



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

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| <b>Country:</b>                  | Czech Republic  |
| <b>Title:</b>                    | The Vyškov District Court decision – direct discrimination of person with disability in access to education |
| <b>Date:</b>                     | 3 May 2016  |
| <b>Expert:</b>                   | David Zahumenský  |
| <b><u>Context</u></b>            |   |
| <b>Issue at stake:</b>           | Direct discrimination in access to education of a person with disability                                    |
| <b>Ground of discrimination:</b> | Disability  |
| <b>Source:</b>                   | The Vyškov District Court   |
| <b>Field:</b>                    | Education   |
| <b>Applicable law:</b>           | Antidiscrimination Act No 198/2009, Act no. 561/2004<br>Charter of Fundamental Rights and Freedoms          |

### Content

#### **Case:**<sup>1</sup>

The Vyškov District Court has decided that the applicant has been discriminated by the municipality Milešovice based on disability. The municipality is therefore obliged to send an apology for the violation of the applicant's right to equal access to education and discrimination and to pay compensation for the non-pecuniary damage in the amount of CZK 50,000 (1.850 EUR).

The applicant was diagnosed with autism spectrum disorders and moderate mental disability according to the neurological and psychological examination that was performed in preschool. Consequently, he was educated in the special school in Brno until 2012. In the special school he felt out of place, his skills surpassed most of his classmates and he could not fully develop his skills and education. The Special Educational Centre in Brno, recommended the integration of applicant to the mainstream elementary school class provided with an individual education plan and educational assistance.

The mother of the applicant asked the local elementary school in Milešovice for the inclusion of the applicant to the mainstream education program in January 2012. According to the headmistress applicant he could not be integrated because the school and their teachers could not handle the tasks that are associated with his integration. The headmistress also stated that she had to take into account the manifested negative reactions of the parents of some children attending the school classes. The official school decision stated that the applicant could not be integrated due to capacity reasons. The applicant's mother then unsuccessfully asked for the integration of the child in 11 other schools in Brno region.

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<sup>1</sup> The Vyškov District Court judgment no. 10 C 250/2014 – 124 of 18 March 2016.

In June 2012 the application was sent again to the Milešovice School and after its rejection applicant made an appeal to the region authority. The appeal was rejected.

Since March 2012 the applicant has been attending classes at the Elementary School in Šaratice, his skills were developing and his integration to the mainstream education was successful.

The applicant brought the antidiscrimination action against Municipality Milešovice in October 2014 to the Municipal Court in Brno. The Court decided about its incompetence and forwarded the action to the Vyškov District Court.

### **Decision of the Court:**

The Vyškov District Court found out that the applicants' right to education and non-discrimination and the principle of equal treatment were breached. Evidence showed that the Municipality of Milešovice had committed direct discrimination against the applicant in accordance with § 1 and § 2 of the Act no. 198/2009. The court found out that applicants' disability was the reason to conclude on the impossibility of the applicants' integration in the mainstream school. According to the court the municipality omitted to take the necessary steps to provide conditions for possible integration of the applicant to the local school.

For this reason the court decided that the municipality as a school founder is responsible for the violation of the applicants' fundamental right guaranteed by the Charter of Fundamental Rights and Freedoms,<sup>2</sup> the right to education, the right to non-discrimination and the principle of equal access to education for every citizen.

The Municipality Milešovice did not appeal against the judgment so the judgment became final.

### **Key points of analysis**

This is the first judgment of its kind in the Czech Republic. The judgment confirmed that the child has the right to inclusive education in accordance with Art. 24 of the Convention on the Rights of Persons with Disabilities and the failure to provide such education can be qualified as discrimination. The judgment also confirmed that municipalities are obliged to ensure the conditions for inclusive education of resident children.

### **Internet link source:**

The Vyškov District Court judgment no. 10 C 250/2014 – 124 of 18 March 2016. Not available online.

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<sup>2</sup> Czech Republic, Resolution of the Czech National Council on the Declaration of the Charter of Fundamental Rights and Freedoms (2/1993 Sb., *usnesení předsednictva České národní rady o vyhlášení Listiny základních práv a svobod*) 1 January 1993.