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NEWS REPORT

Country:	Slovakia
Title:	The Constitutional court dismissed a complaint on failures of public prosecution offices to assess the discriminatory impact of the municipal binding regulation
Date:	27 September 2018
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<u>Context</u>	
Issue at stake:	Indirect discrimination / Obligations of public prosecutor offices when assessing discriminatory impact of municipal binding regulations
Ground of discrimination:	Race/ethnic origin
Source:	Decision of the Constitutional court from 1 august 2018, n. IV. ÚS 435/2018-13, delivered on 10 September 2018
Field:	Housing
Applicable law:	Constitution of the Slovak Republic; article 46 para 1, article 47 para 3, Binding regulation of the town Prešov no. 9/2016 on providing social housing and rented flats in the property of Prešov; article 5 para 3, Civil Code of Slovak republic; article 715, Act no. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Antidiscrimination Act)

Content

Case: Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) v. District prosecution Prešov in the proceeding file no. Pd 267/16/7707, Regional prosecution in Prešov in the proceeding file no. Kd 78/17/7700 and General prosecution of Slovak republic in the proceeding file no. VI/2 Gd 411/17/1000-9.

Case development: In July 2016, the town Prešov adopted a binding regulation on providing social housing in rented flats in its property. One of the regulation's paragraph gives tenants the possibility to swap flats with each other upon the mayor's agreement, but only within their own neighbourhood. In one of these neighbourhoods, there is a significant proportion of Roma inhabitants.

A claimant - local human rights NGO - challenged this paragraph at a district prosecution office arguing that it constitutes indirect discrimination of Roma tenants living in the given town area as it effectively prevents them from swapping their flats with tenants from other town areas. As such it contributes to maintain their residential segregation and ghettoization.

District and subsequently regional and general prosecutions dismissed the claimant's complaint and as a result, the claimant in May 2018 turned to Constitutional court arguing the violation of its right to judicial and other legal protection and right to fair trial guaranteed by the Slovak Constitution and European Convention on Human Rights. In particular, it argued that the prosecution offices did not duly investigate its complaints and did not take into account its legal argumentation, which violated the principle of equality of legal arms and the decisions of the prosecution offices were arbitrary.

Decision of the Court: The Constitutional court dismissed the claimant's constitutional complaint as manifestly ill-founded. In its decision it acknowledged that the public prosecution offices could have dealt with the argumentation of the claimant regarding indirect discrimination more in-depth. However, at the same time it stated that the general prosecution, jointly with subordinated prosecution offices, sufficiently substantiated their decisions. It essentially concluded that the prosecution offices handled the claimant's complaint in a way that is constitutionally acceptable.

The Constitutional court also disregarded the claimant's argument that the failure of the prosecution offices to duly investigate its complaints also violated its right under article 6 of the International Convention on the Elimination of Racial Discrimination imposing on the State Party the obligation to assure effective protection and remedies against any acts of racial discrimination contrary to the Convention. It concluded that the claimant is a legal entity and it does not have ethnic origin that could set a basis for racial discrimination and violation of its rights under the given article of the Convention.

Key points of analysis: Despite acknowledging that the prosecution offices fell short of its legal reasoning regarding discrimination raised by the claimant, the Constitutional court found the decision of the general prosecution lawful. When analysing the decisions of the prosecutions, the decision of the Constitutional court can be considered contrary to international law as the prosecution offices in reality almost completely ignored the legal argumentation of the claimant regarding indirect discrimination.

Internet link source: The decision is published on the website of the Constitutional court <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>.