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### NEWS REPORT

<b>Country:</b>	Slovakia
<b>Title:</b>	Supreme Court: Obligation to consider public interest in a building permit proceeding does not include considering impact of a potential building on segregation of racial minorities
<b>Date:</b>	2 October 2017
<b>Expert:</b>	Vanda Durbakova
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Discrimination of Roma children in education
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National court decision, Supreme Court of the Slovak Republic from 20 June 2017, delivered on 18 August 2017, file no. 10Sžo/53/2016
<b>Field:</b>	Education
<b>Applicable law:</b>	Act No. 50/1976 Coll. on Territorial Planning and Building Order (Building Act), §§ 42, 46, 62, 66, 126 and 162; Code of Civil Procedure (Act No. 99/1963 Coll.), §§ 241, para 1, §§ 109, para 1; Act No. 71/1961 Coll. on Administrative Procedures (Administrative Procedure Code), §§ 46, 47

### Content

**Case:** M.P and M.S. against the Municipality Office Prešov, department of the construction and housing policy from 20 June 2017, no. 10Sžo/53/2016 (delivered on 18 August 2017).

**Case development:** Due to insufficient capacities, the city of Stara Lubovna and the Ministry of Education decided to expand the capacity of the primary school in Stara Lubovna - Podsadek by adding a new modular building - a low-cost annex to the school made out of metal containers. The school has been attended for a long time solely by Roma children from a nearby socially disadvantaged Roma community. The claimants were local residents who owned landed property just beside the land where the new school building was supposed to be built. During the building permit proceeding, in 2014 they turned to a building office and raised objections against the planned school building while pointing at the segregation of Roma children that the building would spur, which is contrary to public interest. The local building office in the village of Nova Ľubovňa dismissed their objections and in August 2014 a construction permit was issued for the new school building. Acting as an appeal administrative body, the Department of building and apartment policy of the District Office in Prešov dismissed their appeal and upheld this decision in October 2014.

As a result, the claimants challenged the administrative decision of the District Office in Presov before the Regional Court in Presov. In December 2014, the Regional court

upheld the administrative decision, by which the new school building was permitted and the claimants turned to the Supreme court contesting the Regional courts's decision. They argued that the legal obligation to consider the public interest when processing a building permit proceeding necessarily includes also considering the impact of a potential building on segregation of racial minorities. Notably, omitting to consider the potential discriminatory impact of a new building within a building permit proceeding is contrary to the domestic and international antidiscrimination legislation embracing a positive obligation to prevent discrimination.

**Decision of the Court:** The Supreme court upheld the decision of the Regional court and fully confirmed its reasoning. It stated that a building office is not eligible to consider within an administrative proceeding the potential discriminatory impact of the construction of a building, specifically the issues concerning segregation of the Roma minority. In this regard, it found the interpretation of the definition of 'public interest' provided by the claimants in the context of the Building Act unreasonably broad. Further, it stated that the claimants were not entitled to submit such an administrative claim to the court as their individual rights were not violated, as they are not parents of Roma children who attended the segregated school. The Supreme court also disregarded the request of the claimants to interrupt the court proceeding and refer the case to the CJEU for preliminary ruling as it found it groundless in respect to the legal issues in the given proceeding.

**Key points of analysis:** The Supreme court decided that the obligation to consider public interest in a building permit proceeding does not include considering impact of a potential building on segregation of racial minorities. The decision has substantive flaws and can be considered contrary to the domestic Antidiscrimination Act and the spirit of the Council Directive 2000/43/EC.

**Internet link source:** The full reported court decision has not yet been published but will be available in Slovak at: <http://www.supcourt.gov.sk/rozhodnutia/>.