

**THE CURIA**  
**as reviewing court**

***Kfv. II. 37.414/2015/8***

*The Curia, in the case initiated by the Plaintiff (address), represented by Dr. Adél Kegye, Attorney (address), against the Defendant, the Klebelsberg Institution Maintenance Center's Pilisvörösvár School District (2085 Pilisvörösvár, Fő utca 104.), represented by the District Director, in connection with the judicial review of an administrative decision regarding a school transfer request, based on the final judgment issued by the Budapest Environs Administrative and Labour Court on January 20, 2015, under case number 7.K.28.487/2014/8, upon the plaintiff's petition for review submitted as document No. 9, without hearing delivered the following*

***judgment:***

*The Curia upholds the judgment of the Budapest Environs Administrative and Labour Court under case number 7.K.28.487/2014/8.*

*The Plaintiff is ordered to pay the State a review fee of 70,000 (seventy thousand) forints, payable upon separate notice.*

*No further review of this judgment is permitted.*

***Reasoning***

*On July 17, 2014, the plaintiff applied for the enrolment of their child, identified as I., into ... elementary school. Acting as the first-instance administrative authority, the elementary school rejected the application on August 6, 2014 (Decision No. L/85-2014), determining that the child was not admitted to the second grade for the 2014/2015 school year.*

*Following the plaintiff's appeal, the defendant upheld the first-instance decision on September 8, 2014, by issuing Decision No. 570-5/2014/KLIK/129.*

*The first-instance court dismissed the plaintiff's claim. In its reasoning, the court first rejected the defendant's motion to dismiss the case, stating that, under Section 327(4) of the 1952 Act III. on the Code of Civil Procedure (hereinafter "CCP"), any party subject to rights and obligations under administrative law, as well as administrative bodies without explicit legal standing, may be a party to a lawsuit. Consequently, the defendant's lack of legal standing did not justify terminating the case.*

*Beyond this procedural issue, the court substantively examined the legality of the defendant's decision within the scope of the plaintiff's claims.*

The court concurred that the child's right to free school choice is safeguarded under Article 3 of the 1991 Act LXIV promulgating the 1989 United Nations Convention on the Rights of the Child, Articles XVI(1) and (2) of the Fundamental Law, and Sections 3(10) and 72(2) of the Act CXC of 2011 on National Public Education (hereinafter "NPE"). However, it found that admission requests must still be evaluated by educational establishments in accordance with the procedures prescribed by the NPE. Citing Sections 51(1) and 51(6) of the NPE, the court determined that the first-instance authority acted in compliance with applicable substantive and procedural laws. The court emphasized that the key factor considered by the authorities was the plaintiff's choice of a school in a different municipality, while multiple schools in the child's locality were available for enrolment. The authorities justifiably considered the logistical difficulties of attending a school outside the child's locality, particularly the problem of accessibility, as a significant factor in their decision. Consequently, the first-instance court found no procedural or substantive illegality in the defendant's decision.

The plaintiff, in their request for review of the final judgment, primarily sought to have the first-instance judgment overturned and a decision rendered in accordance with the claims of their lawsuit. Alternatively, they requested the annulment of the first-instance judgment and an order directing the first-instance court to conduct new proceedings and issue a new decision. The plaintiff argued that the final judgment violated Articles XVI(1) and (2) of the Fundamental Law, Sections 1(1), 3(10), and 72(2) of the Act CXC of 2011 on National Public Education (NPE), which establish the right to school choice. Additionally, the plaintiff claimed that the decision contravened Sections 24(5) and (6) of Decree No. 20/2012 (VIII.31.) of the EMMI Decree, as well as Sections 7(3) and 8(e) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter: Equal Treatment Act), and Sections 206 and 213(1) of the Code of Civil Procedure (hereinafter "CCP"). The plaintiff asserted that the violations of Sections 206 and 213(1) of the CCP stemmed from the first-instance court's failure to evaluate the evidence and its failure to fulfill its obligation to provide adequate reasoning. The court, according to the plaintiff, focused solely on the location of the requested school as a decisive factor without examining whether the transfer request was also justified by discrimination that violated the principle of equal treatment. The court failed to weigh these arguments or comply with evidentiary rules.

The plaintiff further argued that the first-instance court disregarded Section 339/B of the CCP, which stipulates that an administrative decision issued within the scope of discretionary authority is lawful only if the administrative authority has sufficiently established the facts of the case, identified the criteria for exercising discretion, and demonstrated the reasonableness of its evidentiary evaluation in the reasoning of the decision. According to the plaintiff, the defendant's decision violated these requirements by considering only that the requested institution was not obligated to admit the child since their residence was not within the school district.

The plaintiff contended that the court failed to consider the plaintiff's and the minor child's family circumstances, including whether the parent adequately evaluated travel options. The court also did not address the plaintiff's claim of direct discriminatory treatment. The judgment did not make clear on what evidence the first-instance court, or the administrative authority based its rejection of these claims. Neither the administrative decision nor the first-instance judgment demonstrated whether the rejecting school had the capacity, under Sections 24(5) and (6) of the EMMI Decree, to positively assess the plaintiff's enrolment request after admitting district children.

The defendant did not submit a counterclaim for review.

The plaintiff's application for review is unfounded.

The Curia reviewed the final judgment within the framework of the application for review pursuant to Section 272 (2) and Section 275 (2) of the CCP.

In the opinion of the Curia, the court of first instance reached the correct conclusion on the legality of the defendant's decision based on the correctly established facts, and the reviewing court agrees with its decision and reasons.

The Curia points out the following regarding the request for review.

The Curia determined that the plaintiff misinterpreted the provisions of the EMMI Decree. While the Decree sets criteria for admissions in schools with compulsory admission obligations, it does not mandate that the decision-maker must fill every available slot. In this matter, the school principal has discretionary authority and may assess how many additional students, beyond those from the designated district, can be admitted while still ensuring the expected quality of education for district students. The plaintiff's argument—while not disputing the Curia's acknowledgment of the right to free school choice—fails because this right does not imply an unlimited freedom of choice. Except for district schools, it does not create a subjective right to admission to a specific school. The first-instance court was correct in finding that neither the provisions of the UN Convention, the Fundamental Law, nor the National Public Education Act (NPE) were violated.

The plaintiff's reliance on the alleged violation of Section 339/B of the Code of Civil Procedure (CCP) in their review request is unfounded. They also wrongly criticized the first-instance court for—like the administrative authority—considering only the school's location as a relevant factor in its decision. In doing so, the plaintiff

contradicted themselves, as the administrative decision clearly specifies what the authority considered, how it weighed these factors, and what conclusions it reached. The authority deemed the child's daily commute, as a disproportionate burden, sufficient justification to lawfully reject the application. Therefore, the fact that no other considerations were examined does not render the decision or the first-instance court's proceedings unlawful.

Additionally, the plaintiff's assertion that the administrative authority failed to address the issue of segregation is unfounded. The authority compared the characteristics of the two schools and responded to the plaintiff's concerns about segregation. It referenced efforts and achievements of the local school in improving education and teaching conditions. In this context, the Curia noted that the fact that the plaintiff's child, alongside other children of Roma origin, belonged to the same school district due to their place of residence, resulting in the school having a majority Roma student body, does not meet the definition of segregation.

The plaintiff did not initiate proceedings before the Equal Treatment Authority for any alleged violation of equal treatment, nor did they raise such objections during the administrative process. Consequently, the issue was not addressed there. Similarly, the plaintiff did not request evidence in this regard during the judicial proceedings and failed to substantiate their claims.

The Curia found that the first-instance court thoroughly reviewed the defendant's administrative decision based on the arguments set forth in the claim and properly evaluated it as lawful. The final judgment did not violate Sections 206 or 213(1) of the CCP, as the plaintiff merely made assertions regarding the alleged violations without supporting them with evidence, despite the burden of proof placed upon them under Section 164(1) of the CCP. Consequently, under Section 3(3) of the CCP, the plaintiff bears the consequences of their failure to meet the burden of proof.

In view of the above, the Curia upheld the final judgment based on Section 275 (3) of CCP.

The defendant did not submit a counterclaim on the merits, no hearing was held in the case, and therefore, despite winning the case, no actionable costs were incurred and therefore no provision was necessary.

The losing plaintiff, pursuant to Section 78(1) of the CCP and Section 13(2) of Decree No. 6/1986 (VI.26.) of the Ministry of Justice, is obligated to bear the costs of the review fee that was not prepaid due to the fee exemption applicable in the case. The Curia determined the amount of this fee based on Section 50(1) of Act XCIII of 1990 on Duties, which was in force at the time the review request was submitted.

*Budapest, 2 September 2015.*

***Dr. Kincsó Tóth Presiding Judge, Dr. Erika Rothermel Judge-Rapporteur,  
Dr. Gizella Márton Judge***