

The Regional Court of Eger in the lawsuit initiated by the **Plaintiff (address of Plaintiff)**, represented by Attorney Dr. Lilla Farkas (**address of Attorney 1**), against **Defendant I (address of Defendant I)**, represented by Attorneys Dr. Ákos Pápai (**address of Attorney 2**) and Dr. Erika Ulics (**address of Attorney 3**), and **Defendant II (address of Defendant II)**, represented by **legal representative** (address of Defendant II's legal representative), for the **violation of personality rights**, has issued the following

J U D G M E N T:

The Court finds that in the school operated by Defendant II under the maintenance of Defendant I, with the exception of the first-grade class initiated in the 2012–2013 academic year, during the period after January 27, 2004, the school unlawfully segregated students belonging to the Roma ethnic minority from students not belonging to this minority through class grouping. This unlawful segregation involved separating Roma and non-Roma children.

The Court further finds that, from January 27, 2004, the unlawfully segregated children were subjected to discrimination by being provided with a lower standard of education at the school operated by Defendant II under the maintenance of Defendant I.

The Court orders Defendants I and II to cease the above-described violations.

The Court also orders Defendants I and II to eliminate the unlawful situation by ensuring that, starting from the academic year following the finalization of the judgment, the class grouping of Roma and non-Roma children employs methods that prevent unlawful segregation.

The Court **d i s m i s s e s** the plaintiff's claim beyond the stated relief.

The Court orders Defendants I and II to each pay the plaintiff HUF 50,000 (fifty thousand) in litigation costs within 15 days.

An appeal may be filed against the judgment within 15 days of its delivery. The appeal must be addressed to the Budapest Court of Appeal but submitted in four copies to the Eger Regional Court.

The parties may request that the appellate court adjudicate the appeal without a hearing.

If the appeal concerns only litigation costs, unpaid fees, or the reasoning of the judgment, the appellate court may decide the appeal without a hearing, unless the parties specifically request a hearing.

R e a s o n i n g:

The institution of Defendant II, located in **[Town Name]**, operates under the maintenance of Defendant I, the Municipality of **[Town Name]**.

According to its founding charter, the operational area of Defendant II's institution is the administrative territory of **[Town Name]**.

[Town Name] has a population of 2,860.

In accordance with the provisions of its founding charter, Defendant II's institution also educates students with special educational needs.

The school building of Defendant II has three floors. Students are taught in classrooms located on the ground floor, the first floor, and the attic.

There are 9 classrooms on the ground floor, 5 on the first floor, and 4 in the attic.

By the 2012–2013 academic year, only one first-grade class was initiated at Defendant II's school.

In 2007, Defendant II's school had 221 students in 19 classes.

The swimming pool operated by Defendant I's municipality in **[Town Name]** was available for use during physical education lessons by Defendant II's school whenever the pool was operational.

The Organizational and Operational Rules of Defendant II, dated January 13, 2005, specified that after-school care was organized for grades 1–4 in Defendant II's institution, based on a local ordinance adopted by Defendant I's municipal council.

At its meeting held on December 19, 2011, Defendant I's municipal council, upon the recommendation of the acting notary **[Name of Notary]**, resolved to revoke its Resolution No. 89/1996 (X.17.).

At the same meeting, the council adopted Resolution No. 138/2011 (XII.19.), which rescinded Resolution No. 89/1996 (X.17.), under which only students whose mothers were employed were admitted to the after-school program.

On May 31, 2007, the Educational Authority conducted an on-site inspection at Defendant II's institution, resulting in a report.

This report was signed on behalf of Defendant II's institution by the school principal and the current vice-principal, **[Name of Vice-Principal]**.

Page 8 of this report contains a table with three columns.

The first column lists the class labels, the second column provides the class sizes, and the third column estimates the number of Roma students.

According to this table, on May 31, 2007, the total number of students at the school was 221, of which the estimated number of Roma students was 106.

The eighth page of the on-site inspection report was separately signed by the then-principal of Defendant II's institution, **[Name of Principal]**.

Following the on-site inspection by the Educational Authority, Defendant II's institution changed its previous class grouping methods. Class placements were based on the timing of student enrolments, using a standardized form titled *"Auxiliary Table for Enrolling First-Grade Students."*

The enrolment form was administered by the school secretary.

[Name of President] served as the President of the Roma Minority Municipality of **[Town Name]** between 2006 and 2010.

The report of the Parliamentary Commissioner for National and Ethnic Minority Rights **[Name of Ombudsman]** was dated April 19, 2011.

Following a complaint regarding the segregation of Roma children, staff from the office of the Parliamentary Commissioner for National and Ethnic Minority Rights prepared an investigative report. In connection with this report, they visited the classrooms of Defendant II's institution in **[Town Name]**, conducted observations, reviewed documents, and held discussions with the director, **[Name of Vice-Principal]**.

The investigative report analysed the class placement methods using weighted criteria and presented the estimated number of Roma students in each class based

on perception in a table format. The report assessed factors such as the student's and their mother's surnames, the students' multiply disadvantaged status, their actual place of residence, and their first names in determining the estimated number of Roma students.

The follow-up report by the Parliamentary Commissioner for National and Ethnic Minority Rights was dated December 2011. This report evaluated in detail the specific actions taken by Defendant II's institution regarding the nine concrete recommendations made in the initial report.

[Name of Vice-Principal], the former principal of Defendant II's institution, also spoke with staff from the office of the Parliamentary Commissioner during the preparation of the follow-up report.

The follow-up report also assessed the specific measures taken by Defendant I's municipality regarding the recommendations directed to it in the initial report.

The follow-up report concluded that no changes had occurred concerning the segregation of Roma students at Defendant II's school since the initial investigation.

The president of the plaintiff foundation, **[Name of Foundation President]**, submitted a request for information to the Minister of Human Resources in light of the findings of the follow-up report. On July 19, 2012, the State Secretary, **[Name of State Secretary]**, representing the minister, informed the plaintiff foundation that Minister **[Name of Minister]** had approached the Heves County Government Office on March 19, 2012, initiating an administrative investigation into the educational situation in **[Town Name]** to implement measures ensuring legal compliance.

On April 3, 2012, the Heves County Government Office issued Decision No. X-B.14.164-2/2012, ordering an administrative inspection at the public educational institution of Defendant II, maintained by Defendant I, to examine compliance with equal treatment requirements.

However, with the same decision, the Heves County Government Office suspended the initiated administrative inspection until the final resolution of the civil lawsuit pending before the Regional Court of Eger under Case No. 12.P.20.351/2011, pursuant to Section 169/F(1) of Act CXL of 2004 (Ket.).

The plaintiff's statement of claim was filed on October 17, 2011. The plaintiff also attached to their statement of claim a document titled *Report on Fieldwork*, signed

by **[Name of Witness]** on September 9, 2011. This document recorded events from September 1, 2011, including the opening ceremony of the academic year held that morning at Defendant II's institution.

The Court established the facts of the case based on the submissions of the parties, the testimony of witnesses **[Name of Witness]** and **[Name of President]**, and the documentary evidence available.

In its amended claim, the plaintiff requested the court to establish that, with the exception of the first-grade class initiated in the 2012–2013 academic year, Roma children were unlawfully segregated from non-Roma children at Defendant II's school, operated under the maintenance of Defendant I, through unlawful class placement practices and the spatial arrangement of classrooms after January 27, 2004. This segregation occurred both at the class level and physically, due to placement on different floors, as well as during school events and mealtimes.

The plaintiff further requested the court to establish that the defendants provided Roma children subjected to this segregation with a lower quality of education compared to the parallel classes with non-Roma students, including disparities in curriculum content and swimming instruction.

The plaintiff also requested the court to establish that, in the education of students with special educational needs, the defendants violated regulations by merging classes multiple times beyond what the law allows. This directly discriminated against special needs students and indirectly discriminated against Roma children attending these classes.

The plaintiff sought a ruling that the defendants indirectly discriminated against Roma children based on ethnicity by admitting only children whose parents were both employed to the after-school program.

Additionally, the plaintiff requested the court to order the defendants to cease the violations and eliminate the discriminatory situation by implementing a desegregation plan prepared by the plaintiff.

The plaintiff also sought a ruling for the defendants to cover litigation costs (Plaintiff's Preparatory Documents Nos. 1 and 45).

Defendant I requested the dismissal of the plaintiff's claim and an order for the plaintiff to cover litigation costs (Preparatory Document No. 46).

Defendant II similarly requested the dismissal of the plaintiff's claim.

The court found the plaintiff's claim partially substantiated.

I.

According to Section 75(1) of the Civil Code, personality rights must be respected, and these rights are protected by law.

Section 76 of the Civil Code states that a violation of the principle of equal treatment also constitutes an infringement of personality rights.

In this case, the plaintiff foundation alleged that the defendants violated the principle of equal treatment.

Following the enactment of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, effective January 27, 2004, Section 76 of the Civil Code explicitly recognized violations of the principle of equal treatment as infringements of personality rights. Therefore, the plaintiff foundation requested the court to establish the violation starting from this date.

Under Section 20(1)(c) of Act CXXV of 2003 Equal Treatment Act, the plaintiff foundation had standing to file a public interest claim.

The Constitutional Court, in Decision 61/1992 AB, had already established that the state, as a public authority and legislator, is obligated to ensure equal treatment for all individuals residing within its territory and must not discriminate among them in this regard.

The suppression of discrimination and the promotion of equal opportunities were also governed by eight community principles. The creation of Act CXXV of 2003 aimed to achieve harmonization with EU law.

Article XV(4) of Hungary's Fundamental Law also declares that Hungary supports the achievement of equal opportunities through specific measures.

At the time the plaintiff filed its statement of claim, the Public Education Act (Act LXXIX of 1993) was still in force. However, on September 1, 2012, the Act on National Public Education (Act CXC of 2011) came into effect. Section 1(2) of this Act explicitly states that one of its objectives is to ensure that public education is governed by the principle of equal treatment.

Based on these legal provisions, the court substantively evaluated the plaintiff's claims.

In this personality rights case, the political references made by the parties were irrelevant to the determination of the civil matter. The court assessed only the legal

facts that were directly relevant to the legal relationship at issue, disregarding the parties' political references.

In the civil lawsuit initiated by the plaintiff foundation's public interest claim, the court applied the specific rules of evidence set forth in Sections 19(1) and (2) of the Equal Treatment Act. The parties were duly informed about these specific evidentiary rules at the hearing held on September 25, 2012 (as recorded in Hearing Protocol No. 34).

The court also took into account that for the period after January 1, 2007, the provisions of the Equal Treatment Act, as amended, permitted the examination of only the specific exculpatory rules applicable to public education (Section 28 of the Equal Treatment Act).

Based on the alleged violation of personality rights, the plaintiff requested the court to impose three objective sanctions: establish the violation committed by the defendants, order the defendants to cease the violation, require the defendants to remedy the violation.

The court provided separate factual and legal reasoning for its substantive decisions regarding each of these claims.

II.

1.)

Judicial Finding on the Establishment of the Infringement (Section 84(1)(a) of the Civil Code)

Unlawful segregation

In the case, the parties referenced the term "segregation" [note of the translator: the Hungarian legal term is closer to "unlawful isolation" and thus differs from the word "segregation"] in various contexts. However, in this personality rights lawsuit, the court examined the legal applicability of the concept and assessed whether the Roma ethnic minority students at Defendant II's school, maintained by Defendant I, were unlawfully segregated from students who did not belong to the Roma ethnic minority.

According to Section 10(2) of the Equal Treatment Act, segregation constitutes unlawful separation if it isolates individuals or groups based on the protected characteristics listed in Section 8, without explicit authorization by law.

One of the protected characteristics listed in Section 8 of the Equal Treatment Act is national or ethnic origin.

Additionally, Section 27(3)(a) of the Equal Treatment Act states that unlawful segregation in an educational institution, or in a department, class, or group within the institution, violates the principle of equal treatment.

Under Section 19(1) of the Equal Treatment Act, in cases concerning alleged violations of equal treatment, the burden of proof initially lies with the injured party, or the entity authorized to bring a public interest claim. They must demonstrate that the injured person or group suffered harm and had, at the time of the violation or as presumed by the violator, one of the protected characteristics listed in Section 8.

However, under Section 19(2) of the Equal Treatment Act, once the requirements in Section 19(1) are proven, the burden shifts to the other party to prove that they complied with the principle of equal treatment or were not required to do so in the given legal relationship.

Since unlawful segregation does not involve the actual intent of the affected individuals or groups to be segregated, additional proof of harm is unnecessary. The existence of unlawful segregation inherently disadvantages the affected individuals or groups.

Based on the evidence presented, the court found that the plaintiff foundation, filing the public interest claim, met its burden of proof. However, the defendants failed to demonstrate any exculpatory circumstances proving that they complied with the principle of equal treatment or were not obligated to comply with it in the legal relationship at issue.

The court concluded that the plaintiff successfully proved that students at Defendant II's school, maintained by Defendant I's municipality, were directly discriminated against and unlawfully segregated based on the protected characteristic of perceived Roma ethnicity for the following reasons:

The court rejected the defendants' argument that, under Sections 11(1) and (2) of Act CLXXIX of 2011, Defendant II's institution was not legally permitted to maintain records of students' ethnic backgrounds, including Roma ethnicity. Therefore, the defendants claimed they could not have had knowledge of this protected characteristic.

Contrary to this argument, the court found that the plaintiff successfully demonstrated that the affected students possessed the protected characteristic defined in Section 8(e) of the Equal Treatment Act at the time of the violation, either as a matter of fact or as presumed by the violators.

While no expert evidence was presented during the civil lawsuit, the court relied on the investigative report of the Parliamentary Commissioner for National and Ethnic Minority Rights, dated April 19, 2011, and its follow-up report from December 2011.

The Commissioner for Fundamental Rights submitted to the court, under entry No. 15, the reports NEK-356/2011 and NEK-1145/2011 of the Parliamentary Commissioner for National and Ethnic Minority Rights.

The main report indicates that, prior to preparing the investigative report, staff from the Parliamentary Commissioner for National and Ethnic Minority Rights physically inspected the classrooms of Defendant II's school, had the opportunity to conduct observations, review documents, and allowed [**Name of Vice-Principal**], the school principal, to express the institution's position. The investigative report notes that the school principal of Defendant II stated that the order of enrolment randomly determined which class a child was assigned to, with earlier enrollees being placed in Class A and others in Class B.

The investigative report used a weighted set of criteria to examine whether this class assignment method effectively served to mask the segregation of Roma children.

The report considered students as Roma if they met at least 2–4 of the following criteria under the weighted classification:

- The surname of the student and their mother,
- The student's multiply disadvantaged status,
- The student's actual place of residence,
- The student's first name.

The validity of using these criteria to identify potential Roma ethnicity and evaluate the intended objective of the investigative report's method was supported by the testimonies of [**Name of Witness**] and [**Name of President**], who were heard during the first-instance proceedings.

[**Name of President**], who served as the President of the Roma Minority Municipality of [**Town Name**] between 2006 and 2010, testified (as recorded in

Hearing Protocol No. 34) that it was widely known in the town who among the local residents was of Roma ethnicity and who was not.

[Name of President] further stated that certain surnames were typical of Roma individuals in the town and claimed that even the youngest children knew which streets were inhabited by Roma families.

Contrary to the defendants' denials, the court, based on the following evidence, concluded that both the municipal maintainer (Defendant I) and the legal representative of Defendant II's school were explicitly aware of the perceived Roma ethnicity of the students attending Defendant II's institution.

Upon the court's request, Defendant II submitted various documentary evidence under entry No. 15, including the inspection report recorded as entry 15/4, documenting the on-site inspection conducted by the Educational Authority at Defendant II's institution on May 31, 2007.

The administrative inspection aimed, among other objectives, to verify compliance with the provisions on the principle of equal treatment.

The inspection report was signed by **[Name of Vice-Principal]**, who was the principal of Defendant II's school at that time.

Page 8 of the inspection report, which **[Name of Vice-Principal]** also signed separately, contained three columns: the class labels, the number of students in each class, and the estimated number of Roma students in each class.

According to the report, the estimated number of Roma students was recorded separately for each class.

Based on the aggregated data, it was established that on May 31, 2007, Defendant II's school had 221 students, of whom the estimated number of Roma students was 106.

During the evidentiary process, the former principal and current vice-principal of Defendant II's school, **[Name of Vice-Principal]**, stated that the data were not provided by the school or by him personally during the inspection. However, the court found this claim by Defendant II to be implausible and rejected it.

The court determined that, as the inspection report clearly indicates, the Educational Authority conducted its on-site inspection at Defendant II's institution, and the specific data provided in the report's eighth page concerning

individual classes could only have been supplied by Defendant II's legal representative. This finding supports the conclusion that Defendant II's school was aware, if not of the actual, then of the presumed number of Roma students based on their perceived protected characteristic, as it provided data on this basis during the official inspection.

Although Defendant I interpreted two specific statements made by its legal representative, the mayor, **[Name of Mayor]**, during their testimony in the preparatory brief under entry No. 46, the court did not accept Defendant I's legal and factual interpretation of these statements for the following reasons:

The mayor of Defendant I's municipality, **[Name of Mayor]**, made substantive declarations during the hearing held on February 28, 2012.

During this hearing, the mayor, acting as the legal representative of Defendant I, made two assertions as part of their continuous testimony, not in response to specific judicial questions. First, they requested that it be recorded in the minutes that their son was almost killed by Roma children at the school. Second, they mentioned that the Roma janitor at the school no longer worked there, and they intended to hire another Roma janitor for the position.

The court found that, although Defendant I provided a subsequent legal interpretation of these statements in its preparatory brief (entry No. 46), the claims made therein were neither substantiated nor realistic. The court deemed it more plausible that the mayor's statements reflected their perception of the presumed Roma ethnicity of certain students at Defendant II's school and were based on this protected characteristic.

According to Section 8 of the Equal Treatment Act, unlawful segregation includes not only segregation based on actual, factual knowledge but also segregation based on the perceived Roma ethnicity of individuals, even if founded on perception alone. Consequently, the court established that Roma students at Defendant II's school were segregated from comparable groups without legal authorization, in violation of Section 8(e) of the Equal Treatment Act.

Regarding unlawful segregation, the defendants did not invoke either the general or the specific exculpatory rules applicable in public education (Section 28 of the Equal Treatment Act), asserting that the plaintiff foundation failed to prove a comparable situation based on the protected characteristic cited.

However, contrary to this position, the court held that the plaintiff fully met its burden of proof. Considering the specific evidentiary rules applicable in the case

and the absence of successful exculpatory evidence from the defendants, the court established the existence of unlawful segregation.

The court further relied on the inspection report prepared by the Educational Authority on May 31, 2007, which was signed by the then-principal of Defendant II's school. The report, which included findings on compliance with the principle of equal treatment, recorded the principal's statement that Roma students were disproportionately represented in classes labelled A, B, and D. This supports the conclusion that the principal of Defendant II's institution and **[Town Name]** Defendant II's [Name of Principal] was aware of the perceived Roma ethnicity of certain students.

Based on the evidence, the court found that Defendant II's school unlawfully segregated Roma students from non-Roma students through its class placement practices for the following reasons:

Since the court established, based on the parties' unanimous statements, that only one first-grade class was initiated at Defendant II's school during the 2012–2013 academic year, it found that unlawful segregation occurred for the period after January 27, 2004, except for this first-grade class.

The court concluded, based on the inspection report of the Educational Authority dated May 31, 2007, as well as the investigative and follow-up reports of the Parliamentary Commissioner for National and Ethnic Minority Rights, that unlawful segregation at Defendant II's school had been in place since January 27, 2004.

Based on the enrolment data provided in the documentary evidence, broken down by class, the court concluded that the above findings are clearly supported.

During the evidentiary process, Defendant I submitted second copies of the officially established forms titled *Auxiliary Table for the Enrolment of First-Grade Students* for various years.

Based on the content of this documentary evidence and the statements of Defendant II's legal representative, it was established that, following the Educational Authority's on-site inspection, Defendant II's school implemented this class placement method, which it considered objective.

The factual assertions by Defendant II regarding the implementation of this class placement method were not challenged during the evidentiary process.

Nevertheless, for the following factual and legal reasons, the court still found unlawful segregation in connection with class placement.

The court determined that unlawful segregation, as a violation, occurs even when it is maintained passively, without active involvement. Therefore, the defendants were obligated to address segregation that may have arisen inadvertently or randomly, regardless of intent. Unlawful segregation, as behaviour violating the principle of equal treatment, can be committed not only intentionally but also through omission.

The court rejected the defendants' defence that they could not have recognized the unintentional ethnic segregation and, therefore, could not have taken steps to eliminate it. The investigative and follow-up reports by the Parliamentary Commissioner for National and Ethnic Minority Rights presented specific factual and statistical findings. If the defendants had intended to address the unintentional segregation, there is no doubt that they had the opportunity to take concrete measures.

However, the follow-up report indicated that the defendants did not take substantive steps to resolve the situation, leading the plaintiff foundation to file a public interest claim.

Based on the evidentiary process, the court attributed liability to the defendants not for the creation of unlawful segregation but for its continued maintenance.

As the defendants failed to act against so-called spontaneous segregation that may have arisen without their intent, the court found that the violation was committed through the passive maintenance of unlawful segregation, as emphasized in the UN High Commissioner for Human Rights' General Recommendation No. 19 on racial segregation and apartheid (Debrecen Court of Appeal, Pf.I.20.683/2005).

2.)

Discrimination Through Lower Quality Education Provided to Segregated Students

The court also found, based on the evidentiary process, that the plaintiff foundation fulfilled its burden of proof under Section 19(1) of the Equal Treatment Act regarding this claim. The unlawfully segregated Roma students were provided with a lower quality of education at Defendant II's school, resulting in discriminatory treatment.

During the first-instance proceedings, Defendant II consistently denied the existence of unlawful segregation but did not dispute that differing educational content was implemented in certain classes. Defendant II argued that these differences were based on professional, public education-related considerations.

Under the specific evidentiary rules applicable to this case, the defendants could have invoked their legal right to demonstrate, under the statutory exculpatory provisions, that these differences, which they deemed professionally justified, did not result in lower-quality education for the affected students.

Under Section 9 of the Equal Treatment Act, indirect discrimination occurs when a provision, which does not qualify as direct discrimination and appears to comply with the principle of equal treatment, places individuals or groups with characteristics protected under Section 8 at a significantly greater disadvantage compared to others in a comparable situation.

In public education (public instruction), a specific statutory provision under Section 27(3)(b) of the Equal Treatment Act deems it a violation of the principle of equal treatment if individuals or groups are limited to education or instruction, or if an educational system or institution is established or maintained that: does not meet the standards outlined in professional requirements, does not comply with professional rules, and consequently, does not ensure the generally expected preparation necessary to continue studies or take state exams.

The quality of education provided by Defendant II's school is influenced not only by the students' academic performance and abilities but also by other factors affecting them within their families and communities.

Additionally, the quality of school education depends on the institution's physical and personnel conditions, which may vary between classes.

The defendants, under their statutory right of exculpation, could have requested the appointment of an educational forensic expert. Such an expert could have examined all physical and personnel conditions at Defendant II's school, as well as the educational content by class, and provided a unified, comprehensive assessment to determine whether the affected students were subjected to discrimination by receiving a lower standard of education.

Considering the specific evidentiary rules applicable in this case, the plaintiff fulfilled its burden of proof, while the defendants did not request the appointment of an educational forensic expert in relation to the issue. As a result, the court attributed the consequences of lack of proof to the defendants and concluded that,

from January 27, 2004, Defendant II's school, maintained by Defendant I, provided unlawfully segregated Roma students with a lower standard of education, thereby discriminating against them.

If public educators, school principals, or teachers aim to improve the actual integration of multiply disadvantaged children, any substantive decisions made in connection with this professional objective must remain within the framework of the current legal regulations, including those prohibiting unlawful segregation under the Equal Treatment Act.

3.)

Claims Where the Court Rejected the Allegation of a Violation

a.)

The court did not establish that, in the education of students with special educational needs, the defendants discriminated against these students directly or Roma students indirectly through multiple class mergers beyond what is permitted by law.

Based on the evidentiary process, the court found that the plaintiff did not fulfil its burden of proof under Section 19(1) of the Equal Treatment Act in this regard.

The court primarily focused on evidence relating to the plaintiff's claims of ethnic-based unlawful segregation. Concerning this specific claim, the court held that the investigative and follow-up reports prepared by the Parliamentary Commissioner for National and Ethnic Minority Rights, which were available to the court, were insufficient to meet the plaintiff's burden of proof. These reports alone did not provide an adequate basis for establishing the claim.

No witnesses were heard, or other means of proof were used in relation to this application, therefore the court saw no possibility of establishing the infringement based on the evidence available to it and thus dismissed the application.

b.)

The court determined that there was no justification for establishing unlawful segregation in connection with the school ceremonies of Defendant II's school. In this regard, the only available evidence was a document titled "*Report on Fieldwork*" related to the 2011 school year's opening ceremony.

Based on the evidence available, the court concluded that the plaintiff foundation failed to meet its burden of proof regarding this claim. It did not demonstrate that the defendants unlawfully segregated students during school ceremonies in a manner that violated the principle of equal treatment, based on the protected characteristic in question.

The plaintiff did not offer any additional evidence, and based on the available documentation, the court found that the plaintiff had not fulfilled its evidentiary obligation under Section 19(1) of the Equal Treatment Act in this regard.

c.)

The court also found that no unlawful segregation occurred in connection with dining or meal arrangements in the cafeteria of Defendant II's school. It dismissed the plaintiff's claim related to this issue.

In this regard, the court accepted Defendant II's factual assertion regarding the actual size of the cafeteria, which demonstrated that unlawful segregation based on the protected characteristic could not be established.

The investigative report by the Parliamentary Commissioner for National and Ethnic Minority Rights also found no violation related to dining or the school's opening ceremony. Regarding the latter, the report explicitly stated that the school principal's explanation was acceptable, and no discrimination could be established.

d.)

The court found that while Defendant II's school provided a lower standard of education to unlawfully segregated students, resulting in discriminatory treatment, this did not apply to swimming instruction. The court dismissed the claim concerning swimming instruction as unfounded for the following reasons:

In Preparatory Document No. 27, the plaintiff presented detailed factual arguments regarding this claim and attached a second copy of the written statement dated July 21, 2011, from the then-principal of Defendant II's school.

The court determined that Defendant II's school lawfully required students to have swimming equipment to participate in swimming lessons organized during physical education classes in the school's swimming pool.

The court's legal position was that it is not the responsibility of Defendant II's school to ensure that students possess swimming equipment. Furthermore, the plaintiff did not provide any evidence that a student who had swimming equipment and intended to use the school's swimming pool during physical education was prevented from doing so due to their protected characteristic, specifically their perceived Roma ethnicity.

During the evidentiary process, the plaintiff did not offer witness testimony in this regard, and the documentary evidence submitted and referenced by the plaintiff did not fulfil the burden of proof required under Section 19(1) of the Equal Treatment Act.

e.)

The court also dismissed the plaintiff's claim seeking to establish that Roma children were indirectly discriminated against based on their ethnicity due to the requirement that only children with both parents employed could be admitted to the after-school program.

At its meeting held on December 19, 2011, the municipal council of **[Town Name]** revoked its earlier Resolution No. 89/1996 (X.17.) through Resolution No. 138/2011 (XII.19.), following the recommendation of the acting notary, **[Name of Notary]**. The earlier resolution had stipulated that only students whose mothers were employed could be admitted to the after-school program.

According to the minutes of the council meeting, the acting notary **[Name of Notary]** stated before the decision that the earlier resolution was deemed unlawful by the Government Office in its legal review.

Based on the evidence available, the court determined that establishing indirect discrimination under Section 9 of the Equal Treatment Act was not justified. Under Section 19(1) of the Equal Treatment Act, the plaintiff failed to prove that the referenced provision placed individuals with the cited protected characteristic at a significantly greater disadvantage compared to others in comparable situations.

The plaintiff did not present independent evidence to support this particular claim. As such, the court dismissed the claim as unfounded.

IV.

Objective sanction to cease the infringement (Section 84(1)(b) of the Civil Code)

In accordance with the plaintiff's claim, the court, in addition to establishing the violation, ordered the defendants to cease the established violation under Section 84(1)(b) of the Civil Code.

However, this general objective sanction cannot serve as a basis for direct enforcement. Therefore, the plaintiff also requested that the defendants be ordered to eliminate the unlawful situation.

V.

Objective sanction to remedy the harmful situation (Section 84(1)(d) of the Civil Code)

The plaintiff filed a claim aimed at eliminating the harmful situation they deemed unlawful, specifically requesting a concrete judgment on liability. The judgment ordering the cessation of the unlawful situation may serve as the basis for issuing an enforceable document under Section 13 of the Act on Judicial Enforcement.

In cases where discrimination against schoolchildren arises within a public law relationship, civil law, with its regulatory framework, is not suited to address or order the elimination of segregation. Measures necessary to eliminate discrimination fall within the domain of public law, meaning that the established violation can only be addressed using public law mechanisms. (BDT.2010.309.)

However, based on the evidence, the court determined that the discrimination against students at Defendant II's school did not arise within a public law relationship. [Town Name]'s only primary school, Defendant II's institution, does not require a specific public law decision by the municipal council of Defendant I for the unlawful segregation maintained through the class placement method to be eliminated. Therefore, the court also ruled on how to eliminate the violation, ordering Defendants I and II to rectify the unlawful situation established by the court. Starting with the school year following the final judgment, the defendants must adopt a method of class placement that excludes the unlawful segregation of children of Roma ethnicity and non-Roma ethnicity.

During the evidentiary process, the former principal of Defendant II, [Name of Vice-Principal], stated that another placement method was based on the

alphabetical order of students' names (A, B, C). This method, indisputably entirely objective in nature, could serve as a lawful basis for class placement under objective principles.

VI.

In this case, subject to the benefit of cost advance records, the plaintiff did not request the application of subjective sanctions, such as compensation, in addition to objective sanctions.

The recorded procedural fee of HUF 36,000, determined based on an unquantifiable claim value, is borne by the Hungarian State, considering the parties' personal fee exemptions (Decree No. 6/1986 (VI.26.) of the Ministry of Justice, Section 14).

Pursuant to Section 81(1) of the Code of Civil Procedure, Defendants I and II, who predominantly lost the case, are each required to pay HUF 50,000 in litigation costs to the plaintiff. Under Section 3(2) of Decree No. 32/2003 (VIII.22.) of the Ministry of Justice, the court determined the plaintiff's attorney's fees at HUF 100,000.

Eger, December 6, 2012

Tamás Román s.k.
Presiding Judge

Responsible for the authenticity of the publication: