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NEWS REPORT

Country:	Slovakia
Title:	Supreme court recognises the positive obligation of the Government institutions to prevent residential segregation of Roma minority
Date:	24 July 2017
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<u>Context</u>	
Issue at stake:	Indirect discrimination/segregation
Ground of discrimination:	Race/ethnic origin
Source:	Decision of the Supreme court of the Slovak republic from 19 April 2017 delivered on 10 July 2017 n. 5 Cdo 18/2015 - 202
Field:	Housing
Applicable law:	Act no. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Antidiscrimination Act), § 2 para 1, 2 and 3, §§ 2a para 1,2,3 Constitution of the Slovak Republic, article 12 para b1, 2 The Civil Code (Act 40/1964 Coll. as amended), § 711, para 1 Regulation the Ministry of Transport and Construction of the Slovak republic from 23 December 2004 n. V-1/2014

Content

Case: B.C. and others v. Town of Sabinov and the Ministry of Transport and Construction of the Slovak republic from 16 April 2017 delivered on 10 July 2017, n. 5 Cdo 18/2015 – 202.¹

Facts of the case: The claimants of a Roma ethnic minority sued the town of Sabinov for being illegally moved out of rental apartments owned by the town in a central area to the new rental apartments of a lower standard, built by the town outside the built-up areas and far from town infrastructure. The claimants pointed out that the town had moved to the apartments of lower standard solely tenants of Roma ethnic origin, which led to their segregation. They simultaneously sued the Ministry of Transport and Construction of the Slovak republic (“the Ministry of Transport”) for subsidising this town building project despite of its discriminatory nature and for not preventing segregation of Roma tenants.

Case development: The claimants filed the lawsuits with the District court in Prešov in 2007, which in 2009 ruled that the defendants had breached the principle of equal

¹ More information about the case can be found also in *European Anti-Discrimination Law Review*, Issue 12 (July 2011), pp 70-71.

treatment, and emphasised the segregation component, a breach of the duty to adopt measures to prevent discrimination, a need for a strict scrutiny test in case of a 'suspicious criterion' consisting of ethnicity, and the outdated concept of formal equality and awarded to each claimant financial compensation of 1 000€ (dismissing the rest of their claims). However, following an appeal by the defendants, the claimants' case was fully dismissed by the Regional Court in Prešov in May 2010. The legal representative of the Roma claimants referred the case to the Supreme Court of the Slovak Republic, which (in February 2012) overturned the decision of the Regional Court and referred the case back to it for further proceedings. In October 2012, the court of first instance (the District Court in Prešov) issued a new decision and confirmed its original decision, in which it basically reiterated all of its original argumentation. The defendants appealed again against the ruling by the court of first instance and a new decision was issued by the Regional Court in Prešov in March 2014 again dismissing their complaint. Following the appeal of the claimants, the Supreme court adjudicated the case for the second time.

Decision of the Court: The Supreme Court accentuated the importance to consider this case in the broader context of the situation of the Roma minority in Slovak society and its vulnerable position referring to the relevant decisions of the ECtHR. Since only Roma tenants were moved to the apartments of lower standard outside the town, the Supreme Court found reasonable to conclude they were treated differently from the other inhabitants. It stated that the claimants had been entitled to claim their rights protected by the antidiscrimination laws, even though they did not claim that the termination of their rental agreements by the town was illegal. According to the Supreme Court it was premature for the Regional court to legally assess the fact that the claimants had agreed to move to new rental apartments and voluntarily signed the new rental agreements before having determined whether discrimination was proven. However, in this regard it added that even if the claimants agreed with their discrimination, such consent would be relevant only if it has been informed. It further stated that even though the town fulfilled all conditions for receiving the subsidy for building the apartment buildings from the Ministry of Transport, the principles of equal treatment stemming from the Constitution and international treaties have to be prioritized and respected.

On the responsibility of the Ministry of Transport, the Supreme court stressed that even though the relevant directive of the Ministry on providing subsidies for building projects can appear to be legally neutral, The Ministry is obliged to consider compliance of this provision with the principle of equal treatment when applying it in concrete cases and it is obliged to take positive measures if it finds out that the application of the given provision may imply possible discrimination. In this regard, when the request of the town for the subsidy contained facts implying possible discrimination, The Ministry of Transport was obliged to examine circumstances under which the subsidy was supposed to be used. If using of the subsidy eventually led to the segregation of minority population, the legal conditions for providing the subsidy would not be fulfilled due to the contradiction with constitutional principles and international obligations of Slovakia.

The Supreme court again overturned the Regional court's decision and returned the case to the same Regional court for further proceeding.

Key points of analysis: Referring to the binding international human rights obligations of Slovakia and relevant jurisprudence of the ECtHR, the Supreme court found the decision of the Regional court to be unlawful while recognising the responsibility of the Government institutions to prevent residential segregation of the Roma minority. In its key conclusions, the decision is in line with the EU Race directive and the international human rights law as such.

Internet link source: The decision has not yet been published. The decision has been sent to the national expert by the legal representative of the claimants and will be published at a web page of the Supreme court <http://www.supcourt.gov.sk/rozhodnutia/>.