HAJDÚ-BIHAR COUNTY COURT

9.P. 20 No 651/2008/12

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Hajdú-Bihar County Court, with Dr. Péter Tuza, attorney, handling the case on behalf of Tuza Péter Law Office (Budapest, Fővám Square 2-3. IV/4.), representing the plaintiffs, (...) resident, as **First Plaintiff**, and (...) resident, as **Second Plaintiff**, against the defendant (...) represented by Deputy Notary (...) in a lawsuit for **damages caused in the exercise of administrative authority**, has rendered the following

judgment:

The court dismisses the plaintiffs' claim.

The court orders the plaintiffs to pay a procedural fee of **HUF 14,000 (Fourteen Thousand Forints)** upon separate notice from the authority responsible for the duty payment.

An appeal against this judgment may be filed within 15 days from its delivery, addressed to the Debrecen Court of Appeal but submitted in 4 copies in writing to the Hajdú-Bihar County Court.

The court informs the parties that they may request, by way of a joint application submitted before the expiration of the appeal deadline, that the appeal be adjudicated without a hearing.

The appellate court shall decide without a hearing if the appeal concerns only the amount of procedural costs, the allocation of procedural costs, or the reasoning of the judgment.

However, upon the request of either party, a hearing shall be held in such cases as well, provided that the appellant requests it in the appeal.

Reasoning:

Based on the parties' submissions, the attached documents, the case files of the … County Court (Case No. 9.P. 20 305/2008 and 7.K. 30 475/2005), the investigative file of the … Police Department Criminal Division (Case No. 09050-1214/2007.bü.), and the administrative procedure documents related to the present proceedings, the court established the following facts:

The plaintiffs are the parents of a child born on … 1993.
The child began attending kindergarten in the town of H. in January 1998. Based on their age, they should have started primary school in the 1999/2000 academic year. However, upon the request of the kindergarten and the educational advisory service, the … County Government's Special Education Expert and Rehabilitation Service Center examined the child's school readiness and recommended that the child continue kindergarten education for another year. The plaintiffs, as parents, did not contest the findings of the expert examination.
In April 2000, at the initiative of the child's kindergarten, the … County Government's Special Education Expert and Rehabilitation Service Center conducted another examination and, in its expert opinion No. …, concluded that the child had mild intellectual disability and severe speech impairment. Consequently, it recommended that for the 2000/2001 school year, the child should be enrolled in a two-year first-grade class designed for students with mild intellectual disabilities. The expert opinion also designated the school where the child should fulfill their compulsory education, namely, the H. Town Primary School and Student Dormitory.
The parents did not agree with the expert opinion.
Despite being aware of the expert opinion, on April 27, 2000, the plaintiffs enrolled their child in a regular, small-sized first-grade class at B. L. Primary School in H. without disclosing the expert opinion or its findings. Upon learning about the expert opinion, the school's principal revoked the child's admission.
On May 24, 2000, the Notary of H. Town issued Decision No. …, ordering the plaintiffs to enroll their child in the H. Town Primary School and Student Dormitory, as designated in the expert opinion. The plaintiffs appealed the decision on July 12, 2000.
During the second-instance administrative procedure, the County Administrative Office ordered a secondary expert review, which was conducted by the Pedagogical Service and Professional Center of the … University, Special Education Faculty. The parents and the child were summoned for examination on August 29, 2000, but they failed to appear. The expert opinion was eventually issued on September 19, 2000.
This second expert opinion fully concurred with the previous evaluation conducted by the … County Government's Special Education Expert and Rehabilitation Service Center. It found that the child's mental performance fluctuated between the upper limit of significant learning difficulties and the lower limit of developmental delay, with some areas falling within the range of intellectual disability.

The opinion noted that the plaintiffs refused to enrol their child in an institution appropriate to the child's mental abilities. Therefore, as an **exceptional measure**, the evaluators suggested placing the child in the small-sized regular curriculum class of B. L. Primary School. On September 28, 2000, considering this expert opinion, the County Administrative Office, as the second-instance authority, overturned the Notary of H. Town's decision of May 24, 2000, and instead designated the special education first-grade class of B. L. Primary School for the child's enrolment. The plaintiffs were ordered to enrol their child in this institution. The decision also informed the parents that the child's progress would be reviewed by the Special Education and Rehabilitation Committee within a year, i.e., by April 3, 2001.

However, before the issuance of this second-instance decision and during the appeal process, the plaintiffs had already enrolled their child in the preparatory class of B. J. Primary School Kindergarten in D.
Starting from September 11, 2000, the child attended the kindergarten unit located at … street, No. … in D., where they were placed in the senior kindergarten group.

The plaintiffs filed a lawsuit before the … County Court requesting judicial review of the County Administrative Office's school designation decision. In their submission, they argued that the child was already attending kindergarten in D.
Being aware of this, the … County Administrative Office's Department of Public Administration issued Decision No. … on December 6, 2000, which revoked its previous decision on school designation and terminated the school designation procedure.
The reasoning of this decision referred to an assessment provided by the K. M. Street Kindergarten and Kindergarten School, which was requested by the second-instance authority. This assessment confirmed the previous expert opinions regarding the child's personality and fundamental abilities.
The reasoning also cited Section 16(1) of Decree No. 14/1994 (VI.24.) of the Ministry of Culture and Education, which allows a child who has reached the age of compulsory schooling under Section 6(2) of the Public Education Act to continue kindergarten education after August 31, upon parental request, provided that the kindergarten teaching staff agrees.
The decision emphasized that the termination of the school designation process applied only to the 2000/2001 school year and did not exempt the child from undergoing another expert evaluation in the spring of 2001. Furthermore, it did not relieve the parents from the obligation to enrol their child in the school designated in the new expert opinion.

The defendant, including the Notary of H. Town, subsequently considered the child's compulsory education to be resolved, as neither the plaintiffs nor the K. M. Street Kindergarten and Kindergarten School provided any further feedback.

Despite the reasoning provided in Decision No. … issued by the … County Administrative

Office, the plaintiffs did not initiate an expert evaluation of their child's abilities.
On March 13, 2001, the K. M. Street Kindergarten and Kindergarten School sent a written request to the plaintiffs for parental consent to conduct the evaluation.
The First Plaintiff explicitly wrote on the request that they did not agree to the examination.

The child attended the K. M. Street Kindergarten and Kindergarten School until August 31, 2001. The institution assumed that the child had continued their education at B. B. Primary School. This information was provided by the school in response to an inquiry made by the Police Department's Criminal Division in March 2008, as part of a criminal investigation into the child's lack of school attendance.

The child did not attend either kindergarten or school during the 2001/2002 academic year, as the plaintiffs did not enrol the child in any educational institution.

Meanwhile, the plaintiffs sought help from multiple authorities, claiming that their child's schooling was unresolved. Among other actions, they submitted a complaint to the Head of the Parliamentary … Office, but the Ombudsman rejected their complaint as unfounded in Decision No. OBH.1995/2002 dated August 8, 2002.
The plaintiffs also filed a lawsuit against the psychologist and the institution responsible for the examination, but the first-instance court dismissed their claim.

On August 21, 2002, G. P. Primary School in H. rejected the child's admission application, stating that the plaintiffs had failed to submit the necessary enrolment documents despite multiple requests.

The plaintiffs (parents) also submitted a petition to the … Ministry, which, in letter No. …, instructed the notary to enforce the final second-instance decision previously issued by the County Administrative Office, requiring the child's enrolment in the special education first-grade class at B. L. Primary School. The ...Ministry also directed the notary to impose sanctions on the parents if they failed to comply.
However, B. L. Primary School did not have a special education class, contrary to what was stated in the Ministry's letter. Once this was clarified with the Ministry, the Department of ...Education and … Office sent a letter on August 28, 2002, informing the parents that they could still enrol their child at B. L. Primary School.

As a result, during the 2002/2003 school year, the child was enrolled at B. L. Primary School.
However, due to repeated absences, the child failed to meet the academic requirements for first grade. Consequently, at the end of the 2003 academic year, the teaching staff decided that, since the child had not passed the final exams, the 2002/2003 school year would be considered preparatory and that the child could repeat first grade in the 2003/2004 school year.

By the spring of 2003, however, the plaintiff parents submitted a petition to the Notary of H. Town, stating that they believed their child's development was inadequate at B. L. Primary School.
They also submitted a complaint to the … Ministry. In response, the Head of the Ministry's … Department sent a letter in spring 2003, forwarding a letter from the plaintiffs, dated February 20, 2003, to the notary. In this letter, the plaintiffs alleged that their child had been repeatedly physically abused at school and that the teachers had an inappropriate attitude toward them. As a result, they requested that the child be granted a private student status at G. P. Primary School in H..

On April 30, 2003, the Notary of H. Town sent letter No. … to the parents, informing them about Sections 7(1) and (2) of Act LXXIX of 1993 on Public Education, explaining that if they wished for their child to fulfil compulsory education as a private student, they would need to submit a request to the head of the relevant educational institution. The letter also reminded the parents that expert re-evaluation was mandatory every two years under Section 20(4) of Decree No. 14/1994 (VI.24.) of the Ministry of Culture and Education. Therefore, they were instructed to appear for an evaluation at the Pedagogical Service and Professional Support Center of the … University, Special Education Faculty.
At the request of B. L. Primary School, this expert institution scheduled an evaluation for July 2, 2003, and summoned the child along with the parents.
The plaintiffs, citing health reasons, failed to attend the scheduled evaluation. The Professional Support Center then scheduled a new date, July 16, 2003, but the plaintiffs again did not appear with the child.

The plaintiffs formally requested private student status for their child at B. L. Primary School on September 3, 2003.
On September 18, 2003, the Principal of B. L. Primary School rejected the request, citing Section 7(2) of Act LXXIX of 1993 on Public Education, which states that a child's compulsory education must be ensured through daily school attendance.
On October 6, 2003, the plaintiffs submitted another request to the Notary of H. Town, seeking approval for private student status at G. P. Primary School in H.
Meanwhile, on October 9, 2003, the … Social Services Center's … Service sent a letter to the administrative office's child protection caseworker, stating that attempts to contact the family had been unsuccessful.
On January 29, 2004, the Notary of H. Town issued Decision No. …, ordering the plaintiffs to appear with their child for an expert evaluation to determine the appropriate educational institution or eligibility for private student status.
The evaluation was scheduled for June 25, 2004, at the Pedagogical Service and Professional Support Center of the … University, Special Education Faculty.
However, the plaintiffs and the child failed to appear for the evaluation.

During the school year 2003/2004, the child was a pupil at B.L. Primary School.

In the proceedings concerning the ... private student status of the plaintiffs' child before the Notary of H. Town (Case No. …), a decision was issued on July 2, 2004 (Decision No. …), in which the notary, considering the Principal of B. L. Primary School's rejection of the private student status request as a first-instance decision, overturned the rejection and partially granted the plaintiffs' request, allowing their child to fulfil compulsory education as a private student.
For the 2004/2005 academic year, the Primary School and Student Dormitory was designated as the child's place of enrolment.
The operative part of the decision informed the parents that the Special Education and Rehabilitation Committee would review the child's development ex officio after one year, in March 2005. The parents were also obliged to ensure the child's attendance at the expert examination at the time scheduled by the designated school.
The reasoning of the decision detailed the process regarding the minor child's compulsory education and noted that, due to the parents' lack of cooperation, the previous expert evaluations were the only available basis for the decision. These expert reports confirmed the child's persistent learning difficulties and intellectual disability in multiple areas.
It was also stated that, due to the parents' refusal to cooperate, a new expert opinion could not be issued. Based on the available expert opinions, the child's long-term learning difficulties were established, meaning that compulsory education could be completed either in a mainstream or a segregated, special curriculum primary school. For placement in a mainstream primary school, however, the receiving institution must meet specific legal requirements, which no mainstream primary school in H. Town fulfilled under their founding documents. Therefore, the Primary School and Student Dormitory was deemed the only suitable institution for the child's education.
The operative part of this decision—due to the notary mistakenly considering themselves a second-instance authority—incorrectly informed the plaintiffs that they could request judicial review of the decision.
Based on this incorrect information, the plaintiffs filed a claim for judicial review with the … County Court. However, before the court proceedings were concluded, the notary reassessed the plaintiffs' circumstances and, on October 4, 2004, issued Decision No. …, which overturned their own previous decision from July 2, 2004, and fully granted the plaintiffs' request, allowing their child to fulfil compulsory education as a private student. For the 2004/2005 academic year, the G. P. Primary School was designated as the place of enrolment based on the parents' request.
The parents were ordered to enrol their child as a private student in G. P. Primary School's first grade within 8 days of receiving the decision.
The decision also stipulated that the school was responsible for providing the necessary special education teachers to support the child's academic progress.
Additionally, the operative part of this decision informed the parents that they were obliged to ensure their child's attendance at the expert examination at the time designated by the school.
The reasoning of the decision acknowledged that the July 2, 2004, decision had

mistakenly informed the plaintiffs about an incorrect legal remedy, as the authorization of private student status falls within the jurisdiction of the Notary of the Mayor's Office as a first-instance authority, and the appropriate appellate authority was the … County Administrative Office.
The reasoning reiterated that, based on the available expert evaluations, the child had persistent learning difficulties. In such cases, compulsory education can be completed in either a mainstream or a segregated, special curriculum primary school. However, no primary school in H. Town met the required criteria, meaning that the parents should have been required to arrange for private special education at their own expense.
The reasoning further stated that, after reviewing the parents' financial and living conditions, it was determined that their income barely exceeded the minimum wage. Consequently, they were exempted from the financial burden of providing special education services for their child.

The plaintiffs appealed this first-instance decision, requesting that the second-instance authority exempt them from the mandatory expert evaluation, arguing that their child did not have special educational needs.
Additionally, they requested that H. Town Municipality be obligated to provide all necessary conditions for private education until the child completed primary school.
The plaintiffs' appeal was reviewed by the Head of the … County Administrative Office, who issued Decision No. … on May 23, 2005. The decision partially modified the notary's decision, specifically amending the fourth paragraph of the operative part to state that: Until a new expert opinion is issued by the legally mandated Special Education and Rehabilitation Committee, which explicitly recommends that the child fulfil compulsory education as a private student, the parents are responsible for ensuring the necessary special education teachers to support their child's academic progress.
The reasoning of the second-instance decision extensively cited Section 7 of the Public Education Act (Act LXXIX of 1993) and Sections 23(1)–(7) of Decree No. 11/1994 (VI.8.) of the Ministry of Culture and Education.
It concluded that, since the child was fulfilling their compulsory education as a private student based on the parents' decision, it was the parents' legal responsibility to ensure the necessary educational support.
The plaintiffs challenged the second-instance decision in court, seeking judicial review before the … County Court.

On March 16, 2006, the County Court issued Judgment No. 7.K. 30 475/2005/5, in which it dismissed the plaintiffs' claim.

According to the judgment's reasoning, Section 30(1) of Act LXXIX of 1993 on Public Education states that a child with special educational needs has the right to receive special care in the form of pedagogical, special education, and conductive education services as soon as their eligibility is established.

The judgment further refers to Section 30(3) of the Public Education Act, which provides

that the parent selects the educational institution based on the expert opinion of the Special Education and Rehabilitation Committee. However, in the interest of the child, the notary may order the parent to attend an expert evaluation with their child and, based on the expert opinion, may require the parent to enrol their child in the appropriate educational institution.
The reasoning also cites Section 120(1) of the Public Education Act, which states that if a child with special educational needs or learning/behavioural difficulties is receiving education as a private student based on an expert opinion, the municipality is responsible for providing the expert-specified specialist teacher through the designated school or expert institution in accordance with a separate regulation.
The judgment emphasized that since the plaintiffs repeatedly ignored the Committee's summons for an evaluation—meaning there was no expert opinion justifying private student status—the decision of the second-instance administrative authority was legally sound.

Until November 30, 2005, the plaintiffs' child attended G. P. Primary School under municipally funded private student status.
However, from December 1, 2005, following the second-instance decision of the County Administrative Office, which ruled that the child's education as a private student must be provided by the parents, the municipality ceased its financial support. As a result, while the child's private student status remained, the child received no education.

The plaintiffs refused to attend an expert evaluation that would determine whether their child's compulsory education as a private student was justified for the purpose of obtaining municipal funding.

In their claim, the plaintiffs sought HUF 200,000 in non-material damages, along with statutory interest from September 1, 2000, to be paid by the defendant.
The plaintiffs argued that: The notary and the leaders of the municipality's educational institutions repeatedly failed to meet statutory deadlines in handling their case. The defendant unlawfully failed to provide their child with free education and access to primary school, violating the child's right to education. Due to these failures, their child was unable to attend school regularly, integrate into a community, and participate in normal school activities such as field trips and social interactions with peers. They claimed that the municipality's failure was continuous and that they had persistently pursued legal remedies, arguing that their claim for damages had not expired.

The plaintiffs based their claim on Sections 339(1) and 349(1) of the Civil Code, asserting that the municipality acted unlawfully when it ordered their child to attend an expert evaluation before the Special Education and Rehabilitation Committee, despite the fact that: They had never requested such an evaluation. They had consistently opposed both the evaluation and its findings. They referred to Section 12(1) of Decree No. 14/1994 (VI.24.) of the Ministry of Culture and Education and argued that they had commissioned their own expert evaluation on April 18, 2002, from forensic psychologist

Cs.-M. M., whose opinion stated that their child was capable of attending a mainstream primary school.
The plaintiffs also cited Section 13(1) of the Public Education Act, which guarantees the parent's right to freely choose an educational institution for their child.
According to the plaintiffs: The Principal of B. L. Primary School had no authority to revoke their child's enrolment. The notary, as the supervisory authority, should have intervened and ensured compliance with the law regarding the child's enrolment. Under Section 77(3) of the Public Education Act (as in force in 2000), a school is fully liable for damages caused to a student in relation to their enrolment status, regardless of fault.
The plaintiffs further argued that: The County Administrative Office unlawfully revoked its own decision of September 28, 2000, on December 6, 2000, when it withdrew the designation of B. L. Primary School as their child's assigned school.
At the time, Section 61(1) of the Act on Administrative Procedure (hereinafter "APA") only allowed the revocation of an unlawful decision.
Since the original school designation decision to B. L. Primary School was not unlawful, its revocation was illegal.
The plaintiffs also claimed that the notary misinformed them in their April 3, 2003, letter by stating that the request for private student status must be submitted to the school principal. According to the Public Education Act, the decision on private student status falls within the jurisdiction of the notary.
Even if the notary believed that the school principal should handle private student status requests, the notary, as an administrative authority, was still required under Section 7(2) of the Act on Administrative Procedure (APA) to take all necessary measures to prevent irreparable harm or danger, which, in the plaintiffs' view, applied to their child's right to education.
The plaintiffs claimed that due to incorrect legal guidance, they had submitted their request for private student status to the Principal of B. L. Primary School, who, in a letter dated September 18, 2003, unlawfully rejected the request.
They argued that this rejection was illegal because the authorization of private student status falls under the jurisdiction of the notary at first instance, not the school principal.
The plaintiffs further contended that, although they appealed the principal's decision, the notary did not issue a decision until July 2, 2004. Due to this significant delay, their child was no longer able to participate in community-based education, as their age made integration impossible.
In their claim, the plaintiffs also referred to the notary's decision, which initially ruled that the municipality would cover the costs of private education. However, the County Administrative Office, in its decision of May 23, 2005, overturned this ruling, stating that the plaintiffs were responsible for providing the necessary special education teachers for their child's academic progress.
The plaintiffs argued that regular school attendance was never a viable option because enrolling their child in the appropriate grade level at their age would have caused serious disadvantages and negatively impacted their mental and emotional well-being. Thus, they claimed that since the municipality only provided private student status as an option, it should also be responsible for covering the costs of private education.

The plaintiffs also asserted in their claim that they were not informed about how to continue their child's education, nor were they told how to contact the necessary special education teachers.
They argued that, even without an expert opinion, it was evident that their 14-year-old child could no longer integrate into a second-grade classroom, meaning that the only feasible option was private student status.
On August 7, 2007, the plaintiffs formally demanded that the municipality immediately issue a decision regarding the financial support for their child's education. However, the municipality only responded on September 25, 2007, stating that the costs of private student education were the plaintiffs' responsibility.
The plaintiffs claimed that this response was issued beyond the legal 30-day administrative deadline, and as a result, their child was unable to begin the 2007/2008 academic year.

In its **substantive response, the defendant** requested that the court dismiss the plaintiffs' claim. The defendant argued that it had not prevented the child from obtaining an education, as an appropriate placement was designated based on expert opinions. The defendant acknowledged that an expert evaluation to determine special educational needs by the Expert and Rehabilitation Committee could only have been conducted at the request or with the consent of the parents.
However, the defendant also noted that the plaintiffs themselves had commissioned a psychological evaluation, which was completed on August 31, 2000, by forensic psychologist Cs.-M. M.. The expert essentially agreed with the assessment of the Special Education Expert Institution. The defendant further argued that: The plaintiffs chose not to enrol their child in the educational institution designated by the County Administrative Office's decision of September 28, 2000. Instead, they informed the authorities that their child had been admitted to the K. M. Street Kindergarten and Preschool in D. Given this information, the municipality reasonably assumed that the child's compulsory education was being fulfilled, as it received no indication from either the parents or the institution that this was not the case. The defendant also pointed out that the plaintiffs had acknowledged in their claim that the County Administrative Office also failed to comply with deadlines and legal requirements.
The defendant argued that the plaintiffs admitted that their child exceeded the absentee limit during the 2002/2003 academic year due to frequent illness, which was why they did not meet the first-grade requirements.
While the defendant acknowledged that administrative deadlines were not always met, and that it had provided incorrect information about legal remedies in one decision, it denied committing the legal violations alleged by the plaintiffs.
The defendant also emphasized that the County Administrative Office had also contributed to the delays.
Furthermore, the defendant argued that it acted in the best interest of the child, even disregarding certain education laws, by approving private student status and covering its costs for a period.
The defendant contended that the failure to meet administrative deadlines was not

severe enough to justify a claim for damages arising from the exercise of administrative authority.
Moreover, the defendant argued that the plaintiffs themselves played a more significant role in obstructing their child's education, as they failed to enrol the child in a suitable institution despite the child's learning difficulties.

The court found the plaintiffs' claim to be unfounded for the following reasons:

The plaintiffs based their claim on Section 349(1) of the Civil Code, which concerns liability for damages caused in the exercise of administrative authority.

Under Section 349(1) of the Civil Code, liability is more limited than general liability under Section 339, as it can only be established if:
The damage occurred during the exercise of administrative authority.
The damage could not have been prevented through ordinary legal remedies.
The injured party attempted all available legal remedies to mitigate the damage.

Even in such cases, liability can only be established if the general conditions for liability under Section 339(1) of the Civil Code are met.
According to Section 339(1) of the Civil Code, a person who unlawfully causes damage to another is obligated to compensate for it.
However, a person is not liable if they can prove that they acted as could generally be expected under the circumstances.
Additionally, Section 340(1) of the Civil Code states that the injured party must take reasonable steps to mitigate their damages.
If the injured party fails to do so, they cannot claim compensation for the portion of the damage that could have been avoided.

A further legal limitation on enforcing liability for damages is the five-year statute of limitations.
Since the court cannot consider the statute of limitations ex officio, and the defendant did not invoke it, the court does not need to address this issue in relation to the plaintiffs' claim, which was received by the court on March 3, 2008.

According to Section 339 of the Civil Code, the plaintiffs needed to prove that the defendant engaged in unlawful conduct in making decisions regarding their child's education, which resulted in the child's lack of schooling and thereby caused damages to the plaintiffs.

The court noted that the plaintiffs have consistently ignored one key factor—that it is in their child's best interest to attend the most suitable educational institution.
Selecting the appropriate educational institution according to the child's developmental level could only have been done with expert involvement, and even now, the municipality can only fund the child's private education if an expert examination is

conducted.

The plaintiffs correctly cited Section 13(1) of Act LXXIX of 1993 on Public Education, which states that parents have the right to choose an educational institution. However, this right is limited in that parents may only choose a school that matches their child's abilities and capabilities, as also stated in the same legal provision.

During the court proceedings (e.g., Minutes No. 10, Page 3), the plaintiffs reaffirmed that they refused to take their child to an expert evaluation. They continued to oppose the evaluation despite the fact that the Notary of H. Town had ordered them to do so in Decision No. … issued on January 29, 2004.
Following the evidence review and examination of case documents, the court formed the opinion that the plaintiffs were almost proud of their resistance to expert evaluations, even when they were legally required to have their child assessed by a psychologist to determine the most suitable educational institution.
The expert report dated August 30, 2000, prepared by the Special Education Faculty of … University's Professional and Pedagogical Service Center (submitted as Exhibit 1/F/4), confirmed that the decision of the … County Government's Special Education and Rehabilitation Service Center regarding school placement was correct. The plaintiffs' refusal to cooperate led to an exceptional, **experimental recommendation** allowing the child to be placed in a small-sized general education class.

Although the expert opinion was completed on August 30, 2000, the second-instance authority, the … County Administrative Office, could only issue a decision on school placement on September 28, 2000. However, the plaintiffs' argument that their child was unable to start school due to this delay is unfounded.
Section 66(2) of Act LXXIX of 1993 on Public Education explicitly states that a child may be enrolled in school at any time during the school year.

The plaintiffs correctly cited Section 12(1) of Decree No. 14/1994 (VI.24.) of the Ministry of Culture and Education, which states that an expert examination for determining special educational needs can only be initiated at the parent's request or with their consent. However, the defendant's decision to order an examination through its educational institutions did not cause any damages, which is a prerequisite for liability under Section 349 of the Civil Code. The court found that obtaining the expert opinion was necessary to ensure the child's best interests by selecting an appropriate school.

The plaintiffs did not suffer any damage from the fact that the principal of B. L. Primary School, having reviewed the expert opinion of the Special Education and Rehabilitation Service Center, revoked the child's enrolment decision. The principal acted in the best interest of the child, recognizing that, according to the expert opinion, a general curriculum school would not serve the child's needs.
Furthermore, the plaintiffs could not have suffered any damage from the B.L. Primary School's principal's decision, as they themselves chose not to wait for the appeal

decision—i.e., the ruling of September 28, 2000—and instead enrolled their child earlier in an educational institution located in D., which is now called B. J. School, Kindergarten, and Primary Art Education Institution, but in 2000 was known as K. M. Kindergarten and Preschool School.
According to the investigation files, on page 265, the institution's head in March 2008 confirmed that the child attended the kindergarten's senior group from September 11, 2000.

The plaintiffs' claim that their child was unable to start primary school in the 2000/2001 academic year because the B. L. School Principal revoked the enrolment is unfounded. Their argument that they were prevented from enrolling their child due to the September 28, 2000, decision modifying the first-instance ruling is also unsubstantiated.

The plaintiffs themselves chose to enrol their child in kindergarten rather than waiting for the appeal decision. If they had waited for the September 28 decision, the child could have been enrolled in first grade.
The plaintiffs also incorrectly claimed that the September 8, 2000, decision could not be revoked on December 6, 2000, and that the December 6, 2000, decision prevented their child from starting school in the 2001/2002 academic year.
The … County Administrative Office's decision of September 6, 2000, was made without the defendant's (first-instance authority's) involvement in any form. Therefore, if the plaintiffs refer to an unlawful decision by the ...County Administrative Office, this cannot be assessed as the defendant's responsibility.

The decision of December 6, 2000, explicitly informed the plaintiffs that it did not exempt them from enrolling their child for the 2001/2002 school year and that it did not release them from the obligation to ensure their child attended another expert evaluation in the spring of 2001.

The defendant bears no responsibility for the fact that the child did not attend school during the 2001/2002 academic year.
Based on the available data, the plaintiffs did not enrol their child in any educational institution during this school year. In their statements recorded on pages 3 and 4 of Transcript No. 7, the plaintiffs claimed that their child attended the K. M. Street Kindergarten and Preschool for two years. However, according to records from the investigative file (Page 265), the child's legal status at the institution ended on August 31, 2001, and the kindergarten believed that the child had started studies at B. B. Primary School.

Regarding the 2001/2002 academic year, the only available document is an official request from the Kindergarten and Preschool (Document No. 10/F/1), in which the institution asked the plaintiffs to consent to an expert evaluation in the spring of 2001. The plaintiffs refused this request.

The defendant rightfully argued that since the plaintiffs chose to send their child to kindergarten for the 2000/2001 school year, their education was considered arranged for the following school year as well.

The plaintiffs, on page 4 of their claim, referred to a letter from the Ministry of Education dated March 26, 2003, which instructed the notary to take action.
The plaintiffs also submitted Document No. 1/F/5, which contains a letter from the Ministry of Education, requesting the notary to order the plaintiffs to attend an expert evaluation with their child, as required by the mandatory biennial review of the child's condition.
For the 2002/2003 academic year, the plaintiffs' child began first grade in the regular curriculum class at B. L. Primary School.

The defendant cannot be held responsible for the fact that the child did not successfully complete first grade. The plaintiffs acknowledged that their child failed to meet academic requirements due to absences and that the child did not pass the final exam. As a result, B. L. Primary School classified the 2002/2003 academic year as preparatory, allowing the child to repeat first grade in the 2003/2004 academic year in a small-sized class.

The plaintiffs' claim that their child was unable to complete first grade in 2002 and 2003 due to misinformation from the notary regarding private student status is unfounded.

The Notary of H. Town correctly informed the plaintiffs in their April 3, 2003, letter (Document No. F/9 of the claim) about the legal requirements.
At the time of the letter and the submission of the lawsuit, Section 7(1) and (2) of Act LXXIX of 1993 on Public Education remained unchanged. According to this law:
Parents can choose whether their child fulfils compulsory education by attending school or as a private student.
If the school principal determines that private student status is disadvantageous, or that the child is unlikely to complete studies successfully as a private student, they must notify the municipality's notary.
The notary then decides how the child must fulfil their compulsory education.
If the child is disadvantaged, the principal must obtain the opinion of the Child Welfare Service before making a decision.

The Notary of H. Town also informed the plaintiffs on April 3, 2003, that neither B. L. Primary School nor G. P. Primary School had received an official request from the plaintiffs for private student status.
According to Section 7(2) of the Public Education Act, the notary could not decide on private student status until the school principal had made a decision on the plaintiffs' request.
Such a decision from B. L. Primary School was only issued on September 18, 2003.

Document F/10 of the claim includes a letter from the plaintiffs to the school principal, dated September 3, 2003, in which they formally requested private student status.
The principal's response stated that based on Section 7 of the Public Education Act, the child's compulsory education must be fulfilled through daily school attendance.
Therefore, the school principal denied the request for private student status, and the notary was informed of this decision.
The defendant was not responsible for taking action regarding private student status during the 2002/2003 school year, as no official request had been submitted to the school principal before September 3, 2003.
Therefore, the plaintiffs' claim on page 5 of their lawsuit, arguing that the notary should have made a decision on private student status sooner, is unfounded.

Additionally, the court found it contradictory that the plaintiffs claimed the B. L. Primary School Principal unlawfully rejected their request for private student status, while at the same time, on page 4, paragraph 5 of their claim, they argued that B. L. Primary School was not a suitable institution for their child's education.

The plaintiffs correctly argued that the defendant's decision regarding private student status was issued late, exceeding the statutory processing deadline.
However, the court held that the plaintiffs should have ensured that their child fulfilled their compulsory education during the 2003/2004 school year at B. L. Primary School, where their student status remained active.

The court found that the notary's delay in making a decision was significantly caused by the plaintiffs' refusal to present their child for an expert evaluation, which was necessary to determine the most suitable educational institution.
The notary, aware of the requirements under Section 120 of Act LXXIX of 1993 on Public Education, which only allows municipal funding for private student education based on an expert opinion confirming special educational needs or learning difficulties, required the plaintiffs to obtain such an opinion.
On January 29, 2004, the Notary of H. Town issued Decision No. …, ordering the plaintiffs to attend the expert evaluation with their child. However, the plaintiffs failed to appear for the scheduled appointment.
Due to high demand, the expert institution, the Special Education and Professional Support Center of … University, was only able to schedule the child's evaluation for June 24, 2004.
It was only after the plaintiffs again failed to attend the evaluation that the notary was finally in a position to make a decision regarding the child's private student status.

Although Decision No. … of July 2, 2004, was procedurally flawed, this did not cause any harm to the plaintiffs. Recognizing the procedural violation, the Notary of H. Town issued a new decision on October 4, 2004, correcting the error and changing the designated school from the Primary School and Student Dormitory to G. P. Primary School for the 2004/2005 academic year.

Additionally, the notary—albeit unlawfully—also ruled that the school was responsible for providing the necessary special education teachers.
By doing so, the notary violated Section 120 of the Public Education Act, but this worked in the plaintiffs' favour, as the municipality assumed financial responsibility for their child's private education despite the lack of an expert opinion.
The plaintiffs, on page 6 of their claim, correctly cited the reasoning of Decision No. … issued by the Head of the … County Administrative Office (submitted as Document F/13).

However, this second-instance decision, issued on May 23, 2005, confirmed that allowing municipal funding for private student education had been a mistake.

This second-instance decision correctly cited Section 120(1) of the 1993 LXXIX Public Education Act, which states that:
If a child with special educational needs or a child with learning or behavioural difficulties is designated as a private student based on an expert opinion,
Or if the parent chooses to fulfil the child's educational requirements at home,
The school or the expert institution responsible for the child's development must ensure the availability of the necessary specialists, following specific legal provisions.

The plaintiffs cannot claim that the Head of the County Administrative Office issued a prejudicial decision, as this was independent of the defendant's actions and outside the scope of the defendant's administrative authority.
Moreover, the County Administrative Office's decision was lawful, as confirmed by the … County Court in Administrative Case No. 7.K. 30 475/2005/65, which was initiated by the plaintiffs.
The defendant's decision of July 2, 2004, and the subsequent decision of October 4, 2004, granting private student status and financing it through the municipal budget, was legally incorrect. However, this procedural violation benefited the plaintiffs, as their child's education was funded at public expense despite the lack of an expert opinion.
Processing Deadline Violation and Alleged Damages
The plaintiffs' claim for damages due to the missed processing deadline is unfounded because:

Even if the 30-day processing deadline had been met, the only lawful decision would have been to require an expert opinion before approving municipal funding.
The plaintiffs persistently refused to obtain an expert opinion, both at the time and throughout these legal proceedings.

The plaintiffs' argument on page 7, paragraph 7, of their claim, stating that the municipality was obligated to cover private student costs, is unfounded.
This issue was already decided by the Head of the County Administrative Office in Decision No. …, and the … County Court's judgment of March 16, 2006 (Case No. 7.K.

30 475/2005/65), upheld the legality of that decision.
Furthermore, the decision by the Head of the County Administrative Office was beyond the defendant's administrative jurisdiction, as the defendant's notary had actually ruled in favour of the plaintiffs, albeit unlawfully, by granting municipal funding.

The plaintiffs' claim in Section XII (page 7) of their lawsuit, alleging that the defendant failed to provide adequate information about the child's schooling options, is also unfounded.

The plaintiffs submitted Document 1/F/17, a letter from the Notary of H. Town dated September 25, 2007, which explicitly detailed the situation and available options.
The plaintiffs' claims in Sections XIII and XIV (page 8) of their lawsuits, asserting that the municipality failed to arrange funding for private student education, are equally unfounded.
A legally binding decision had already been made regarding their child's private student status.
The plaintiffs had been repeatedly informed that, under Section 120 of the Public Education Act, municipal funding was only possible if an expert opinion was provided—which they consistently refused.
The plaintiffs reaffirmed their opposition to an expert evaluation multiple times, even during these proceedings.
The municipality did not act unlawfully by declining to issue repeated denials for the same request, as the plaintiffs had already received a final decision.

Based on the above findings, the court ruled that the plaintiffs' claim was legally unfounded and therefore dismissed their lawsuit.
Although the plaintiffs requested an interlocutory judgment on liability, the court found this unnecessary as the claim was rejected entirely due to lack of legal basis.
The plaintiffs were ordered to pay the outstanding procedural fees, which had been initially waived under the cost-advancement system, pursuant to Section 15 of Decree No. 6/1986 (VI.26.) of the Ministry of Justice.
Since the defendant did not request reimbursement of legal costs, the court did not rule on litigation expenses.

January 12, 2009

.....

judge