

The Curia
as reviewing court
O r d e r

Case number: Kfv.IV.37.139/2022/9

Members of the Board: Dr. Zsolt Balogh Presiding Judge

Dr Barnabás Hajas, Judge-Rapporteur

Dr. Lajos Árpád Kiss, Judge

Dr András Patyi, Judge

Dr. Eszter Varga, Judge

The plaintiff: plaintiff1

(address1 legal representative: legal representative1)

Representative of the appellant: Dr. Muhi Erika, Attorney

(adress2)

Defendant: North Budapest School District Centre

(adress3)

Representative of the defendant: Dr. Mátyás Kapa, individual Attorney

(adress4)

Subject-matter of the case: examination of the legality of decisions and administrative acts BP/1009/00396-2/2019 and TK/188/01264-6/2020 made in the sphere of education

Party requesting the review: plaintiff (No. 61)

Final decision under appeal: judgment of the Budapest-Capital Regional Court No. 41.K.701.887/2020/59

Ordering Section

The Curia annuls the judgment of the Budapest-Capital Regional Court No. 41.K.701.887/2020/59 and orders the court of first instance to initiate new proceedings and issue a new decision.

The Curia shall set the amount of the costs incurred by the applicant in the review proceedings at 30,000 (thirty thousand) forints and the amount of the costs incurred by the defendant in the review proceedings at 80,000 forints (eighty thousand).

The order is not subject to review.

Reasoning

Facts Underlying the Application for Review

[1] The minor plaintiff is a student with special educational needs, requiring enhanced attention and special care. On November 29, 2017, the Headquarters of the Metropolitan Pedagogical Service (hereinafter "Expert Committee") conducted an evaluation of the plaintiff. As a result, the Expert Committee issued an expert opinion on February 2, 2018 (Ref. No. 19096/17-18), concluding that the plaintiff requires special attention and care due to their special educational needs. The opinion recommended that the plaintiff's education be conducted exclusively in a special educational setting, stating that compulsory education could only be fulfilled through regular school attendance.

[2] On March 23, 2018, the plaintiff's legal representative requested a review of the expert opinion. The Government Office of Budapest Capital, District IV (hereinafter "First-Instance Authority"), appointed the Expert Committee to conduct the review as part of an administrative procedure. Following a comprehensive psychological and pedagogical assessment conducted on April 23, 2018, the Expert Committee issued a new expert opinion on April 26, 2018, which reaffirmed the findings of the earlier evaluation. The First-Instance Authority subsequently upheld the Expert Committee's conclusions in its decision of May 7, 2018 (Ref. No. BP-04/003/00123-8/2018).

[3] The plaintiff challenged this decision by filing an appeal, requesting that both the decision and the underlying expert opinion be amended. Specifically, the plaintiff sought to have the findings regarding the necessity of special education removed and instead requested that an order be issued for integrated education. Additionally, the plaintiff requested that a different educational institution be designated, one that would be more suitable for their abilities. In the course of the second-instance proceedings, the Government Office of Budapest Capital (hereinafter "Defendant's Predecessor") appointed the ELTE National Pedagogical Practice Service (hereinafter referred to as the "Practice Service") as an expert body. On January 10, 2019, the Practice Service issued an expert opinion (Ref. No. ISK/770/1(2019)), stating that the findings from the first-instance expert opinion remained valid with respect to the diagnosis, classification of support needs, and development recommendations. It was recommended that the plaintiff continue their education during the 2018/2019 academic year under the "Curriculum Guidelines for the Education of Students with Special Educational Needs" and with appropriate developmental support. The Practice Service further concluded that, considering the plaintiff's condition, the importance of intensive foundational education at their age and grade level made a mid-

year school transfer inadvisable. Accordingly, it suggested that, temporarily, the plaintiff might benefit more from continued special education. The expert opinion emphasized that compulsory education should be fulfilled through daily school attendance, supported by differentiated pedagogical methods and comprehensive developmental programs.

The expert opinion also specified that by the end of the 2018/2019 academic year, during the routine review to be conducted *ex officio* by the Expert Committee, it would be necessary to assess the institutional possibilities for integrated education and the establishment of appropriate conditions. On February 28, 2019, the predecessor of the defendant issued a decision (Ref. No. BP/1009/00396-2/2019), citing the opinion of the Practice Service in its reasoning, rejecting the plaintiff's appeal and upholding the first-instance decision.

Subsequently, based on a supplementary expert opinion issued by the Expert Committee on October 15, 2018 (Ref. No. 19096/18-19) – which designated Újpest Kindergarten, Elementary School, and Unified Special Education Methodology Center as the appropriate institution for the plaintiff – the defendant's predecessor modified its earlier decision (Ref. No. BP/1009/00396-2/2019) on April 2, 2019 with issuing another decision (Ref. No. BP/1009/00396-4/2019), which rejected the plaintiff's appeal and upheld the first-instance decision, with the institutional designation specified in the supplementary expert opinion (Ref. No. 19096/18-19).

[4] On November 4, 2019, the Expert Committee conducted the plaintiff's next mandatory statutory review. Based on this review, the Expert Committee issued an expert opinion on January 9, 2020 (Ref. No. 19096/19-20), confirming that the plaintiff continued to experience other psychological developmental disorders, remained a student with special educational needs, and required enhanced attention and special care. The opinion recommended continued special education and stated that the plaintiff's compulsory education could only be fulfilled through regular school attendance. The institution designated for the plaintiff remained Újpest Kindergarten, Elementary School, and Unified Special Education Methodology Center. The expert opinion indicated that the next review would take place during the 2022/2023 academic year.

[5] On April 20, 2020, the plaintiff's legal representative requested a review of the expert opinion as part of an administrative procedure. In response, the defendant initiated an administrative procedure and again appointed the Expert Committee as an expert body. Following a comprehensive psychological and pedagogical assessment conducted on May 21, 2020, the Expert Committee issued a new expert opinion on May 25, 2020, reaffirming the findings of its earlier opinions. On July 3, 2020, the defendant issued a decision (Ref. No. TK/188/01264-6/2020) upholding the expert opinion of the Expert Committee.

The Claim and the Defendant's Defense

[6] The plaintiff filed a claim against the decisions of both the defendant's predecessor and the defendant (hereinafter collectively "defendant"), seeking the modification of these decisions. The plaintiff requested that the court remove the findings in the expert opinions underlying the decisions regarding the necessity for special education, order integrated education for the plaintiff, and designate an educational institution suited to the plaintiff's abilities. The plaintiff also sought the reimbursement of litigation costs.

The plaintiff challenged only the findings in the expert opinions related to severe learning disabilities and the recommendation for special education. The plaintiff argued that, with appropriate support, integration would be possible, and that the most suitable educational environment for the plaintiff would involve joint education with non-disabled children following a standard curriculum. The plaintiff

contended that the defendant's decisions violated their right to education appropriate to their abilities and to inclusive education, did not serve their best interests, and discriminated against them based on their disability.

The plaintiff invoked several provisions of international and domestic law to support their argument, including Article 3(1) and Article 23 of the Convention on the Rights of the Child (hereinafter "CRC"), promulgated by Act LXIV of 1991, emphasizing the "best interests of the child"; Article 5 (Equality and non-discrimination), Article 7 (Children with disabilities), and Article 24 (Education) of the Convention on the Rights of Persons with Disabilities (hereinafter "CRPD"), promulgated by Act XCII of 2007; Sections 8(g), 10(2), and 27(3) of the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter "Equal Treatment and Opportunity Act"); and Sections 46(3) (establishing right to education) and 47(1)-(3) (establishing right to special treatment) of the Act CXC of 2011 on National Public Education (hereinafter "NPE").

The plaintiff argued that the assigned school, as a segregated, special-education institution, was not in their best interest, did not align with their abilities or intellectual potential, and effectively barred them from pursuing further education. They asserted that the Expert Committee's recommendation for special education and the assignment to this institution were driven by the lack of a state-maintained general education school with appropriate facilities for special care within a reasonable distance of their residence. Furthermore, the plaintiff claimed that their right to equal treatment was violated, as their protected characteristic—disability—prevented them from accessing quality education alongside their peers in a setting suited to their abilities.

The plaintiff requested the appointment of an ad hoc expert, arguing that the expert opinion effectively functions as an administrative act, creating rights and obligations, determining the child's status, specifying how compulsory education is to be fulfilled, and designating the institution responsible for providing the required education. They contended that their right to legal remedy would become purely formal and meaningless if the court could not order the appointment of a judicial or ad hoc expert. According to the plaintiff, the claim aimed to ensure that they could study in a non-discriminatory environment, in a manner and at an institution appropriate to their abilities.

The defendant's predecessor and the defendant maintained their positions outlined in their decisions and requested the dismissal of the claims. They argued that the decisions were based on the expert opinions and, lacking the necessary expertise to determine how compulsory education should be fulfilled, the authority could not deviate from the expert findings. The defendant asserted that the plaintiff could no longer challenge the decision (Ref. No. BP/1009/000396-6/2019), as the period it covered (up to the 2019/2020 academic year) had already elapsed, during which the plaintiff had been placed in special education. The expert opinion underpinning that decision had also been upheld during the subsequent review and served as the basis for Decision No. TK/188/01264-6/2020, which continued to recommend special education. The defendant argued that the court's review should focus on whether the authority adhered to applicable legal regulations during the administrative procedure, rather than determining the plaintiff's specific educational needs. The defendant opposed the appointment of an expert, asserting that no expert opinion could retroactively overturn findings pertaining to the period up to the 2019/2020 academic year, as the state of the plaintiff at the time of the assessments could no longer be reconstructed.

The final decision sought to be reviewed at first instance

[9] The Court of First Instance dismissed the plaintiff's claims.

[10] The court of first instance consolidated the lawsuit initiated against the decision of the defendant's predecessor (Ref. No. BP/1009/000396-6/2019) and the lawsuit initiated against the decision of the defendant (Ref. No. TK/188/01264-6/2020) and adjudicated the claims jointly.

[11] According to the final judgment, the plaintiff's assumption that the subject matter of the lawsuit was their right to education in a non-discriminatory manner at an institution suited to their abilities was incorrect. The lawsuit was limited to reviewing the legality of the defendant's decisions. Therefore, the court of first instance only needed to determine whether the defendant issued its decisions in compliance with the law.

[12] The court of first instance found that due to legislative changes during the preceding administrative procedures, the defendant conducted these proceedings partly under differing legal frameworks.

[13] While the plaintiff disputed the validity of the defendant's decisions, the court of first instance deemed the decisions to be based on expert opinions. At the plaintiff's request, the court appointed the Metropolitan Pedagogical Service as an ad hoc expert, as it deemed the appointment of a judicial expert from the registry unfeasible due to the complexity and specialized nature of the issue and the lack of available experts at the Hungarian Institute for Forensic Sciences (hereinafter "HIFS"). The court of first instance held that even though the Expert Committee involved in the initial administrative procedure was a subunit of the ad hoc expert, the restructuring of the expert system and the different personnel composition of the ad hoc expert body ensured the impartiality of the expert opinion. The plaintiff's request to exclude the ad hoc expert was rejected by the court, which highlighted that there was no evidence of bias, and no such concerns were raised against the written declaration of impartiality submitted by the ad hoc expert.

[14] On October 20, 2021, the ad hoc expert, based on institutional observations, comprehensive psychological and pedagogical assessments, previous expert opinions, teacher evaluations, and consultations with the plaintiff's parents, issued its expert opinion. It concluded that the plaintiff continued to suffer from other psychological disorders (severe learning, attention, and behaviour regulation disorders), required special attention and care, and recommended continued special education. The expert reaffirmed the designation of Újpesti Kindergarten, Elementary School, and Unified Special Education Methodology Center as the appropriate institution for the plaintiff.

The final judgment accepted the expert opinion as credible and relied on it in the ruling. The court found that the opinion supported the validity and legality of the defendant's decisions, as its conclusions aligned with the expert opinions obtained in prior procedures. The ad hoc expert could not retroactively assess the plaintiff's previous condition but inferred from their current findings that the defendant's

decisions were appropriate and based on well-founded expert assessments. The court dismissed the plaintiff's objections to the findings on severe learning disabilities and the order for special education.

[15] The final judgment held that the defendant fulfilled its obligation to appoint an expert as required by the Act CXCV of 2011 on National Public Education (NPE) and the corresponding Government Decree No. 229/2012 (VIII. 28.) on its implementation (hereinafter implementation). Since the scope of expert opinions that can be used as evidence is defined by law [NPE Section 47(1)], the defendant lawfully based its decisions on expert opinions obtained during the administrative proceedings. Accordingly, the court concluded that the administrative authority's decision was legally sound, sufficiently substantiated, and made in compliance with the applicable legal regulations.

[16] The court rejected the plaintiff's evidence motions submitted as part of their claim, providing justification for this decision in its judgment.

[17] The final judgment stated that if the defendant's actions resulted in violations of the Equal Treatment Act (hereinafter "ETA"), such grievances must be addressed in a separate procedure initiated before the competent authority. Citing the Curia's ruling in Case No. Pfv. 20.241/2015/4 (EBH2015.P.6), the first-instance court explained that determining unlawful segregation under Section 10(2) of the ETA or violations of the requirement for equal treatment in education under Section 27(3) falls within the jurisdiction of civil courts. An administrative court, when reviewing sector-specific educational regulations, cannot make determinations based on the ETA, as doing so would exceed the scope of the case. Similarly, in compliance with Article 5 of the CRPD Convention equality and freedom from discrimination can only be enforced in this context.

[18] The final judgment concluded that since the essence of the legal dispute was how the plaintiff's right to education should be exercised—whether integrated or special education was justified—and no evidence was presented indicating that the designated institution failed to provide appropriate education, there was no violation of Sections 46(3) and 47(1) of the National Public Education Act (NPE), or Articles 7 and 24 of the CRPD Convention.

Request for Review and Defense

[19] In their request for review, the plaintiff sought the annulment of the final judgment and an order directing the first-instance court to conduct a new procedure and issue a new decision.

[20] The plaintiff argued that the first-instance court's interpretation of the law rendered their right to legal remedy meaningless. They contended that the court's position—that the dispute was limited to reviewing the legality of the defendant's decision—was incorrect. According to the plaintiff, judicial review should have also extended to the lawfulness of the expert opinion, as parental consent to its conclusions without challenge effectively grants it binding legal effect without formalizing it as a decision. If a parent disagrees with the expert opinion, they may request an internal review before the same committee, but this process lacks procedural safeguards. Only after this internal review's failure can the parent file an appeal, which in this case involved the assignment of ELTE for evaluation during the contested period. The plaintiff argued that the government office's decision on the appeal relied on the same expert opinion but failed to constitute a genuine review of the original expert opinion.

[21] The plaintiff emphasized that neither the Code of General Administrative Procedure (Act CL of 2016) nor the NPE restricts the scope of judicial review to procedural matters. No legislation excludes

the expert opinion itself from being reviewed in court. The plaintiff argued that if such review were not possible, it would effectively nullify their right to legal remedy.

[22] The plaintiff invoked Article XXVIII(7) of the Fundamental Law, which guarantees the right to legal remedy, and referenced the Constitutional Court of Hungary's Decision No. 11/2019 (III.29.) AB. They asserted that contrary to the principles outlined in this decision, their right to legal remedy had become official because the first-instance court deemed the expert opinion underlying the initial decision non-reviewable. They also argued that their right to legal remedy was violated by the appointment of an ad hoc expert they had explicitly objected to, citing the expert's alleged bias. Additionally, they criticized the practice of having one pedagogical service review the work of another service operating under the same administrative authority, which also serves as the operator of the designated educational institution.

[23] According to them, an expert opinion on learning capacity is an administrative act that can be subject to judicial review. In support of this, they referred to Section 4(1) and Section 4(3)(a) of Act I of 2017 on the Code of Administrative Court Procedure (hereinafter "CACP") and to the parts of a commentary on those provisions, which was not specified. They emphasized that the Metropolitan Pedagogical Service operates as a "budgetary (administrative) body," its expert committee activities are governed by administrative law, and the opinions it issues have legal effect and binding force within the public education system. The plaintiff argued that educational institutions must comply with these expert opinions, and if they fail to do so, enforcement can be sought through judicial proceedings. On this basis, the plaintiff asserted that judicial review should extend to the lawfulness of the expert opinion.

[24] The plaintiff argued that legal remedy would only have been effective if decisions were made within a reasonable timeframe and if the court's decision provided sufficient guarantees to ensure their inclusive education by modifying both the expert opinion and the administrative decision.

[25] The plaintiff objected to the first-instance court's exclusion of constitutional rights issues raised in their claim. They noted that even in prior proceedings, they had invoked violations of their rights under the Equal Treatment Act and the CRPD Convention related to discrimination. The plaintiff maintained that the principles of equal treatment and the prohibition of discrimination are constitutional requirements that permeate the entire legal system and must be directly applied in all procedures, including those involving expert opinions.

[26] The plaintiff contended that the first-instance court disregarded the direction of their claim and failed to fulfill its obligation to provide adequate reasoning. They challenged the court's conclusion that examining violations of equal treatment fell exclusively within the jurisdiction of civil courts.

[27] The plaintiff also disputed the assertion that their access to education was ensured. They argued that education in a segregated school should be an exceptional solution, primarily initiated by parents, and only justified when no alternative exists for fulfilling compulsory education. The plaintiff emphasized that their right to education suitable to their actual abilities should be exercised inclusively alongside majority (non-disabled) children and reiterated that the segregated education provided was unsuitable for their needs.

[28] The plaintiff asserted that the administrative decision would only be lawful if it complied with both domestic legislation and international obligations. In this regard, they cited the CRPD Convention, the Convention on the Rights of the Child, and the commentary on Article 24 of the CRPD.

[29] In their opposition, the defendant requested that the final judgment be upheld.

[30] The defendant contested the plaintiff's factual and legal arguments, citing inaccuracies and deficiencies.

[31] The defendant argued that the plaintiff's position, arguing that the subject of the claim was not the administrative decision but the underlying expert opinion, contradicts existing regulations. In the case at hand, the defendant holds jurisdiction and competence to conduct the administrative proceedings. A central aspect of these proceedings involves a matter requiring specialized expertise, which the defendant itself does not possess. Consequently, the necessary expert opinion is provided by the relevant pedagogical service institution.

[32] The defendant emphasized that expert committees are the only entities equipped to address the specialized issues related to children with special educational needs. These committees are uniquely qualified under the legal framework to provide the necessary expert assessments.

[33] The defendant refuted the plaintiff's claim of overlap between the entities managing pedagogical services and educational institutions. They clarified that while the defendant is the operator of the designated educational institution, the Metropolitan Pedagogical Service operates independently as a separate budgetary body under the Central Pest School District Center.

[34] The defendant reiterated that only expert committees have the personnel and professional expertise to assess the needs of children requiring special education.

[35] The defendant highlighted that the plaintiff had undergone multiple expert evaluations at both the regional and national levels, which consistently identified their special educational needs and prescribed special separated education.

[36] The defendant noted that while the plaintiff's claim referenced various legal provisions to challenge the administrative decision, it failed to specify any concrete legal violations in the defendant's predecessor's procedures or the content of the decision.

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[37] He explained that the applicant was entitled to receive the benefit of special treatment in accordance with the expert opinion of the expert committee. The plaintiff was not discriminated against in relation to anyone but would suffer prejudice precisely if he did not receive the special treatment to which he was entitled in the manner, form and place considered appropriate by the experts.

[38] According to the defendant, the applicant's application goes partly beyond the legality of the administrative decision and does not fundamentally challenge the application of the law, but the substantive law.

The Curia's decision and its legal grounds

[39] The review request is partially well-founded, as explained below.

[40] The Curia reviewed the final judgment within the scope of the review request and the opposition to the review request, in accordance with Section 115(2) and Section 108(1) of the CACP.

[41] Under Section 120(5) of the CACP, no new evidence may be introduced during the review process. The Curia based its decision on the documents and evidence available at the time the final judgment was rendered.

[42] The Curia first had to determine the subject of the administrative case. Specifically, it considered whether the expert opinion itself constituted administrative activity or if the case solely concerned the administrative decisions of the defendant and its predecessor.

[43] Although the Metropolitan Pedagogical Service operates as a budgetary entity, it does not meet the definition of an administrative body under Section 4(7)(1) of the CACP. The Central Pest School District Center is not a state administrative body, and its organizational units do not qualify as administrative bodies under Section 4(7)(1)(a) of the CACP. According to Section 9 of the Code of General Administrative Procedure Act CL (hereinafter “CoGAP”), an authority is defined as an entity or person authorized by law, government decree, or municipal decree to exercise administrative powers.

It is true that Section 42 of the Government Decree No. 229/2012 (VIII. 28.) grants district educational authorities the power to make administrative decisions regarding integration, learning difficulties, behavioural challenges, or special educational needs in connection with expert opinions. Thus, they meet the criteria outlined in Section 4(7)(1)(e) of the CACP. However, neither the National Public Education Act nor the Government Decree No. 229/2012 (VIII. 28.) grants administrative authority to the Metropolitan Pedagogical Service or the expert committees operating within its framework. Therefore, they cannot be considered administrative bodies under the definition provided in the CACP. Consequently, their activities cannot be the subject of an administrative dispute, as they fail to meet the conjunctive criteria for administrative action. Furthermore, because Section 47 of the NPE specifically authorizes the service to issue expert opinions, such opinions do not qualify as individual administrative decisions under Section 4(3)(a) of the CACP.

[44] Neither the NPE nor the Government Decree No. 229/2012 (VIII. 28.) indicates that an expert opinion is binding on the student or their parent. Section 47(1) of the NPE specifies only that special care must be provided according to the expert opinion. Section 42(1) of the Government Decree No. 229/2012 (VIII. 28.) grants the defendant and its predecessor the authority to make decisions in administrative proceedings related to integration, learning difficulties, behavioural challenges, or special educational needs based on expert opinions. Section 42(2) allows a parent to request the initiation of such proceedings if they disagree with the expert opinion or the expert committee's process. However, the law does not provide for an appeal against the expert opinion itself.

[45] Based on the above, the Expert Committee does not perform administrative functions. It is not the expert opinion that changes the legal status of the plaintiff but the decisions of the defendant and its predecessor. Therefore, an expert opinion does not constitute administrative activity.

[46] Since January 1, 2018, Section 43(5) of the Government Decree No. 229/2012 (VIII. 28.) has stipulated that an expert who participated in the preparation of an expert opinion as part of the expert committee (mentioned in Section 4) involved in the case cannot serve as an expert in the proceeding. This provision of Government Decree No. 229/2012 (VIII. 28.) establishes a clear exclusionary rule.

[47] The Curia found no merit in the plaintiff's arguments regarding the nature of the expert opinion or the alleged lack of procedural safeguards in the functioning of the expert committee.

Regarding the right to legal remedy, the plaintiff cited the Constitutional Court of Hungary's Decision No. 11/2019 (III. 29.) AB, which reiterated principles established in Decisions No. 14/2018 (IX. 27.) AB and 25/2018 (XII. 28.) AB. According to these decisions, "an essential, inherent element of the right to remedy is the possibility of redress, meaning that the concept and substance of remedy must include the ability to correct legal violations. The requirement for effective remedy entails two aspects: first, that access to the remedial system is not obstructed by legal provisions, and second, the scope of the remedy, i.e., whether it is comprehensive or limited. The requirement for effective judicial protection is part of the right to a fair trial. It is a constitutional requirement that courts must substantively decide on the rights brought before them. Merely providing formal access to the judiciary is insufficient to satisfy procedural guarantees, as the constitutional safeguards aim to ensure that courts can render substantive decisions with finality. Effective judicial protection that satisfies the constitutional framework for fair procedures depends on the scope of judicial review as defined by procedural rules.

In regulating judicial review of the legality of administrative decisions, it is a constitutional requirement that "courts must be able to substantively adjudicate the rights and obligations at issue. The legal framework defining administrative decision-making powers must include criteria or standards by which the court can review the legality of decisions. Judicial review of administrative decisions cannot constitutionally be limited to examining mere formal legality. (Decision No. 11/2019 (III. 29.) AB, paragraphs [11]-[12])"

[49] Based on these principles, the Curia examined whether the first-instance court's procedure met the constitutional requirement articulated by the Constitutional Court, specifically whether the court substantively adjudicated the administrative dispute. The key question was whether the first-instance court reviewed the administrative decisions rendered in prior proceedings, including the findings of the expert opinions.

[50] The final judgment clearly indicates that the first-instance court appointed an ad hoc expert specifically to assess the basis—and thus the legality—of the administrative decisions made in the prior proceedings, including their reliance on expert opinions. The court provided reasoning in its judgment for why it did not appoint a judicial expert, or the ad hoc expert proposed by the plaintiff. The judgment also explained why the ad hoc expert's opinion was deemed reliable and accepted as a basis for its decision. Additionally, the court justified in its Order No. 47 and final judgment because it rejected the plaintiff's motion to exclude the ad hoc expert on grounds of bias.

[51] The proceedings demonstrate that substantive review of the expert opinion was not only possible but was conducted by both the administrative authorities in prior proceedings and the first-instance court. At the parent's request, an administrative procedure was initiated, allowing for substantive challenges to the expert opinion. One of the prior proceedings included an appeal process in which the expert opinion was also subject to review. Finally, the administrative court provided an opportunity to challenge the expert opinion. The nature of expert opinions is such that neither administrative authorities nor courts are obligated to accept them automatically. However, if they find an expert opinion reliable and use it as the basis for their decisions, it becomes part of the reasoning for those decisions and subject to challenge within the framework of remedies against the administrative or judicial decisions.

[52] The first-instance court reviewed the expert opinions, evaluated them appropriately, and incorporated them into its proceedings and reasoning. It did not completely reject the plaintiff's arguments regarding the review of expert opinions. Instead, it conducted expert evidence proceedings and examined the legality of the decisions by the defendant and its predecessor in light of the expert opinions. Accordingly, the Curia found that the review of the legality of the decisions extended to the underlying expert opinions and was not limited to formal legality. This satisfied the substantive remedy requirements articulated in the Constitutional Court's practice.

[53] While the Curia has not previously established principles for applying the CRPD Convention, its practice regarding the Convention on the Rights of the Child (CRC), as invoked by the plaintiff, provides guidance on fulfilling international obligations. Article 3(1) of the CRC states: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.” Under Article Q(2) of the Fundamental Law, Hungary ensures harmony between international law and Hungarian law to fulfill its international obligations. This implies that the NPE and its provisions must align with Article 3 of the CRC. The foundational principles of the NPE which prioritize the interests of the child, further reinforce this alignment.

[54] Article 3(1) of the CRC is not addressed solely to legislators but also to implementing bodies, including administrative authorities such as the defendant. Interpreting the foundational principles of the NPE together with Article 3(1) of the CRC confirms that the best interests of the child must permeate both the NPE and its application. The CRC Committee’s General Comment No. 8 (2006) highlights that considerations of a child’s best interests must account for both short- and long-term factors and align with the overall spirit of the CRC, transcending legal boundaries (Kf. v. IV. 37.590/2021/8. [26]-[27])

[55] The CRPD Convention is implemented similarly to the CRC, requiring that the NPE and its provisions align with the CRPD. There was no argument in the case suggesting that the NPE or Government Decree No. 229/2012 (VIII. 28.) conflicted with international treaties. The NPE and Government Decree No. 229/2012 (VIII. 28.) in line with the Fundamental Law’s Article XV (4)-(5) and the CRPD, contain provisions ensuring the rights of students with disabilities. However, the practical application of these rights through individual administrative decisions is of paramount importance for their enforcement.

[56] The CoGAP in its Chapter 15, establishes procedural protections for minors, individuals lacking legal capacity, those with limited legal capacity, and persons with disabilities. Section 29(1) categorically states as a general principle that minors and persons with disabilities are entitled to enhanced protection in administrative proceedings. The foundational principles of the CoGAP also merit attention in this context. Notably, the principle of legality under Section 2, which requires authorities to act within the scope of their powers in compliance with the law, ensuring professionalism, simplicity, cooperation with clients, and good faith; and the principle of official action, which obligates authorities to establish facts ex officio. These principles must be upheld throughout all phases of administrative proceedings, consistent with Articles XXIV and XXVIII of the Fundamental Law, which guarantee the rights to fair administrative proceedings and a fair trial. (Kfv.IV.37.590/2021/8.[29])

[57] In this case, there was no evidence to suggest that the defendant or its predecessor violated the provisions of the National Public Education Act (Nkt.) or the Government Decree No. 229/2012. Accordingly, the Curia found no basis for the plaintiff’s claim that the CRPD Convention had been violated.

[58] The plaintiff argued that, contrary to the final judgment, their right to education had not been ensured. The Curia assessed the decisions in question but could only make findings to the extent supported by the content of those decisions. It was undisputed that the plaintiff was participating in education at the designated institution.

As previously discussed, consideration of the child’s best interests requires attention to both short- and long-term factors. In this case, the child’s best interest is served by receiving education that is most suitable both immediately and in the long term. The ad hoc expert emphasized that, for the plaintiff, inclusive education with specific developmental support for attention and behavioural regulation disorders could be successful in the future, including in secondary school, although the exact timing

could not be predicted due to various internal and external factors. The Curia concluded that the decisions ensured education tailored to the plaintiff's needs, bringing inclusive education within tangible reach while accounting for the child's long-term development. Determining the most appropriate educational format is a technical matter, which the first-instance court evaluated during its review of the legality of the defendant's decisions.

[59] The plaintiff argued in their review request that the first-instance court failed to examine the constitutional rights set out in their claim, leaving this aspect of their case unaddressed. The final judgment held that allegations of violations of equal treatment must be raised in a separate procedure before the competent authority. Furthermore, it stated that determining violations of equal treatment in education falls within the jurisdiction of civil courts and that an administrative court reviewing sector-specific educational rules cannot make findings based on the Equal Treatment Act as this would exceed the scope of the case. The first-instance court also clarified that compliance with Article 5 of the CRPD Convention regarding equality and freedom from discrimination must be enforced in the manner previously outlined.

[60] Under Article 28 of the Fundamental Law, courts are obligated to interpret laws in line with their purpose and the Fundamental Law. According to the Constitutional Court of Hungary, Article 28 imposes a constitutional obligation on courts to align their legal interpretations with the Fundamental Law in their judgments. (See Decisions No. 7/2013 (III.1.) AB, reasoning [33], and 28/2013 (X.9.) AB decision, reasoning [29]) This obligation requires courts to identify the fundamental rights implications of cases within their interpretive discretion and to interpret applicable laws in light of the constitutional content of the relevant fundamental rights. (See Decision No. 3/2015 (II.2.) AB, paragraph [17]). Therefore, if the Constitutional Court has established the constitutional content of a provision in the Fundamental Law applicable to a case, the courts must adhere to this interpretation. Under Section 39(1) of Act CLI of 2011 on the Constitutional Court of Hungary, the Constitutional Court's decisions are binding not only on the substantive issue but also on the legal interpretation provided in the reasoning. (See Curia Decision No. Pfv.V.20.923/2019/7) In other words, courts must interpret laws in accordance with the Fundamental Law and cannot deviate from mandatory interpretations provided by the Constitutional Court. (Curia Decision No. Bfv.III.300/2019/16)

[61] The case-law analysis group of the Curia also pointed out in its summary opinion that Article 28 facilitates the reference to fundamental rights in judgments, and the public law protection of fundamental rights permeates all areas of legal application. This is perhaps most evident in administrative law, but there are also numerous examples of connections between the public law protection of rights enshrined in the Fundamental Law and the civil law protection of personal rights, as well as applications in criminal law and labor law. General fundamental rights tests or specific tests (e.g., the comparability and justifiability test in cases involving the prohibition of discrimination, as in labor law rulings) are reflected in judicial decisions."

[62] It is important to emphasize that the requirement of equal treatment is far broader than the mechanisms provided by the Equal Treatment Act. It originates from the principle of equality before the law and the prohibition of discrimination, enshrined in Article XV(1) of the Fundamental Law. The plaintiff referenced provisions of the ETA which operationalize the principles of Article XV by imposing obligations on organizations exercising administrative powers and educational institutions to uphold equal treatment. Sections 4 and 5 of the ETA clearly establish that the requirements of equal treatment and the prohibition of discrimination are not confined to specific branches of law but are constitutional principles that permeate the entire legal system.

[63] The principle of equal treatment is reflected in the foundational provisions of the NPE (Section 1(2)) and the principles of the CoGAP (as part of the principle of legality, Section 2(2)(b)). Therefore,

when the first-instance court applied the provisions of the NPE, it should have substantively examined the plaintiff's claim regarding the alleged violation of these principles. The plaintiff's claims regarding equal treatment cited the ETA but clearly did not seek to utilize the specific legal remedies provided by that Act. Consequently, the first-instance court erred in concluding that findings based on the ETA could not be made in the context of educational sector-specific rules.

[64] The Curia rejected the final judgment's assertion that issues of equal treatment fall exclusively within the jurisdiction of civil courts. The Curia noted that the case cited in the judgment involved a personal rights dispute, while the current case concerns an administrative legal dispute. The two matters differ so significantly that they cannot be considered identical. Moreover, the referenced Curia ruling contains no statement suggesting that violations of equal treatment can only be adjudicated in civil proceedings.

[65] The Curia found that the first-instance court violated Section 86(1) of the CACP, which requires that a judgment address all claims made in the case. According to established Curia practice, a judgment must provide sufficient reasoning to demonstrate that all claims have been fully adjudicated. This includes addressing every aspect of the claim in the reasoning. (Kfv.V.35.239/2017/7)

[66] As a result, the Curia annulled the first-instance judgment under Section 121(1)(a) of the CACP, and ordered the first-instance court to conduct a new proceedings and issue a new decision. According to Curia practice, if the reviewing court has already ruled on certain aspects of the final judgment, those matters will be considered *res judicata* in the rehearing. (Kfv.III.37.638/2015/5)

[67] In the rehearing, the first-instance court must fully address the plaintiff's claim and evaluate their arguments concerning the alleged violation of equal treatment. This includes determining whether the plaintiff's right to equal treatment was violated in the prior proceedings or the administrative decisions at issue.

Substantive Principles of the Decision

[68] *The judgment must address and provide reasoning for every aspect of the plaintiff's claim.*

[69] *When the client is a child with a disability, authorities must apply the law in light of Article 3(1) of the Convention on the Rights of the Child (CRC), the provisions of the CRPD Convention, and Section 29(1) of the CoGAP.*

Closing Section

[70] The Curia adjudicated the case in a hearing conducted at the defendant's request, pursuant to Section 115(2) and Section 77(2) of the CACP.

[71] The plaintiff did not submit a cost statement during the review proceedings; therefore, the Curia refrained from making a decision regarding costs in this matter, as per Section 115(2) of the CACP which applies Section 110(3) of the same act and Section 35(1) of the CACP, applying Section 82(3) of the Act CXXX of 2016 on the Code of Civil Procedure. The Curia only determined the amount of the defendant's costs incurred during the review proceedings but left the decision on their allocation to the court that will issue the new judgment.

[72] Further review of the Curia's judgment is barred under Section 116(d) of the CACP.

Curia
IV.Kfv.37.139/2022/9/II

Budapest, 27 September 2022.

Dr. Zsolt Balogh s.k.

Presiding Judge

Dr. Barnabás Hajas s.k.

Judge-Rapporteur

Dr. Árpád Lajos Kiss s.k.

Judge

Dr. András Patyi s.k.

Judge

Dr. Eszter Varga s.k.

Judge

For the authenticity of the document:

official