

Regional Court of Eger
No.12.P.20.166/2014/92.

The Regional Court of Eger, in the lawsuit initiated by **Plaintiff I (Address of Plaintiff I)** represented by **Legal Representative 1 (with a registered office at Address 1)** and **Plaintiff II (Address of Plaintiff II)** represented by **Legal Representative 2 (with a registered office at Address 2)** against **Defendant I (Address of Defendant I)** represented by **Legal Representative 2 (with a registered office at Address 3)**, **Defendant II (Address of Defendant II)** represented by **Legal Representative 3 (with a registered office at Address 4)**, and **Defendant III (Address of Defendant III)** also represented by **Legal Representative 2 (with a registered office at Address 5)** for violation of **personal rights**, has rendered the following

J U D G M E N T:

The court establishes that Defendant III, as of January 27, 2004, has engaged in indirect discrimination against school-aged, Gypsy (Roma) children with normal abilities, residing in County 1, by disproportionately diagnosing them as requiring special education using culturally non-neutral diagnostic tools.

The court further establishes that Defendant I, from January 27, 2004, to December 31, 2012, through the omissions of its legal predecessor, bears responsibility as the maintainer of Defendant III and the special education institutions operating in the county. By failing to take measures mandated by the applicable legal provisions concerning oversight, Defendant I perpetuated the indirect discrimination committed by Defendant III.

The court also finds that Defendant II, as the overseer of the education sector, from January 27, 2004, similarly perpetuated the indirect discrimination committed by Defendant III by neglecting to implement legally mandated oversight measures, including targeted inspections.

The court orders Defendants I, II, and III to cease the unlawful practices.

The court dismisses the claims of Plaintiffs I and II beyond this.

An appeal may be lodged against this judgment within 15 days of its delivery. The appeal, addressed to the Debrecen Court of Appeal, must be filed in four copies with the Eger Regional Court.

The court informs the parties that legal representation is mandatory for any party

filing an appeal (or a cross-appeal) in the appellate proceedings. Any procedural actions or statements made without legal representation are invalid unless the party has requested and been granted legal aid, or the court must reject such requests for other reasons. If a party does not have legal representation during the appellate proceedings or fails to address the deficiency upon notice, the appeal will be dismissed ex officio.

The court also informs the parties that the appellate court may adjudicate the appeal without a hearing if:

- The parties jointly request this before the deadline for filing appeals,
- The appeal pertains only to matters such as interest payment, allocation or amount of legal costs, unpaid fees, state-advanced costs, enforceability, payment deadlines, instalment payment permissions, or objections to the reasoning of the judgment without requesting a hearing.

If the appellant or the other party requests a hearing either in the appeal or upon notice from the appellate court, the appeal will be adjudicated at a hearing.

R e a s o n i n g:

At the request of the **County Municipality of County 1**, the joint-stock company, **Company 1**, submitted its summary report titled "Strategic Program for the Development of the Roma Society in **County 1**" in December 2013. The expert working group, comprising five members, processed the relevant statistical data and conducted on-site visits.

In the chapter of the summary report examining the dimensions of the Gypsy community's disadvantages in **County 1**, the expert working group also analysed the educational levels of the Roma population and the institutional framework of education.

The report includes a finding that in four cities **within County 1—City 1, City 2, City 3, and City 4**—the proportion of Roma students in special schools is approximately 80%.

Additionally, the report notes that among the 118 municipalities in the county, 21 schools operate special classes and development classes, in which Roma children constitute approximately 98% of the student body.

The report also observed that, despite regulations stating that students could only be placed in remedial classes based on individual assessments clearly proving intellectual disability, this minimum criterion was not met in practice for years.

Regarding this observation, the report explicitly states in its summary and concept development chapter that all efforts must be made to prevent Roma students, who are clearly not intellectually disabled, from being redirected to alternative curriculum general schools. Instead, it advocates for supporting these children's integration through specialized remedial and developmental programs.

After January 27, 2004, the pedagogical services in **County 1** were provided by **Pedagogical and Professional Services 1**, maintained by the **County Municipality of County 1** until December 31, 2012.

From January 1, 2013, **Defendant I** assumed the maintenance responsibilities for the pedagogical services institutions in **County 1**.

Currently, the expert committee activities in **County 1** are carried out by **Defendant III**, the legal successor of **Pedagogical and Professional Services 1**.

The former maintainer, the **County Municipality of County 1**, adopted the plan for public education task fulfilment, institutional network operation, and development in **County 1** for the period 2008–2013 through its resolution No. 95/2010 (VI.25) during April 2008.

This document states that in **County No. 1**, the education of children with special educational needs is provided in three forms: in independent special education establishments, in special education groups organised in normal schools and in integrated education.

At the time of drafting the plan for public education task fulfilment, institutional network operation, and development in **County 1**, nine independent special education institutions were operating in the county, six of which were maintained by the **County Municipality of County 1**.

The independent special education institutions were the following:

- Vocational School at Address 1,
- Vocational School at Address 2,
- Vocational School at Address 3,
- Institution at Address 4,

- Vocational School at Address 5, and
- Vocational School at Address 6.

Between March 31, 2007, and November 30, 2007, the **Pedagogical and Professional Services 1** initiated an official procedure to re-examine children and students in the county who had previously been identified as having special educational needs due to psychological developmental disorders.

On January 11, 2008, the head of **Pedagogical and Professional Services 1** summarized the county's indicators related to the legally mandated re-evaluation in a table.

As a result of this re-evaluation, the special educational needs designation was removed for 61% of the children and students examined.

Prior to this re-evaluation, in March, April, and May of 2004, 62 children in **County 1** were re-evaluated as part of the *Last Desk* program.

The plan for public education task fulfilment, institutional network operation, and development for **County 1**, approved in April 2008, also found that the number of members in the **Expert and Rehabilitation Committee in County 1** decreased by four in 2007 due to layoffs, significantly hindering their work.

The same plan adopted by the **County Municipality of County 1** also noted that even before the layoffs, the personnel conditions of the **Expert and Rehabilitation Committee 1** were inadequate.

Subsequently, in 2009, a review program supported by equal opportunity experts in special services was conducted. The objectives of this program were to eliminate unwarranted classification as disabled, reintegrate students with multiple disadvantages, and identify necessary changes to enhance the objectivity, fairness, and legality of diagnostic procedures.

As part of this program, a total of 914 students in grades 1–3, classified as mildly intellectually disabled and having multiple disadvantages, were re-evaluated with the participation of equal opportunity experts in special services.

The educational sector's governing body, **the Ministry at Address 1**, was supported by its background institution, a **nonprofit economic company 1 located at Address 1**.

In 2010, this company published a working paper entitled "Factors that perpetuate the risk of undue disability, report on a programme", which was prepared by the

working group of the company's equal opportunities directorate for the reduction of undue disability in the framework of an EU project.

The report states in its introductory part that the problem of unjustified disability is still present in today's education system and that the risk of unjustified disability is mainly compensated by the shortcomings of the diagnostic process.

The Wechsler Intelligence Scale for Children (WISC) intelligence test, created in 1949, was revised for the first time in 1974, for the second time in 1991 and for the third time in 2003, and this latest revision is called WISC-IV. This intelligence test measures the results of four indices: verbal comprehension, perceptual intelligence, memory and processing speed.

The standardisation of the WISC-IV intelligence test in Hungary was carried out with the involvement of the **2nd economic company**, the test was administered from May 2006 to July 2007, and the intelligence test data were based on a nationally representative sample of the children concerned.

In 2008, all expert and rehabilitation committees in the country received the now standardised WISC-IV intelligence test free of charge.

The Pedagogical and Professional Services 1 received 15 copies of the WISC-IV intelligence test.

During the Hungarian standardization of this test, 8.6% of the sampled children were of Roma origin.

The WISC-IV intelligence test is applicable for children over six years old. However, during the personal rights lawsuit, the Wechsler Preschool and Primary Scale of Intelligence (WPPSI-IV), which can be used for children aged 2 years 6 months to 7 years 7 months, was also standardized in Hungary in 2015 as part of the EU-funded TÁMOP 3.4.2.B project.

Defendant III also received one copy of this latter intelligence test.

The report prepared by the **nonprofit economic company 1 at Address 1 in 2010** identified a significant issue: contrary to professional and legal standards, a physician was absent in a notably high proportion of expert examinations. Specifically, in half of the 914 examinations conducted, there was no physician on the evaluation team. In 11 counties, physicians participated in only half of the child assessments. The worst ratio was in County 1, where only 2% of the examined children were assessed with the participation of a physician.

However, the report also noted that in two counties, the examinations of the affected students adhered to legal requirements, with three-member teams consisting of a physician, psychologist, and special education teacher conducting the assessments.

The report compiled by the background institution of Defendant II also included the unresolved question of why, even when the committees had appropriate diagnostic tools at their disposal, they did not use them regularly, or at least for disadvantaged and multiply disadvantaged children. Regarding County 1, the report concluded through a questionnaire survey that only 3% of children were tested using the WISC-IV intelligence test or a culture-independent method.

According to the report, in Budapest, as well as in **Counties 2, 3, and 4**, no students' classifications changed as a result of re-evaluations. In most counties, mobility applied to only one or two students. However, a high number of classification changes occurred in **Counties 5, 6, 7, 8, and County 1**. In County 1, this affected seven children, accounting for 17% of the re-evaluated children.

The report also included recommendations, particularly concerning the oversight of expert rehabilitation committees. It proposed that the Education Office annually verify whether the committees meet the material and personnel requirements mandated by law, either through on-site inspections or document analysis. It also suggested that spot checks be conducted to ensure adherence to professional diagnostic protocols during child evaluations.

This public report was prepared by the background institution of Defendant II and was made available to all county municipalities maintaining expert and rehabilitation committees, including Defendant I.

In the personal rights lawsuit, the plaintiffs filed their statement of claim on September 21, 2010, designating the **County 1 Local Government** as Defendant I, **the Ministry 2** as Defendant II, **Minister 1** as Defendant III, and the **Pedagogical Services and Professional Provider** as Defendant IV.

During the first-instance proceedings, the plaintiffs withdrew their claim against **Minister 1**, the minister responsible for the Ministry of Education, as a private individual. Consequently, the court dismissed the case with regard to **Minister 1** as Defendant III.

During the same proceedings, the court established statutory succession for the legal entities of Defendant I, Defendant II, and Defendant III based on legal provisions. Accordingly, the court issued substantive decisions in the personal

rights lawsuit against Defendant I, Defendant II, and Defendant III (**resolutions numbered 13, 14, and 15**).

After the statement of claim was filed, the European Court of Human Rights delivered its judgment on January 29, 2013, in the case of *Horváth and Kiss v. Hungary*.

István Horváth and András Kiss had filed a statement of claim on November 13, 2006, at the County Court of **County 5**, alleging that the **County 5** Expert and Rehabilitation Committee had discriminated against them and based on their ethnic Roma origin, classified them as mildly intellectually disabled.

The County Court of **County 5** issued its judgment in the related personal rights lawsuit on May 27, 2009, while the case before the European Court of Human Rights was still ongoing.

In the personal rights lawsuit, Intervenor I and **Intervenor II** both filed motions to intervene in support of the plaintiffs' claims. However, the court rejected these motions from the private and legal entity intervenors through non-appealable resolutions numbered 47 and 48.

Intervenor I and **Intervenor II** submitted constitutional complaints requesting the Constitutional Court to annul the two unconstitutional resolutions. They also sought to have the Constitutional Court annul Section 56(3) of the Code of Civil Procedure as unconstitutional and initiate a preliminary ruling procedure before the European Court of Justice under Section 155/A (2) of the Code of Civil Procedure to interpret Article 7(1) of Council Directive 2000/43/EC. The

Constitutional Court proceedings are still ongoing.

Defendant II submitted a motion to suspend the proceedings, but the court rejected this request through resolution number 76.

The court established the facts of the case based on the submissions of the parties, testimony from six witnesses (**first witness, second witness, third witness, forth witness, fifth witness, sixth witness**), and the available documentary evidence.

The plaintiffs, in their secondary claims, requested that the court establish that Defendant III has, since January 27, 2004, indirectly discriminated against Roma children living in the county, in violation of Section 9 of the Equal Treatment Act, by diagnosing them as having special educational needs at an exceptionally high rate, using assessment tools calibrated for majority children and disregarding the ethnic and social characteristics of Roma children.

In their claim, the plaintiffs requested the court to establish that Defendant I, as the maintainer of Defendant III and the special education institutions in the county, has, since January 27, 2004 (and up to December 31, 2012, through the liability of its legal predecessor for unlawful activities), maintained the direct and indirect ethnic discrimination described in the claim. This was done by failing to conduct spot checks on the assessment methods and evaluations used for diagnosing the learning abilities of children presumed to be Roma based on their perceived or actual origin and by continuing the operation of the county's special education system unchanged despite decreasing student numbers and professional integration efforts necessitated by professional advancements.

The plaintiffs also requested that the court establish that Defendant II, as the overseer of the education sector, has, since January 27, 2004, perpetuated the direct and indirect discrimination described in the claim by failing to conduct targeted oversight of the evaluation methods and processes used in assessing the learning abilities of Roma children based on their perceived or actual origin.

The plaintiffs further requested that the court order the defendants to cease their unlawful practices.

Additionally, the plaintiffs requested that the court compel the defendants to eliminate the discriminatory situation. Specifically, they sought an order for Defendant II to measure and analyse the impact of new mandatory diagnostic procedures on the proportion of Roma students classified as having special educational needs, and to share the results and planned measures based on these findings with the plaintiffs by December 31 of each year for five years following the final judgment.

The plaintiffs also requested the court to compel Defendant I to provide training to the professionals employed by Defendant III's expert committees on new diagnostic tools developed by Defendant II, especially those aimed at preventing the unjustified classification of Roma children as having disabilities. Furthermore, the court should order Defendant I to ensure that Defendant III is immediately provided with the workplace and diagnostic conditions necessary for conducting culture-independent assessments, following the receipt of the final judgment. This includes training on the purpose of voluntary parental data provision regarding ethnicity and methods to encourage parental responses. Additionally, Defendant I should conduct annual professional oversight of the application of culture-independent diagnostic methods and their impact on Roma children in special education programs and share the results of such oversight with the plaintiffs by December 31 of each year for five years following the final judgment.

The plaintiffs also requested that the defendants be ordered to pay the litigation costs (Preparatory Document No. 87).

Defendant I sought the dismissal of the plaintiffs' claims and an order for the plaintiffs to pay the litigation costs (**Preparatory Documents Nos. 1 and 2**).

Defendant II similarly requested the dismissal of the plaintiffs' claims and an order for the plaintiffs to pay the litigation costs (**Preparatory Documents Nos. 3, 4, and 5**).

Defendant III also requested the dismissal of the plaintiffs' claims and an order for the plaintiffs to pay the litigation costs (**Preparatory Documents Nos. 6 and 7**).

The claims of Plaintiffs I and II were partially substantiated.

I.

The new Civil Code, Act V of 2013, came into effect on March 15, 2014.

According to Section 8(1) of Act CLXXVII of 2013 (the Civil Code Implementation Act), the provisions of the new Civil Code concerning sanctions for violations of personal rights apply only to infringements that occurred after its effective date.

In the personal rights lawsuit, the plaintiffs requested that the violations be established as having occurred from January 27, 2004. However, they only sought the application of objective sanctions that are independent of culpability against the defendants.

The plaintiffs requested that, in addition to establishing the violation, the court order the defendants to cease the unlawful conduct and eliminate the discriminatory situation.

Since the provisions of Section 84(1)(a)-(d) of the old Civil Code and Section 2:51(1)(a)-(d) of the new Civil Code, which name sanctions for violations of personal rights irrespective of culpability, are essentially identical, the old Civil Code applied to the period between January 27, 2004, and March 14, 2014, while the new Civil Code applied from March 15, 2014. However, this circumstance had no substantive legal significance due to the above reasons.

According to Section 75(1) of the old Civil Code, everyone is obliged to respect personal rights, which are protected by law.

Section 76 of the Civil Code provides an illustrative list of personal rights afforded special protection, including the right to equal treatment, as of January 27, 2004.

The suppression of discrimination and the promotion of equal opportunities were also regulated by eight EU directives. The creation of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act.) served to achieve harmonization with EU law.

One of these eight directives is Council Directive 2000/43/EC, which implements the principle of equal treatment irrespective of racial or ethnic origin.

However, even before the adoption of this act, the Constitutional Court stated in its Decision 61/1992 (XI.20.) that the state, as a public authority, is obligated to ensure equal treatment for all individuals residing within its territory and cannot discriminate among them. The prohibition set forth in Section 70/A(1) of the Constitution extends to the entire legal system if the differentiation violates the right to human dignity.

Section 70/A(1) of the Constitution stated that the Republic of Hungary guarantees human and civil rights to everyone within its territory, without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Article XV(2) of Hungary's Fundamental Law stipulates that Hungary guarantees fundamental rights to everyone without discrimination, particularly on the grounds of race, colour, gender, disability, language, religion, political or other opinions, national or social origin, property, birth, or other status.

In the aforementioned decision, the Constitutional Court also declared that the state has the right and, to a certain extent, the obligation to consider the actual differences among individuals when enacting legislation.

The Constitution regulated the right to education as a secondary fundamental right, explicitly stating that the Republic of Hungary guarantees its citizens the right to education (Article 70/F(1)). Similarly, Article X of the Fundamental Law clearly states that Hungary ensures the freedom of scientific research and artistic creation and, to achieve the highest possible level of knowledge, the freedom to learn and, within the limits set by law, the freedom to teach. Moreover, Article XI of the Fundamental Law affirms that every Hungarian citizen has the right to education, which Hungary ensures under Article XI(2) by promoting and

generalizing public education, providing free and compulsory primary education, free and universally accessible secondary education, and higher education accessible to everyone based on their abilities, as well as by providing financial support for those participating in education as prescribed by law.

In the personal rights lawsuit, the plaintiffs, who were Roma students residing in **County 1** and attending primary school, alleged that the defendants violated their right to equal treatment by subjecting them to direct and indirect discrimination.

Furthermore, Article 67(1) of the Constitution stated that in the Republic of Hungary, every child has the right to protection and care from their family, the state, and society, necessary for their proper physical, mental, and moral development.

The foundation of children's proper mental development lies in state-provided free access to primary education, which is of paramount importance for their growth. This education must ensure that children acquire the essential knowledge needed for their future success.

According to the court's legal position, the state had a constitutional obligation to ensure the appropriate mental development of Roma children with normal abilities residing in **County 1**. The court examined whether, during the period covered by the lawsuit, the state provided adequate care to offer these students educational opportunities aligned with their actual abilities, while also ensuring equal treatment.

Article Q(3) of the Fundamental Law states that Hungary accepts the generally recognized rules of international law, and other sources of international law become part of the Hungarian legal system upon promulgation by law.

Pursuant to Article E(3) of the Fundamental Law, the law of the European Union may lay down a generally binding rule of conduct within the framework of paragraph 2, and therefore, in the context of the litigation, the Tribunal interpreted Community law within the framework of Article E of the Fundamental Law.

In addition, the tribunal also took into account the case law of the European Court of Human Rights in its assessment of the plaintiffs' claims, as this court found in *Horváth and Kiss v. Hungary* on 29 January 2013 that due to a systemic error, ignoring the linguistic, social and cultural background, a high proportion of children from a disadvantaged background, mostly of Roma ethnicity, were diagnosed as mentally handicapped.

In addition, the European Court of Human Rights in the case of *Kiss Alajos v. Hungary* also ruled that the otherwise sovereign state has significantly less room for manoeuvre in relation to people with intellectual disabilities, a finding made in the context of its concern about the practice of treating people with intellectual and mental disabilities as a single group.

In this context, the court also assessed the finding in the 2010 report prepared by **Non-Profit Economic Company 1**, which stated that **County 1** had the lowest proportion—only 2%—of children whose evaluations included the participation of a physician in the medical team. In the court's view, this meant that the diagnostic criteria for mild intellectual disabilities of organic origin were not available for these students. At the same time, the legal provisions in force at the time did not allow children to be classified or assigned a status without empirical medical expert evaluation.

This circumstance was legally relevant because, based on the testimony of expert witnesses, the greatest challenge arose when the expert committee examined only children with mild intellectual disabilities.

In the personal rights lawsuit evaluated by the European Court of Human Rights, the Supreme Court, in its judgment under **Decision No. 8**, stated in its reasoning that the plaintiffs, due to systemic negligence infringing their human rights, could turn to the European Court of Human Rights.

In the case of *Horváth and Kiss v. Hungary*, the European Court of Human Rights found that Hungary violated Article 2 of the First Protocol, read in conjunction with Article 14 of the Convention, and ordered Hungary to pay the applicants €4,500 jointly. The Court deemed the applications of the two Roma youths admissible, except for their claims regarding the inadequacy of the tests applied. However, concerning the inadmissible claim, the Court noted in its judgment that the applicants could have initiated proceedings against the educational authorities.

In this personal rights lawsuit, however, the plaintiffs designated the ministry overseeing the education sector as Defendant II. Consequently, the court, based on its legal position, could substantively examine whether the state fulfilled its obligations under Hungarian, EU, and international law.

While the requirement for equal treatment is fundamentally a negative obligation—requiring the obligated party to refrain from conduct that violates the equal human dignity of certain individuals or groups based on their characteristics—the European Court of Human Rights, in paragraph 116 of its

judgment in *Horváth and Kiss v. Hungary*, stated that the state has specific positive obligations to prevent the perpetuation of past discrimination and avoid discriminatory practices embedded in seemingly neutral tests.

Furthermore, as early as February 25, 1982, in the case of *Campbell and Cosans v. the United Kingdom*, the European Court of Human Rights declared that the term "respect" in Article 2 of the First Protocol implies more than acknowledgment or consideration. Additionally, in cases involving fundamentally negative measures, it suggests a certain positive obligation on the part of the state.

Based on international treaties signed and promulgated by Hungary, the court concluded that addressing whether the right to equal treatment of Roma students residing in **County 1** was violated during their primary education due to structural deficiencies required positive measures. These measures imposed a positive obligation on the Hungarian State to create appropriate conditions in compliance with its international legal obligations.

In this context, the court examined how the concepts of the right to equal treatment and positive discrimination should be considered concerning the personal rights and relationships at issue in the case.

The court, referencing Constitutional Court Decision 9/1990 (IV.25.), regarded the prohibition of discrimination against equal dignity and constitutionally defined fundamental rights as limits on positive discrimination.

In connection with the legal relationship at issue, both Plaintiff I and Plaintiff II had standing under Section 20(1)(c) of the Equal Treatment Act, thus lawfully filing a public interest claim.

The court also examined the passive standing of the defendant legal entities in the personal rights lawsuit.

The plaintiffs argued that it is the state's responsibility to prescribe culturally neutral diagnostic methods (protocols) that consider the specific needs of school-aged children of Roma ethnicity and to establish the legal framework for these methods.

Section 18(2)(c) of Act CXC of 2011 on National Public Education defines the activity of expert committees as one of the tasks of pedagogical professional service institutions.

Given that, under laws enacted during the personal rights lawsuit, Defendant I, as a state institution maintainer, oversees public education institutions, including

pedagogical services, the public interest claim concerning the misdiagnosis of Roma children in **County 1** was lawfully filed by Plaintiffs I and II against Defendant III. This is because the Hungarian State, through the legal functioning of Defendant III under the professional supervision of Defendant I as the state maintainer, is obligated to ensure that Roma children in County 1 can exercise their personal rights to equal treatment in public education.

The public interest claim was adjudicated by the court with the appropriate jurisdiction and competence. The plaintiffs requested a decision only concerning objective sanctions independent of culpability and did not assert any damages claims against the defendants. Accordingly, the court examined whether the inadequacy of the diagnostic methods used during the period at issue could be evaluated as a violation of the personal rights of Roma children in **County 1**, leading to their misdiagnosis.

In the personal rights lawsuit initiated based on the plaintiffs' public interest claim, the court applied the specific rules of evidence outlined in Sections 19(1) and (2) of the Equal Treatment Act. and informed the parties in Order No. 33 about the special evidentiary rules applicable in the case.

The Equal Treatment Act sets out specific exculpatory rules concerning employment, public education, and the provision of goods and services. Therefore, the general exculpatory rules in Section 7(2) of the Act can only be applied when the law does not prescribe stricter or more lenient exculpatory rules.

The court, considering Section 23(1) of the Equal Treatment Act, examined whether the right to equal treatment of Roma students residing in **County 1** was violated during their primary education.

Following the extensive presentation of evidence, the plaintiffs clarified and amended their claims in Preparatory Document No. 87. This preparatory document detailed which objective sanctions the plaintiffs sought to impose on the defendants prior to the conclusion of the trial.

Based on free evidence, in the personal rights lawsuit, the plaintiffs attached a duplicate of the *amicus curiae* brief prepared by the Roma Education Fund as an annex to their **Preparatory Document No. 9**. Additionally, at the hearing held on March 10, 2015, the plaintiffs presented a **sixth witness**, an American educational researcher, whom the court heard through an interpreter.

II.

The plaintiffs, in addition to filing claims against Defendant III, also filed claims for the establishment of violations against Defendants I and II, based on the alleged failure to fulfil their oversight obligations. Therefore, the court independently examined whether Defendants I, II, and III engaged in any actions or omissions that could be evaluated as violations of personal rights.

Since the potential liability of Defendant I, as the legal entity maintaining state institutions, and Defendant II, as the ministry responsible for the education sector, is secondary in nature, it presupposes that Defendant III actually committed a violation of personal rights. Consequently, the court first addressed the question of whether **Defendant III** violated the right to equal treatment of Roma children residing in **County 1**.

1. The Plaintiffs' Claims Filed Against Defendant III Aimed at Establishing the Infringement

1/a) Direct Discrimination.

In the personal rights lawsuit, the plaintiffs primarily sought the liability of Defendant III under Section 8(e) of the Equal Treatment Act, alleging that Defendant III directly discriminated against school-aged Roma children with normal abilities residing in **County 1** based on their actual or perceived membership in this ethnic group, subjecting them to direct adverse treatment on ethnic grounds.

The Act CXC of 2011 on National Public Education came into effect on September 1, 2012. Section 1(2) of this act declares that equal treatment is one of the objectives governing the entirety of public education.

However, the plaintiffs filed their statement of claim on September 21, 2010, and sought to establish violations of personal rights by the defendants beginning on January 27, 2004.

For most of the period relevant to the lawsuit, the Act LXXIX of 1993 on Public Education was in effect. Section 4/A(1) of this act stated that those involved in the organization, management, operation, and implementation of public education were obligated to uphold the requirement of equal treatment in their decisions and actions related to children and students.

Additionally, Section 4/A(5) of the Act LXXIX of 1993 on Public Education stipulated that the provisions of the Equal Treatment Act must also be applied when implementing this section.

During the period in question, the expert committee activities in **County 1** were carried out by the **Pedagogical and Professional Services 1** and its legal successor, **Defendant III**.

Under the relevant legal provisions, the pedagogical service institutions in **County 1** were obligated to comply with the requirement of equal treatment when ensuring the functioning of expert committee activities.

The plaintiffs primarily based their claims on direct adverse discrimination and requested the court to establish that Defendant III committed violations of personal rights in this regard.

The reasoning of the judgment in the *Horváth and Kiss v. Hungary* case before the European Court of Human Rights contains a detailed summary of the arguments presented by both the applicants and the Hungarian government.

According to paragraph 96 of the reasoning, the Hungarian government argued that the disproportionately high number of Roma children in special education could be explained by their disproportionately high representation in a social group deprived of the beneficial effects of modernization. However, these factors fall outside the scope of the right to education or any of the rights guaranteed by the Convention, as they pertain to areas of social and developmental disparities.

At the same time, Section 10(3)(a) of the Public Education Act, effective from September 1, 2003, explicitly stated that children and students have the right to education and upbringing that corresponds to their abilities, interests, and aptitudes.

Concerning the primary claim of direct adverse discrimination, the court carefully examined which individuals constituted the comparable groups and based on a joint evaluation of the two groups in comparable situations, determined whether a distinction violating the requirement of equal treatment could be established between the two groups. Specifically, it assessed whether a causal link existed between the protected characteristic of the Roma ethnicity of individuals in one group and the disadvantage alleged in the personal rights lawsuit.

In the personal rights lawsuit, the court had to determine whether Defendant III, through its actions or omissions within its jurisdiction, subjected Gypsy (Roma) children with normal abilities residing in **County 1** to adverse discrimination

during their enrolment in public education. Specifically, it examined whether these children, despite their expressly guaranteed rights under the Public Education Act, were denied access to education that matched their actual abilities. Such denial would constitute a violation of the requirement of equal treatment, resulting in an infringement of their personal rights.

The summary of the working paper *"Factors Conserving the Risk of Unjustified Disability Classification: A Report on a Program"* identified Roma students, along with multiply disadvantaged students and those placed in child protection services, as being disproportionately represented among those classified as disabled.

The deficiencies in the diagnostic methods commonly used to assess students' learning abilities during the period in question were considered a systemic issue that led to misdiagnosis. Addressing and rectifying this systemic issue involved obligations under international treaties signed by Hungary, including those concerning Roma students.

The document titled *"National Social Inclusion Strategy (Deep Poverty, Child Poverty, Roma)"*, issued in December 2011 by the State Secretariat for Social Inclusion under the Ministry of Public Administration and Justice, and evaluated in the case of *Horváth and Kiss v. Hungary* by the European Court of Human Rights, referred back to the 2007 national strategy *"Making Things Better for Children."* This strategy emphasized that, in an equitable educational system, every child—regardless of whether they come from a poor, uneducated family, live in segregated housing, are disabled, are migrants, or are exceptionally talented—should receive education corresponding to their abilities and talents throughout their lives, free from prejudice, stereotypes, biased expectations, or adverse discrimination.

For objective sanctions aimed at protecting personal rights, it is not necessary for the conduct leading to these consequences to be culpable. Regarding the claim of direct adverse discrimination, the legal element of unfavourable treatment compared to a comparable group must be established. The court found that Defendant III, based on Section 8(e) of the Equal Treatment Act, did not subject Roma children attending special schools or classes in **County 1** to direct adverse discrimination on ethnic grounds. Consequently, the court dismissed the plaintiffs' primary claim against Defendant III as unfounded.

1/b) Indirect Discrimination.

According to Section 9 of the Equal Treatment Act, a provision that does not constitute direct adverse discrimination but seemingly complies with the requirement of equal treatment can still qualify as indirect adverse discrimination. This occurs when such a provision disadvantages certain individuals or groups defined under Section 8 of the Act at a significantly higher rate compared to other comparable individuals or groups, thereby violating the requirement of equal treatment. Even though such behaviour is based on neutral criteria, it disproportionately impacts a protected group compared to a comparable group.

Under Section 20(1)(c) of the Equal Treatment Act, two social organizations and two foundations lawfully initiated the personal rights lawsuit, as the violation or its imminent risk affected an indeterminate group of individuals. Thus, the court could substantively examine whether the plaintiffs met their burden of proof based on shared evidence.

Based on the evidence presented, the court concluded that the plaintiffs fulfilled their burden of proof by submitting 16 documentary pieces of evidence annexed to their statement of claim. Consequently, the burden of exculpatory evidence concerning indirect adverse discrimination rested on Defendant III.

The court found that the plaintiffs successfully demonstrated that Roma students with normal abilities residing in County 1 were disadvantaged and that the affected group members possessed a protected characteristic under Section 8 of the Equal Treatment Act at the time of the violation, namely their Roma ethnicity.

Because of the successful prima facie evidence by the plaintiffs, Defendant III bore the burden under Section 19(2) of the Equal Treatment Act. to prove that the plaintiffs' allegations were unfounded, that it complied with the requirement of equal treatment, or that it was not obligated to comply in the specific legal relationship.

Chapter III of the Equal Treatment Act contains specific legal provisions applicable to education and training.

Section 7(2) of the Equal Treatment Act, effective January 1, 2007, stipulates that no behaviour, action, omission, condition, or practice violates the requirement of equal treatment if:

a. it unavoidably restricts a fundamental right of the disadvantaged party to protect another fundamental right, provided the restriction is appropriate and proportionate to achieve the goal;

or

b. in cases not covered by point a., it has a reasonable justification directly related to the given legal relationship, based on objective assessment.

Section 7(3) of the Equal Treatment Act, also effective January 1, 2007, excludes the application of subsection (2) to direct adverse discrimination or unlawful segregation based on characteristics listed in Section 8(b)-(e).

The court determined that the plaintiffs' claims of discriminatory behaviour by Defendant III were valid. Defendant III's conduct failed to meet the necessity and proportionality test in connection with the fundamental rights of Roma students with normal abilities residing in **County 1**. Therefore, Defendant III's attempt to justify its actions under Section 7(2)(a) of the Equal Treatment Act was unsuccessful.

The Hungarian Parliament promulgated the Convention on the Rights of the Child, adopted in New York on November 20, 1989, with Act LXIV of 1991.

Article 2 of the Convention states that state parties shall respect and ensure the rights set forth in the Convention for all children within their jurisdiction without discrimination, particularly regarding the child's or their parent's or legal guardian's race, colour, gender, language, religion, political or other opinions, national, ethnic, or social origin, property, disability, birth, or other status.

Article 4 of the same convention stipulates that state parties must adopt all legislative, administrative, and other measures necessary to implement the rights recognized in the convention.

Thus, Hungary had an international legal obligation to ensure the appropriate intellectual development of Roma children residing in **County 1**, providing them access to primary education that matched their actual abilities while ensuring equal treatment.

At the same time, Article 14 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on November 4, 1950, does not prohibit member states, including Hungary, from treating certain groups differently to correct existing inequalities.

According to the jurisprudence of the European Court of Human Rights (ECHR), discrimination involves differential treatment of individuals in relevantly similar situations without objective and reasonable justification.

The court found that Hungary's international legal obligations did not preclude the application of "positive discrimination" to Roma students in Hungary, including those in **County 1**, to attempt to rectify actual inequalities through differential treatment.

The Constitutional Court of Hungary has also confirmed that the state has the right—and, in some cases, the obligation—to consider actual differences between individuals during the legislative process. This was affirmed in Constitutional Court Decision 61/1992 (XI.20.).

However, it is undisputed that the application of "positive discrimination" must be examined to determine whether it would violate the prohibition against discrimination on equal dignity grounds or any constitutionally protected fundamental rights.

The court concluded that, in the context of the legal relationship at issue, the application of "positive discrimination" was not precluded by the above two limitations. There was no prohibition under international or domestic law that would have prevented the Hungarian state from prescribing diagnostic methods that considered the unique linguistic, social, and cultural backgrounds of Roma children. The state could also have established a comprehensive legal framework to ensure that Roma children receive education corresponding to their actual abilities during their primary schooling.

In *D.H. and Others v. the Czech Republic*, the ECHR found that differential treatment could manifest as a disproportionately adverse impact of a general policy or measure, even if neutrally worded, which results in the unfavourable treatment of a group. Such a situation can constitute indirect discrimination, even in the absence of an intention to discriminate.

The court opined that there was no intent to discriminate against Roma students in this case. However, despite the seemingly neutral legal regulations, the diagnostic methods applied placed Roma students at a significantly greater disadvantage compared to comparable groups. For this reason, the court found it justified to establish indirect discrimination for the following reasons.

In the personal rights lawsuit, the court concluded that the plaintiffs fulfilled their burden of proof through the documentary evidence they submitted during the evidentiary process.

The court found that the following three pieces of documentary evidence submitted by the plaintiffs clearly demonstrated that Roma students residing in **County 1** were disadvantaged due to their ethnicity. The plaintiffs showed that the diagnostic tools used during the period in question were not culture-neutral and failed to ensure that Roma students with normal abilities could receive education appropriate to their actual abilities during their primary schooling. The expert committees disproportionately diagnosed these students as having special educational needs.

Based on the introduction of the *Strategic Program for the Development of the Roma Society in County 1*, prepared in December 2003 by **Company 1**, it can be established that the former Defendant I in the personal rights lawsuit, the County Municipality of **County 1**, commissioned the program as a planning document.

The expert team of five members included an educational expert. In addition to conducting site visits, the experts also analysed statistical data. Thus, the court concluded that the summary report was clearly suitable for documenting the legal framework and methods by which the former institutional maintainer provided primary education for Roma students prior to the period at issue.

The summary report found that the proportion of Roma people in **County 1** exceeded the national average. It also presented, in a tabular format, the estimated proportion of Roma residents provided by municipalities in the towns and villages of the county.

The report further determined that in four towns of **County 1**, approximately 80% of students in special schools were Roma. Additionally, of the 118 settlements in **County 1**, 21 had special or remedial classes, where the proportion of Roma children was 98%.

Due to these proportions, the report unequivocally concluded that every effort must be made to prevent Roma students, who are clearly not intellectually disabled, from being directed to alternative-curriculum primary schools. Instead, these students should be supported in their integration through special remedial and educational programs.

According to the court, the findings of the summary report, prepared by experts under the commission of Defendant I's predecessor, clearly demonstrated that before the period at issue, Roma students in **County 1** attended special schools or special and remedial classes within regular schools at rates far exceeding their proportion compared to comparable groups.

The court also considered the provisions of the *Educational Task Performance, Institutional Network Operation, and Development Plan for County 1*, adopted by the County Municipality of **County 1** through Decision 95/2010 (VI.25.), covering the period from 2008 to 2013.

This documentary evidence was also assessed by the court in relation to the conditions under which the expert committee operated in **County 1** during the period at issue, including the material and personnel resources available.

Finally, the court gave particular consideration to the working document titled *Factors Conserving the Risk of Unjustified Disability Classification: A Report on a Program*, published in 2010 by the background institution of Defendant II, the **non-profit company I**. The findings of this document likely influenced the two plaintiffs, both social organizations, to file a public interest claim specifically related to **County 1**.

The introduction of the working document states that the work of the seven-member professional working group and the review program could be considered a continuation of the 2004 program, which garnered significant attention for its focus on reassessing students unjustifiably classified as disabled and might even be referred to as the *Last Desk 2* program.

According to the court, the summary report clearly demonstrated that the state had made continuous efforts through various programs to establish a structure and legal framework for primary education that would eliminate the unjustified classification of students with normal abilities as disabled.

The published working document, which reflected the program's status as of July 17, 2009, was also suitable for the period following January 27, 2004. Its findings regarding **County 1** allowed the plaintiffs to fulfil their burden of proof.

The document determined that in **County 1**, only 3% of children were tested using the WISC-IV intelligence test, a culture-independent method. Furthermore, only 2% of examined children in **County 1** had evaluations that included the participation of a physician, making it the county with the worst ratio in this regard.

Having concluded that the plaintiffs met their burden of proof, the court examined whether Defendant III's exculpatory evidence was successful.

Based on the evidence presented, the court determined that Defendant III's exculpatory evidence was unsuccessful. As a result, the court upheld the plaintiffs' secondary claim against Defendant III and established that, from January 27, 2004, the legal entity of Defendant III subjected school-aged Roma children with normal abilities in County 1 to indirect adverse discrimination. This was due to the use of non-culture-neutral diagnostic tools that disproportionately disadvantaged these children by diagnosing them as having special educational needs at a significantly higher rate, for the following reasons:

It is an undisputed fact that a sovereign state must consider various interests when creating the legislative environment in which primary education operates. Parents' expectations of the state concerning primary education vary significantly: parents of children with intellectual disabilities, parents of children with learning difficulties, and parents of gifted children all have different expectations.

However, these children live in diverse ethnic, social, and cultural environments.

Despite this, the state must strive to balance competing interests and establish an organizational structure and legal framework that ensures every child and student receives an education suited to their actual abilities throughout their studies.

Based on the testimonies of expert witnesses during the evidentiary procedure, it was unequivocally established that the most significant professional challenge arises when expert committee specialists assess a student whose IQ borders between normal intelligence and intellectual disability.

In Hungary, this threshold for IQ is 70.

Following the evidentiary procedure, the court concluded that the circumstances alleged by the two foundations authorized to pursue public interest claims were substantiated. Under Section 19(2)(b) of the Equal Treatment Act, the burden of proof shifted to Defendant III to demonstrate that it upheld the requirement of equal treatment. As a pedagogical service institution, Defendant III was obligated to adhere to this requirement within the legal relationship at issue.

In preparatory **Document No. 10**, Defendant III claimed that the discontinuation of SNI (Special Educational Needs) statuses in **County 1** was the result of legislative and professional changes, not misdiagnoses.

Defendant III's legal representative proposed hearing seven school principals as witnesses. However, the attorneys representing Defendant III did not maintain this evidentiary motion. Furthermore, during the first-instance proceedings, Defendant III, despite its burden of proof, did not request expert evidence.

In the *Horváth and Kiss v. Hungary* case before the European Court of Human Rights, the government argued that the disproportionately high number of Roma children in special education could be explained by their overrepresentation in a social group deprived of the beneficial effects of modernization. The government also argued that the applicants were not treated differently from non-Roma children who faced similar social and cultural disadvantages.

In the current personal rights lawsuit, Defendant III could have used various evidentiary tools under the principle of free evidence to demonstrate that it upheld the requirement of equal treatment contrary to the plaintiffs' claims.

However, Defendant III, despite its burden of proof in the shared evidentiary framework of the lawsuit, did not submit additional evidentiary motions. The court also determined, based on the documentary evidence submitted by Defendant III, that the defendant failed to meet its burden of proof. As a result, the consequences of this failure were borne by Defendant III.

Due to the specific evidentiary rules applicable in the personal rights lawsuit, the court assessed the evidence available to it individually and collectively. It concluded that Defendant III's exculpatory evidence was unsuccessful.

In light of the burden of proof, Defendant III was also obligated to present statistical data, potentially on an annual basis, reflecting the work of the expert committee in **County 1** for the entire period at issue. These data could have formed the basis for a later expert evaluation.

At the hearing held on April 13, 2011, the plaintiffs requested the appointment of the **special education expert I.** in connection with their primary claim of direct adverse discrimination. However, at a later stage of the proceedings, they did not maintain this evidentiary motion, and Defendant III also did not request the ordering of expert evidence.

During the hearing held on May 4, 2011, the plaintiffs clarified in Preparatory **Document No. 11** the specific aspects and methodology for conducting expert evidence.

At the same hearing, they submitted Preparatory **Document No. 12**, which the court found contained numerical data that could be evaluated in relation to whether the plaintiffs fulfilled their burden of proof.

The court determined that merely referencing the qualifications and certifications of Defendant III's employees did not suffice to meet the burden of proof in demonstrating that the requirement of equal treatment had been upheld.

Regarding the burden of exculpatory evidence, Defendant III made no substantive arguments against the negative findings concerning **County 1** in the report titled *Factors Conserving the Risk of Unjustified Disability Classification: A Report on a Program*, prepared by the non-profit organization associated with Defendant II.

The court found that both shortcomings identified in the report concerning **County 1** were legally relevant in establishing that Defendant III engaged in indirect adverse discrimination, violating the principle of equal treatment.

The court concluded that Defendant III's practice during the period in question constituted indirect adverse discrimination. Specifically, it disproportionately diagnosed school-aged Roma children with normal abilities in **County 1** as having

special educational needs by using non-culture-neutral diagnostic tools.

The report found, based on a survey, that only 3% of the children subjected to review in **County 1** were tested using the WISC-IV intelligence test, a culture-independent method.

Evidence established that although **County 1**'s expert committee received the standardized WISC-IV intelligence test as early as 2008, it nevertheless employed other diagnostic methods for Roma students. These methods were not culture-independent and did not offer Roma students access to primary education that matched their actual abilities.

Although Defendant III did not dispute this during the personal rights lawsuit, it is an undisputed fact that the legal provisions governing the personal rights of Roma students in **County 1** underwent several significant changes during the period at issue.

It is also an undisputed fact that throughout the educational relationship of Roma children living in County 1, the prohibition of discrimination remained a continuously applicable requirement for Defendant III.

Section 4/A (4) of the Public Education Act, effective from January 27, 2004, stated that violations of the principle of equal treatment should be addressed through the procedures regulated by the Act. However, the conduct of such procedures, regardless of their outcome, did not preclude the possibility of asserting personal rights claims in court.

According to Section 12 of the Equal Treatment Act, if a violation of personal rights occurred through a breach of the obligations set forth in the Public Education Act (Act LXXIX of 1993), the provisions of the Equal Treatment and Promotion of Equal Opportunities Act (Act CXXV of 2003) had to be applied.

Although the legal provisions defining Defendant III's obligations changed frequently during the period at issue, this fact alone did not suffice to make Defendant III's exculpatory evidence successful.

Slightly more than a year before the start of the period at issue, from September 1, 2003, as a result of Act LXI of 2003, the term *student with disabilities* in the Public Education Act was replaced by the term *student with special educational needs*.

However, until December 31, 2006, under Section 29/b of the Public Education Act, students with special educational needs also included those who, according to the expert and rehabilitation committee's opinion, were severely and

permanently impeded in the learning or educational process due to psychological developmental disorders.

Subsequently, Act CXXI of 2006, effective from January 1, 2007, repealed Section 29/b of the Public Education Act and expanded the definition of children and students with learning and behavioural difficulties. It included those who were severely and permanently impeded in the educational and learning process due to psychological developmental disorders, but these individuals were excluded from the category of children and students with special educational needs.

Act LXXVII of 2007 then redefined the concept of special educational needs, but due to one of its provisions, Section 126 of the Public Education Act never came into force.

Act LXXVII of 2007 also amended Section 121(1)(29/b) of the Public Education Act, effective September 1, 2007, limiting the category of children and students with special educational needs to those with severe and permanent disorders in cognitive functions or behavioural development that were not attributable to organic causes.

Instead of Act CXXI of 2006, Section 21 of Act LXXVII of 2007 introduced a new Section 126 into the Public Education Act, requiring expert and rehabilitation committees to officially review by December 31, 2007, all students previously classified as having special educational needs due to severe and permanent impediments in educational and learning processes caused by psychological developmental disorders. This review was to determine whether these students indeed suffered from severe and permanent disorders in cognitive functions or behavioural development and, if so, whether these could be attributed to organic causes.

Decree No. 7/2007 (II.13.) of the Ministry of Education and Culture introduced Section 26/A into Decree No. 14/1994 (VI.24.) of the Ministry of Public Education on training obligations and pedagogical support services. This provision required expert committees to review, between March 31 and November 30, 2007, children whose special educational needs were previously classified as resulting from psychological developmental disorders.

Subsequently, Decree No. 43/2007 (XII.29.) of the Ministry of Education and Culture, effective January 13, 2008, again amended Sections 26/A(1) and (2) of Decree No. 14/1994. Under the new regulation, expert committees were required,

based on the results of reviews conducted between March 31 and July 10, 2007, to determine by December 31, 2007—within a very short timeframe—whether the special educational needs arose from cognitive or behavioural development disorders attributable to organic causes or otherwise, and whether learning, behavioural, or integration difficulties still persisted for these students.

The legal definition of special educational needs changed multiple times during the period in question, presenting significant challenges for Defendant III as an implementer of these laws.

However, the lawsuit was not initiated by private individuals or Roma students from **County 1** but instead by two foundations through public interest litigation. Consequently, the possibility of awarding non-pecuniary damages based on fault-dependent subjective sanctions did not arise.

The two foundations submitting the public interest lawsuit sought only fault-independent objective sanctions in the proceedings, requesting, among other things, that the court establish the occurrence of the violation.

Therefore, the circumstances mentioned above held no legal relevance concerning the adjudication of the plaintiffs' claim to establish the violation against Defendant III.

In connection with the plaintiffs' claim to establish the violation, the court also assessed the following:

Witness 4, the disability and public education service representative from Defendant II (the ministry responsible for education), testified that child psychologists were a critically scarce profession, with perhaps only 50 such professionals in the entire country.

Moreover, the 2008 Public Education Task Implementation and Network Development Plan of the **County 1 Local Government** noted that the staffing conditions of the expert committees operating in **County 1** were inadequate even before workforce reductions, significantly hindering their operations.

Although these circumstances raise questions about whether the funding for the expert committees in **County 1** during the period was sufficient for them to operate in compliance with all legal requirements, the state had a constitutional obligation during the period in question to ensure that Roma students in **County 1** could access education appropriate to their actual abilities. Since this obligation was also based on Hungary's international legal commitments, the state bore a

positive obligation to provide adequate material and staffing conditions to ensure the requirement of equal treatment for Roma students in County 1.

Thus, Defendant III could not have successfully invoked the undeniably challenging external conditions—beyond its control and independent of its influence—that affected the operations of the expert committees in County 1 as part of its exculpatory defence.

2. The Plaintiffs' Claim Against Defendant I for a Declaration of Infringement

In the personal rights lawsuit, the plaintiffs alleged that Defendant I, as the institutional maintainer, failed to take certain actions concerning its oversight of Defendant III. However, due to the public interest nature of the lawsuit, the plaintiffs did not seek non-pecuniary damages but only requested the court to establish the violation.

Throughout the period in question, Defendant III functioned as the institution of pedagogical services in public education.

From January 27, 2004, to December 31, 2012, the **County 1 Local Government** exercised the role of institutional maintainer. Starting January 1, 2013, Defendant I assumed these rights concerning pedagogical services institutions in **County 1**.

Both institutional maintainers were subject to a public-law obligation to provide the material, human, and financial resources necessary for their public educational institutions' operation.

If a municipal or state institutional maintainer fails to fulfil this public-law obligation, such an omission does not automatically create civil liability (including liability under personal rights law).

The court did not find Defendant I liable for failing to fulfil its public-law obligations. Instead, based on the evidence, the court determined that Defendant I perpetuated the indirect discrimination implemented by Defendant III by failing to take actions required under legal provisions to fulfil its oversight duties for the following reasons:

The former Defendant I (**County 1 Local Government**) attached 53 pieces of documentary evidence to its preparatory brief (filed under Resolution No. 2) and reiterated its position, as stated in its counter-arguments, that under Section 102(2)(d) of the Public Education Act, the supervisory activities of a county-level

municipal maintainer do not extend to reviewing professional decisions made by Defendant III.

Regarding the period after January 1, 2013, Defendant I (the state institutional maintainer) did not submit any substantive statement.

Under Section 87(1)(g) of the Public Education Act, county-level governments were required to ensure the functioning of committees responsible for assessing learning abilities and rehabilitation.

Furthermore, Section 21 of the Public Education Act specifies that learning ability assessment and rehabilitation committees are institutions of pedagogical services in public education.

According to Section 102(2)(d) of the Public Education Act, maintainers are also obligated to oversee the legality of their educational institutions' operations.

Contrary to the legal position of the former Defendant I, under Section 104(1)(a) of the Public Education Act, maintainers were also required to ensure not only the proper functioning of learning ability assessment and rehabilitation committees but also the legality of their decision-making processes.

Based on the referenced legal provisions, the court clearly determined that Defendant I, as the institutional maintainer, bore civil liability for the lawful operation of the expert and rehabilitation committee in **County 1** from January 27, 2004, to December 31, 2012, due to the omissions of its predecessor. This liability was also relevant in terms of personal rights.

The former Defendant I (**County 1 Local Government**) attached procurement contracts as documentary evidence to its preparatory brief filed under **Resolution No. 2**. These contracts were entered into after the December 2003 submission of the summary report titled *Strategic Program for the Development of the Roma Society in County 1* by **Company 1**.

The contracts demonstrate that the former Defendant I (**County 1 Local Government**) appointed a county minority coordinator to perform minority, coordination, and consultancy tasks. The preparatory brief outlined the coordinator's duties.

Based on this documentary evidence and 57 additional documents submitted by the former Defendant I, the court found that, while the former Defendant I undertook certain measures to fulfil its statutory oversight obligations, it maintained the indirect discrimination perpetrated by Defendant III by failing to

exercise its legal right under Section 104(1)(a) of the Public Education Act. This provision enabled the maintainer to oversee the legality of decisions made by its operated educational institutions, even though it was undisputedly aware that the educational institution in **County 1** disproportionately diagnosed school-aged, normally abled Roma students as having special educational needs.

In 2010, one of Defendant II's background institutions prepared a public report titled *Factors Conserving the Risks of Unjustified Disability Designation: A Program Report*. This report identified significant deficiencies related to the operation of the expert and rehabilitation committee in **County 1**.

The Act on National Public Education (Act CXC of 2011) came into effect on September 1, 2012. As a result, the former Defendant I (**County 1 Local Government**), as a legal actor, was only required to implement the new act's relevant provisions for three months. Therefore, the court examined whether the state institutional maintainer (Defendant I) fulfilled its statutory oversight obligations for the period beginning January 1, 2013.

Chapters 48 and 49 of the *Act on National Public Education* define the obligations and rights of maintainers and the legal provisions for monitoring public educational institutions.

According to Section 48(1)(a) and (b) of the *Act on National Public Education*, the oversight of public educational institutions may involve pedagogical, professional, or legal aspects.

For the period after January 1, 2013, Defendant I failed to submit documentary evidence specifically related to **County 1** that demonstrated it conducted pedagogical, professional, or legal oversight to investigate why the expert and rehabilitation committee in **County 1** diagnosed a disproportionately high number of school-aged, normal-capacity Roma students as having special educational needs compared to other counties.

Based on the evidence, the court found that Defendant I failed to exercise its oversight obligations as prescribed by Section 104(1)(a) of the Public Education Act. By neglecting measures to ensure the legality of decisions made by the expert and rehabilitation committee in **County 1**, Defendant I perpetuated the indirect discrimination implemented by Defendant III.

3. Plaintiffs' Claim Against Defendant II for Establishing the Infringement

Defendant II, in connection with the plaintiffs' claim submitted against it, detailed its factual and legal position extensively in three preparatory briefs. However, in these preparatory briefs, alongside references to the relevant legal provisions, Defendant II primarily presented factual arguments in a nationwide context.

In the personality rights case, however, the court specifically had to decide whether Defendant III applied indirect discrimination against school-aged, normal-capacity Roma students living in **County 1** and whether Defendant II, as the supervisory authority of the education sector, perpetuated this indirect discrimination by failing to implement measures based on its statutory oversight obligations, such as ordering targeted inspections.

Under Section 93(1)(a) of the Public Education Act, the minister responsible for directing the education sector was required to issue guidelines for the education of students with special educational needs. Simultaneously, Section 93(2) of the Public Education Act, which has been effective since September 1, 1999, allowed for:

1. The ordering of national, regional, and professional inspections;
2. The conduction of pedagogical and professional assessments, audits, and analyses;
3. The request to maintainers to conduct professional inspections, pedagogical and professional measurements, reviews, or analyses at the educational institutions they maintain, and to report back on their results.

This provision also stipulated that if the maintainer failed to comply with the ministry's request, the National Education Evaluation and Examination Center could proceed based on the minister's direction.

For the period after September 1, 2012, the Act on National Public Education (Act CXC of 2011) established the relevant legal obligations for Defendant II:

Pursuant to Paragraph (1) of Article 77 of the Act, the Minister responsible for education shall be responsible for the sectoral management of public education as defined by the Act.

At the same time, Section 77(3) of the National Public Education Act, like the referenced provision of the Act on Public Education, explicitly provided the minister responsible for education with the authority to order regional professional inspections and to request that the maintainer of educational institutions under their jurisdiction conduct legal and professional inspections,

pedagogical-professional measurements, audits, and analyses, and to provide a report on the results.

This provision also stipulated that if the maintainer failed to comply with such a request, the official authority would act upon the instructions of the minister responsible for education.

The background institution of Defendant II, **the nonprofit economic company 1**, published the working paper titled *Factors Conserving the Risk of Misclassifying Disability: A Report on a Program* in 2010.

According to the court's assessment, this working paper revealed specific deficiencies regarding **County 1**, which would have clearly justified Defendant II either ordering a professional inspection of the expert and rehabilitation committee operating in **County 1** to address the deficiencies identified by its background institution or requesting the municipal or later state maintainer to conduct legal and professional inspections and report on the results.

In relation to its burden of exculpation, Defendant II was unable to provide documentary evidence specifically concerning **County 1** that would prove it had ordered a professional inspection for **County 1** or requested the maintainer to conduct legal and professional inspections.

Defendant II, despite the significant deficiencies identified in the working paper issued by its background institution concerning County 1, failed to order a targeted inspection for the county, either directly or indirectly, to address the shortcomings. The working paper, *Factors Conserving the Risk of Misclassifying Disability: A Report on a Program*, prepared by a **nonprofit economic company 1** explicitly made recommendations in its 8th chapter for measures relating to the oversight of county expert and rehabilitation committees. It specifically proposed that the Educational Authority inspect the material and personnel conditions of these committees annually and conduct spot checks to ensure that the diagnostic protocol criteria were adhered to during child evaluations.

The recommendation articulated in the working paper issued by Defendant II's background institution specifically pertained to the work of county expert and rehabilitation committees, identifying it as one of the measures to prevent unwarranted classification as disabled. It also identified as a problematic factor that the scarcity and specific characteristics of the diagnostic tools used could influence the evaluation results both positively and negatively.

Based on the evidence presented during the trial, the court established that, regarding school-age, normally abled students belonging to the Roma minority in **County 1**, the diagnostic tools used by the expert and rehabilitation committee operating in **County 1** during the period in question negatively affected the

evaluation results of these children. This resulted in them being disproportionately diagnosed as having special educational needs, thereby placing them in a significantly more disadvantaged position.

Additionally, the court concluded from the evidence that Defendant II, as the overseer of the education sector, by failing to order the aforementioned targeted inspections, also perpetuated the indirect discrimination that Defendant III had effectively carried out.

4. The Plaintiffs' Request for an Order Requiring the Defendants to Cease Infringement

In addition to seeking the establishment of the violation, the plaintiffs requested the court to order the defendants to cease the unlawful conduct. This additional objective remedy for the protection of personality rights was also pursued in the personality rights case.

Regarding the applicability of objective sanctions that are independent of culpability, it is legally irrelevant whether the legal entity responsible for the unlawful conduct constituting a violation of personality rights acted in good or bad faith or whether culpability can be attributed to it.

Since the court determined that Defendant III, through its contested practice, violated personality rights, and that Defendants I and II, through their failure to fulfil their supervisory obligations, perpetuated the indirect discrimination deemed a violation of personality rights, it was able to assess the justification for applying this additional objective sanction with respect to all three defendants.

A party may only be ordered to cease a violation if the consequences caused by the unlawful conduct deemed a violation of personality rights continue to exist.

In this regard, the court took the legal position that, given that the exculpatory evidence presented by Defendants I, II, and III was unsuccessful, the consequences of indirect discrimination against school-age, normally-abled Roma children living in **County 1**—recognized as a violation of personality rights—must be regarded as still persisting at the time of the first-instance judgment. Therefore, the court ordered Defendants I, II, and III to cease the violation of personality rights.

5. The Plaintiffs' Request for an Order Requiring the Defendants to Remedy the Unlawful Circumstances

The plaintiffs amended their claim regarding this remedy multiple times during the proceedings. They submitted their final statement prior to the conclusion of the trial in their preparatory document under No. 87, specifying the exact obligations they requested the court to impose on the defendants to remedy the unlawful situation violating personality rights of school-age, normally abled Roma students residing in **County 1**.

The Defendant I argued that imposing specific obligations on the defendants in a personality rights case would violate the separation of powers principle.

The plaintiffs, seeking to address the unlawful situation they considered harmful, filed a claim aimed at a specific judicial order. Consequently, a judgment specifying the manner of remedying the violation could serve as the basis for issuing an enforceable document under Section 13 of the Act on Judicial Enforcement.

However, if the disadvantageous treatment, including indirect discrimination, arose within a public law relationship, the regulatory framework of civil law is inadequate to address or eliminate "segregation." Measures necessary to eliminate such discrimination fall within the realm of public law and can only be resolved through public law instruments (BDT.2010.309.).

Based on the evidence, the court concluded that the indirect discrimination against normally abled Roma students residing in **County 1** arose in a public law relationship. Therefore, there was no legal basis for addressing the violation of personality rights through civil law remedies. Accordingly, the court dismissed the plaintiffs' claims against the institutional maintainer (Defendant I) and the sectoral director (Defendant II) as unfounded.

However, the court interpreted the obligation to cease the personality rights violation as follows: rectifying structural deficiencies in education requires positive measures from the state. The state has a positive obligation to ensure appropriate conditions that enable school-age, normally abled Roma students residing in **County 1** to receive education suited to their actual abilities. Fulfilment of this obligation, rooted in international law, must include targeted institutional maintenance and sectoral supervision to guarantee the effective implementation of this possibility.

III. **Costs of the Proceedings**

In this case, where statutory cost exemption applies, the plaintiffs did not seek subjective sanctions alongside objective sanctions.

The court determined that the fixed procedural fee of HUF 36,000, calculated based on the indeterminate value of the case, would be borne by the Hungarian State in accordance with Section 14 of Decree 6/1986 (VI.26.) of the Ministry of Justice.

Additionally, pursuant to Section 81(1) of the Code of Civil Procedure, the court ruled that each party shall bear its own attorney (or legal counsel) costs. The plaintiffs were also ordered to bear the costs incurred in connection with the presentation of the **sixth witness**.

Eger, 10 March 2016

. Tamás Román s.k.
judge of regional court

Responsible for the authenticity of the publication: