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FLASH REPORT

Country:	Slovakia
Title:	The first instance court dismissed an <i>actio popularis</i> lawsuit launched by a human rights NGO addressing segregation of Roma children in Roma-only primary school
Date:	16 June 2020
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<u>Context</u>	
Issue at stake:	Segregation of Roma children in primary 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 (Anti-discrimination Act), Act. No. 245/2008 Coll. on Upbringing and Education (School Act), Section 3d, Council Directive 2000/43/EC (Racial Equality Directive), International Convention on the Elimination of Racial Discrimination, Article 3

Content

Facts of the case: A claimant - a Slovak human rights NGO - in December 2015 filed an *actio popularis* lawsuit under the domestic Anti-discrimination Act with the District court Bratislava III against the state represented by the Ministry of Education concerning documented segregation of Roma children at a primary school in the village Muránska Dlhá Lúka. The given village has a relatively small marginalised Roma community that is residentially segregated. Before September 2015 all children from the community (approx. 70) attended until their 4th grade a small ethnically homogenous Roma-only school located directly in the village and from the 5th grade moved to the other bigger schools in nearby villages and towns. All non-Roma children from the village commuted to the other schools in nearby villages and towns already from their 1st grade. Due to lack of space capacities of the school in the village, the municipality in April 2014 made an agreement with the Ministry of Education to build a new low-cost school building made up of metal containers, located outside the main village area, in very close vicinity to the segregated Roma community. The new building was funded from the state budget within the project of the Ministry of Education. The claimant argued that education of Roma children in the new low-cost school constitutes their segregation. It argued that the Ministry of Education did not take effective measures to prevent segregation of Roma children, while stressing the fact that the other schools in the nearby villages and towns had sufficient capacities to accommodate Roma children from the 1st grade as they did with non-Roma children. The claimant asked the court to order the Ministry of Education to elaborate a desegregation plan that would propose effective measures to remove segregation and subsequently to implement the plan. The claimant also suggested that the effective measures, while considering the current situation, could obviously include securing effective transportation

for Roma children to the nearby schools and securing their inclusion with the other children there.

The court did not deal with the case at all for considerably long time and the first hearing took place more than three years after the lawsuit was filed. The complainant during the proceeding therefore turned to the Constitutional Court which in January 2020 found violation of the complainant's constitutional right to have its case heard in a reasonable time without any delay.¹

Decision of the court: The District court in its decision no. 21 C 698/2015 from 6 February 2020 dismissed the lawsuit, stating that the respondent proved by its evidence that it did not violate the principle of equal treatment and that the claimant failed to bear its burden of proof as it did not sustain a *prima facie* case of discrimination. The court found no illegal action of the respondent that would exclude or separate Roma children from non-Roma children based on their ethnic origin, since the Roma children fulfilled their compulsory school attendance at the school within its school catchment area and this school was freely chosen by their parents - the Roma parents could have enrolled their children in the other nearby schools as the parents of non-Roma children did. The court further reasoned that: 1./ it was not proved that Roma children were educated in the given Roma-only school due to their ethnic origin - the school was built for all children that could also attend it, if their parent would have chosen it. 2./ it was not proved that building a new school close to the marginalised Roma community was 'motivated ethnically', but the reason was to improve the quality of the educational process for the children.

The court also pointed out that the claimant did not prove the lower quality of education provided in the given school and disregarded the submitted expert opinions produced by renowned Slovak academics for this court proceeding that highlighted inherent negative psychological, social and pedagogical impacts of segregated education of Roma children, including its wider negative impacts on social cohesion in the society.

The District court also rejected the claimant's proposal to approach the Court of Justice of the EU with a request for preliminary ruling on the interpretation of EU law in this case.

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 in order to interpret the definition of segregation in line with EU directives and CERD.

Key points of analysis: According to the country expert's assessment, the District court decision was progressively concluding that the state and its authorities (Ministry of Education) can be sued as a party in such a court proceeding and also did not question the possibility of civil courts to order to desegregate (implement a desegregation plan) in cases of segregation, in this regard the court dismissed the objections of the respondent. However, it essentially failed to recognise the overall legal nature and scope of racial segregation as it is prohibited by the applicable laws and ignored relevant judgments of the European Court of Human Rights concerning segregation of Roma children in education (especially *Lavida and Others v. Greece*). The domestic court unlike ECtHR and UN CERD did not interpret the segregation as a form of discrimination *per se*, which also arises from the *de facto* accumulation of minority people, for example in the school environment, whether or not this has been done with malicious intent or not, and that the respondent is responsible not only for the segregation caused by their intentional conduct but also for the segregation caused by the negligence or inaction of competent state authorities. At the same time, the court did not agree with the applicant's legal argumentation that, in accordance with the Convention on the Elimination of All Forms of Racial Discrimination (Article 3), segregation is in itself discriminatory and inherently harms protected

¹ Decision of the Constitutional Court of the Slovak Republic No. III. ÚS 75/2019-29 from 21 January 2020. Available in Slovak at <https://www.poradna-prava.sk/en/documents/slovak-constitutional-court-decision-confirming-court-backlogs-in-a-antidiscrimination-court-proceeding/>.

individuals. It is therefore not necessary to demonstrate a specific additional disadvantage for a finding of discrimination within the meaning of Article 2 of the Racial Equality Directive of the European Union.

Internet link source: The judgment is available in Slovak only here:

<https://www.poradna-prava.sk/en/documents/district-court-judgment-concerning-alleged-segregation-of-roma-children-in-education-in-a-village-muranska-dlhá-lúka/>.