DEBRECEN COURT OF APPEAL

Gf.I.30.347/2014/10.

The Court of Appeal of Debrecen declared the name (address) of the plaintiff represented by Dr. Lilla Farkas and Dr. Adél Kegye (address), lawyers, the name (address) of the defendant I. represented by Dr. Előd Kovács (address), lawyer, the name (address) of the defendant II. represented by Dr. Károly Czifra (address), lawyer, the name (address) of the defendant III. (address) of the defendant III, the defendant IV (address) of the defendant IV and the defendant V (address) of the defendant V represented by Dr. Gabriella Rubi (address), lawyer, against the defendants V for breach of the requirement of equal treatment, the Nyíregyháza General Court 10.G.40.099/2012/22 against the judgment of the Court of Justice of the European Communities in Case T-338/08 Győrháza v Court of First Instance of the European Communities in Case T-338/08 Győrháza, brought on behalf of the defendants in Orders II to IV under number 23 and the defendant in Order I under number 24, and the cross-appeal brought by the under number Gf.3, the Court of First Instance has rendered the following

j u d g m e n t :

The Court of Appeal upholds the judgment of the first-instance court with a textual clarification, specifying that the second to fourth defendants are prohibited from committing further legal violations instead of being prohibited from engaging in "such and similar" actions.

The parties shall bear their own costs incurred in the appeal proceedings.

No appeal may be lodged against this judgment.

R e a s o n i n g :

Primary school No. ... has been a residential school since 1958. In the 1950s, **G was** the most sought-after residential area in the city, but in 1983-84 the population was replaced by gypsy families, and the school's pupils became gypsies.

The expert opinion of **K.J.,** a public education expert, drawn up on 26 March 2007 by the General Assembly of the defendant in first instance on the measure of the General Assembly of the defendant on the revision of the network of educational institutions, stated, inter alia, that primary school No. ..., which had one class per year among the Roma population living in a settled, segregated and severely poor situation, would be

closed from the 2007/2008 school year. It had 100 pupils and a maximum capacity of 120 pupils. Since the 2002/2003 school year, the number of pupils, classes and groups of pupils has remained practically unchanged. The institution employs 18 teachers who are highly experienced in the education of disadvantaged Roma children, have personal knowledge of the families of the children attending the school and their individual problems, and thus have the opportunity to work with the pupils on a personal basis. Of the pupils attending the school, 98 children are severely disadvantaged or eligible for regular child protection assistance. The children have a high level of socio-cultural disadvantage and their parents' income is generally below the minimum subsistence level. Textbooks are provided free of charge by the school, all lower-school pupils receive free meals, while upper-school pupils have to pay a minimum fee, but this is also a difficulty. Pupils go on to study after completing grade 8, with several pupils ... Some pupils are enrolled in the Arany János talent programme at the Gymnasium, while others are studying a profession. Today's pedagogical approach is to increase equality of opportunity by compensating for disadvantage. There is growing support for the abolition of segregated education, because the integrated education of these pupils promotes their integration, and it is illegal to segregate a group of pupils under the Equal Treatment Act.

The plaintiff withdrew his action filed with the Szabolcs-Szatmár-Bereg County Court under No P.22.020/2006 on the ground that the general assembly of the defendant I. had terminated the elementary school No ... on 23 April 2007 with effect from 31 July 2007, by transferring the pupils to another 6 schools. At the same time, it undertook to ensure the transport of children from the settlement to school by operating a school bus.

The phasing out of the school .... The Gypsy Minority Self-Government of the City of County Law supported the decision of the City of County Law City by its Resolution No. 13/2007 (IV. 3.). However, according to the comments on the implementation of the decision, it is not known what measures have been taken to organise further training for teachers of the host schools on the integration of Roma pupils, nor have special school buses been provided for the transport of pupils, but bus routes have been adapted to the location of the host schools, which will cause further problems, possibly atrocities, especially for upper secondary school pupils.

The submission of the municipality on the adoption of the Roma integration programme and the utilisation of the vacant building complex of primary school No... (38.829/2007.IX.) formulated the reduction of socio-cultural disadvantages, the improvement of equal opportunities through school education and employment, and the reduction of segregation through community and cultural programmes as specific objectives.

After the closure of school No. ..., the children in the settlement were rudely integrated into the designated host schools, and the municipality did not use public funds for successful integration.

Following the change of management of the 1st defendant, the Mayor of the municipality, **Dr. K.F.,** announced at the General Assembly on 23 May 2011 that the

municipality, as the maintaining authority, had provided for the accommodation of pupils of the primary school No. ..., which had ceased to exist without legal succession, in 6 schools maintained by the municipality, and at the same time had also provided for the organised transport of pupils. However, the closure of the primary school has led to a number of problems for the education of children living in site **H.** The defendant in the second instance submitted a letter of intent to start primary school education in the **H** settlement in the school year 2011/2012. In addition to its primary education tasks, the Church also intends to carry out Roma pastoral activities in accordance with local conditions. It considered it important to ensure the exercise of the right to education on the basis of equal opportunities, the freedom of conscience and religion in public education, the right of national and ethnic minorities to education in their mother tongue and the implementation of Roma pastoral care by providing primary education and education of the highest possible quality. At the same time, the cooperation requires the conclusion of a cooperation agreement and a contract establishing the right of use, which was submitted to the Assembly.

Prior to this, the defendant II, through Bishop **K.F. x,** made a declaration of intent to the defendant I that from September 2011 they would start Roma pastoral work through the kindergarten education, visiting and helping families, as well as organising cooperation with local social institutions and organisations. After the first year's experience, primary education could be started for the time being in the lower grades, on an ascending scale, without social tension or resistance. On 23 May 2011, he amended his declaration to the effect that, if the city administration can provide the necessary conditions, he will take over the task of primary education starting with the 2011/2012 school year, starting with a first grade in the ascending order.

The mayor of the 1st defendant informed the legal representative of the 2nd defendant that the transfer of the kindergarten in **D** Street is subject to the Public Procurement Act, while the primary school property is suitable for 4 classes of grades 1 to 4 after the change of function. Since the primary school education will take 8 grades, they are looking for the possibility to make the building suitable to accommodate 4 additional grades.

Following the Committee's referral, the First and Second Defendants entered into a cooperation agreement and a grant agreement on 31 May 2011.

The purpose of the cooperation agreement is to define the public education tasks undertaken in the framework of the debris pastoral activities at site **H**, which is the subject of the statement of the defendant II of 23 May 2011. The subject of the agreement is the **"SZ. M."** Greek Catholic primary school founded by the Church, for an indefinite period from 1 September 2011. The Church undertakes to fulfil the public tasks of education and training and, subject to the maximum number of 200 pupils laid down in the operating licence, to admit, educate and train all children of **Ny who are over the** age of 6 and whose parents agree to their children being educated in a Catholic school. In this context, it pays particular attention to the admission of children with multiple disadvantages, whose applications will not be refused. It ensures that the proportion of children with fewer pupils than the average number of pupils with fewer pupils in the city's primary schools is equal to the average number of pupils with

fewer pupils and undertakes to endeavour to run a Roma minority education programme. For the school year 2011/2012, the number of pupils is around 25, which it will continue to maintain at 1 class per year. It has undertaken to provide school education and teaching free of charge. It has ensured that the education and teaching work carried out in the institution is of an appropriate standard, providing the necessary staff and material conditions in line with the specific features of the institution. To this end, it makes use of the budgetary contribution provided for by the law in force at the time and, as the institution's maintainer, makes every effort to ensure the institution's operation by drawing on additional resources. It undertakes to apply to the government office responsible for public education for a unilateral declaration pursuant to Article 118(9) of the Public Education Act without delay after the conclusion of the agreement. It undertook to include the school in the integration programme of the defendant I., taking note of the monitoring of compliance with the provisions. The agreement referred to the fact that a separate leasing contract provided for the use of the real and movable property in order to implement the provisions of paragraphs 5, 6 and 7.

According to the grant agreement concluded on that day, the defendant I undertook to provide annual budgetary support to the defendant II, provided that the latter undertook to provide full-time education for disadvantaged children in the institution it had established or maintained and to strive to implement Roma minority education.

By Decision No 197/2011 (X. 27), the defendant in first instance decided to replace the organised transport of pupils from the closed primary school No **...** with transport to and from the host establishment, with a subsidy of 30 % of the cost of the pass and the season ticket for each pupil concerned by the reorganisation. The children will be accompanied on the school bus and to the bus stop of the scheduled service by mentors employed by the host schools.

At the time of the decision, the plaintiff, together with his colleagues, visited site **H** to assess whether the parents wanted their children to return to the school in the site and whether they were Greek Catholic. The parents did not know at the time that there would be a Greek Catholic school in the settlement. According to their statement, they were told by **Cs. M.** (president of the Roma municipality of ....) persuaded them to go to the school because their older children were being bullied in other schools. According to the summary finding, the preparations were carried out in secret and therefore the plaintiff could not participate in the decision-making process at an early planning stage. In fact, the mayor took the initiative to open the school in the settlement, but the parents were only persuaded to do so, in violation of their right to free choice of school. There is no justification for opening a school, which has already been closed once because of segregation.

On 12 March 2012, the Ministry of Public Administration and Justice registered the 1st respondent as an internal ecclesiastical legal entity of the Hungarian Catholic Church.

The Articles of Association of the defendant III, which was already operating under the Church, were amended on 20 May 2011 to register the defendant IV as a permanent establishment. A..... County Government Office registered the

establishment and amended the details of the operating licence, and from the school year 2012/20**...** authorised the independent operation of the defendant in class IV with the activity defined in the sectoral order, with a definition of 60 pupils in grades 1 to 4 of primary education and teaching.

According to a 2007 situation analysis, the number of people living in ethnically segregated housing in the area of the lawsuit is 1984. Those in the 3 to 5 age group are 100% disadvantaged. 22% of the children with multiple disadvantages are in the 3 to 5 age group. Of these, 67% attend kindergarten and are 100% disadvantaged. There are two such districts in **Ny**, Housing Estate **H** and Housing Estate **K.** Amongst the intentions to address the problem, it was noted that the introduction of a kindergarten programme in the vicinity of a settlement-like residential area could also yield good results in promoting the school success of children with multiple disadvantages. However, visits and data analysis show that the effectiveness of available services is in many respects inadequate in promoting the school success of disadvantaged and SEN pupils. Although the municipality has tried to act with care (e.g. in closing the **H** Square primary school and integrating pupils into other institutions), the measures and methods used have not had the desired impact. There are many conflicts, some of which are extremely difficult to handle and which, if they exist, can later lead to an anti-integration atmosphere among teachers, parents and residents. According to the situation analysis, there are also schools with few or no disadvantaged and severely disadvantaged pupils, such as **"SZ. M."** Greek Catholic Primary School.

According to the 2010 Public Education Equal Opportunities Situation Analysis and Action Plan, the number of people living in segregated housing in 2007 was 1984, but due to lack of data, it is not possible to know the exact number of children of pre-school and primary school age living in a settlement-like environment. The primary school in the **H** housing estate has been closed down and Roma pupils were admitted to the city's primary schools (**A.J.K.F.**, **Z.Z.**, **B.J.**, **V.K.**, **M.Zs.**, Garden City Primary Schools). Pupils are transported by school bus to the city's six primary schools, accompanied by teaching assistants. The **H** Square school building has been functionally renovated and is now home to a family support service, a child welfare service and a classroom run by the **HN** Foundation.

The First Respondent's Equal Opportunities Programme 2011/2016 (Annex 1 to General Assembly Decision No 127/2011 (30.VI.)) included..... segregated areas, naming the **H** and **K housing estates** as segregated housing estates, while the Ókisteleki grape-growing area was defined as a segregated area. It identified several factors behind the problems, one being low educational attainment and unemployment defined by the underclass subculture, and inactivity due to the abandonment of job search. Poor employment results in a lack of regular income to support themselves, leaving them in a vulnerable position and poor financial circumstances. The lack of income can lead to a number of problems (depression, self-destructive behaviours, aggression, crime), perhaps the most serious of which is child poverty and thus the reproduction of poverty. Colony **H** is located on 2.2 km², not far from the city centre, isolated by railways and industrial complexes and agricultural land, and has 302 dwellings. The dwellings were built before 1945, mostly ground floor terraced houses

converted from former military stables. A few multi-storey buildings with larger dwellings are also found; they are typically used as municipal rental housing and emergency housing. With a population of nearly 2,000, the demographic characteristics of the residents are significantly different from the city average: the age structure of the neighbourhood is very young, with a high proportion of children and a low proportion of elderly people. It is worth mentioning that the proportion of the population aged 40-64 is well below average, not only among the elderly, but also among the elderly, due to the lower average age.

A fundamental problem that inevitably arises when examining the situation of Roma is that official ethnic data are either not available or are limited. The municipality should endeavour to collect as much data as possible on the situation of the Roma in the municipality, in compliance with the data protection legislation in force. The majority of the Roma population living in the city lives in the **H** and **K** housing estates, the improvement of the quality of life and living conditions of the residents of the **H** estate is planned to be carried out through a tender (ÉAOP-2009-5.1.5/B.), the main objective of which is the renovation of housing conditions and community spaces, the organisation and provision of community development programmes for the residents.

The presence of the Greek Catholic Church on site **H** dates back several years. Until 2007, faith teachers visited the settlement, and after the closure of school No. **..., K.A.** carried out pastoral work, trying to spread the gospel with the help of small priests, reading scripture passages, talking to the residents of the settlement, praying together. The residents approached representatives of the faith life to ask the Church to play a greater role in the settlement of the problems in Settlement **H**, pastoral care and education.

The missionary command to the Church is found in the Gospel of Matthew, and Canon 585 of the Code of Canon Law commits the Church to preach the Gospel to the whole world, that Canon 635 refers to the establishment of educational institutions. Roma pastoralism as a theological concept does not refer exclusively to the Roma, as stated in the 2006 Roman document on the Principles of Roma Pastoralism. The specificity of the pastoral care of the Roma is the love of Christ in preserving the identity, culture, freedom and human dignity of the Roma, and the physical, spiritual and intellectual uplifting of the Roma towards God on the one hand, and towards the knowledge of themselves on the other. To this end, it is the task of the Church to ensure that the Roma have a proper self-esteem, self-knowledge and relationship with God. Pastoral care is always personal, with respect for the human person.

The Church's Roma pastoral activities are not limited to the education and upbringing of pupils, but also include the training of parents through a wide range of institutions, such as the **Sz. P..** Institute for Adult Education.

After the closure of school No. ..., parents in the settlement complained that Roma children in the host schools were given preferential treatment, and that the children were humiliated because of this, and had no friends or partners. These lectures were repeated at public forums and residents' meetings, where the legal representative of the defendant, Bishop **K.F. K., was** also invited. The re-opening of the school on the

site was proposed by **Cs.** No decisive action was taken by the minority self-government due to the attitude of the teachers of the host schools.

In 2011, 15 applications were submitted by parents, of which 7 children were non-religious (or did not indicate their denomination), 4 were Reformed, 2 Roman Catholic and 2 Greek Catholic. The reasons given for choosing a school were 6 for good education, 3 parents for proximity to home and good education, 1 for racism and proximity to home and 5 did not give a reason for choosing a school. In 2012, 14 applications were received from parents, of which 6 children were non-religious, 5 were Reformed, 2 Greek Catholic and 1 Roman Catholic. Among the criteria for choosing a school, 3 indicated residence and good education, 3 did not give a reason for their choice, 3 enrolled their child because they trusted the education, 2 parents chose their child because they did not want to expose them to racism and 1 parent because they attended a religious school. Two parents cited the reason for admission as being that their siblings also attend the school in the settlement, and one parent cited the reason because the child was not admitted to the school attended by his brother.

Of the total of 199 children, 20 pupils were enrolled in the settlement school in Year 1, 18 in Year 2 and 13 in Year 3. The **"Sz. M."** Greek Catholic Primary School (municipal school), 1 pupil is in Year 1 and 2 pupils in Year 2.

On September 17, **2013**, the plaintiff submitted a petition to the defendant in the first instance for the launch of a school bus, together with an annex signed by 100 Roma parents from Ny. The original copy of the petition was forwarded to the district of the fifth defendant, requesting the school maintainer to launch a school bus from the areas densely populated by Roma, which are segregated or at risk of segregation. In his request, he explained that primary school children, especially lower school children, cannot travel alone and that parents have to buy a season ticket, for which there is no subsidy. Parents therefore choose their school on the basis of this constraint, to the detriment of all other more important considerations.

Resolution No. 228/2012 (IX. 27.) of the General Assembly of the 1st respondent provided for the assumption of the right to operate public educational institutions maintained by the municipality as of 1 January 20**.** The General Assembly declared its intention to assume the operation of the movable and immovable property owned by itself in the area of its jurisdiction, which is used by the public education institutions maintained by the State Institution Maintenance Centre to perform the tasks of the State Institution Maintenance Centre, in accordance with the provisions of the Act on National Public Education, with the exception of the vocational training school pursuant to Article 5(1) to (4) of Act CLXXXVII of 2011 on Vocational Training.

In its application, the plaintiff seeks the following relief:

1. a declaration that the cooperation agreement and the grant agreement concluded on 31 May 2011 between the defendants in the first and second instance violate the Civil Code. Article 5 of the Civil Code and the provisions of the Civil Code. Article 75(3) and Article 200(2) of the EC Treaty,

2. requested the restoration of the situation before the conclusion of the contract,
3. a declaration that the defendant I., by giving free use of the school building owned by it, by terminating the school bus and by providing additional funds to the defendant II., unlawfully segregated the Roma children of **G** settlement from the non-Gypsies on the basis of nationality from the 2011/2012 school year onwards,
4. a declaration that the defendant in the second instance unlawfully segregated the Roma children in the school district **G from the** non-Gypsy children in the school district III in the school year 2011/2012, and in the school district IV from the school year 2012/20**..,**
5. a declaration that the defendant III. unlawfully segregated the Roma children in settlement **G** from the non-Gypsy children in the school year 2011/2012,
6. a declaration that the defendant IV, which does not have a compulsory admission zone, unlawfully segregated the Roma children in settlement **G from the** non-Gypsy children by creating segregated classes starting from the 2012/2013 school year**,**
7. order the defendants to cease and desist from such and similar infringements,
8. to order the defendant V, as the legal successor to the defendant I, to restore the situation that existed prior to 31 May 2011, including the school integration programme for the children of the settlement and the school bus,
9. in the alternative to the second head of claim, sought an order that the defendant in the first instance should cease to make the building in the dispute available for free use,
10. with regard to the Roma children of the settlement who are students in the defendant school of the defendant school of the fourth class, he requested that the defendant school of the second class be ordered to place the Roma children of the settlement who wish to continue to participate in religious education in classes of the majority (non-Gypsy) nationality (ethnicity) corresponding to the grades.

The defendants moved to dismiss the action, denying the nullity of the contract as alleged by the plaintiff and the violation of the provisions of the Ebktv. (*Equal Treatment and Equal Opportunities Act* (Act CXXV of 2003)) 3, and the defendant V also disputed its capacity as successor in title.

In its judgment number 22, the Court of First Instance finds that

- the 1st defendant, by giving the school building owned by it free of charge, by terminating the school bus and by providing the 2nd defendant with additional funds, unlawfully segregated the Roma children of the **H** settlement from the non-Gypsies on the basis of nationality from the 2011/2012 school year,
- the defendant in the second instance unlawfully segregated the gypsy children from the non-Gypsy children in the school year 2011/2012 in the defendant's school in the third instance, which it maintained, and from the school year 2012/2013 in the fourth instance**, the** gypsy children in the school in the **H settlement,**
- the defendant III. unlawfully segregated the gypsy children in settlement **H** from the non gypsies in the school year 2011/2012,
- the defendant IV unlawfully segregated the gypsy children in settlement **H from**

the nongypsy children by creating segregated classes from the 2012/2013 school year**,**

therefore, ordered the defendants in Classes II to IV to cease and desist and were prohibited from such and similar infringements and dismissed the action as to the remainder. It held that the State was liable to pay the application fee.

In the grounds of its decision, the plaintiff's right of action was based on Article 28(1)(c) of the Ebktv. (*Equal Treatment and Equal Opportunities Act* (Act CXXV of 2003)

Based on the 2007 and 2011 equal opportunities programmes containing data of public interest, the court of first instance found that the majority of the population living in the spontaneously segregated settlement **H is** of Roma origin and that the proportion of disadvantaged and severely disadvantaged people is blatantly high compared to the urban population. For this reason, the decision of the defendant in first instance to provide the defendant in second instance with a building located in the segregated area free of charge for educational activities constitutes unlawful segregation under Article 10(2) of the Act on the Protection of the Rights of Persons with Disabilities.

The defendant II did not participate in the creation and maintenance of the spontaneous segregation, but by its action in 2011, when it undertook to maintain a single school in the segregated settlement in addition to its existing school in the city centre, it also implemented unlawful segregation at the institutional level, i.e. within an educational institution, pursuant to Section 27 (3) a) of the Act on the Protection of the Rights of the Child.

The defendant II invoked Roma pastoralism as a special excuse under Section 28 (2) (b) of the Ebktv., but did not claim the fact of national minority education. Consequently, the court of first instance had to rule only on the question of whether the transfer of the village school to the church was indeed initiated by the parents on the basis of their voluntary choice of religious belief.

From the testimony of the witnesses examined in the trial, it can be established that negotiations were held between the 1st and 2nd defendants about the ecclesiastical maintenance of the school in settlement **H**, but the initiative of the 2nd defendant was exclusively directed at the ecclesiastical maintenance of the kindergarten in **D** Street in the settlement. The first defendant requested that the church start the first grade one year earlier.

The pre-registration form of children enrolled in 2011 also confirms that the organisation of the church school was not a parental initiative, as only two of the 15 application forms indicated the fact of the Greek Catholic denomination, while the vast majority indicated the proximity of the place of residence. This was also confirmed by the plaintiff's fieldwork report of 31 May 2011 and the testimony of witnesses **M.A.** and **H.K.**

Pursuant to Article 19(1)(a) of the Act, the plaintiff was also required to establish that the aggrieved group has suffered or is in imminent danger of suffering harm, which obligation was fulfilled by the plaintiff as follows:

Witness **T. T.** stated that desegregation is not possible in a segregated environment, because if segregated, excluded children are dealt with in a group, they will be segregated anyway and will not be able to integrate into the majority society later on. If a child is segregated in a primary school until the age of 14-15, he or she will not be able to integrate into mainstream society.

According to the testimony of **K.G., an** economist researcher who is also an educational researcher, a follow-up study based on the results of competency measures that have been used for academic purposes since 2006, the more disadvantaged a student is, the greater the gap in academic achievement. At the end of year 8, those in the top 10% were almost 90% likely to complete secondary school. In contrast, the spill-over effect for those in the bottom 10% is only to complete or not to complete upper secondary school. Those who have not completed primary school have a very minimal chance of finding a job. A reason for completing upper secondary education consists of 3 essential components: family educational environment, school and health indicators. The school has an extraordinary potential to influence children's learning, because if a school competently manages the different social situations of a class of children, it has been shown to achieve very good results with children, including Roma and non-Roma children in the same class, who are significantly less different from each other than two randomly selected Roma and non-Roma pupils who are not in the same class or school.

Sociologist **H. G.** testified that the subject of his direct research was the school in Settlement **G.** The data on the number of Roma pupils in the school in 1989 and 1992 show that the proportion of Roma pupils in the school has gradually increased (70% in 1989, 80% in 1992, 97% in 2000 and 96% in 2004), while the number of pupils has decreased (180 in 1989 and 104 in 2004). This is also an inevitable corollary of the process of segregation, which is also partly the result of those who are able to, who are more aware or more thoughtful about their child's education because of their social situation, and who perceive deteriorating conditions, moving their children from these schools to inner-city schools.

Witness **D.G., who is** the Director of the Ys Foundation and was the Ministerial Commissioner for the Integration of Disadvantaged and Roma Children in the Ministry of Education in 2004-2006, stated that segregated schools are not good because disadvantaged children at their most receptive age do not meet children different from them in their education who could impart other knowledge. He claimed that Ys students were all integrated into education.

Mrs M Á. A. testified that the most important long-term motivator for participation in school education is the parent. Catching up serves the purpose of social integration, which is also the aim of the village school.

The court of first instance found that the disadvantage of segregated education can

be established without concern because the only possibility for disadvantaged children to escape from extreme poverty is to obtain secondary or higher education on the basis of an adequate level of education, which cannot be achieved by segregated education, but only by public education together with the majority children.

The pastoral care for the Roma invoked by defendant II does not allow for the segregated education of Roma children, in light of the Church's representatives' claim that the aim of pastoral care for the Roma is also acceptance of the majority society with regard to the Roma and vice versa.

The group of persons to be examined for the purposes of unlawful segregation was the group of persons in a comparable situation, which consisted of school-age children who had been pupils in the primary schools maintained by the defendant in the first instance. According to the 2011 data, the number of pupils in the primary schools maintained by the 1st Defendant was 6447, of which the number of disadvantaged pupils was 2277 and the number of pupils with multiple disadvantages was 459. The proportion of disadvantaged pupils was therefore 35.3%, of which 7.1% were severely disadvantaged, while the proportion of disadvantaged pupils in the school in question was 100%, of which 56.3% were severely disadvantaged. On the basis of this comparison, it is also possible to establish the existence of unlawful segregation at the expense of the defendant in first instance.

In 2011, the **"Sz. M."** In 2011, 282 pupils attended the "Sz. M." Primary School, of whom 49 (17.4%) were disadvantaged, including 11 (3.9%) with multiple disadvantages. Of the 282 pupils, 3 are of Roma origin.

According to the defence of the defendant in the second instance, the pupils were attending remedial education at the school, and therefore the unlawful segregation could not be assessed against him.

H. K., a witness and former head of the branch school, later the director of the multi-purpose institution, provided a detailed account of the staffing conditions and operation of the school. According to an analysis conducted by the principal and deputy principal of "Sz. M." Primary School, which examined the pedagogical and professional aspects of the settlement school, the development program for multiply disadvantaged children attending the school is supported by a speech therapist, a special education teacher, and a development teacher. The program aims to provide each student with the most suitable and optimal development tailored to their unique personality structure, considering their prior knowledge, weaker and stronger areas, individual needs, aspirations, interests, personal characteristics, special strengths, and weaknesses. Another goal is to ensure that these children receive education, development, and training suited to their abilities and interests while living with their families in their place of residence or nearby. This approach helps promote equal opportunities and increase the chances of social integration. This field includes methods tailored to individual developmental differences and needs, ensuring personalized development for each student.

The programme does not contain any deviation from the provisions on the essential

characteristics of public education as laid down in the purpose and principles of the Public Education Act.

Minister of Human Resources **B. Z.** presented as a witness that the European Roma Strategy was prepared during the Presidency of the European Union, in the framework of which the Member States committed themselves to prepare their own strategy. Hungary has fulfilled its commitment, for which the government has commissioned an action plan, setting out deadlines, programmes, funds, responsibilities and a monitoring system. The fact that from 2013 municipal schools have been maintained by the state is also of great significance, because in state-maintained schools there will be a much better chance of catching up and catching up, because the state can fulfil its commitment not to segregate children, as the measures of the single maintainer can help more than the individual decisions of the municipalities in the past. He did not dispute that spontaneous segregation often occurs, with a large Roma population. Regarding the school in the case, he stated that it was a priority programme for the government. There has been a significant amount of rehabilitation of the site. He emphasised the development of pupils in their own community, building their self-esteem, as a result of which they can establish contact with an environment where there may be hurt, rejection or any negative animosity.

The Court of First Instance held that the statements made by the Minister responsible in general terms could not be assessed in the absence of the conjunctive conditions laid down in Article 11(1) of the Ebktv.

Based on the above, the first-instance court established that the plaintiff substantiated the violation of the requirement of equal treatment and the resulting disadvantage, while the evidence presented by the second defendant did not yield results.

The request of the defendant KSH I. to inquire about the composition of the population of .... was unnecessary because the documents attached by the defendant I. provided sufficient data. Also unnecessary was the motion of the defendants III-IV for an expert opinion on nationality and education, because according to their submissions, no nationality education was provided, while the quality of education was not invoked by the plaintiff, and the institution providing education in the settlement was not separately entitled to provide remedial education.

The action for voidness based on the manifestly unconscionable nature of the contract between the 1st and 2nd defendants was without merit.

The plaintiff's right of action is based on § 234 of the Civil Code and § 234 of the Civil Code. Article 3(1) of the Civil Code.

The plaintiff alleged an infringement of morality on the ground that the cooperation agreement, the grant contract and the free lease agreements together had the intended legal effect of re-establishing a school on site **H,** which was now under church maintenance.

The fact that the 1st defendant has handed over a school building to the 2nd defendant

for educational purposes is not manifestly contrary to morality. Nor is it manifestly contrary to public policy to have the unlawful segregation of the pupils of Site **H in the** course of their education, as alleged by the plaintiff, because this is not contrary to the generally accepted moral standards of society. The social perception of segregated education is far from uniform, and there is a significant degree of divided opinion on the issue.

The Civil Code. 5 of the Civil Code was unnecessary even without additional elements because of its subsidiary nature, since the invalidity of a contract or one of its provisions can only be established on the basis of the grounds of nullity and voidability set out in the Civil Code, but not on the basis of the fundamental principles of the Civil Code, such as the prohibition of abuse of rights.

The judicial finding of infringement and the application for an injunction were well founded. In the light of Article 84(3)(a) to (b) of Act CXC of 2011 on National Public Education, the defendant in Grade IV is not allowed to continue first grade education in the settlement school due to the ascending system of education, in the light of the final decision.

The claim based on Section 84, Paragraph (1), Point d) of the Civil Code (Ptk.) was unsuitable for achieving the intended legal effect due to its general nature. The plaintiff submitted an alternative claim regarding the method of termination, which, on one hand, would not be enforceable through judicial means if fulfilled, and on the other hand, would violate the parents' right to freely choose a school if they do not decide to enroll their children in a religious school. In light of this, the court of first instance rejected the claim in this regard.

The plaintiff is to be considered predominantly successful in the lawsuit; however, no claim for costs was submitted against the defendants. Due to the personal exemption from court fees granted to all parties, the court fees remain the responsibility of the state. Regarding the claim for costs submitted by the fifth defendant, the court of first instance ruled that each party shall bear its own costs incurred, based on Section 81, Paragraph (1) of the Code of Civil Procedure (Pp.).

The judgment of the Court of First Instance was appealed by the defendants I to IV, and the plaintiff cross-appealed.

In his appeal, the defendant in first instance sought, first, partial reversal of the judgment of the Court of First Instance and dismissal of the action in its entirety and, second, setting aside of the judgment, with directions to the Court of First Instance to rehear the case and give a new decision. It criticised the fact that the first instance court had taken a position on the basis of witness testimony on an issue requiring special expertise, namely that segregated education cannot lead to an escape from extreme poverty, only integrated public education can. The studies relied on by the witnesses did not relate to church-organised education, and the results of the Roma

pastoral education carried out by the defendant II are not yet known, as it is ongoing. He complained that the submissions of parents in this regard had been ignored by the trial court. No conclusions could have been drawn from the 2007 Equal Opportunities Situation Analysis as to the present situation, nor did it contain data on the Roma origin of the majority of the residents of site **H**, but the judgment nevertheless found that segregation on the basis of nationality had been established. The free use of the building could not have constituted segregation because it did not affect the district school system, where the residents of settlement **H** could continue to attend. The choice of school is based solely on the free choice of pupils and parents. With the opening of the new school, the right of choice was not diminished, but extended. The comparator chosen was wrong because, on the one hand, the ascending system of the school in the case meant that only children below school age could be affected and, on the other hand, the school in the case was not run by the defendant in the first instance. The comparison relates to children with multiple disadvantages and therefore no unlawful segregation on the basis of nationality can be established. The abolition of the school bus cannot be imputed to the defendant because it introduced the rent subsidy system instead; in this respect, the court of first instance breached its obligation under Article 221(1) of the Civil Code. The subsidy granted to the defendant in the second instance, which is a public school, complied with the legal provisions. Since, as from **2013,** its tasks in the field of public education ceased, the judgment of the Court of First Instance formulated in the present case is unlawful.

The second to fourth defendants, in their appeal, requested a partial modification of the first-instance judgment and the complete dismissal of the plaintiff's claim. They argued that the first-instance court had partially failed to establish the facts and partially drew incorrect conclusions from them. They claimed that the judgment did not comply with the provisions of the Equal Treatment Act (Ebktv.), the Public Education Act (Njtv.), the Church Act, and the Convention on the Rights of the Child, adopted in New York on November 20, 1989. Furthermore, they argued that the decision violated fundamental rights. The defendants referred to the Code of Canons of K Churches, specifically Canons 585 and 635, which they claimed justified the establishment of the school in question, rather than being motivated by segregation. According to their position, the plaintiff failed to fulfill the evidentiary obligation required under § 19(1)(b) of the Equal Treatment Act (Ebktv.). In contrast, they asserted that the school was opened at the initiative of parents, and its closure would violate the right to free school choice. They also challenged the plaintiff's legal standing in the case, arguing that the alleged violation affected specific, identifiable children, rather than a general legal interest. The second defendant specifically contested its legal standing in the case, claiming that it did not fall under any provision of § 4 of the Equal Treatment Act (Ebktv.). In this regard, it also criticized the first-instance court for failing to fulfill its obligation to provide reasoning for its decision. The second to fourth defendants further requested that the Constitutional Court be petitioned to review the constitutionality of the Equal Treatment Act (Ebktv.), and in parallel, they sought the suspension of the proceedings.

In their appeal response, the plaintiff requested that the first-instance judgment be upheld in the parts challenged by the appeals of defendants I-IV. The percentage of Roma students in the segregated settlement and the school in question was supported

by numerous documents. The provisions of the first-instance judgment cannot be examined separately, and thus, the defendants' arguments presented in this regard cannot be accepted. The withdrawal of the school bus actively facilitated segregation, as the 30% transportation subsidy was not an effective measure, particularly since it did not apply to parents accompanying young children. Moreover, the judgment did not impose any obligation on the first defendant regarding the school bus. The first defendant did not request expert evidence on the negative effects of segregation, even after the plaintiff's private experts were heard, and this omission cannot be cited as a defense in the appellate proceedings. The harassment suffered by Roma children in the schools maintained by the first defendant, along with the failure to investigate related complaints, created psychological pressure on both the settlement's parents and children. This pressure may have led the first defendant to address the issue by channeling Roma children—who had been rejected by the majority—into a segregated but now denominational school. The second to fourth defendants engaged in national segregation between the two schools they operated in Ny. The canon law provisions they referred to are not recognized under applicable legal regulations, nor do they justify segregated education, as several urban schools were accessible from the settlement. The first-instance judgment provided adequate reasoning regarding the legal violations alleged by the second to fourth defendants. The plaintiff requested that the defendants be ordered to cover legal costs. According to judicial practice, the plaintiff's legal standing in the case cannot be questioned merely because the number of affected students can be determined with certainty at a given moment. The plaintiff opposed the request to initiate proceedings before the Constitutional Court.

The plaintiff also submitted a cross-appeal, in which they objected that the first-instance judgment unjustifiably omitted the following facts relevant to the case, and therefore requested that the judgment be supplemented accordingly: "The cooperation agreement, usufruct lease, and support contract between the first and second defendants was concluded on May 31, 2011. The contracting parties stated that the agreement was made to define the public education responsibilities undertaken by the Church within its Roma pastoral activities in the Ny.. H settlement. According to Clause 2, the subject of the agreement was the participation of the third defendant's school in the implementation of the first defendant's public education responsibilities as defined in Act LXXIX of 1993 on Public Education. The usufruct loan agreement was concluded to enable the second defendant to fulfill the public education responsibilities assigned to it. According to Clause 4, the borrower was permitted to use the property exclusively for primary school education activities. According to Clause 11, the agreement could be terminated with immediate effect if the specified purpose of the usufruct loan became impossible to achieve. The contracts between the first and second defendants were not modified after signing, even though, since September 1, 2012, it was no longer the third defendant's school but rather the fourth defendant's school operating in H-vár. From January 1, 20..., the first defendant's obligation to provide municipal public education ceased, yet the contracts remained unchanged even after January 1, 20...."

In its cross-appeal, the defendant in the first instance sought to have the judgment of the Court of First Instance upheld in so far as it was challenged by the plaintiff in its cross-appeal, while the defendants in the second to fourth instances did not substantially object to the performance of the terms of the cross-appeal.

In the absence of an appeal, the Court of First Instance did not affect the order of the Court of First Instance dismissing the plaintiff's action against the defendants in Orders I to IV in part and against the defendant in Order V in full. The Court of First Instance held that the appeals and the cross-appeal were unfounded, as follows:

First and foremost, it is necessary to clarify that the abbreviation of the 2003 Act CXXV on Equal Treatment and the Promotion of Equal Opportunities is Ebktv., as stated in its justification, and not Ebtv., which actually refers to the 1997 Act LXXXIII on Mandatory Health Insurance Benefits.

The name of defendant V - in the heading of the judgment at first instance and in the grounds of the judgment at first instance - is not K..., but the name of defendant V.

The legal references referred to in the judgment of first instance also require clarification in that the legal reference in paragraph 4 of page 28 of the judgment of first instance is correctly Section 20 (1) (c) of the Ebktv., while the correct reference in paragraph 7 of page 32 is Section 19 (1) (a) of the Ebktv.

Contrary to what was stated in his appeal, the defendant's legitimacy in the proceedings was not lacking.

A Pp. Article 130 (1) (g) - after the 1995 amendment - made the so-called active or passive legitimation of the action a precondition for the action by regulating its absence as a special ground for dismissal of the application. This must, however, be interpreted restrictively: this provision applies only to cases where the law specifically and expressly names or lists, in terms of the legal position, who is entitled to bring the action and against whom it is to be brought. Substantive rules which do not specifically provide guidance on the scope of the action but, for example, regulate the question of liability, cannot be brought within the scope of the Civil Code. Article 130(1)(g). In such cases, the action may be dismissed.

Section 4 (g) of the Equal Treatment Act names public education and higher education institutions as those which are obliged to comply with the requirement of equal treatment in the establishment of their legal relations, in their legal relations and in their procedures and measures. The second respondent is not a de facto educational establishment, but it is the maintainer of an educational establishment and therefore falls within the scope of point (g). Nevertheless, it also falls within the scope of Article 5(c) of the Law, according to which, in addition to the requirements of Article 4, an individual entrepreneur, legal person or unincorporated body in receipt of State aid is required to comply with the requirement of equal treatment in respect of the legal

relationship arising from the use of State aid, from the time the State aid is received until the use of the State aid can be monitored by the body entitled to do so in accordance with the rules applicable to it.

A contrary position would have the unintended result that the orders against the Class III-IV defendants would be unenforceable in the absence of standing by the Class II defendant who maintains them.

The legitimacy of the plaintiff in the lawsuit could not be successfully challenged by the defendants in Orders II-IV either, because although the number of students who suffered the infringement can be precisely determined at a given moment, their number is otherwise constantly changing.

Having said the above, it can be stated that the court of first instance correctly established the facts of the case and that the Court of First Instance's position on the issue of unlawful segregation was shared by the Court of First Instance.

In their appeal, defendants I-IV contended that the trial court erred in finding that the plaintiff had satisfied its probable cause obligation, but also erred as to the exculpatory reason.

Articles 27-30 of the Ebktv. provide for special rules in the field of education and training. According to Section 27(3)(a) of the Act, the unlawful segregation of a person or group in an educational institution or in a section, class or group established within it constitutes a violation of the requirement of equal treatment. Pursuant to Article 28(2)(a) of the Equal Treatment Act, it is not a violation of the requirement of equal treatment if, at the initiative of parents and at their voluntary choice, education is organised in a public educational institution on the basis of religious or philosophical convictions or nationality, the purpose or curriculum of which justifies the creation of separate classes or groups, provided that the participants in the education do not suffer any disadvantage as a result and provided that the education meets the requirements approved by the State, prescribed by the State or supported by the State.

The rules of evidence were subject to the rules of Article 19 of the Ebktv, i.e. the had to establish that the person or group of persons suffering an infringement suffered a disadvantage or an imminent threat of such a disadvantage and that the person or group of persons suffered an infringement had, at the time of the infringement, actually or according to the assumption of the infringer, a characteristic as defined in Article 8.

According to the Supreme Court's case decision Pfv.IV.20.936/2008/4, the concept of unlawful segregation implies that it is devoid of the will of the person or group concerned to segregate, i.e. the fact of unlawful segregation necessarily affects the persons concerned adversely.

The Court of Appeal shared the view of the Court of First Instance regarding the ethnic composition of the inhabitants of the settlement. The 2007 analysis of the situation of

equal opportunities in public education, also referred to in the first instance judgment, identified the number of people living in a suburban and ethnically segregated, settlement-like environment as 1984. Children in the 3-5 age group are 100% disadvantaged, 36.22% of children with multiple disadvantages are in this age group, 67% (85) of whom attend kindergarten and are 100% disadvantaged. Among the settlements listed as residential areas are the **H settlement** as a segregated area. The number of primary school pupils in the two segregated areas, including housing estate **K**, was estimated at 298 pupils, all of whom are 100% disadvantaged and 193 of whom are also severely disadvantaged. 64.7% of primary school pupils live in the estate, compared to a city average of 25.9% for semi-disadvantaged children and 7.5% for severely disadvantaged children.

The Equal Opportunities Programme 2011-2016 continued to include the **H-segment** and the **K-segment** among the segregated areas, and it was stated in point IV.3 of the programme that the vast majority of the Roma population living in the city live in the **H-segment** and the **K-segment.**

As no data indicating a population change emerged following the preparation of equal opportunities programmes and situation analyses, the court of first instance correctly found that the majority of the population living in the spontaneously segregated **settlement H is** of Roma origin, and that the proportion of disadvantaged and severely disadvantaged groups is blatantly high compared to the urban population.

The Court of First Instance also rightly held that the question to be answered in the context of the exemption was whether or not the ecclesiasticalisation of the school in **village H** was indeed intended to establish a school based on the initiative of the parents and their religious convictions of their own free choice.

The second defendant's declaration of intention was to transfer the municipal kindergarten on **D** Road to the church. After the first year of pre-school education and the experience of Roma pastoral care, primary school education was to start in the lower grades from 2012. At the request of the defendant in first instance, the defendant in second instance amended its request, after several consultations, concerning the possibility of reopening the former school **in the H-site and** stated that it was able to assume the primary school education tasks in the ascending order from the school year 2011/2012 once the necessary conditions had been created. Subsequently, the cooperation agreement, the grant contract and the contract for the lease of the property were concluded. The individual pre-registration forms (15) of the children enrolled in the first year show that only two parents indicated that they were Greek Catholic, the vast majority of them indicating that the school was located close to their place of residence.

There was therefore no question of parental initiative, the absence of which is clear from both the testimonies and the documents submitted.

Defendants II-IV erroneously argued that one class per grade conceptually precludes segregation, because in the case at hand, there was not segregation between classes

in the same grade, but segregation on the basis of nationality (ethnicity) in the school reopened in the segregated area.

The evidence provided also showed that the school bus was no longer available and that parents were unable to cover the additional costs, which encouraged them to send their children to the school in the settlement. A further motivation was that it was a Roma school where the child would not be ostracised.

The court of first instance did not find the testimony of the responsible minister to be of any value in the case. However, in the view of the Court of First Instance, the Minister's testimony was of value for the purposes of the adjudication of the case: during his examination as a witness, he himself did not dispute that the **H-site was** a segregated environment, but in his opinion, a school in a segregated environment allows for inclusion and helps integration to be successful.

Segregation is a form of prejudice. According to Gordon W. Allport, there are five degrees of prejudice: 1. verbal prejudice, 2. avoidance, 3. discrimination, segregation, concentration, 4. physical aggression and finally 5. persecution and extermination (Gordon W. Allport, p. Allport: Prejudice, Osiris - Budapest 1999, pp. 44 and 83). In fact, segregation cannot be eliminated by legal means alone, but administratively supported segregation must be countered by administrative means. This alone, however, is not a solution to targeted integration, because the process is hampered by negative historical experiences on the one hand and existing prejudices on the other.

In light of the foregoing, the defendants' attempt to excuse their conduct was unsuccessful.

The Court of Appeal also found the cross-appeal to be unfounded. Since the first-instance court's judgment did not address the free lease agreement for the property and the plaintiff did not appeal the decision rejecting the related claim, it would have been irrelevant to include the provisions contained therein in the established facts as a result of the appellate proceedings. Furthermore, the contents of the cooperation agreement were recorded in accordance with the requested details in the second paragraph of page 5 of the first-instance judgment.

For the reasons set out above, the Court of Appeal upheld the judgment of the Court of First Instance by clarifying the operative part containing the unenforceable wording pursuant to Article 253(2) of the Civil Code.

In view of the exemption from fees of all parties to the proceedings, the fee for the appeal shall remain payable by the State pursuant to Section 4 (1) of Act XCIII of 1990 on Fees. Both the appeals of the defendants I-IV and the plaintiff's cross-appeal were unsuccessful, and therefore the Pp. 81(1), the Court ordered each party to bear its

own costs, having regard also to the unascertainable value of the dispute.

Debrecen, November 6, 2014

dr. Csikiné dr. Gyuranecz Márta sk. president of the chamber, dr. Bakó Pál sk. rapporteur judge, dr. Pribula László sk. judge

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