Metropolitan Court of Budapest

27.P.20.939/2020/44.

The Metropolitan Court of Budapest

The applicant:

applicant (applicant's address)

Representative of the applicant:

dr. Adél Kegye lawyer (lawyer's address)

The defendant:

defendant (defendant's address)

Representative of the defendant:

Buczkó Law Office (represented by Péter Buczkó, attorney-at-law, with the address of attorney-at-law)

The subject of the lawsuit:

breach of the right to equal treatment

J U D G M E N T

The Court finds that, from 27 January 2004, the defendant infringed the individual right to equal treatment of children from the county who were removed from their families solely on the ground of their material circumstances, by failing to provide professional methodological guidance on the application of the prohibition on the removal of children from their families solely on the ground of material circumstances and by failing to carry out targeted checks on the practice of the child protection services in this respect.

The Court finds that, as from 27 January 2004, the defendant infringed the individual right to equal treatment of children of national origin from the county, who were de facto singled out from their families solely on account of their poor financial situation, by failing to carry out a targeted investigation into the extent and the reasons for the fact that the children de facto singled out from their families solely on account of their poor financial situation were of a particularly high proportion of national origin.

The Court orders the defendant to cease the infringement.

The court orders the defendant to carry out an investigation every calendar year for 5 years into the number of children of national origin who are considered to be of national origin by perception and to publish the results of the investigation and the measures taken on the basis of the results on its website by 31 March of the calendar year following the calendar year in question.

The Court orders the defendant to carry out a targeted inspection within 12 months to verify the application of the prohibition of discrimination based on material deprivation and national origin in the removal of children from the county family and to draw up a plan of measures based on the findings of the inspection, the implementation of which is to be monitored after 18 months. The court orders the defendant to publish the action plan on its website within 30 days of the expiry of the time-limit and the document verifying its implementation.

Beyond this limit, the court will dismiss the action.

The defendant is ordered to pay the applicant the costs of the proceedings, within 15 days, in the amount of HUF 192,380 (one hundred and ninety-two thousand three hundred and eighty).

The unpaid fee of HUF 36,000 (thirty-six thousand) shall be borne by the Hungarian State.

An appeal against the judgment may be lodged electronically at the Metropolitan Court of Appeal within 15 days of service of the judgment.

Legal representation is mandatory for the party lodging an appeal (cross-appeal) and an application for review (cross-application for review) against the judgment. Actions and statements in proceedings by a party without legal representation shall be ineffective unless the party without legal representation has applied for leave to be represented by an attorney, or the court is otherwise required to refuse the application, or the law precludes proceedings by proxy for the particular action. A party may apply to the legal aid service for authorisation to be represented by an attorney-at-law. If the party who has applied for legal representation does not have legal representation, or fails to arrange for the replacement of the legal representation which has ceased to exist despite having been invited to do so, the court shall, subject to the exceptions set out above, dismiss the application for legal representation of its own motion. Legal representatives shall be the persons specified in Article 73/C (1) to (3) of Act III of 1952 on the Code of Civil Procedure (Code of Civil Procedure).

The court of second instance may hear an appeal against a judgment out of court if the appeal relates only to the payment or amount of the costs of the proceedings or the payment of the unpaid fee, or only to the time limit for performance of the judgment, or only to the grounds of the judgment. In such cases, the appellant party may request a hearing in his appeal or, failing that, the appellant party's opponent may request a hearing at the request of the court of second instance.

Before the expiry of the time limit for appeal, an appeal may be decided on the basis of a joint application by the parties.

R e a s o n i n g

[1] The plaintiff foundation (plaintiff, abbreviated name: plaintiff) has for a long time been conducting national and international research on the integration of national children and has also been providing individual legal protection in Hungary and other European countries to national children and their families who have been alleged to have been discriminated against on the basis of their material vulnerability or ethnicity.

[2] The defendant is a central budgetary body, the Ministry of Child Protection, which is responsible for the sectoral management of child protection administration, and exercises the legality and professionalism control duties and powers related to the exercise of the child protection and guardianship functions of the Metropolitan and County Government Office (Article 1 (3) of Government Decree No.331/2006 (XII. 23.) on the performance of guardianship duties and powers, and on the organisation and competence of the guardianship authority (Gyvr.)).

[3] The domestic child protection system operates at two levels.

In primary care, family and child welfare services and family support workers help children and their families who come to their attention on the basis of warnings and signals from members of the signalling system (in particular children's rights representatives, schools, churches, police) to solve problems and situations of vulnerability within the family framework, keeping the family together. Within the primary care system, there are temporary care institutions (temporary homes for children and families and substitute parents) which provide temporary solutions to acute problems and situations of vulnerability of children and families.

Specialist care is child protection care provided by family and child protection centres, which remove children from their families and refer them to statutory services for children whose problems have not been addressed by the primary care system. The removal of a child from his/her family may be a last resort when the problems of the child and his/her family cannot be resolved within the framework of the basic care system.

[4] The domestic practice of removing children from their families, particularly national children, has been the subject of research and study by several organisations and research groups at both international and national level.

[5] In 2007 the applicant prepared a report entitled "Title of the report1" and in 2011 "Title of the report2" on the situation of national children in the Hungarian child protection system, concluding that national children are removed from their families at a significantly higher rate than the majority of the population, which is typically due to the extreme poverty of their families and the deep-rooted prejudice against nationalities in the majority society.

[6] As the winner of the applicant's call for tenders, the association carried out a research project between September 2015 and January 2016 on "Children in special care in the county", the basic question of which was to assess whether a disproportionately higher number of ethnic children are

placed in special care and whether the removal from the family is typically due to financial reasons, or whether discrimination based on their extreme poverty and ethnicity plays a role (24.The research was carried out with the permission of the Directorate General for Social Affairs and Child Protection, and the defendant had previously commented on the questionnaire used in the research.

The research was based on the analysis of statistical and institutional data, on the recording and analysis of data sheets containing information on children placed in specialised care from the TEGYESZ (Territorial Child Protection Service) documentation and the declarations of child protection guardians, and on interviews with members of the signalling system and with staff of child welfare services, district child protection offices and specialised care sites.

The final report of the research, dated February 2016 (hereinafter: the final report of the research, No.24.736/2019/1/F/4.ssz.), summarises that there is a close link between extreme poverty, severe deprivation and the admission of children to specialised care, with children from families with children of ethnic backgrounds with a high risk of poverty and with many children being strongly overrepresented in the county's specialised care. Moreover, it can be shown that around 80% of children entering (i.e. being removed from) specialised care are of ethnic or semi-ethnic origin, a remarkably high proportion that is not explained by the high proportion of ethnic population in the county or by the prevalence of extreme poverty among the ethnic population of the villages concerned (p. 87).

[7] In its reports on Hungary, the UN Committee on the Rights of the Child has expressed concern about the abuses in the removal of children of poor financial circumstances and national origin from their families and has urged that this be addressed.

The report, dated 27 January 2006, stated, inter alia, that "the Commission is particularly concerned about the over-representation of national children in the institutions and the lack of efforts to reintegrate children into their families as soon as possible".

In a report dated 14 October 2014, the Commission expressed concern about the "high number of children separated from their parents who are living in poverty or homeless due to unemployment" and urged the state to ensure that "children are not separated from their parents due to poverty or lack of housing".

The latest report, dated 7 February 2020, again urged the Hungarian State to "fully implement comprehensive programmes to prevent children from being separated from their parents and placed in child protection care due to the economic situation of the family" and to "strengthen national measures to eliminate discrimination against children ... with particular attention to education, health, child protection services and housing". (24.736/20191/F/3.ssz.).

[8] After a lengthy preparation (starting in 2008), the Ombudsman issued in December 2017 the AJB-2026/2017. After a long preparation, the Ombudsman issued his report No. 2026/2017, which was the subject of an investigation, covering the territory of municipalities, counties2, counties3, counties4 and counties, on "how the rights of the child, the requirements of proportionality and gradualism are applied in the procedures for the admission and removal of children to specialised child protection care" (hereinafter Ombudsman's report, No. 24.736/2019/1/F/2).

In the course of its investigation, the Ombudsman took into account the information provided by the directors of the specialised child protection services, and consulted the organisational president of the association, the vice-president of the Hungarian Maltese Charity Service and child protection professionals in the county.

The Ombudsman's report describes the research taken into account during the investigation as follows: "In addition to analysing the data received following my inquiries, I have tried to review the experience and results of professional research and studies that have looked at the links between the poor existential and income situation of families and the field of child welfare and protection. As an ombudsman, I am not in a position to carry out my own complex social science research on an issue that would otherwise be justified." (page 28, point 1.2).

In this context, the Ombudsman referred to the Association's research on the situation of children's placement in specialised care in the county, which was completed in February 2016, as detailed in [6].

The Ombudsman's report, based on the data provided by the County Child Protection Centre and the Regional Child Protection Specialist Service (Child Protection Specialist Service), records that in 2016, 90 children were referred to the Specialist Service, of whom 44 were placed in foster care (p. 8, point 2.3). The report also states that 17 of the 90 children referred to the specialised care were identified as being at risk of financial difficulties, namely 'homeless parent, parent without income, eviction, parent with housing problems', and were placed in care (i.e. all children referred to the specialised care for financial reasons without exception). According to the Ombudsman, this means that 18.88% (17 out of 90 children) of the children referred to specialised care and 38.63% (17 out of 44 children) of the children placed in care were placed in specialised care or removed from their families because of financial vulnerability. The Ombudsman's report states, in the context of the above finding, that "the reasons for referral are complex for almost all children, the problems of the family are interrelated, as social and financial reasons can be the source of almost all other problems, affecting all aspects of the family's life".

The Ombudsman's report also presents data from the Association2 of Primary Care for Children, which states that when asked in 2016 "how many times case managers of child welfare centres run by district headquarters proposed family removal" and how many of these cases were "primarily based on financial vulnerability", they answered that 154 cases were proposed for removal, but in none of these cases was financial vulnerability the primary reason for the referral (14.p. 3.3.1).

The Ombudsman's report deals with "the removal of children from their families for financial reasons" (III.1.1, pp. 28-29), noting, on the basis of the data from primary and specialised care detailed above, that the average percentage of children who were taken into care, i.e. removed from their families for financial reasons, is 30% in the capital and in the counties under review, while the highest percentage is 38.63% in the county.

In the context of the above (point III.1.2, pp.28-29), the Ombudsman's report referred to the fact that it had "reviewed" the "experiences and results" of the Association's research detailed above and briefly summarised the findings of the research.

The Ombudsman's report concluded, on the basis of the data from primary care and specialised care detailed above, that "the fact that almost one third of children in specialised child protection care in the areas covered by the inquiry are not able to live with their biological family due primarily to financial vulnerability is a serious setback to the right to protection and care of the children concerned" (29.The Ombudsman pointed out that his inquiry confirmed the findings of previous ombudsman inquiries and other inquiries, as well as statistical data (p. 34).

The Ombudsman's report concludes that "the ultima ratio, gradualism and the application of necessity and proportionality criteria in individual cases" can lead to a decision in the best interests of the child, but it is also clear that the problem cannot be solved at the level of child protection services alone, because the complex problem can only be solved through "coordinated, continuous social policy measures" (p.34).

In the light of the Ombudsman's findings, he made the following recommendations to the defendant:

On the one hand, assess the current institutional shortcomings in each county and then take targeted action to increase the number of places in temporary care - primarily in substitute care and family homes - and to design more homogeneous and accessible places, adapted to the needs of the area.

Second, help to ensure that the services provided by primary child welfare services provide sufficient support to the families concerned to prevent, as far as possible, the removal of the children concerned from their families, either primarily or solely because of financial vulnerability.

Thirdly, examine the possibility of setting up a professional working group to determine how the removal of children from their families, whether primarily or exclusively due to material vulnerability, can be prevented or remedied by social policy instruments, in line with international standards and the principles of necessity and proportionality.

[9] On 21 September 2017, the State Audit Office of Hungary (SAO) issued a report on the "Audit of the institutional system of child protection" (24/F/4.ssz.).During the audit, the SAO examined the performance of regulatory tasks and the regularity of the exercise of the powers of the maintainers in relation to the defendant (as "central managing authority"), the Directorate General for Social Affairs and Child Protection (as "central maintainer") and a sample of local authorities. The audit covered the implementation of certain measures relating to child welfare and child protection services and the defendant's (as sectoral minister) activity in coordinating child protection services and the fulfilment of the obligations imposed.

The report found specifically for the defendant (as the central managing authority) that in the field of child protection services providing personal care it had not established "indicators and targets enabling the monitoring of the fulfilment of the tasks set out in the national strategies", and that therefore the fulfilment could not be assessed, and that "in the performance of its tasks in the field of child protection it had set objectives, but had not assigned targets and indicators to them and had not monitored their achievement" (27. The defendant contested in part the findings of the SAO's investigation (pp. 45-50).

[10] The Central Statistical Office's findings of its assessment, published in its publication "Title of the publication", issue 11 of 2014, under the title "Title of the article", and supported by detailed statistical data, are summarised as follows:

"It can be said that families with low education levels, no active employment, parents with many children and national families are more likely than other families to be placed in a children's or family's temporary home. It is important to stress, however, that everyone can find themselves in a situation where they are unable to provide housing for their children and family, and in these cases temporary care can be a solution for families" (24.736/20191/F/5.ssz.).

[11] Between 2013 and 2020, the defendant took the following measures in the context of the exercise of its management responsibilities and powers in the child protection sector (based on the documents cited or submitted by the defendant):

(1) "National official control plan for the social and guardianship offices of the metropolitan and county government offices" of 6 December 2013. On 16 December 2013, the defendant ordered an inspection of the specialised child protection care to check whether "the child in the specialised child protection care receives a full range of care, including food, clothing, mental health and health care, care, education and housing, which is appropriate to his/her age, health and other needs and which promotes his/her physical, intellectual, emotional and moral development" (24.736/2017/11/A/1, 26/F/9. ssz.);

(2) On December 10, 2014, the defendant ordered the "National official control plan for the social and guardianship offices of the capital and county government offices" to be carried out between January 1, 2015 and December 31, 2015. (24.736/2017/3/A/1.-2. ssz.);

(3) On 8 December 2015, the defendant submitted a "National official control plan for the social and guardianship offices of the metropolitan and county government offices" for the period from 1 July 2015 to 30 June 2016. on 8 August 2017, the defendant ordered a target analysis, which was intended to examine, with regard to specialised child protection care, the impact of 'the provision of free meals for children in care, nursery schools and schools and free textbooks for young adults in care' on 'the quality, quantity and supply of care content provided in the context of care in the home' (24.736/2017/3/A/9. ssz.);

(4) On 18 November 2016, the defendant ordered an investigation into the "implementation of the provisions of the law and the decision of the guardianship authority" in relation to child protection specialised care, in connection with the practice of ordering foster care, in addition to the fulfilment of the personal and material conditions (24.736/2017/11/A/5. ssz., 26/F/10. ssz.);

(5) In a letter dated 22 December 2016, the State Secretary for Social Affairs and Social Inclusion informed all the Departments of Guardianship and Justice of the Government Offices and all the Family and Child Welfare Centres of the amendments to the legislation that will enter into force on 1 January 2017 to enhance the safety and protection of children (No 24.736/2017/11/A/9);

(7) In August 2017, the defendant issued a professional recommendation on the "Rules for the operation and functioning of the detection and signalling system operated by the Family and Child Welfare Service", a 37-page document setting out the rules for the detection of situations of risk to children and the obligations and cooperation of the members of the signalling system in this regard (No. 24.736/2017/3/A/2);

(8) In August 2017, the 2nd edition of the "Protocol on the Processes of Family and Child Welfare Services in Child Protection Care" was issued, an 84-page document regulating the procedures to be followed in child protection measures (No. 24.736/2017/3/A/4);

(9) The 2nd edition of the protocol "Processes of the detection and signalling system operated by the Family and Child Welfare Service" was published in August 2017 (No. 24.736/20173/A/5);

(10) The 2nd edition of the Protocol "On the processes of social assistance work in the framework of family and child welfare services" was issued in August 2017 (No. 24.736/201763/A/7.s.a.);

(11) In August 2017, the defendant published a 58-page methodological guide, corresponding to the 3rd revised edition, entitled "Sector-specific uniform principles and methodology for the recognition and elimination of child abuse in connection with the operation of the child protection detection and signalling system", which deals in detail with the recognition of emotional, physical and sexual abuse of children, the methodology of reporting and the activities for the elimination of abuse (No. 24.736/20173/A/6.);

(12) "National official inspection plan for the departments of the capital and county government offices acting in the field of social affairs, child protection and guardianship", 2017. In the inspection plan dated 31 October 2017, the defendant identified the areas of specialised child protection care to be examined in particular in the inspection of the spatial and material conditions of placement, the full range of care, the outdoor activities of children and young adults, sports activities, artistic activities, talent care and catching-up, and also provided for the inspection of the implementation of the provisions of the legislation and the decision of the guardianship authority (24.736/2017/11/A/4, 26/F/8);

(13) "The Department of Social Affairs and Guardianship of the Department of Public Authorities of the County Government Office and the Department of Rehabilitation and Expertise of the Department of Employment, Family Support and Social Security of the Municipal District Office 2017. The defendant prepared a partial report dated 21 November 2017 entitled 'Comprehensive audit of the year 2017', which examined the activities of the authority responsible for child welfare in relation to cash and in-kind benefits and specialised care. The partial report stated that, overall, "the performance of the duties of the guardianship authority is in compliance with the law and of a good quality", that the authority "strives to maintain legality and professionalism" and that the authority "has a strong commitment to customer-friendly administration and to providing full information to customers", as a

result of which the partial report made recommendations for the future, such as that the guardianship authority "should pay more attention to the legal provisions in force" (No. 24.736/2017/3/A/8);

(14) In a letter dated 23 March 2018 from the Secretary of State to the Secretary of State2, State Secretary for Territorial Administration of the Prime Minister's Office, the Secretary of State requested information in order to comply with the requests and recommendations of the Ombudsman's report (24.736/2017/11/A/10. ssz.);

(15) From 1 July 2018, a new system of continuing social training was introduced (p. 26.p. 15);

(16) From 1 September 2018, social assistance activities in kindergartens and schools have been introduced (Section 26/F/6);

(17) In the plan entitled "National official inspection plan for the departments of the metropolitan and county government offices acting in the field of social child protection and guardianship", dated 25 October 2018, the defendant ordered a targeted inspection of the foster care, adoptability, family adoption and temporary placement (38/A/5. p;)

(18) A professional recommendation entitled "Child protection signalling stand-by service for special service providers" was issued in February 2019 (No 26/F/7);

(19) In the action plan entitled "2021 National Official Control Plan for the Departments of the Metropolitan and County Government Offices with Social, Child Protection and Guardianship Responsibilities", dated 2 November 2020, the defendant indicated as a priority objective "the examination of the guardianship practice related to the review of the temporary placement of children, with particular regard to whether the right of the child to live in a family is properly enforced in the guardianship proceedings" (No.38/A/4.).

[12] The court established the facts of the case on the basis of the presentation of the parties, the documents attached by them, the testimony of witnesses 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and the other written evidence submitted by the parties, in particular the final report of the research conducted by the association on "Children in Special Care in the County" and the report of the Commissioner for Fundamental Rights under number AJB-2026/2017.

[13] The applicant submitted **its** amended **application** (no. 24) in a genuine set of two claims, with the second claim containing two claims which are apparently a set of claims.

I.

*In its **first** application, the applicant sought a declaration that the defendant had failed to exercise its powers under Article 9(e)-(i) of Act XXXVIII of 1992 on Public Finances (old Áht.) and Article 1(3) of Government Decree No. 331/2006 (XII.23.) on the performance of child protection and guardianship functions and powers, and on the organisation and competence of the guardianship authority (hereinafter Gyvr.), in particular:*

a) despite the scientific research, international and national institutional indications that the removal of children from their families for material reasons is likely or supported, it has not carried out a targeted survey or targeted monitoring among child protection institutions on the extent, causes and consequences of this phenomenon;

b) has not developed a plan of action to eliminate and prevent the phenomenon, despite scientific research, international and national institutional indications that would suggest or support the likelihood of material separation;

c) failed to develop professional guidelines or protocols for child protection professionals on how to prevent children being removed from their families for financial reasons;

(d) failed to provide financial and integrated family support tools for child protection professionals in primary care, specifically aimed at keeping families in financial crisis together;

(e) did not provide child protection professionals with tools in the primary care setting to provide targeted support to address the housing crisis.

The applicant claims that, by failing to do so, the defendant is perpetuating the practice of the bodies under its control of removing, or threatening to remove, an unspecified number of children from their families for reasons related to their social origin, wealth or income. According to the applicant, the defendant discriminates directly against children who have been removed from their families on the basis of their social origin and their wealth/income situation, in comparison with all children who have been separated from their families for a reason permitted by law. The defendant thereby infringes

Article 8(p) and (q) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter 'the Equal Treatment Act').

The applicant based its first head of claim on the position (paragraphs [4] to [10] of Section 9) that the practice of the defendant, which was based on the failure to act as detailed above, caused direct discrimination against children from the county who were in fact children of a family who were in a position of priority solely on the basis of material grounds, contrary to Article 8(q) of the Ebktv, based on their financial situation. According to the applicant, this is unlawful in itself, because Article 7(1) of Act XXXI of 1997 on the Protection of Children and Guardianship Administration (Act XXXI of 1997 on the Protection of Children and Guardianship Administration) prohibits the removal of a child from his or her family for purely financial reasons. The applicant submits that the protected characteristic of those children, as defined in Paragraph 8 of the GvB, is their poverty (that is to say, their poor financial situation) and that the disadvantage to which they are subject is that they are unlawfully removed from their family for that reason. This is fundamentally prejudicial to the interests of the persons concerned, since the child's best interest is to be brought up in a family, even in cases of extreme poverty.

The applicant pointed out that, although the reasons for the removal of these children from their families are not formally given in the decisions of the authorities as material reasons, the reasons for removal, which are usually defined as neglect or inadequate housing conditions, are also typically based on the poverty of the families. The applicant submits that the defendant could prevent the continuation of this unlawful practice by providing methodological guidance on the assessment of material vulnerability and by monitoring the practice of the authorities and taking measures to remedy the anomalies found.

The applicant claims that a group of children from the county who have been removed from their families for other legitimate reasons, i.e. not solely for financial reasons, are in a comparable situation to these discriminated children, which in their case is not a disadvantage but a decision in their best interests, in order to ensure their proper development.

In support of its first head of claim, the applicant no longer pleaded that the defendant's conduct complained of constituted discrimination on grounds of national origin. However, the applicant stressed that discrimination on grounds of poverty and national origin typically affect the persons concerned at the same time, as a result of which they suffer multiple discrimination.

According to the applicant, the defendant's conduct complained of constitutes direct discrimination against the children concerned on the basis of a breach of Article 8(q) of the Children's Act.

II.

*By his **second head of** claim, the applicant* seeks ***primarily a*** declaration that, among the children designated in the first head of claim, despite a practice which is apparently neutral as regards their nationality, national children are removed from their families at a rate which is strikingly higher than that of non-national children in a comparable situation, who are singled out solely on the ground of their material vulnerability, in relation to the proportion of national children in the population of the county. The defendant thus indirectly discriminates against the children of the priority nationality on the basis of their nationality by infringing Paragraph 9 of the Law on the Protection of National Minorities by failing to exercise the rights under Paragraph 93(1)(d)(f)(g)(h) of the old Áht. 9(e) to (i) and Article 1(3) of the Gyvr. in connection with the exercise of its duties in the field of child protection and guardianship, specifically aimed at ensuring the prohibition of discriminatory singling out, namely

a) despite scientific research and indications from international human rights institutions that the over-representation of national children in the child protection system is likely or under-represented, has not conducted a survey among child protection professionals on the reasons for this;

(b) despite scientific research and indications from international human rights institutions that the over-representation of ethnic children in the child protection system is likely or supported, it has not developed a protocol for the anonymous collection of ethnic data and has not instructed the collection of ethnic data on children in care for statistical purposes.

The applicant based this application on the fact (paragraphs [11] to [14] of p. 9) that the number of national children among the children of the county concerned by the first application, i.e. children who were in fact removed from their families for purely material reasons, was strikingly high, far exceeding the proportion of the national population. In the applicant's view, the defendant's failure to act, as set out above, constitutes indirect discrimination against children of national origin on grounds of social origin contrary to Article 9 of the Law on the Protection of Children of National Origin and qualifying under Article 8(p) of the Law. It can be established that, although the removal of children from their families is not ostensibly based on their national origin, these children are removed from their families at a strikingly higher rate than children from families of non-national origin in a comparable situation, without any reasonable justification.

According to the applicant, the situation of children of non-national origin who are in a situation comparable to that of the children suffering the disadvantages described above is that of children of non-national origin who are actually children of a family who are singled out for financial reasons, and who represent a significantly smaller proportion of the children singled out than would be justified by objectively assessable reasons (in particular their population).

The applicant claims that the defendant's conduct constitutes indirect discrimination against the children concerned within the meaning of Articles 8(p) and 9 of the Children's Act.

The substance of the *applicant's* ***alternative*** claim is identical to that of his principal claim, except that, in his alternative claim, he defined the group of children in a situation comparable to that of disadvantaged children as the non-national children of the county not removed from their families

In the applicant's view, the disadvantaged situation of the children of national origin from the county who were removed from their families also exists in relation to all children from the county (as a group in a comparable situation), in addition to the situation described in the primary application (para. 9 [15]). According to the applicant, the disadvantaged situation of the children concerned by the claim can also be established in relation to this group of children, which is a consequence of the fact that children of national origin from the county are removed from their families in a proportion twice their population.

In both actions, the applicant sought a declaration of infringement as from the entry into force of the Ebktv, i.e. 27 January 2004.

The applicant requested the application of the *additional* ***remedies*** *set out below:*

It sought an order that the defendant cease the infringement.

He sought an order that the defendant cease and desist from the infringement by

a) Order the defendant to start, within 2 months of the judgment becoming final, the collection of statistical data on the nationality of children in the basic and specialised care of the county child protection system, based on the perceptions of professionals working in the child protection system, in a way that does not allow the identification of the persons concerned; analyse the data collection every year for 5 years from the date of the judgment becoming final, in particular with regard to trends in the number of national children, whether they are increasing or decreasing, the possible causes of this and the scope of the interventions required; share the analysis with the applicant for 5 years.

b) Within 2 months of the judgment becoming final, conduct a survey of the county's child protection services in temporary care, including temporary homes for families and children and the institution of substitute parents; the survey shall address the gap between the current needs and the actual needs of the county, taking into account the county's specific demographic, geographic, settlement structure, housing and poverty indicators, and the extent of the gap; share the survey with the plaintiff.

c) Within 1 month after the judgment has become final, convene a professional working group, including NGOs and professionals, to draw up a problem map showing the known causes of the nationality and/or material grounds for the exclusions; include the applicant's representative in the working group; make the problem map public within 5 months after the judgment has become final.

d) Within 6 months after the judgment has become final, the defendant shall also entrust the professional working group referred to in point c) of the application with the task of drawing up a professional guide for child protection professionals on how to avoid removal of a child from his/her family on the grounds of financial vulnerability and/or nationality; the guide shall specify the grounds related to the financial situation on the basis of which a child may not be removed from his/her family; the defendant shall instruct the child protection services under his/her control to apply the guide.

e) Within 6 months of the judgment becoming final, prepare a plan of action in accordance with international standards on the rights of the child and fundamental rights, based on the assessments referred to in points a) to d), to eliminate the national and/or material grounds for removal in the county, and implement it within 18 months of the judgment becoming final.

The applicant sought an order that the defendant publish this action plan and the report on its implementation on its website.

The applicant also requested the defendant to pay the costs of the proceedings, the amount of which, referring to a contract of mandate, was set at HUF 802,125.

[14] **In its** amended **counterclaim** (no. 26), the defendant primarily relied on the Pp. In its motion No. 26 (26.26.), the defendant primarily invoked § 157(a) and § 130(1)(b) and (g) to have the proceedings dismissed.

In the event of a decision on the merits of the action, the applicant pleaded, first, that the action was time-barred and, second, that the action should be dismissed in its entirety and that the applicant should be ordered to pay the costs of the proceedings, which amounted to HUF 38,100, charged on the basis of the costs list.

On the one hand, the defendant sought to have the case dismissed for lack of jurisdiction.

In its view, the court has no jurisdiction to rule on the action, because it seeks to review the legality of procedures which have been concluded by final administrative decisions, which is not possible in a personal law action.

On the other hand, the defendant relied on the lack of legitimacy of the applicant in the proceedings.

According to the applicant, its Articles of Association state that the applicant is a non-governmental organisation for the protection of "national minorities whose rights have been violated". According to its interpretation, this means that the applicant is not entitled to bring an action under the law of personality for the protection of "those living in a poor financial situation", because the protection and assistance of persons belonging to this disadvantaged group (i.e. those living in poverty) is not included in the objectives of the foundation, and therefore, pursuant to Article 3(1)(e) and Article 20(1)(c) of the Ebktv.

The defendant also raised a statute of limitations objection.

He claims that the claim is time-barred for a period of more than 5 years before the date of the application, i.e. before 2012.

According to the defendant's counterclaim, the applicant did not bring the action against the appropriate defendant, i.e. the body with the statutory functions and powers.

In its defence, the defendant argued that in its action the plaintiff was in fact contesting the decisions of the authorities concerning the removal of children from their families, which is not the competence of the defendant, but of the guardianship authorities, and therefore the defendant could not be sued for lack of competence.

The defendant strongly argued that the decisions of the guardianship authorities are subject to appeal and judicial review, i.e. if the removal of the child from the family despite the legal prohibition was solely for financial reasons, this would be the consequence of the decision of the guardianship authorities or the court, in which the defendant could not and did not have any role.

The defendant also claimed that the plaintiff's claim based on the lack of exercise of "professional management powers" in connection with the removal from the family was not true and that there was "no adequate causality" between the defendant's actions and the unlawful practice which, in the plaintiff's view, was unlawful.

The defendant also claimed that the action contained an unenforceable claim and was therefore inadmissible.

According to the applicant, the application does not comply with the Pp. 121(1)(c) and (e), in particular because the legal remedies sought by the applicant are unenforceable and raise constitutional concerns, since the defendant, which is a public body or governmental entity, "is not entitled to be required by the court to perform tasks related to its professional activity".

In the defendant's defence, the applicant did not identify in his amended application any comparably situated persons or groups of persons who are treated less favourably than the members of the disadvantaged group he was defending.

With regard to Application No. I, because the applicant did not define the difference between the two groups in terms of the protected characteristic defined in Article 8 of the Equal Treatment Act, but in terms of the disadvantage suffered in the application of the law (unlawfulness), the applicant's definition of the groups of children described as being discriminated against and in a comparable situation to them is therefore purely fictitious.

As regards Application No II, because the plaintiff's definition of disadvantaged groups and groups in a comparable situation is logically and numerically refutable. In the defendant's interpretation, this follows from the plaintiff's assertion that both the children prioritised for financial reasons and those prioritised for other reasons are of almost equal national origin, which means that it cannot be ruled out that the children concerned were disadvantaged in their admission to child protection specialised care on the basis of their national origin.

According to the defendant's assessment, it exercised its duties and powers in the context of child protection and fulfilled its obligations.

The defendant requested an assessment of the significant development of the institutional system of basic child protection, the expansion of the transitional homes for families and children, the development of the institutional system of the title of the article, the strengthening of the system of

detecting children at risk, which have significantly improved the situation and opportunities of children of families in the care of child protection.

The defendant urged that it should be appreciated that the plaintiff in the lawsuit raises a complex social problem that goes beyond the scope of the lawsuit and cannot be solved by the plaintiff's enforcement of its claims.

[15] The court started the trial of the lawsuit in the proceedings under No.27.P.24.736/2017 (main proceedings), its judgment under No.43 was set aside by the Metropolitan Court of Appeal by its order under No.32.Pf. 20.749/2019/7-II (order of the FÍT) and the court of first instance was ordered to re-try the lawsuit and to issue a new decision.

In its order, the Metropolitan Court of Appeal required that in the retrial, the plaintiff must specify precisely which and how the defendant's conduct violated the personal rights of the persons concerned to non-discrimination. In addition, the applicant must identify in a precise manner the group of persons who are disadvantaged and those who are in a comparable situation. The court must then conduct the evidentiary procedure, with the plaintiff having the burden of establishing probability and the defendant the burden of proof.

[16] The action is partly well founded.

[17] The defendant's *motion to dismiss was* denied by the court in its order No. 27-I, for the reasons set forth below.

[18] *On the one hand, the defendant requested the discontinuance of the proceedings for lack of jurisdiction* (§ 157 (1) (a) and § 130 (1) (b) of the Civil Code). According to the plaintiff, its claim seeks a review of the legality of proceedings that were actually concluded by final administrative decisions, which the court does not have jurisdiction to decide.

The claim of the plaintiff is based on Articles 3(1)(e), 8 and 20(1)(c) of the Ebktv, according to which a civil and interest representation organisation whose statutory task is to protect and support disadvantaged groups with protected characteristics as defined in Article 8 of the Ebktv may bring an action under the law of personality for the protection of the persons concerned in the event of a violation of equal treatment based on these protected characteristics. The defendant has not disputed that, pursuant to Article 23(1)(g) of the Civil Code, the jurisdiction to hear personality rights actions lies with the courts.

It follows from the legislation cited that the defendant's plea of lack of jurisdiction is unfounded.

The applicant did not base its action on individual breaches of public authority, but on the defendant's failings which allowed or maintained that the practice of the authorities of the county in relation to the removal of children from their families could not exclude discrimination based on poverty and national origin which violated the right to privacy of the children concerned. Accordingly, the applicant bases its claim on the direct consequence of the defendant's conduct complained of (the practice of the child protection authorities discriminating against the persons concerned) and not on its indirect consequence, namely the unlawful individual decisions which can be traced back to the contested practice of the authorities.

The invoked provisions of the Equal Treatment Act allow for this particular way of enforcing personality rights, in which the infringement of personality rights embodied in the violation of equal treatment is not based on individual infringements, but on the violation of protected characteristics of a community as defined in the Equal Treatment Act. The general rules on jurisdiction apply to the assessment of personality rights based on this special authorisation, i.e. the court of law has jurisdiction to hear the present action pursuant to Article 23(1)(g) of the Civil Code.

[19] *The defendant also claimed that the action should be dismissed for lack of legitimacy of the plaintiff* (Pp. 157 (1) (a) and 130 (1) (g)). According to the plaintiff, since the plaintiff's Articles of Association only designate the legal protection of "nationalities whose rights have been violated" as the foundation's task, it is not entitled to bring an action under the law of personality to protect other victims, such as "those in a poor financial situation" (Ebktv. Article 3(1)(e), Article 8(p) and (q), Article 20(1)(c)).

The defendant has already taken a position on this request for discontinuance in the order of the Metropolitan Court of Appeal under No.32.Pf. 20.749/2019/7-II, therefore the court cites the findings of that order, which are also applicable to the present proceedings and which are fully shared by the court, as follows:

"The applicant ... qualifies as a civil and interest-representing organisation under Article 3(1)(e) of the Act on the Right of Association, Public Benefit Status and the Functioning and Support of Civil Organisations, whose founding charter includes among its objectives the promotion of social inequality and social inclusion of disadvantaged groups, as defined by the precise definition of the protected characteristic, and the protection of human and civil rights, as defined by the precise definition of the protected characteristic. The applicant's legitimacy in the action is further justified by the fact that the persons affected by the discrimination are poor children, and to a large extent national children, that is to say, the alleged disadvantage is suffered by the children represented by the applicant because they are both poor and national, the two being indissociable, interrelated and mutually reinforcing. According to the applicant's affirmative statement at the appeal hearing, it is the national children

living in poverty who are entitled to bring the present action, since the parties to the first application are also primarily national children.

Pursuant to Article 20 (1) (c) of the Ebktv., the applicant was entitled to bring a claim in the public interest, because it is undisputedly a civil society organisation acting in the interest of the rights of national minorities. The law does not contain any restriction that an organisation may only bring an action under the law of personality for a breach of equal treatment of a kind which directly affects only the group of persons it represents. However, the applicant fulfilled the conditions laid down in Article 3(c) of the Ebktv. Thus, the plaintiff was a statutorily defined entity that could bring an action in the public interest."

[20] *The defendant's further claim, formally submitted as a counterclaim, but in substance constituting a ground for discontinuance, according to which the plaintiff did not bring the action against the proper defendant, i.e. not the body with the statutory function and competence* (Pp. According to the applicant, the defendant does not have the competence to take the decision to remove the children from the family, so that if the requirement of equal treatment had been infringed in the proceedings in the manner alleged by the applicant, this would have been the consequence of a decision of the guardianship authority or the court, in which the defendant could not and did not have any role.

The defendant's claim is unfounded.

The Court refers to paragraph [18], according to which the subject of the present action is not whether the requirement of equal treatment has been infringed in individual decisions, but whether or not the practice of the authorities acting in the case of the children represented by the applicant infringes the requirement of equal treatment as a result of the defendant's omissions.

The defendant has not disputed that it has the task and competence to "define the operational framework of social, child welfare and child protection bodies" and that it is obliged to "provide methodological support to assist in the application of the law" (p. 26, p. 12). The defendant's own presentation also shows the untenability of its argument that it has nothing to do with decisions on the removal of children from their families. The defendant itself acknowledged that it is responsible for providing methodological guidance on the application of the law and for monitoring the legality of the practice of the authorities, and that, consequently, it has passive standing (i.e. it is actionable) in relation to claims based on the practice of the authorities which infringes the requirement of equal treatment and is attributable to the failure to fulfil these tasks.

[21] *According to the defendant's plea of limitation,* the plaintiff's claim was time-barred for a period of more than 5 years prior to the filing of the application.

The objection is unfounded.

Pursuant to Article 75 (1) of Act IV of 1959 on the Civil Code (old Civil Code, Civil Code), the right to a person is an absolute right, enforceable against everyone, to the respect of which everyone has a justified claim. In view of this nature of rights relating to individuals, the objectively based sanctions for their infringement, i.e. the claims for the declaration, cessation and remedy of the infringement under Article 84(1)(a)(b) and (d) of the Civil Code, share the nature of a fundamental right, i.e. they are non-exhaustive civil law claims.

[22] The *legal basis for the* assessment of the application is laid down in the Equal Treatment and Equal Opportunities Act.

The present action is a public interest action brought by the applicant, as a non-governmental organisation entitled to assert claims in the public interest meeting the requirements of Article 3(1)(e) of the Ebktv., for the protection of the interests of children from families in the county who have suffered discrimination due to their poor financial situation and national origin, in order to assert a claim under the law of personality.

The requirement of equal treatment "requires duty-bearers to refrain from any conduct which, on the basis of certain characteristics, results in direct or indirect discrimination, retaliation, harassment or unlawful segregation of persons or groups of persons." Accordingly, "on the one hand, the requirement of equal treatment implies a negative obligation: on the one hand, the duty-bearers must not violate the equal human dignity of others, while on the other hand, it implies a rightful enforceable claim of everyone to be treated as a person of equal dignity" (Explanatory Memorandum to the Equal Treatment Act).

According to Section 7 (1) of the Equal Treatment Act, direct and indirect discrimination based on the protected values defined in Section 8 constitutes a violation of the requirement of equal treatment.

According to Section 8 (p) and (q) of the Equal Treatment Act, the social origin and financial situation of a person or group is a protected value that forms the basis for discrimination.

Direct discrimination is a provision which results in an individual or a group being treated less favourably than another person or group in a comparable situation because of its actual or perceived protected characteristic - in the present case: its social origin and wealth (Section 8 of the Equal Treatment Act).

Indirect discrimination is a provision which does not constitute direct discrimination and which appears to meet the requirement of equal treatment, if it places certain persons or groups with protected characteristics in a significantly more disadvantaged position than another person or group in a comparable position was, is or would be in (Section 9 of the Equal Treatment Act).

Pursuant to Article 4(m) of the Equal Treatment Act, budgetary bodies are obliged to observe the requirement of equal treatment in the establishment of their legal relations, in their legal relations, procedures and actions.

[23] The provisions of the old Civil Code are applicable to the *substantive* adjudication of the infringement of personality rights in the litigation, with regard to the provisions of Act CLXXVII of 2013 on the transitional and enabling provisions related to the entry into force of Act V of 2013 on the Civil Code (new Civil Code), Article 8 (2), paragraph 8.according to which the provisions of the old Civil Code shall apply to continuous infringing conduct commenced before the entry into force of the new Civil Code (15 March 2014).

The factual basis of the plaintiff's claim is the defendant's conduct, which, according to the plaintiff, has existed for decades, and consequently the provisions of the old Civil Code apply to the assessment of the personal rights claim asserted in the action.

According to Article 75 (1) of the Civil Code, everyone is obliged to respect the rights of the person. These rights are protected by law.

According to Article 76, a violation of the rights of the person means in particular a violation of the requirement of equal treatment.

Pursuant to Article 84 (1) (a) (b) and (d), a person whose personal rights have been infringed may, in the circumstances of the case, claim a judicial declaration that the infringement has occurred and an order to cease the infringement and to remedy the situation.

[24] The *procedural* framework of the proceedings is provided by Act III of 1952 on the Code of Civil Procedure (old Code of Civil Procedure, old Code), given that the proceedings were commenced on 20 December 2017, before the entry into force of Act CXXX of 2016 on the Code of Civil Procedure (new Code of Civil Procedure) (1 January 2018).

Pursuant to the provisions of the Civil Procedure Code concerning the statement of claim (Article 121 (1) (c) (e)), the plaintiff must specify the facts on which the right sought to be enforced is based and

must clearly state its specific request for a decision of the court (statement of claim).which the defendant claims infringe the individual rights of the persons it represents to equal treatment.

[25] To summarise the findings on the legal framework of the lawsuit, it can be stated that in public interest litigation the law provides for the possibility to derogate from the general rules with regard to the person asserting the claim (i.e. for an NGO to bring a personal lawsuit to enforce a personal law claim based on discrimination of persons not specifically defined), but the general rules of the Civil Code and the Civil Procedure Code apply to the enforcement of the claim itself in these lawsuits as well. Accordingly, an enforceable claim of personality rights in a public interest litigation can only be based on specifically defined conduct of the defendant, i.e. a general assessment of the defendant's conduct, practice or the consequences thereof cannot be the subject of a public interest litigation.

[26] As a consequence of the above, the court did not attach any importance to the parties' extensive presentations in the case, by which the defendant assessed the efforts and results of the defendant in child protection, and the plaintiff assessed the inadequacy of these efforts in general, far beyond the scope of the present case. The present action does not concern a comprehensive assessment of the situation of child protection. In the present case, the court could and should have taken a position only on whether or not the defendant, by the conduct complained of by the plaintiff, had infringed the individual right to equal treatment of the persons protected by the plaintiff.

[27] After determining the legal framework of the plaintiff's claim, the court took a position on whether the *action complied with the provisions of the Civil Code. 121(1)(c) and (e).* In this context, the court examined, as stated in the order of the FÍT, whether the plaintiff had complied with its obligation to identify in a precise and precise manner in its amended action the *conduct of the defendant complained of* and the *discriminated against and the comparably situated group of persons* affected by the plaintiff's claim.

[28] The applicant derived the *contested conduct of the defendant*, inter alia, from the defendant's duties and powers based on the legislation detailed below:

- The Act No. 331/2006 (XII.23.(Gyvr.), the Minister responsible for the protection of children and youth shall exercise, as the Minister responsible for the protection of children and youth, the powers specified in Article 2(1)(e) to (h) of Act XLIII of 2010 on central state administration bodies and the status of members of the Government and State Secretaries, and the powers of control of legality and professionalism in connection with the exercise of the child protection and guardianship functions of the capital and county government offices.

Pursuant to Article 2 (1) (h) of Act XLIII of 2010, the defendant may, in the exercise of its powers of legality and control, require the bodies under its control to submit reports or accounts.

- Pursuant to Chapter XV, Section 101 (1) of Act XXXI of 1997 on the Protection of Children and Guardianship Administration (Act XXXI of 1997 on the Protection of Children and Guardianship Administration), the Minister of the defendant shall be responsible for the sectoral management of the tasks ensuring the protection of children, and Section (2) defines the tasks of the sectoral management, inter alia, as follows:

a) define the professional and qualification requirements for the tasks of child protection, the legal and professional control of these tasks,

c) performs tasks related to the professional supervision and management of the guardianship authorities,

(g) coordinate and organise the registration and information system necessary for the management and uniform operation of the child protection system,

(k) approve and publish on the Ministry's website the methodology against child abuse, the methodology for investigating child abuse and the professional methods for the operation and functioning of the child protection reporting system.

[29] In its application, the applicant sets out the following alleged conduct (omissions) of the defendant which is attributable to its failure to exercise its duties and powers under the legislation referred to:

concerning application No I:

a) did not carry out a targeted survey or audit of child protection institutions to examine the extent, causes and consequences of the practice of removing children from their families for financial reasons;

(b) has not developed a plan of action to eliminate and prevent the practices detailed in (a);

c) failed to develop professional guidelines or protocols on how to prevent the removal of a child from a family for financial reasons;

(d) failed to provide financial and integrated family support to families in financial crisis in the context of primary care,

(e) no means of dealing with a housing crisis provided under primary care.

in respect of the application under II:

a) did not conduct a targeted survey on the reasons for the over-representation of national children in the child protection system;

(b) has not developed a protocol and has not ordered the collection of ethnic data on national children entering the child protection system for statistical purposes.

[30] The defendant claims that the plaintiff has only generally invoked the defendant's duties and powers with no factual basis, which is not suitable to determine the defendant's conduct complained of, and thus its statement of claim does not comply with the provisions of the Civil Code. 121.§ and cannot be assessed on the merits. The defendant pointed out that it was under no obligation to carry out a control-target analysis or to provide methodological guidance in connection with the removal from the family (p. 26, p. 8).

The defendant's objection is unfounded.

The procedural requirement imposed on the application, which must be satisfied in order for the action to be heard on the merits, is the precise definition of the defendant's conduct complained of, so that the substantive assessment of whether the applicant has pleaded the existence of the defendant's conduct complained of is a question of the merits of the action and not of its procedural adequacy.

[31] In the Court's assessment, the applicant has, in accordance with the legal requirements detailed in paragraph [24] and the requirements of the FÍT order, identified in a clear and precise manner the specific facts, i.e. the defendant's conduct (omissions), which it claims violate the individual right to equal treatment of the persons it represents.

[32] In its amended application in the repeated procedure, the applicant clarified the definition of the *group of persons* affected by its claim and of those in *a comparable situation* (§§ 8-9 of the IAC).

According to the order of the FIR, the applicant's claim in the main proceedings did not meet the requirements to define the persons or groups concerned and the groups in a comparable situation, in view of which in the retrial "the applicant must identify the person or group in a less favourable position represented by him, on the one hand, and at the same time must identify the person or group in a comparable position and, in this context, the applicant must bring an action for infringement of personality rights."

[33] The plaintiff identified those affected by his claim under Count I as "children of the county who were effectively removed from their families solely because of their poverty (i.e., unlawfully)" and claimed that they were in a comparable situation to "children of the county who were not removed from their families solely for financial reasons (i.e., lawfully)."

In the context of the primary claim in Action II, the applicant identified "children of national origin from the county concerned by Action I - i.e. children who were actually singled out from the family for purely material reasons" as the group of persons affected by his claim, claiming that the members of the "same group of children of non-national social origin" are in a comparable situation.

In the alternative claim submitted in the context of Action No. II, the applicant defined the scope of the children affected by the enforcement of the claim in the same way as in the primary claim, claiming that the "non-national children of the county who were not removed from their families" were also in a comparable situation.

[34] According to the court's assessment, the plaintiff has defined the members of the groups concerned and of the groups in a comparable situation in a clearly identifiable manner, based on criteria that can be assessed on an objective basis, and thus meets the requirements of the Civil Code and the Ebtv.

[35] The defendant also disputed the procedural adequacy of the plaintiff's definition of both disadvantaged groups and groups in a comparable situation, claiming that the action as presented in the retrial was not suitable for a hearing on the merits.

The defendant's objection is unfounded.

The requirement for the application to be admissible is only the correct identification of the group which has been discriminated against and the group which is in a comparable situation to them, but the substantive assessment of whether the two groups are in a comparable situation (as the applicant claims) or not (as the defendant claims) is not a matter to be examined in the formal sufficiency of the application, but in the first phase of the examination of the evidence (order of the FIR).

[36] On the *basis of the above deduction, the court found that the plaintiff's amended claim complied with the provisions of the Civil Code. 121(1)(c) and (e), i.e. the plaintiff had sufficiently identified the facts on which the right sought to be enforced was based, namely the conduct (omissions) of the defendant complained of, and the group of persons affected by the discrimination and in a comparable situation to them. In the light of the foregoing, there is no procedural bar to the action being determined on the merits.*

[37] According to the defendant's lead argument, the subject-matter of the action is a *complex social problem* - namely the provision of family support for children of ethnic origin living in extreme poverty - which cannot be charged to the defendant, which renders the action inherently unfounded.

The defendant's argument cannot be accepted.

The mere fact that the performance of the tasks incumbent on the defendant at the maximum level would not constitute a solution to the complex problem of national and non-national children living in poverty does not in itself mean that the defendant can be exempted from the obligation to perform the tasks specifically incumbent on it. It is clear that the decades-old problem of children living in extreme poverty, a large proportion of whom are national, which has been persisting for decades for a variety of reasons, can only be resolved in an acceptable manner by means of a broad social consensus and the coordinated performance of public duties. This can only be successful if all those involved fulfil their responsibilities, even if this alone is obviously not a complete solution to a complex social problem. It follows that the defendant must be held 'accountable' for its omissions, which result in the children of the county, who are the most vulnerable, being discriminated against because of their poor financial situation and their national origin.

On the basis of the foregoing, it may be concluded that the applicant's claim does not seek a solution to the social problem which is the subject-matter of the action, but the performance of the defendant's duties in relation to it.

<u>Disadvantaged groups and groups in a comparable situation</u>

[38] The factual element of discrimination is that there must be a person or group in a *comparable situation*, i.e. a person or group in comparison to which the person or group claiming the violation of equal treatment has suffered a disadvantage on the basis of the protected characteristic defined in Article 8 a) to t) of the Equal Treatment Act.

[39] In view of the above, in a discrimination action, the applicant must specify.

- on the one hand, the group of persons discriminated against, including their protected characteristic (characteristic) as defined in Section 8 of the Equal Treatment Act, which they have suffered,

- on the other hand, those in a comparable situation to them, which group has an objectively assessable characteristic identical to that of the disadvantaged group, and which group members have not suffered the same disadvantage based on the infringement of a protected characteristic as defined in Section 8 of the Equal Treatment Act as the members of the disadvantaged group.

[40] In the context of its application under No. I, the applicant identified the group of children who suffered causal discrimination as "children from the county who were in fact only deprived of family support due to their poverty (i.e. unlawfully)", claiming that the "children from the county who were not only deprived of family support due to their material circumstances (i.e. lawfully)" are in a comparable situation.

[41] According to the court's assessment, the plaintiff has defined the group of persons affected by his claim and those in a comparable situation to them in accordance with the requirements of the Ebktv.

Firstly, both groups of children are considered to be 'children from a priority family', i.e. the two groups have the same objectively measurable characteristics, and therefore the groups of children can be compared on a factual basis.

On the other hand, the applicant defined the disadvantaged children as a group of "children from the county who were in fact singled out from their families for exclusively financial reasons, i.e. unlawfully", which meets the requirement of sufficient specificity and identifiability. In addition, the applicant has also submitted that the poor 'material situation' falling within the scope of Article 8(q) of the Ebktv is the protected characteristic which, according to the applicant, is the basis for the discrimination.

Thirdly, the group defined as being in a comparable situation, i.e. "children in the county who are not removed from their families for purely financial reasons, i.e. legally", has also been defined with sufficient precision and precision.

[42] As regards Application No I, the defendant disputed that the group of children whose removal from their families was not solely due to their poor financial situation, that is to say, for a legitimate reason, could be understood as being in a comparable situation to the group of disadvantaged children whom the applicant had described as children who had been removed from their families for reasons which were in fact solely attributable to financial considerations, that is to say, unlawfully. In the defendant's interpretation, the applicant did not in fact define the disadvantage suffered by the children who were removed from their families for financial reasons as being poverty (poor financial situation), but as being the unlawfulness of the decisions to remove children from their families, as compared with children who were not removed from their families for financial reasons. The defendant concludes that this "disadvantage" does not constitute an infringement of the protected characteristic of the children concerned as defined in Article 8 of the ECHR, but an erroneous individual decision of the authorities or courts concerning them (while reiterating that no final decision has been taken that the removal of a child from his or her family was solely for financial reasons). According to the defendant's interpretation, it follows from the above that the groups identified by the applicant, which he claims are in comparable situations, do not exist in fact and from an objective point of view, and are merely a "fiction of the plaintiff".

[43] The defendant's objection is unfounded.

Contrary to the defendant's interpretation, the plaintiff's claim was that the children concerned were actually removed from their families solely because of their poverty, i.e. because of their protected characteristic as defined in Article 8(q) of the Family Law Act, i.e. their financial situation. The applicant merely submitted that this procedure not only violated the requirement of equal treatment, but was also unlawful sui generis, because Article 7 of the Gyvtv. directly prohibits the removal of children from their families solely for financial reasons.

The applicant identified as being in a comparable situation to the children concerned "the children of the county who were not singled out for financial reasons alone", in relation to whom it made the additional claim that the removal of these children from their families was lawful.

[44] On the basis of the above deduction, it may be concluded that, contrary to the interpretation of the defendant, the applicant did not define the protected value on which the discrimination against the children concerned was based in terms of the legal disadvantage suffered by them, but in terms of their poverty. The applicant merely made the additional assertion that this infringement of equal treatment violates not only the provisions of the Ebktv. but also those of the Gyvt., which in no way

undermines the validity of his original assertion that the basis of the discrimination is the poor financial situation of the children concerned, which is a protected value as defined in Article 8(q) of the Ebktv.

[45] In the context of his main claim under No. II, the plaintiff identified "children of national origin from the county concerned by his claim under No. I - i.e. children who were actually singled out from the family for purely material reasons" as the group of persons concerned by his claim, claiming that the members of the "same group of children of non-national social origin" are in a comparable situation.

[46] The court also found that the plaintiff's definition of disadvantaged groups and groups in a comparable situation was well-founded in the context of the above application, on the basis of the criteria set out in paragraph [41].

On the one hand, the members of both groups are "children of the county de facto excluded from the family for material reasons", i.e. the two groups have the same characteristics that can be objectively assessed, and therefore the groups of these children can be compared on a factual basis.

On the other hand, the applicant defined the disadvantaged children as a group of "children of national origin from the county who are de facto distinguished from their families solely for material reasons", which meets the requirement of clarity and precision. In addition, the applicant has also specified that social origin, which is covered by Article 8(p) of the Equal Treatment Act, is a protected ground of discrimination.

Thirdly, the group defined as those in a comparable situation - i.e. "non-national children from the county, who are singled out from their families for financial reasons only" - can also be clearly identified and meets the requirements of the Ebktv.

[47] The defendant also contested the validity of the plaintiff's definition of discriminated groups and groups in a comparable situation in connection with the main claim under II.

It argues, first, that the groups defined by the applicant are not in a comparable situation and, second, that the disadvantage alleged by the applicant cannot be proven from a logical and arithmetical point of view. According to the applicant, that finding follows from the applicant's own submission that 34,3 % of the children in the county are of national origin and that the proportion of children of national origin is almost the same, 74 % to 78 %, both among children who are excluded from the family for any reason and among children who are excluded for material reasons (paragraph 9 [13]).

[48] The unfoundedness of the defendant's objection is also apparent from its own presentation.

In fact, the applicant claims that around 75% of the children de facto removed from their families for purely material reasons are of national origin, despite the fact that only around 34% of the children in the county are of national origin. It follows that the proportion of children of national origin among the children who are in fact the only children given priority for material reasons is more than twice the proportion of the population. This also means that only around 25% of the children in comparable situations who are actually children of non-national origin, despite a population share of around 64%, are actually children of non-national origin. This implies that the proportion of children of non-national origin who are effectively removed from their families for purely material reasons is more than twice as low as their share of the population.

It follows from this deduction that it is irrelevant in the context of the applicant's claim above that approximately 75% of the children who are not children of non-material origin are also children of national origin, because the applicant has not identified either the children concerned or the children in a comparable situation in this group (children of national origin who are not children of material origin).

The Court notes that the fact that both the children removed from material and non-material families are of national origin in almost the same proportion, more than twice the proportion of the population, leads to the reasonable conclusion that discrimination against national children is generally present, i.e. not only in the case of removal from material families.

[49] The Court shares the applicant's view that discrimination may occur even if there is no or only with difficulty a group in a comparable situation, but discrimination against a group or person based on a protected characteristic can be established without it (hypothetical comparative situation). Accordingly, the identification of a group in a comparable situation to the discriminated against is only indispensable if the probability of a disadvantage cannot be established without it (Court's summary opinion, no.9. p. 5, CJEU Kelly case C-104/10, Meister case C-415).

The above interpretation could also be applied in the present case, because it is possible to determine and establish the likelihood of disadvantage based on poverty and national origin without defining the groups in comparable situations.

However, the court emphasises that the above interpretation of the law was not necessary in the present case, because it can be established that the plaintiff has defined the group of persons in a comparable situation to those affected by his claim in accordance with the requirements of the Ebktv.

[50] In view of the merits of the primary application under II, the court's consideration of the secondary application - which differed from the primary application only in the determination of the comparably situated group - became devoid of purpose and was not examined on the merits.

Circumstances alleged by the applicant

[51] Pursuant to Article 19 (1) and (2) of the Civil Procedure Act, *the plaintiff in a* lawsuit has the burden of *establishing probability, while the defendant has the burden of proof.*

Accordingly, in the action, the plaintiff had to establish, first, that the persons it represented possessed a protected characteristic falling within the scope of Article 8 of the Ebtv. and that they suffered discrimination on the basis of that characteristic in comparison with other persons or groups in a comparable situation; second, that the defendant's alleged failure to act was unlawful; and third, that the discrimination was caused by the defendant's unlawful conduct.

If the plaintiff's obligation of probable cause is successful, the defendant bears the burden of counter-proving that the circumstances alleged by the plaintiff do not exist or that it has complied with the requirement of equal treatment or was not obliged to do so in the legal relationship in question.

[52] According to the defendant, the plaintiff is not only required to establish a probability, but also to prove that the persons it represents suffered discrimination causally linked to the conduct complained of.

The defendant's objection is unfounded.

The plaintiff has a duty of probability to establish all relevant facts alleged in the lawsuit, including the existence of a causal link between the defendant's conduct complained of and the violation of equal treatment of the persons concerned. That finding follows from the fact that neither the law nor the case-law support the defendant's interpretation that the plaintiff's obligation to establish the probability of all the facts relevant to the action, based on Paragraph 19(1)(a) of the Ebktv., does not extend to proving the causal link between the defendant's unlawful conduct and the plaintiff's infringement of his rights and that the plaintiff bears the burden of proof in that regard (s. 38/A/1, Pfv.IV.20.553/2019/.8, paragraph [54],).

[53] With regard to the content of the plaintiff's burden of proof, the court shares the defendant's position, based on the decision of the Curia, that it does not reach the level of proof, but in any event it is a higher standard than mere allegation (Case 38/A/2, judgment in Case Kfv.III.37.156/2021/3 [43]).

[54] The jurisprudence provides sufficient guidance on the requirements to meet the burden of proof, which can be summarised briefly as follows: if the evidence provided by the claimant falls within the "possible - not excludable" range, the plausibility of an allegation is admissible.

This interpretation is supported, for example, by the fact that the Curia accepted as fulfilling the obligation of probability the reference to internet articles with unrefuted content, the content of anonymous questionnaires and witness statements, despite the fact that there were also witness statements with contrary content (Pfv.IV.20.667/2019/8.No.

The above interpretation can also be supported by the above-mentioned judgment of the Court of Appeal in Case No. Pfv.IV.20.553/2019/.8, [54] according to which the mere fact that the number of children in care was high in a given place and time and that they were exclusively children of national origin living in extreme poverty, is sufficient to establish that the removal of these children from their families is based on poverty and discrimination based on national origin.

[55] It follows from the two-step system of proof in equal treatment actions that the completion of the plaintiff's burden of proof does not mean the acceptance of the whole claim, but only the plausibility of the legally founded claims. For obvious reasons of procedural law, only in the judgment can the court take a position on which part of the application it considers to be legally founded, and consequently the leading, informative order on the discharge of the obligation of plausibility merely means that the court considers the record of proof on the plausibility of the legally founded claims to be complete and proceeds to hear the case on the defendant's counter-evidence on the facts as plaintiff has established.

[56] In the Court's assessment, the *applicant has satisfied the obligation of probable cause in the legally founded part of its application, for* the reasons set out below.

[57] The plaintiff was inspired to file the lawsuit by the findings of the association's research on "Children in Special Care in the County". The subject of the research was an examination of the social background and circumstances of children placed in specialised care in the county (i.e. children who are removed from their families), and the results confirmed the opinion, known among professionals and widespread in public opinion, that a high proportion of children removed from their families are

specifically due to the poverty of the children or families concerned, and that the children removed from their families are of a particularly high ethnic origin, far in excess of the proportion of the population.

The research was based on data sheets on children living in the county in the given period, interviews with child protection professionals (especially child protection guardians) and statistical analysis.

[58] The defendant focused its defence on the factual lack of documentation and the lack of professional basis of the data sheets included in the above research (p. 26, p. 38), in the court's assessment, legally questionable and factually unfounded, for the reasons detailed below.

[59] In connection with the design and filling in of the data sheets, the research witness 1 made the following statements (p. 32):

"The data sheet is based on the data sheet used in the child protection sector. ... On this basis, a draft form was prepared and commented on by the Department for Child Protection of the EMMI. We accepted some of their comments and suggestions for amendments, and rejected those that were not accepted, giving due reasons. ...

The data sheet was a two-page document, page 1 contained the basic data, this part of the data sheet was filled in by the staff of the County Child Protection Service who were responsible for the registration tasks. Page 2 of the form was completed by the child protection guardians. The questionnaires themselves were given to the researchers ... during the interview with the child protection guardians, which was recorded independently of the questionnaires, the child protection guardian handed the questionnaire, which he had also completed, to the researchers ... this is the reason why the handwriting on pages 1 and 2 is different, because they were completed by different people ...

The research also raised the need to look at decisions to remove children from their families, but it was clearly and quickly shown that this was not feasible....

There is no entry for the researcher on any page of the form, as stated, the researchers did not fill in the form. ...

To the question of the representative of the respondent as to whether the contradictions in the data content of pages 1 and 2 of the data sheet were asked and analysed, my answer is that the data sheet

did not contain control questions and the data content of pages 1 and 2 of the data sheet was different, therefore, in this sense, the data content of pages 1 and 2 cannot be contradictory.

In response to the question of the representative of the respondent as to whether, for example, the specific discrepancy has been resolved between the fact that in the case of a particular child, on page 1, the reason for removal is financial and on page 2, the reason for removal is that the parent is in prison, my answer is that there is no discrepancy. On page 1, the reason for inclusion is specifically recorded, based on the county child protection records. And page 2, completed by the child protection guardian, contains predominantly contact questions, focusing on whether the child protection guardian completing the form sees any possibility of, for example, the child being looked after at home in the foreseeable future, or whether any progress can be expected in the relationship between the family and the child. To give a concrete example, it may be that the parent was not in prison when the child was taken into protection, but that this was only later, which is why the child protection worker filling in page 2 of the form says that there is no chance of the child being returned to the family.

I can also say, in connection with the question of the defendant's representative on the need to resolve the contradiction concerning the data content of the data sheet No 354, that there is no contradiction here either. On page 1, the reason given for taking the child into care is a housing problem, while on page 2 it is stated that there is no chance of the child returning to the family because the father is in prison and the mother and grandparents are not fit to bring him up. There is no inconsistency between the two pieces of data. Page 1 of the form describes the child's status at the time of his or her placement and the reasons for it. It is possible that the reasons recorded on page 2, which the child protection guardian will indicate at a later stage as an obstacle to the child's return to the family, did not exist at all at that time. ..."

[60] The header on page 1 of the data sheet is entitled "Data available in the registers of the CFCA" and on page 2 "Data provided by child protection guardians", which is fully consistent with Witness 1's detailed presentation above on the data content of the data sheets.

[61] *On the one hand, the* defendant objected that page 1 of the data sheets - where the reason for placement was indicated - was filled in by the researchers, in connection with which it disputed the correctness of the classification of the reasons for removal from the family (i.e. placement in child protection care) used in the data sheets. He referred to the testimony of a witness8 from the head of the guardianship department, who gave the following evidence:

"The concepts and entries in the data sheets presented are not used in the practice of the guardianship authorities. I repeat that it is very simplistic to attribute the reason for placement to a reason, which is the reason given on the forms presented. Typically, there are several reasons for removing a child from the family, for example, a reason such as 'the parent does not provide for the child', which is mentioned

on one of the forms, certainly cannot be mentioned in the guardianship proceedings." (main proceedings, p. 27, jkv.).

[62] The defendant's objection is unfounded

Contrary to the defendant's claim, it can be clearly established that page 1 of the data sheet was not filled in by the researchers, but by the staff of the county child protection service, based on their own records.

This fact is also stated in the final report of the research itself (basic procedure, p. 1/F/4, p. 8), and is also supported by the testimony of the witness participating in the research1 , referred to in paragraph [58], which describes in exhaustive detail the details of the data collection method, and the title of the individual pages of the data sheet. This follows for the obvious reason that the legal prohibition on the protection of personal data prevented the researchers from looking at the guardianship decisions on which page 1 of the data sheets were based.

The child protection professionals who were interviewed as witnesses at the defendant's request (and who had participated in or had knowledge of the completion of the forms) claimed at most that they had not seen page 1 of the form or had no knowledge of its completion, but none of them claimed that the researchers had completed page 1 of the form, which contained the information on the reason for the foster care placement, as recorded in the child protection register.

Accordingly, it can be established beyond any doubt that the reason given on page 1 of the form is the reason given in the foster care authority's register, which was entered on the form by the authority's officials.

It follows directly from this that the testimony of a witness, a child welfare officer, cited by the defendant8 , who said that the data sheets contained "simplistic" reasons "not used in the practice of the child welfare authorities", not only refutes but also expressly supports the validity of the action. This means that even the social welfare authorities themselves do not consider it appropriate to indicate in their official records the reason for taking a child into care, which is a fundamental methodological uncertainty that is inadmissible in the most basic intervention in the lives of the families and children concerned, namely the removal of the child from the family.

[63] *Second,* the defendant complained that the researchers had not made any suggestions as to the content of the questionnaires and had not modified the questionnaires accordingly.

[64] The defendant's objection is unfounded.

First of all, the court refers again to the testimony of witness 1 (p. 32), who stated that the data sheet used in child protection was used as a basis, the draft prepared on this basis was discussed with the defendant and his comments and suggestions for amendments were partly accepted and partly rejected with due justification.

On the basis of the above general objection, the defendant complained specifically that the omitted questions from the data sheet could have been used to request a statement on the child's ethnic origin, without which the child protection guardians "were not entitled to handle and declare data on ethnicity", which implied that "the data sheets were not professionally adequate, and the findings of the study based on them were therefore unfounded" (p. 38, p. 3).

The defendant's objection raises legal, data protection and non-technical concerns, so even if they were upheld, they would not undermine the professional soundness of the research. The Court notes that the defendant and the Directorate General for Social Affairs and Child Protection, which authorised the research, clearly had the legal possibility to require the legal requirements for the data forms, so that if the concerns detailed above did exist - i.e. the researchers had requested ethnic data from the child protection guardians on the data form which they were not the data controllers of and could not have declared - they should have addressed this legal concern not by commenting on the data form, but by using appropriate legal means.

The court notes that the defendant's comments on the form, which were ignored by the researchers (p. 38/A/3), do not include any comments on the content of the form concerning the reason for the foster care, nor did the defendant himself refer to this.

[65] *Thirdly,* the defendant also objected to the fact that page 1 of the data sheets was not seen by the child protection guardians who filled in page 2 of the data sheet, in connection with which it cited the testimony of witness 11 child protection guardian, who gave the following:

"The forms were filled in by giving them to us, by which I mean the child protection guardians. We filled in the forms ourselves, not in the presence of the researchers, and we were not given instructions on how to fill them in. ... I only saw page 2 of the form, I did not see page 1 (basic procedure, section 38, jkv.).

[66] The defendant's objection is unfounded.

As explained in paragraphs [59] - [60], page 1 of the data sheet contains data recorded by the administrators based on the county child protection specialist care register, so there is no factual basis for the respondent's claim that this part of the data sheet contains the findings of the researchers.

According to the testimony of the child protection guardian witness11 referred to by the defendant, the data sheets were "given to them" and "he did not see page 1", from which statement, in relation to a two-page data sheet, it can be concluded that page 1 of the data sheet was not given any importance by the child protection guardian who filled in page 2 and therefore did not look at it.

The court notes that since page 1 of the form contains the data recorded in the register of the child protection authority, filled in by an official of the authority, it is in principle irrelevant whether the child protection guardian who filled in page 2 knew its contents, since it merely contained the data of the child under guardianship recorded in the register of the authority, which he obviously knew. It also follows that even if the guardians were indeed unaware of page 1 of the form - i.e. they received a completely blank form which did not yet contain the information from the guardianship register and which was not supported by any other information in the case - this would not be a basis for doubting the validity of the research.

[67] *Fourthly:* the defendant submitted that it had "requested" the entire file on the admission of the children in the records to specialised care (i.e. the entire file on the primary care, the decision to admit the children to specialised care and the documents from the review period), a comparison of the data contained in these records with the data in the data sheets shows that the reason for removal given in the data sheets and the actual reasons for removal do not correspond in many cases, the data sheets contain gross simplifications and distortions, and the two pages of the data sheets are in conflict with each other.

[68] The defendant's objection is unfounded.

The court points out, first of all, that the defendant's procedure of "requesting" the entire file of the individual cases on which the data sheets were based and using the data of the files to present its defence in the case is a data protection concern, in violation of the principle of purpose limitation. This procedure is not only unlawful, but is also a wholly one-sided defence, contrary to the principle of equality of arms, since the defendant bases its allegations on data which, because of the legal prohibition on disclosure of personal data, cannot be disclosed to researchers or the applicant.

With regard to the content of the objection, the court refers first of all to the above-mentioned testimony of witness 1 (p. 32), according to which there is a discrepancy in the content of the two pages of the form based on reasonable grounds and not a contradiction: page 1 contains the registration data concerning the child's admission to the special care system, while page 2 contains the statement of the

child's guardian on the child's situation at the time of filling in the form, in particular with regard to the possibility of the child's reintegration into the family. Accordingly, the two pages of the form contain data relevant to completely different dates, during which time there could have been a number of changes in the child's circumstances, which is a reasonable explanation for the possible discrepancies between the two pages of the form, which is not substantially refuted by the defendant.

[69] By examining the data sheets, the defendant requested, on the one hand, a document-based verification of the data content of certain randomly selected data sheets and, on the other hand, the appointment of an expert to answer the technical questions arising in connection with the evaluation of the data sheets.

[70] The Court points out first of all that, for the reasons set out in paragraphs [61] to [68], the unfoundedness of the defendant's objections to the data sheets can be clearly established on the basis of the available evidence, and therefore there is no need to take evidence for that reason alone.

Nevertheless, the Court considers it necessary to give reasons for the legal uncertainty and lack of factual basis of the defendant's requests for evidence.

On the one hand, it is not even possible to compare the data content of the data sheets with the case file containing the personal data of the child concerned for data protection reasons.

On the other hand, expert evidence on the content of research questionnaires, the methodology of data collection and the evaluation of research findings would constitute an impermissible interference with the freedom of scientific research. The Court emphasises that the defendant has the right to challenge both the methodology and the findings of the research and that, if the evidence in support of this raises doubts as to the correctness of the research findings, it may be possible to call an expert, but only to answer a specific technical question and not to review the findings of the research.

[71] Contrary to the defendant's claim, the research was based not only on the evaluation of the questionnaires, but also on interviews with child protection professionals and their analysis, as well as statistical data processing. Thus, even if there were any concern about the validity of the data sheets (which there is no evidence in the case), this alone would not cast doubt on the validity of the findings of the multi-source research.

[72] The court highlights the following findings of the association's final report (main proceedings, no. 1/F/4):

"Under the 1997 Child Protection Act, children cannot be removed from their families solely for financial reasons. Nevertheless, even if it is not explicitly reflected in removal decisions, but rather as a background factor, income poverty remains a clear and typical reason for referral to specialised care" (p.3).

"Specialist care is the 'end point' of a process. The number of families for whom a child is removed is not independent of income and employment status, housing policy, support systems for families with children (income transfers, child welfare and social services), the operation of primary child welfare services (availability and accessibility, characteristics of the types of services provided), and other important factors." (p. 3)

"According to child protection guardians, two thirds (67%, 187) of the minors in specialised care are national, another ten (11%, 31) are "semi-national" (one parent national, one non-national), and the proportion of non-national children is 22%. Guardians could not decide whether 27 of the children in care were national or not; excluding them, three quarters (78%) of the children in the county's childcare system are national or "semi-national" (the two groups were combined for the analysis). (p. 47).

"The ethnic composition of the families concerned and the number of children also suggest that there is a strong link between extreme poverty, severe deprivation and children entering care. Families with ethnicity and many children at high risk of extreme poverty (children) are strongly over-represented in the county's specialised care. Two thirds of families have at least one of the 'social problems' examined (which are, of course, not very separable) ; one fifth are 'severely deprived' in all respects (p. 61).

"According to child protection guardians, the leading reason for referral to specialised care - based on our somewhat arbitrary aggregation - is neglect, endangerment of children, "parental incompetence". A much less frequent reason for removal is the physical-mental condition of the parents, addiction, deviant behaviour of the children, social and housing situation, or physical abuse." (p. 62)

"According to our research, nearly 80 percent of the people receiving care in specialised care are ethnic (or "semi-ethnic"). This is an over-representation that cannot be explained by the high proportion of ethnic population in the county, nor by the extreme poverty that characterises the majority of the ethnic population in the villages concerned." (p. 62)

"Overall, the focus of our study is that there may be circumstances and mechanisms of functioning in the system of placement and removal from the family that cause a severe overrepresentation of children of ethnicity." (p. 62)

"Although this contradicts the basic spirit of the Child Protection Act, all the interviews show that the common denominator of the reasons for the removal is that the vast majority of children in Hungary

today are placed in specialised care because of the extreme poverty of their families. Without exception, the interviewees also confirmed that the overwhelming majority of children are of national origin: they estimate the proportion of national children in specialised care at around 80%, compared to a slightly lower proportion of children in protection, and at most the proportion of children in primary care is estimated to be slightly lower than the proportion of national children. Considering the proportion of nationalities in the population, this is a serious over-representation, but considering the proportion of nationalities in extreme poverty, the shift in proportions is less striking.

At the same time, there is a much more elusive aspect, the existence of ethnic minorities of nationalities, which cannot be described as a purely social category, so we cannot consider the problem as a poverty issue. The prejudice against ethnic people in the majority society is deeply rooted, it is presented in the interviews as a way of life, as irresponsibility, in extreme cases as parasitism (having children to get money), and it defines the reasons for the removal of children from ethnic families as the inescapable truth of the majority middle-class values." (p.63)

"Finally, we would like to point out that the discriminatory nature of state systems does not first appear in child protection. It is the hopelessness of escaping from extreme poverty that is at the root of the child's removal. And deep poverty is exacerbated by the discrimination and inequality faced by ethnic minorities in all areas of life; housing segregation, employment discrimination, educational segregation, unequal access to various benefits, discrimination in health care, discrimination in public offices, etc." (p.64)

"It is a common experience that while there is some acknowledgement of the poverty and hopelessness of families, and even when asked about the reasons for the removal, most professionals make it clear that the vast majority of families are very poor, when talking about the reasons for the removal, they take the position - contradicting themselves - that it is possible to live on what the families receive from the state and that the families are ultimately responsible for the removal." (p. 65)

"According to our fact sheet research, nearly 80 per cent of people in the county's specialist care are ethnic or 'semi-ethnic', with some interviewees citing rates of 90-95 per cent. This is certainly a degree of over-representation that cannot in itself be explained by the high proportion of the ethnic population in the county, nor by the extreme poverty that characterises the majority of the ethnic population in the villages concerned. This situation, the over-representation of ethnic children in the specialised care system, is not a new development, according to local professionals, and has been the case for decades. Our data also show a strong link between extreme poverty, severe deprivation and children's placement in specialised care. Nationalities with a high risk of poverty and families with many children (children) are strongly over-represented in the specialised care of the county. Two-thirds of families have at least one of the 'social problems' assessed, and one-fifth are 'severely deprived' in all respects. Although the spirit of the Child Protection Act is that children should not be removed from their families because of poverty, this is the case for most removals. It also highlights that complex support and appropriate services could prevent removal in many cases." (p.87)

[73] In the court's assessment, the findings of the association's final research study, highlighted above, are in themselves sufficient to establish that a significant proportion of the children from the county's families are in fact placed in specialised care for financial reasons only and that these children are of a particularly high proportion of national origin.

[74] Contrary to the defendant's assertion, the applicant did not base its claim solely on the findings of the association's research, but also relied on a number of other pieces of evidence.

Firstly, as detailed in paragraph [7], the applicant referred to the reports of the UN Committee on the Rights of the Child from 2006 to 2020, which regularly included criticism of the domestic practice of removing children from their families for financial and housing reasons, who are in a poor financial situation and have a high proportion of nationality.

Secondly, the applicant referred to the Ombudsman's report, as set out in paragraph [8], which concluded that the removal of children from their families was largely due to financial reasons. According to the defendant, the findings of the Ombudsman's report are based solely on the Association's research, and the Ombudsman's report is therefore also unfounded because the research sheets are not in conformity with the documents.

The defendant's objection is unfounded. On the one hand, for the reasons set out in paragraphs [60] to [67], neither the research data sheets nor the findings of the research can be found to be unsubstantiated, and on the other hand, the Ombudsman based his finding on a number of additional facts and evidence detailed in his report.

Thirdly, the witnesses1, witness2, witness3, witness4 and witness5, who were examined at the applicant's request, also clearly stated that both the removal of children from their families for de facto purely financial reasons and the fact that these children are of a high percentage of Hungarian national origin are problems of child protection that have been known for decades and are partly due to the defendant's failings.

[75] *On the basis of the above deduction, the court found that the plaintiff was likely to have suffered discrimination based on their financial situation and social origin, falling within the scope of Article 8(p) and (q) of the Equal Treatment Act.*

[76] In the action, the plaintiff had to establish both the existence and the unlawfulness of the defendant's conduct (omissions) complained of and that the children it represented suffered causal discrimination.

[77] Pursuant to the legislation referred to in paragraph [28], namely Section 1 (3) of the Gyvr., Section 1 (1) (h) of Act XLIII of 2010 and Section 101 (1) (a) and (c) of the Gyvtv., the defendant is responsible for assisting and monitoring the operation of state administrative bodies and institutions (in particular guardianship authorities) in child protection matters on the basis of legality and professionalism.

Pursuant to Article 7 (1) of the Children Act, children may be separated from their parents or other relatives only in their own interests, in cases and in a manner specified by law, and children may not be separated from their families solely because of financial vulnerability.

It follows from the defendant's duties and powers that it is obliged to promote the uniform interpretation and practice of the law by the child protection authorities, which, in the context of the adjudication of the legal issue in the case, means that the defendant is obliged to provide professional guidance and to monitor the county child protection authorities' uniform interpretation and application of the mandatory legal provision that children may not be removed from their families for financial reasons alone, and that the prohibition of discrimination based on national origin is applied in their practice.

[78] In its counterclaim, the defendant claimed that the applicant had filled the defendant's duties and powers with content without any factual basis, so that in particular, in connection with the removal of children from their families, it was not subject to any obligation to carry out a control-target analysis or to provide methodological guidance (p. 26, p. 8).

The above statement of the defendant is also in contradiction with his own statement, which he himself did not dispute, expressly acknowledging that he is responsible for defining the operational framework of the social, child welfare and child protection system (of which child protection is a part) and providing methodological support to assist the application of the law (p. 26, p. 12).

In addition, the defendant itself submitted a large number and scope of measures and professional materials (see paragraph [11]) proving the fulfilment of its control and methodological tasks, which in itself is sufficient to prove that the defendant exercised its control powers extensively and also provided methodological guidance.

[79] In particular, the defendant's argument that if it were to provide methodological guidance to the guardianship authorities, which have discretionary power to make individual decisions in cases of removal from the family, it would deprive those authorities of their decision-making power (pp. 26, 38), is untenable. The methodological guidance is based on the need for uniform interpretation of the law, which is a fundamental requirement for the practice of all law enforcement bodies. The body responsible for ensuring this is determined within the organisational structure of the legal practitioner concerned and, in the case of the administration of guardianship, the defendant is required to perform this task.

[80] Here the court points out that the liability of the defendant - as a sectoral management body - has already been examined by the courts in several actions based on the violation of equal treatment, and a unanimous position has been reached that the defendant is liable for failures resulting from the shortcomings in the exercise of its supervisory and professional guidance duties and powers, which cause the violation of equal treatment. Accordingly, it can be held that, since the legislation expressly provides for the possibility for the defendant to order professional supervision and to establish the necessary professional protocols and to monitor their implementation, the defendant is liable for its failures to exercise its duties and powers, which are attributable to its failure to exercise them and which cause an infringement of equal treatment (Debrecen Court of Appeal, Pf.I.20.214/2020/10.ssz. [point 22]).

[81] On the basis of the evidence in the case, it is clear - and this was not disputed by the defendant - that the defendant ministry responsible for the sectoral management of child protection was aware of the reports of the UN Committee on the Rights of the Child, the study of the association and the report of the Ombudsman. From these sources, and obviously from many others, the defendant was well aware that, according to authoritative professional opinions, the work of child protection services involved the unacceptable and unlawful practice of removing children from their families for purely financial reasons and that there was also discrimination against national children.

[82] The defendant disputed the findings of these reports and studies at the level of generalities, mainly on the grounds that they addressed a complex social problem, the solution of which could not be claimed from the defendant.

In this context, the Court reiterates its earlier observation that the complexity of the social problem at stake and the trivial fact that the defendant cannot solve the problems of children living in extreme poverty on its own does not mean that it is exempt from the obligation to fulfil its own tasks.

[83] *The court assessed the plaintiff's compliance with the obligation to prove the unlawfulness of the defendant's conduct and the probable causal link between the omissions and the discrimination against*

the children represented by the plaintiff along the general findings detailed above, and concluded that it had been partially successful, for the reasons set out below:

[84] Prior to the detailed assessment of the defendant's failures challenged in the plaintiff's Application No. I, the court quotes the findings of witness 3 (social policy expert, child protection specialist, member of the UN Committee on the Rights of the Child), because he provides a good summary of the indications and warnings that are certainly known to the defendant Ministry, which raise serious problems in the practice of child protection bodies in determining the material vulnerability (main proceedings, p. 3 of the 20. s. jkv.):

"The primary basis of the problem is an anomaly in the interpretation of the law, the wording of the law is not precise enough, as the Ombudsman's inquiry has also found. The concepts of 'endangerment' and 'material endangerment' are not sufficiently precise, delimited and subjective. By way of example, this means that when a parent, regardless of the reason, is unable to provide adequate food and fruit for his or her child in the summer heat, this is often considered neglect by child welfare professionals, even though this is clearly due to reasons beyond the parents' control." (p. 3)

"In the decisions taken by the county municipalities to remove children from their families, the financial reason ... is mentioned in almost all decisions... I think it is important to note that this practice is due to the lack of information of the municipalities, or more precisely to difficulties in interpreting the law. For example, the decisions often cite homelessness, inadequate housing conditions, lack of water or food for children as grounds, which the municipal decisions describe as parental fault, even though these 'shortcomings' are clearly attributable to material reasons, i.e. the removal of children from their families for these reasons is in substance a removal for material reasons. Parents are unable to provide their children with adequate conditions due to a lack of financial resources." (p. 4)

[85] The applicant complained about the following conduct (omissions) of the defendant under points (a) to (b) of its Application No I:

a) despite the scientific research, international and national institutional indications that the removal of children from their families for material reasons is likely or supported, it has not carried out a targeted survey or targeted monitoring among child protection institutions on the extent, causes and consequences of this phenomenon,

b) has failed to develop a plan of action to eliminate and prevent this phenomenon, despite scientific research, international and national institutional indications that would suggest or support the likelihood of material separation.

[86] The applicant's allegation is partly well founded.

The defendant Ministry should have checked the practices of the bodies under its sectoral control with regard to the application of the prohibition on the removal of children from their families for financial reasons, having been aware of the indications of both national and international organisations and scientific research that highlighted a serious problem.

This conclusion follows from the defendant's duties and competences analysed in paragraphs [28] and [77], on the basis of which it can be established that the defendant is responsible for the *control of* the activities and practices of the child protection bodies under its sectoral control from the point of view of legality.

[87] The applicant identified the defendant's conduct complained of in the failure to carry out a "targeted assessment or monitoring" and in the defendant's "failure to draw up a plan of action" to "eliminate and prevent the phenomenon" which is the subject of this application.

According to the court's assessment, the unlawfulness of the defendant's conduct can be found in its failure to comply with the duty to exercise control deriving from its duties and powers.

The consequence of the defendant's failure to comply with its inspection obligation is the failure to draw up an action plan based on the findings of the inspection.

The court considered the failure to comply with the obligation to verify the application of the prohibition of removal from the family for financial reasons to be a failure on the part of the defendant to comply with the law, which was the basis for the finding of a breach of the right to personality and the deduction of the legal consequences. Accordingly, in the context of a finding that the defendant's infringement could be related to the past, the court did not consider it justified to find that the lack of a plan of measures based on the findings of the failure to carry out checks constituted a specific infringement.

[88] The defendant's failure to develop professional methodological guidelines and protocols for the enforcement of the prohibition of the removal of children from their families for purely financial reasons in the practice of child protection bodies is the failure to comply with the provisions of paragraph c) of Application No.

[89] The applicant's claim is well founded.

As already explained in detail above, the defendant was aware of the warnings that the decisions on the removal of children from their families do not directly mention a material reason in view of the legal prohibition, but it is clear that indirectly (i.e. actually) the removal of children to specialised care is still based solely on material reasons, because the reason for removal, typically indicated as housing problems or child neglect, often covers the extreme destitution and extreme poverty of the child and his/her family.

[90] The difficulties of legal interpretation that fundamentally affect the practice of removing children from their families - i.e. the possible distinction between the "material vulnerability" of a child and the "vulnerability" of a child - would have justified in particular the defendant to provide professional methodological guidance and a protocol on the application of the prohibition of removing a child from his or her family, which is actually based solely on a poor financial situation. Such a protocol could have significantly assisted the practice of child protection services in ensuring that children are not removed from their families for either direct or indirect financial reasons.

It follows from the defendant's responsibilities and powers, analysed in paragraphs [28] and [77], that it is clear that the defendant is obliged to provide *methodological assistance to the* child protection services under its sectoral control.

[91] Here, the court points out that a protocol is obviously not suitable for interpreting all possible life situations, there will obviously always be issues that cannot be judged on the basis of it, but professional guidance for assessing the problems that typically arise would in any event significantly improve the uniformity and legality of the assessment of material vulnerability. This is so even if it does not in itself solve the problem as a whole (as Witness 1 pointed out in his witness statement, p. 32, p. 11).

[92] The defendant referred to the Methodological Guide on Uniform Principles for the Recognition of Child Abuse among the evidence listed in paragraph [11] of the lawsuit. This in itself is striking evidence that it is necessary and professionally possible to develop detailed methodological guidance on the identification of child endangerment. Obviously, if it is possible to do so for the recognition of child abuse, there is no professional reason why the same detailed methodological guidelines should be drawn up for another situation of vulnerability, namely the assessment of material vulnerability.

The court notes that, like the protocol for the identification of child abuse, the need for methodological guidance for the assessment of material endangerment is also based on a legal obligation: the former is required by Section 101 (1) (k) of the Gyvtv., while the need for a professional protocol for the assessment of material endangerment follows from the provision of Section 7 (1) of the Gytv., which expressly prohibits the removal of a child from a family for material reasons only.

[93] The above assessment is clearly supported by the testimony of a witness6 (child protection expert) who was examined at the defendant's request (main proceedings, p. 24, jkv) and who gave the following statements:

"For child abuse, ... provides a very detailed methodological guide for professionals working in child protection. The definitions and criteria set out here are the basis for determining whether a child has been abused. Child protection professionals will act on the basis of this methodological guide and will only say that a parent is abusing a child if this can be established on the basis of the definitions in the methodological guide. This is very important, it is a very serious allegation against a parent."

According to this methodological letter, a finding of maltreatment - i.e. a finding that a parent has mistreated a child - can be based on objective criteria."

From the testimony of the witness with expertise in child protection, it can also be reasonably concluded that if it is possible and necessary to develop a professional - methodological protocol for the assessment of "maltreatment", on the basis of which it can be judged on the basis of objective criteria, then it is obviously possible and necessary to issue the same protocol for the assessment of material vulnerability.

[94] In points (d) to (e) of Application No I, the applicant pleaded the unlawfulness of the following conduct of the defendant:

(d) failed to provide financial and integrated family support tools for child protection professionals in primary care specifically aimed at keeping families in financial crisis together;

(e) does not provide child protection professionals with tools in primary care to specifically assist in addressing the housing crisis.

[95] The applicant justifies the unlawfulness of the defendant's omissions as follows:

"The defendant, as the manager of a separate heading in the budget, plans its own revenue and expenditure in respect of chapter appropriations. The defendant therefore decides itself how much to spend in a budget year on education, child protection or, for example, sport, while maintaining the principal amounts. In our view, it is through this power that the defendant is entitled to improve and

extend the human and material resources of the bodies under its control, provided that they have budgetary implications. As a body managing a chapter, it can plan autonomously within its own budget chapter for each appropriation, so that it is up to the defendant's professional and other considerations to decide what resources are available to it to keep housing poverty and families in crisis together and to ensure the financial coverage of targeted measures taken following any assessment." (p. 37.p.10)

[96] The applicant's argument is not accepted.

The defendant ministry is the central public administration responsible for a number of areas, including education, health and the social sector. It follows that an assessment of the use of the budgetary resources allocated to the tasks and functions falling within the defendant's remit is possible only on the basis of an overall examination of the defendant Ministry's activities as a whole, which is manifestly outside the scope of the present action. On the basis of the foregoing, the Court held that, however important the task of keeping together families with children in crisis, particularly in housing, is, the mere fact that the defendant Ministry did not allocate more resources to that end from the budget available does not constitute a discriminatory failure on the part of the defendant.

[97] The court also points out, in connection with the assessment of the plaintiff's claim above, that the present case does not concern a comprehensive assessment of the defendant's child protection activities, the court decides only on the application, and the assessment of any further motions is outside the scope of the case.

The applicant's claims were based on the infringement of the individual right to equal treatment of children who were taken into care (i.e. children placed in specialised child protection). It follows that only in this context is it possible to apply the legal consequences, i.e. only the defendant's failure to take the children into care can give rise to a finding of infringement of the right to a fair hearing. It follows that the respondent's omissions in the basic child protection system are not the subject-matter of the present action, since it is in the basic child protection system that the problems of families in crisis (in particular housing crisis) are dealt with.

The Court emphasises that its above findings relate expressly and exclusively to the determination of the legal framework of the action. The evidence in the case also shows that the shortcomings of the basic child protection services play a fundamental role in the placement (removal) of children in specialised care, but this is not the subject of the present case.

[98] The plaintiff was also required to establish a probable causal link between the defendant's failure to act and the discrimination against the plaintiff's representatives.

According to the Court's assessment, it follows from the very nature of the defendant's omissions that they are necessarily causally linked to the discrimination suffered by the persons concerned.

It is clear that the absence of a protocol for determining material vulnerability (i.e. defining the objective criteria for distinguishing between "vulnerability" and "material vulnerability") has allowed and provided grounds for the continuation and maintenance of the unlawful practice of child protection services, which has resulted in the removal of children from their families for material reasons only.

The Court reiterates that the basis of the plaintiff's claim is a complex social problem, which can be traced back to a number of other causes in addition to the defendant's negligence. Thus, it can be established beyond doubt that the discrimination of the children concerned is not solely due to the defendant's failure to act. Nevertheless, the Court reiterates that the mere fact that the elimination of the defendant's failure cannot lead to a complete and complex solution of the problem does not mean that the defendant cannot be held liable for its own failure.

[99] The defendant's omissions constitute *indirect discrimination against the* children of the county, who are in fact children of a family distinguished from their family for exclusively financial reasons, within the scope of Articles 8(q) and 9 of the Act. By failing to comply with its obligations of control and professional guidance, the defendant has caused a disadvantage which appears to affect everyone (that is to say, all children in specialised childcare), but as a result it is the children of the county who are in fact the children of families with a de facto exclusive economic background who, because of their poverty (as a protected characteristic), are treated less favourably than children of the county who are in a comparable situation and who are not children of families with a de facto exclusive economic background.

[100] For the *reasons set out above, the Court found that the applicant had established both that the defendant's failure to provide professional methodological guidance* on the application of the prohibition of the removal of children from their families, which was in fact based solely on their poor financial situation, and to carry out a targeted inspection of the practice of child protection services in this respect, was *unlawful, and that the* children represented by the applicant were discriminated against as a result of the defendant's failure to act.

[101] The applicant based his claim in Action II on the allegation that the children of the county who were actually singled out from the family for material reasons had a particularly high proportion of national origin, which constituted indirect discrimination against them on the basis of their social origin, compared to children of non-national origin who were in a comparable situation and were actually singled out from the family for material reasons.

[102] The plaintiff based the plausibility of the above allegation on the findings of the defendant, based on institutional studies and scientific research, cited in detail above, which are known beyond doubt, according to which approximately 75-80% of the children enrolled in the county's specialised care are of national origin, which is not explained either by the high proportion of the national population in the county, approximately 34%, or by the extreme poverty affecting the majority of them (see in particular the findings of the association's final research report, cited in paragraph [72] above).

[103] In the above application, the applicant complained of the following conduct (omissions) of the defendant:

a) despite scientific research or indications from international human rights institutions that the over-representation of national children in the child protection system is likely or justified, has not conducted a survey among child protection professionals on the reasons for this;

(b) despite scientific research and indications from international human rights institutions that the over-representation of ethnic children in the child protection system is likely or supported, it has not developed a protocol for the anonymous collection of ethnic data and has not instructed the collection of ethnic data on children in care for statistical purposes.

[104] In the context of the assessment of the plaintiff's claim under (a), the court found, in line with the reasons set out in paragraphs [28], [77] and [86], that the defendant's duty to monitor required it to investigate the reasons for the high proportion of national children who were financially excluded from the family and to monitor the practice of child protection services in this respect, the failure to do so constituting an unlawful failure to act on the part of the defendant.

[105] Under point (b), the applicant relied on the defendant's infringement in failing to collect anonymous, statistical data on the ethnicity of the children concerned by the application.

[106] The court found the plaintiff's claim to be well-founded.

According to the court's assessment, the examination of the extent and proportion of overrepresentation of national children among children who were financially excluded from the family would have been a significant task for the defendant, the failure to do so should be established as a separate infringement of the defendant. This follows from the fact that, without establishing the

proportion and number of national children concerned, neither the extent of the problem can be established in any meaningful way, nor can the practice of child protection bodies in this respect be examined, nor can the necessary measures be taken. At the same time, the court considered it unjustified, in the context of establishing the defendant's past infringement, to go into detail as to how the defendant should have fulfilled this task (anonymous data collection for statistical purposes).

[107] The court shared the defendant's argument that whatever the way the proportion of national children concerned is determined, it necessarily implies the collection of specific personal data on ethnic origin within the scope of Section 3(3) of Act CXII of 2011 on the Right to Informational Self-Determination and Freedom of Information (Infotv.), which is expressly prohibited by the Act as a general rule.

[108] According to the court's assessment, the collection of data on national origin as described above is not governed by the prohibitive general rule, but by the Infotv. 5(2)(b) of the Infodata Act, because such data collection is strictly necessary and proportionate for the implementation of an international treaty proclaimed by law.

[109] The international treaty promulgated by Act XXXI of 1993 is the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

States Parties have the following obligations under Articles 8 and 14 of the Convention:

Under Article 8 (right to respect for private and family life), everyone has the right to respect for private and family life, i.e. the public authorities may intervene in the life of families "only in cases provided for by law, when such intervention is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of public health or morals, or for the protection of the rights and freedoms of others".

Under Article 14 (prohibition of discrimination), the Convention rights (including, by analogy, the right to respect for private and family life under Article 8) must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[110] It follows from the invoked Articles 8 and 14 of the Convention, which are relevant to the present case, that the Hungarian State must ensure that the prohibition of discrimination on grounds of social

origin is observed in the course of the official proceedings deciding on the removal of a child from the family, i.e. proceedings which fundamentally affect the right to respect for family life.

The defendant must ensure that this state obligation is fulfilled in the case of specialised child protection services.

[111] The court - sharing the reasoning of paragraph [60] of the judgment of the Debrecen Court of Appeal under no.Pf.I.20.214/2020/10 (no.24/F/1) - found that the defendant Ministry, which is obliged to ensure the fulfilment of the state obligation based on an international treaty, as detailed in paragraph [108], can only fulfil its duty in the course of the official procedures forming the factual basis of the present action if it is aware of the number and proportion of the children concerned. That follows from the reasons set out in paragraph [106] above, namely that without knowing the extent of the national children affected, it is impossible to assess the problem and, in particular, to resolve it.

[112] On the basis of the above deduction, the court held that the defendant could not fulfil its duties under the international treaty relating to the enforcement of the prohibition of discrimination on the basis of national origin without collecting the ethnic data of the data subjects, and consequently this data collection is prohibited by the Infotv. 5(2)(b) of the Infodivision constitutes lawful data collection.

It follows directly from this that the claimant's allegation that the defendant failed to fulfil its duty to assess the extent of discrimination based on national origin of the children who were actually excluded from the family for financial reasons by not measuring the number and proportion of the national children concerned is well-founded.

[113] The plaintiff's burden of proof extends to establishing a causal link between the defendant's failure to act and the discrimination against the plaintiff's representatives.

The court also accepted the plaintiff's plausibility obligation of causation in relation to the above application for the reasons already explained in connection with the principal claim, as detailed in paragraph [98]. Therefore, without repeating its reasoning, the Court also points out, in relation to the above application, that it follows from the very nature of the defendant's omissions that they are necessarily causally linked to the discrimination suffered by the persons concerned.

[114] The defendant's omissions constitute *indirect discrimination against* children of national origin from a county who are actually from a family of national origin distinguished for exclusively material reasons, within the scope of Articles 8(p) and 9 of the Act. The disadvantage caused by the defendant's

failure to fulfil their oversight and professional guidance obligations seemingly affects everyone (that is, every child taken from their family solely for financial reasons), but as a result, it was the county children of national origin who were taken from their families solely for financial reasons that experienced less favourable treatment due to their social origin (as a protected characteristic) compared to county children who were also taken from their families for reasons solely related to financial issues but were not of national origin.

[115] For the *reasons set out above, the Court found that the applicant's failure to carry out a targeted investigation into the extent and cause of the fact that the children who were in fact singled out from the family solely on the basis of their poor financial situation were of national origin, and the unlawfulness of that failure, had resulted in discrimination against the children represented by the applicant.*

Evaluation of the evidence of the defendant

[116] Pursuant to Article 19 (2) of the Equal Treatment Act, the defendant had the burden of proving that the circumstances alleged by the plaintiff did not exist or that it had not complied or was not obliged to comply with the requirement of equal treatment.

[117] For the reasons set out in the previous chapter, the court found that the plaintiff had established a likelihood of discrimination against the children it represented on the grounds of poverty and national origin, and that this was caused by the defendant's failings. The defendant was required to prove the unfoundedness of these circumstances, as alleged by the plaintiff, at trial.

[118] The defendant sought to prove at trial, *by means of extensive documentary evidence* and the *testimony of* a significant number of child protection professionals, that the circumstances alleged by the plaintiff did not exist.

[119] The defendant's counter-proof was unsuccessful, for the reasons set out below.

[120] The defendant relied on the *documents* detailed in paragraph [11] above, in particular those relating to the ordering of checks, the establishment of procedures and the provision of professional guidance, claiming that they demonstrate the performance of its child protection duties.

[121] The court reiterates, in the context of the assessment of the defendant's documentary evidence, that the present case is not concerned with the assessment of the defendant's child protection activities in general. In its judgment, the court only considered whether the children represented by the plaintiff were discriminated against on the basis of poverty and national origin as a result of the defendant's failures. It follows that only in this respect is there room for the admission of evidence in the proceedings.

[122] The documentary evidence relied on by the defendant was not capable of supporting the falsity of the facts alleged by the plaintiff, in particular because it was almost exclusively based on the performance of the defendant's duties outside the scope of the present action, which was not relevant to the present action.

[123] The measures cited by the defendant in paragraph [11], which the defendant claims to have taken to demonstrate its work, do not even before 2018 generally show any activity or activity on the part of the defendant specifically relating to the assessment and interpretation of the material vulnerability of children in child protection, or to the management of the over-representation of national children in child protection, or to the monitoring of the authorities' activity in that regard.

The defendant itself also referred to the "monitoring" of the guardianship activities related to the temporary placement of children from 2019 (see. In [11] under (17) and (19), measures under 38. The measures referred to by the defendant mean that the annual national control plan now includes as an inspection objective the examination of the official practice of temporary placement of children. This is obviously a step forward, but there are currently no measures taken by the defendant specifically aimed at verifying the application of the prohibition of discrimination based on poor financial circumstances and national origin in the practice of the authorities in removing children from their families. In the light of the above, it can be concluded that the alleged failings of the defendant, as alleged by the applicant, are still present and that there is no indication that the defendant is addressing in a substantive manner the problems alleged in the case concerning the practice of the child protection authorities.

The court also points out that the inspections ordered by the defendant often defined the purpose and priorities of the inspection at a general level, so that it is not excluded in principle that they also concerned the subject matter of the case. However, only the findings or measures resulting from the inspection would serve as a basis for such a finding, and the defendant itself has not invoked any such basis.

[124] The defendant's measures, as detailed in paragraph [11], addressed a number of important child protection issues. However, it is also clear from the circumstances in which the applicant is likely to be found that the serious problems of child protection, of a magnitude and importance comparable to the areas and deficiencies affected by the defendant's measures, are the abuses alleged in the application. It follows that the *lack of* measures taken by the defendant (in particular, the *lack of* monitoring and methodological assistance) concerning the prohibition of removal from the family for purely financial reasons and the over-representation of children of national origin within that category of children, expressly confirms the existence and importance of the failings of the defendant which the applicant alleges.

[125] In the course of the evidentiary proceedings, at the request of the defendant, the court examined a number of witnesses who were child protection professionals working in the county, whose *testimonies concerning the* material circumstances of children and the overrepresentation of national children in child protection, which are *relevant to the merits of the case,* the court highlights the following.

[126] The witnesses gave the following evidence in relation to the application in Case I:

"As to the question of what methodological guidelines have been developed to eliminate or reduce the removal of children from their families due to material (as part of) causes, my answer is that there is a general professional rule, guidelines that there is no difference between the endangerment of a child due to material or non-material causes. It follows that there are no methodological guidelines that contain procedural rules or protocols only for resolving or improving the situation of vulnerability that is wholly or partly attributable to material causes.

There is a detailed, general protocol for the operation of child welfare services, which describes in detail how organisations should act and operate, and its findings and requirements apply to both material and non-material child endangerment cases. It follows that the way in which material vulnerability or material problems affecting a child are resolved is determined by the local knowledge of the family worker and not by a general protocol. It is the family worker's "job", "to know the local possibilities", and accordingly to establish and record an action plan to solve the identified material problems" (Witness 6 Child Protection Expert, Basic Procedure, p. 24, Jkv).

"Legislation and practice show that children cannot be removed from their families for "mere" financial reasons. ... Children of families in extreme poverty should only be removed from their families if the material reasons or shortcomings involved are life-threatening. Even in cases where the material threat is life-threatening, the family workers will do their utmost to identify material resources, whether local or external, in order to resolve the material problem. ...

If the family is cooperative and there is no way to find any solution to the financial problems ... and the financial problems are life-threatening, then the child may be removed from the family ... it is absurd and rare for a deficiency to be life-threatening." (Witness 7, County Network Counsellor of the Defendant's Directorate General for Social Protection of Children, Basic Procedure, p. 27).

"The ... set of problems ... which includes neglect of hygiene, neglect of medical and health care, neglect of schooling, neglect of nursery schooling, and lack of food ... cannot in itself be a basis for removing a child from the family. ..

Whether or not the aforementioned... circumstances constitute material reasons or deficiencies is a matter of perception ... only if the parent ... refuses to cooperate does the possibility of official action, i.e. the removal of the child from the family, arise."

"It is undeniable that financial problems are typically at the root of the problems affecting children, because where there is no money, there is no possibility to provide proper sanitation and meals.... It is also obvious to us that many of the problems that arise are due to financial reasons, and in such cases the key to a solution is the cooperation of the family, which is a very important factor."

"Cases are regularly traced back to complex causes, the boundaries between the causes are indeed often blurred, it is often not easy to identify a problem, even though the criteria for declaring a person to be at serious risk are determined by law. There are also methodological guidelines, the Ministry has such methodological guidelines. ... There are no methodological guidelines that 'say whether a blade of grass is to the right or to the left, whether it is materially vulnerable or not', but I stress that this is because of the complexity of the cases, so there is no possibility of methodological guidelines in this sense. What is of particular importance in judging cases is the personal experience gained over several decades and the practice developed on this basis" (Witness 8, Head of the Department of Public Authorities, Guardianship and Justice, Municipal District Office, Basic Procedure, p. 27, Jkv.)

"An example of a material reason is if a parent does not go to the job centre to apply for a job. For example, if the family's housing conditions are very bad and they do not want to change them despite the help offered, or more precisely, they cannot or do not want to change them. ...

The problem is that the financial reason is often linked to other problems, and often the family also has mental health problems. This can be reflected, for example, in not treating mental health problems, not replacing medication, not providing adequate food....

"Inadequate nutrition of the child is a neglect problem, i.e. it is not just the parents' income difficulties that may be the cause. It is neglectful parenting because, if the parent sends the child to the educational institution, the child can be adequately fed through free child nutrition. ...

"It is a very difficult question to judge whether the Ombudsman's finding that in about one third of cases children are removed from their families for financial reasons, which could be avoided by access to appropriate child protection measures and services, is well-founded. ..

I believe that the primary care system, with the involvement of charities and in cooperation with them, is capable of addressing the financial reasons for the parents' cooperation, in which case the system provides an opportunity to avoid removal for financial reasons." (Witness9, Head of the Department of the Department of Social Affairs and Guardianship of the County Government Office, basic procedure, p. 32).

"Children should not be removed from their families for financial reasons alone, I can state this unequivocally for the area and municipality3 that I know of."

"Whether the problem underlying a case is a substantive cause is determined by the public perception and experience of methodological guidelines and child welfare professionals...

These methodological guides are also published by the EMMI, but there are also guides published by others...

In response to the judge's question as to what specific written methodological guidelines are available for assessing whether a cause arising in the context of a child's vulnerability constitutes a material cause, my answer is that there are no such specific written guidelines, but the methodology for professionals to assess material causes can be established and interpreted through case studies. The knowledge, experience and competence of the professionals are the guiding factors to judge whether a parent is cooperative or not." (Witness 10, Head of the Municipal Family Assistance and Child Welfare Centre3, Basic Procedure, p. 32, jkv.)

[127] Two basic conclusions can be drawn from the testimonies.

On the one hand, the testimonies clearly reflected that the county child protection professionals interviewed were, without exception, professionals who were committed to children, who felt institutionally and personally responsible for their fate, and who took every reasonable step to ensure that the best interests of the child were served in the cases they were involved in, i.e. that they

remained in the family. The Court emphasises that this is not disputed by the applicant and is not the subject of this action.

At the same time, it is also clear from the testimonies that even the eminent professionals interviewed as witnesses decide whether a child's vulnerability is material or not, based on their individual perceptions and personal experience.

This possibility of practice is unacceptable, especially given that the decision of the authorities to remove a child from the family has a fundamental impact on the lives of families: if a financial vulnerability can be established, their child cannot be removed from the family and they have a right to expect state assistance to solve their financial problems, otherwise the authorities are obliged to remove the child from the family in the best interests of the child. The extreme seriousness of this decision justifies that the assessment of material vulnerability should be based on a consistent practice with a solid methodological basis, the absence of which is clearly reflected in the testimonies.

[128] The court notes that the importance of the defendant's professional - guidance and control tasks is particularly emphasised by the fact that the removal of a child from the family typically affects the underprivileged members of society, living in extreme poverty, suffering from multiple deprivations and with little capacity to assert their interests, for whom the correct interpretation of the purpose of the legislation - i.e. to ensure that not only direct but also indirect (e.g. housing) material reasons are not used as a basis for removing their children from their families - is of fundamental importance and is a key factor in their lives.

[129] The defendant is undoubtedly liable for the deficiency on which Application No. I is based, because as the sectoral manager of child protection, it had the opportunity, based on its duties and powers established in the legislation, to take effective measures that would actually lead to results in order to identify and determine the material vulnerability of children on the basis of uniform principles and methodology. By failing to take such measures, the defendant has contributed to the maintenance of the unlawful practice of the county child protection services, which has led to the removal of children from their families on the sole basis of material grounds.

[130] The witnesses requested by the defendant to be heard in respect of Application No II made the following statements:

"Of course, family workers often know in which cases the family is of nationality. In my personal experience, it is not common for children of a nationality to be involved in child endangerment cases

in excess of the population proportion in the area. My own experience is that families of nationality are more likely to seek help voluntarily."

I have not investigated, and could not investigate, whether the children involved in the cases that came to my attention were of national origin, as this cannot be recorded, as the law precludes it. Therefore, I have no data to answer the question as to the proportion of children of nationality either in my own practice or nationally." (Witness 6, basic procedure, s.24 jkv).

"When a family carer sees a child of nationality, they have to use positive discrimination, because families of nationality tend to have more disadvantages and more people in extreme poverty.

To illustrate positive discrimination with an example, it means that if a school proposes private tuition status for a child, the family support worker should check that the reason for this is certainly not related to the child's nationality, i.e. that this is not the reason that inspires the school's proposal. There is also a lot of accusation from the profession that we are 'overprotecting' these families, with schools and agencies regularly citing this."

"I have no experience or opinion that there are more cases of family separations in areas with a predominantly ethnic population. I repeat, there is no way that a child's nationality could be the reason for removal from the family. I also repeat that it is not possible for a child to be removed from a family for financial reasons alone. It follows that I have no experience of national children being removed from their families in excess of the national population, but this is only personal experience, I do not know of any data, but I would point out that no such data can be collected." (Witness 7, p. 27).

"For legal reasons, of course, we do not collect data on the nationality, or national origin, of the children we come across, but of course I can always judge whether the child or family concerned is of nationality. So it is not possible to judge exactly whether national children are over-represented in relation to their population share among the children who are singled out from the family. Nor is this question meaningful, for example, in the case of a village where 90% of the population is of nationality and the remaining 10% are elderly. Obviously, in these villages, children of almost exclusively national ethnicity may also be involved in family separation." (Witness 8, Basic Procedure, p. 27, jkv.)

"there are 131 municipalities in the county, including several with an over-representation of the national population. The research relied on by the applicant may have led to the conclusion and the impression that in these cases only national children are removed from the family. It is my position that nationality does not influence the decision to remove children from their families. It is important to know that we do not keep a register of nationality, but of course in certain situations, in certain cases, from the circumstances of the case, we know, we are not blind to the fact that the child concerned is

of nationality. But I believe that this in no way affects the management of the child's case, not only the removal from the family, but all the decisions that are relevant to it."

I dare not estimate the proportion of children of national nationality in the population. Nor can I say what proportion of children of nationality are young children in specialised care, given that we do not collect such data, nor can I estimate it." (Witness 9, Basic Procedure, p. 32).

[131] Several conclusions can be drawn from the assessment of the testimonies.

On the one hand, the testimonies clearly reflected that the child protection professionals interviewed did not harbour any discriminatory attitudes towards national children, and that they were justified in helping children with multiple disadvantages.

On the other hand, it is also clear that the witnesses working in the system of institutions under the defendant's sectoral control shared the defendant's general position that discrimination on the basis of national origin is excluded in child protection services, including the admission of children to specialised care.

In the Court's assessment, the opinions of the witnesses, based on their subjective judgments and based on their personal experiences and professional opinions, are not in themselves capable of refuting the plausibility of the allegations based on the evidence provided by the applicant. In addition to the testimonies of the applicant, the applicant has established the plausibility of its allegations by, inter alia, the scientific findings of the final report of the association, which contains findings based on statistical analysis, that is to say, findings supported by objective evidence; the findings of the UN Committee on the Rights of the Child, which consistently contain the same findings over decades; the findings of the Ombudsman's report, which is based on statistical analysis and numerous other sources; the findings of the SAO's report and the analysis of the CSO (see, inter alia, the report of the SAO and the analysis of the CSO). see paragraphs [6] to [10]).

The testimonies of the witnesses examined in response to the defendant's motion could not refute the finding, based on scientific and institutional assessments, invoked by the applicant, which invariably points in the same direction, that discrimination based on national social origin is present in child protection (including in the specialised care of children in the county). The testimony of the witnesses shows that they did not personally or in the practice of the child protection services they observed experience or recognise discrimination against children of national origin, but that does not in itself mean that the existence of the practice alleged by the applicant is refuted at the level of generalisation. The Court notes that the fact that the county child protection professionals interviewed during the Association's research expressed opinions that differed significantly from the witnesses' testimonies (see the findings of the Final Study) particularly supports the validity of this conclusion.

Thirdly, even professionals working directly with the families concerned have only a vague estimate of the involvement of national children in child protection services, typically stating that they have not experienced an overrepresentation of national children but "would not dare" to estimate their numbers, especially as such data cannot be collected due to legal prohibitions.

[132] The testimony of the witnesses described above expressly supports the plaintiff's plausibility. For the reasons set out at [106] above, knowledge of the extent of the involvement of national children in specialist child protection services is already essential to the recognition of the problem. The lack of such an assessment is not attributable to the professionals working with children and their families at the first level of child protection, but to the Ministry of the Respondent. The defendant should have based its professional - methodological guidance on the collection of data in accordance with the requirements of legality, in order to ensure that the recognition and elimination of discrimination on grounds of national origin is fully implemented at the level of specialised child protection services.

[133] *The court, having assessed the testimony of the witnesses examined at the defendant's request, concluded, for the reasons set out above, that it was not capable of refuting the plaintiff's alleged discrimination in relation to any of the plaintiff's claims, nor of proving that it was not due to the defendant's negligence.*

[134] The defendant repeatedly and emphatically requested the Curia Pfv. IV.20.533/2019/8 of the Court of Appeal (nos. 38/F/1) (nos. 26, 38), because, according to the applicant, the findings of that judgment would lead to the conclusion that the applicant's action was unfounded. The defendant submits that in a case with similar facts to those in the present case, the Curia found that "there was no manifest error of law, omission or error of assessment of a serious nature such as to establish the liability of the administrative authorities and, consequently, the infringement of the applicants' rights of personality in the proceedings of the guardianship authority and the government office acting as second instance authority". The defendant further submitted that in the present case the Curia also found that it could not be established that the applicant had suffered discrimination on the grounds of his national origin or his existence in extreme poverty in a municipality otherwise predominantly inhabited by ethnic minorities and that the authorities had removed the children from the family environment on that ground (p. 10 of p. 26).

The defendant's plea is unfounded for several reasons.

First, the case is fundamentally different from the present case. The subject-matter of the case referred to is the adjudication of a claim relating to a specific individual decision concerning an infringement of the personality rights of the authority acting in the case, whereas the subject-matter of the present action is the assertion of a claim in the public interest based on a breach of equal treatment. The subject-matter of the action brought by the defendant and the present action is fundamentally

different for the reasons set out in paragraphs [18] and [20] above, and there is therefore no basis for the defendant's assertion that the facts of the cases are essentially identical.

Secondly, contrary to the applicant's claim, the Curia held in paragraph [54] of its judgment that the fact that children of national origin living in extreme poverty in the municipality and period concerned were removed from their families without exception, in itself made it likely that these children were discriminated against on the basis of their poverty and national origin. As explained in paragraph [55] of the judgment of the Curia, in this particular case, the defendant's counter-evidence was successful and it was therefore concluded that the removal of the child from the family in the case in question was not due to the authorities' failings but to the mother's neglect.

[135] *In view of the partial success of the plaintiff's plausibility argument and the ineffectiveness of the defendant's counter-proof, the court found that the children represented by the plaintiff had suffered discrimination based on their poverty and national origin in the course of the specialised child protection care resulting in their removal from the family.*

The court also found that the defendant had failed to provide professional methodological guidance on the application of the prohibition on the removal of children from their families due to their de facto poor financial situation and to carry out targeted monitoring of the practice of child protection services in this respect, and had failed to examine the extent and the reason for the high proportion of children of national origin who were removed from their families due to their de facto poor financial situation.

The court further found that the plaintiff's representatives were discriminated against as a result of the defendant's failure to act.

The court stresses that Article 4(m) of the Ebktv. expressly states that budgetary bodies are obliged to respect the requirement of equal treatment in their measures and procedures.

Further legal consequences

[136] The applicant sought *an order that the defendant cease the infringement.*

The injunction is not an enforceable injunction, but the court emphasizes the parties' obligation to enforce the judgment, "orienting the parties to the correct conduct after the infringement" (Supreme Court, Pfv. IV.21.568/2010/5.p. 10, main proceedings 1/F/6.)

Therefore, in accordance with consistent case law, the Court granted the applicant's application and ordered the defendant to cease the infringement.

[137] The applicant also sought *an order that the defendant cease and desist from the infringement in the manner requested in the application.*

An order to cease an infringement of personality rights may be both a non-executory injunction, which emphasises the obligation to enforce the judgment in general (as an order to cease an infringement), and an enforceable injunction.

The court refers to the judgment already referred to in paragraph [135], in which the Supreme Court held that an order to cease an infringement of personality rights may also contain a restraining order which may serve as a basis for the issuance of an enforceable document pursuant to Article 13 of Act LIII of 1994 on Judicial Enforcement (Act on Judicial Enforcement). The Supreme Court (Kúria) pointed out in its judgment that, in addition to the general obligation, the court may also determine the specific manner in which the injunction is to be terminated, without prejudice to the fact that the defendant is under a public law obligation, not a civil law obligation, to respect the right to equal treatment. However, the judgment emphasises that this is possible in the case of an action which has been properly brought, in particular in order to satisfy the requirement of enforceability.

[138] It follows from the above that the court did not share the plaintiff's contention that it is the court's task to "put an end to the matter" on the basis of academic and institutional indications and force the executive to put an end to its objectionable practices; nor did it share the defendant's view that "in a democracy it is nonsense that the court could impose any obligation on the executive, on the governmental bodies, on the basis of a petition of a foundation." (p. 42).

Contrary to the interpretation of the two extremes of the parties, the court's task in a public interest litigation based on the violation of equal treatment is to assess the legal and factual merits or lack thereof of the action, based on the facts that can be established on the basis of the evidentiary procedure conducted, in the framework of the plaintiff's request and the defendant's counter request, in accordance with the substantive and procedural rules.

It follows that the court's enforcement activity cannot be interpreted as the ultimate instrument of the rule of law, under which the court may, without any restriction, order the executive to take any measure

necessary to eliminate discrimination. At the same time, there is no basis for interpreting the court's margin of discretion to the effect that it is not possible to impose private sanctions for a breach of personality rights by the organs of the executive acting in the context of a public law relationship by requiring the organs of the executive to take action.

[139] The court assessed the specific claims of the plaintiffs for the manner of injunctive relief on the basis of the general criteria set out above and found them to be partially well-founded, for the reasons set out below.

[140] By its claim under (a), the applicant sought an order that the defendant should begin, within 2 months, to collect data for statistical purposes on the nationality of children in the basic and specialised care of the county child protection system, on the basis of the perceptions of professionals working in the child protection system, in a manner that would exclude the identification of the persons concerned; analyse the data collection every year for 5 years from the date of the judgment becoming final, in particular with regard to trends in the number of national children, whether they are increasing or decreasing, the possible causes of this and the scope of the interventions required; share the analysis with the applicant for 5 years.

[141] For the reasons set out in paragraphs [106] to [112], the Court concludes that the claimant's claim is largely well founded.

According to the deduction set out in the judgment, the Hungarian State is also obliged under an international treaty to ensure the prohibition of discrimination based on national origin in official procedures, including in the provision of specialised child protection services. It is the duty of the defendant, which is obliged to perform that State function, to monitor the application of the prohibition of discrimination in child protection proceedings and to take the necessary measures. It is not possible to perform that task without knowing the number of persons concerned, and the applicant's claim that the defendant should assess the number of children of national origin concerned on the basis of the perception of the child protection professionals is therefore well founded.

The court considered the plaintiff's request concerning the commencement of the survey and the details of the data collection to be unfounded, firstly because the plaintiff can determine the method of the survey and it is not necessary to state and specify in the judgment that the triviality of the data collection can only take place in a lawful framework. In addition, these omitted claims did not meet the requirement of enforceability of the application and could not therefore be satisfied on procedural grounds.

For the reasons explained in paragraph [97], the court also saw no possibility to order the collection of data on the national social origin of the persons concerned, even if it covered the basic child protection services, because the subject of the present case is the assessment of the defendant's failures in relation to the specialised child protection services, and therefore the legal consequences can be limited to this scope.

The court ruled that the defendant must publish the findings of the survey on its website by 31 March of the year following the year in question, as this would ensure that its measures are publicised in a timely manner.

[142] On the basis of the above grounds, the court ordered the defendant to *carry out a survey of the number of children of national origin in the county for each calendar year for a period of five years from the date of the judgment becoming final, and to publish the results of the survey and the measures taken on the basis of the survey on its website by 31 March of the calendar year following the calendar year in question.*

[143] The application of the above legal consequence is based on judicial practice, the judgment of the Debrecen Court of Appeal in Case No. Pf.20.214/2020/10 (No. 24/F/1 [60]) considered the application of the defendant's obligation with the same legal reasoning as the above to be justified.

[144] The plaintiff requested under (b) that the defendant be ordered to conduct a survey within 2 months of the county's temporary care services for children, including temporary homes for families and children and the institution of substitute parents; the survey should address the difference between the current needs and the actual needs of the county, taking into account the county's specific demographic, geographic, settlement structure, housing and poverty indicators, and the extent of the difference; the survey should be shared with the plaintiff.

[145] On the basis of the reasons set out in paragraph [97], the Court considered the applicant's claim to be unfounded and rejected it.

Without repeating what has been said in the preceding paragraph, the court will briefly point out that the present case does not concern a comprehensive assessment of the defendant's child protection activities. The subject-matter of the present action is the assessment of the defendant's failings in relation to the specialised child protection services, and therefore the assessment of the defendant's failings in relation to the basic child protection services (including the temporary care and substitute parenting services) is outside the scope of the present action.

The court notes that the plaintiff's request does not meet the requirement of enforceability either, and therefore cannot be granted on procedural grounds.

[146] Under point (c), the applicant requested that the defendant be ordered to convene within 1 month a professional working group, including NGOs and professionals, to draw up a problem map showing the known reasons for the nationality and/or material grounds for the exclusions, to include the applicant's representative in the working group and to publish the problem map within 5 months.

[147] The court considered the plaintiff's claim to be unfounded and dismissed it.

The claimant's claim does not meet the requirement of enforceability in any element, it asks the defendant to take measures which are uncertain and cannot be assessed objectively, and which cannot be taken for reasons of procedural law.

The court may order the defendant to take specific measures within the scope of his or her powers and duties to bring an injunction to an end, but it may not determine the means of enforcement. Thus, it is not possible to provide in general terms that the defendant must involve civil and professional organisations in its work, and it is in particular not possible for the court to order the defendant in its judgment to entrust a specific organisation (the plaintiff) with the performance of a task falling within the defendant's scope of duties and powers or to involve it in its work.

The court also points out that the term "problem map" as claimed by the plaintiff has neither a statutory definition nor a clear, uniform colloquial interpretation that would allow its existence to be established beyond doubt, which uncertainty of interpretation in itself renders the plaintiff's claim unfounded.

[148] Under point (d), the applicant requested that the defendant be ordered to entrust the professional working group under point (c) with the task of drafting a professional guide for child protection professionals on how to avoid removal on the grounds of material vulnerability and/or nationality within 6 months; to set out in the guide the material grounds for not removing a child from his or her family; to instruct the defendant to apply the guide to the child protection services under his or her control.

[149] For the same reasons as those set out in paragraphs [97] and [145] to [147], the court also considered the above claim to be unfounded and dismissed it on the grounds that it was unfounded in procedural and substantive law.

Without repeating the above, the court points out that the infringement of personality rights under the Civil Code. 84(1)(d) of the Civil Code, the defendant may be ordered to take specific measures which, firstly, relate to the cessation of the infringing omissions, secondly, fall within the defendant's duties and powers and, thirdly, satisfy the conditions for enforceability.

The applicant's above claim does not meet these requirements.

Firstly, for the reasons set out in paragraphs [88] to [93], the Court found that the defendant had committed an infringement of the principle of equal treatment in that it had failed to issue a professional methodological guide on the removal of children from their families for de facto purely financial reasons, which discriminated against the children represented by the applicant. Therefore, the application of legal consequences is only appropriate in that context. Therefore, the applicant's claim that the defendant should be ordered to issue a protocol on the prohibition of discrimination on grounds of national origin is unfounded.

On the other hand, it follows from the above that the defendant's task is to issue the abovementioned technical guidance, which is the measure which, if adopted, would lead to the termination of the infringement. This is not what the applicant seeks, but an order requiring the defendant to instruct a professional working party to draw up this protocol, which the defendant cannot be required to do, as explained in paragraph [146].

Third, the applicant's application does not satisfy the requirement of enforceability either. In particular, the applicant requested the defendant to set up a professional working party 'also' made up of professional and non-governmental organisations, the terms of which are so general that they are not a sufficient basis for an enforceable judgment.

The court notes that, as a consequence of the civil law principle of procedure on request (Pp. Article 3(1)), the court is bound by the request of the parties and may not go beyond it, so that, in the context of the above request of the plaintiff, it could only decide on the merits or otherwise of the defendant's request to take the requested action.

[150] Under point (e), the applicant requested that the defendant be ordered to draw up, within six months of the judgment becoming final, a plan of measures in accordance with international standards on the rights of the child and fundamental rights, based on the assessments referred to in points (a) to (d), to eliminate the national and/or material exclusions in the county, to be implemented within 18 months of the judgment becoming final; the applicant also requested that the defendant be ordered to publish this plan of measures and a report on its implementation on its website.

[151] The court considered the applicant's claim to be predominantly well-founded and ordered *the defendant to carry out a targeted inspection within 12 months to verify the application of the prohibition of discrimination based on material deprivation and national origin in the removal of children from the county family and to draw up a plan of measures based on the findings of the inspection, the implementation of which it was to monitor after 18 months. The court ordered the defendant to publish the action plan on its website within 30 days of the expiry of the time limit and the document verifying its implementation.*

[152] The court found that the plaintiff's request to carry out the survey (audit) and to issue the action plan was well-founded.

The court rejected the above request of the plaintiff on the basis of the civil law principle of the Pp. Article 3(2), according to which the court assesses the substance of their claims, not their formal designation. It therefore considered it necessary to require the defendant to carry out a targeted inspection as a necessary precursor to the action plan.

However, for the reasons set out in paragraph [147], the court considered the plaintiff's request that the court should specify on which surveys the defendant was obliged to base its measures as unfounded and rejected it.

The court set the time limit for compliance at 12 months, contrary to the plaintiff's request, because it considered that this period was strictly necessary to allow for a substantiated investigation and action plan.

[153] The court also considered the plaintiff's claim that the defendant should be ordered to implement the action plan within 6 months to be unfounded. This claim is unenforceable and cannot be interpreted, in particular because the time-limit for the implementation of a future action plan, the content of which is therefore unknown, cannot be determined in advance. Moreover, the applicant's request is unrealistic, since it requires the applicant to take action to remedy a serious, complex problem which goes back decades and the full resolution of which is certainly not possible within 6 months.

[154] Nevertheless, the court provided that the defendant is obliged to verify the enforcement after 18 months. This provision of the judgment is unenforceable, declaratory in nature, and was intended to emphasise the importance of continuous and regular monitoring of the implementation of the action plan.

[155] The application of the above legal consequence is known in case law, and the court refers in particular to the decision of the Pécs Court of Appeal in case no.20.004/2016/4 (main proceedings, no.1/F/12), upheld by the judgment of the Curia in case no.20.085/2017/9 (main proceedings, no.12/F/1).

In this judgment, the Court of Appeal of Pécs ordered a school to prepare an action plan in the context of the desegregation obligation, because it considered that the elimination of segregation requires complex measures, which are unfeasible without an action plan that defines and coordinates the steps of the process in advance. However, the court did not specify the mandatory content of the action plan, as this could only be done in the light of local circumstances. In paragraph [47] of its judgment upholding the above decision, the Curia held that the provision of the judgment requiring the drawing up of a plan of measures complied with the requirement of enforceability.

In the present case, the court ordered the defendant to draw up a plan of measures in the same framework: it considered that the implementation of the prohibition of discrimination based on material deprivation and national origin in the context of family separations is a complex task, the successful implementation of which requires the definition of the necessary actions in a plan of measures, the content of which must be determined by the Ministry of the defendant on the basis of the findings of the preliminary investigation.

[156] The applicant sought a declaration of infringement as of 27 January 2004, the date of entry into force of the Ebktv.

The court considered the plaintiff's claim to be well-founded, because it had established a sufficient likelihood that the defendant's alleged omissions already existed at the time of the entry into force of the Ebktv.

This finding is supported by the first report of the UN Committee on the Rights of the Child, which warned of discrimination against national children in child protection institutions as early as 2006, and by the fact that further institutional and academic findings (in particular the Ombudsman's report and the final study of the Association's research) have unanimously identified discrimination against poor and national children in child protection as a problem that has existed for decades.

The Court emphasises that the findings of the research conducted in 2007, entitled "Title of Report1", detailed in [5] above, and the testimony of the minority researcher witness4 who conducted the scientific study (p. 32), clearly demonstrate that both the discrimination against the persons represented by the applicant and the failures of the defendant and its predecessors to enable it have been problems in the protection of children for decades.

[157] For the **reasons set out above, the court partially upheld the action**.

[158] A Pp. 78 (1), the unsuccessful party is liable to pay the costs of the successful party. Pp. Pursuant to Article 81 (1) of the Civil Procedure Code, in the event of partial success, the court shall decide on the costs of the action in proportion to the amount of the success.

According to the court's assessment, the plaintiff has won 80% of the case and the defendant 20%, and the parties can claim their legal costs in this proportion.

The applicant applied for the determination of his legal costs on the basis of IM Order No. 32/2003 (VIII.22) on the determination of attorney's fees in court proceedings (IM Order) until the final statement of claim (No. 37). Finally, on the basis of the "statement of costs" under No. 37/F/2, the plaintiff, referring to (but not enclosing) a lawyer's retainer agreement, requested that the defendant pay HUF 802,125 in legal costs. The plaintiff did not provide any evidence of the content of the lawyer's retainer contract referred to, and the court therefore refused to accept the determination of its claim for costs based on that contract. Therefore, the court determined the costs of the plaintiff in the amount of HUF 250,000 (including the HUF 10,000 costs of the proceedings as determined in the FÍT order), applying Article 3(2)(a) and (6) of the IM Order, out of which the plaintiff is entitled to claim HUF 200,000, based on the plaintiff's 80% success rate. The court considered the application of Article 2(6) of the IM Regulation - i.e. the fixing of a higher amount of attorney's fees than that provided for in Article 2 of the IM Regulation - to be justified by the exceptional complexity, complexity and length of the case and in view of the work of the plaintiff's representative.

In the bill of costs filed under No. 38/F/6, the defendant determined its total litigation costs in the amount of HUF 38,100, from which the court could not deviate on the basis of the principle of the obligation to file a request, and therefore, in view of the 20% success rate of the defendant, the court determined the amount of the litigation costs to be paid by the defendant in the amount of HUF 7,620.

On the basis of the aggregation of the parties' obligations to each other to pay the costs of the action, the defendant was ordered to pay HUF 192,380 in costs.

[159] The unpaid fee corresponding to HUF 36,000 shall remain the responsibility of the Hungarian State in view of the full personal exemption from fees granted to the plaintiff pursuant to Section 5(f) of Act XCIII of 1990 on Fees, and to the defendant pursuant to Section 5(c) of Act XCIII of 1990 on Fees.

[160] The right to appeal against the judgment is based on Section 233 (1) of the Hungarian Civil Code, and the time limit for the appeal is based on Section 234 (1) and Section 219 (1) a) of the Hungarian Civil Code.

Budamegye2, 22 September 2021

Dr. Ágnes Uzsoky

Judge