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FLASH REPORT

Country:	Slovakia
Title:	First instance court: State authorities have no obligation to take measures on the elimination of segregation of Roma children in a local primary school
Date:	22 March 2019
Expert:	Vanda Durbáková
<u>Context</u>	
Issue at stake:	Segregation of Roma children in education
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Education
Source:	National court decision
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), Act. no. 245/2008 Coll. on Upbringing and Education (School Act), Section 3d, Act no. 596/2003 Coll. On State Administration in School System and School Self-government, Section 8

Content

Case development: A claimant - a local human rights NGO - in January 2016 filed an *actio popularis* lawsuit under the domestic Anti-Discrimination Act with the District court in Prešov against the Ministry of Education and the District office in Prešov concerning documented segregation of Roma children at a primary school in the village Terňa. The claimant argued that some Roma children at the school faced segregation due to decisions adopted by the responsible state authorities setting up the school catchment area for the given locality as well as due to their inactivity to prevent existing segregation. The authorities arguably did not take into account the limited space capacities of the school and set up the local school catchment area in such way that the school was unable to accommodate all Roma children from a nearby village Malý Slivník with the children from the majority and had to start educating some Roma children in the second afternoon shift and in separate Roma-only classes. The claimant pointed at free capacities of some other nearby schools, which could accept and educate more children. The claimant asked the court to oblige the sued state authorities to adopt effective measures that would eliminate and prevent segregation of Roma children at the given school. The Slovak Public Defender of Rights provided its submission as a third party to the Court as she mapped the situation in this locality from her own initiative. Her submission supported the reasoning of the claimant.

Decision of the court: The District court dismissed the lawsuit.¹ It stated that the claimant failed to sustain its burden of proof as it did not prove that the disputed decisions of the state authorities on the school catchment area had violated the principle of equal treatment and had disadvantaged Roma children in comparison to children from the majority. In this regard it further reasoned that the decisions were not discriminatory since they related to all children, including non-Roma children. The court also essentially concluded that the state authorities were not eligible to interfere with the organisation of the educational process that was fully the competence of the school. The court commented also on the situation at the involved school and stated that discrimination of Roma children could be found there only in case they would be placed in separate classes due to their Roma ethnic origin, which was not proved.

From a procedural point of view, the court rejected an objection of the sued state authorities and concluded that NGOs are eligible to file *actio popularis* lawsuits and that the general courts have jurisdiction to deal with such discrimination cases.

Key points of analysis: The District court dismissed an *actio popularis* lawsuit against the Ministry of Education and the District office in Prešov concerning documented segregation of Roma children at the primary school in the village Terňa. The court disregarded the fact that the decisions of the state authorities on the school catchment area had negative impact on the situation at the given school that was overcrowded and was resorted to placing some Roma children in segregated classes. The school was unable to resolve the given problem without resetting the school catchment area and the active intervention of the state institutions responsible for the area of public education. The court also completely failed to consider relevant decisions of the ECtHR and of domestic courts concerning discrimination of Roma children in mainstream education and segregation of Roma minority in general. As such its decision is contrary to the domestic and international antidiscrimination legislation including the EC Racial Equality Directive. The claimant appealed against the decision and also proposed the Appeal Court to refer the case to the Court of Justice of the EU for preliminary ruling on interpretation of the EU law in this case.

Internet link source:

The decision is available in Slovak language at the website of the claimant: <https://www.poradna-prava.sk/sk/dokumenty/rozhodnutie-okresneho-sudu-v-presove-tykajuce-sa-namietanej-zodpovednosti-statnych-organov-za-segregaciu/>.

¹ Decision of the District court in Prešov in the case Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) v. Ministry of Education, Science, Research and Sport of the Slovak republic and the District Office in Prešov, file no. 29C/14/2016 (delivered on 13 March 2019).