



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

### NEWS REPORT

<b>Country:</b>	Slovakia
<b>Title:</b>	Regional court upheld dismissive decision of the first-instance court on <i>actio popularis</i> challenging a legal provision with alleged discriminatory impact on Roma women
<b>Date:</b>	18 December 2017
<b>Expert:</b>	Vanda Durbakova
<b>Issue at stake:</b>	Indirect discrimination
<b>Ground of discrimination:</b>	Race/ethnic origin/sex/gender
<b>Source:</b>	National court decision, Regional court in Bratislava from 26 September 2017 delivered on 22 November 2017, n. 14Co/552/2014 - 180
<b>Field:</b>	Social security/welfare
<b>Applicable law:</b>	Act no. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Antidiscrimination Act), § 2a para 3; § 3 para 1, § 9a. Act No. 383/2013 Coll. of Laws on Birth Allowance and Multiple Children Birth Allowance and on Amending and Supplementing Certain Acts, as amended], § 3 para. 4b

### Content

**Case:** Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) against the Slovak republic represented by the National Council of the Slovak republic from 26 September 2017, n. 14Co/552/2014 - 180.

**Facts of the case:** Act No. 383/2013 Coll. of Laws on Birth Allowance and Multiple Children Birth Allowance and also previous legislation setting the conditions for providing birth allowance and multiple children birth allowance in Slovakia set up the conditions under which these allowances are provided to eligible persons. It stipulates that eligible persons were not entitled to receive these allowances if they leave the hospital after the childbirth without a prior approval of their attending doctor. The Slovak non-governmental organisation the Center for Civil and Human Rights (the claimant) filed an *actio popularis* lawsuit under the domestic Antidiscrimination act arguing that the given legislation has disparate impact on Roma women and children from socially disadvantaged environments while limiting their ability to obtain the given social allowance and thereby constitute indirect discrimination. It argued that the legislation negatively impacts almost solely Roma women, who tend to leave hospitals after the childbirth without the approval of the doctor and provided also some statistical data in order to support its arguments. The claimant further argued that the relevant provision of the Law can not be objectively justified by the legitimate aim (to motivate women to stay

in the hospitals) and that the means of achieving this aim are not appropriate and necessary. The provision does not address or mitigate the documented reasons why some Roma women may choose to leave the hospital earlier than recommended after the childbirth, which includes widespread degrading and abusive treatment they face due to their ethnicity in hospitals. In addition to claiming racial discrimination the claimant also argued discrimination on the ground of sex/gender as the discrimination is constituted solely in a situation of giving birth. Also, the Slovak equality body has concluded that the relevant provision constituted indirect discrimination.<sup>1</sup>

**Decision of the Court:** The first instance court in May 2014 dismissed the lawsuit<sup>2</sup> and the Regional court in Bratislava in the reported decision of September 2017 fully confirmed its reasoning. The Regional court confirmed that civil courts in Slovakia are competent to adjudicate on the conformity of legal provisions of equal legal force, because there is no other state authority where the lawsuit can be referred to. In respect to the merits, the Regional court considered the *actio popularis* lawsuit to be based on hypothetical assumptions and unspecified cases of alleged discrimination of Roma mothers, while stating that the alleged indirect discrimination could be claimed before court only directly by affected individuals. This would enable the court to thoroughly assess if concrete persons were discriminated against by the challenged legal provision. Further, it did not consider the legal provision to be discriminatory as the state is eligible to set conditions for providing social benefits with regard to the fact that parents of new born children have not only rights to receive the benefits, but also duties to take care of their new born children. In this respect, it referred to the opinion of the Defender of Public Rights from 2007 stating that there are medical and psychological reasons why the mother should not leave the hospital after a childbirth without approval of the doctor, which the challenged legal provision reflects. It could thus not be considered discriminatory.

**Key points of analysis:** From the procedural point of view, the Regional court established that civil courts in Slovakia are competent to adjudicate on the conformity of legal provisions of equal legal force. It confirmed that the eligible subjects (domestic equality body and eligible NGOs) can challenge the conformity of general legal provisions with the antidiscrimination legislation by *actio popularis* lawsuits. In respect to the merits of the case, the Regional court did not recognise the concept of indirect discrimination at all and failed to consider the lawsuit based on its definition in line with the reasoning of the claimant. It only examined whether the challenged legal provision fulfilled a legitimate aim, but did not consider its adequateness and necessity with regard to the documented negative impact on Roma women from socially disadvantaged environments and their children. The court also ignored the possibility to claim indirect discrimination also by *actio popularis* when concluding in principle that it can assess discrimination only when the case of an individual claimant is brought before it.

**Internet link source:** The decision is available at:

<https://www.poradna-prava.sk/en/documents/rozsudok-krajskeho-sudu-v-pripade-verejnej-zaloby-poradne-tykajucej-sa-pravneho-ustanovenia-s-diskriminacnym-dopadom-na-romske/>.

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<sup>1</sup> Expert's opinion of the Slovak National Center for Human Rights from 15 August 2007.

<sup>2</sup> Decision of the District Court Bratislava I, file No. 12C 231/2010 – 132 from 16 May 2014.