General Court of Ny.
10G.15-13-040 099/22

The Regional Court of Nyíregyháza sitting as the Court of First Instance represented by counsel, **EHHGYA** (established under number), the ***plaintiff,*** represented by counsel, **NYMJVÖ** (established under number), ***defendant I,*** and **MKEHE** (established under number), ***defendant II,*** represented by counsel, **SZMGKÓÁIG (established under number), and SZMGKÓÁIG** (established under number), defendant ***III.*** and **SMGÓÁI** (established under number)***, IV,*** against ***the defendants*** (established under number), represented by a lawyer, and **KIK** (established under number), ***V,*** represented by a lawyer, *and others, for breach of the requirement of equal treatment (unlawful segregation), the Court,* at a hearing held on the day below, rendered the following

Judgment:

The Court **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 segregates the Roma children of H.t. from the non-Gypsies on the basis of nationality from the 2011/2012 school year,

- the second defendant unlawfully segregates the Roma children from the non-Gypsy children in the third defendant school in H.t. in the 2011/2012 school year, and in the fourth defendant school in H.t. from the 2012/2013 school year**,**

- the defendant III. unlawfully segregated the Roma children in H.t. from the non-Gypsy children in the 2011/2012 school year.

- the defendant IV. unlawfully segregates the Roma children in H.t. from the non-Gypsy children by creating segregated classes from the 2012/2013 school year**.**

Orders the Second to Fourth Defendants **to cease and desist and** enjoins them from such and similar infringements.

Beyond that, the plaintiff's action is dismissed.

The court establishes that the state will bear the litigation fee due to the fee exemption of the parties involved.

Within 15 days from the date of service of the judgment, the appeal against the judgment was lodged with the **D** Court of Appeal, but in writing with the **Ny** Court of First Instance, in accordance with the provisions of the Pp. An appeal may be lodged, free of duty, in 9 copies, in writing, in accordance with § 93(2).
Legal representation is mandatory in proceedings before the Court of Justice.
The appeal must specify the decision against which the appeal is directed and state to what extent and for what reason the party seeks to have the decision changed.

The court informs the parties that the Court of Appeal may decide the appeal against the judgment without a hearing, however, the parties may request a hearing in the cases listed in Article 256/A (1) (b) to (d) of Article 256/A (1) (b) to (d) of Act III of 1952, or they may request that the appeal be decided without a hearing on the basis of their joint application submitted before the expiry of the time limit for appeal.

REASONING:

The presentations of the parties to the proceedings before the Court of **Ny, the** documents attached to them, the expert findings, Dr. S.G. (Education Officer of the 1st Defendant), Mrs. T.R. and M.A. (parents), Mrs. R. J.É. (Roma representative of the 1st Defendant), T.T., K.G., H.G., D.G., Mrs. M.Á.A., Ms. Dr. R.E.G. (former Deputy Mayor of the 1st Defendant), Mr. H.K. (Director of the 4th Defendant), Minister B.Z., Mr. L.I. (President of the County Gypsy Regional Assembly) and Ms. C.M. (President of the Ny Roma National Council), the Court found the following **facts** based on the testimonies of the witnesses:

The expert opinion of the General Assembly of **Ny.M.J.V. on the** measure of the General Assembly of **Ny.M.J.V. on the** revision of the network of educational institutions, prepared on 26 *March 2007 by* the public education expert K.J., states, inter alia, that the **primary school No. X,** which is the subject of the present action, will be closed from the school year 2007/2008, and that it is a school which *operates in a settled* and *isolated manner among a Roma population living in severe poverty.* It currently has 100 pupils, a maximum capacity of 120 pupils, an average of 12.5 pupils per class, with one class per year group. 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, who know the families and individual problems of the children attending the school personally, and who are able 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. The parents of the children attending the school generally have incomes below the subsistence level. Textbooks are provided free of charge by the school, all lower school children receive free meals and the upper school children have to pay a minimal fee, but this is also a problem. Pupils go on to further education after completing grade 8, with several pupils participating in the I.G.A.J.'s talent programme, but others are also studying for a profession. In today's pedagogical understanding, equal opportunities for pupils can be increased by compensating for disadvantage. Both in the European Union and in our country, there is growing support for the abolition of segregated education, since the integrated education of these pupils promotes their integration into society, and it is unlawful to segregate a group of pupils by segregated education under the Equal Treatment Act (Annex 3, page 10 of the document attached by the 1st

respondent under No 6).

Primary School X has been in operation since 1958, it was and still is a residential school, in the 1950s G. was the most frequented residential area of the city, in 1983-84 the population was replaced by gypsy families, and the pupils of the school became gypsies (letter of 25 February 2007 from the staff of **Primary School X,** annexed by the defendant I. under No. 6, concerning the closure of the school)

On 9 October 2007, the plaintiff withdrew its application under No P.22.020/2006, **SZ.SZ.B.M.B., on the grounds that the** General Assembly of the Municipality of the City of **Ny. with** County Rights had, by decision of 23 April 2007, closed primary school **No X** with effect from 31 July 2007 and had decided to transfer the pupils of the closed school to another six schools. In addition, it undertook to ensure the transport of the children of the settlement to school by means of a school bus service (Annex 7 to document No 6 attached by defendant No 1).

In connection with the closure of School No. **13,** the Gypsy Minority Self-Government of the City of **Ny.** County Legislative City made comments in its letter of 14 May 2007 in relation to Resolution No. 83/2007 (IV. 23.) of the General Assembly of the City of **Ny.** County Legislative City, according to which the Gypsy Minority Self-Government, in its meeting held on 3 April 2007, supported the closure of **Primary School No. X** without succession, in one phase, and formulated its conditions in Resolution No. 13/2007 (IV.03.). Comments on the implementation of the decision indicate that the decision identifies the schools that will accommodate pupils of **primary school X, but it** is not known what measures have been taken to organise training for teachers of the schools receiving pupils on the integration of Roma pupils. As far as they are aware, no such proposal has been made, nor have school buses been provided to transport pupils of compulsory school age, but bus services have been adapted to the location of the host schools. This will cause further problems, possibly even atrocities, especially for pupils in upper secondary schools.

The resolution of the General Assembly of the County City of **Ny. of** 23 April 2007 on the reorganisation of certain educational institutions decided to *close primary school **No. X** without successor as of 31 July 2007.*

Municipal submission **No.** 38.829/2007.**IX.** dated 13 June 2007 was made on the adoption of the Roma integration programme and the utilisation of the vacant building complex of **primary school No. X**, and made statements on the utilisation for community purposes, including the fact that the integration of children living in **H.t.** cannot be solved by changing schools alone, because it requires long-term planning and the implementation of a complex programme from segregation to inclusion. The specific objectives are to reduce socio-cultural disadvantages, to improve equal opportunities through school education and training and employment, and to reduce segregation through community and cultural programmes (Annexes to the 's application).

Following the closure of the school in Settlement X**, the** municipality's designated host school was a cold integration of children from the settlement, and the municipality did not even use state support for successful integration.

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

municipality, as the maintainer of the defendant municipality **X.** However, as a result of the closure of primary school **No.** H., the schooling of children living in H. t. has brought to the surface a number of problems. E.H. in H. has submitted a letter of intent to start primary education on the H. t. property in the school year 2011/2012. In addition to its primary education tasks, the church also intends to carry out Roma pastoral activities according to local conditions. It considered it important to ensure the exercise of the right to education on the basis of equal opportunities, freedom of conscience and freedom of 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 teaching to the highest possible standard. 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 for consideration.

Prior to the mayor's announcement, the E.E. of H. made the following declaration of intent to the municipality through the Bishop of H.: at the request of the municipality, on 4 May 2011, under the leadership of the pastoral vicar and the education officer of the E. of H. and the head of the human policy department of the municipality, a consultation was held on the possibility of church involvement and cooperation in H. t. and its outline. As a first step, it would be advisable to transfer the municipal kindergarten on D. Road to the church, which currently has 4 kindergarten groups with 96 children enrolled. If the consultations and professional forums for parents could be held in compliance with the legal framework, our church could start its Roma pastoral work, visiting and helping families, and organising cooperation with local social institutions and organisations through the kindergarten education from September 2011. After the first year of pre-school education and pastoral experience, primary education could be started in 2012, without social tension or resistance, and on an ascending scale, for the time being at the lower grades. If the Church were to be involved at this rate, the communication problems that followed the closure of the institution in 2007 could perhaps be avoided. (Annex 5 to document No 6 attached by the defendant in first instance)

On 23 May 2011, he amended his application, stating that at the request of the municipality, he had repeatedly discussed the possibility of reopening the former school in H. t., and came to the conclusion that if the municipality could provide the necessary conditions, the Church could take over the task of primary public education starting from the 2011/2012 school year, starting with a first grade in the ascending system.

On the same day, the mayor of the 1st defendant informed the legal representative of the 2nd defendant that, according to the oral discussion, the transfer of the kindergarten in D. Street is subject to the Public Procurement Act, and that the primary school property will be able to accommodate 4 classes of grade 1 to 4 after the change of function. After the primary school will accommodate 8 grades, we are looking for the possibility to make the building suitable to accommodate 4 additional grades. Our aim is to provide a building that meets the needs of both the Roma population, especially children, and the church.

Following the submission of the Committee, on *31 May 2011, the* first and second defendants concluded a cooperation agreement and took the necessary measures to that end, pursuant to *General Assembly Decision 96/2011 (31 May 2011),* as set out in Annexes 1 and 2, and concluded the cooperation agreement and the grant agreement.

According to the cooperation agreement, the municipality and the church stipulated that the agreement was concluded in order to define the public education tasks undertaken by the church

in the framework of its pastoral activities in the area of ruins in Ny. The agreement was preceded by a declaration of the Church of 23 May 2011. The subject of the agreement is the participation of the S.M. Greek Catholic Primary School, founded by the Church, in the implementation of its public education tasks; its duration is indefinite 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 of the institution, to admit, educate and train all children in Nyíregyháza over the age of 6 whose parents agree to their children being educated in a Catholic school. Within this framework, it pays special attention to the admission of children with multiple disadvantages and undertakes not to refuse their application. It will ensure that the proportion of children with fewer pupils from disadvantaged backgrounds in the school population is equal to the average proportion of pupils from disadvantaged backgrounds in the city's primary schools and will 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. The Church has also undertaken to provide school education and educational services free of charge. It has ensured that the educational work carried out in the institution is of an appropriate standard, creating the necessary personnel and material conditions in accordance 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 immediately after the conclusion of the cooperation agreement for a unilateral declaration pursuant to Article 118(9) of the Public Education Act from the government office responsible for public education. It undertakes to include the school in the integration programme of the first-tier defendant, noting that the municipality may, in consultation with the church maintainer, verify compliance with the provisions of the agreement. Among the other provisions of the agreement, it was pointed out that a separate lease contract provides for the use of the immovable and movable property for the purposes of the implementation of points 5, 6 and 7.

The aid contract concluded on the same day (96/2011 (31.5.2011).) of the same day) states that the municipality undertakes to provide annual budgetary support to the church for the performance of the tasks undertaken by the church - taking into account the provisions of the annual budget law, the number of pupils actually attending Nyíregyháza and the provisions of this contract - within the framework of a grant agreement concluded within 30 days of the adoption of the annual budget of the municipality, provided that the church is established or maintained in the institution (Sz.M. Greek Catholic Primary School), and endeavours to provide full-time education for disadvantaged children in accordance with Section 121 (1) 14 of the Public Education Act and to implement the Roma minority education in accordance with Annex 3, point 16 of the Act on the Budget of the Republic of Hungary for 2011.

In its Decision No 197/2011 (27.X**.**2011), the defendant in first instance decided to replace the organised transport of pupils of the closed **primary school No X to** and from the host establishment with a subsidy of 30 % of the cost of the pass and the ticket for all pupils affected by the reorganisation (even in the absence of social need) from the mayor's budget. The children will be accompanied by mentors employed by the host schools on the school bus and until the stop of the regular bus service. (Annex 10 attached by the defendant in first instance under No 6)

At the time of the decision of the Ny.V.Ö. of 31 May 2011, the , together with his colleagues, appeared at the H.t. with the aim of asking the parents living in the settlement whether they wanted their children to return to the school in the settlement and whether they were Greek

Catholic. The parents in the settlement stated that they did not know that there would be a Greek Catholic school in the settlement, that they had not been told about it, and that they had not been informed about it either in a forum or in writing. According to their statement, Mrs Cs.M. (President of the Roma municipality of Ny.) talked the parents into it on the grounds that their older children were being bullied in other schools, and no other argument in favour of the Greek Catholic school was put forward. According to the summary finding, the preparations were carried out in secret and therefore the was not able to participate in the decision-making at the early planning stage. The fact is that the mayor took the initiative to open the school in the settlement, parents were only persuaded to take their children there, in violation of their right to free choice of school. The opening of the school has no justification, as it has already been closed once because of segregation.

By a decision of the Ministry of Public Administration and Justice of 12 March 2012, the H.E. was registered as an internal ecclesiastical legal entity of the Hungarian Catholic Church pursuant to Section 11 (3) of the Ehtv., which entered into force on 1 January 2012 (Annex 40.002/12/13**.**jkv.).

On 20 May 2011, the Articles of Association of the S.M.G.K.Ó.Á.School (with registered office at S.M.), which was already operating under the Church, were amended in order to register it as a site under the number Sz.M.G.K.Á.I., H.t. The application was granted by the **Sz.Sz.B.M.** Government Office by decision of 22 August 2011, the application to amend the registered operating licence and the registered particulars was granted and the establishment was registered as an establishment from 20 May 2011, the date of signature of the amended institution's articles of association (Annexes 1 to 2 to the document attached by the defendant II under No 40.002/12, serial No 20).

The **SZ.SZ.B.M**. Government Office granted the application for the issuance of the operating licence of the S.M.G.K.Ó.é.Á.is. as an independent institution and authorised the institution to operate independently from **the** 2012/2013 school year with the activities defined in the sectoral order; full-time primary education according to the work schedule of primary education and teaching in primary school in grades 1-4, with a specified number of 60 pupils (Annex to the minutes No. 30)

From the above, it can be concluded that the S.M.Á.I. as an educational institution, operates as a branch of the S.M.Á.i. in the school year 2011/2012 and as an independent school from the school year 2011/2013.

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The 2007 evaluation of the J.V.Ö. Ny.M.'s analysis of the situation of equal opportunities in public education shows that the number of people living in ethnically segregated (settlement-like) housing is 1984. Children aged 3 to 5 years are 100% disadvantaged (HH). 36, 22% of the children with multiple disadvantages (HHH) are in the 3 to 5 age group. 67% of them attend kindergarten and are 100% disadvantaged. There are two such districts in Ny. and K. lt. Amongst the intentions to address the problem, it was noted that the introduction of a kindergarten programme near the 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 be careful (e.g. in closing the H. t. primary school and integrating pupils in other institutions), the measures and methods used have not had the desired impact. There are many conflicts, there are very difficult cases, the existence of which can later lead to an anti-integration atmosphere among teachers, parents and residents of the city (Annex to the minutes, No **13**).

The *2010* Public Education Equal Opportunities Situation Analysis and Action Plan states that the number of people living in segregated, settlement-like housing in 2007 was 1984, but the exact figures are not known at the moment (due to lack of data), so it is not possible to say how many children of pre-school and primary school age live in settlement-like environments. The primary school in H. lt. has been closed down and the primary schools of the town receive Roma pupils (A.J., K.F., Z.Z., B.J., V.K., M.Zs., K.Á. I.-k). Pupils are transported by school bus to the six primary schools of the town, accompanied by teaching assistants. The building of the school in H.t. has been functionally renovated and is currently used by the family assistance service, the child welfare service and a school run by the H.-N. Foundation.

The First Respondent's *Equal Opportunities Programme 2011/2016* (Annex 1 to Resolution of the General Assembly No. 127/2011 (30.VI.2011)) includes the segregated areas of Ny.V., naming the areas of H. lt. and K. lt. as segregated housing estates, while the area of Ó.i-sz is defined as a segregated area. He stated that there are several factors behind the problems, one being low educational attainment and unemployment defined by an underclass subculture, and inactivity due to giving up looking for work. Poor employment and the lack of regular income to support themselves leave them in a vulnerable position, living in poor financial conditions. 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 re-production of poverty.* The H.t. found that the housing estate covers an area of 2.2 km2 , not far from the city centre, isolated by railways and industrial complexes and agricultural land, and contains 302 dwellings built before 1945, mostly ground-floor terraced houses converted from former military stables. There are also a few multi-storey buildings with larger dwellings, typically functioning 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.

As stated in point 4.3, it was also noted that the *lack or limited availability of official ethnic data is* an inevitable *problem* when examining the situation of Roma. 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 town live in H. and K.i lt., the improvement of the quality of life and living conditions of the people living in H. is planned to be carried out through tenders, the tender ÉAOP-2009-5.1.5/B. has been submitted, the main objective of which is the renovation of housing conditions, community spaces, the organisation and provision of community development programmes for the residents (Annex 4 attached under line 14)

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The presence of the Greek Catholic Church in H. t. dates back several years, until 2007, after the closure of School **X,** teachers of faith visited the village; K.A. was engaged in pastoral

work, trying to spread the gospel with the help of small priests, reading excerpts from the scriptures, talking to the inhabitants of the village, praying together. The residents approached representatives of the faith life to encourage the Church to play a greater role in the resolution of the problems of the H. t. i, both in 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 the proclamation of the Gospel throughout the world, with Canon 635 concerning 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 Roma pastoral care is the love of Christ, the preservation of the identity, culture, freedom and human dignity of the Roma, the physical, spiritual and intellectual uplift of the Roma towards God on the one hand, and towards self-knowledge on the other. To this end, the Church's task is to give the Roma a correct self-esteem, self-knowledge and a correct relationship with God. Pastoral care is always personal, with respect for the human person. II. defendant's statement in the record No. 31, page 9)
However, the Church's pastoral activities for Roma are not limited to the education and upbringing of pupils, but also include the training of parents through its extensive institutions - the adult education institute of S.P. (Statement of the legal representative of the defendant II.)
According to the statement of facts of the defendant in the second instance, instead of the integration complained of by the plaintiff, it is more appropriate to define inclusive education, which, due to the religious activity of the Church, means inclusion, i.e. the inclusion of a minority community together with its cultural, sociological and human personality traits, and consequently the effectiveness of inclusion presupposes active behaviour on the part of both the receiving and the included community (Dr. S.Cs.31Protocol No. 8), testimony of Mrs. R. J.É. (Roma representative of the defendant II., Protocol No. 31, p. 31)

The defendant's argument throughout the proceedings was that the H. t.complex pastoral care for the Roma in the settlement, together with the residents of the settlement, the education and upbringing of the pupils attending the settlement school, which is run by the church, the social inclusion can be achieved and achieved in the longer term with the help of the inclusive method, taking into account that the full inclusion can be achieved by eliminating the almost 500-year-old social convention, with the mutual acceptance of both the minority and the majority society. Because of the long time needed for Roma pastoralism, the Church saw the need to implement inclusive education by establishing a village school alongside its urban school. In its defence, it argued that the maximum number of pupils allowed by the maintainer, as laid down in Annex 3 to Act LXXIX of 1993 on Public Education and in Annex 4 to Act CXC of 2011 on National Public Education, could not be exceeded by the municipal school. The new school building has been designed to the size required by law, with a capacity of 27 pupils per classroom. The new school building has 16 classrooms and 16 classes, and consequently the number of pupils attending the school in the settlement cannot be accommodated by the municipal school due to its capacity (Statement of the defendant III, annexed under No 51).

In order to support the education and training activities in the settlement school, which aims at social inclusion, and the rehabilitation of the settlement with the help of the EU subsidy in H.t., the court granted the second defendant's motion for evidence and heard the Minister of Human Resources B.Z. as a witness in the proceedings. In his testimony, he stated that he had personally participated in the process of reaching a settlement between the parties in order to prepare it. As part of the government's action to promote the social inclusion of the persons concerned by the lawsuit, he referred to the fact that in spring 2011, during its Presidency of the European

Union, the Hungarian government had drawn up the European Roma Strategy, in which the Member States undertook to ensure that each nation state would draw up its own strategy. Hungary fulfilled its obligation and its national strategy for catching up covered the areas of extreme poverty, Roma and child poverty. For this strategy, the government has prepared an action plan, setting out deadlines, programmes, the funds allocated to them and a monitoring system. In the area of social inclusion, he said it was important that from 1 January **2013 the** former municipal schools had been taken over by the state, which, according to the Minister for Education, in his testimony, he expected to give these schools a much better chance of inclusion and inclusion than before, as the state would be able to fulfil its commitment in this area to ensure that children participating in education would not be segregated, separated or segregated. In his view, the measures taken by the single maintainer could be more effective than the previous decisions taken by local authorities.

In the context of the church-run village school in H.t., he claimed that it is a segment of the village rehabilitation that has been and will be carried out in H.t., which is education for social inclusion, with the combined implementation of specific criteria in H.t., which allows for real integration.(Minute No. 53, page 9) With regard to the church education, he stressed that it is provided locally in the colony, with the involvement of parents, which is the alpha and omega of inclusive education, and that there is also an adult education programme for parents, which in reality is a community-building programme. He stressed that the findings of the H.t. are not generalisable, specifically the teleprehabilitation at the H.t. and the community building are the combined result of the evaluation of the success of inclusion. In his testimony, he pointed out that in 2010, no municipality had received state support for settlement liquidation under the Roma inclusion programme, so the government's intention is not to focus on settlement liquidation but on settlement rehabilitation, of which 120 municipalities are actively involved. He did not dispute the fact that the sectoral ministry is still in debt with regard to the legislation on catching-up, and that its aim remains the same: to formulate the objective to be achieved in law, i.e. to justify what real catching-up in schools means. In addition, the education government does not intend to make any changes to the regulation of antisegregation points.

In the hope of reaching an amicable settlement, the litigants requested a stay of proceedings following a hearing of witnesses by the Minister for Industry, which was unsuccessful. The parties have attached to the minutes, number 53, the negotiating agenda proposed by the Minister and the statements of the plaintiff and defendant II in the context of the settlement, including the outline of the psychological rehabilitation programme of Nyíregyháza H., entitled "Let there be spirit in it", as noted by the legal representative of defendant II (defendant's statements attached under number 53).

The Minister of Education also acknowledged that the operation of the village school was carried out in a segregated environment, citing as a positive example the Harlem Children's Zon project, which he described as a global enterprise after a personal visit, in which blacks carry out in their own environment, with their own people, a type of inclusion and integration, elements of which can be found in the micro-environment of H. t., citing the involvement of parents in the project as the most important element (p. 19).

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In his application for the taking of evidence against segregated education, the requested the hearing of several persons with recognised professional experience in the field of education and

submitted the opinion of the Commissioner for Fundamental Rights, Prof. Dr. Sz.M.

The resolution pointed out, among other things, that the disparities indicate serious social integration problems, since the current situation, which is even worse than before, has come about despite the fact that it has been obvious to all decision-makers for decades that it is in the fundamental interest of society as a whole to change the situation of the Roma in a positive direction, to help them to maintain themselves and to involve them more intensively in the social division of labour. Policymakers have launched a number of equal opportunities programmes to address many of the questions raised by the real integration of the Roma. However, integration schemes that vary from government to government, without preventive situation assessment and continuous professional monitoring, have so far failed to address consistently the crucial segments of the socio-economic development of Roma communities. The results have remained apparent, because equal opportunities measures have not been based on a broad social consensus in the absence of adequate communication.

However, everyone, researchers and politicians alike, typically agree that *learning and knowledge can provide the Roma population in Hungary with a real, i.e. systemic and relatively short-term integration opportunity and prospects for advancement.* As a Commissioner for Fundamental Rights, she considers it one of her priorities to take decisive action against *educational segregation*, which is *not only created spontaneously,* but often also directly under pressure from parents of higher social status, and is *considered illegal* under the Equal Treatment Act *even if the intention was not to create it, and even if it does not directly cause disadvantage.*
The lack of an integrated social environment, communication between different social/ethnic groups, the lack of a sense of cooperation/interdependence and mutual acceptance of otherness, i.e. the indirect consequences of segregation, are serious disadvantages which in themselves - without any intention to segregate or directly discriminate - constitute a violation of equal dignity. It is not by chance that the law on equal treatment and equal opportunities allows segregation only exceptionally and under strict conditions.

The resolution also pointed out that it is a fundamental question of what objective criteria can be taken into account in each individual situation to presume with a high degree of certainty that the infringer could have assumed the existence of the protected characteristic. In the context of education, *the* weighted criteria applied in the practice of the Ombudsman, by classifying the material circumstances giving rise to the presumption of gypsy nationality, fixed the surnames of the pupil and the mother, the cumulatively disadvantaged situation of the pupil and the address of the pupil as primary factors, noting that *gypsy segregations can be well defined on the basis of* local public knowledge and the urban development strategy of the *given municipality*, an *equal opportunities problem.*

The plaintiff also attached the statement of the Mayor's Office of Ny.M. J.V. in the lawsuit he had previously brought, but which was terminated due to the decision of the municipality, with the number of pupils and the number of gypsy pupils of **primary school No. X in** H., from 1983 to 2007, stating that the number of pupils was covered by the number of gypsy pupils from 2004 onwards, according to the statement (documents attached under No. 46).

The witnesses the proposed to hear all stated that the education of pupils in a segregated area, in addition to the operation of a separate school, results in educational segregation.

In his testimony, education expert T.T. stated that he has been fighting against the catch-up

education referred to by the defendant II for more than a decade and a half, since educational segregation and isolation increase ethnic tensions, which harm both minority and majority society. He argues that desegregation is not possible in a segregated environment, because if education segregates and excludes children, if it treats them in separate groups, they will not be able to integrate into the majority society (minutes No 36, pp. 7, 11).

In his testimony, K.G., the head of the Educational Economics Group of the Institute of Economics of the Hungarian Academy of Sciences, referred to the fact that, using the results of competency measurements carried out using scientific methods and the data of a large-scale follow-up study launched in 2006 (Doc. No.2 attached to Protocol 36), the professional conclusion can be drawn that there has been a very significant increase in school segregation in the last 30 years; most of the increase occurred after the regime change. He cited a number of US studies and measurements as the basis for his professional conclusion. In his testimony, he detailed a Supreme Court decision in the case of the Charlotte-Mecklenburg School District, a large school district in North Carolina, in which the court ruled in 1971 that segregation could be eliminated by school busing, a decision that lasted for 30 years, until 2002. In that year, another Supreme Court decision reversed this process and abolished busing. The school district provided researchers with the amount of valuable data that ensured individual-level follow-up for decades. Consequently, the social impact of the change could be accurately measured from the tracking data, on the one hand, the situation 30 years earlier was restored within one school year, all pupils returned to the school nearest to their place of residence, and segregation in the school system was created, on the other hand, teachers with high added value left districts with increased numbers of disadvantaged children (Protocol 36, pp. 37-38).

Witness H.G. is a sociologist who has been involved in research on Roma since 1971.In 2007, he was part of a research project dealing specifically with the situation of Roma pupils in primary schools, with a focus on the problems of segregation and integration. In his testimony, he stated that in the mid-1990s, the education government introduced the so-called catch-up normative, as a result of which the education provided under this system ended in total failure, which was replaced by the 2000. The data from the 2000 survey clearly proved that the indicators measuring the effectiveness of education were just as bad for pupils in catch-up classes, and that the disadvantages increased during the 1-2-3 years they spent in catch-up classes, and that they were placed in mainstream classes with such disadvantages that it was hopeless to keep up with the other pupils. In conclusion, he stressed that the joint research clearly demonstrated that in a segregated situation it is ineffective, and even a disadvantage, to assume any pedagogical advantage in a small class size (minutes 36, pp. 61-62).

D.G., the director of the R.A., formerly the Ministerial Commissioner for the Integration of Roma Children and Disadvantaged Children of the Ministry of Education, testified that as Ministerial Commissioner, a tender was launched within the framework of the Operational Programme for Social Renewal (TÁMOP 2.1/2007), which supports the abolition of segregated schools for whatever reason, in a progressive system for the effectiveness of integration. This would have amounted to HUF 50 000 000 per municipality; a total of 7 applications were received from the country, 2 of which did not meet the eligibility criteria, and 2 of the other 5 applications were eligible for funding---Ny. municipality did not apply for this funding (minutes No 36, 74. Page 24) Because of his professional experience and personal involvement, he stated that in order for children from 10 to 20 to 100 years old with disadvantages to reach university, they not only need to go to a school with good teachers, but also to go to a school where they

can see peers who are different from them (Minute No 36, page 94)

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The second defendant attached to the documents the expert opinion of Á.A.: according to him, integration can be achieved by applying the appropriate pedagogical method and by means of remedial education. During the hearing of witnesses, as a university lecturer at M.E.T.I., he identified parental motivation as the most important factor in motivation for learning from a *pedagogical point of view*. He predicted the pedagogical impact of catch-up education in the long term, with measurable results when the children studying in the colony move on to the next stage of public education. He identified trust as the most important factor in pedagogical work, arguing that in a segregated environment, churches can do during their education what state or municipal schools cannot, namely create an affective emotional safety and sphere. He also drew attention to internal segregation, whereby a pupil is directed to a school where he or she cannot fit in and is therefore not appropriate to his or her environment. He considered the example of Hódmezővásárhely to be a good example, because in that municipality, after several years of work, the need for integration had been established both in the environment to be integrated and in the receiving environment, i.e. the teachers, parents and children in the receiving schools had been prepared, and the schools from which the children were transferred to another school had been prepared, including the parents (minutes No 43, pp. 7-8, 11).

The pedagogical professional analysis of 7 June 2012 for the G.K.A.I. in Ny. contains the following findings: in Ny., *residential segregation in the* H.t. was not violent but *spontaneous, whereas* segregation means violent segregation. Given that parents are free to choose their school, they request religious education and, as the school is within walking distance of the child's place of residence, the burden on parents is not disproportionate. Accessibility is ensured, two children have applied for admission to our B.G. Road school and have been admitted, so the claimant's allegation that the grassroots church school, which is open to parental choice, is segregated cannot be established.
The students of the H.t. school are the most outstanding in terms of remedial education, developmental activities and talent management.
Their pedagogical approach is based on love, appreciation, patience, helping, personalised attention, which leads to more effective educational results than performance-oriented, soulless methods. The school considers it important to establish Christian values in its education, to educate children in faith and religious life, to cultivate the Greek Catholic tradition, to form a balanced personality in harmony with God, with others and with oneself, to develop a culture of mother tongue and basic knowledge and skills, to maintain children's cheerfulness and confidence, to develop a culture of play and listening to one another, to learn about, respect and appreciate the world God has created.
In the area of catching up pupils, it is stipulated that children with multiple disadvantages attending school will be offered a development programme and will be assisted by a speech therapist, physiotherapist and development teacher. The programme is designed to provide each pupil with the most appropriate and optimal development for his/her complex personality structure, taking into account his/her prior knowledge, its weaker and stronger areas, his/her needs, aspirations, interests, personality traits, specific strengths and weaknesses. In the field of pedagogical method, H.G. argued that the material provided is not convincing, because love, appreciation, patience, help, personal attention are very important pedagogical virtues, but they are essential requirements for the teacher to be able to work effectively, and are therefore not sufficient and cannot be called pedagogical method.

The plaintiff and the first and second defendants submitted the same arguments, according to which the city of Ny. implemented a rigid integration following the closure of School **X** in H.t. Mrs. M. Ch.M., as the president of the Ny.R.N.Ö., stated in her testimony that after the closure of the school in the settlement, she received a flood of complaints from parents in the settlement complaining that Roma children were being treated with favour in the host schools, and that the children were crying because they were humiliated in the schools; the children in the settlement had no partners or friends, and therefore many of the children went to school crying. These lectures were repeated in the residents' forums, in the residents' meetings. Several persons were invited to the residential meetings who could provide any assistance in relation to the education of the children in the settlement, including the legal representative of the 2nd respondent, Bishop K.F. The church leader spoke directly to the parents and the Mayor then further discussed with the Bishop and after the legal environment was created, it was possible to have the school run as a church maintained school in the settlement for 3 years to the satisfaction of both parents and children. The reopening of the school on the site was personally initiated by him in response to the request of the inhabitants. He stated that if he had not taken the initiative, it was likely that the school would not be operating at present. The school has 20 + 18 + 13 pupils per class. However, his statement also indicated that there was no decisive action by the minority self-government requiring action because of the attitude of the teachers in the host schools. He recorded in his statement that since 2010, when he took up the post of president, he had not received any requests from parents to open a denominational school, the only request from parents being that the school should be reopened in the settlement.

L.I., as the vice-president of the O.C.Ö. and president of the county's regional Roma self-government assembly, stated in his testimony that after the closure of the school in the settlement, there were several reports from the Roma population in the settlement that children had to be transported to several schools. Parents justified the reopening of the school solely on the grounds that the children did not have to travel, they lived locally and applied for it, mainly to Ms Cs. The majority Roma population in H.t. has increased to 80-85%, together with the increasing prevalence of mixed marriages among the settlement's residents. He set the proportion of Roma children in the settlement at 80-85%, children who attend school. Parents also complained about the operation of the school bus, asking for the school to be reopened in the settlement, the reason being that children had to get up early in the morning to catch the bus and parents could not get to work on time.

The , after processing the application forms for the 2011/2012 and 2012/2013 school years attached to the documents of the defendant II, claimed that in 2011, 15 application forms were submitted by parents, of which 7 children were non-religious (or did not indicate their denomination), 4 were Reformed, 2 Roman Catholic, 2 Greek Catholic. The reasons for school choice were 6 because of good education, because they expect attention from the church school, 3 parents because of proximity to home and good education, 1 because of racism and proximity to home, and 5 did not indicate a reason for school choice. No parents specifically mentioned denominational or religious education.

In 2012, 14 applications were submitted by parents, of which 6 children were non-religious, 5 Reformed, 2 Greek Catholic, 1 Roman Catholic. Among the criteria for choosing a school, 3 parents chose to enrol their child because of the place of residence and good education, 3 did not give a reason, 3 enrolled their child because they trusted the education and 2 parents chose to enrol their child because they did not want to expose them to racism, 1 parent because he went to a church school, 2 parents indicated in their application that their siblings also attend the school in the settlement, and 1 parent because the child was not admitted to the school where

his brother goes. (G.40.002./13/32.)

The defendant II enclosed the quantified data on the enrolment of children in the settlement in certain educational institutions, which showed that, in addition to the 16 primary schools in the settlement, 20 of the 199 children in the settlement school were 1. Of the 199 pupils in the school, 20 pupils are enrolled in grade 1, 18 in grade 2 and 13 in grade 3, while at the Greek Catholic primary school in Sz.M. (town school) 1 pupil is in grade 1 and 2 in grade 2..099/13/8) He also attached the calendar of events of the S.M.A.I. **for the** school year 2012/2013 and 2013/2014.

On 17 September **2013**, the submitted a petition to Ny.M.J.V.Ö. for the launch of a school bus, together with an attachment signed by 100 Roma parents from Nyíregyháza. The original copy of the petition was forwarded to the school district of the defendant's Ny.-i territory, requesting the school operator to start school bus services in the areas of the settlement densely populated by Roma, which are also segregated areas or areas at risk of segregation according to the city's integrated urban development strategy. In its request, the municipality argued that it would provide a 30 % subsidy for all pupils in Nyíregyháza, regardless of need, in the form of a post-paid local bus pass. Primary school children, especially lower school children, cannot travel on their own, so parents have to buy a season ticket, for which there is no subsidy. Parents are therefore primarily concerned with this constraint when choosing a school, and all other important considerations are therefore neglected. In his request, he pointed out that the was also aware from Bishop K.F. that the Mayor was not ruling out the possibility, since the Bishop had indicated the great demand for school buses in the H.t., despite the fact that there is a school in the village and that 75 % of the children in the village do not attend the Greek Catholic school.

Resolution No 228/2012 (IX**.**27.) of the General Assembly of the 1st defendant, which provided for the assumption of the right to operate the public educational institutions maintained by the municipality as of 1 January **2013**, according to which the General Assembly declared its intention to assume the right to operate the public educational institutions maintained by the state institution maintenance centre in its jurisdiction, which are owned by the municipality, in accordance with Act CLXXXVII of 2011 on Vocational Training. (1) to (4) of Article 5 of the Act on National Public Education. The submission stated that pursuant to Article 74(1) of Act CXC of 2011 on National Public Education, which entered into force on 1 January **2013,** the State shall ensure the provision of basic public education tasks, with the exception of kindergarten education for children belonging to nationalities, and kindergarten education for children with special educational needs who can be educated and taught together with other children and pupils. Within the framework of the operation of movable and immovable property for the performance of the tasks of the general assembly, the municipal government shall ensure, from its own resources, the material conditions necessary for the performance of the public education task and the personnel conditions associated with the operation of movable and immovable property. The municipal government is exempted from its obligations in the absence of conditions relating to economic and income-generating capacity as provided for in a separate legal act (information note of the defendant I and the decision of the General Assembly attached to the minutes of the meeting of the General Assembly No 40.002/2012/43).

The plaintiff brought an action against the defendant in the first instance on 3 January 2012, based on the Civil Code. 5 § 75-84, § 200 and § 237, § 8 (b), (c), (e), § 10 (2) and § 27. §-In his action, the defendant sought a declaration that the school building owned by him had been put at the disposal of the G.t.-G.T. by the free use of the school building and the provision of

additional funds, and that the school building had been used by the G.t.-G.T.s Roma children from non-Roma children at school level from the 2011/2012 school year. Therefore, order the defendant to cease and desist from such and similar infringements. He also requests that the defendant be ordered to immediately restore the original situation that existed prior to 1 September 2011 (the date of enrolment). He also requested that the defendant be ordered to remedy the harmful situation by implementing the desegregation measures referred to in the Civil Code. Article 87(1)(d) of the Civil Code. It also sought a declaration that the cooperation agreement and the grant contract concluded on 31 May 2011 between the defendant and E. H. H. violated the provisions of Art. § 5 of the Civil Code, and that the contract and the E.E. Article 75(3) and Article 200(2) of the Civil Code, and therefore the court should restore the situation prior to the conclusion of the contract pursuant to Article 237(1) of the Civil Code.
At the request of the court, the plaintiff, as defendant in the second instance, extended its action to E. in H., and then to S.M.Á.I., a municipal school and its affiliated school maintained by the diocese, and S.M. as a separate school, and extended its action to the third and fourth defendants and, following a change in the law relating to the operation of state and municipal schools which entered into force on 1 January **2013**, designated K.I.K. as the fifth defendant in order to fulfil the successor function of the first defendant, on account of the applicability of the legal consequences of the integration tasks.
In his action, which was amended on 28 March **2013** and maintained unchanged at the time of the judgment, he asked the court to give the following judgment, maintaining the original pleas in law.

1. declare that the cooperation agreement and the grant agreement concluded on 31 May 2011 between the defendant I and the defendant II violate the Civil Code. Article 5 of the Civil Code and the Civil Code. Article 75(3) and Article 200(2) of the Civil Code.

2. pursuant to Article 237(2) of the Civil Code, restore the pre-contractual situation of the defendants in Orders I and II.

3. declare that the defendant I, by giving the use of the school building owned by him free of charge, by terminating the school bus and by providing additional funds to the defendant II, unlawfully segregates the Roma children of G.t. from the non-Gypsies on the basis of nationality as of the school year 2011/2012.

4. declare that the defendant II unlawfully segregates Roma children from non-Gypsy children in the defendant's school III in G.t. from **the** 2011/2012 school year and in the defendant's school IV from the 2012/2013 school year (creation of a member school and then a settlement school and the authorisation of the start of ethnically segregated classes)

5. declare that the defendant III unlawfully segregated the Roma children in G.t. from the non-Gypsy children in the school year 2011/2012 (Roma classes in a member school)

6. declare that the defendant IV, which does not have a compulsory enrolment, unlawfully segregates Roma children in G.t. from non-Roma children by creating segregated classes (enrolment) from the 2012/2013 school year**.**

7. order the defendants to cease and desist from such infringement and from any similar infringements.

8. order defendant V, as the successor to the public education functions of defendant I, to restore the original situation that existed prior to 31 May 2011 by reinstating the school integration programme for the children of the settlement and the school bus.

9. In the alternative to the application in paragraph 2, the requested that the court order the defendant in first instance to pay the costs of the proceedings in accordance with the Civil Code. 84(1)(d) of the Civil Code by terminating the free use of the building at issue.

10. with regard to the Roma children of the settlement who are pupils in the school of defendant IV, order defendant II to remedy the prejudicial situation in accordance with the Civil Code Article 84 (1) (d) of the Civil Code, so that the gypsy children from the settlement who wish to continue to participate in religious education in the defendant schools of Orders III and IV, which are maintained by the defendant, are placed in classes of the majority (non-Gypsy) nationality (ethnicity) corresponding to the grades.

In its statement of facts, the claimed that the Pp. According to § 163 (3) of the Civil Code, it is a well-known fact that the majority of the inhabitants of the H.t. in Nyíregyháza are Roma, a fact shared not only by sociological research but also by the government itself, since the report of the State Secretary for Social Inclusion, B.Z., on his visit to the H.t. also contains the fact that the majority of the inhabitants of the H.t. are Roma. Moreover, the defendant I also acknowledges on page 8 of the submission of the General Assembly for the submission of the application for the rehabilitation of the town for social purposes (file No 3475/2011 **X**) that the inhabitants of the H.t. live in very poor income and social conditions, the vast majority of them being of Roma origin. It follows that the majority of the pupils in the school in question are also of Roma origin, as the defendant in the second instance stated in its news item on its website, referring to the article of 15 September 2011. It follows that the overwhelming majority of pupils at the H.t. member school are of Roma origin, which shows a striking difference in comparison to the proportion of Roma pupils in the school-age population of Ny. and the proportion of Roma pupils at the Szekler school of the 3rd defendant. The defendant I admitted the fact of segregation in the submission of the General Assembly of 12 February 2007 and accordingly, on 23 April 2007, it closed primary school **X** without succession with effect from 31 July 2007, and the desegregation was therefore successful.

However, a change in the composition of the first defendant in the autumn of 2010 has stalled the integration process, with the prospect of full resegregation in the longer term. In a statement to R.FM in June 2011, the mayor of the 1st defendant said that he had personally invented the idea of restoring the Gypsy school in the settlement and that he had approached the 2nd defendant diocese offering the school building. He did this because neither majority nor minority children were comfortable with the closure of the segregated school. The integration was not prepared, the previous administration did not consider any aspects, and as a result, non-Roma parents moved their children out of the schools to other church or municipal schools. The first defendant also supported the creation of the new school when it decided to close two other schools in Ny. for economic reasons. It also failed to examine whether the Gypsy school, which was to be opened as a branch school of the defendant's school in the third instance, could operate legally under the applicable law, in view of the striking disparities in the proportion of Gypsy and multiply disadvantaged children in the two school buildings, which were the result, inter alia, of the defendant's decisions on class classification. At the assembly, the mayor said that neither the parents nor the local Roma minority self-government had been informed beforehand, so that the people concerned did not know what would happen to the children. Two things were certain: that the building would have to be run because of the tender commitments, and that

there was resistance to integration among the majority parents. Ms Cs.M. Cs.M., the president of the municipal CKÖ, speaking to the press, appealed to parents in H.t. who were about to choose a school not to give in to the integration pressure, but to send their children to the reopened Catholic school in H.t., which pays special attention to the admission of children with multiple disadvantages, because their applications are not rejected. In the 's view, the disadvantage of segregation on the basis of nationality follows from Paragraph 10(2) of the Ebtv. According to the , the UN Committee against Racial Discrimination addressed the issue of segregation in a general recommendation, stating that racial segregation in housing based on property origin can be so stigmatising that it constitutes discrimination in itself, and therefore called upon States Parties to combat spontaneous segregation.

The cooperation agreement and grant agreement between the first and second defendants is alleged to be contrary to good morals, a legal concept which is a legal category expressing the general value judgments of society. The question to be examined in this context is whether the legal transaction itself is socially reprehensible and, since ethnic segregation is unlawful, whether it is therefore socially reprehensible. Within the package of contracts, the parties have stipulated in the cooperation agreement that the Church is to be the exclusive representative of the Ny.H. t.-Therefore, it was to be expected that the defendant in the second instance would assess the consequences of the contracts, since the establishment of the school was perfected in the unlawful segregation on the basis of nationality, since the defendant in the second instance, due to its local knowledge, its familiarity with the conditions in Nyíregyháza and its decades of experience in school maintenance, can no longer claim that the "reopening" of the school was motivated solely by good intentions. Consequently, the plaintiff sought a declaration that the defendants I-IV were all responsible for the segregation of the Roma children in the classes of the defendant's member school in the settlement. Defendant I's segregation order resulted in the termination of the school bus and integration program, the execution of the contracts challenged in the complaint, and the provision of additional funding to Defendant II's school sponsor.

The order of the defendant in the second instance segregating the children was to establish a member school at H.t. and to permit the opening of segregated classes for children of gypsy nationality.
Defendant III's segregation order, which resulted in the segregation of the Gypsy children in the settlement into segregated classes and the establishment of a separate school, extended the finding to Defendant IV. According to his legal contention, a fundamental right exemption from segregation on the basis of nationality is not possible because the special rule on the field of education, i.e. Section 28 of the Ebtv. only allows for exemption of nationality education, which exemption was not invoked by any of the defendants. The second defendant's plea, the Roma pastoral care and the education for integration causally linked to it, is also mentioned in the contested contract package. However, remedial education, as a preferential treatment, can only be lawful if it is permitted by law or by government decree on the basis of a statutory authorisation. It is essential that neither the Public Education Act nor the Ebtv. allows remedial education that takes place in separate classes or in separate school buildings in the context of classroom lessons. Nor does the legislation in force permit segregated education based on Roma pastoral care, because this activity does not correspond to the denominational education provided for in Article 28(2) of the Ebtv., which allows segregation, since the aim of Roma pastoral care is to enable Roma adults and children to develop their religious faith in the denomination of their choice. At the same time, the defendant in the second instance has not demonstrated the factors which require different treatment of the Roma by the church, so that they should be pastored in separate school buildings, separate churches and separate denominational communities. In this context, he referred to the fact that the bishop had also

referred in his lecture to the fact that it was not possible to care for and pastor the Roma together with non-Roma because of the rejection of the majority ethnic group.

Since the third respondent has a denominational education, this proof of excusal could be based on Section 28 (2) of the Ebtv., but excusal based on denominational education in cases of national segregation is categorically excluded by Section 7 (3) of the Ebtv. Moreover, it cannot be effective either because the children do not receive denominational education on the initiative and voluntary choice of the parents and, moreover, neither the purpose nor the curriculum of the denominational education in the defendant school of the third rank does not justify the segregation of the Roma nationality at the class or member school level. To the extent that the exclusion may be successful, the restriction imposed by the Defendants in Orders II and III and Order IV, i.e. the ethnically segregated education of the children, cannot be considered proportionate to the parents' freedom of denominational school choice, satisfying the fundamental rights test of § 7(2).

In connection with the tertiary and eighth causes of action against defendant V, he claimed that the defendant I **was** replaced by K.I.K., therefore, defendant V is the legal successor of defendant I, pursuant to Article 4(1) of the Act on the State Reservation of Other Municipally Maintained Institutions with Public Education Tasks and the decision of the General Assembly relied on by defendant I. The restoration of the original situation in this context refers to the need for the defendant in Case V to restore the integration process, that is to say, to ensure the school bus service, which is regarded as a pledge of integration, and to ensure that the teachers, pupils and parents of the host institutions involved in integration are also properly informed and trained. It is the responsibility of defendant V to ensure that the requirement of equal treatment is applied in the institutions it runs.

With regard to the nullity of the contracts of the 1st and 2nd defendants and the legal consequence thereof, the court stated in the first and second applications that, due to the specific services of the contracts, the situation prior to the conclusion of the contracts cannot be restored and therefore the court should declare the contracts effective until judgment is given pursuant to Section 237 (2) of the Civil Code. The consequence of this finding will be that the defendant in the second instance will not be entitled to continue to use Castle H and its premises will not be entitled to operate a primary school. Nor will it be entitled to the municipal subsidies which the defendant I receives under the subsidy agreement in respect of its participation in the municipality's public education tasks (clause 2 of the cooperation agreement). It is submitted that the defendant IV cannot operate in Castle H, with the consequence that it can continue to operate in another location, such as the Greek Catholic building in the city centre, after amending its articles of association and obtaining a new operating licence. However, this does not prevent the defendant defendant II from providing educational services in Ny. even for children of Roma nationality. It indicated that this proposed finding could not and did not affect the right of the children enrolled at defendant IV to receive denominational education, because it was clear to the that there was sufficient space available in the building of defendant III to accommodate the gypsy children who chose denominational education in the settlement, and that the children could be transferred there at the instruction of the maintainer of defendant II. In view of this fact, it seeks to apply the consequences of the nullity of the contracts in such a way that the pupils of the defendant in the fourth instance have sufficient time to choose a new educational institution, provided that the defendant in the second instance is unable to ensure that the children are educated in the defendant in the third instance. In the 4th, 9th and 10th Application, in the context of the legal consequences of the defendant II's infringement of

personality rights, it was alleged that the 9th Application in the alternative sought the termination of the lease agreement and the 10th Application specified the specific manner in which the infringement of personality rights could be terminated in the event that the defendant II was unable to provide the denominational education of the children in the educational relationship with the defendant IV with an integrated student body at another location. According to him, the submission of the 2nd respondent that it is not physically feasible to integrate the school in the building of the 2nd respondent is refuted by the statutes of the 3rd respondent dated 10 May 2012, as the 3rd respondent is not physically feasible to integrate the school in the building of the 3rd respondent. The number of primary school places in the defendant's lower school is 216 and in the upper school 216, whereas the defendant's third school currently has 342 pupils, 199 of whom are in the lower school, so that, in addition to the 32 pupils to be integrated, it would be possible to admit 27 more pupils in the first grade.

The legal consequence of the infringement of the personality rights of the Defendants in Orders III and IV was a declaration of infringement in respect of Claims 5 and 6, by establishing that the Defendant in Order IV is an affiliate of the Defendant in Order III. The Civil Code. With regard to the action for cessation of the defendants' infringements and for an injunction against further infringements in Action 7 under Article 84(1)(b) of the Civil Code, the submitted that the objective sanctions are intended to sanction repeated or continuous infringements, in view of the fact that the defendants' infringements of personality rights are continuous, and that it is therefore necessary to apply the legal consequences under Article 84(1)(b).

The supplemented its arguments in its summary statement on the merits after the evidentiary procedure, stating that in spring 2011 the draft Public Education Act was submitted to the Parliament, which caused a serious debate due to the planned nationalisation of schools and the reintroduction of catch-up education, which would also allow the organisation of separate classes. The proposal was not voted through. At the same time as the restructuring of public education, the government was also planning measures for the social inclusion of Roma, which Hungary was required to draw up on the basis of the EU's Framework Strategy on Roma Integration. According to the known documents and the regulations governing the support policy, the historical churches and the national Roma self-government were to play a key role in ensuring the social inclusion of Roma. In parallel with these two nationally significant processes, the mayor of the first defendant, in the context of the planned rationalisation of the education system, and due to the scarcity of local budgetary resources, wanted to ensure the education of primary school children in H.t. in an institution transferred to a church, and the necessary additional resources were available from the budgetary support to the church. The 1st defendant saw prospects for cooperation with the church, especially with the inclusion of the Roma inclusion strategy in the then planned 2012 central budget and the expected government measures. At the same time, the mayor of the 1st defendant initiated negotiations with the 2nd defendant church without consulting the general assembly, the Roma national self-government or the Roma parents in the settlement, offering to start a lower school in Castle H. Prior to the meeting of the General Assembly at which a decision was taken on the contested contracts, the defendant in the second instance had envisaged cooperation by taking over the running of the kindergarten in H. t. exclusively and by providing the education of children of compulsory school age from the kindergarten in the future on a progressive system. The pointed out that no evidence had been adduced in the course of the proceedings to show that, prior to the conclusion of the contract, any parent had approached any of the defendants with a view to the resumption of the school's operation in order to organise denominational education. According to the records of the meeting, the agreement was solely concerned with the public education, religious and social activities carried out on the premises, which the 1st defendant

referred to collectively as Roma inclusion and the 2nd defendant referred to as Roma pastoral care. According to the , the contracting process is confirmed by the minutes and resolution of the meeting of the municipal Roma national council of 24 May 2011, because it is recorded therein that Ms Cs.M. informed the members that she had received information from the mayor of the first defendant on 24 May 2011 about the operation of the denominational school in the settlement. At the same time, the Mayor informed that the aim is to have a unified Roma inclusion programme in close cooperation with the churches, from kindergarten to the vocational college. For this reason, the President planned to hold a public forum to draw the attention of parents in H.t. who were about to choose a school to send their children to the first grade to H.t. schools, and therefore proposed that the minority self-government should support the reopening of the school.

In his summary statement, he asserted that during the proceedings, the plaintiff fulfilled the legal obligation to demonstrate, through the exploration of ethnic ratios, that the school in question is in a comparable situation to other schools maintained by the first and second defendants. In this context, he referred to the finding in the final decision of the Curia in the Jászladány school case, which stated that the municipality's ownership of the buildings establishes the comparable situation of the schools' students. The comparison between the fourth defendant's school and the first defendant's municipal schools was uninterrupted from September 2012 until January 1, 2013, both in terms of the use of the property and the disbursement of support.

Subsequently, the schools maintained by Defendant Class I became maintained by Defendant Class V. As of January 1, **2013, there is a question of** joinder due to the ownership and related operating qualities of the Defendant Class I building. The school at issue was and continues to be a member school in the 2011/2012 school year and an independent school in the following school year. As the school was part of the defendant's third-tier headquarters school at the time of its opening as a denominational school, the school in the present action must be compared with the former in terms of ethnic proportions, i.e. the comparison must be made at the level of class or building within a denominational school. However, given that the segregation also occurred at the school class or member building/department building level, this could result in a situation where the responsibility for segregation rests solely with the Class II Defendant and the Class III Defendant operating under its maintenance, even though during this period, the Class II, Class III Defendants were also providing mandatory public education services in the building owned by the Class I Defendant, which they had taken over from the Class I Defendant. From the 2012/2013 school year onwards, the defendant II is the maintainer of the school, and it is therefore necessary to compare the pupils of the denominational school of defendant IV with the pupils of the denominational school of defendant III, in which the glaring differences in the nationality ratio are striking, since according to the statement of defendant III, there are 1-3 Roma children attending the headquarters school, whereas the majority of the pupils attending the school in the settlement are Roma children.

In the context of the discharge of the liability of the defendant in the second instance, the prohibition provision in § 27 of the Ebtv and the question of the permissible special education in § 28 must be taken into account. According to the plaintiff, separate education is voluntary if it is the result of an informed choice by parents, based on their free will, to provide education that affirms their denominational identity, and its physical conditions are no worse than those in an integrated school, noting that no litigant in the lawsuit has alleged the existence of nationality education. Consequently, it is necessary to further examine whether the education

provided in the school in the dispute meets the conditions of denominational education as regulated by Article 28, taking into account in this context that the school in the dispute was first a denominational member school and then an independent denominational school. Since both the member school and the headquarters school provided denominational education, there is no denominational difference between them, i.e. the reason for segregation is not denominational participation in education, because the relevant difference between the pupils was only their nationality.

Defendant II invoked ecclesiastical autonomy, which is directed to internal religious activity and as such cannot cover the provision of public education, which was the responsibility of Defendants II-IV under the challenged contracts. According to the defendants, the children in the present proceedings are in a public education relationship with the denominational schools and are therefore subject to Articles 4 and 27 of the Ebtv.

The defendants in Orders II-IV also referred to the pastoral care of Roma as defined in § 11 of the Equal Opportunities Act, which is a measure implementing equal opportunities, which is not covered by the Equal Opportunities Act. However, neither the Roma pastoral care nor the Roma inclusion programme is a legal norm at the level provided for in Article 11 of the Act, in that no legislation had been enacted on the Roma inclusion programme by the time the hearing was closed. Defendants II-IV also argued that Roma pastoral care uses a special methodology to educate children, that the target group of Roma pastoral care is not exclusively the Roma population, and that Roma pastoral care is more than school education, as it also includes elements of religious and social care. In his testimony, the director of defendant IV stated that the pedagogical programme of the school in question had not been drawn up and that the methodology was still in the experimental stage.

The 1st defendant's counterclaim that the contract concluded by it is of a property nature, so that the requirement of equal treatment need not be observed when concluding this contract, is contradicted by the content of the contract itself, namely clauses 2 and 7.4 of the cooperation agreement and the preamble to the lease contract, clauses 4 and 11 thereof. It is also contradicted by the mayor's statement recorded in the minutes of the assembly, the statements recorded at the meeting of the Education Committee and the statements made at the meeting of the Roma National Council of 24 May 2011.

In his counter-motion for summary judgment on the merits, the **defendant I.** referred to the fact that the initiative for the institutionalised operation of the Roma pastoral care in H.t. came from the defendant II., referring to the lecture of K.F. and the statement of Dr. S.C. recorded during his hearing as a witness. Contrary to the 's assertion that comparability within the meaning of the Ebtv is constituted by the assumption of tasks and the granting of aid as provided for in the cooperation agreement, the defendant in first instance has not been performing any public education tasks since 1 January **2013** and therefore cannot grant aid to the defendant in second instance. The findings in the Kúriai Jászladányi case relied on by the are not applicable in the present case, since in the case of the Jászladányi school the two schools were located in the same building and only part of the building complex housing the municipal school was previously leased.

Based on the nullity of the cooperation agreement and the grant agreement, he claimed that under Article 200 (2) of the Civil Code, a contract may be contrary to good morals if it intentionally violates the socially expected moral standards, and that the court practice establishes a breach of good morals if the conduct undertaken in the contract seriously, blatantly

and obviously irritates the public perception and the moral standards reflected in it. Referring to the decision of the Curia 6/2013**.** However, it is clear from the statements of the witnesses heard in the course of the proceedings that the purpose of the contracts was not to resegregate, because they were concluded with the aim of allowing the Greek Catholic Church to operate a Catholic school maintained by the Church in the context of the pastoral care of the ruins of the H. t.in the H.H. The purpose of the contract is to run a religious school, which should not be frowned upon by society, but should on the contrary be seen in a positive light, with the aim of providing a Catholic education for children and helping disadvantaged children to catch up.

The Civil Code. In the action based on Article 5 of the Civil Code, the Court pointed out that the contracts challenged by the did not infringe that substantive provision, because the defendants in the first and second classes had exercised their freedom of contract and had concluded a cooperation agreement for the operation of a religious school, which could not be interpreted as having been concluded for a purpose incompatible with a social purpose or with the intention of harassing or diminishing the rights of any person. In the context of the contract restricting the rights of the person, it referred to the fact that the religious school was only an alternative for children and parents living in the area, because the school offered a choice to all parents who wished to provide for the education of their children in accordance with the pastoral principles of the Catholic Church. The system of district schools did not change with the opening of the new Catholic school, so that neither the children's nor the parents' individual rights were affected or restricted by the treaties.

The contracts between the defendants I and II challenged by the plaintiff are, in his legal opinion, in breach of the Civil Code. 312(1) of the Civil Code, given that the mandatory provision of primary education by the defendant I ceased as of 1 January **2013**, and therefore the plaintiff's claim for restitutio in integrum cannot be upheld. Even if the claims that those contracts have been terminated, its petition for a declaration that the contract is null and void cannot be granted, since the nullity of a contract which has been terminated cannot be examined.

As regards the restoration of the original state, he said that the legal consequences to be examined, and how this could be achieved in the case of user obligations, were inherently excluded. A particular assessment may also be required of the way in which the restoration of the original situation may be achieved in the context of a cooperation agreement, since it involves agreements affecting the legal relations of pupils other than the parties to the dispute.

In the context of unlawful segregation, he claimed that by providing the school building for free use, by terminating the free school bus and by providing the school with other funds, the defendant could not have unlawfully segregated the school because the defendant had simultaneously introduced a rent subsidy scheme which sufficiently served the children's travel between their place of residence and the educational institutions. The subsidy for the establishment of the Catholic school complied with the legislation on public education, and the defendant in Case II undertook to contribute to the performance of the municipal task by operating the school, for which the municipality provided a subsidy. He stressed that the former municipal school in H.t. was not reopened, but that the defendant in the second instance had founded a church school in the H.t. school building, and that consequently there was no continuity of the relationship between the two institutions. He stressed that the opening of the church school did not affect the district school system because the defendant I continued to operate the district schools and consequently the children from H.t. continued to be admitted to their district school. Segregation is also out of the question because the decision of the pupils or their parents to choose between the school in the settlement or the municipal school, which

operates on different principles, was based on the right of the parents to choose their school in accordance with the right of free choice of school.

He claimed that the defendant I. had launched a large-scale development in the framework of a territorial and social reintegration project in the H.t. within the framework of social urban rehabilitation. To date, 810 metres of new road have been built, 681 metres of road have been renovated, the construction of a park with multi-age playgrounds and sports facilities has been completed, and the renovation of social rental housing has been carried out in 82 flats.

However, pursuant to the statutory provision that entered into force on 1 January **2013, the** municipal government was replaced by the K.I.K., and consequently the municipality could not grant any subsidies to the defendant in the second instance for **2013.** On that basis, the sought the dismissal of its application with costs.

By their summary statement of the merits, the defendants in Cases II-IV sought dismissal of the 's action. In the context of the burden of proof arising from Article 19(1) and (2) of the Civil Code, it was submitted that the burden of proof and the resulting burden of proof in relation to the plaintiff's action under the substantive law of the Civil Code, including the abuse of rights and the invalidity of the contract, rests with the plaintiff. In this context, it is submitted that the has infringed the provisions of the Civil Code. In this regard, the claimant submitted that the defendant had failed to establish the facts on the basis of Article 5 of the EC Treaty, namely which defendant had committed the abuse of rights and by which conduct.

In his application, the identified race, colour and nationality as the protected characteristics, presumably meaning racism. This is significant in terms of protected characteristics because the Gypsy and Hungarian ethnic groups belong to the same Europid major racial group. The same is true for skin colour, since it is common knowledge that the skin colour of Hungarians and Gypsies is the same, noting that the Church does not distinguish between people belonging to the Gypsy ethnic group and the Hungarian ethnic group, either on the basis of race or skin colour. Consequently, the proof of nationality alone may not be sufficient to establish the likelihood of a violation, and it must also be established that the violation of equal treatment is likely to occur and therefore threatens to occur with respect to the protected characteristic of nationality. The defendants in Cases II to IV contend that the has failed to establish a prima facie causal link between nationality as a protected characteristic and the alleged disadvantage.

In the relationship between the municipal schools maintained by Defendant V and Defendant IV's school, he alleged that the lack of unlawful segregation was justified because only 54 of the 199 students in the local public schools attend the denominational schools maintained by Defendant II. Of the 25 children who graduated from the denominational kindergarten, only 11 were enrolled in the defendant's School IV. It reasonably follows that, if all the children in the settlement were of Gypsy origin, unlawful segregation in the relationship between the municipal schools and the denominational school in the settlement could not be established.
In the relationship between the III and IV Defendants as denominational schools, the extent to which the two schools are in a comparable position must be examined. In this regard, he alleged that there was positive discrimination in the statement between their schools, which the plaintiff did not refute, pointing out that there was a proven intersection between the III-IV defendants as denominational schools. It follows that, in so far as none of the public education establishments applies tuition fees and all s are admitted where they apply, a finding of unlawful segregation is precluded. This means that if all s from an area considered as segregated are admitted where they apply and there is no reason to prevent the parent and the child from

exercising their right to free choice of school, this constitutes a valid reason for exclusion as defined in Article 10(2) of the Education Act.

In the context of the examination of the grounds for excusal under Section 28 (2) a) of the Ebtv., it claimed that the circumstances of the establishment of the denominational school had been established by the evidence, and the interviewed leaders of the national minority self-government had confirmed that there had been parental initiatives to open the denominational school, even if these parental initiatives had not achieved their goal directly, but with the intervention of national minority and local government leaders. The legislation requires the fact of a parental initiative and not the manner in which it was taken as a condition for exemption. It was alleged that the education was in compliance with state standards and participants were not disadvantaged, and therefore the statutory condition of liability was satisfied by the defendant II-IV.

In contrast to the claim based on the claim of breach of morality under Section 200 (2) of the Civil Code, the plaintiff alleged, but did not prove, that the defendant in the second instance had the aim, when concluding the lease agreement, of ensuring that the gypsy children in the settlement were educated separately from the inner-city schools. On the contrary, the establishment of a denominational school for gypsy pastoral care for the upliftment of the underprivileged social strata, neither collectively nor separately, is not immoral and does not violate good morals. He stated that a model school has been established on the site, where the children feel at home, where a high quality education is ensured, and where they receive a moral upbringing, which is a joy for the parents, the children, the leaders of the ethnic minority self-government, the city, the government and the church.

In support of each of the claims, he alleged:

1. The invalidity of the contract must be assessed at the time of conclusion, not at a later date.
2. The lease contract is not invalid and therefore there is no possibility to restore the original condition.
3. The lending of the property and the termination of the school bus, neither separately nor together, are not suitable for a finding of unlawful segregation.
4. The school's ascendancy system and the interchangeability between the two denominational schools disprove unlawful segregation.
5. The unlawful segregation of the child who was also educated by the defendant H.t. III cannot be justified on this ground either.
6. Enrolment was based on the parents' right to choose their school, therefore no unlawful segregation can be established.
7. Section 84 (1) (b) of Paragraph (1) shall not apply.
8. defendant V cannot be ordered to restore the original situation because, according to the , it played no part in the unlawful situation.
9. Since the lease contract on the property is not invalid, its termination does not provide an adequate legal basis for the deprivation of free use.
10. The applicability of the legal remedy set out in the application would infringe the parents' right to free choice of school and would also be unenforceable.

He referred to the fact that local teaching is a new legislative priority, and during his testimony the Minister stressed the importance of this, which was elevated to the status of a law by Article 89(1) of the Public Education Act. The enabling law, as set out in Article 11(1)(a) of the Ebtv. and constituting the exemption on the grounds of residence, is precisely Article 89(1) of the

Public Education Act, which guarantees local residence and accessibility of schools for lower secondary school pupils, read in conjunction with Article 89(2)(a)(2), which provides that class organisation for pupils of a nationality may be carried out if 8 parents so request.

In its response on the merits, defendant V sought dismissal of the 's action and an order that it pay the costs. He submitted that the defendant in Case V was not the legal successor of any of the former administrators of the institutions, since those municipalities continued to exist in their personal capacity. The defendant in Case V is therefore not liable for any infringements committed by the former maintainers, as it has not made any provision since its creation which would have resulted in the violation of the individual rights of any person.
It is wrong to claim that the defendant in the Vth class is the legal successor of the defendant in the Ith class pursuant to Section 4(1) of the Act on the State Reservation of Certain Municipally Maintained Institutions with Public Education Functions. That statutory provision provides only that the existing institutions are transferred to the State by absorption into the defendant in Class V, but what is relevant to the present action is that none of the defendants in Classes III to V has been absorbed into the defendant in Class V and no other institution is involved in the action. It follows that a Class V defendant cannot be ordered to restore the original status quo ante, especially if it did not participate in the creation of the altered status quo. Defendant V was created without a predecessor in title, regardless of whether it considers the current status quo, the current public education situation, to be unlawful. According to Section 79(6) of the Public Education Act, the Government Office has jurisdiction over violations of the requirement of equal treatment, but only in matters of admission or transfer. The defendant V is both entitled and obliged to fulfil the duties set out in Article 3 of the Klik Decree, including the duty to maintain pursuant to Article 3(1)(c) of the Public Education Act, Articles 83-85.

He pointed out that if a new task is assigned to a public education institution, this may only be done by ensuring the necessary conditions for its provision, subject to the provisions of Article 7(1) of the General Act. As regards defendant V, the 's action seeks the conclusion of a contract for the provision of road transport services, which is the performance of expenditure not provided for in the Finance Act, which is intended to prepare for integration. However, such an obligation could only be imposed on defendant V in the absence of a legal title if it were preceded by a legislative amendment. He pointed out that, under Article 84(3)(c) of the Public Education Act, the maintenance authority may not change its tasks in the school year. He also referred to Article 24(1) of the Public Education Act, which stipulates that public education institutions are autonomous in professional terms, and to Article 26(1), which together declare institutional autonomy, which only gives the maintainer the right of consent within certain legal limits. The 's action for the installation and operation of a school bus is unfounded on the basis of Article 76(7) of the Law on Public Education, since it is applicable only where the school is located outside the municipality.

The plaintiff's claim is predominantly well founded.

The plaintiff, in their claim, requested the determination of unlawful segregation resulting from the specific conduct of defendants I-IV, as well as an order for its cessation and the elimination of the violation against defendants I-II-III-IV in a specified manner.

The Association Agreement concluded by the Hungarian State with effect from 1 February 1994 aims, among other things, at the future accession of the State establishing the Association

Agreement to the Union. During the period covered by the Association Agreement, Directive 2000/43/EC of the Council of the European Union of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, addressed to the Member States, provided as follows:

The right to equality before the law and protection against discrimination is a universal human right for all individuals, as recognized by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination (which Hungary ratified by Legislative Decree No. 8 of 1969), the United Nations International Covenants on Civil and Political Rights, as well as Economic, Social, and Cultural Rights, and the European Convention on Human Rights and Fundamental Freedoms, to which all member states are signatories. (3)

Due to its universal nature arising from human existence (from birth to death), the essential content of the fundamental right formulated in the EU Directive itself overrides all other constitutional rights involved in the lawsuit, such as the right of parents to choose their schools and the right to freely practise their religion (age-dependent).

In order to ensure the development of democratic and tolerant societies enabling the participation of all persons irrespective of racial or ethnic origin, measures in the field of discrimination on grounds of racial or ethnic origin should go beyond access to self- and non-self-employment and *cover areas such* as *education*, social protection, including social security and health care, social advantages, access to and supply of goods and services.(12)

To this end, any direct or indirect *discrimination* based on racial or ethnic origin in relation to the areas covered by this Directive *should be prohibited throughout the Community*. (13)

The assessment of the facts from which it may be inferred whether there has been direct or indirect discrimination shall be a matter for the courts or other competent bodies in the Member States, in accordance with the rules of national law or practice. These rules may provide, in particular, that indirect discrimination may be established by any means, including on the basis of statistical evidence. (15)

The prohibition of discrimination shall not prevent the maintenance or adoption of measures to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may authorise organisations composed of persons of a particular racial or ethnic origin, provided that their main objective is to promote the special needs of such persons.(17)

This Directive sets minimum requirements, leaving Member States the option to introduce or maintain more favourable provisions. The implementation of this Directive should not serve to justify a reduction in the level of protection already existing in the Member States (25).

The Member States should provide for effective, proportionate and dissuasive penalties in the event of infringement of the obligations under this Directive (26).

Among the general provisions, the Directive provides, among the objectives set out in Article 1, that it aims to establish a framework for combating discrimination based on racial or ethnic origin with a view to putting into effect in the Member States the principle of equal treatment.

It defines the legal concepts of direct discrimination, indirect discrimination and harassment in Article 2, and provides for retaliation in Article 9. The legislation does not contain the constituent elements of unlawful segregation. However, in Article 5, among the positive action measures, it authorises Member States to provide that, with a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to eliminate or compensate for disadvantages linked to racial or ethnic origin.

In the context of the implementation of the Directive, as set out in Article 16, Member States undertook to comply with the Directive by 19 July 2003, and in Article 17, they undertook, by 19 July 2005 and every five years thereafter, to communicate to the Committee all the information necessary to enable it to report to the European Parliament and the Council on the application of this Directive.

The Hungarian State fulfilled its obligation to create legislation on equal treatment and the promotion of equal opportunities under the Association Act by Act CXXV of 2003 on equal treatment and the promotion of equal opportunities, which entered into force on 1 January 2011, recognising in its preamble the right of all persons to live as persons of equal dignity, providing effective legal protection for those who suffer discrimination and declaring that the promotion of equal opportunities is *primarily a state obligation.*

Among the general provisions of the Equal Treatment Act, Article 2 stipulates that the provisions on the requirement of equal treatment laid down in separate legislation shall be applied in accordance with the provisions of **this** Act.

Pursuant to the provision of the Act on the personal scope of the Act, the requirement of equal treatment must be observed, inter alia, by the Hungarian State, local governments, their bodies, public educational and higher educational institutions, budgetary bodies in the establishment of their legal relations, in their legal relations, in their procedures and measures (§ 4).

According to the provision of Article 6, the scope of this Act does not extend, inter alia, to the legal relations of ecclesiastical legal persons directly connected with the judicial activities of churches. However, educational institutions established by a church are covered by the Ebtv. as laid down in the case law of the BH. no. 14 of 2006.

The violation of the requirement of equal treatment is provided for in Article 7, which states in particular direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation and orders to do so.

The general grounds for exemption are regulated by law in § 7 (2), which states that, unless otherwise provided by **this** Act, conduct, measures, conditions, instructions or practices which are proportionate or for which there is a reasonable justification do not infringe the requirement of equal treatment. However, paragraph 3 excludes the application of the general grounds for exemption to direct discrimination and unlawful segregation.

Article 8 of the Ebtv. lists the protected characteristics in the statutory definition of direct discrimination in an exemplary manner; the plaintiff claimed in his action that as a result of the provision of the defendant in R. I-II-III-IV, a group was treated less favourably than other

persons or groups in a comparable situation were or would be treated, because of their actual or perceived position or characteristics.

The statutory definition of unlawful segregation is contained in Article 10(2), which provides that a provision which, on the basis of the characteristics defined in Article 8, segregates a person or a group of persons *from persons or a group of persons in a comparable situation to them, without being* expressly permitted by law, constitutes unlawful segregation.

The 's right to bring an action in the public interest based on the provisions of the Ebtv. is based on Section 28 (1) c) of the Ebtv.

As a public interest claimant, the rules of evidence are set out in § 19, which states that the plaintiff must establish a prima facie case that

a.) the person or group of persons who have suffered damage to their rights has suffered damage or has suffered direct damage
threatened and

b.) the person or group of persons or entities who, at the time of the infringement, actually or allegedly
was presumed to possess one of the qualities defined in § 8.

On the other hand, where there is a prima facie case, the burden of proof is on the other party to prove that

a.) by the aggrieved party or the person entitled to pursue a claim in the public interest
the likely circumstances did not exist, or

b.) has complied with the requirement of equal treatment or, in respect of the relationship in question.
was not obliged to keep it.

I. In the context of the declarations sought against each of the defendants on the basis of the Ebtv., the alleged against defendants I and II that, as a result of the cooperation agreement and grant agreement concluded between them on 31 May 2011, defendant I, by giving the school building owned by it free of charge, enabled the resumption of public education in the same building in the H.t. in the framework of a church school.

The fact is that the school in H.t. was closed at the end of the 2007 school year as a result of a municipal decision (also) of the lawsuit initiated by the plaintiff in 2006.

Prior to the closure, in the opinion of the public education expert K.J., regarding the examination of the issues contained in the Resolution of the General Assembly of Ny.M.J.V. No. 5/2007 (I.22.) on the review of the network of educational institutions, it was stated in the context of the closure of **primary school No. X** that the current number of pupils is 100, with an average of 12.5 pupils per class. Of the pupils attending the school, 98 children are severely disadvantaged or eligible for regular child protection assistance. Equal opportunities for pupils can be increased by compensating for disadvantage, both in the European Union and in our country, as the abolition of segregated education is promoted, since integrated education of pupils promotes their integration into society (Annex to document 40002/12 /6).

The 2007 Public Education Equal Opportunities Situation Analysis for the population living in peri-urban and ethnically segregated settlements put the number of pupils attending

kindergarten and primary school at 1,894. Those in the age group 3-5 years are 100% disadvantaged, 36.22% of the children with multiple disadvantages are in the age group 3-5 years, 67% (85) of them attend kindergarten and are 100% disadvantaged.

Among the settlement-like residential areas, the segregation of H.t. next to the eastern housing estate was recorded. The number of primary school pupils in the two segregated areas is 298, all of whom are 100% disadvantaged and 193 of whom are also cumulatively disadvantaged: 64.7% of the primary school pupils in the settlement. The city average, however, is HH. 25.9% and HHH. 7.5%, according to the data provided.

The figures still show a staggering discrepancy, it says, although the data are not accurate because a full survey has not yet been carried out. Given the very high likelihood of the existing social situation reproducing itself in this environment, efforts must be made to prevent the perpetuation of extreme poverty as far as possible (Annex 1, No 40 002/12/14).

The Equal Opportunities Programme for 2011-2016 continues to mention H.t. and the Eastern Housing Estate among the segregated areas, noting that the problems are caused by several factors: low educational attainment and unemployment defined by the underclass subculture, and inactivity due to the abandonment of job search.

In point IV.3 of the equal opportunities programme it was stated that the Roma in Hungary are without doubt the most vulnerable social group in the country. The vast majority of the Roma population living in the city live in the H. and K. housing estates.

On the basis of the findings of the 2007 and 2011 Equal Opportunities Programs, which contain public data, the court is not concerned that the majority of the population living in the spontaneously segregated H. t. is of Roma origin, and that the disadvantaged and the severely disadvantaged group is blatantly high compared to the urban HH. and HHH. rates. In the light of this, the decision of the municipality to provide the Greek Catholic Church with the opportunity to resume its educational activities in the building it had been given, by transferring free of charge a building in the segregated area, which had previously also served as a school building, constitutes unlawful segregation within the meaning of the Ebtv. (2) of Article 10, because by enabling education in the settlement, the municipality of the first instance, knowing the composition of the population of the segregated settlement and the age distribution of its population, achieved this as a targeted legal effect.

On the basis of the public interest data of the defendant I., the plaintiff, in the knowledge of the facts also relied on by the plaintiff, has therefore fulfilled its obligation of probability as set out in Article 19(1) of the Rules on the burden of proof.

Defendant II did not participate in the creation and maintenance of 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, thus creating an independent member school, it also committed the offence of unlawful segregation at the institutional level, i.e. within an educational institution.

Consequently, neither the defence of the defendant I. nor the defendant II. that the requirements likely to be met by the plaintiff do not exist in order to excuse their liability as defined in § 19 (2) a. of the Ebtv. cannot be assessed in their favour by the above finding of facts.

II. It follows from the above that the defendant II. by establishing a member school within the scope of the statutory provisions on education and training, as defined in § 27 (3) of the Act, must be assessed as a violation of the requirement of equal treatment, since, in particular, the wording of the Act implies that the unlawful segregation of a group in an educational institution as defined in a.).

Taking into account that our national legislation on unlawful segregation under Art.§ (2) of the general grounds for exclusion, namely the proportionality index and the reasonableness of the grounds, cannot be examined under the prohibition provision set out in paragraph (3), it is consequently possible to establish educational segregation as one of the *special grounds for exclusion, that it is* not contrary to the requirement of equal treatment for a public educational establishment to *organise, at the initiative of the parent and at the parent's voluntary choice, education based on religious* or other philosophical *convictions*, or on minority or national minority convictions, the purpose or curriculum of which justifies the creation of separate classes or groups; provided that no disadvantage is thereby caused to the persons receiving the education and that the education complies with requirements approved by the State, prescribed by the State or supported by the State.

The defendant II invoked Roma pastoralism as a special excuse under Section 28 (2) (b) of the Ebtv., but did not claim the fact of national minority education. In its application and during the proceedings, the plaintiff did not make any findings relating to the quality of education or the curriculum of the school in question in the context of the examination of the conjunctive conditions.

Consequently, the court had to rule only on the question of whether or not the establishment of the school in the settlement was indeed the initiative of the parents and based on their voluntary choice of religious belief.

In examining this statutory condition, it is relevant that the educational institution is established for the purpose of providing denominational education of the parents' voluntary choice, as a result of a specific parental initiative.

The legal representative of the defendant II, K.F., who was heard during the proceedings, stated in his testimony that the Greek Catholic Church, which had been present on the settlement since 2007, had been carrying out pastoral activities in the framework of Roma pastoral care. In that context, the Church intended to transfer the municipal kindergarten in D. Street to the Church. To this end, on 06 May 2011, it wrote a letter to Deputy Mayor Ny. requesting that the municipality take the necessary measures to transfer the kindergarten in D. Street to the church. In his testimony, he stressed that the Church intended to provide education in an ascending system after the completion of kindergarten education, and that it also intended to start the school education in an ascending system, which was actually implemented by the Church by enrolling only first graders in 2011.

In a letter dated 06 May 2011, the legal representative of the defendant II. referred to the fact that *after the first year of pre-school education and pastoral experience,* primary education could be started in *2012,* without social tension and resistance, in the first year of primary school, in an ascending system. If the Church's involvement were to take place at this pace, it

might be possible to avoid the communication breakdowns that followed the closure of the institutions in 2007 (Annex 5 attached under No 40002/12/6).

Following this letter, on 23 May 2011, the legal representative of the defendant II. states that, *at the request of the municipality, the* defendant II. has repeatedly discussed the possibility of reopening the former school in H.t. from the 2011-2012 school year. After examining this issue with the assistance of experts, they came to the conclusion that, if the city administration could provide the necessary conditions, the church could take over the task of providing primary education by starting a first grade in the ascending order. It therefore calls on the municipality to examine whether it can provide the necessary property and material conditions for education in the long term.

The municipality of the defendant municipality I., after writing the letter of 23 May 2011, concluded a cooperation agreement for education, a grant agreement and a lease agreement at the general meeting held on 31 May 2011. The presentation was made by the Mayor, Dr. K. F., in which he informed the members of the assembly that the draft cooperation agreement provides for the enrolment of 28 children in the school in H.t., *if the parents agree, the* school can start here under a ruin pastoral system in church maintenance in the ascending system.

In response to J.A.'s concerns about segregation, the mayor stated that he had been in discussions with the bishop since January 2011 and had also suggested that the church take over the maintenance of B.Gy. I. However, the church prefers to start this in G.

N.L., a representative, expressed concerns, stating that he found it strange that he had to learn through the newspaper that such an agreement had already been made. He pointed out that the council had no prior information about it, yet the decision had already been made.

The mayor: a week ago he could not give any information because *a week ago the Greek Catholic Church did not want this cooperation or did not give a definitive answer.*

Heard in the trial Dr. S.Cs. II. confirmed the statements made in the minutes of the general assembly in the scope of the cooperation agreement, as in the case of a change of the maintenance of the school, the change of the maintenance of the school must be notified to the authority by 31 May at the latest. Consequently, it can be concluded from these facts that there were negotiations between the municipality and the defendants I and II on the transfer of the school in H. t. to the Church, the Church's initiative being aimed solely at the transfer of the kindergarten in D. Street on the site to the Church. The initiative of the municipality was the basis for the cooperation agreement which was finally accepted by the municipality on 31 May 2011.

This fact is further confirmed by H.-in the testimony of Dr. R.E.G., who was the witness of the I. r. defendant, confirmed that the municipality had assessed the church's ambitions - they wanted to take over the kindergarten in the first place - and that the mayor wondered whether the major reorganisation might not lead to the church starting its activities a year earlier, which it would have liked to start a year later with the first class (minutes No 43, penultimate paragraph, page 36).

The fact that the organisation of the religious school was not initiated by parents is also confirmed by the individual pre-registration form of the children enrolled in 2011, since in the school year 2011-2012 the defendant I. provided the court with 15 application forms, of which

2 parents indicated the fact of the Greek Catholic denomination, the vast majority of them indicated the proximity of their place of residence.

It is further confirmed by the fieldwork report recorded by the on 31 May 2011. On the same day, the plaintiff attended the public meeting on the reopening of the Gypsy school in H. t., which he had closed 4 years ago, and also asked parents in the settlement whether they wanted their children to return to the school in the settlement and whether they were Greek Catholic. Mrs Cs., who was present at the meeting, said that she had been told by parents that it would be better to open the school because there was no bus and parents could not afford the extra expenses. She offered to come to the site with us and talk to the parents and see if that is the case. When talking to the parents in H.t., the parents stated that they did not know that there was going to be a Greek Catholic school, no one told them that. There was no information either in a forum or in writing. Only Mrs. Cs. and the tenant (B.E.) went around and persuaded them. They clearly only want it because they are hurting their older children in other schools. No other argument in favour of the Greek Catholic school was put forward (Annex 4 to file No 40002/12/9).

Parent M.A., who was interviewed during the proceedings, stated in her testimony that the only motivation for my youngest son's choice of school was that it was a Roma school, and that the child would not be ostracised here (Protocol No.43, page 5).

Regarding the denominational affiliation, the headmaster of the village school H.K. stated in his testimony that there are children of other denominations in the school, Reformed children, who cannot be included in the Greek Catholic faith, but the parents are very open (Protocol No. 43, page 55).

Based on the above reasons, it can be established beyond any doubt that after the closure of the school in the settlement, although there were complaints from parents about the fact of rigid integration and transport, the church education of the school in H.t. was not preceded by the parents' initiative, but after the initiative of the municipality, due to the changed position of the church, the kindergarten in D. street was also churched in the settlement school in the ascending system.

III. Paragraph 19(1)(b) of the Ebtv. imposes an obligation on the in proceedings for breach of the requirement of equal treatment of a group that has suffered a legal *disadvantage, in* addition to the probability that the group has suffered a *disadvantage* or, in the case of a claim in the public interest, that there is an imminent threat of such a *disadvantage.*

As set out above, the has fulfilled its obligation of probable cause during the proceedings.

As to the prejudice suffered by the group aggrieved by the unlawful segregation due to segregated education: the plaintiff filed several motions for the taking of evidence in this regard, also taking into account that the defendant's defence throughout the proceedings in connection with segregated education was that the settlement school maintained by the defendant initially as a member school and later as an independent institution, was engaged in so-called catch-up education.

Witness T.T. summarized his testimony by saying that you cannot desegregate in a segregated environment, because segregated, excluded children, if you deal with them in a separate group,

whatever you can do in terms of their education, they will still be segregated and will not be able to integrate into the majority society later on. By the age of 14-15, if a child is segregated in a primary school, that child will not be able to integrate into mainstream society (Protocol No 36, p. 11, paragraph 5).

In his testimony, K.G., an economist researcher who is also involved in education, stated that since 2006, as a result of competency measurements that can also be used for academic purposes, it has been possible to carry out a follow-up study on the results of the 2006 competency measurement in the field of career recruitment. The most important findings of this follow-up study were the performance of pupils in completing upper secondary education, or any form of upper secondary education, using the results of 6 full academic years compared to the 2006 baseline year.

The finding is that the more disadvantaged a student is, the greater the discrepancy in educational attainment. In fact, students who had the best test scores at the end of Year 8 - those in the 10th decile, including children from disadvantaged backgrounds - were almost 90% more likely to complete secondary school. In contrast, those in the worst decile - those with the worst reading or math test scores - have the only spill-over effect of either completing or not completing secondary school. Those who did not finish primary school have very minimal chances of finding a job in adolescence or in adulthood. However, if you have completed primary school, you have an approximate 15% chance of finding a job. However, if you have a secondary education, the rate is between 70% and 80%.

The witness pointed out that the reasons leading to the completion of a secondary school education are practically the result of 3 essential components: the family educational environment, which, regardless of the ethnospecific nature of the environment, can only ensure the chances that the family gives to their child to have access to all the tools and activities that support their cognitive development.

The second component is the school itself, which can have a huge impact on children's learning, because if the different social situations of a class of children are handled competently by a school, it has been proven that very good results can be achieved with the same children: if we calculate the average of the difference in test scores between two arbitrary Roma and non-Roma children attending the same class, there is *an exact and demonstrable* difference between them that is significantly smaller than between two arbitrarily selected Roma and non-Roma pupils not attending the same class, not attending the same school, with all the additional conditions for the objectivity of the test (parental education, poverty indicators, etc.) being fixed.).

The third component is the indicators of health, which are not relevant to the adjudication of the case (Minute 36, pp. 39-30).

In the context of the operation of the village school, the witness referred to the Charlotte-Mecklenburg case and its subsequent investigation following the operation of the school bus and its termination (Minute 36, pp. 37-38).

A II. r. In connection with the Roma pastoral activities carried out by the defendant II., it was submitted that it cannot be disputed that the Church approaches education with the utmost good will; Roma pastoralism certainly has a positive effect, since it transmits the humanist ideals of religion and the humanist ideals of faith life, but the essential question to be decided in the case

is whether or not these values should be transmitted to children while they are physically isolated, because only in this way is it possible to bring them up to speed (36. Protocol, p. 54).

In his testimony, sociologist H.G. stated that his direct research was on the G.t. school. *The 1993 amendment to the Data Protection Act allowed the official exclusion of Roma origin from the register of educational institutions*, *but* data on the number of Roma pupils in these schools, including in the H.t. school, were known from 1989 and 1992.

The data on the school in the settlement that was the subject of the lawsuit showed a gradual increase in the proportion of Gypsies from 1989: 70% in 1989, 80% in 1992, 97% in 2000 and 96% in 2004.

In addition to the ratios, the trend in the number of pupils in the village school was also downwards: in 1989, the school in H. t. had 180 pupils, while in 2004 it had 104. This is also a necessary concomitant of the segregation process, because segregation also arises partly from the fact that those who can, who are more aware or more thoughtful about their child's education because of their social situation, perceiving the deteriorating conditions, take their children from these schools to schools in the city centre (minutes 36, p. 60).

Also known was the introduction of the education government's catch-up grant from the mid-1990s. However, catch-up education ended in complete failure. Research carried out by the witness as author in 2000 clearly demonstrated, with indicators measuring the effectiveness of education, that the disadvantages that children undoubtedly had at the age of 6 as a result of their disadvantaged social situation increased during the 1-2-3 years they spent in catch-up classes, and they were placed in mainstream classes with such disadvantages that it was hopeless to keep up with the rest (Report No 36, p. 61).

D. G. as R.A. Director of the R.A., the Ministerial Commissioner for the Integration of Disadvantaged and Roma Children of the Ministry of Education in 2004-2006, in his testimony he stated in a nutshell that segregated schools are not good because it is an integral part of the learning process that disadvantaged children *at the most receptive age of 6 years do* not meet children who are different from them in their education; children who are not HH, not HHH, not Roma and not from the same colony, thus *imparting* other knowledge into their lives *through the age group effect.*

He stated that the students at R. had all received an integrated education and that this was the example that had led them to university (minutes 36, p. 86, 94, paragraphs 3-4).
In order to prove the necessity of remedial education, the defendant II. proposed the hearing of M.-né Á.A., a university assistant professor, who also prepared an expert opinion on behalf of the defendant II. on the functioning of the village school and its pedagogical method.

According to the witness, the most important long-term motivation for attending school, not from a sociological point of view, but from a pedagogical point of view, is the parent. The basic criterion of inclusion is that it serves social integration, which is also the aim of the village school and to which it allocates the means. The prerequisite for this is to have accurate and basic individual personal information about the children, so that individual paths and methods can be implemented and used in a differentiated way, in order to compensate the children's individual disadvantages as much as possible, so that ultimately the children can break out of their disadvantaged situation.

He claims that the educational assistance is provided by the teachers working at the school in the settlement, in the form of a teaching assistant, a development teacher and a small class size. Both his expert opinion and the witness's testimony concerned the pedagogical conditions of integration, mentioning also the fact of internal segregation, which occurs in the case of children who attend a school where they cannot integrate because their environment is not suitable for them, i.e. the background condition for integration, the inclusive learning environment does not provide this for them, and therefore the child does not feel safe. On the contrary, the Church, by its presence in education, gives the pupils the faith and confidence that makes a valuable difference to both children and parents, highlighting the affective nature of education, as opposed to the sociological cognitive approach (Minute No 43, p. 7, p. 9).

In his action extended to defendant II, the plaintiff based the existence of a direct threat of harm to the Roma students represented by his public interest action on the fact that, at the outset of the proceedings, he referred to the finding of the Supreme Court in its judgments that segregation in itself constitutes a disadvantage.

He referred to the United States Supreme Court's landmark ruling against school segregation in Brown v. School Board, which stated that "there are intangible factors which cause the segregation of white and colored students of similar age and ability solely on the basis of race to create a sense of inferiority in their status within the community which can never be remedied in any way that can affect their minds and hearts" (Judgment of May 17, 1954).

In the field of disadvantage, after the evidence offered by the plaintiff, the court found that the disadvantage of segregated education can be established without any concern by the data of the Kertesi follow-up study, which is proved in an exact manner, that 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, as it has been proved, but only by public education together with the majority children.

The pastoral care for the Roma referred to by the defendant II. may, of course, be a determining, essential element of its public education, but this does not allow for the separate education of Roma children in the settlement school, taking into account the fact that the basic premise, also asserted by the representatives of the Church, that the aim of the pastoral care for the Roma is also the acceptance of the majority society with regard to the Roma, and vice versa, cannot be realised. On the other hand, the defendant II did not state at what point in time and in what way the placement of Roma pupils in the majority society as a result of its inclusive education is expected, together with the fact that all witnesses in the proceedings referred to the fact that the most receptive age for this assessment is the age of primary school.

IV. The classification of the group of persons in a comparable situation in respect of the affiliated school, which was maintained by the defendant II and then an independent institutional school with a protected characteristic, was to be examined further in the light of the statutory provisions on unlawful segregation.

a.) The measure of the Municipality of Defendant I. concerning the set of contracts challenged in the plaintiff's action, the group of persons in a comparable situation was made up of all school-age children enrolled in primary schools maintained by the municipality, the detailed

statement of which is contained in the analysis of the situation and action plan for equal opportunities in public education for 2010, issued by the Municipality of Ny.M. J.V.Ö.

In the comparison of primary schools in Annex 2 of the plan, the primary schools listed under numbers 1-21 -including schools run by churches, public foundations and public benefit corporations, which cannot be used as a basis for comparison- the proportion of schools in municipalities with a high proportion of disadvantaged pupils ranges from 1% to 30% (with the highest proportion being B.G.Á.I., (Annex 2 to the action plan attached under No 40.002/12/14).

The 2011 data was attached to the file by the defendant II, which includes the following:
The total number of pupils in the primary schools run by Ny.M.J.V. is 6447, of which the number of disadvantaged pupils is 2277, of which the number of pupils with multiple disadvantages is 459.
The share of disadvantaged pupils in schools maintained by Ny.Ö. is 35.3%, of which 7.1% are pupils with a multiple disadvantage, while the share of disadvantaged pupils in the S.M.H. T. member school is 100%, of which 56.3% are pupils with a multiple disadvantage.

Having made this comparison, the defendant I. can be held liable for unlawful segregation pursuant to Section 10 (2) of the Ebtv.

b.) In 2011, the comparable data is the Greek Catholic Church school operating exclusively in the territory of Ny., of which the school in H.- t. was a member school.

According to comparable data, the number of pupils attending the S.M.A.I. - as determined on the basis of the data provided on 01 October 2011 - is 282, of which 49 are children with a multiple disadvantage and 11 are pupils with a multiple disadvantage (in percentage terms, 17.4% HH, 3.9% HHH).of the 16 pupils enrolled in the school of the H.T., which is a secondary school, 16 pupils are disadvantaged, of which 9 pupils are severely disadvantaged, with a percentage of HH. 100 %, HHH. 56,3 %.

In the absence of a declaration, the data sheet stated the number of Roma pupils as an estimated number of pupils in the member schools as 10 out of 16, and in the inner city school as 3 out of 282 pupils (Annexes 7, 8, 9 to the counterclaim of the respondent II., attached under No. 40.002/12/20).

Based on the above data, it is worrying to note that the proportion of disadvantaged pupils in the inner city school is half of the average in Ny (35.3%, 17.7%), while the proportion of pupils enrolled in the settlement school is 100%.

V. In the course of the proceedings, the defendant II. claimed on the basis of the provision of § 11 of the Equal Treatment Act, which is a constitutional limitation of equal treatment, that the pupils in his member school and later in his independent school had been attending remedial education, and therefore the unlawful segregation could not be assessed against him.

Regarding the essential content of remedial education, H.K., as a witness and former head of the branch school, later the director of the multi-purpose institution, testified as follows: At S.M.Á.I., seven teachers work; in grades 1 and 2, there are two teaching assistants and four teachers, of whom two are primary school teachers, and two provide after-school teaching

activities. Additionally, a special education teacher is also employed at the institution. S.M.Á.I. follows the pedagogical program of Sz.M.Á.I., which is currently undergoing revision; however, the fourth defendant did not submit the program during the proceedings. The key features of this program include love-based pedagogy and individualized treatment. According to H.K., the goal for students is not only to acquire intellectual and factual knowledge but also to deepen their spirituality. For this reason, religious education and choral tradition play a significant role in Greek Catholic education. (Minutes No. 43, p. 50.)

Parents' meetings are held monthly in classes 1 and 2. Teachers get to know all parents. The intensive contact with parents, mostly focused on keeping in touch, was mentioned as a very positive aspect.

Act CXC of 2011 on National Public Education, which entered into force on 1 September 2012, states in its preamble that the Act aims to replace the Act on Public Education along three legislative principles. The first is the use of the term 'public education', and thus its content, which encompasses the period from nursery school to the end of compulsory schooling and emphasises its essential basis: education. The second is its framework character. The third legal principle is the redefinition of the role of the Hungarian State in public education.

The aim and principles of the law include the creation of a public education system that promotes the harmonious spiritual, physical and intellectual development, skills, knowledge, skills, knowledge, skills, knowledge, knowledge, skills, knowledge, of children and young people, skills, emotional and volitional qualities, literacy and age-appropriate abilities, and thus to educate responsible citizens capable of leading a moral and independent life and of achieving their goals, reconciling private interests with the public interest. The *main aim of* education and training is to *prevent social exclusion* and to nurture talent.

As stated in Article 1(2), the whole of public education is governed by, inter alia, equal treatment. According to paragraph (3) of the Head of Institution's declaration, the *pedagogical culture of educational institutions is* characterised by the pursuit of individual treatment, acceptance of the child and pupil, trust, love, empathy and the setting of age-appropriate standards.

According to Article 3 (6), the priority task of public education is to provide opportunities for early childhood development before school and for the fullest possible social integration.

Paragraph (10) provides that the school system *is interoperable*, so that a transfer to another school or type of school, even during the school year, is possible on the basis of the requirements of the host institution, within the framework established by this Act.

Both the inner city and the settlement school can enrol pupils without any zoning.

The analysis carried out by the director and deputy director of the S Sz.M.Á.I., who carried out the pedagogical professional analysis of the school in the settlement, recorded the following in the area of the pupils' catching-up:
Providing a development programme for children with multiple disadvantages attending school, with the help of a speech therapist, physiotherapist and development teacher. The programme is designed to provide the best possible development for each child, taking into account his or her prior knowledge, his or her weaknesses and strengths, his or her needs, aspirations, interests,

personality traits, specific strengths and weaknesses, and the complex structure of his or her personality.
Another aim is to provide them with education, development, training and training appropriate to their abilities and interests, living in their home or in a family close to where they live. Equal opportunities can be achieved, increasing the chances of social integration. This area covers methods of development appropriate to individual developmental differences and needs (Annex 10 to the counter-application, No 40 002/12/20).

The provisions set out in the programme do not deviate from the provisions on the essential characteristics of public education as laid down in the purpose and principles of the Public Education Act.

During the testimony of the Minister of Human Resources B.Z., he explained that during the Presidency of the European Union, the European Roma Strategy was prepared in spring 2011, in the framework of which the Member States committed themselves to the preparation of their own strategies. Hungary has fulfilled its commitment, and the national strategy for inclusion has been published under the title of Deep Poverty, Roma, Child Poverty. To this strategy, the government has assigned an action plan, setting out deadlines, programmes, funds, responsibilities and a monitoring system.

In this context, he also considered important the fact that from 01 January **2013 the** former municipal schools were transferred to the state. This is also of great significance because schools maintained by the state will have a much better chance of catching up and catching up, as the state can fulfil its commitment not to segregate or separate children, as the measures of the single maintainer can help more than the individual decisions of the former municipalities.

He did not dispute that spontaneous segregation is very common, with a high Roma population.

With regard to the school in the case, he stated that the H.t. is a priority programme for the government, since the combined force of the need for change is present, namely the city, the state, the government, the church and the Roma themselves are the will for change. He assessed the positive interaction in the fact that the T.I.K.e. K.I., as a coordinator of the integration institution, is present in the settlement, the rehabilitation of the settlement is significant, the housing environment in H.t. is continuously rehabilitated by the renovation of social rental housing, the extension and renovation of infrastructure roads.

In the area of education in the village, he emphasized the development of students in their own community, building their self-esteem, as a result of which they can establish a relationship with an environment where there may be hurt, rejection or any negative emotions.
He stressed the importance of local education, which necessarily leads to the involvement of parents in education, which he claimed is the alpha and omega of inclusive education.
He stressed that *his finding was made solely in relation to the school in the case, not disputing the fact that the segregated environment of the school* and the *school's own group learning allows for catching up and thus helps pupils* to *integrate successfully.*

He claimed that through the church's Roma pastoral work, children are helped to integrate, which is not a valid statement for other schools. It is therefore *the combination of circumstances that makes integration a reality* (minutes No 53, pp. 8-9-10-11).

The government's intention is to define in law what real catch-up in school means, it says. This

is being clarified, along with a statement that the government does not intend to make any changes to the regulation of antisegregation points (minute 53, page **13**).

The Ebtv. lays down conjunctive conditions for Member State legislation aimed at eliminating unequal opportunities as defined in § 11 of the Ebtv. in cases where it excludes the violation of the requirement of equal treatment with regard to measures aimed at eliminating unequal opportunities, namely: it must be aimed at eliminating unequal opportunities based on an objective assessment of an explicitly designated social group, it must be based on a law or a government decree issued on the basis of a statutory authorisation and it may be for a limited period or until a definite condition is met.

Furthermore, according to paragraph 2, a provision laid down by law must not infringe a fundamental right, must not confer an unconditional advantage and must not preclude the consideration of individual criteria.

The Minister of Education himself has stated that this legislation, which enables social inclusion and aims to eliminate inequality of opportunity, was not ready by the time the hearing was concluded. The statements made by the Minister in charge in general, such as his presentation specifically in relation to the operation of the residential school and its prehabilitation, cannot be assessed in the absence of the conjunctive conditions set out in Article 11(1) of the Ebtv.

He cited the Harlem Children's Zone project as a positive example, where African Americans conduct remedial and integration programs within their own communities, with their own people. He noted that elements of this approach can also be found in the microenvironment of H.t. In this context, he highlighted only the importance of parental involvement as a key feature of the project. However, he did not outline a Hungarian impact study, the timeline for implementation, or other conditions specified by the conjunctive requirement set out in § 11(1) of the Ebtv. (Equal Treatment Act)—not even within the government's legislative preparation stage.

In relation to catching up, the National Public Education Act contains provisions on church schools in Chapter 23. According to Article 31(1) of the Act, religious institutions may operate and organise their activities in accordance with the rules laid down in **this** Act, which differ from the general rules.

Under paragraph (2), if the educational establishment is maintained by a church:
a.) the educational institution may operate as a religiously or ideologically committed institution and may accordingly require the acceptance of a religion or belief as a prerequisite for the admission of children or pupils and may examine this in the context of an admission procedure,
b.) the provisions relating to the admission of children and pupils, with the exception of those relating to the maximum number of pupils, shall not apply to compulsory admission and to the provisions determining the number of classes and groups.

Pursuant to Article 32 (2), if *the church* has concluded an agreement with the government that also covers the provision of public education, it shall undertake to cooperate in the provision of public education by means of a unilateral declaration sent to the government office competent for the seat of the educational institution and undertake to *provide for the catching-up of pupils.* On the basis of the unilateral declaration, the government office shall include the church-run institution in the public education development plan. The Hungarian Catholic Church is entitled to make a unilateral declaration on the basis of an international treaty.

Pursuant to Article 34 (2), the Government Office shall carry out a legality audit of the activities of the maintainers of the ecclesiastical public education institution at least every two years, and shall notify the body paying the budgetary contribution of the results of *the* audit. In the course of the legality audit, the Government Office examines whether the maintainer is operating the educational institution in accordance with the provisions of the founding deed and the operating licence.

In Chapter 45 on sectoral governance, the Minister responsible for education and the regulatory functions of the Government, the Act provides, inter alia, that *the Minister* may, in accordance with the provision in force from 16 December 2012, grant support for participants in public education in the context of his responsibility for *social inclusion* and talent support, in particular talent management, pursuant to Article 78(2a).
In other contexts, catching up is not included in the legal provisions.

On the basis of the above grounds, the court, by examining the provisions of the Ebtv.in the context of the infringement of the protected characteristics of children attending the school in H.t.-I., the had established the likelihood of a violation of the Equal Treatment Act, justifying the disadvantage by the fact that the separation from a group of persons in a comparable situation as defined in the statutory definition of unlawful segregation was established without concern by the conclusion of a package of contracts to be assessed at the expense of the municipality of R.I., and then, as a result of the comparison between the inner-city school and the member school, and then the school as an independent institution, as regards the school maintained by the church. On the other hand, the defendant II did not prove its case under Article 19(2)(a) and (b) of the Ebtv, including the conditions set out in Article 28(2)(a) of the Ebtv for educational segregation as a special excuse, nor did it prove its case in the course of the court proceedings.

The request for the composition of the population of Ny. submitted by the defendant I. was also unnecessary due to the provisions of the Data Protection Act, the documents submitted by the defendant I. in the lawsuit provided sufficient data on the composition of the population of H.t. as a result of the spontaneous segregation in the lawsuit, even using the additional data of the lawsuit (Art. 206(1) of the Civil Procedure Code).
Also unnecessary was the motion to introduce evidence of nationality, educational experts moved by Defendants III-IV.
The defendant II and III did not provide ethnic education either, according to the plaintiff's claim, and the quality of education was not invoked in the plaintiff's claim. Nor was the institution which provided education in the settlement separately entitled to provide remedial education, as assessed by the court.

VI. The plaintiff's action for annulment based on the manifestly unethical ground of invalidity under Article 200(2) of the Civil Code is unfounded in respect of the package of contracts concluded by the defendants I and II.

The plaintiff's right of action as a non-party to the contract is based on Section 234 of the Civil Code and Section 234 of the Civil Procedure Code. § 3 (1) of the Civil Code. Paragraph 234(1) of the Civil Code provides that the nullity of a void contract may be invoked by any person without time limit, unless the law provides otherwise, and no special procedure is required to establish the nullity.

The plaintiff's legal interest in challenging this claim is established by the provisions of the Ebtv. (Equal Treatment Act), according to which the plaintiff contested the validity of the contract package on the grounds that it clearly violates good morals, as it breaches the provisions on equal treatment.

Established judicial practice considers a contract to be clearly contrary to good morals if its content, intended purpose, or legal effect violates the generally accepted moral expectations of society.

The plaintiff claimed that the agreements in question were contrary to good morals because the cooperation agreement, the grant contract, and the free-use loan agreements collectively resulted in a targeted legal effect, enabling the operation of a church-run school once again in H.t.. Furthermore, by transferring the school building—previously used for educational purposes—free of charge, the municipality facilitated the church's renewed provision of public education.

In this context, the defendant II. relied on the fact that all public educational institutions maintained by the defendant II. were acquired after the conclusion of a free lease agreement, and in this respect, it submitted the free lease agreement for its school in Szolnok as evidence of its practice.

The fact that the municipality allows a school building to be handed over to a church for educational purposes through a cooperation agreement or a lease agreement is clearly not against good morals. However, the intended legal effect alleged by the , namely that by that measure, by concluding that contract, it was intended to have the unlawful segregation of the pupils of the Huszár site in the course of their education and that that unlawful segregation is manifestly contrary to good morals, is also unfounded, because it does not infringe the generally accepted moral standards of society. The social perception of segregated education is far from uniform, and there is a considerable degree of division of opinion on the subject, which is itself confirmed by the increased media interest in this case.

In light of all these considerations, the nullity grounds cited by the plaintiff in both their primary and secondary claims, as specified in the Hungarian Civil Code (Ptk.), were unfounded.

The Civil Code, as regards the reference to § 5 of the Civil Code, although the plaintiff did not make any statement of fact beyond this reference: the regulation between the general provisions of the Civil Code, if a ground for invalidity is also stated, the Civil Code is not applicable. Even if Article 5 of the Civil Code were to be referred to in the case of a declaration of invalidity, the examination of that provision would be unnecessary, even without the additional elements of fact, because of its subsidiary nature, since the invalidity of a contract or of one of its provisions can be established only on the basis of the grounds of nullity and voidability laid down in the Civil Code, but not on the basis of the fundamental elements of the Civil Code, such as the prohibition of abuse of rights.

VII. In its amended application, the plaintiff seeks a declaration of unlawful segregation, an order that each of the defendants be ordered to cease and desist with respect to the educational institutions III-IV maintained by defendant II, and an order that defendant V, as the principal of I. r. defendant, as the successor to the public education functions of the defendant, to restore the

original situation that existed prior to 31 May 2011 by reinstating the school integration programme for the children of the settlement and the school bus.

In their ninth and tenth alternative claims, the plaintiff requested that the first defendant be obliged to terminate the free use of the disputed building. Additionally, regarding the Roma children from the settlement enrolled in the school of the fourth defendant, the plaintiff sought to oblige the second defendant to remedy the discriminatory situation by ensuring that, within the schools operated by the third and fourth defendants, the Roma children from the settlement who wish to continue participating in denominational education are placed in majority classes corresponding to their grade levels.

The Civil Code, in the area of the civil law protection of persons governed by Title IV of the Civil Code, the Civil Code provides for a definitive list of rights to the person and intellectual works. Article 76 of the Civil Code provides that violation of rights relating to the person includes, in particular, violation of the requirements of equal treatment, violation of freedom of conscience and unlawful restriction of personal freedom, violation of physical integrity, health, honour and human dignity.

As a consequence of the legal regulation, the Civil Code also regulates the deduction of legal consequences at the statutory level, namely according to Article 84 (1): a person whose personal rights have been violated may, depending on the circumstances of the case, bring the following civil claims:
a.) demand a judicial declaration that the infringement has occurred,
b.) demand that the infringement cease and prohibit the infringer from further infringements,
d.) demand the cessation of the injurious situation, the restoration of the situation prior to the infringement, on the *part or at the expense of the infringer.*

With regard to the applicability of the legal consequences, on the basis of the above grounds, the judicial determination of the existence of an infringement is based on the provisions of the Civil Code 84.§ (1) a.) of the Civil Code, in view of the fact that the plaintiff in its amended action has expressly stated exactly what conduct, when and in what manner the infringement was committed against the defendants I-IV.

The cessation of the infringement set forth in point b.) was also established against the defendants II-III-IV, taking into account that the defendant II. continuously implemented the violation of equal treatment by means of ascending system of education as defined in Article 10 (2) of the Equal Treatment Act.

Taking into account that in Chapter 48 of Act CXC of 2011 on National Public Education, on the subject of the obligations and rights of the maintenance authority, Paragraph 84 (3) of the Act provides that the maintenance authority shall, in the school year and, with the exception of the months of July and August, in the educational year
a.) may not start a school, organise or dissolve a school, college or kindergarten, or transfer the right to maintain it,
b.) may not reorganise or discontinue a school class or a group of dormitories, because pursuant to paragraph (7) the maintainer may decide, no later than the last working day of May of the year of implementation of the draft measure, to transfer the right to maintain the educational institution, to reorganise the educational institution, which may be by merger, which may be a merger or amalgamation, or to discontinue the educational institution.

Therefore, due to the ascending system of education, the defendant IV. cannot, in the light of the final decision, continue to provide first grade education in the settlement school.

The plaintiff's action for termination under § 84(d), formulated in general terms, is not capable of producing the legal effect sought by the plaintiff, i.e., to compel termination by judgment.

The above-mentioned decision of the maintainer in connection with the restructuring or termination of its educational institution, as defined in Article 84 of the Public Education Act, which is related to the educational relationship as a special legal relationship, is, on the one hand, subject to a time limit, and, on the other hand, the plaintiff's action does not contain a specific and definite claim for the termination of the pupils' rights in the school or the education provided in the settlement, or the manner of closing the institution, also in view of its multi-purpose operation (kindergarten).

The plaintiff's action was also brought in the context of the manner of termination as an alternative action to the application for a definitive injunction, as set out in the eighth and tenth paragraphs of its amended application, that is to say, it sought the restoration of the original situation that existed prior to 31 May 2011, in that the school integration programme for the children of the settlement and the school bus were not to be implemented in accordance with the provisions of Article V. In his application for decree, he requested that the Roma children in the settlement who were pupils at the school of defendant IV be enrolled at the educational institution of defendant III, in the event that they wished to continue to attend denominational education.

A substantive injunction to remedy the unlawful situation would not be enforceable in court, and its enforcement would also violate the parents' right to free choice of school, if the parents do not choose to send their children to a church school, as defined in the substantive action.

In view of all the above, the court ordered the plaintiff to pay the costs of the proceedings in accordance with the Civil Code. 84.§ (1) a.) and b.) of the plaintiff's claim, while his claim under d.) was unsatisfactory in view of his general claim.

The plaintiff's claim in the alternative claim against defendant V, asserted in its action in the eighth action, relating to the reinstatement of the school bus requested as a means of desegregation, was, as stated above, without merit, but in this connection the court makes the following observations:
The plaintiff is correct in its argument that the defendant V would be under an obligation to operate the school bus if the children in the settlement were to receive non-denominational education in the future.

The plaintiff's claim may cover children in grades 1 to 2 and 3 attending school in H.t., in view of the claims 1 to 7.

Chapter 46 of the said Act on National Public Education contains certain central and territorial functions of the Minister responsible for education in the field of public education, pursuant to which Article 79(1) provides that the Minister responsible for education shall perform certain functions of the Ministry of Education in the field of public education through the Office and the State Centre for the Maintenance of Institutions (K.I.K.).

Paragraphs (6) to (7) of Article 79 contain a provision on the violation of the requirement of equal treatment in individual cases of the original equal treatment found during the inspection of the government agency.

Pursuant to Article 3 of the Act, a public education institution may be established and maintained by the State and, within the framework of this Act, by a religious legal person as specified in this section, if it has acquired the right to carry out the activity. Pursuant to Article 4(g) of the Ebtv., the requirement of equal treatment must be complied with by public education establishments in their procedures and measures when establishing their legal relations.

Chapter 44 of the National Act on Public Education, Chapter 44 (1) of the Public Education Act, among the persons obliged to perform the tasks, stipulates that the state shall ensure the performance of the basic tasks of public education. Pursuant to paragraph (2), the State shall perform public education tasks by establishing and maintaining an institution and by means of a public education contract with the maintainer of a church-based public education institution.

Paragraph (3) states that an educational institution may be transferred to a religiously committed educational institution if more than half of the parents of the minor children and pupils enrolled in the institution support it. The state institution maintenance centre may propose to the Minister responsible for education that a public education contract be concluded with a religiously committed provider of education at the same time as the transfer of the institution, if the school is state-owned or the owner local authority has decided on the transfer and provides education for pupils requiring non-religious education at the same standard.

Paragraph (4) of Article 74 contains a provision for municipalities with a population of more than 3,000 inhabitants that they shall ensure the operation of all movable and immovable property in their jurisdiction owned by themselves and used by the state institution maintenance centre for the performance of the tasks of public education institutions - with the exception of vocational training schools.

Pursuant to Section 74 (6a), the specific conditions of operation shall be laid down in a contract with the state institution maintenance centre, adapted to the tasks performed by the public education institution.

The combined interpretation of these contractual provisions means that, in the context of the tasks defined in Article 79(1) of the National Public Education Act, the conclusion of individual public education contracts must take into account not only individual cases of segregation, but also all legal acts constituting a violation of equal treatment in the performance of the tasks of public education as defined in the Ebtv.

Chapter 44 also provides for the case where the municipality of the place of residence or, in the absence thereof, of the place of stay reimburses the costs of travel *to the kindergarten* providing compulsory admission and, if necessary, provides an accompanying person for the child if the kindergarten is located outside the municipality and the municipality does not provide transport to the kindergarten. Paragraph 76(7) further provides that *transport to the school providing compulsory admission shall be provided by the maintaining authority. By virtue* of the provisions of the article, this is understood to be the case within the municipality concerned, contrary to the contention of the defendant.

It follows from this statutory provision that in the event that the parents of the pupils concerned by the lawsuit, who are currently in grades 1 to 2 and 3, do not wish to continue their education in the church-run municipal school, exercising their right to choose their school, but in the school providing compulsory admission, the maintenance authority, i.e. the defendant V., is obliged to provide for their transport.

On the basis of the above grounds, it was found that the plaintiff's claim for declaratory and non-segregation was well founded, but the court did not find that the legal consequence of desegregation could be established on the basis of the above grounds.

The plaintiff was therefore predominantly successful in the proceedings, but did not bring a claim for costs against the defendants.

All the parties to the proceedings were granted full personal exemption from fees pursuant to Article 5 (b) - (c) - (f) of the Act on the Law on the Protection of the Rights of the Child, therefore the amount of 36,000 HUF in the first instance proceedings before the court of first instance, which cannot be determined, is borne by the State.

The defendant V. r. submitted a claim for costs in his counterclaim and, despite the fact that the judgment does not contain an enforceable order against him, the legal successor status of the defendant V. r. in connection with the operation of the school bus was established, and the court therefore ordered that each party to the proceedings bear its own costs incurred in connection with its legal representation, including attorney's fees, in accordance with the provisions of the Hungarian Civil Code. Article 81(1) of the Civil Code.

Ny., 28 February 2014.

Dr sk.
judge