

HAJDÚ-BIHAR COUNTY COURT

6.P. 20.341/2006/50.

ON BEHALF OF THE REPUBLIC OF HUNGARY!

The Hajdú-Bihar County Court, in the case initiated by the plaintiff (...) represented by attorney Dr. Lilla Farkas (1097 Budapest, Lónyai u. 34. III/21.) against the **First Defendant** (...), **Second Defendant** (...), and **Third Defendant** (...), represented by attorney Dr. Ferenc Ács (4025 Debrecen, Simonffy u. 57.), for the violation of personality rights, issued the following

J u d g m e n t:

The Court establishes that the First Defendant, the Second Defendant operating under its authority, and the Third Defendant unlawfully segregate Roma students in their out-of-headquarters units of the concerned primary schools and directly discriminate against them by providing educational tools and material conditions of inferior quality and disadvantageous accessibility.

The Court orders the First, Second, and Third Defendants to cease the infringement described above and prohibits them from committing further similar infringements.

The Court orders the Second and Third Defendants to eliminate the unlawful situation by the beginning of the 2007-2008 academic year. Furthermore, the Court obliges the First Defendant to tolerate the termination of the unlawful situation.

The Court orders the First Defendant to send the operative part of the judgment, including a statement expressing its regret regarding the established infringement, to the Hungarian News Agency (Magyar Távirati Iroda) within 15 days.

Beyond the above, the Court **dismisses** the remainder of the Plaintiff's claim.

The Court orders the First, Second, and Third Defendants to jointly and severally pay the Plaintiff procedural costs of HUF 390,540 (three hundred ninety thousand five hundred forty) within 15 days.

The procedural fee not paid in the course of the proceedings shall be borne by the

State.

This judgment may be appealed within 15 days of its delivery. The appeal must be addressed to the Debrecen Court of Appeal but submitted in writing and in triplicate to the Hajdú-Bihar County Court.

The Court informs the parties that the appellate court may decide on the appeal without a hearing if it pertains solely to the amount or bearing of procedural costs, unpaid fees, the deadline for performance, or the reasoning of the judgment. In such cases, the parties may request a hearing.

The parties may also jointly request a decision without a hearing on other grounds before the expiration of the appeal deadline.

R e a s o n i n g :

Based on the statements of the representatives of the parties, the content of the submitted and obtained documents, the data from the expert opinions gathered and supplemented, the testimonies of witnesses M.L., B.B., H.J., V.L.A., D.H.M., B.M., J.L., L.L., R.A., L.R., K.G., F.L., K.H.K., G.I., C.E., and V.Z., as well as the video and audio recordings incorporated into the proceedings, the Court establishes the following facts:

The Second and Third Defendant primary schools, which are independent legal entities, operate within the territory of H. city under the maintenance of the First Defendant municipality.

For over 10 years, the Second Defendant has been conducting education partially at its main building located at H., S. Street ..., and partially at two other buildings: one located at H., R. Street ..., approximately 800 meters to 1 kilometre from the main building, and another at H., K. Street ..., also 800 meters to 1 kilometre from the main building.

In the 2006-2007 academic year, the total student body of the school was 868. Of these, 484 students attended the main building on S. Street ..., 227 students attended the building on K. Street ..., and 157 students attended the building on R. Street The proportion of Roma students within the total student body was 54%. At the main building, the proportion of Roma students was 28% (ranging between 0% and 72% within individual classes). At the building on K. Street, the proportion of Roma students was 86% (ranging between 67% and 100% within individual classes), while at the building on R. Street, the proportion of Roma students was 96% (ranging between 82% and 100% within individual classes).

At the S. Street building, certain classes provide bilingual education, others offer advanced language instruction, while others provide advanced IT education. Additionally, integration programs or, alternatively, skills development programs are

conducted specifically in all classes. A total of 21 classes (from grades 1 to 8) are located in this building.

At the K. Street building, a total of 11 classes (from grades 1 to 8) are located. Of these, one class offers advanced IT education, while all other classes, except for one, provide Hungarian-language Roma ethnic education and either integration programs or skills development programs. The integration and skills development programs do not require any special material or personnel conditions. The Roma ethnic education (Roma cultural awareness program) differs from the general curriculum in that participants attend additional classes for 3 hours per week in subjects such as Roma cultural awareness, drawing, culture, singing, and dance. Additionally, within this time frame, there is 30 minutes per week dedicated to remedial lessons for general curriculum subjects. This form of education does not require special material or personnel conditions. Before the start of the program, the parents of students participating in the Roma ethnic education (Roma cultural awareness program) sign a written declaration expressing their consent for their child to take part in the minority education program during the school year.

The basis for class organization at the K. Street building is as follows: students are assigned to classes in this building if their parents select the Roma cultural awareness program for their children (by providing written consent). Additionally, students are placed in these classes if their parents submit a verbal request to the school administration, explicitly requesting that their child be placed either in a class located in this building or with a teacher who teaches at this building. Furthermore, students who attended kindergarten for a shorter period and thus require remedial education—within the framework of the Roma cultural awareness program—are also assigned to these classes.

The reason for utilizing the K. Street building as a school facility is that the main building lacks the physical capacity to accommodate all students (it is currently operating at full capacity with the existing number of students). The reason why the classes located at the K. Street building were specifically placed there is that bilingual education and advanced IT education (except for ... class) are conducted at the main building. These programs require group division and specialized classrooms. Consequently, it is practical to locate the classes participating in these forms of education at the main building, where the necessary specialized classrooms are available.

At the R. Street building, a total of 13 classes (from grades 1 to 8) are located, all of which provide special education (remedial education for students with special needs). In addition, all these classes offer Roma ethnic education (Roma cultural awareness program). The basis for class organization in these classes is the provision of special education, which complies with Section 30(1) and (2) and Section 35(2) of Act LXXIX of 1993 on Public Education. Placement in these classes is determined by the expert opinions of the Expert and Rehabilitation Committees.

While the special education program does not require specific material conditions, it does require special personnel conditions, namely teachers with qualifications in

remedial pedagogy, who teach from curriculum-specific textbooks. The Roma ethnic education in these classes is not a criterion for class organization. Instead, it is provided based on written declarations of consent signed by the parents of the affected students. These declarations confirm the parents' agreement for their child to participate in minority education programs during the school year. The minority education program does not require special material or personnel conditions and differs from the general curriculum in that participating students attend additional classes for 3 hours per week in Roma cultural awareness, drawing, culture, singing, and dance.

The use of the R. Street building for educational purposes is a physical necessity, as the main building cannot accommodate all students due to its full capacity. The reason the affected classes are located in the R. Street building is due to a decades-long tradition: special education (previously known as "remedial" classes) has traditionally been conducted in this school building. Across the entire school and its buildings, ethnic background of the students does not play a deliberate or conscious role in the organization of classes or their placement in specific buildings.

Regarding the material conditions relevant to education, the main building contains 5 specialized classrooms, 9 rooms for group activities, 1 gymnasium, 1 sports field, 4 portable computers, 3 projectors, 2 video cameras, 2 photocopiers, and a library. By contrast, neither the K. Street nor the R. Street buildings have specialized classrooms or group activity rooms, gymnasiums, sports fields, portable computers, projectors, video cameras, or libraries. Furthermore, the R. Street building does not have a photocopier, while the K. Street building has only one photocopier. As a result, the students attending classes in the K. Street and R. Street buildings cannot access the facilities and equipment available in the main building. In some cases, these facilities are completely inaccessible; in others, the distance between their designated school buildings and the main building means they are at a disadvantage compared to students studying at the main building.

The facts described above were similar in their main parameters and characteristics to those described above for the school in the school years preceding the 2006-2007 school year.

For over 10 years, education at the Third Defendant school has been conducted partially at its main building located at H., J. Street ..., and partially at two other buildings: one located at H., S. Street ..., and another at H., F. Street ..., both situated 1500–2000 meters from the main building.

In the 2006-2007 academic year, the total student body of the school was 848 students, of whom 748 students attended the main building, 52 students attended the S. Street building, and 48 students attended the F. Street building.

The proportion of Roma students within the total student population was 32%. At the main building, the proportion of Roma students was 22% (ranging from 0% to 50% in individual classes). However, at both the S. Street and F. Street buildings, expert opinion data indicated that 100% of the students were of Roma ethnicity (with all

classes in these buildings consisting entirely of Roma students).

The S. Street building housed 4 classes (...), while the F. Street building housed an additional 4 classes (...). In all of these 8 small-sized classes, education was provided through skills development programs and Roma ethnic education. In contrast, at the main building, there were 31 classes (grades 1 to 8), where students were taught in normal-sized classes. No skills development programs or Roma ethnic education were provided at the main building.

The small-sized classes, which consist of no more than 15 students, are organized pursuant to Section 20(b) of Annex III of Act CLIII of 2005. Based on the relevant regulations, the organization of these small-sized classes and the specific type of education provided therein was the result of the Defendants' voluntary decision. The specialty of this program is that students participate in all-day activities, but it does not require any special material or personnel conditions. Roma minority education does not require special material or personnel conditions either. Its specificity, compared to the general curriculum, lies in the fact that participating students receive 3 hours of Roma cultural education weekly.

The methodology for organizing these small-sized classes at the school is as follows: Students are assigned to small-sized classes if the Educational Counselling Center recommends such placement due to integration, learning, or behavioural difficulties and issues a written opinion to this effect. Students are also assigned if their parents submit a written request to the school administration to enrol their child in the S. Street division of the Third Defendant school. Additionally, students are assigned if their parents submit a written request to the school administration requesting that their child participate in Roma minority education during the school year. For the 2006-2007 academic year, out of the 15 students assigned to this particular class, 13 students were placed based on the Educational Counselling Center's recommendation, while 2 students were placed based on a written parental request for enrolment in this specific school building. All 15 students participated in Roma minority education. In the preceding academic year, out of the same total of 15 students, 8 students were placed in the class based on the Educational Counselling Center's recommendation, while 7 students were assigned based on their parents' written request for enrolment in the specific school building. All 15 students also participated in Roma minority education.

At the F. Street building, education is provided exclusively for upper-grade classes. These classes are transferred automatically to this building following the completion of grade 4 at the S. Street building, meaning that separate class assignments do not occur for these students. Their small-sized class education and participation in Roma ethnic education are identical in terms of material and personnel conditions, as well as in nature, to the education described at the S. Street building.

The reason for the use of the **S. Street and F. Street buildings** for educational purposes is that the main building at J. Street operates at full capacity due to the number of students taught there. The reason these specific classes are located in the outlying buildings is that the classrooms in these buildings are smaller and suitable for small-group teaching, making it practical and efficient to place the small-sized classes in these facilities.

The Defendants assert that neither the assignment of students to classes nor their placement in outlying buildings was influenced by the ethnic background of the students.

At the main building, the following facilities are available for students and their education: 7 specialized classrooms (subject-specific classrooms), 1 exercise room, 2 gymnasiums, 1 sports field, 4 portable computers, 2 projectors, 2 video cameras, 3 photocopiers, and 1 library.

In contrast, at the outlying school buildings, there are no specialized classrooms, exercise rooms, gymnasiums, sports fields, portable computers, projectors, video cameras, photocopiers, or libraries. Students at the F. Street building spend one day per week at the main building, attending all their classes there and using the facilities and equipment available at the main building. However, apart from this arrangement, students at the outlying buildings cannot access the equipment and facilities of the main building to the same extent as those studying at the main building. Due to the distance between their educational location and the main building, they face disadvantageous access to these resources.

In the academic years prior to 2006-2007, the above-described facts regarding the school differed only in that the number of students studying in the outlying buildings was significantly higher. In all other major parameters and characteristics, the circumstances were similar to those described.

In its amended and extended claim (last amended as recorded on page 20 of Record No. 41), **the Plaintiff** requested that the Court establish that the First Defendant and the primary schools maintained by the Second and Third Defendants unlawfully segregate Roma children from non-Roma children in their outlying school units (referred to as "Roma sections") and directly discriminate against the segregated Roma children by providing them with lower-quality educational facilities and resources that are disadvantageous to access. The Plaintiff further requested that the Defendants be ordered to cease the unlawful conduct and be prohibited from engaging in such and similar violations in the future, that the First Defendant be ordered to issue a statement of regret regarding the infringement, to be published via the Hungarian News Agency (Magyar Távirati Iroda), that the Second and Third Defendants be ordered to eliminate the harmful situation by implementing a desegregation plan prepared by a public education expert under the provisions of Section 39/E of Decree No. 11/1994 (VI.8.) MKM on the Operation of Educational Institutions, Section 121(1)(16) of the Public Education Act, and Minister of Education Notice No. 27480/2003, that the First Defendant be ordered to tolerate the desegregation measures prescribed for the Second and Third Defendants.

The Plaintiff based its claims on the alleged unlawful segregation occurring between the individual and outlying school buildings.

The Defendants, in their substantive response, requested the dismissal of the Plaintiff's claim.

The Court determined that the Plaintiff's claim is **predominantly well-founded** for the following reasons:

Pursuant to Section 20(1)(c) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "Equal Treatment Act"), which was in force at the time the Plaintiff initiated the claim and remains in force, a social or representative organization may file a personality rights lawsuit before a court for the violation of the principle of equal treatment if the violation is based on a characteristic that constitutes an essential feature of an individual's personality and affects a larger group of individuals whose members cannot be precisely identified.

The Plaintiff foundation is a social organization whose founding document explicitly identifies as one of its objectives the protection of the rights of Roma and disadvantaged children. The Plaintiff based its claim on the alleged violation of the principle of equal treatment due to ethnic origin, as well as skin colour and racial affiliation. The affected individuals are a group of Roma students studying in the outlying buildings of the Second and Third Defendants' primary schools. Since the number and identities of this group's members cannot be precisely determined in advance due to the group's size and the nature of the case, and because the composition of this group changes annually, the alleged violation affects a larger group of individuals whose members cannot be precisely identified. Furthermore, ethnic origin is considered, based on judicial and constitutional court practice, an essential feature of an individual's personality.

In view of the above, the Court established that, with regard to the Plaintiff's identity and the subject matter of the claim, the Plaintiff is entitled to the special right to initiate proceedings under Section 20(1)(c) of the Equal Treatment Act, and this right continues to exist. This special right to initiate proceedings, particularly because the affected group comprises a larger group of individuals who cannot be precisely identified, is independent of the will or intent of the group's members or even its majority.

Therefore, the written declarations of the majority of the parents of the currently affected students, which urged the Plaintiff to withdraw its claim, are irrelevant to the determination of the Plaintiff's right to initiate proceedings. Likewise, the identical resolution adopted by the local Roma Minority Self-Government during the course of the proceedings is also irrelevant.

Consequently, the Court finds that the Plaintiff foundation's standing (legitimacy) to bring the present claim is established, as outlined above.

The Plaintiff based its claim on the segregation of individuals based on ethnic minority status, skin colour, and race.

According to Section 1(2) of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (hereinafter "RNEM"), a national or ethnic minority is any group that has been established in the territory of the Republic of Hungary for at least a century, exists in numerical minority within the population, its members are Hungarian citizens,

and it is distinguished from the rest of the population by its language, culture, and traditions, while demonstrating a collective consciousness aimed at preserving these attributes and expressing and protecting its historical community interests.

The relevant concepts of "race" and "colour" are not defined in the Hungarian legal system.

Based on the Plaintiff's claim, the Court determined that the affected group referred to by the Plaintiff consists of individuals who undeniably belong to the Roma ethnic community recognized in Hungary. The defining and essential characteristic of this group is its actual or perceived membership in this ethnic community. Based on the above, the Court evaluated the Plaintiff's claim with reference to ethnic minority status as a protected characteristic under Section 8(e) of the Equal Treatment Act. The references to skin colour and race under Sections 8(b) and (c) were excluded from the scope of examination. The Court reasoned that these characteristics were secondary and non-essential in the context of the Plaintiff's claim under Section 20(1)(c) of the Equal Treatment Act which pertains to harm suffered by a group whose members cannot be precisely identified. For example, in this case, the affected group does not consist of individuals of different ethnicities but of identical skin colour, where skin colour alone would otherwise define the group's communal characteristic.

The Court established the facts based on the historical circumstances described as follows:

The Court appointed an ad hoc expert in accordance with Section 177(2) of the Code of Civil Procedure (CCP), for two primary reasons. Firstly, the expert's task—determining the proportion and distribution of Roma minority students in the Second and Third Defendant primary schools—is a specialized matter not included in any classical field of judicial expertise. Secondly, the appointed expert has approximately a decade of specialized professional knowledge and direct, first-hand experience regarding the operation and conditions of the schools concerned. Over the past 10 years, the expert's professional work has included developing, managing, and monitoring Roma minority education programs, particularly within the Second and Third Defendant schools. These professional experiences, insights, and data gathered through their work are of significant importance for answering the expert questions raised in this case, which require specialized knowledge.

The methodology for determining the ethnicity ratios (if necessary for the preparation of the expert opinion, the seconded expert should involve a sociological expert in his/her work, and the local Gypsy Minority Self-Government should be involved in the preparation of the expert opinion, which should provide the expert with the data, information and opinions necessary for the preparation of the expert opinion; the expert shall carry out on-site visits to the educational establishments concerned, to all the buildings concerned and to all the departments concerned, obtaining the necessary and possible data and information from the heads of the educational establishments and from the local Gypsy Minority Self-Government, and, in the event of uncertainty of figures, determining the minimum number at which the answer can be given up to a certain level, and the from-to limit within which the uncertainty exists, and in the

case of the percentages, to take into account both pupils belonging to the Roma ethnic group and pupils who are considered by others to belong to the Roma ethnic group) was determined by the court in the lawsuit, and the expert, in cooperation with the local Gypsy Minority Self-Government, prepared and submitted his expert opinion taking into account the given methodology. On the basis of the expert opinion, the statement made by the expert who prepared it at the hearing and the testimony of the representatives of the Minority Municipalities who contributed to the preparation of the expert opinion, it can be concluded that the figures for the ethnic minority pupils set out in the expert opinion, with a deviation of no more than 1%, accurately reflect the proportion of persons who are actually of Roma ethnicity or who are considered by the Roma ethnic community to belong to it on average and with good reason. And the expert opinion submitted does not violate data protection rules with regard to anonymity.

Although Section 7 (1) of the RNEM establishes that the declaration and manifestation of belonging to a minority is an individual's exclusive and inalienable right, it also specifies that, except as provided in subsection (2), no one may be compelled to make a statement regarding their minority status. Given this regulation, in the context of litigation, it is not permissible to require affected individuals (or their legal representatives) to declare their minority status. This is partly because they cannot be compelled to make such a declaration under the legal provisions and partly because obtaining the necessary information would, under the current circumstances, involve securing statements from 1,716 affected individuals.

Pursuant to Section 163(1) of the Code of Civil Procedure (hereinafter "CCP"), the court orders the collection of evidence to establish the facts necessary for adjudication. In accordance with Section 3(5) of the CCP, any evidence may be used in the litigation due to the flexibility of the evidentiary system, and the court evaluates and assesses the probative value of such evidence under Section 206 of the CCP. Considering that uncovering the referenced ratios (evidence) is indispensable to the plaintiff's case, and that the most precise means of doing so within the framework of available resources, the facts of the case, and the applicable legal environment is through expert opinions prepared using the expert method at issue in the proceedings, the court has accepted the relevant data from the expert opinion as the basis for its judgment.

The court established the facts concerning the nature of specialized education conducted in certain classes of the Second and Third Defendant primary schools, as well as the existence of expert opinions and parental requests required for such education, based on documents and records submitted by the Defendants, testimony from witnesses V.L.A. and D.H.M., facts recorded by the appointed expert regarding some of the data, and the absence of any challenge by the plaintiff under Section 163(2) of the CCP. The court determined the principles of class organization and the criteria and justifications for assigning classes to specific school buildings primarily based on the testimony of witnesses V.L.A. and D.H.M. Regarding material conditions, the court recorded the facts established in the historical context using data from the obtained and later supplemented expert opinion, along with the testimony of the previously mentioned witnesses.

The court established that, with respect to the relevant facts determined in the case, the situation in the years preceding the 2006-2007 academic year was similar to that of the 2006-2007 academic year (with the exception of the number of students attending classes outside the main building of the Third defendant's premises). This determination was based on an expert opinion that was not contradicted by other data in the case.

The court also notes that the expert opinions submitted by the Defendants, which were prepared at their private request and attached to the case files, were considered as representing the Defendants' positions in the litigation. However, these opinions did not provide data, facts, or evidence capable of overturning or casting doubt on the relevant data from the court-appointed expert opinion. The court also rejected the Defendants' motion to appoint another expert, as the expert's relevant and pertinent data were already evaluated as the most precise form of evidence available in the given context, and the submitted expert opinion was accepted as the basis for the court's judgment. Consequently, it was deemed unnecessary to procure another expert opinion based on a methodology requiring the statements of more than 1,700 individuals' legal representatives, which is prohibited by law. The court likewise dismissed the Defendants' request to extend the deadline for submitting additional parental declarations, as the court had previously determined, based on the plaintiff's arguments, that such declarations were not significant either for the plaintiff's right to file the claim or for the relevant factual findings in the case.

Under Section 76 of the Civil Code, a violation of the requirement of equal treatment constitutes an infringement of personal rights.

Pursuant to Section 3(5) of the RNEM., any violation of the requirement of equal treatment with regard to minorities is prohibited.

According to points b) and g) of Section 4 of the Act on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "ETA"), which was promulgated on December 28, 2003, and remained in force until December 31, 2006, local governments and their bodies, as well as public educational institutions, are obligated to uphold the requirement of equal treatment in the establishment of legal relationships, within their legal relationships, and in their procedures and measures.

Under Section 7(1) of the ETA, a violation of the requirement of equal treatment includes direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation, as well as instructions to engage in such conduct.

According to Section 7(2) of the ETA, the requirement of equal treatment is not violated by conduct, measures, conditions, omissions, instructions, or practices (collectively referred to as "provisions") based on a characteristic listed in Section 8, provided there is an objectively justifiable and reasonable justification directly related to the specific legal relationship.

Point e) of Section 8 of the ETA defines direct discrimination as any provision resulting

in a person or group receiving less favourable treatment compared to another person or group in a comparable situation due to their actual or perceived affiliation with a national or ethnic minority.

Section 9 of the ETA defines indirect discrimination as a provision that, while seemingly complying with the requirement of equal treatment, disproportionately disadvantages certain individuals or groups possessing characteristics listed in Section 8 compared to other persons or groups in comparable situations, without qualifying as direct discrimination.

Under Section 10(2) of the ETA, unlawful segregation is defined as conduct that separates certain individuals or groups of individuals from others based on characteristics defined in Section 8, without a reasonable justification determined through objective consideration.

Section 27(3)(a) of the ETA provides a specific rule regarding education and training, stipulating that the unlawful segregation of a person or group within an educational institution, or within a division, class, or group established within such an institution, constitutes a violation of the requirement of equal treatment. In this context, Section 28(2)(a) of the ETA states that the requirement of equal treatment is not violated if, at the initiative and voluntary choice of parents, a public educational institution organizes minority or nationality education, or education based on religious or other ideological beliefs, that justifies the formation of separate classes or groups due to its objectives or curriculum; provided that participants in such education do not suffer any disadvantage as a result and that the education complies with state-approved, state-prescribed, or state-supported standards.

Under Section 19 of the ETA, in proceedings initiated due to a violation of the requirement of equal treatment, the injured party or the party authorized to pursue a public interest claim must prove that:

- a) the injured person or group suffered a disadvantage, and
- b) at the time of the alleged violation, the injured person or group possessed (either actually or as presumed by the violator) one of the characteristics defined in Section 8.

Once this is proven, the burden of proof shifts to the other party, who must demonstrate either that:

- a) they complied with the requirement of equal treatment, or
- b) they were not obligated to comply with the requirement of equal treatment in the context of the specific legal relationship.

With respect to the provisions of the Act on Equal Treatment and the Promotion of Equal Opportunities in force as of January 1, 2007, which are relevant to the case and differ from the provisions cited above that were in effect until December 31, 2006:

Under Sections 7(2) and 7(3), unless otherwise provided by the ETA a conduct, measure, condition, omission, instruction, or practice (collectively referred to as "provision") does not violate the requirement of equal treatment if:

- a) it restricts the fundamental rights of the disadvantaged party in an unavoidable

manner to ensure the enforcement of another fundamental right, provided that the restriction is suitable for achieving the objective and is proportionate to it; or b) in cases not covered by point a), it has a reasonable justification determined through objective consideration and is directly related to the specific legal relationship.

However, these provisions cannot be applied in cases of direct discrimination or unlawful segregation based on the characteristics defined in points b)–e) of Section 8.

Section 8(e) of the ETA, defines direct discrimination as a provision that results in a person or group receiving less favourable treatment than another person or group in a comparable situation due to their actual or perceived affiliation with a national or ethnic minority.

Section 9 of the ETA defines indirect discrimination as a provision that, while not constituting direct discrimination and seemingly complying with the requirement of equal treatment, places certain individuals or groups possessing the characteristics defined in Section 8 at a significantly higher disadvantage compared to other individuals or groups in comparable situations.

Section 10(2) of the ETA defines unlawful segregation as a provision that separates certain individuals or groups from other individuals or groups in comparable situations based on the characteristics defined in Section 8, without explicit authorization under the law.

The specific provisions of the currently applicable law concerning education and training are identical to those previously in force. Under Section 19 of the currently applicable law, which governs the rules of evidence in proceedings related to violations of the requirement of equal treatment, the injured party or the entity entitled to enforce a public interest claim must demonstrate that: a) the injured person or group suffered a disadvantage, or—if enforcing a public interest claim—faced a direct threat of such disadvantage; and b) at the time of the alleged violation, the injured person or group possessed (actually or as presumed by the violator) one of the characteristics defined in Section 8.

If these claims are substantiated, the burden of proof shifts to the opposing party, who must prove that: a) the circumstances alleged by the injured party or the party authorized to pursue a public interest claim did not exist; or b) they complied with the requirement of equal treatment or were not obligated to do so in the specific legal relationship.

Given that the plaintiff's claim did not reference the segregation existing between specific classes in the Second and Third Defendant schools as the basis for their case, and no claim was filed on that factual basis, the court, in accordance with Section 215 of the Code of Civil Procedure, refrained from assessing or adjudicating whether the Second and Third Defendants violated the requirement of equal treatment by establishing specific school classes or by maintaining ethnic disparities within the student numbers of individual classes.

In this context, the court merely noted that in the R. Street building of the Second

defendant, the formation and organization of classes identified as "...” are carried out based on expert opinions issued by an independent body, which is mandatory for the school and beyond its influence (i.e., the school does not control the class sizes or the proportion of students belonging to ethnic minorities). In contrast, for all other classes under the administration of the Second and Third Defendants, class organization depends on the decisions of the respective schools. Moreover, none of the specialized types of education conducted in these schools imposes an obligation to assign any particular student to a specific class.

Regarding ethnic minority education, the court emphasized that under the current legal framework (including the Act on the Rights of National and Ethnic Minorities, the Public Education Act, as well as Government Decree 243/2003 and MKM Decree 32/1997), organizing minority education is mandatory under certain conditions. However, there is no legal obligation or prescription for students participating in minority education to be placed in separate classes from other students. Such separation may lawfully occur only if explicitly requested and initiated by the affected parents (voluntary segregation) or if all the conditions set out in Section 28(2)(a) of the ETA are satisfied.

As previously noted, the court established, based on the expert opinion obtained, that the number and proportion of Roma students, whether actual or perceived, differ by at most 1%, as evidenced in the case. However, within the school units located outside the main buildings of the Second and Third Defendant elementary schools, the proportion of students, whether actual or perceived, belonging to the ethnic minority in question is strikingly high and shows a glaring discrepancy compared to their proportion in the student body of the schools' main buildings. This discrepancy substantiates the finding of segregation. Such segregation is linked to a characteristic protected under the ETA (ethnic affiliation) and, in alignment with the plaintiff's position, constitutes a disadvantage in itself.

Concerning the Defendants' defence, under the provisions in effect until December 31, 2006, the general defence outlined in Section 7(2) of the ETA, the exemption provided under Section 10(2) regarding unlawful segregation, and the specific defence applicable to education and training detailed in Section 28(2)(a) of the ETA, may all be invoked.

However, given that the plaintiff's claim is based on segregation occurring between the different school buildings, the evidentiary scope extends to determining whether the placement of a disproportionately high number of Roma students in school units outside the main buildings is justified by a reasonable cause, directly related to the legal relationship in question and independent of the protected characteristic, as assessed through objective consideration. Alternatively, it must be established whether such segregation resulted from minority education organized at the initiative and voluntary choice of the parents, with the objective or curriculum justifying such segregation, and whether the affected students suffered no disadvantage as a result. The Defendants, however, failed to prove these circumstances in the proceedings.

In the context of equal treatment, including unlawful segregation, not only active conduct but also passive conduct that maintains an already established situation can constitute a violation. The finding of a violation does not depend on culpability and does not require intentional or conscious conduct or passivity. Addressing unequal

treatment tied to ethnic origin, manifesting in any disadvantage, or eliminating an already existing unequal situation is a fundamental legal objective, which necessitates a strict interpretation of the rules governing exculpation.

Regarding equal treatment, the allocation of students to specific school buildings and the associated physical conditions (specialized classrooms, opportunities for smaller group divisions, classroom sizes) cannot be considered a reasonable cause based on objective consideration that would exempt the Defendants from liability for violating equal treatment and, consequently, for unlawful segregation. Similarly, the fact that a particular situation has existed for decades due to tradition does not constitute a reasonable cause for exemption. Nor can any economic considerations or financial constraints needed to implement changes be included as reasonable causes for exemption. Furthermore, ethnic education (as an exculpatory ground under Section 28(2) of the ETA) does not result in exemption, as the facts and data revealed, along with the current legal framework, do not justify the creation of separate classes, nor does the placement of students in a different building align with parental initiatives or the goals and curriculum of the given type of education. Considering that the reasons provided by the Defendants for the placement of specific classes and students in particular school buildings align with the aforementioned points, the court determined that no exculpatory circumstances exist.

Under the legislation effective from January 1, 2007, regarding segregation occurring during this subsequent period, the burden of proof was on the Defendants to establish that the segregation was expressly permitted by law or alternatively resulted from voluntary segregation as defined in Section 28(2) of the ETA. Since there is no statutory authorization and, as described above, minority education under the circumstances of the case does not result in exemption, the court determined that the Defendants failed to demonstrate exculpatory circumstances for the relevant period.

Regarding the material conditions of the various school buildings, the court recorded the significant differences in accordance with the historical facts established in the case. These differences demonstrate disadvantages for students studying in buildings outside the main premises, particularly in terms of the unavailability of certain resources and difficulties in accessing others. Given that such disadvantages are predominantly suffered by Roma students studying outside the main premises, these disadvantages are inherently linked to their unlawfully segregated status and represent a consequential effect of that segregation. Since, as noted above, the Defendants' exculpation arguments regarding the segregation were unsuccessful, the violation can also be established in this regard.

Considering that the legal protection sought by the plaintiff foundation on behalf of the represented community is provided under the domestic legal framework for the factual circumstances of the case, the court found the provisions of Council Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin to be inapplicable. In refraining from direct application, the court noted that among the sources of European Union law, regulations are universally binding and directly applicable in Member States (pursuant to Article 249 of the Treaty), whereas directives are not recognized for horizontal direct

effect. However, vertical direct effect is established and recognized by the case law of the Court of Justice of the European Union (e.g., Case 152/84 Marshall I, and Case C-188/89 Foster v. British Gas). Accordingly, individuals may invoke the provisions of directives directly against the state or state-related authorities if a Member State has failed to fulfil its obligations under the directive—i.e., if the Member State has not transposed the directive into its national law or has done so improperly, and if the directive's relevant provisions are unconditional and sufficiently precise. However, judicial decisions do not permit the application of a directive in place of national legal provisions where the Member State's internal legal framework provides adequate protection for the factual situation and claims asserted in the case.

According to Article 12 of the Equal Treatment Act, claims for violation of the requirement of equal treatment may be enforced, among others, in lawsuits concerning personality rights.

Pursuant to Section 84(1) of the Civil Code, a person whose personality rights have been violated may assert the following civil law claims, depending on the circumstances of the case:

a) request a court declaration that the violation occurred; b) demand that the violation cease and that the violator be prohibited from further violations; c) demand that the violator provide satisfaction through a statement or other appropriate means, and if necessary, ensure that the satisfaction is publicized appropriately at the violator's expense; d) demand the elimination of the harmful situation.

The above sanctions are objective in nature, meaning they are independent of whether the violation can be attributed to the violator's fault.

In light of the foregoing, the court rendered its decision in accordance with the cited legal provisions as outlined in the operative part, while rejecting the part of the plaintiff's claim that sought to compel the Second and Third Defendants to implement a desegregation plan and to require the First Defendant to tolerate its implementation. The rationale for this rejection is that the elimination of the current segregation—and the associated material disadvantages and discriminatory conditions—can theoretically and practically be achieved in various ways (e.g., in the case of the Third defendant, education outside the main building is likely to end by the conclusion of the current school year, based on case data). Consequently, it is unnecessary to restrict the elimination of the unlawful situation to a specific method under Section 84(1)(d) of the Civil Code. In light of this, the court declined the plaintiff's motion for expert evidence aimed at developing a desegregation plan.

The court set the deadlines for compliance with the obligation to provide satisfaction under Section 217(1) of the Civil Code and for compliance with the obligation to eliminate the unlawful situation under Section 217(2) of the Civil Code. In determining the latter, the court considered the nature of the obligation, particularly that implementing the necessary measures during the current school year could result in various disadvantages but that the unlawful situation cannot be maintained over an extended period.

Pursuant to Section 78(1) of the Code of Civil Procedure, the court ordered the Defendants to reimburse the plaintiff for litigation costs incurred during the case. These costs include the expert fee advanced by the plaintiff in the amount of HUF 240,000, the witness fee of HUF 540, and the attorney's fee of HUF 150,000 determined in accordance with Section 2(1)(a) of Ministry of Justice Decree 32/2003 (VIII. 22.). The deadline for payment of these litigation costs is based on Section 217(1) of the Civil Code.

The procedural fee not paid during the litigation will be borne by the state pursuant to Section 14 of Ministry of Justice Decree 6/1986 (VI. 26.), given that all parties to the case are exempt from paying procedural fees.

Debrecen, 2 May 2007

...
Judge