after completing the 8th grade. (6/A/17./)

According to the internal professional documents titled Human Resources Operational Programme /HEFOP Report/ prepared in February 2007 and Experiences from the First Year – Trial Implementation of Competency-Based Programme Packages at Kossuth Lajos Primary School, differentiated education is conducted across all eight grades, and for the past 16 years, the school has successfully provided individual care and personalised development for children requiring such support. Due to parental unemployment, poverty, inappropriate lifestyles, and lack of education, an increasing number of children are considered disadvantaged or at risk, and many frequently wander unsupervised. "According to statistical data, 65% of their students are in a multiply disadvantaged situation." "The below-average abilities, lack of motivation, disadvantaged or at-risk status, home environment, and uneducated parents

of students at our school, as well as their lack of interest in schoolwork, have long posed a serious challenge to teachers." (Documents attached under No. 29.)

According to the pedagogical programme of Kossuth Lajos Primary School, approved by the General Assembly in 2007, "the majority of the city's Roma population, as well as more than 50% of marginalised families, live in the school's operational area (Újváros, Pinnyéd, Sziget). As a result, the majority of our students are of Roma origin, and the number of socially disadvantaged or at-risk students is extremely high." "The vast majority of Roma students are children of undereducated parents. Their family environment significantly differs from that of more educated families who can provide greater protection and better educational conditions." "Uneducated parents either earn low wages or are unemployed, which results in poor living conditions for their children." A significant majority of the school's students are entitled to additional textbook support. (Programme attached under No. 22, pages 6, 23, and 29.)

On 28 March 2008, during a field visit conducted by the claimant's staff, the institution's capacity was 440 students, with an enrolment of 220. Among them, 108 were in a multiply disadvantaged situation (hereinafter MD), plus 30 students who had recently declared their MD status to the municipal clerk. Additionally, 50 students were in a disadvantaged situation (hereinafter D), and 58 were students with special educational needs (SEN). Fourteen students were enrolled as private students. According to the field experience of the claimant's employee, RR, 80–90% of the school's students were Roma, with 60% being Lovari, a small percentage Beás, Rumungro, and Köszörűs Roma. In the 2007/2008 academic year, 113 students from the enrolment district began their studies in the first grade, of whom only 10 enrolled at Kossuth Lajos Primary School. Only two students were commuters. Witness NN, after reviewing the minutes attached to the statement of claim, found the characterisation of "massive dropout" to require a more nuanced presentation, as precise data were unavailable; however, their data indicated that several girls had left school due to early family formation. (Minutes attached under No. 25, page 3.)

Witness AA worked at the Győr Roma Advocacy Association (RAA) from 2002 to 30 November 2008. As part of their duties, they accompanied health visitors, doctors, and police officers during various programme activities, such as health and drug prevention lectures. They were also engaged in regular activities at the school's cultural centre, teaching Roma traditions to children twice a week for two hours and organising various celebrations with full support from municipal and educational professionals. Based on six years of experience, AA stated that Kossuth Lajos Primary School "is considered a Roma school in Győr." While non-Roma children also attended, their living conditions were similar to those of the majority Roma students. Over six years, the proportion of Roma students at the school had remained unchanged, with only "one or two" Hungarian children from extremely poor backgrounds who "did not fit into elite schools." Seventy percent of Újváros residents belonged to the Roma ethnic group. (Minutes attached under No. 13, page 8.)

BB, the director and legal representative of the ...Anyás Infant Home, had two Roma children enrolled in the school. The uninterested witness stated that they had not specifically examined the proportion of Roma students but acknowledged that it was well known in Győr that many Roma families lived around Kossuth Street and that many Roma students attended the school. (Minutes attached under No. 20, page 5.) Their professional experience with the institution was positive.

Witness DD, employed by the Rompodrom Roma on the Road Association, confirmed that the school maintained regular contact with the leadership of the local Roma minority self-government (CKÖ), particularly with witness LL, given the high number of Roma students at the school. However, DD did not know their exact proportion. (Minutes attached under No. 20, page 9.)

Witness FF, whose second child was also enrolled at the school, expressed complete satisfaction with the institution, affirming that no distinctions were made among students. FF, as a parent, shared this belief. While many Roma children attended the school, FF could not estimate their proportion. (Minutes attached under No. 20, page 15.)

Witness JJ had been employed at the school since August 1981 and served as headmaster from August 2006. Based on nearly three decades of teaching experience and familiarity with the students, their parental backgrounds, and identity affiliations, JJ estimated that "approximately 70% of the school's students belong to the Roma ethnic group, both historically and at present." (Minutes attached under No. 25, page 5.)

Witness KK had served as head of the education and cultural department since 1 July 2004. Kossuth Lajos Primary School was the only designated district school in Újváros. The number of MD students was significantly higher than elsewhere, prompting the exclusion of several streets from the school's district during the district boundary modifications in January–February 2009. Registration of MD students by ethnic background was prohibited, making it impossible to determine how many MD students were of Roma origin. A significant portion of Újváros' population belonged to the Roma ethnic group, but their proportion was steadily and rapidly declining. Újváros was undergoing significant transformation, becoming a preferred residential area with numerous new high-value buildings, a conspicuous and ongoing change. (Minutes attached under No. 25, page 12.)

The Equal Educational Opportunity Plan of Kossuth Lajos Primary School (2008) stated that 72% of students were D students, while 10% were MD students, a rate 7.6% higher than the municipal MD average. (Plan attached under No. 26, page 6.) The claimant had reasonable grounds to dispute the accuracy of this data, as the proportion of MD students recorded in the lawsuit was significantly lower than 10%. The proceedings established that the social composition of the school's district differed significantly from that of other schools, with district school disparities largely stemming from the residential distribution of different social strata. The 2009 district boundary modification did not substantially affect the student composition. Witness EE, a social worker employed by the claimant, conducted multiple fact-finding visits to the school in Győr as part of a public education data collection assignment. They were aware that during the January 2009 district boundary modification, several parts of Kossuth Street were reassigned to different schools. However, during on-site investigations, they did not find a single family or child who had changed their previous status as a result. (Minutes attached under No. 20, page 13.) The witness's findings were consistent with the documentary evidence submitted by the defendant regarding the student composition of the 2009/2010 academic year.

In our country, ethnic-based registration is not permitted. In 2005, the categories Disadvantaged (D) and Multiply Disadvantaged (MD), as defined in the Public Education Act, were used by the educational administration to define target groups based on social criteria. D status means that the student's family is entitled to Regular Child Protection Benefit (RCPB) due to income thresholds per capita, whereas MD status means that, in addition to the above, neither parent (or in the case of a single parent, the given parent) has an educational qualification higher than eight years of primary school. According to witnesses heard in the proceedings, the classification of RCPB and MD status does not "align effectively," as they are processed in different places, and MD classification is based on a voluntary declaration by the parent who has not completed the eighth grade. The issue is not only whether "there are gaps in the system," but also whether MD classification can be reliably determined in all cases. Witness KK, the head of the education department, was unable to specify the exact number of MD students in their testimony but confirmed that the number was high at the given school. (Minutes No. 25, page 15.) The data revealed in the proceedings supported this statement.

The claimant has fulfilled their burden of proof and likelihood under the Equal Treatment Act (ETA), proving the disadvantageous effects of the unlawful conduct and the fulfilment of the legal elements of unlawful segregation. The concept of unlawful segregation, which violates the principle of equal treatment, implies that the separation of the affected persons or groups occurs without their volition and necessarily results in a disadvantage to them. From 1 February 2004, institutional-level segregation of Roma ethnic minority and MD children was established at Kossuth Lajos Primary School.

The aim of Győr's Equal Educational Opportunity Programme is to eliminate territorial inequalities within the city and ensure that the proportion of D and MD children is not disproportionately high in any school, not only through district boundary determinations but also at the institutional level. The determination, or rather the maintenance, of the pre-January 2009 district boundaries did not eliminate territorial inequalities. In the 2009 district boundary changes, children from the relevant district were assigned to ten different institutions along city bus routes, ranging from KF Primary School to M Primary School. However, this measure did not bring practical changes, as most children from Újváros-Sziget were not enrolled in local schools by their parents. Of the more than 100 children from the district, barely more than 10 enrolled in first grade in September 2009 or before. In the autumn of 2010, no first-grade class was initiated. Despite the district boundary changes, designated schools were obliged to admit these children, but parents still had the right to choose Kossuth Lajos Primary School based on free school choice.

The purpose of district boundary determination is precisely to ensure that the proportion of D and MD children remains approximately the same across all institutions. More distant streets may also be included in a district, but the residents must be supported and assisted in attending school. Due to the policy of free school choice, a certain level of student movement between schools is inevitable. However, in order to maintain proportionality, district boundaries must be reviewed annually. This did not occur effectively in the present case. At the municipal level, the problem was not addressed.

Alongside the undeniable benefits of free school choice, its negative consequences are also apparent. Although schools are obliged to admit students residing in their designated district, they have been able to fill additional spaces selectively for years, impacting the selectivity of the system and increasing disparities between schools. The well-documented demographic trends have further reinforced this process. The current regulation—correctly—requires the mandatory admission of D and MD children in cases of surplus capacity (Public Education Act, Section 66(5)). The OECD's PISA international survey, conducted in 2001, demonstrated that in Hungary, parental educational attainment has the most significant influence on students' academic performance.

Ensuring equal treatment in education aims to improve the situation of Roma and/or impoverished students, with local governments playing a key role in eliminating discrimination.

Segregation refers to the phenomenon in which different social strata, ethnic groups, etc., within a municipality are spatially separated from one another. In the present case, the historical urban development of the known city districts, the reflection of residential segregation, the predominant parental decision (whereby a large proportion of parents withdrew their children from the designated school), and the practical consequences of free school choice (the formation of elite and segregated schools) have all contributed to the current situation. The court cannot establish the defendant's liability for this situation but can determine that the defendant's efforts to counteract spontaneous segregation were ineffective. The legal violation was established through the mere passive maintenance of unlawful segregation.

The court examined the defendant's defence in the context of exoneration, considering general and specific exoneration until 31 December 2006, and from January 2007, the exoneration under ETA Section 28(2)(a).

A legal element of unlawful segregation is that the separation of individuals with a protected characteristic lacks a reasonable justification based on objective consideration. This legal element is mirrored in the general exoneration provisions applicable to the defendant. The absence of a justification, which constitutes a negative circumstance under ETA Section 10(2), cannot be directly proven. Instead, the burden of proof shifts to the defendant under ETA Section 7(2) to establish that the segregation had a reasonable justification based on objective consideration. The substantive framework for such a justification is defined by Article 5 of the repeatedly cited Directive, which states that to ensure full practical equality, the principle of equal treatment does not prevent any Member State from maintaining or adopting specific measures aimed at eliminating or compensating for disadvantages arising from racial or ethnic origin (positive measures). As pointed out in the Supreme Court's judgment LB Pfv.IV.20.936/2008/4, this provision leaves no doubt that Member States may only implement measures that appear, on the surface, inconsistent with the principle of equal treatment if they are specifically designed to create opportunities for those suffering disadvantages due to racial or ethnic origin.

In public education legal relationships, determining whether the separation of individuals based on protected characteristics under ETA Section 8 had a reasonable justification is crucial. This must take into account the interests of the children participating in public education and the ability of parents to consciously assert their children's interests.

The defendant, under Section 8(4) of Act LXV of 1990 on Local Governments, is obliged to provide for primary education and ensure the enforcement of the rights of national and ethnic minorities. Furthermore, Section 86(1) and (2) of the Public Education Act defines it as a municipal duty to provide for the primary education of national or ethnic minorities residing in the municipality, as well as the education of students with special educational needs (SEN), provided they can be educated alongside other students.

The local government, under Section 90(1) of the Public Education Act, determines the operational districts of schools. According to Section 85(4), the local government is obliged to prepare an action plan for the organisation of its public education responsibilities, and under Section 85(7), it must develop a quality management programme. Within the framework of its managerial responsibilities, the local government determines the number of classes to be initiated in each academic year, grants exemptions for class size deviations, supervises the legality of institutional operations, approves the institution's quality management, educational, and pedagogical programmes, and evaluates and monitors the implementation of the tasks outlined in these programmes (Public Education Act, Section 102).

Based on the cited provisions, the local government played a role in maintaining the existing situation—spontaneous segregation—and thus bears responsibility. Unlawful segregation deprives children belonging to minority groups of equal educational opportunities, even if identical educational conditions are provided. Under Section 4/A(1) of the Public Education Act, all participants in the organisation, management, operation, and implementation of public education are required to comply with the principle of equal treatment when making decisions and taking actions concerning children and students. According to Section 4/A(2), every child and student has the right to receive education under the same conditions and of the same quality as others in a comparable situation. Furthermore, under Section 4/A(5), the provisions of the Equal Treatment Act (ETA) must also be applied when implementing this section.

At the school in question, the education of Roma and Multiply Disadvantaged (MD) children did not meet the statutory requirements compared to other educational institutions. The defendant cannot rely on the argument under ETA Section 19(2)(a) that it complied with the requirement of equal treatment.

Under ETA Section 19(2)(b) and Section 7(2)—considering the provisions of Section 28(2)(a)—the burden of proof was on the defendant to demonstrate that it was not required to uphold the principle of equal treatment in the given legal relationship. In other words, it had to prove that the segregation had a reasonable justification based on statutory authorisation or that it was legitimised by a conscious parental decision, thereby making the segregation lawful.

According to the established content of a reasonable justification for exemption, discrimination based on racial or ethnic origin can only be justified by measures aimed at creating opportunities for the disadvantaged, taking into account the interests of the children and conscious parental choice. The long-term maintenance of spontaneous segregation at the school in question within the public education legal relationship does not constitute a reasonable justification under objective consideration that would exclude the finding of unlawful segregation based on ethnic and socio-economic status.

The defendant also argued that the unlawful segregation was justified by the voluntary decisions of those affected and by the training forms of national minority education.

*The court emphasises that voluntary separation does not constitute segregation.*

It is evident that a parental decision regarding school choice can only be considered voluntary if it is made with full knowledge of all necessary information. Enrolment at the school in question can only be deemed a conscious act if parents were aware not only of the training forms and opportunities provided by the school but also of the conditions and type of education their child would receive in other institutions.

Being aware of its burden of proof, the defendant submitted parental declarations from the 2003/2004 to 2008/2009 academic years at the final hearing (documents 35/A/1-5). These declarations uniformly stated:

"I request that my child, enrolled at Kossuth Lajos Primary School, receive school education and training in accordance with Decree 32/1997 (XI.5.) of the Ministry of Culture and Public Education, considering the guidelines for national ethnic minority education."

The documents, filed annually in binders, lacked issue dates, many were unsigned by parents, and some contained the name and class of the student. These deficiencies alone exclude the possibility of the defendant successfully relying on these documents for exoneration.

The defendant could not clarify when, how, from whom, and in what form the parents received information. The statements were prepared as pre-printed forms (Minutes No. 35, page 2). Beyond procedural concerns, the claimant reasonably challenged this, highlighting that the defendant had submitted 113 parental declarations for 2003/2004, meaning, even by the defendant's admission, at least this many children were affected. This further supports the claimant's assertion regarding the "Romanisation" of the school.

Under Section 43(2) of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (NEM Act), minority children have the right to education in their native language, in both their native language and Hungarian, or in Hungarian, based on their parent's decision. According to Section 43(4), a local government responsible for educational services must organise minority education if requested by at least eight parents of children belonging to the same minority and if a class can be organised in accordance with the Public Education Act. Under ETA Section 28(2)(a), voluntary minority education initiated by parents and justified by its objectives or curriculum does not violate the principle of equal treatment.

The decree issued by the Ministry of Culture and Public Education (MKM) was interpreted in Case No. 24.P.21.443/2008 by the Somogy County Court, with the appellate decision issued by the Pécs Regional Court of Appeal in Case No. Pf.I.20.061/2010/7. The first-instance proceedings included an expert opinion from a national minority public education expert (document 27 in the present case file). The expert emphasised that minority education can be conducted within an integrated school if the conditions are met; it does not require a separate minority education institution. If at least eight parents from the same minority request such education, the school provider is obliged to ensure it. If no school can fulfil this requirement, students may continue their minority education as guest students at another school. The Pécs Regional Court of Appeal established in its final judgment that minority education, due to the distinct linguistic and cultural characteristics of national and ethnic minorities, can be conducted within a general/integrated educational framework. At the defendant's institution, national and ethnic minority education was substantively implemented, as outlined in witness JJ's summary dated 20 October 2009 (document 21/A/4), and its founding document included this as a core activity (document 21/A/5). However, learning the Roma language is not a mandatory element of Roma minority education, and it has not been implemented at the school in question.

Due to the formal and substantive deficiencies of the declarations submitted under 35/A/1-5, the voluntary decision of the affected parties cannot be established, nor can it be regarded as a conscious parental declaration of intent. Even the strong expressions of will by parents informed about the lawsuit, their genuine attachment to the school (as evidenced by the testimonies of the heard parents, grandparents, and legal guardians, and the declarations submitted under 12/A/1), and witness LL's testimony do not allow the conclusion that the parents of children attending the school in question had all the necessary information before making their decision.

The training forms of national minority education did not justify the segregation either. The March 2010 inspection by the Educational Authority concerned students with special educational needs (SEN) and was therefore irrelevant to the subject matter of the dispute, making the defendant's reference to it inapplicable (35. attached decision).

Based on the above, the defendant's exoneration attempt was unsuccessful, and the segregation was found to be unlawful.

#### Legal Consequences:

Since the defendant failed to prove its exoneration, the court, based on Section 84(1) of the Civil Code, established that the defendant violated the principle of equal treatment by maintaining the unlawful segregation of Roma ethnic minority and multiply disadvantaged students at Kossuth Lajos Primary School.

*Segregation does not require the existence of disadvantage for the segregated group; it suffices that the segregation is not permitted by law.* Even if identical conditions are ensured, unlawful segregated education remains illegal. Maintaining unlawful segregation passively, without active measures, constitutes a legal violation. While segregation was present in the school, it was not due to the active conduct of the municipality but rather due to objective, demographic factors. *The municipality's responsibility lies in its failure to take all necessary steps to eliminate the unlawful situation.*

The claimant did not invoke indirect discrimination in the proceedings, having withdrawn its related claim (Minutes No. 20, page 2). Consequently, the court deemed the appointment of an educational expert unnecessary. The court examined and assessed the interrelations of the National and Ethnic Minorities Act (NEM Act), Decree 32/1997 (XI.5.) of the Ministry of Culture and Public Education (MKM Decree), and the Equal Treatment Act (ETA), as well as the expert opinion submitted in the case. The defendant failed to prove that parents were aware that their rights concerning national minority education would be upheld at other institutions as well.

Regarding the minority education exemption, as the claimant argued (document 34), children could not be integrated precisely because of their minority education status. The multi-step exemption test under ETA Section 28 requires proof that:

- The school in question lawfully organised minority education (taking into account the opinion of the Roma Minority Self-Government and at the request of at least eight Roma parents),
- Any school-level segregated education beyond this was necessary,
- The segregated students suffered no disadvantages.

The latter condition prioritises the best interests of the child and requires that parents give their consent with adequate information. The defendant can only exonerate itself from liability for unlawfulness (segregation) if all of these conditions are met. The lack of conscious parental intent alone renders the exoneration unsuccessful, making the appointment of an expert unnecessary.

Despite the high level of student and parental satisfaction, the strong connection of parents to the school, the regular parent-teacher communication, the commitment of well-trained educators, their empathy and continuous professional development, and the school's successful programmes, grant applications, and competency assessments, the unlawful situation persists due to the segregation.

Following the establishment of the violation, the court, pursuant to Section 84(1)(b) of the Civil Code, ordered the defendant to cease the unlawful practice.

To remedy the unlawful situation, the court partially granted the claim under Section 84(1)(d) of the Civil Code, as set out in the operative part of the judgment. However, it did not specify the method of elimination, rejecting the corresponding claim based on the following reasoning:

Segregation in the school arose within a public law relationship, meaning that the necessary measures must be determined within the framework of public law. The elimination of the unlawful situation requires the implementation of a professionally developed programme, which falls outside the scope of the present proceedings. The restructuring of public education institutions and funding must be comprehensively reviewed to resolve the issue. The rehabilitation of Győr Újváros is ongoing, and the restructuring of the school maintenance system should rely on larger, functionally viable territorial units while preserving the benefits of decentralisation. The organisation of schools, designation of district boundaries, and implementation of territorial integration, as outlined by witness KK's broader integration concept (Minutes No. 25, page 13), are matters within the municipality's jurisdiction (Public Education Act, Section 102).

The claimant's amended claim was largely upheld. The court ruled on litigation costs based on Section 81(1) of the Code of Civil Procedure, in proportion to the claimant's success and failure, considering Decree 32/2003 (VIII.22.) of the Ministry of Justice.

Under Section 5(1)(b) and (f) of Act XCIII of 1990 on Duties (Itv.), both parties are exempt from court fees. Accordingly, the state shall bear the unpaid procedural fee of 21,000 HUF under Section 39(2)(b) of the Itv., in conjunction with Decree 6/1986 (VI.26.) of the Ministry of Justice, Section 14.

**Győr, 30 September 2010**

Erzsébet Lakatos Savanyóné, PhD  
Judge

Responsible for the authenticity of the copy: the issuer