

ON BEHALF OF THE REPUBLIC OF HUNGARY!

The County Court, in the case initiated by the first and third plaintiffs, represented by attorney Dr. Lilla Farkas (1097 Budapest, Lónyai Street 34, III/21), against the first, fourth, and fifth defendants (the first and fourth defendants represented by attorney Dr. Zsuzsanna Oláh, 4400 Nyíregyháza, Dózsa György Road 4-6, II/2), and the fifth defendant proceeding without legal representation, concerning the violation of fundamental rights and other claims, held a hearing on May 27, 2009, and publicly delivered the following:

JUDGMENT

The County Court determines that the defendants violated the rights of the first and third plaintiffs to equal opportunity and to the freedom to choose their education. Therefore, the Court orders the first, fourth, and fifth defendants, jointly and severally, to pay the first and third plaintiffs within 15 days the sum of HUF 1,000,000 (One million) each as non-pecuniary damages, which must be deposited into accounts maintained by the guardianship authority in the plaintiffs' names.

Additionally, the Court orders the defendants to pay the plaintiffs HUF 100,000 (One hundred thousand) as litigation costs within the same time frame.

Furthermore, the Court orders the first, fourth, and fifth defendants, jointly and severally, to reimburse the state the sum of HUF 205,000 (Two hundred five thousand), representing costs advanced by the state, payable to the Economic Office of the Court upon separate notification.

An appeal against this judgment may be lodged within 15 days of receipt, addressed to the Debrecen Court of Appeals but filed in six (6) copies with the Szabolcs-Szatmár-Bereg County Court.

Legal representation is mandatory in proceedings before the Court of Appeals. Statements made by parties without legal representation are invalid.

REASONING:

I.

The County Court established the following facts based on the parties' statements (excluding the fifth defendant), expert opinions presented in the proceedings, documents related to the plaintiffs' education, and records of testimony provided by experts in similar cases before other county courts:

The first plaintiff commenced and completed their primary education at the special school operated by the first defendant, based on an evaluation initiated by their kindergarten and conducted by an expert and rehabilitation committee assessing learning abilities. Although the plaintiff's kindergarten opposed the evaluation's conclusions and protested its findings, they were not permitted to participate in the examination. Despite their objections, the first plaintiff remained enrolled in the special school operated by the first defendant for the entirety of their education.

The kindergarten-initiated evaluation concluded that the plaintiff exhibited a developmental delay of two and a half years, combined with neurotic tendencies (such as nail-biting, scribbling, and pencil-shaking) and symptoms of infantile personality development, with a diagnosis of mild intellectual disability. Based on these findings, it was recommended that the plaintiff fulfill their compulsory education according to the curriculum for students with mild intellectual disabilities. The rehabilitation recommendations included developing cognitive abilities (perception, observation, and thinking process) and improving fine motor skills.

The signed expert opinion (document no. 1773/2001) from the evaluation indicates that the examination was conducted by a special education teacher, an education expert, and a psychologist. However, only one name is present on the document. No specific data is available regarding a subsequent examination on December 3, 2002, other than a notation indicating that the plaintiff's condition had not changed and that they remained mildly intellectually disabled, as signed by the special education teacher. A follow-up examination in April 2005 confirmed that the plaintiff's condition remained unchanged and classified them as "educationally impaired" with special educational needs, recommending continued attendance at the special school operated by the first defendant. The mandatory review period was set at two years, and the review decision recorded that the plaintiff was receiving education in a segregated setting.

An accompanying memo dated September 15, 2005 (prepared by a clinical psychologist and a special education teacher) observed that children in classes with alternative curricula are taught a reduced syllabus, making their future integration into mainstream education more difficult. The memo recommended expanding the standard evaluation process.

In 2006, the first plaintiff was examined as part of a nationwide initiative by a psychologist, an education expert, and a special education teacher. The experts concluded that the plaintiff was motivated during the assessment, cooperative with adults, and talkative, but struggled to control their behaviour appropriately in various situations. The Raven's Progressive Matrices yielded below-average results (IQ 83), but the plaintiff was not deemed intellectually disabled. However, poor performance on the Bender Visual-Motor Gestalt Test, coupled with behavioural observations, suggested neurological immaturity. It was presumed that this immaturity could result in learning and behavioural difficulties, but the plaintiff was considered intellectually capable of attending a standard school class. The report recommended

urgent re-evaluation of the plaintiff's educational placement and additional specialized assessments to examine neurological development.

This examination followed a mandatory review conducted by the expert committee on April 28, 2005, led by a special education teacher and a psychologist. That review similarly concluded that the plaintiff's condition warranted continued attendance at a school with an alternative curriculum, as their state had not fundamentally changed since the previous evaluation.

The first plaintiff underwent another examination on March 20, 2007, which produced a Raven IQ score of 71. While this score was low, the report noted that the plaintiff's general knowledge was slightly better than their test results suggested. Additionally, the detailed review report indicated that the plaintiff had integrated into their class community, adapted to school rules, did not have speech impairments, and was capable of independent learning, though they needed encouragement. The plaintiff was described as active, happy, diligent, and developing a sense of responsibility. While their attention was easily distracted, they successfully met the academic requirements of their grade. The cause of the plaintiff's mild intellectual disability remained unknown, and they were still classified as having special educational needs. Areas recommended for improvement included visual analysis and synthesis skills, as well as analogical reasoning. The next mandatory review was scheduled for the 2009/2010 school year.

The Raven IQ score of 71 is considered low.

Despite this, they achieved good results in the subjects they studied in 2006 and 2007.

The third plaintiff was first examined by the local educational advisory service at the start of their compulsory school age. Their performance weaknesses—poor vocabulary, difficulties with sentence formation, imprecise memory for sentences and stories, challenges in spatial and planar orientation, and weak numerical concepts—were attributed to socio-cultural disadvantages. As a result, it was recommended that they attempt to catch up in the first grade of elementary school through differentiated treatment. The third plaintiff began their studies at the now-defunct Nyíregyháza 13th Primary School (H. Square Primary School), having already turned seven years old. At this school, the plaintiff was taught using methods designed to mitigate disadvantages arising from their socio-cultural background. However, based on their performance during classroom activities, the school recommended an expert evaluation, which resulted in the plaintiff's transfer to a school with an alternative curriculum at the end of the academic year.

At that time, the plaintiff was found to exhibit performance delays equivalent to those of a child three years younger.

Currently, the third plaintiff is still enrolled in the school operated by the first defendant, with their studies nearing completion.

During a so-called control examination conducted when the third plaintiff was in the sixth grade (April 2005), it was noted that they were learning relatively well. However, the results of the Raven's Progressive Matrices did not indicate any improvement in mental performance. Therefore, continued education in a school with an alternative curriculum was recommended.

A subsequent evaluation conducted in November 2008 (Expert Opinion No. P.20.035/2008/8) concluded that the third plaintiff's mental performance fell within the below-average range of normal intelligence. Their performance was inconsistent and scattered.

The intelligence test results indicated that, in several areas, the plaintiff lagged two to three years behind the expectations for their age group. The most significant underperformance was observed in areas of thinking ability, memory performance, and associative storage.

However, the summary opinion (Expert Opinion, p. 5) concluded that the third plaintiff is not intellectually disabled but rather faces learning difficulties. The plaintiff has significant gaps in acquired knowledge but demonstrates relatively good social maturity and adaptive behaviour. Despite this, they have special educational needs and require specialized care and special education support. It was recommended that their further education be facilitated through developmental sessions and catch-up programs.

For the first plaintiff, the summary examination concluded that they have mild intellectual disability associated with an unclear organic neurological anomaly. Despite this, they show good adaptability, are motivated to complete tasks, and exhibit sociable behaviour. The first plaintiff also has special educational needs and requires specialized care and special education support. It was recommended that they continue their education in a specialized vocational school, as this remains the most suitable environment for their future development.

II.

In their claim, the plaintiffs sought a declaration of the violation of personal (fundamental) rights and the imposition of liability for damages on the special vocational school and primary school where the plaintiffs studied, the specialized school serving as the location for the Learning Abilities Examination Committee, the normal curriculum-based H. Square Primary School, the local government of Nyíregyháza, and the fourth and fifth defendants, who were involved as the creators, supervisory bodies, and operators of the committee for examining learning abilities. They also included the fifth defendant as the legal successor of a merged institution established in 2008.

The plaintiffs argued that the educational institutions and the Learning Abilities Examination Committee failed to provide them with adequate pedagogical habilitation and rehabilitation services necessary for pursuing their studies in appropriate schools and under suitable curricula. Furthermore, the plaintiffs claimed that the parents, as their legal representatives, were deprived of their right to legal remedies concerning the committee's opinions, recommendations, and so-called reassignment decisions.

The defendants, in their individual and collective statements of defence, essentially requested the dismissal of the plaintiffs' claim for damages, arguing a lack of illegality and asserting that they acted in accordance with the expectations applicable to the given circumstances.

III.

The County Court, after evaluating the content of the plaintiffs' claim (as per Section 3(2) of the Code of Civil Procedure), determined that the plaintiffs' claim regarding the establishment of violations of fundamental rights and the imposition of liability for damages due to unlawful conduct was well-founded.

With respect to the present legal dispute, the Court emphasized the following:

The subject of this case was not whether the first and third plaintiffs should have received segregated or integrated education. Instead, the issue was whether the schools and local governments fulfilled their obligations under Article 70/A of the Constitution of the Republic of Hungary, which guarantees human and civil rights to all individuals within its territory without discrimination. Article 70/A(3) of the

Constitution mandates that the Republic of Hungary supports the realization of equality of rights by taking measures to eliminate inequalities of opportunity.

The Constitution further recognizes the right to education as a secondary fundamental right, stating that the Republic of Hungary ensures its citizens' right to education by extending and generalizing public education and providing access to secondary and higher education based on individual abilities. Article 70/G(1) declares that the Republic of Hungary respects and supports the freedom of education and teaching.

The implementation of the right to education is governed by the Public Education Act (Act LXXIX of 1993), which specifies in Section 121 that the operation of the public education system is a responsibility of the state. The state, local governments, and other entities may establish and maintain institutions for this purpose, provided they have obtained the rights to do so under the applicable regulations. Furthermore, Section 3(3) of the Act designates as a basic responsibility of local governments to ensure free and compulsory primary education through the operation of institutions within their jurisdiction.

The Public Education Act also requires that the state and local governments respect the right of parents to ensure that their children receive appropriate education and upbringing. Parents are granted the right to freely choose the educational institution where their children will study, based on their children's abilities, skills, and interests.

According to Section 121 of the Public Education Act, it is the responsibility of the institution's maintainer to provide preparatory integration (Section 121(1), Point 16). The purpose of this is to organize education aimed at creating equal opportunities through the application of educational programs issued by the minister responsible for education. These programs are designed to counterbalance disadvantages arising from social circumstances or developmental delays. Children and students participating in this program must be included in the same kindergarten group or school class as their peers, or in the same group in cases of class division. The ratio of children requiring special educational support to their peers in such groups or classes must not exceed the limits specified by law (as established by Section 9(1), Point h of Act XVII of 2004).

The interpretive provisions of the same law (Point 22) define the concept of "appropriate further care." This refers to ensuring that the personal and material conditions of kindergarten education and school instruction under the given circumstances meet the required standards. Additionally, the existing pedagogical services must be guaranteed within the framework of the given educational and instructional activities. For children with special educational needs, their specific education and instruction should not cease, nor should the education of children struggling with learning difficulties.

The conditions necessary for the education and instruction of children with special educational needs (Point 28) include the following: Employing teachers whose qualifications align with the type and severity of the child's special educational needs, using specialized curricula, textbooks, and teaching aids tailored to the needs of the children, ensuring the involvement of a special education teacher with the appropriate qualifications for the developmental preparation and professional guidance defined by the relevant expert committee, providing the professional services specified by the expert and rehabilitation committee for the child.

The inclusion of Point 28 was enacted by Act LXI of 2003 and subsequently amended by Act CXLVIII of 2005.

The definition of who qualifies as a student with special educational needs was set forth in Section 78(3) of Act LXI of 2003, effective as of September 1, 2003, and remains in force today. However, such a definition existed even earlier (albeit not defined under a specific point). At the start of the present case (2001), Point 29 contained a different provision. Nevertheless, its content already outlined the criteria

for students with special educational needs. In 2001, Point 20 classified as disabled any child for whom an expert and rehabilitation committee determined the following:

- a) The child struggles with a pervasive developmental disorder, such as autism.
- b) The child faces partial ability deficits and school performance disorders due to other psychological developmental issues, leading to persistent hindrance in their development and learning process. Examples include dyslexia, dysgraphia, dyscalculia, mutism, pathological hyperactivity, attention disorders, etc.

From September 1, 2003, Point 29 defines a student with special educational needs as one who, based on the opinion of the expert and other rehabilitation committees, is identified as having a physical, sensory, intellectual, or speech disability, autism, or a combination of multiple disabilities (categorized as a severe or "cumulative" disability).

The legislation has consistently differentiated between disabilities and special educational needs within the basic concepts. These laws imposed requirements on schools and expert committees to determine, on an individualized basis, the cause of the special educational needs and, depending on its type and severity, identify the necessary specialized teachers, curriculum, textbooks, equipment, and schools required (as specified under Section 121, Point 14 in 2001, and Points 28 and 29 in 2004–2006).

It is undisputed—supported by the primary and follow-up reports of the Learning Abilities Examination Committees, the assessments conducted at specialized camps, and the expert opinions obtained during the court proceedings—that such individualization was not performed. Specifically, the determination of the type and severity of the disability was omitted, and the expert and rehabilitation committees failed to specify, on a child-by-child basis (plaintiff-by-plaintiff), the range of professional services required for the students.

According to Section 4/A of the Public Education Act (effective from January 27, 2004, pursuant to Act CXXV of 2003), it is mandated that all entities participating in the organization, management, operation, and execution of tasks in public education must comply with the principle of equal treatment when making decisions and taking measures related to students. This means that every student in public education has the right to receive the same standard of care under the same conditions as other individuals in comparable situations. Any violation of the requirement for equal treatment must be remedied.

Violation of the principle of equal treatment may give rise to the enforcement of personal rights before a court (Section 4/A(4)).

According to Section 6(4) of the Public Education Act, the school principal determines the start of compulsory education based on the opinion of the educational counseling service or, in the case of children with special educational needs, the expert opinion of the Learning Abilities Examination Expert and Rehabilitation Committee.

Pursuant to Section 10(3), it is the student's right to receive education and upbringing tailored to their abilities, interests, and aptitudes, and to study and continue their education according to their capabilities. The educational program and activities of state and local government schools must ensure the student is informed and taught in a versatile manner that respects their right to the free development of their personality. Students are also entitled to receive differentiated care appropriate to their condition and personal circumstances—this includes special care and rehabilitative support—and may turn to the institution of pedagogical professional services for assistance, regardless of their age (Section 12(f), introduced by Act LXII of 1996, Section 8).

Section 126 of the Public Education Act (established by Section 21 of Act LXXXVII of 2007 during the course of this litigation) provides, on a national level, that expert and rehabilitation committees must examine all students through ex officio procedures by December 31, 2007. The purpose of these

examinations is to identify students who are persistently and severely hindered in the educational and learning process due to psychological developmental disorders and, consequently, qualify as students with special educational needs.

The examination's goal is to determine whether the child suffers from persistent and severe disorders of cognitive functions or behavioural development and, if so, whether these are attributable to organic causes or not.

Thus, in this section, the legislator set a deadline of August 31, 2008, for expert and rehabilitation committees to distinguish between children whose cognitive or behavioural development disorders are attributable to organic causes and those whose disorders are not organically based.

Based on the aforementioned legal provisions, and in light of the secondary fundamental right enshrined in Article 70/E of the Constitution, the Court concluded that, in the cases of the first and third plaintiffs, neither the initial examinations nor the subsequent follow-up examinations clearly determined: why the plaintiffs required special education under their specific circumstances; what forms this special education should take; whether their condition was attributable to behavioural issues, learning difficulties, or organic causes (or causes unrelated to organic conditions).

The principle of equal opportunity requires that, when a child reaches the necessary developmental level to begin school—at the earliest at age 6 and no later than age 8—it must be determined whether they should participate in general curriculum-based education or special curriculum-based education. It is for this purpose that expert and rehabilitation committees have operated for decades.

In this case, it was clearly established that, due to the continuous reorganization and expansion of the Rehabilitation Committee's operations, there were significant interruptions over the past decade. The committee struggled to maintain adequate conditions for its functioning, including sufficient personnel and experts.

As a result, the committees were unable to consistently conduct the so-called control examinations, whether mandatory or school initiated. For this failure, responsibility lies with both the fourth defendant, who created and operated the committee, and the fifth defendant, as the legal successor of the vocational school (B. G. K. S. Special Vocational School), which was responsible for ensuring the committee's operational conditions.

The fourth defendant (maintainer) and the fifth defendant (operator) failed in their duty by not ensuring the following under their supervisory authority: the committee's actions (or those of the first defendant institution) were not accompanied by consistent legal remedy notifications, nor were parental observations, legal remedy requests, or their resolution adequately monitored or evaluated. Under Section 102(2) of the Public Education Act, the maintainer is obligated to ensure the legality of the public educational institution's operations.

The notary of the maintaining local government, specifically the notary of the county government, was granted explicit powers and authority regarding public education administration.

Section 83 of the Act stipulates that educational institutions—including expert committees—must communicate decisions concerning students in writing to the student or their parents. The student or parent has the right to initiate proceedings within 15 days of such communication against the school's decision or measure. The procedure is governed by the rules of the Administrative Procedures Act, currently replaced by the Administrative Procedure Code.

Section 86 specifies the obligations of various types of local governments in ensuring general education and upbringing at the primary school level.

Local (municipal, town, and county-level) governments are obligated to provide general primary education, including, since Act LXII of 1996, the education of physically disabled, sensory-impaired, mildly intellectually disabled, speech-impaired, and other disabled children who can be taught alongside their peers. Additionally, the fourth defendant is responsible for providing educational services to students who cannot be taught alongside their peers due to physical, sensory, intellectual, speech, or other disabilities (Section 87).

As such, it was the legal obligation of the fourth defendant (the county government), under statutory provisions, to organize the legal supervision of the committee's operations in such a way as to specifically determine for both the first and third plaintiffs why they were placed in schools designated for children who cannot be educated alongside their peers due to disabilities such as physical, sensory, intellectual, or speech impairments.

In the present case, the defendants themselves did not dispute the historical fact that there was no specialization, the parents were not informed of their legal remedy options or the possibility of requesting a review, and the current head of the committee admitted that regular follow-up reviews were not ensured.

The fourth defendant provided additional support to the committee's work only within the framework of the Last Desk Program (UPP or "utolsó padból program") starting in 2004. However, this case arose before 2004 and continued nearly uninterrupted thereafter.

A Section 2 of the Civil Code of the Republic of Hungary provides that the law protects personal rights and legitimate interests. Section 78(1) states that personal rights must be respected by everyone and are under legal protection.

The violation of equal treatment constitutes an infringement of personal rights under Section 76. Additionally, Section 84 stipulates that anyone whose personal rights have been violated may bring civil claims against the violator, including seeking a judicial determination of the violation. The claims of the first and second plaintiffs to establish the violation of their rights were well-founded, and the Court ruled in their favour against the defendants.

The plaintiffs' claims for non-pecuniary damages under Section 84(1)(e) of the Civil Code were also well-founded. The conditions under Section 339(1) and 349 of the Civil Code were met: Illegality was established, harm was suffered due to the provision of an education based on a lower-level curriculum and in lower-standard schools as a result of the defendants' combined actions and omissions and a causal link exists between the harm caused and the plaintiffs' resulting damage to their self-esteem, self-respect, and identity.

The purpose of non-pecuniary compensation is to reduce, wholly or partially eliminate the non-pecuniary damage suffered by the injured party.

The first and third plaintiffs have not received any educational services in recent years that would have met their special needs, and have therefore suffered disadvantages, and the order to pay damages corresponding to their claim under the Civil Code serves to at least partially remedy this, based on Section 355 (2) (4) of the Civil Code.

The defendants failed to meet their burden of proof to excuse, i.e. that they acted as would normally be expected in the circumstances (Civil Code. Section 339(1) of the Civil Code) and the conditions of Section 349 of the Civil Code also apply to the educational administration activity, because the damage could not be remedied by ordinary remedies because the plaintiffs (their parents) were deprived of the possibility of ordinary remedies.

The damage suffered by the plaintiffs was caused by the interdependent and inseparable conduct of the defendants, so the court held that the damage was caused by the interdependent and inseparable conduct

of the defendants. Pursuant Section 344 of the Civil Code, the court held them jointly and severally liable.

The county court, in cases involving claims due to violations of personal rights, did not and could not examine Section 344, Paragraph (3), Point b) of the Civil Code (Ptk.), that is, to what extent the injured party contributed to the occurrence of the damage, nor could it examine parental conduct as outlined in Section 340, Paragraph (2) of the Civil Code.

IV.

The first and third plaintiffs won the case, so the county court, pursuant to Section 78, Paragraph (1) of the Code of Civil Procedure, ordered the defendants jointly to pay the plaintiffs' legal costs. The amount of these costs was determined with discretion, taking into account the plaintiffs' submissions, and based on Decree 34/2003 (VIII. 22.) of the Ministry of Justice.

The litigation was subject to a fee-recording exemption. The first and third plaintiffs enjoyed personal cost exemption, and the defendants were exempt from fees. Therefore, pursuant to Section 78, Paragraph (2) of the Code of Civil Procedure, the court only obligated the defendants jointly to pay the costs advanced by the state during the proceedings.

The county court disregarded the judgment of the Strasbourg Human Rights Court in resolving the legal dispute because, while the facts of that case are similar to the present one, the defendant in that case was the state. Consequently, the legal principles and conclusions established in that case could only be considered indirectly, as interpretations of fundamental rights, in cases against specific educational institutions or their maintainers.

The court noted that the fifth defendant, as the successor, failed to submit a substantive defence after receiving the statement of claim and related documents. However, given the nature of the dispute, the court did not apply the consequences of a default judgment against the fifth defendant but instead issued a substantive ruling on the matter.

The court considered Point 5 of the plaintiffs' amended statement of claim (dated March 11, 2009, document 15) to be incomprehensible in the context of the dispute, as the remedy sought under Section 84, Paragraph (1), Point d) of the Civil Code was already addressed by the non-material compensation under Point e).

Furthermore, the court could not assess the so-called socio-cultural disadvantage leading to learning difficulties in relation to the plaintiffs' claims. This case revolves precisely around whether the plaintiffs' specific educational needs, stemming from organic or non-organic causes, were recognized and addressed. The court cannot take a position on issues such as deep poverty or socio-cultural disadvantage, as these matters exceed the scope of civil law and the principles of equal opportunity and personal rights. The court's role, pursuant to Section 5 of the Civil Code, is to protect and enforce rights guaranteed by law (Section 7).

The possibility of appealing the judgment is provided under Section 233, Paragraph (1) of the Code of Civil Procedure, while further information is based on Sections 256/A, 73/A, and 73/B of the Code.

Nyíregyháza, 27 May 2009.

Dr. István Ungvári sk.

Judge