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### FLASH REPORT

<b>Country:</b>	Slovakia
<b>Title:</b>	Constitutional court dismissed a complaint addressing failures of public prosecution offices in assessing segregation impact of a binding municipal regulation on Roma children in education
<b>Date:</b>	22 March 2019
<b>Expert:</b>	Vanda Durbáková
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Segregation of Roma children in education / Obligation of public prosecution offices in assessing discriminatory impact of binding municipal regulations
<b>Grounds of discrimination:</b>	Racial or ethnic origin
<b>Field of application:</b>	Education
<b>Source:</b>	National court decision
<b>Applicable law:</b>	Constitution of the Slovak republic; article 46 para 1, article 47 para 3, Act no. 153/2001 Coll. on the Prosecution; Section 31, Act no. 365/2004, Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Antidiscrimination Act), article 2 para 1, article 3 para 1

### Content

**Case development:** A claimant - a local human rights NGO - filed a complaint with the District prosecution in July 2016 addressing illegality of the binding municipality regulation of the town Vranov nad Topľov setting up school catchment areas for primary schools established by the town. Based on gathered statistics about numbers of Roma children in primary schools in the town, the complainant argued that the municipal regulation set up school catchment areas in a way that concentrated Roma children living in the town and in nearby villages into particular school and thus contributed to their segregation in education. The Roma population in the town predominantly lived in one residential area and Roma children from this area fall within the catchment area of one particular school. Moreover even nearby villages with substantial Roma population fall within the catchment area of the same school, which increased the percentage of Roma children there up to 85 percent in comparison to much lower proportions of Roma children in the other schools in the town. Some other documented social patterns in the town suggested segregation impact of the disputed municipality regulation.

The District prosecution office did not find the regulation to be illegal and the Regional and General prosecution offices further dismissed the claimant's complaint addressing faults in assessing the case. In this regard the General prosecution office specifically reasoned that the claimant's complaint targeted the municipality regulation, which was adopted based on certain broader non-legal arguments and facts that prosecutors are not eligible to assess. As a result, in April 2017 the claimant turned to the 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 by the European Convention on Human Rights. It particular, it argued that the prosecution offices did not duly investigate its complaints and did not deal with its argumentation, thus violating the principle of the equality of legal arms and made decisions of the prosecution offices arbitrary.

**Decision of the Court:** The Constitutional court dismissed the claimant's constitutional complaint as manifestly ill-founded.<sup>1</sup> It concluded that the General prosecution office had sufficiently reasoned its decision and that it had, in combination with the decisions of the subordinated prosecution offices, handled the claimant's complaint in a way that was constitutionally acceptable. The court also noted that with regard to a prosecution office handling a complaint, there is no adverse party standing against the claimant and its constitutional right to be treated equally in a legal proceeding could therefore not be even theoretically violated.

The Constitutional court also disregarded, without further reasoning, the claimant's notion that the failure of the prosecution offices to duly investigate its claims also violated its right under Article 6 of the International Convention on the Elimination of Racial Discrimination imposing the State party's obligation to assure effective protection and remedies against any acts of racial discrimination contrary to the Convention.

**Key points of analysis:** The Constitutional court dismissed a complaint addressing failures of public prosecution offices as for assessing segregation impact of the binding municipal regulation on Roma children in education. It concluded that the General prosecution office had sufficiently reasoned its decision and handled the claimant's complaint in a way that was constitutionally acceptable. However, the court did not give any concrete reasoning on why it considered the General prosecution office's decision to be in compliance with the Constitution. The Court did not review the decisions of the lower prosecution offices at all due to the lack of its competence. This is caused by the very limited, and flawed, interpretation of the subsidiarity principle by the Slovak Constitutional Court, which in principle finds its competence only for reviews of the last decisions of the supervising authority. This approach essentially limits the Constitutional Court's review of violations of fundamental rights and freedoms to the review of due process before the last competent authority.

**Internet link source:** The decision is available in online database of the Constitutional Court in Slovak language: <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#>.

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<sup>1</sup> Decision of the Constitutional court in the case *Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) v. District prosecution Vranov nad Topľou* in the proceeding file no. Pd 55/16/7713-6, *Regional prosecution in Prešov* in the proceeding file no. Kd 214/16/7700 and *General prosecution of Slovak republic* in the proceeding file no. VI/2 Gd 347/16/1000, from 29 November 2018 delivered on 8 March 2019, file no. IV ÚS. 644/2018-10.