Jász-Nagykun-Szolnok County Court
No 16.P.20.812/2007/70

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Court of Jász-Nagykun-Szolnok County, in the case of, Name of the plaintiff I (address of plaintiff I) Name of the plaintiff I, plaintiff II (address of plaintiff II) Name of the plaintiff II, represented by Dr. Lilla Farkas, attorney-at-law (address of plaintiff-attorney) against Name of the defendant I (address of defendant I) defendant I, Name of the defendant II (address of defendant II) Name of the defendant II (address of defendant II) defendant II, represented by Dr. Makai Gabriella attorney-at-law (address of defendant-attorney) in the action for infringement of equal treatment rendered the following

J u d g m e n t :

The action brought by the plaintiffs I and II **is dismissed.**

Orders the First and Second Plaintiffs jointly and severally to pay to the First Defendant, within 15 days, the sum of HUF 250,000 (two hundred and fifty thousand) in costs of the proceedings and, at the same time and in the same manner, to pay to the Second Defendant, within 15 days, the sum of HUF 250,000 (two hundred and fifty thousand) in costs of the proceedings.

The State bears the registered duty.

An appeal may be lodged against this judgment within 15 days of service, in writing, in triplicate, at this court, but addressed to the Debrecen Court of Appeal.

The court informs the parties that legal representation is mandatory in proceedings before the court. The action of a party without legal representation is ineffective unless the party has applied for the authorisation of a lawyer or the court is otherwise obliged to refuse the application or the law precludes proceedings by proxy for the action in question.

The request for the appointment of a lawyer may be submitted to the competent County Judicial Office of the place of residence, domicile or workplace of the party.

The court or tribunal will inform you if the appeal concerns only the payment of interest, the payment or amount of the costs of the proceedings, the payment of unpaid fees or costs advanced by the State, or if the appeal concerns only the preliminary enforceability, the time limit for performance or the authorisation of payment by instalments, if the appeal is directed solely against the grounds of the judgment, the court of appeal may decide the appeal without a hearing, but the parties may request a hearing in the cases listed above or, on the basis of a joint application submitted before the expiry of the time limit for lodging an appeal, the appeal may be decided without a hearing.

R e a s o n i n g :

The court examined the application, the applicants' submissions, the documents of the attached Szolnok Labour Court No. M.746/2002, the documents of the Jász-Nagykun-Szolnok County Court No. P.20.839/2009, the documents of the 12.K.27.142/2005, the County Court's file Pk.62.831/2001, the content of the applicants' pleadings, the defendants' defence, the content of the pleadings, the testimony of the witnesses heard, and makes the following

S t a t e m e n t o f F a c t s.

'Name of the village' is located in the North Great Plain Region, in the north-western part of Jász-Nagykun-Szolnok County, in the southernmost part of the Jászság sub-region. 'Name of the village' has an area of 9274 hectares and a population density of 66.8 persons/km^2 . In 2007 the population was 6.059 inhabitants. The number of elderly people - over 60 years old - and young people - under 18 years old - is almost the same. The population of the municipality has not decreased significantly in recent years, despite the fact that annual deaths regularly exceed annual births, which indicates a high rate of in-migration, mainly due to low house prices.
At the 2001 census, 10.6% of the population declared themselves as Roma ethnicity (655 people), a high proportion among the surrounding settlements. Since the research of the 'Researcher's Name', the accepted terminology in the literature is the 'population considered as Roma by the outside world', which is 'the name of the village', according to the 'name of the municipality', with a consensus estimate of 1850 people, almost one third of the population (2007 data), taking into account lifestyle, habits and customs.

The 'name of the village' is due to its geographical location an agricultural settlement, industrial activity has only started to develop in recent years thanks to the small businesses that have settled there. The village has a 49 % solid road network, and electricity, water, gas and telephone networks are also nearly 100 %, but not all households have access to them. In addition, organised municipal waste collection has been solved. The network of institutions in the 'Name of the Commune' is well developed.

On November 21, 2000, the legal representative of the 1st Respondent submitted a proposal to the Assembly entitled *"Operation of a private school in the name of the municipality"*. In his thesis, the Mayor set out his view that schooling was a vital issue for the future of the 'name of the village' and that the establishment and operation of a private foundation school was the way forward to address the problems he had outlined. At the end of his letter, he explained that *"Nevertheless, my specific proposal is to make a declaration of intent in which the Municipality of the 'name of the village' expresses its intention to make the 'name of the square' school complex and its equipment available to a group of teachers, a foundation or a trust, organised around a leader, for the purpose of running a private school."*

On 28 November 2000, the Assembly of the Municipality of the Name of the Commune held a meeting, at which it adopted Assembly Resolution No. 303/2000 (28.XI.) on the declaration of intent to establish a private foundation school, entitled: *"The Assembly of the Municipality of the Name of the Commune expresses its intent to establish a private foundation school, providing the material conditions - part of the school complex"*.
The above was motivated by the fact that a significant number of families from 'name of municipality' had their children educated in a school in another town or municipality.

On 22 March 2001, the municipality received a declaration of support with 1055 signatures: *'I hereby support the intention of the municipality of 'the name of the village' and our mayor to establish a private or foundation school next to the current municipal school. We are convinced that the Mayor, at the head of the Municipal Council, is doing his professional work within the legal framework for the future of our children and the municipality.*

The Memorandum and Articles of Association of Defendant II, 'Name of Defendant II' (name of the Memorandum and Articles of Association) are dated 18 September 2001. The purpose of the Foundation is: primary education, education, day care, language education, art education, dance, education for a healthy lifestyle, sports, education and training of children with physical and mental disabilities, education, religious ethics education, information technology. The founders of the foundation are: 'founder name 1', resident at 'address 1', 'founder name 2', resident at 'address 2', and two entities: 'entity name 1' and 'entity name 2'.

The Foundation's registered office is at the address of the 'defendant in the second instance'. Duration of the foundation: the founder has established the foundation for an indefinite period. The members of the board of trustees of the foundation at the time of its establishment were: 'founder's name 1', 'person's name 1' (current legal representative), 'person's name 2', 'person's name 3', 'person's name 4' (legal representative of defendant I), 'person's name 5', 'person's name 6', 'person's name 7' and 'person's name 8'. The Chairman of the Board of Trustees was elected as 'founder name 1', the Vice-Chairman of the Board of Trustees was elected as 'person name 1' and the Secretary was elected as 'person name 2'. The initial cash assets of the foundation were 4.010.000.- Ft, which were composed as follows: 'founder name 1' founder 2.500.000.- Ft, 'founder name 2' founder 10.000. The founder 'founder name 1' deposited HUF

1.000.000.- and the founder 'founder name 2' deposited HUF 500.000.- in the bank account of the foundation.

By order of the Jász-Nagykun-Szolnok County Court Pk.62.831/2001/5, which became final on 19 February 2002, the second respondent foundation was registered under registration number 904. In the order, it stated that the foundation has its registered office at the address of the defendant II and its representative is a resident of the address of 'person name 1'. The purpose of the foundation is: primary education, education, day care, language education, art education, dance, sports, religious ethnic education, information technology. Nature: open, use of assets: proceeds of initial assets, grants, type of foundation: private foundation.

The Municipal Council of the defendant I. adopted the following decision under the number 59/2002 (III. 12.): *"The request of the defendant II. of the name of the municipality 'Name of the municipality' for the designation of a school building for the operation of the 'primary school name 1'.rendű alperes neve kuratóriuma kérelmére bérbe adja 10 éves időtartamra az 'általános iskola neve 1' működtetésére a 'cím 4' szám alatti - a nagyközségi önkormányzat tulajdonát képező - általános iskola épületegyüttesének 1744,13 m^2 alapterületű részét a következő feltételekkel:*

1. *The Board of Trustees of the 'Name of the Municipality' 'Name of the Second Defendant' undertakes to operate the part of the building leased to it with the care of a good steward.*
2. *The Board of Trustees also undertakes to contribute to the maintenance of the building by carrying out the necessary interior cleaning and painting work every year.*
3. *The Board of Trustees intends to pay a rent of HUF 1.000.000.- for 2 years in advance, which includes the overhead costs - water, electricity - which the Assembly agrees to and accepts.*
4. *The Assembly undertakes and commits that if for any reason it terminates the contract with the Board of Trustees of the Foundation within 10 years, it will provide a building suitable for primary school purposes for the operation of the 'Primary School 1'.*
5. *After 2 years, the Assembly shall review the annual rent, taking into account the rate of inflation officially established by the Central Statistical Office.*
6. *The Assembly shall place at the disposal of the Board of Trustees of the Foundation, free of charge, on the basis of a separate inventory, the furnishings, equipment and visual aids located in the building.*

The Assembly authorises the Mayor to conclude and sign the detailed lease contract, and to order the inventory and transfer of the fixtures, fittings and equipment and visual aids."

The Municipal Council of the defendant I. in case No. 61/2002 (12.III.) adopted the following Municipal Council decision on the division of the school building under 'title 4' between the municipal and the foundation school.

"'The Municipal Council of the Municipality of the Name of the Commune' determines

the division of the school building at 'address 4' between the municipal school and the foundation school as follows:

The main entrance is used by the municipal school, as well as the area to the right of the main entrance, the ground floor lobby and the upstairs area to the right of the lobby. The Foundation School uses the area to the left of the main entrance, the upstairs lobby and the area to the left of the main entrance."

On 18 March 2002, the Mayor, represented by 'person name 4', and the Vice-Chairman of the Board of Trustees, represented by 'person name 1', entered into the lease agreement as follows:

"RENTAL CONTRACT

between the Council of the Municipality of the municipality 'name of the municipality' (represented by the Mayor of the municipality 'name of the person 4'), on the one hand, and the defendant, the first defendant, as lessor - hereinafter referred to as the Lessor - on the other hand
on the other hand, by and between the Board of Trustees of 'Foundation Name 1', 'Title II Defendant' (represented by 'Person Name 1', Vice-Chairman of the Board of Trustees), as Tenant, hereinafter referred to as 'Tenant', this day, subject to the following conditions.

1. *The Municipality of the 'name of the municipality' owns the building complex of the primary school located at 'title 4'.*
2. *The part of the building complex of the elementary school as defined in point 1, with a floor area of 1744.13 m^2 (the exact part of the building complex subject to the lease is an integral part of the present contract), pursuant to the decision of the Assembly of the Municipality of the 'name of the municipality' No. Annex No. 1) is hereby leased to the Tenant for the sole purpose of operating the primary school for grades 1 to 8 of the primary school 'Primary School 1', who shall use the property on that basis.*
3. *3.) The lease will take effect on 01 July 2002 and will run for a period of 10 years, i.e. until 01 July 2012. The landlord undertakes that if for any reason he terminates this lease with the tenant within 10 years, he will provide a building suitable for primary school purposes (ready to receive pupils of 8 grades) for the operation of the 'primary school name 1'.*
4. *The Parties agree that the Lessee shall pay the Lessor in advance, within 15 days from the date of signing this contract, the rent of HUF 1,000,000, i.e. HUF 1 million, for two years from the date of entry into force of this contract. The rent of HUF 1.000.000.- paid in advance for two years shall include the overhead costs of the leased object, such as water, electricity and gas. After two years, the Council will revise the annual rent, taking into account the officially established inflation rate published by the Central Statistical Office.*
5. *the property may only be used by the tenant for the primary education of grades 1 to 8 of 'primary school name 1' and may not be sublet or used by a third party.*

6.)*The tenant is obliged to use the property for its intended purpose during the term of the lease, to operate it with the care of a good landlord, to carry out the usual and regular repairs and minor renovation works at his/her own expense.*
7.)*The tenant also undertakes to completely whitewash the inside of the school building once a year at his/her own expense during the term of the lease.*
8.) *During the term of the lease, the Lessee shall protect the condition of the property in all respects and take care of its valuables.*
9.) *The lease includes the fixtures, fittings and equipment and visual aids in the leased part of the building in accordance with Annex 2, which is an integral part of this contract. These movables shall be made available to the lessee free of charge by the lessor.*
10.)*The parties agree that the Lessor shall be entitled to check the contractual compliance of the lease and the proper use of the premises whenever possible, but at least once a year.*

Issues not covered by this contract are governed by the rules of the Civil Code on leases. The Contracting Parties have signed the present contract in full agreement with their intentions.

'Name of the municipality', 18.03.2002."

The Administrative Office of the County of Jász-Nagykun-Szolnok brought an action for review of the decision of the first defendant municipality under No 12.P.20.839/2002. In its observations No 02-1775-8/2002, the Administrative Office declared the above decisions No 59/2002 (12.III.2002) and No 61/2002 (12.III.2002) to be unlawful and ordered the municipality to restore the legal situation by setting a time-limit. In his comments, he referred primarily to the position of the Parliamentary Commissioner for National and Ethnic Minority Rights, according to which the decision to lease the building complex of the primary school 'in the name of the municipality', i.e. to reduce the number of classrooms, was clearly a decision of the municipality that also covered the education of persons belonging to the minority, and therefore the consent of the 'municipality in the name of the minority' should have been obtained. In its view, the 'name of the municipality' has the right to give its consent to the municipality's decision to transfer part of the primary school in the municipality to a foundation, since it affects the situation of minority pupils in the municipality, irrespective of their participation in minority education. It also pointed out that the above decision should have been based on the opinion of the county council, which was incorporated into the development plan.
In its counter-application, the municipality took the position that the defendant was not obliged to obtain the consent of the minority self-government in connection with the decisions challenged by the applicant, since there is no minority education in the primary school maintained by the municipality.
In its application, the applicant Administrative Office then asked the Regional Court to review the decisions of the defendant in first instance No 59/2002 and No 61/2002 (12.3.2002) and, in so far as they were unlawful, to annul them.

The Jász-Nagykun-Szolnok Megyei Bíróság (Jász-Nagykun-Szolnok County Court), in its judgment of 21 October 2002, number 12.P.20.839/2002/10, dismissed the applicant's action. In its reasoning it stated that § 8(4) of the Ötv. referred to in the plaintiff's action does indeed stipulate the enforcement of the rights of national and ethnic minorities within the scope of the mandatory duties of the municipal government, but that this generally formulated obligation can only be given substance by the imposition of a specific statutory obligation. The defendant did not fail to fulfil this statutory obligation for the reasons set out in the applicant's observations on legality.
The county court found that the two decisions under review did not provide for the transfer of ownership or maintenance rights, and therefore the decisions were not subject to the legal requirement of obtaining the opinion of the county council on the development plan. Therefore, for the reasons set out in the observation on legality, the decisions sought to be reviewed did not infringe any rule of law and the applicant's action was dismissed.

The applicant lodged an application for review of the above judgment, which was dismissed by the Supreme Court of the Republic of Hungary by order of its own motion, No Kfv.III.37.031/2003/2 of 1 July 2003.

The defendant Foundation II established the 'primary school name 1'. On 1 August 2002, the municipal clerk authorised the school to operate by Decision No 2052/2002. The school had 205 children enrolled, and the foundation employed 13 teachers on an hourly and salaried basis. The school started operating in the part of the school ('Title 4') rented by the municipality to its foundation.
Most of the teachers employed by the Foundation were formerly civil servants of the defendant primary school, and the children enrolled in the Foundation also continued their education at that school.
The 'primary school named 1' held its opening ceremony, started its operation, and then the Administrative Office of Jász-Nagykun-Szolnok County annulled the above Decision No 2052/2002 by Decision No 034688/6/2002 of 30 August 2002 and ordered the first instance authority to initiate a new procedure.
The administrative decision was sent to the municipality on 2 September 2002. On 2 September, the Municipality held an extraordinary meeting of the Municipal Council and decided to ensure the compulsory school attendance of children of primary school age by means of Municipal Council Decision No 173/2002 (2 September 2002). The decision stipulates that, in order to ensure compulsory education from 3 September 2002, the primary education of the 205 pupils enrolled in 'Primary School No. 1' will be provided by the 'Primary School No. 1' of the 'Municipality', under the same conditions as the 'Municipality', subject to the provisions of the Decision of the Municipal Council of the 'Municipality', as of 3 September 2002, and of § 102, paragraph /9/, points a/ and b/ of the Public Education Act.

For these reasons, the Foundation School could not start its actual operation in the 2002-2003 school year. The municipality ensured the schooling of the children enrolled in the foundation school by taking the children back to the municipal primary school according to the schedule in which they would have started the foundation school (this was the

basis for the class assignment, i.e. the 'old' classes were not restored).

The 'primary school name 1' received a new operating licence from the 'name of the municipality' by decision No 2565/2003 of 5 June 2003. According to the decision, the 'name of the municipality', at the request of the 'name of the defendant in the second instance', authorises the 'name of the primary school 1' to start operating from 1 August 2003 with a planned capacity of 250 pupils at 'address 4'. According to the decision, the maximum number of pupils that may be admitted is 250, in grades 1 to 8 of primary school.

Thus, the 'primary school name 1' actually started operating in the 2003-2004 school year. The foundation primary school started the 2003-2004 school year with 13 full-time teachers, 5 part-time teachers and 3 technical staff. The lower school started with 6 classes with a total of 126 pupils, of which 4 arrived and 3 left, with 127 children graded. The upper school started with 4 classes with 76 pupils, 4 arrived, 2 left, 77 graded, and one non-graded child who had to take a class examination. Day care started with two classes with an average of 45 children and between 50 and 60 children were served for lunch.

During the first semester, about HUF 4.000.000.- was spent on the purchase of the necessary equipment for the operation of the school, the complete equipment of the computer room, maps for history, geography, charts, biology, environmental studies and Hungarian subjects, experimental equipment for physics, chemistry, sports equipment, equipment for day care activities. Support has been used to purchase TVs, VCRs, tape recorders, amplifiers, CD players, carpets, fridges, vacuum cleaners, coffee and tea makers, printers. While 1% of the tax donation was used to buy two overhead projectors with screens and a computer. It was laid down that from the proceeds of the fundraising ball, another grant from 'organisation name 2' and from the proceeds of the ball organised by 'association name 1', two more computers with desks were purchased, a piano was ordered and the remaining amount will be used to improve the science room.

In 2004, the County Administrative Office, acting within its competence to control the legality, made a new legal comment against the Assembly's resolutions No. 59/2002 (12.III.) and No. 61/2002 (12.III.), and called upon the defendant municipality to withdraw the two resolutions, to eliminate the unlawful situation and to remedy the consequences of the violation of the requirement of equal treatment and equal opportunities, setting a deadline of 28 May 2004 for the resolutions concerned.
The time-limit having expired without result, the applicant brought an action before the county court seeking annulment of the defendant's decisions. He submitted that he had referred to the observation of legality in several places and referred in a summary manner to the results of the comprehensive investigation carried out by the OCEA in the course of the investigation procedure ordered by Order No 34935/2003 of the Minister for Education, pursuant to Article 95/A(4) of Act LXXIX of 1993 on public education.
It submitted that, by its defective decisions, the defendant had changed the operating conditions of the municipal school, which was part of the municipal school's own basic tasks of public education, to an extremely detrimental extent by sharing the municipal

school building and making it available to 'primary school No 1'. The primary breach of the law was identified in the fact that the defendant, by that measure, divided the pupils of the primary school into two groups in one physical space, the defendant's not at all concealed aim being to place children from disadvantaged backgrounds in one group and children from normal backgrounds in the other. The disadvantaged children are both those with unsettled financial backgrounds and those with parents who are less able to advocate for their children. This has resulted in both a lack of capacity to meet the costs of foundation schooling and, in many cases, a lack of awareness of the benefits of foundation schooling or, if they did, an inability to follow through with the process.
In its view, the defendant's contested decisions created segregation. The municipal school was predominantly attended by children from the disadvantaged backgrounds described above, while the foundation school was also predominantly attended by children from settled backgrounds. This violation of the law is further compounded by the fact that all this segregation has taken place in a physical space with the obvious extreme polarisation, so that it is easily comparable in everyday life. Pupils in the municipal school were also disadvantaged by the fact that the spatial division of the lower school had disrupted the uniform organisation of the school by pedagogical stage that had been in place until then. The municipal school is unable to fulfil its task of educating and training pupils with special educational needs, for the most part, because of a lack of appropriate conditions. The foundation school, on the other hand, has almost no responsibilities for pupils with special educational needs at present.
In its application, the applicant claimed that the two decisions constituted an infringement of the following system of legislation. The decisions were already unlawful at the time they were adopted because of § 4 /7/ of the Public Education Act and § 1 of Act 2003 CXXV, which lays down the requirement of equal treatment, and § 4 b/ of the Act also obliges local authorities to comply with the requirement of equal treatment. Furthermore, in its view, the two incriminated municipal decisions also violate the provisions of the Convention against Discrimination in Education promulgated by Act No. 11 of 1964, in particular Articles 1 and 2 of the Convention. Furthermore, the infringement of the basic obligation to provide basic primary education and training, as set out in Article 8(1) and (4) of Act LXV of 1990 on Local Authorities (the Local Authorities Act), was committed by the defendant when the decisions at issue in the present proceedings were adopted.

By order No 12.P.27.096/2004/2, the Jász-Nagykun-Szolnok County Court dismissed the plaintiff's action without issuing a summons pursuant to the provisions of the Hungarian Civil Code. 130 § /1/ paragraph d/. The applicant appealed against that order. As a result of his appeal, the Metropolitan Court of Appeal, by order No 2.Kf.28.658/2004/2, set aside the order of the court of first instance and ordered the court of first instance to hear the case and to give a new decision.

The court conducted the proceedings under number 12.K.27.142/2005. The defendant, the Municipality of the Municipality of the Name of the Commune, sought the dismissal of the action brought by the applicant. In its defence, the defendant submitted that the right exercised by the defendant in the adoption of the two decisions was also vested in the defendant by virtue of Article 44/A(1)(b) of the Constitution and Article 80(1) of the

Act. He relied on the fact that the provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Articles 4 and 27, entered into force on 27 January 2004, and that, in that light, the applicant therefore relied on an investigation and infringements of the law which had not been carried out and which were not in force at the time of the defendant's decision. The defendant also submitted that the decisions taken by it were neither decisions of the management of the maintenance fund nor decisions taken under institutional powers which could infringe the principle of equal opportunities. Defendant exercised only its discretion in making its decisions. He noted that the 'primary school name 1' operating 'defendant name II' was founded by two private individuals, not the municipality, and that since 2003 the foundation primary school has been operating in the leased property with 205 children enrolled in the 'municipality name'. He pleaded that no action can be taken which affects the rights acquired and exercised in good faith by the pupils.

The intervener, the Equal Treatment Authority, supported the applicant's action.

Judgment of the Jász-Nagykun-Szolnok County Court of 9 March 2006, number 12.K.27.142/2005/19, dismissing the action brought by the applicant, the Public Administration Office. It held that the defendant's decisions sought to be reviewed did not infringe the law for the reasons stated by the applicant. The county court pointed out that the subject-matter of the action was solely the two decisions at issue in the action. Those decisions were adopted by the defendant in the exercise of its right of ownership under Article 44/A(1)(b) of the Constitution. For this reason, discrimination and breach of equal treatment could not have occurred, as well as because the infringements of rights complained of could not be read into the decisions themselves. The same applies to the other infringements alleged by the applicant.

The applicant lodged an appeal against the judgment.

On 19 September 2006, the Supreme Court of the Republic of Hungary, as the court of review, issued its judgment under the number Kfv.III.37.321/2006/7, upholding the judgment of the Jász-Nagykun-Szolnok County Court under the number 12.K.27.142/2005/19.

In its reasoning, the Supreme Court found that the defendant's decisions challenged in the action did not infringe any substantive or procedural law. The court before it had made a full investigation of the facts, the facts established were not contrary to the documents and the assessment of the evidence was reasonable. The court correctly found that the defendant had acted in its capacity as owner of the property and had taken decisions which were not related to the enforcement of the legislation on public education or equal opportunities. The objections listed in the application for review, such as different treatment, different curricula, different types of books, different teaching staff, differences in standards, different catering, different treatment in particular, are independent of the decisions relating to the sharing of the school building and the letting of part of it.
The court held that the circumstances referred to in the application for review could not

be the subject of the present action, since the decisions did not contain any decisions on them. In the present case, the only question to be examined was whether the defendant's ownership decisions infringed the law on the management of municipal property. However, the applicant could not identify any such breach of law.

Since 2003, the municipality of 'Name of the Municipality' has actually had two primary schools, the municipally run 'Primary School 2' and 'Primary School 1'. Both schools are attended by 99% of children from the municipality.

The 'primary school name 2' is maintained by the Council of the municipality of the defendant municipality in first instance. The school has its seat at 'address 5' and its premises at 'address 4'. The school 'Name of the Square' (now 'Name of the Road 1') was established in 1858, while the school 'Name of the Road 2' was established in 1960. The school was merged in 1977.

The number of pupils in 'primary school name 2' was as follows:
In the 2004-2005 school year, grade 1 59 students, grade 2 35 students, grade 3 47 students, grade 4 56 students, grade 5 49 students, grade 6 42 students, grade 7 42 students, grade 8 38 students. In differential grade 1-2 7 pupils, grade 3-4-5 6 pupils, grade 6-7-8 10 pupils. Total: 391 pupils.
In the school year 2005-2006, class 1 47 students, class 2 60 students, class 3 37 students, class 4 43 students, class 5 54 students, class 6 42 students, class 7 39 students, class 8 36 students. At different levels, class 1-2 4 pupils, class 3-4-5 6 pupils, class 6-7-8 11 pupils.
Total: 375 people.
In 2006-2007, Class 1 38 students, Class 2 44 students, Class 3 59 students, Class 4 33 students, Class 5 50 students, Class 6 49 students, Class 7 48 students, Class 8 34 students. In different years, class 1-2 9 pupils, class 3-4-5 9 pupils, class 6-7-8 6 pupils.
Total: 379 people.
In the 2007-2008 school year, class 1 46 students, class 2 33 students, class 3 40 students, class 4 57 students, class 5 38 students, class 6 53 students, class 7 50 students, class 8 35 students. The number of pupils in different grades was 9 in grades 1-2, 9 in grades 3-4 and 7 in grades 6-7-8.
Total: 377 people.

The evolution of the number of teachers in 2004 was 27, in 2005 30, in 2006 27 and in 2007 29 in the 'primary school 2'.

In 2004, the 'primary school name 2' received 97.575.000.- HUF in state aid. The first defendant municipality received an additional amount of 39.281.000.- Ft
contributed to the maintenance of your school. This amount was given by the 1st defendant for the operation and accumulation of the 'primary school called 2' and 1.720.000.- HUF for free meals. The accumulation refers to the improvement of tangible assets, which consisted of: the purchase of a computer for HUF 293,750, office furniture for HUF 499,855, an overhead projector for HUF 176,983, and equipment for teaching Hungarian language and literature to pupils in lower secondary school for HUF 165,596,

totalling HUF 1,136,184. This year, the amount spent on school operations was HUF 36,424,816. In 2004, the defendant I. made investments in the amount of HUF 14,177,000, consisting of: modernisation of lighting (HUF 6,601,000), renovation of the main building's bathroom (HUF 7,756,000).

In 2005, the school received 104.960.000.- HUF in state aid. The 1st defendant contributed a further HUF 49 603 000 to the maintenance of the school in that year. This amount was used by the 1st defendant for the operation and accumulation of the 'primary school name 2' and for free meals of HUF 4,586,000. The accumulation covers the purchase of tangible fixed assets, which consisted of: the purchase of equipment for the teaching of geography, mathematics and Hungarian language for the 1st grade and the different classes 174.566.- HUF, in summary, the amount of the first respondent municipality's subsidy 49.603.000.- HUF was spent on the development of tangible fixed assets 174.566.- HUF, free meals 4.586.000.- HUF, the amount spent on operations 44.842.434.- HUF, no investments were made this year.

In 2006, the school received 106.676.000.- HUF in state aid. The 1st defendant contributed an additional amount of 51.430.000.- HUF to the maintenance of the 'primary school name 2' in that year. This amount was used by the 1st defendant for the operation and accumulation of the school and also for free catering of 4.142.000 HUF. The accumulation consists of improvements to tangible fixed assets, which include: the purchase of visual aids, for which the school spent HUF 180 210. Of the 51.430.000.- HUF given by the municipality, 180.210.- HUF was spent on fixed asset improvements, 4.142.000.- HUF was spent on free meals, while the amount spent on operations was 47.107.790.- HUF. In the year 2006, the defendant in the first instance 'primary school name 2' made investments amounting to HUF 18,107,000, consisting of: reconstruction of heating system for HUF 17,768,000, PVC coating of 3 classrooms for HUF 339,000.

In 2007, the 'primary school name 2' received 102.632.000.- HUF in state aid. The 1st defendant contributed an additional amount of 64.037.000 HUF to the maintenance of the primary school in that year. This amount was used by the 1st defendant for operating and accumulation costs and 4,355,000 HUF for free meals. The accumulation refers to the improvements of fixed assets, which consisted of the purchase of a projector for HUF 235,000, a laptop for HUF 166,000 and chairs, tables and cabinets for HUF 277,200. Of the 64.037.000.- HUF of the municipal subsidy, the school spent 678.200.- HUF for the improvement of fixed assets, 4.355.000.- HUF for free meals, while the amount spent on operations was 59.003.800.- HUF. In 2007, the 1st defendant made investments in its school amounting to HUF 4,883,000, consisting of: installation of an alarm system for HUF 133,000, maintenance of classrooms for HUF 1,000,000 and renovation of classroom bathrooms for HUF 3,750,000.

In 2008, the 'primary school name 2' received 107.525.000.- HUF from the Hungarian State Treasury, in addition to which the 'municipality name' Municipality supported it with 73.177.000.- HUF. This year, there were no municipal developments or investments, and the total amount of aid received was HUF 180,702,000.

The revenue and expenditure for 'primary school name 1' are as follows:

In 2004, the municipality did not provide any support to the foundation, nor did it support the catering, but in 2004 it paid the overhead costs for the school in the amount of HUF 1,553,799.

ENTRIES

YEAR	Total aid	'name of the municipality' Municipality Allstate aid	Other revenue	Number of pupils	Aid per pupil		
2005.	60.055.936 Ft	2.718.847 Ft	48.522.522 Ft	0	8.814.567 Ft	205 persons	292.955 Ft
2006.	67.177.424 Ft	6.262.780 Ft	49.464.511 Ft	2.409.766 Ft	9.040.367 Ft	206 persons	326.104 Ft
2007.	70.155.975 Ft	7.448.177 Ft	50.380.928 Ft	1.347.500 Ft	10.979.370 Ft	216 persons	324.796 Ft
2008.	78.352.774 Ft	8.125.000 Ft	47.657.372 Ft	11.310.000 Ft	11.260.402 Ft	213 persons	367.853 Ft

PUBLICATIONS

YEAR	Total expenditure	Materials purchased	Other services	Wages and contributions	Payments of a personal nature	Depreciation	Number of pupils	Amount per pupil
2005.	62.755.127 Ft	2.775.309 Ft	8.070.227 Ft	48.514.937 Ft	2.070.661 Ft	1.323.993 Ft	205 persons	306.122 Ft
2006.	62.955.443 Ft	2.195.369 Ft	9.348.817 Ft	47.456.755 Ft	3.585.760 Ft	408.742 Ft	206 persons	305.608 Ft
2007.	68.606.176 Ft	2.342.328 Ft	11.805.077 Ft	51.531.321 Ft	2.825.284 Ft	102.166 Ft	216 persons	317.621 Ft
2008.	76.288.541 Ft	2.474.739 Ft	14.303.772 Ft	55.455.246 Ft	3.981.809 Ft	72.975 Ft	213 persons	358.162 Ft

The amounts of revenue for 'Primary school name 1' shown under the heading 'Municipality name' include the following:
In 2004, defendant I did not provide any support to defendant II.
In 2005, the defendant I provided a subsidy of HUF 500,000 to the defendant II, subsidised the catering with HUF 58,000, while in 2005 it paid HUF 2,160,000 in utility bills, for a total of HUF 2,718,847 as stated above.
In 2006, the 1st defendant provided a subsidy of 1,500,000 HUF to the 2nd defendant, the catering was subsidised by 2,212,000 HUF and the overhead costs of the school were 2,550,780 HUF, which was borne by the 1st defendant, for a total of 6,262,780 HUF, which was the total subsidy provided by the municipality to the foundation.
In 2007, the 1st defendant provided the 2nd defendant with a subsidy of HUF 1,008,000, the catering was subsidised with HUF 3,198,347 and the overheads incurred were HUF 2,449,830, in total the subsidy provided by the municipality in 2007 was HUF

7,448,177.
The 2008 municipal subsidy also includes the overheads paid by the municipality.

The overheads are paid by the municipality for the whole of the 'Road 1' building, because the building was not split up and the separate consumption hours were not used. The municipality therefore pays the overheads for the whole school building and provides this back to the Foundation as a grant per square metre.
The overheads are received as an indirect subsidy as a monthly benefit in kind by the defendant in the second instance from the defendant in the first instance, which is included under the heading "'Municipality name' Municipal revenue" above.

The evolution of the revenue of 'primary school name 2':

YEAR	Total aid	'name of the municipality' Municipality Treasury	Municipal developments, investments	Number of pupils	Amount per pupil	
2005.	154.563.000 Ft	49.603.000 Ft	104.960.000 Ft	-	379 persons	407.817 Ft
2006.	176.213.000 Ft	51.430.000 Ft	106.676.000 Ft	18.107.000 Ft	379 persons	464.941 Ft
2007.	171.552.000 Ft	64.037.000 Ft	102.632.000 Ft	4.883.000 Ft	377 persons	455.045 Ft
2008.	180.702.000 Ft	73.177.000 Ft	107.525.000 Ft	-	393 persons	459.801 Ft

The revenue per pupil amounts for 'primary school name 1' and 'primary school name 2' are as follows:

YEAR	Amount per pupil 'name of primary school 1'	Amount per pupil 'name of primary school 2'
2005.	292.955 Ft	407.817 Ft
2006.	326.104 Ft	464.941 Ft
2007.	324.796 Ft	455.045 Ft
2008.	367.853 Ft	459.801 Ft

The Assembly of the 1st defendant adopted the Assembly Decision 155/2006 (20.VI.) as follows: *""The Assembly of the Municipality of the Name of the Municipality", at the request of the 2nd defendant, "shall set off and accept the investment in the yard of the elementary school "Name of the Second Defendant" for the period from 1 September 2005 to 31 August 2008, in the amount of HUF 1.500.000.- as rent."*

The Assembly Decision No 81/2009 (12.II.) provides as follows: *"'Name of the founding deed' for the establishment of the rent of the school part of the 'name of the municipality' Municipality of the 'Name of Defendant II' - for the purpose of operating the 'Primary School Name 1', the rent for the building at 'Address 4' for the period from 1 September 2008 to 31 December 2010 is set at HUF 1,000,000, half of which is to be paid by the tenant by 31 December 2009 and the other half by 31 December 2010."*

Until the establishment of the foundation school, the primary schooling of the 'name of the village' primary school children was carried out in the primary school by placing the

lower school children in the renovated building at 'name of the road 1' for grades 1-4, while the upper school was located in the building at 'address 5', where the gymnasium is located. With the conclusion of the lease agreement, the schooling of children attending the 'primary school name 2' was changed so that the lower grades 1-2-3 attend the building at 'address 4', while the school building at 'road name 2' accommodates grades 4-5-6-7-8, taking into account the fact that a gym is located in that building.

Until the 2008-2009 school year, there was no Gypsy minority education in the 'primary school name 2'. 368 out of 393 pupils started Gypsy minority education in the 2008-2009 school year.

For the foundation 'primary school name 1' the tuition fees are as follows:
Decision No 4/2003 (24.II.) of the 'name of the municipality' 'name of the defendant II.' provided that "*the tuition fee shall not exceed the amount of child protection allowance, which was HUF 3,000 for the academic year 2003-2004."*
The tuition fee was increased as follows The following decision was taken at the meeting of the Foundation held on 15 February 2006, according to the decision of the Board of Trustees 41/2006 (15.II.): *"The Board of Trustees of the 'Name of the Municipality' 'Name of the 2nd defendant' unanimously agreed by open vote with 6 votes in favour, 0 against and 0 abstentions to increase the tuition fee to HUF 4,000.- from the academic year 2006-2007. Parents who already have 3 children attending the school will continue to pay the tuition fee of 3.000.- HUF per child."*

Every year, the 1st defendant announced a competition for disadvantaged good pupils attending the foundation school. Thus, as of the current school year, 2009-2010, the Municipality is now paying the tuition fees of 10 children to the Foundation School, thus supporting disadvantaged children through the 1st Defendant.
At the time of enrolment, parents fill in a declaration of intent to enrol their child in the Foundation School during the enrolment period.

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Defendant I operates a Day Care Centre for children at home in the name of the 'municipality'. The nursery school operates in two places of operation, the 'Nursery 1' place of operation and the 'Nursery 2' place of operation.

In the school year 2004-2005, 192 children were enrolled in the kindergarten 1, of which 110 children were enrolled in Gypsy minority education.
In the school year 2005-2006, 188 children attended, of which 108 children were enrolled in Gypsy minority education.
In the 2006-2007 school year, 105 out of 181 children attended Roma education.
In the school year 2007-2008, 195 children were enrolled, of which 115 children attended Roma education.
In the 2008-2009 school year, 118 out of 193 children participated in Gypsy minority education.
In the 2009-2010 school year, 204 children were enrolled, of which 132 attended Roma

minority education. The number of places is 196 and the number of groups is 8.

The 'Kindergarten 2' kindergarten site has three sections, a large centre with four groups, a small centre with two groups and a new section with two groups.

From 2007 onwards, the grouping of kindergarten children on the 'Kindergarten 2' route and the 'Kindergarten 1' route was as follows:

small groups on the 'Kindergarten 2' road	CSIGA	GOMBA	PILLANGO
	Total number/HHH/Percentage	Total number/HHH/Percentage	Total number/HHH/Percentage
	20 persons 8 persons 40 %	25 persons 11 persons 44 %	24 persons 4 persons 17 %
'kindergarten 2"road middle group	SUNDAY	KATICA	-
	Total number/HHH/percentage	Total number/HHH/percentage	
	24 persons 10 persons 42 %	26 persons 5 persons 19%	
'kindergarten 2' road large group	MACI	NEWSLETTER	MÉHECSKE
	Total number/HHH/percentage	Total number/HHH/percentage	Total number/HHH/percentage
	27 persons 5 persons 19%	27 persons 12 persons 44%	22 persons 17 persons 77%
'Kindergarten 1' road mixed group	SÜNI Total number/HHH/Percentage	NAPOCSKA Total number/HHH/percentage	Averaging due to mixed group
	25 persons 16 persons 64%	27 persons 18 persons 66%	34 persons/52 persons=65%

YEAR 2008

'kindergarten 2' road small groupsMÉHECSKEMEMACININAPRAFORGÓ			
	Total number/HHH/percentage	Total number/HHH/percentage	Total number/HHH/percentage
	23 persons 9 persons 39%	22 persons 8 persons 36 %	23 persons 7 persons 30 %
'kindergarten 2" road middle group	GOMBA	PILLANGO	CSIGA
	Total number/HHH/percentage	Total number/HHH/percentage	Total number/HHH/percentage
	26 persons 13 persons 50 %	22 persons 7 persons 31%	26 persons 14 persons 53%
'kindergarten 2" road large group	KATICA	SUNDAY	-
	Total number/HHH/Percentage	Total number/HHH/Percentage	
	26 persons 9 persons 35%	25 persons 10 persons 40%	
'kindergarten 1"road mixed group	SÜNI Total number/HHH/Percentage	NAPOCSKA Total number/HHH/percentage	Averaging due to mixed group
	23 persons 15 persons 65%	26 persons 17 persons 65%	33 persons/49 persons=65%

YEAR 2009

'Kindergarten 2' road small groupsDAYSUGARCATICA			
	Total number/HHH/percentage	Total number/HHH/percentage	
	25 persons 7 persons 28%	25 persons 8 persons 32 %	
'kindergarten 2' road middle group	NEWSLETTER	MACI	MÉHECSKE
	Total number/HHH/percentage	Total number/HHH/percentage	Total number/HHH/percentage
	25 persons 15 persons 60 %	27 persons 15 persons 55%	25 persons 11 persons 44 %
'kindergarten 2' road large group	GOMBA	CSIGA	PILLANGO
	Total number/HHH/percentage	Total number/HHH/percentage	Total number/HHH/percentage
	27 persons 13 persons 48 %	24 persons 12 persons 50%	26 persons 11 persons 42 %
'kindergarten 1'road mixed group	SÜNI Total number/HHH/Percentage	NAPOCSKA Total number/HHH/percentage	Averaging due to mixed group
	28 persons 17 persons 60 %	28 persons 20 persons 71 %	37 persons/56 persons=66%

The other day nursery is located on the 'Nursery 1' road. The number of children is as follows:

In 2004-2005, 44 children were enrolled, of which 39 attended Roma minority education.
In the 2005-2006 school year, 43 children were enrolled, of which 39 attended Roma minority education.
In the 2006-2007 school year, 50 out of 54 children attended Roma education.
In the 2007-2008 school year, 48 out of 52 children attended Roma education.
In the 2008-2009 school year, 47 out of 49 children attended Roma education.
In the 2009-2010 school year, 53 out of 56 children attended Roma education.
The nursery has 46 places and 2 groups.
The group assignment was as above.

The 'Kindergarten 2' site has a homogeneous group structure, which means that children of the same age group are in the same group, while the 'Kindergarten 1' site has mixed groups, mainly due to parental demand.

In 2008, the development of the ratios between the 'Kindergarten 2' and 'Kindergarten 1' day care centres of the 'municipality' day care centre was as follows:

	'kindergarten 2' road	'kindergarten 1' road	Deviation in %
2008/2009.	Total number/HHH/Percentage	Total number/HHH/Percentage	%
	193 persons 77 persons 40 %	49 persons 32 persons 65 %	25 %

In 2009, the ratio between the 'Kindergarten 2' and 'Kindergarten 1' day-care centres in

the 'municipality' day-care centre

'Kindergarten 2' road 'Kindergarten 1' roadDeviation in %			
2009/2010.	Total number/HHH/Percentage	Total number/HHH/Percentage	%
	204 persons 88 persons 43 %	56 persons 37 persons 66 %	23 %

The district boundaries described in the nursery school regulations were not established by the first instance municipality, the parent is free to choose the place of enrolment for his/her child of nursery age. However, local practice shows that parents enrol their children in the place of activity nearest to their place of residence. The streets near the 'Kindergarten 1' site are mainly those where the local Roma minority lives.

The kindergarten on 'Kindergarten 2' cannot be extended any further, as its capacity has reached its maximum. Expansion of the 'Kindergarten 1' site is underway as the defendant I has purchased an adjacent building where expansion is possible.

During the period in question, all children were admitted to the day nursery school to which they applied for admission, both for the 'name of primary school 2', 'name of primary school 1' and 'name of municipality'. No parental complaints about schooling or nursery schooling were received by the local municipality or the name of the local 'municipality'.

Plaintiff I, 'Name of Plaintiff I', was incorporated on May 12, 2006.
The second applicant, 'association name 2', was entered in the register of the Jász-Nagykun-Szolnok County Court under No. Kny.63.145/2003/3 by order of 16 October 2003 under No. 1912. The order became final on 12 November 2003.

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The first and second plaintiffs brought an action in the county court seeking a declaratory judgment as follows:
1) The county court should declare that the defendant I., by sharing and renting the school building under its maintenance and by taking away the authority of the headmaster to classify the Roma and the severely disadvantaged children in the primary schools of the municipality, unlawfully segregated the Roma and the severely disadvantaged children from the non-Roma and the non-severely disadvantaged children in the school year 2002-2003 at the class level and later at the school level.
2.) Declare that the defendant I provides inferior quality and material conditions of education to the segregated Roma and children with multiple disadvantages.
3) Order the First Respondent to cease and desist and enjoin it from such and similar infringements.
4.) Order the defendant in first instance to *progressively* restore the original situation as it existed prior to 1 August 2002, the date of enrolment.
5.) Order the defendant in first instance to express its regret for the infringement in a

statement sent to the Hungarian Telegraphic Agency.
6.) Order the defendant in first instance to pay a fine of HUF 1.000.000.-.
7) Declare that the lease agreements between the defendants in Orders I and II are in accordance with the Civil Code. 75(3) and 200(2) of the Civil Code are null and void.
8.) Order the defendant in the second instance to tolerate the restoration of the original situation.

At the hearing on 22 September 2009, the first and second applicants extended their action to the kindergarten as follows:

9) Declare that the defendant I. has unlawfully segregated Roma and severely disadvantaged children from non-Gypsy and non-severely disadvantaged children since 27 January 2004 on an inter-site basis in the Day Care Centre and on an inter-group basis in the Central Kindergarten 2 on the 'Kindergarten 2' road.
10.) Order the First Respondent to cease and desist from such infringement and to cease and desist from such and similar infringements.

With regard to their application concerning the school, they argued that they were exercising their right to bring an action under the Civil Code in respect of the situation prior to 27 January 2004 (the date of entry into force of the Act on the Protection of the Rights of the Child). They referred to the fact that the lease agreement between the 1st and 2nd respondents had created segregation on the basis of ethnicity and social/wealth status between the class in the school year 2002-2003 and the foundation municipal schools from the school year 2003-2004 onwards, in the name of the 'municipality'. This restricted and still restricts the personal rights of the predominantly Gypsy ethnic and 61% cumulatively disadvantaged pupils of the municipal school, more specifically their right to equal treatment.

On the basis of the Civil Code, the two applicants challenged the lease contract, which resulted in an infringement of personal rights, for the period from 2002 to 27 January 2004. For the period thereafter, the two applicants also sought, as public interest litigants under the Ebktv. and the Ptk., inter alia, a declaration of the existence of segregation as a result of the maintenance of the lease and its termination.
The plaintiffs' position in response to paragraph 7 of their application was that the lease agreement concluded by the defendants I and II was in breach of the Civil Code. 75(3) of the Civil Code and 200(2) of the Civil Code, sought an order for restitution of the original situation of the defendants under Section 237 of the Civil Code and submitted that the contract also infringed Sections 215(1) and 215(3) of the Civil Code.
They argue that the rental contract violates several laws. At the time it was concluded (spring 2002), it violated Article 70/A of the Constitution, Article 4 /7/ of the Public Education Act in force at the time, and Article 4 /7/ of the Civil Code. 76 of the Public Education Act, the UNESCO Convention against Discrimination in Education, promulgated in Decree-Law No. 11 of 1961, which is henceforth applicable in domestic law, and Articles 3 and 5(e) and (b) of Decree-Law No. 8 of 1969. It was submitted that in the contested contract the defendant I reorganised and closed (partial closure) the municipal school in a substantial part of its premises (the building known as 'Square'),

in circumvention of Article 102(3) of the Public Education Law in force at the time. The applicants referred to the fact that the lease contract would have required the consent of the third party, the 'name of the municipality', and that, in their view, the contract was not in fact concluded.
The plaintiffs argued that if the lease between defendants I and II was not concluded, segregation between the schools would not occur. The plaintiffs alleged that the 'municipality in name' had created a physical separation, a segregation, of the two schools by an active act (entering into a lease agreement), which in their view was unlawful. It was not disputed that this lease was concluded before the entry into force of the Opportunities Act, before 27 January 2004, but in their view, for the period prior to that date, the contract was null and void under the Civil Code and was challenged on that basis. They claimed that the Civil Code. The claimants argued that the contract itself infringed the right of personality in breach of Articles 75(3) and 76 of the Civil Code and could therefore be challenged on the ground of nullity without time limit. The first defendant's failure to terminate the lease after the entry into force of the Opportunities Act and thus to maintain segregation between schools was identified as passive conduct. In the field of direct discrimination, the applicants alleged that when comparing 'primary school name 2' maintained by defendant I and 'primary school name 1' maintained by defendant II, the situation of 'primary school name 2' was worse in terms of material conditions and educational conditions in the two schools. In their view, the two schools are in a comparable situation because both schools are in fact maintained by the defendant in the first instance. They argued that 'Primary School 1' could not function without the assistance of the dominant 1st respondent.

The applicants based their right of action on Article 20(1)(c) of the Act on the Protection of the Rights of the Child after the entry into force of the Act on the Protection of the Rights of the Child. They claimed that under Section 8(1)(1) of the Local Government Act, the municipality has the mandatory duty to provide primary education in the municipality. In the situation in the present proceedings, the obligation of the municipal decision-makers, the mayor and the members of the municipality, following the establishment of the foundation school, to provide primary education is only towards the children attending the municipal school. Any allocation or additional funding which they provide for or vote for the education of children of primary school age must be examined in the light of that obligation. The Act does not impose any compulsory duties on the foundation or pupils attending foundation schools. The first respondent municipality did not conclude a public education agreement with the second respondent and the resulting infringement by default may, in their view, have several causes. What is certain is that this breach by omission created the basis for segregation and direct discrimination. If the first defendant had entered into a public education agreement, it could not have argued in the administrative proceedings against it that it was bound only by a private law relationship with the second defendant or the foundation school. However, plaintiffs argued that segregation is not based on mere negligence, since there is a lease between the Class I and Class II defendants and the Class I defendant provides budget support to the Class II defendant and the foundation school. In a series of decisions, the Court has ruled on the affairs of the school maintained by Defendant II, is responsible for segregation and direct discrimination between the foundation and

municipal schools.
A 2003. évi CXXV. törvény (Ebktv.) 4. § b/ pontja értelmében az Ebktv. hatálya kiterjed a helyi önkormányzatokra és ezek szerveire. Section 8 defines direct discrimination, which includes
b/ race,
c/ skin colour,
e/ and belonging to an ethnic minority,
p/ and q/ on social and wealth status,
which form the basis for segregation in the lawsuit.

The applicants also brought their action in respect of children with multiple disadvantages. They argued that Article 8 of the Equal Treatment Act defines the protected characteristics, which include social and economic status (points p and q), which, in addition to ethnicity, form the basis for segregation in the lawsuit. Differences based on social and economic status in public education are deemed to be disadvantaged from 1 September 2003 and cumulatively disadvantaged from 1 January 2005. According to Article 121(1)(14) of the Public Education Act currently in force: a disadvantaged child or pupil is a child or pupil who, because of his or her family circumstances or social situation, is protected by the notary or is in receipt of regular child protection assistance, and a severely disadvantaged child or pupil is a child or pupil whose parent who has legal custody has not more than 8th grade at school. provided that the parent is entitled to a regular child protection allowance for the child or pupil, and a child or pupil who has been placed in a permanent foster care. In their view, the following criteria should be considered when determining whether a protected characteristic is also an essential feature of personality:
1.) Whether a constitution or international treaty provides protection on the basis of the property.
2) Whether it serves as a basis for a preferential State measure.
3) Whether the daily life of the victim is fundamentally affected.
4.) Whether the individual can, by his or her own choice, change the attribute that is visible to him or her.
The applicants' position was that if any of the relevant criteria were met, it could be established that the protected characteristic was an essential characteristic of personality. Thus, it was their position that the action could be brought on the basis of both points (p) and (q) of the social and property situation, in addition to points (b), (c) and (e) of Article 8 of the Equal Treatment Act.
After the enactment of the Opportunities Act, their position was that the 1st respondent was creating the unlawful segregation by maintaining and not terminating the lease. Thus, the unlawful segregation, segregation was based by the plaintiffs on the lease and its continued maintenance in the lawsuit.

In relation to discrimination, they argued that the 1st defendant had taken an ownership decision to divide the school by transferring the better part of the school to the foundation school and, by keeping the worse part of the school (2 Road), had directly discriminated against and was discriminating against children attending the municipal school by providing them with a materially more disadvantageous education than that

provided to children attending the foundation school. It was the applicant's position that all the children with special educational needs who were being segregated in the municipal school remained there and were being taught by the defendant I.
In their submission No. 64, the plaintiffs submitted that the lease agreement between the defendants I and II was a sham under Section 207(6) of the Civil Code, a public education agreement was sham, and the court should therefore declare and qualify the defendants' contract on that basis.

The applicants brought their action in relation to the nursery education in their application under No F/59. They argued that the 'name of the expert', annexed under T3/23, had established, on the basis of the situation analysis of the equal opportunities expert, that 40.4% of the 274 kindergarten pupils were from a disadvantaged background. According to the equal opportunities expert, the proportion of HH kindergarten children is 24 % higher in the 'Kindergarten 1' building than in the Central Kindergarten 2 building, while 90 % of the kindergarten children are gypsies. In the central building, the difference in the HHH rate between the age groups is now more than 25%, with the ratio of the small and middle groups to the large group. It was stated that in the 'Kindergarten 2' unit, 71 out of 195 kindergarten children are HHH, which corresponds to 36,4 %, while in the 'Kindergarten 1' unit, 34 out of 52 kindergarten children are HHH, which corresponds to 65,4 %, a difference of 29 %, thus segregation is achieved. On the basis of the above, they have submitted points 9 and 10 of their application, in which they seek a declaration of segregation in respect of the kindergarten, on account of the places where it is located and the grouping of the kindergarten, as from the entry into force of the Law on the Rights of the Child.
The applicants seek an order that the defendants pay the costs of the proceedings and the fees of a private expert obtained in the proceedings.

I. II. defendants primarily requested the termination of the action under the Pp. 130 § /1/ paragraph d/.
In the alternative, they sought dismissal of the action on the merits. They argued that the lease agreement between the defendants in the first and second instance is a property decision from which no public education or personality rights issue can be created. They referred to the provisions of Act XI of 1987, according to which a statute cannot impose an obligation or declare conduct unlawful prior to its promulgation. They referred to the fact that the legality of the lease had already been declared final and absolute twice by the Jász-Nagykun-Szolnok County Court in judgments 12.P.20.839/2002/10 and 12.K.27.142/2005/19, which had been upheld by the Supreme Court.
They argued that in their view, the protection of personality rights on the grounds of violation of equal treatment exists as of 27 January 2004, and that before 27 January 2004 there was no unlawful segregation, discrimination or infringement. They submitted that the foundation 'primary school name 1' is not maintained by the defendant in the first instance, but was set up by two individuals and two legal entities. On this basis, there is no question of the 1st defendant also maintaining the foundation school, both schools have separate maintainers. It has been argued that the two schools are thus not in a comparative position, which has been acknowledged by an equal opportunity expert 'expert name'. It has thus been argued that the two schools are not in a comparative

position and therefore there is no way that the two schools can be compared by the court on different criteria. They referred to the fact that, pursuant to Article 89(3) of the Local Government Act, a local authority may grant subsidies for the operation of institutions maintained by others, which the defendant in the first instance does, but is not, however, the maintainer of, for example, the sports club 'name of municipality', which it also subsidises. It has been argued that unlawful segregation, as in its name, implies illegality and discrimination implies some disadvantage. They claimed that the applicants could not point to any such conduct or omission because there was none. Thus, they claimed that the very existence of the two schools did not amount to segregation. They referred to the fact that all children are admitted to the school to which they apply.

As regards the kindergarten, defendants also rejected that there would be segregation. It has been presented and annexed under No 69, according to which the Day Care Centre for children from the 'municipality' has been participating in the kindergarten integration programme for the equal opportunities of disadvantaged children every year since 2007. He also stated that this had been checked by the official bodies and that the check had not revealed any shortcomings and that the grant had been retained. They stated that, as regards the nursery, the children attending both places of work were those who had applied for admission. In this respect, there is no influence or deliberate manipulation of the number of children. It was submitted that no district boundaries are set for nursery education because of the above.
Defendants I and II have moved to dismiss the action on the above grounds.
In response to the plaintiffs' extended claim that the court should declare that the lease agreement entered into by the defendants I and II is a sham and a sham public education agreement and, on that basis, consider the relationship between the defendants I and II as a public education agreement, they argued that this is unfounded, that the conclusion of a public education agreement is based on the will of two parties, which did not occur in the present case, and that there is no such agreement between the two schools. Their position was that the lease was a property decision by the municipality, no pretense could be established, and they also requested in their reply that the extended action be dismissed.

The first and second defendants have applied for costs.

<u>The action brought by the applicants in Class I and II is unfounded as follows:</u>

The court did not share the defendant's view on the application of Pp. 130 § /1/(d) of the Civil Procedure Code, so there was no need to terminate the proceedings.
Pursuant to Article 229, paragraph 1 of the Civil Procedure Code: the legal force of a judgment on the subject of a right enforced by an action precludes the same parties, including their successors in title, from bringing a new action against each other for the same right arising from the same factual basis, or from otherwise contesting the right already adjudicated in the judgment (substantive res judicata).

The court found that the conditions set out in § 229 /1/ of the Civil Code were not met, there was no identity of parties and no identity of facts. The plaintiff in the lawsuits

described in the statement of facts was the County Administrative Office, the defendant was the Municipality of the 'name of the municipality', and the subject of the lawsuits were the 2 decisions of the Municipal Council (Decisions Nos. 59/2002 and 61/2002) challenged by the Administrative Office.

Plaintiffs' standing to sue before the entry into force of the Qualification Act:

For the period prior to the entry into force of the Act on the Protection of the Rights of Persons with Disabilities, the applicants in Class I. 75(3), 200(2), 237 and 215(1) and (3) of the Civil Code.

Pursuant to Article 200, paragraph /2/ of the Civil Code: a contract which is contrary to law or which has been concluded to circumvent law is null and void, unless the law provides for other legal consequences. A contract is also void if it is manifestly contrary to morality.

Pursuant to Article 234, paragraph 1 of the Civil Code: the invalidity of a void contract may be invoked by any person without time limit, unless an exception is provided by law. No special procedure is required for the declaration of nullity.

According to the county court's opinion, only a person who is entitled to do so by law or who has a legally recognised interest in the enforcement of the infringement and who, in addition, has no other civil remedy for the infringement other than a declaration of nullity, may bring an action for annulment under Article 234 (1) of the Civil Code.
The law does not specify the persons entitled to bring an action for the annulment of a contract. Thus, the court examined whether, for the period prior to the entry into force of the Law of Privileges and Immunities, the plaintiffs in the first instance had a legal interest in challenging it, the primary issue to be examined in the action under paragraph 7 of the plaintiff's claim: whether the interest of the plaintiffs in the first instance reached a level which entitled them to bring an action for the nullity of a contract concluded between others.

A Pp. 3, the right to bring an action is vested in the interested parties or in a person who has the power to bring an action for the enforcement of another's rights. The court must examine the capacity of the interested party in each case individually, taking into account all the circumstances of the case. The statutory provision provides for a broad right to rely on the nullity of a contract on the grounds of a highly protected social interest, but this does not automatically confer a right to bring an action. A contrary interpretation of the law would expose the parties to the transaction to harassment and would give rise to a right of action which would be detrimental to the security of the transaction, to individual rights and would not serve the public interest. The court's position was that the 1st II plaintiffs had no statutory authority to sue prior to the entry into force of the Opportunities Act.

The court examined whether the interest of the plaintiffs in first instance reached the described level of legal interest. In this regard, the Court found that the interest of the

Plaintiffs in this case does not constitute a legally protected interest that would give rise to a right of action by Plaintiff I II for a declaration that the contract between the defendants is void.
The court points out, however, that the lease described in the facts of the case regulates the property relations between the first and second defendants.

The Civil Code. According to Art. A contract or unilateral statement otherwise restricting the rights of the person is null and void.
The court held that the contract concluded by the defendant I. II. does not concern personal rights, so there is no question of the application of the Civil Code. 75 § /3/ of the Civil Code.

According to § 215 /1/ of the Civil Code: if the conclusion of a contract requires the consent of a third party or the approval of an authority, the contract is not concluded until such consent or approval is obtained, but the parties are bound by their declaration. A party shall be released from his obligation if the third party does not give his consent or the approval of the public authority within a reasonable period of time specified by him to the other party.
According to paragraph /3/: In the absence of consent or approval, the contract shall be subject to the consequences of nullity.

The court did not share the plaintiffs' view that the lack of consent of the 'municipality name 1' rendered the lease agreement concluded by the defendants invalid.
Pursuant to Article 9, Paragraph 1 of Act LXV of 1990 (Act on the Local Government): the local government is a legal person, and the Assembly is vested with the functions and powers of the local government. The mayor represents the body of representatives.
Pursuant to Art. 16 § /1/ paragraph 1 of the Act: the decisions of the Assembly are the decrees and resolutions.
The defendant in first instance decided to lease and share part of a building in its decisions No 59/2002 (12.III.) and No 61/2002 (12.III.).
According to Article 44/A, paragraph 1(b) of the Constitution: the local representative body shall exercise the rights of the owner in respect of municipal property, shall manage the revenues of the municipality independently, and may undertake business at its own risk.
Paragraph /1/ of Article 80 of the Act also stipulates that the local government, with the exceptions provided for in this Act, shall have all the rights and burdens and shall be subject to all the obligations which the owner is entitled to or is subject to. The exercise of the rights vested in the owner shall be vested in the Assembly.
The Civil Code. 112 of the Civil Code, the right of disposal of the owner is the right to dispose of his property. The first defendant, as the owner, had the right of disposal, which included the right to lease or to share the property or building which it owned.

Pursuant to Paragraph 102 /10/ of the Public Education Act in force at the time of the conclusion of the lease contract: If the maintaining local government is the educational institution of the national or ethnic minority involved in the education of children and pupils in kindergartens, schools, colleges, or in the provision of specialised pedagogical

services
a/ the establishment, termination, modification of the scope of activity, the establishment of the name,
b/ to set and amend its budget,
c/ to evaluate the professional work of the institution,
d/ to approve the organisational and operational rules,
e/ the educational programme shall obtain the consent of the national minority self-government in the case of public educational institutions with regional and national responsibilities, for the approval of the pedagogical programme and the pedagogical cultural programme and for the evaluation of their implementation.

In the court's view, the lease agreement between the first and second defendants did not require the consent of the CKÖ on the basis of the above section. The court points out that the same position was taken in the judgments 12.K.27.142/2005/19 and 12.P.20.839/2002/10.

The county court therefore found that the claim brought by the first and second applicants (paragraph 7) was unfounded for the period before the entry into force of the Law on the Protection of the Rights of Persons with Disabilities.

For the period after the entry into force of the Opportunities Act:
The applicants' standing to bring proceedings:

The Act CXXV of 2003 on equal treatment and the promotion of equal opportunities entered into force on 27 January 2004. The right of action of the applicants in the first and second classes is based on § 20 (1) (c) of Act CXXV of 2003 (Act on Equal Treatment and Equal Opportunities).
A social and interest representation organisation may bring an action before a court for infringement of the requirement of equal treatment if the infringement of the requirement of equal treatment is based on a characteristic which is an essential feature of the personality of the individual and affects an indeterminate larger group of the person who is the infringer.
The statutes of the first and second plaintiffs include the protection of the rights of Roma and disadvantaged children as a purpose.
Pursuant to Section 19 (1) of the Equal Treatment Act: in proceedings for violation of the requirement of equal treatment, the aggrieved party must establish a likelihood that the aggrieved person or group is or has been disadvantaged and that the aggrieved person or group had, at the time of the violation, in fact or according to the assumption of the violator, the protected characteristic defined in Section 8.

The applicants based their action on the one hand on the infringement of the requirement of equal treatment on grounds of ethnic origin, colour and race, and the persons concerned were children of Roma ethnicity attending local primary schools and kindergartens, given that the number and the number of pupils could not be precisely determined in advance due to the size of the group and the nature of the case.
In the court's view, the plaintiffs' right to bring an action existed on the basis of Section

20(1)(c) of the Act on the Protection of Human Rights and Fundamental Freedoms, i.e. on the basis of segregation on the grounds of ethnic minority, skin colour and race, which the court considered to be well-founded.

However, in the court's view, the plaintiffs do not have the right to pursue claims in the public interest in respect of disadvantaged children.
According to the above mentioned Section 20, paragraph 1 of the Equal Treatment Act, an action may be brought for breach of the requirement of equal treatment if the breach of the requirement of equal treatment or the imminent threat thereof is based on a characteristic which is an essential feature of the personality of the individual.

The Interpretive Dictionary defines property as: property: a noun, a distinguishing characteristic of someone or something.

Section 121, point 14 of the Public Education Act defines disadvantaged situation as follows: a disadvantaged child or pupil is a person whose entitlement to regular child protection benefits has been established by the notary due to his/her family circumstances or social situation. Within this group, a child or pupil is considered to be severely disadvantaged if his or her parent who has legal custody of the child has, according to a voluntary declaration made in accordance with the procedure laid down in the Act on the Protection of Children and Guardianship Administration, successfully completed the studies of a kindergarten child at the age of 3 or of a school pupil at the time of compulsory schooling, but not later than the 8th grade of school.

According to the court's view, disadvantage is not a characteristic and not an essential feature of the personality of an individual, even if the family circumstances and social background may have some long-term impact on the personality of the individual (Judicial practice Judgment of the Debrecen Court of Appeal, No.Pf.I.20.683/2005/7)

The court examined the plaintiffs' claim by examining whether the parties to the case had acted in accordance with the law, and whether the defendant I II had complied with the relevant legislation in the case.

The Civil Code. Article 76 of the Civil Code, as amended by Article 37 of the Equal Treatment Act, provides that a violation of the right to privacy includes, inter alia, a violation of the requirement of equal treatment. The content of this infringement, the conditions for proving it and the possibility of exemption from the legal consequences of the infringement are regulated by the Equal Treatment Act.

Pursuant to Section 4 (g) of the Equal Treatment Act, educational institutions are obliged to observe the requirement of equal treatment in the establishment of their legal relationships, in their procedures and measures (hereinafter jointly referred to as the legal relationship).
According to Section 10(2) of the Act on the Protection of Individuals with regard to the Protection of Minors, a provision which, on the basis of the characteristics defined in Section 8, distinguishes certain persons or a group of persons from persons or a group

of persons in a comparable situation to them, without being expressly permitted by law, shall be deemed unlawful segregation.

In the case of unlawful segregation, the Act excludes the applicability of the general exception under Section 7(2) of the Act, since it does not classify the segregation as unlawful only if the Act expressly allows it, for example under Section 28 of the Act.

Pursuant to Section 19(2) of the Act on the Protection of Human Rights and Fundamental Freedoms: the party subject to proceedings may avoid a finding of infringement and legal liability only if it proves that the party who has suffered damage or the person entitled to assert a claim in the public interest has not been subject to the probable circumstances or has not complied with the requirement of equal treatment or was not obliged to comply with it in respect of the legal relationship in question.

Pursuant to Section 27 (3) (a) of the Equal Treatment Act: a violation of the requirement of equal treatment means in particular that a person or group of persons
a/ unlawful segregation within an educational institution or within a section, class or group established within it.

Belonging to a national or ethnic minority is one of the protected characteristics listed in Section 8 of the Equal Treatment Act.

According to the provisions of the above mentioned legislation, unlawful segregation occurs in an educational institution if persons or a group of persons with the characteristics specified in § 8 are segregated from others on the basis of their protected characteristics, such as belonging to a particular national or ethnic minority, without being expressly permitted by law.

In the lawsuit, the first and second plaintiffs claimed that if there is no lease, then there is no segregation, claiming that the first defendant created a physical separation, segregation, through an active activity, the lease itself, which is therefore illegal. It was further alleged that the maintenance of the lease is a breach by default which perpetuates the unlawful segregation and it is this default (non-termination of the lease) which is in violation of the Opportunities Act and thus ensures the maintenance of segregation. The applicants could not identify any other conduct or omission relating to unlawful segregation other than the conclusion of the lease or its non-termination, because, in their view, the very existence of the lease, which led to the sharing of the complex, triggered the segregation.

The legal position of the court on this issue was as follows:

The lease contract was concluded before the entry into force of the Opportunities Act.
According to Article 12(2)(2) of Act XI of 1987: A statute may not impose any obligation or declare any conduct unlawful prior to its promulgation.
It was established that the lease itself did not concern personal rights, but only regulated the property relations between the defendant I and II.

In view of the provisions of Act XI of 1987, the court did not examine the physical level of segregation claimed by the plaintiff before the entry into force of the Act on the Protection of Individuals with Disabilities.

Paragraph /2/ of Article 13 of the Public Education Act: Parents shall have the right to choose the educational institution of their choice. On the basis of the right of free choice of educational institution, the parent may choose a kindergarten, school or college according to the child's talents, abilities, interests, religious or philosophical beliefs, national or ethnic origin.
Paragraph /2: Parents have the right to choose a non-state or non-municipal educational institution for their child and to establish or participate in the establishment of a non-state or non-municipal kindergarten or school, as provided for in this Act.

The idea of establishing a foundation school was apparently initiated at the suggestion of the legal representative of the 1st defendant, 'person name 4'. In fact, according to the facts of the case, the Municipal Council passed a resolution in which they confirmed their intention to establish a private school and their support for it. It is also a fact that the proposal of the legal representative of the defendant in the first instance, the 'name of the municipality', was supported by the population, as is shown by the declarations of intent submitted by the defendant (file No 43).
However, it is a fact that the defendant in the second instance was not created by the defendant in the first instance.
According to the court's view, the mayor's proposal and the Assembly's declaration of support are in vain if there is no demand for the initiative and its implementation among the population. The foundation - as stated in the facts - was set up by private individuals and companies, they provided the assets and the foundation started its operations. The Court points out that, if there were no parental demand for this type of schooling, the private school would clearly not have been established and could not operate without children enrolled. In the court's view, the defendant in the second instance has proved that, from the entry into force of the Opportunities Act but before that date, all children who entered the school were admitted, and that there was no discrimination or selection of children.

The legal representative of the 2nd plaintiff and witness 1 denied the above and submitted that in 2003 the enrolment of 100 Roma children in the 2nd defendant's school had been unsuccessful.
In this regard, the court found that the Board of Trustees of the defendant II had acted and issued a decision (Document No. 33) under No. 29/2004 (IX. 13.) In this decision, the Board of Trustees of the defendant II, as the maintainer of the 'primary school name 1', 'person name 9', II. The Board of Trustees of 'General School No 9', the legal representative of the applicant, rejected the application for legal aid and invited him to apply to the Jász-Nagykun-Szolnok County Court within 30 days of the notification. In support of its application, the Board of Trustees stated that on 1 August 2003, in its capacity as head of the 'organisation called 3', it had handed over a letter of intent signed by the parents of 101 Roma children stating that those children wished to attend 'primary school called 1' from 1 September 2003 and that the parents wished to enrol them there.

The decision of the Board of Trustees stated that, following an inspection of the file, it had been established that the 'association called 2' referred to by the applicant had not yet been legally registered with the competent Jász-Nagykun-Szolnok County Court on 1 August 2003, had not yet been granted legal personality and was therefore not entitled to take any action on behalf of the organisation until the final registration. The decision stated that the right of enrolment belonged to the parent. The decision further stated that: *'From the documents available to us, we have established that in the case of the applicant, his wife, as the legal representative of the children, returned on 25 February 2003 a 'person's name 9' and a further declaration of intent filled in in the negative. In the case of the applicant, we note that, as the parent of all children in the 'name of the municipality', he was given the opportunity to complete a declaration of intent in January and February 2003 to indicate whether he wished his child to be educated at the Foundation School. On the basis of the material evidence before us, we find that they did not wish to avail themselves of this opportunity."*
The decision therefore found that the applicant 'name of person 9' had not fulfilled the conditions for the establishment of a pupil status, and that no pupil status had been established between the children of the applicant and the applicant's 'name of primary school 1'. The above decision, dated 13 September 2004, was received by the legal representative of the applicant in Grade II, 'person No 9', on 28 October 2004, and he did not apply to the Jász-Nagykun-Szolnok County Court for a legal remedy within the statutory time-limit.
The court found that no such complaint or petition was received by the defendant II after the entry into force of the Equal Protection Act, and even before the entry into force of the Equal Protection Act, the legal representative of the plaintiff II, 'person name 9', did not voluntarily exercise the right to judicial remedy in relation to his alleged or actual injury.

On 27 January 2004, the foundation school was already in operation when the Opportunities Act came into force. According to the facts of the case, enrolment in a foundation school requires that the parent obtains the letter of intent, completes it, submits it to the school, pays the monthly tuition fee of HUF 3,000.00 or HUF 4,000.00 and follows the school's rules. The headmaster of the school maintained by the defendant in the second instance testified that the school admits all children who apply regardless of their ethnic or national minority.
In the court's view, the first and second plaintiffs could not show any unlawful conduct to the court that would have supported their claims. It is a fact that the 'name of the municipality' is of mixed ethnicity, and the facts of the case show that the proportion of the population of Roma origin is mixed. The fact is that, according to Article 13(2)(a) of the Public Education Act, it was possible for a private school to be established in the municipality. According to the facts of the case, the lawsuits brought by the Public Administration Office in this regard have proved unsuccessful. It is also a fact that the foundation school obtained the necessary permit to operate.
According to Article 13, paragraph 1 of the Public Education Act: parents have the right to freely choose the educational institution of their choice. The court found that all children attend the school where their parents have enrolled them, and no complaint has been lodged with either the defendant in the first or the defendant in the second instance

in respect of the above. In the court's view, the mere fact that monthly tuition fees have to be paid at the foundation school does not in itself constitute segregation, given that no distinction can be made between, for example, persons of Roma ethnicity and the poor.

Witness 2', who was heard as a witness and who is the head of the 'municipality name 1', gave a detailed statement in his testimony that his child also attends the foundation school, which he is satisfied with. The witness stated that there are also Roma children attending the school, the witness put the number of Roma pupils at around 30%. The witness also stated that the foundation school is also attended by children from disadvantaged families (Minute No 34).

In the court's view, the mere existence and operation of two schools does not constitute unlawful segregation. The plaintiffs have alleged the existence of segregation in the failure of the 1st defendant to terminate the lease since the entry into force of the Opportunities Act.
According to the court, the defendant in first instance is bound by the Civil Code. 4 § /1/ of the Civil Code, according to which in the exercise of civil rights and the performance of obligations, the parties are obliged to act in good faith and in accordance with the requirements of fairness and honesty, in mutual cooperation. In the lease contract, the defendant I undertook that, if it terminated the contract before the expiry of the fixed term, it would provide another school building for the foundation school. Therefore, Defendant I is bound by the terms of the contract, and Defendant I must act as set out above when performing the contracts. The court points out that if there were no claim to the operation of the foundation school in the name of the 'municipality', it is obvious that the school could not operate because no children would be enrolled. Merely because of the determination of the legal representative of the 1st respondent, without parental demand and other supporters, this initiative could not have been implemented. The fact that it was implemented shows that it met the demand of the public.

The applicants failed to prove the existence of segregation (at the factual level). The court's position was that there was no unlawful segregation between the two schools merely by virtue of the conclusion or existence of the lease. Thus, the court found that there was a complete absence of a causal link between the detriment alleged by the plaintiffs and the protected characteristic, and that the requirement of equal treatment had been upheld by the defendants in the first instance.

<u>In relation to discrimination:</u>

The Ebktv. 8. § a: Direct discrimination is deemed to be any provision which has as its result a) the sex, b) the race, c) the colour of the skin, d) the nationality, e) the membership of a national or ethnic minority, f) the mother tongue, g) the disability, h) the state of health, i) the religious or philosophical conviction, j) the political or other opinion, k) the marital status of a person or group, (l) maternity (pregnancy) or paternity, (m) sexual orientation, (n) gender identity, (o) age, (p) social origin, (q) financial situation, (r) part-time or fixed-term nature or duration of employment or other

employment relationship, (s) membership of an interest group, (t) any other status, characteristic or attribute (hereinafter together referred to as: (t) his or her situation or characteristic (hereinafter referred to as "characteristic") which is less favourable than that which is, has been or would be accorded to another person or group in a comparable situation.

Pursuant to Section 27 (3) (b) of the Equal Treatment Act: the restriction of a person or group to education, the establishment or maintenance of an educational system or institution, the quality of which does not reach the standards set out in the professional requirements issued or does not comply with the professional rules, and as a result of this does not provide the possibility of the preparation and preparation necessary for the continuation of studies and the taking of state examinations, which is generally expected, constitutes a violation of the requirement of equal treatment.

The plaintiffs claimed that by renting part of the better building to the foundation school through the separation and physical division of the building, the defendant I thereby put its own school in a worse situation, because the municipal school was placed in a worse building and this in itself allows for a lower quality of education. The First and Second Claimants submit that the situation created by the lease agreement gives rise to the claim that the First Defendant in itself is providing a substandard education for the children in the municipal school. It was therefore submitted that by the decision of the first defendant as owner to divide the school and transfer the better part to the foundation school (keeping the worse part of the building), the first defendant directly discriminated against the children attending the school, providing them with an education that was materially less favourable than that provided to the children attending the foundation school.

Until the establishment of the foundation school, a primary school in the name of the village operated with grades 1 to 4 in the renovated building on the road called 'Road 1', while the upper grades were taught in the building on the road called 'Road 2', where there is a gym.
The legal representative of the 1st defendant submitted that when the lease agreement and the school building were shared, the Municipal Council was guided by the fact that the municipal school needed the gym, needed the building on Road 2 and that is why the building on Road 1 was shared.
The court found that as long as a municipal school was a 'township name', lower school pupils attended 'road name 1', while upper school pupils attended 'road name 2'. With the establishment of the private school, this situation has changed to the extent that lower school pupils only attend 'Road Name 1' up to grades 1-3, while they continue their education in 'Road Name 2'.
The court's position was that this fact alone does not discriminate because if there were no foundation school, all lower school children would attend the municipal school in the same way, except for the 4th grade.

The court found it an important fact that the 1st group of experts of the OCEA investigation carried out on 1 October 2003 found the following at that time. Expert

Group No 1 analysed the existence of equipment and facilities by comparing the condition of the equipment and facilities recorded in the two schools. Expert Group No 1 concluded that*: 'The shared building, which was designed for classroom teaching, does not now have functioning and unfurnished classrooms and laboratories. The equipment of the primary school was fundamentally deficient. On this basis, the validity of the operating licence granted to the Foundation School is highly questionable. During the on-site inspection it was established that the municipal school part of the building at 1 Road Street also has a speech therapy room and that the equipment in the classroom with teaching and educational aids is satisfactory. In the municipal school building at 2 Road, there is an upper school and two lower school classes for grade 4. Expert Group 1 concluded that the building at 1 Road is in a better position in terms of its condition, general state of repair and modernisation. The school at 2 Road is currently in a better position in terms of teaching infrastructure (particularly as regards specialised teaching, library, IT, physical education). However, it was also found that, with the exception of a few classrooms with new furniture, most of the classrooms are in a very worn-out state and the whole building needs a total internal renovation. In their view, the co-location of the two schools, the use of common premises and the sharing of various facilities and equipment did not result in a situation which discriminated between pupils attending the two parts of the building."*

The court found as a fact that the two schools are run by different owners. Defendant I maintains 'primary school name 2' and Defendant II maintains 'primary school name 1'. In the court's view, the fact that the defendant I supports the foundation school with the sums described in the statement of facts does not make the defendant I the maintainer of the school. It was possible to ascertain the amount of the defendant I's support to the foundation school as set out in the tables of facts. The court considered it indicative that 'Witness 3', a witness who had provided a private expert opinion at the request of the plaintiffs, had stated that the amount of financial support provided by defendant I to defendant II was not significant in itself, in arithmetical terms (Minute No. 59, p. 23).
It was noted that the maintenance of the Foundation School is mainly ensured by the subsidy received from the State.
The court found that the plaintiffs had failed to prove their claim that without municipal aid, the defendant's school could not operate. The court's position was that the two schools were not in a comparable situation, given the different operators. The court makes this finding despite the fact that the Board of Trustees of the Second Defendant has had three members of the Assembly, including the legal representative of the First Defendant, on its Board of Trustees since its inception.
The documents annexed to the application showed, for example, the amount of equipment purchased for the school year 2003-2004 to improve the material conditions of the 'primary school 1'.The school director 'Witness 4' stated in his testimony that the school has been continuously expanding its equipment over the years from its own resources and that this is the reason for the equipment it has today. The witness also stated emphatically that the school would continue to operate without the support of Defendant I because Defendant II would provide it (Minute No 59).
As the two schools are not in a comparable situation, neither in terms of material facilities nor in terms of education, given the separate maintenance, the court dismissed

the applicants' request for an expert.

The municipality may grant aid to the defendant in the second instance, subject to the possibilities provided for in § 1 /6/ and § 80 /1/ b/ of the Local Government Act. Pursuant to Section 89(3) of the Local Government Act, a local government may grant aid for the operation of an institution maintained by another.
Defendant I has developed and presented to the court the institutions it supports, including Defendant II. In the court's view, this support does not make the first defendant a maintainer, bearing in mind that the foundation school is able to operate mainly on the basis of the state support it receives.
In the court's view, the management of the defendant I is also a question of the part of the lease agreement concluded relating to the rent and the payment of the rent. The State Audit Office is entitled to carry out such an investigation in respect of the defendant I. In the lease agreement, the parties agreed that the defendant I would also lease the assets in the leased part of the building to the defendant II free of charge, and for the above reasons the court did not examine the market value of the assets transferred. It is clear that the foundation school could only start its operations in classrooms with equipment such as desks, chairs, blackboards, etc. The question of the management of the defendant I as the owner is therefore how the assets were made available to the tenant.

With regard to the defendant in the first instance, Article 8(4) of Act LXV of 1990 on Local Self-Governments provides that the municipal government is obliged to provide, inter alia, for primary school education and training and to ensure the rights of national and ethnic minorities.
In addition, Article 86, paragraphs 1 and 2 of Act LXXIX of 1993 on Public Education (hereinafter referred to as the "Köotv.") also stipulates that the municipal self-government is obliged to provide for the primary school education of pupils belonging to national or ethnic minorities in the settlement inhabited by a national or ethnic minority, and for the provision of care for pupils with special educational needs, provided that they can be educated together with other pupils.
The local government determines the operational districts of schools (Section 90 /1/ of the Public Education Act). Pursuant to Section 85 /4/ of the Public Education Act, the local government is obliged to prepare a plan of measures for the organisation of its tasks related to public education, and pursuant to Section /7/ of the Public Education Act, the local government is obliged to prepare a local quality management programme in the context of the maintenance of the management. Within the scope of maintenance management, the local government determines the number of classes that may be started in a given school year, authorises deviations from the maximum number of pupils, monitors the legality of the operation of the public education institution, approves the quality management, educational and pedagogical programme of the institution, evaluates and monitors the implementation of the tasks specified in the programme (Section 102, Paragraph 2, Subsection c/d/f of the Public Education Act).
On the basis of the evidentiary proceedings conducted, the county court was of the opinion that the defendant I did not breach the above obligations by entering into and maintaining the lease agreement and by exercising its right under Section 89(3) of the Public Act to provide support to the defendant II.

On the issue of the public education agreement:

The plaintiffs in the 1st II. case have explained in their submission under line 64 that in their opinion the lease contract concluded is a sham under § 207 /6/ of the Civil Code, it is a sham contract, which is a sham contract, and this sham contract is none other than the public education agreement, which the defendant in the 1st II. case did not conclude between themselves as a public education agreement.

According to § 207, paragraph 6 of the Civil Code: a contract made under a false pretense is null and void; if it disguises another contract, the contract shall be judged on the basis of the disguised contract.
The court did not share the legal position of the first and second plaintiffs in this regard. In the court's view, the lease agreement described in the facts of the case is nothing more than a property agreement governing civil law relations. Both defendants I and II stated that they did not consider the lease agreement to be a sham because the private school founded by defendant II was operating in the leased part of the building on the basis of the lease agreement. It was established that both parties expressed their genuine intention to enter into and perform the contract.
It was not proven in the lawsuit that the defendant in the first instance decides, for example, what kind of pedagogical work and what kind of management is carried out in the school maintained by the defendant in the second instance. The Court points out that the mere fact that three members of the Board of Trustees are also members of the Board of Trustees does not make the Board of Trustees of the 1st Defendant the same as the Board of Trustees of the 2nd Defendant. The first defendant does not have a majority of foundation trustees on its Board of Trustees, so the first defendant can make a decision that conflicts with the decision of the 3 trustees (who are also members of the Board of Trustees), if any, given that the 'municipality' has a 13-member Board of Trustees.
The operating licence issued to the defendant's school in the second instance states the number of pupils the private school can admit. These issues are not addressed in the lease agreement. The court was of the firm opinion that the lease agreement could not be considered a public education agreement, taking into account that a lease agreement is governed by the Civil Code, whereas a public education agreement is governed by the Public Education Act. Therefore, in the court's view, if the defendant I wishes to enter into a public education agreement with the defendant II or the foundation school, it must do so on the basis of the rules of the Public Education Act. Thus, the court failed to find that the lease agreement was a sham and that it disguised a public education agreement.

In their submission, number 64, the applicants explained that *"the intention of the defendant I and its mayor was clearly to establish a foundation school, under their control, using municipal financial resources, in a building owned by the municipality, to perform local government functions. It is no coincidence that not only the preparatory documents of the defendant I, the minutes of the meetings of the municipal council submitted by the plaintiff, but also the testimony of the headmaster of the foundation school stressed that the foundation school also has children from the 'municipality', that the foundation school essentially performs municipal functions, and that the pupils there*

must therefore be supported by the municipality."
In the court's view, the plaintiffs are making an evasive assessment of the role of the defendant's legal representative in the first instance. In the court's view, the establishment of the private school was indeed initiated by the legal representative of the first defendant and was supported by public demand. The court explained its position as set out above. In the court's view, the legal representative of the defendant I, 'person No 4', could not have known that he would be re-elected mayor in the local elections in 2002 and again in 2006, and the court therefore considers that the above argument of the plaintiff cannot stand on that ground either. The Court reiterates that it is a fact that there are indeed children in both institutions in the 'name of the municipality' and that the defendant in first instance supports the defendant in second instance with the sums stated in the facts, which are granted to it by law.
In the course of the detailed evidentiary procedure, the court found that the two schools were not in a comparable situation, given the two different maintainers, and therefore the court did not appoint an expert because it had taken a position on the above legal issue.
The court did not hear 'person name 10' (the head of the office of the National and Ethnic Minority Parliamentary Commissioner) and 'person name 11' as witnesses, given that both witnesses were to be heard for the period before the entry into force of the Opportunities Act. The court also did not order the hearing of 'person name 12' as a witness, in view of the fact that the plaintiff had submitted the articles of the witness, after which the court did not conduct any evidentiary proceedings for the period before the Law on Immunities, for the reasons set out above.

The court found from the facts of the case that the Defendant I funded its proprietary school in an amount orders of magnitude greater than the Defendant II Foundation School.
On 22 September 2009, the court heard 'Witness 3' as a witness, who, at the request of the plaintiffs, submitted an ad hoc expert opinion (under No. 52). The court noted from the witness's presentation that the witness had prepared the expert opinion solely from the documents in the case, and had not been on the premises of the documents that he had provided to the plaintiff. It was established during his personal hearing that the witness was not aware of material issues in the light of the request (e.g. the establishment and operation of the private school). The court did not accept the position of the plaintiffs and the witness that the defendant I should support its own school with the amount of money allocated to the defendant II. In the court's view, the municipality has its own revenues. On the basis of the above approach, no non-profit organisation could receive a grant from the municipality, because the first plaintiff could say that it was taking it from its own school. The court notes from the testimony of Witness 3 that the 1st Defendant remained the owner of the buildings, so that if he had leased the building at 2 Road to the 2nd Defendant, the investments he made would have been charged to him as owner, because the tenant is not required to make investments that are charged to the owner.
The court evaluated and assessed the testimony of 'Witness 3' and the expert opinion he submitted as the position of the party in support of the applicant's position during the evidentiary proceedings.

On the basis of the foregoing, having found the pleas in paragraphs 1 to 2 of the plaintiffs' complaint to be without merit, the County Court dismissed the complaint as set forth in the operative part and, in connection therewith, dismissed the claims in paragraphs 3, 4, 5, 6, 8 based on paragraphs 1 and 2 as set forth in the operative part.
The court notes that the 'primary school named 1' has been operating since 1 September 2003 with the number of children as stated in the facts. In the court's view, the plaintiff's action for the termination of the foundation school in the first instance would have been unfounded, in the light of Article 84(13) of Act LXXIX of 1993 on Public Education, according to which the rights acquired and exercised in good faith by pupils may not be affected by a finding of nullity or futility. The Court notes that the above section was not taken into account in the action brought by the first and second applicants.

In relation to nursery education:

The applicant brought its application for the nursery school at a hearing on 22 September 2009 under No F/59. In that application, the applicant seeks a declaration that the defendant I has unlawfully segregated Roma and severely disadvantaged children from non-Gypsy and non-severely disadvantaged children since 27 January 2004 between the places of care in the day nursery school run by the defendant and between the groups in the Central Nursery School on the 'Kindergarten 2' road. Order the defendant I to cease and desist from such infringement and to refrain from such and similar infringements.

The applicants based the extension of the application on the expert opinion of the witness 'name of expert' under number T/3/23.

In the course of the evidentiary proceedings, the court established, according to the facts, how the proportion of children of Roma ethnicity in the kindergarten's places of work had developed since 2004. In this context, the following was established:
Since the 2004-2005 school year, children of Roma origin have been in the majority in both places of work. The court made this finding on the basis of the number of children from the Roma minority in the given year and in the given place of work. On the basis of this, it was established that 88.6 % of the pupils in the kindergarten 1 in the school year 2004-2005 were of Roma origin, and this figure had already risen to 94.6 % in 2009-2010. While at the 'Kindergarten 2' site, 57.3% were considered to be of Roma ethnicity in the 2004-2005 school year, 57.5% in 2005-2006, 58.1% in 2006-2007, 58.9% in 2007-2008, 61.1% in 2008-2009 and 64.7% in 2009-2010.
From the documents submitted by the defendant under No 69, the court found that there were no actual, written district boundaries between the places where the kindergarten had its functions.
From the submission of the defendant I and the testimonies of the interviewed kindergarten teachers 'Witness 5' and 'Witness 6', the court found that the enrolment in kindergarten is done by the parent who chooses the place of enrolment, and there is no municipal regulation on this. Witnesses 'Witness 5' and 'Witness 6' submitted that this 'name of the municipality' is in fact done by the parent enrolling his child in the place of care nearest to where he lives. The witnesses submitted that the reason for the proportion

of Roma children in the kindergarten on 'Kindergarten 1' is that the streets in this part of the municipality are mainly inhabited by Roma families, so that it is a result of natural selection that this situation has arisen in the place of care on 'Kindergarten 1'.
Witness 5 stated in his testimony that he personally prepares the group assignments at the "Kindergarten 2", where there are homogeneous groups, and he tries to ensure that all groups have children of Roma origin. The witness emphatically denied that there were any groups of purely majority Hungarian children at the 'Kindergarten 2' site. The witness stated that all groups have children of Roma ethnicity. The court found it an important fact that the witness stated that the legal representative of 'person 9' had visited the kindergarten in 2007, where he had only drawn attention to the proportional number of children. The witness testified that at the time of that meeting, the legal representative had no objections to the operation of the kindergarten. This part of the witness's testimony was not contradicted by 'person name 9' (record no. 70), so the court did not accept the legal representative's statement in record no. 68 regarding the separation of the kindergarten.

The court found that the plaintiff based the extension of the claim on the expert examination carried out by the witness 'expert name' in 2007, but sought a finding of segregation from 2004. No evidence was offered in this respect for the period 2004-2007.
On the basis of the information submitted by the defendant I under line 61 and 66, the court found that it does not follow from the information submitted that the defendant I had unlawfully segregated the kindergarten's places of work either by active conduct or passive conduct or omission. In his submission No 69, the defendant in first instance submitted to the county court that the kindergarten integration programme for the equal opportunities of children with multiple disadvantages, introduced by the Public Education Act on 1 January 2007, was published nationally in 2007 and was put out to tender. Since 2007, they have been participating in the kindergarten integration programme for equal opportunities every year and have complied with the conditions for the subsidy every year, they have received the amount of subsidy requested and the audit has not revealed any problems or deficiencies. Thus, it was considered that the applicants' extended claim in respect of the kindergarten was also unfounded.
The court also considered the extended claim in relation to children of Roma origin, for the reasons set out above.
The court held that the applicant could not point to any active behaviour on the part of the municipality to justify the difference between the two places of work. In the court's view, the plaintiffs did not refute the defendant's first-tier submission, nor the witnesses' testimony of the head of the kindergarten, that the streets where Roma families live in the municipality are located in the vicinity of the kindergarten on the road to Kindergarten 1. The applicants were therefore unable to refute the submission that the parents' choice of the place where the child is enrolled is the result of natural selection.
The court found as a matter of fact that there was also no complaint on the issue of kindergarten education either to the defendant I or to the plaintiffs I II. Thus, the court found that it was clear that the kindergarten child was enrolled in the place of duty where the parent wished to enroll him. The court found it to be an important fact that the majority of children of Roma origin in both places of care is growing year by year, and

that the number of children of Roma origin in the place of care 'Kindergarten 2' is also growing year by year, so that it cannot be stated that no children of Roma origin are admitted to the kindergarten 'Kindergarten 2'. The court concluded that, on the basis of the above, there was no unlawful segregation between the two places of work.

From the documentary evidence submitted by the defendant I. under number 69, it was possible to ascertain how the allocation of the groups (as stated in the facts) was developed over the years. It could be established that all the groups contained disadvantaged children and that the difference between the groups did not exceed 25%.

The court heard the equal opportunities expert 'expert name' as a witness (record No 34). The applicants brought their action under No F/59, as set out above, on the basis of the situation report annexed to the minutes under No T/3, number 34.

The court found it an important fact that the material prepared in December 2007, numbered T/3, was not accepted by the defendant I and was not attached to his application. It was the situation analysis under No. 23 that was submitted by the 1st defendant for its application at the time (it was not awarded a grant).
In the document submitted under number 23, the defendant I. reacted to the material submitted by the equal opportunities expert under number T/3, as follows, not disputing the fact that the proportion of children with HHH [with multiple disadvantages] cared for in the 'Kindergarten 1' place of care exceeds the proportion of children with HHH cared for in the 'Kindergarten 2' place of care, with a difference of more than 25%. He concluded that this is not due to segregation, but that parents choose the nursery nearest to their home when enrolling their children in nursery school, and that this is therefore a natural selection. They went on to say that equal opportunities considerations would be taken into account.
The first defendant submitted the inspection report under No. 69/A/3, which was drawn up on 3 October 2008 on the results of the professional inspection of the integration and development programme for kindergarten children carried out in the kindergarten. According to the attached evaluation form dated 3 October 2008, the institution complied with the programme in all respects. According to the evaluation: *"The institution applied for normative support for 75 children in its application, as this was the number of children with HHH estimated at the time of its submission at the time of the October statistics, but the audit also showed that 104 out of 247 children had HHH. Both statistics showed compliance with the call for applications. All the staff of the kindergarten are formally involved in the implementation of the IPSZ objectives, they have a multifaceted partnership system or they try to compensate for the backlog of children with HHH and to provide social support. Their developmental pedagogical work ensures successful integration and a successful start to school without failure in an exemplary kindergarten environment. The relationship between the nursery and the families is close and characterised by openness and mutual trust. There has been a reduction in the number of unauthorised absences and fewer official measures have been required. The teachers' work enables children to develop in the best possible way for themselves."*

In the course of the evidentiary procedure, the court found that the circumstances alleged by the applicants in the extended action under number F/59 did not exist (Section 19(2)(a) of the Act on the Protection of the Rights of the Child, level of facts, no discrimination).

The Court also found the extended action to be unfounded and dismissed it as set out in the operative part.

In summary:

The education system must meet the challenges of today's modern age. It was with this in mind that, to the extent permitted by law, the founders established the defendant II and the defendant II established the 'name of the primary school 1'. The foundation school was able to start operating, subject to the lease agreement between defendants I and II and the sharing of the building. The court held that the foundation establishing the private school and the parents supporting it could not be deprived of this opportunity merely because the municipality in question was of mixed ethnicity, with a Roma ethnicity as defined in the facts. In the Court's view, the monthly tuition fees are set at a level so low as to allow children from any family wishing to attend to do so. It was established as a matter of fact that the proportion of children with HHH and HH in the school run by the defendant in the second instance was also much higher than the national average, as was the case in the school run by the defendant in the first instance (file, No 23, p. 18). Therefore, in the County Court's view, the mere fact that there are two schools in the 'name of the municipality' does not in itself constitute segregation or discrimination, and the disadvantage would only be realised if the foundation school was established for the purpose of excluding certain social groups from education. However, the evidentiary procedure carried out did not prove the latter, and it was established that the school admits anyone who accepts the school's rules, irrespective of national or ethnic origin. Therefore, the defendant I did not commit an infringement by sharing the building it owned and renting the shared part of the building to the defendant II.
In the course of the evidentiary proceedings, the county court found that the claim of the plaintiffs I and II was unfounded on all counts, both with regard to the schools and the kindergarten.

The plaintiff I. II. became a pervert, therefore the Pp. Pursuant to § 78 (1), subject to § 2 (1) (a) of IM Decree No. 32/2003 (VIII. 22.), they are liable to pay the costs of the proceedings as described in the operative part, subject to § 2 (1) (a) of the Civil Code. 334, § /2/.

The litigants are exempt from personal fees pursuant to Article 5 § /1/ b/ and f/ of the Law on Fees, so the unpaid fees are borne by the State pursuant to Article 4 § /1/.

On the basis of the above factual and legal grounds, the court ruled as set out in the operative part.

Szolnok, 9 December 2009

Gyöngyné Dr. Gabriella Kovács sk. j u d g e

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