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NEWS REPORT

Country:	Slovakia
Title:	Dismissal by the District Court of a discrimination complaint made by a Roma child placed in a special class for children with intellectual disability
Date:	02 July 2018
Expert:	Vanda Durbakova
<u>Context</u>	
Issue at stake:	Indirect discrimination in access to education- misdiagnosis of Roma child being placed in special classes for children with intellectual disability, segregation of Roma children in education
Ground of discrimination:	Race/ethnic origin
Source:	National court decision, District court in Malacky from 17 May 2018, n. 5C/212/2014
Field:	Access to education
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; § 2a para 3; § 5 para 1 and para 2 c); § 9 para 2, §§ 11 para 1-2

Content

Case: X.Y. joint by the third party European Roma Rights Center against Elementary school in Plavecký Štvrtok and Ministry of Education of the Slovak republic from 17 May 2018, n. 5C/212/2014.

Facts of the case: In 2014, the claimant represented by his father sued the Elementary school in Plavecký Štvrtok ("the school") for discriminating against him on grounds of his Roma ethnic origin because he had been placed in special class for intellectually disabled children. The claimant also sued the Slovak republic represented by the Ministry of Education of the Slovak republic ("the ministry") for indirect discrimination: he found state policy of placing Roma children into the special classes and schools to be discriminatory. He also claimed that his right to private life guaranteed by the Article 8 of the European Convention of Human Rights has been violated by both defendants. He requested the court to state that he has been discriminated on grounds of his Roma ethnic origin and to order the defendants to pay him a loss of financial income in his professional carrier due to his lower education and provide him apology.

The claimant was placed in a so-called “zero grade” classroom¹ attended only by Roma children. After that year, he was placed in a first-grade regular classroom of the school. Following a psychological assessment and the consent of his parents he was then placed in a special class for intellectual disabled children with reduced curricula. Subsequent psychological assessments were made the following years which confirmed the claimant’s intellectual disability and recommended that he continues being placed in that special class. In 2011, the claimant’s parents requested that the assessment be made by an independent psychologist and a pedagogue specialised to deal with children with intellectual disabilities. The professionals both assessed that the claimant’s intellectual potential was normal (not having intellectual disability) although he had some learning difficulties. In this regard they recommended that he be placed in lower grade regular classroom with individual curricula or in special class with expanded curricula, so he can achieve lower secondary education.

Decision of the Court: On 17 May 2018 the District court in Malacky dismissed the claim in all parts. It held that the claimant did not prove that he has been discriminated against. The court did not find the school responsible, as it followed only existing legislation. According to the court the school could not influence the existing domestic legislation and the claimant’s assessed abilities. The court did not agree with the claimant that his psychological assessment was biased as it did not take into the account the fact that the claimant grew up in Roma family which first language was Roma language with west Slovakian dialect and his knowledge of Slovak was low. According to the court it has been proved during the proceedings that the claimant could not speak Roma language and had a proper knowledge of Slovak language.

The court also dismissed a claim that his placement in “zero grade” and special classes constituted segregation. According to the court, the sued school is a school attended only by Roma, so in this case no segregation can occur. The court further noted that there are no discriminatory reasons for placing the claimant into the zero grade” and special classes. The court admitted that there are serious problems in providing education to Roma minority in Slovakia which has been confirmed by many international institutions and ombudsperson, but it does not mean that in the concrete claimant’s case there has been discrimination.

The decision of District court is not final and can be appealed against.

Key points of analysis: This is the first decision of a national court regarding the placement of Roma children in special schools and classes based on a psychological assessment in Slovakia. The District court’s decision is not in line with domestic antidiscrimination legislation, EU directives and ECtHR case law (D.H. and others vs Czech Republic, Horvath and Kiss vs Hungary). According to the national expert the reasoning of the court in its decision is insufficient and very inconsistent. As such, the decision is very difficult to be analysed. Although there has been evidence that the claimant has been misdiagnosed, the court ignored this fact and concluded that the school cannot be responsible as it only proceeded in line with valid legislation. As for the State responsibility the court did not provide any reasoning why it did not find the State responsible even though it admitted that there are serious problems in providing education to Roma children in Slovakia. The court in this regard also omitted any reasoning regarding the claim of indirect discrimination. Furthermore, the use of burden of prove seems to be problematic. It seems from the court’s reasoning that the court required the claimant to prove that he was discriminated against and to prove

¹ So-called “zero-grade” are classes within primary schools created for children ‘from socially disadvantaged backgrounds for whom it can be assumed that their development will equalise by placing them in zero-grade classes’ and for children who ‘on reaching the age of six do not have the capacity for school attendance and come from socially disadvantaged backgrounds’. Although formulated seemingly neutrally, these measures appear to have been aimed particularly at Roma children, and it is almost exclusively Roma children who are placed in such classes.

discriminatory ground. Finally, the conclusion of the court that in case the school is attended only by Roma there is no segregation is in violation with ECtHR case law. (like Sampanis and Others vs. Greece and Lavida and Others v. Greece)

Internet link source: The decision in Slovak language has not yet been published and is on a file of European Roma Rights Center.