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NEWS REPORT

Country:	Slovakia
Title:	The Supreme Court of the Slovak Republic ruling in favour of inclusive education of a child with a disability
Date:	29 January 2016
Expert:	Janka Debrecéniová
Issue at stake:	The Supreme Court of the Slovak Republic ruled there is, in relation to disability, right to inclusive education and reasonable accommodation. A refusal to provide reasonable accommodation is a form of discrimination
Ground of discrimination:	Disability
Source:	National court decision (decision of the Supreme Court of Slovakia of 24 September 2015, case No 7Sžo/83/2014)
Field:	Education
Applicable law:	Convention on the Rights of Persons with Disabilities (Article 24, in conjunction with Articles 2 and 5), Act No. 245/2008 Coll. on Education (Schools Act) (<i>zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov</i>) – mainly Sections 144(2), 6(1), 6(4), 94, 95 and 97

Content

Case development:

The claimant was a female child with an intellectual disability and a hearing impairment who was refused enrolment at a mainstream primary school. The local government upheld the decision¹ on the claimant's appeal against the decision of the director of the primary school.² The claimant then initiated judicial review of both of the administrative decisions before the Regional Court in Bratislava, but her lawsuit was dismissed in the first instance.³ Therefore the claimant appealed against the first instance decision to the Supreme Court.⁴

The defendant (the local government who had upheld the decision of the director of the school) argued that the mainstream school did not have adequate staff and technical conditions for a child with special educational needs stemming from her disability, and defended that if conditions of a "special school" (i.e. school for children with a health disadvantage, distinct from mainstream schools) suit the needs of this child better, then

¹ Decision of the District Bratislava Rača – Local Office (*Mestská časť Bratislava Rača – Miestny úrad*) No ŠÚ/VARG/9998/1621/2013 of 8 July 2013.

² Decision of the Primary and Nursery School of Katarína Brúderová (*Základná škola s materskou školou Kataríny Brúderovej*) No 531/2013 of 20 May 2013.

³ Decision of the Regional Court in Bratislava (*Krajský súd v Bratislave*) No 1S/208/2013-76 of 3 July 2014.

⁴ Case No 7Sžo/83/2014. The decision was delivered on 24 September 2015.

it is this special school at which the child should be enrolled. The defendant also argued that special schools respect the right of children with disabilities to education as guaranteed by Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD, or the "Convention") and that these facilities guarantee reasonable accommodation as stipulated by the Convention.

Decision of the Court:

The Supreme Court quashed the decision of the director of the mainstream school and that of the local government and ordered the latter to continue conducting proceedings in the case. It also expressed its legal opinion on the case which will be binding in the proceedings to follow.

The Supreme Court applied CRPD as the "relevant legal basis" and noted that according to the Slovak Constitution, the Convention is a part of the Slovak legal order and takes precedence over the national legislation, and hence it was the duty of the school director and the local government to interpret the provisions of the School Act in accordance with the Convention (and they were even entitled to apply its provisions directly).

The Supreme Court noted that the defendant's argument that the inability of a mainstream school to provide special conditions for a child with special educational needs justifies non-enrolment of such a child at this school cannot be accepted in this case, mainly because the case file did not contain any evidence on whether the school director was actively trying to create special conditions for the complainant. The Supreme Court also noted that neither the school director nor the local government or the regional court did specify what the disproportionate or excessive burden for the realisation of reasonable accommodation comprised.

The Supreme Court noted that a refusal to provide reasonable accommodation is a form of discrimination on the ground of disability and that this type of discrimination is prohibited (and the court referred to Article 2 of CRPD). The court also emphasised that the best interest of a child must represent the primary perspective when deciding about enrolment at a mainstream school, and that in this case inclusive education of the complainant, accompanied by the reasonable accommodation that she needed, was in her best interest. The court referred to an expert opinion which recommended considering education of the complainant in a mainstream school, with a simultaneous provision of an individual educational plan and a teacher assistant for her. The court, referring to another expert opinion, also emphasised that inclusive education of children with disabilities is beneficial for all children – i.e. for those with and without a disability.

The decision is a landmark one because it states authoritatively that providing reasonable accommodation related to disability is a legal duty not only in the field of employment (which is entrenched in the Anti-Discrimination Act) but also in the field of education (the Anti-discrimination Act does not contain a specific reasonable accommodation duty with regard to education – only a general duty to adopt measures to prevent discrimination, which could also be interpreted broadly as requiring the adoption of reasonable accommodation measures; the Supreme Court, however, did not mention the Anti-discrimination Act in its decision at all).

The complainant requested the enrolment at the mainstream primary school in spring 2013, and the first instance court decision was delivered in July 2014. Upon appeal of the complainant, it took the Supreme Court more than one year (until September 2015) to deliver its decision. By the time of drafting this flash report (January 2016), nor the director of the school neither the local government have taken the decision on whether the complainant will get eventually enrolled. Although the decision will be most likely in favour of the complainant (the Supreme Court was quite clear and guided the lower courts on the substance in this case), the case has already taken almost three years of

life of a young child with a disability and a very fundamental issue relating to her education is not settled yet. From this perspective, the remedy provided cannot be considered effective.

Key points of analysis:

- The Supreme Court of the Slovak Republic made it clear that the duty to provide reasonable accommodation in relation to disability applies in the field education.
- The Supreme Court applied the CRPD and emphasised its precedence over national law.
- The Supreme Court highlighted the concept of the best interest of the child and the advantages of inclusive education for all children – i.e. those with and without disabilities.
- The proceedings in this particular case still taking too long and the case is not finished – which puts the overall effectiveness of the remedy into question.
- The decision will probably have broader implications on many other children attending “special schools” – although its real impact will depend on whether public authorities transform the decision into meaningful policies.

Internet link source: http://www.supcourt.gov.sk/data/att/47341_subor.pdf last accessed 27/01/2016.