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FLASH REPORT

Country:	Slovakia
Title:	The Appeal Court confirmed that education of marginalised Roma children in ethnically homogenous primary school does not amount to discrimination
Date:	28 July 2020
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Update of flash report:	Slovakia - District Court: Education of Roma children in segregated Roma only school does not constitute discrimination based on ethnic origin (PDF 162 kB)
<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 (Anti-discrimination Act), Section 2, Section 2a(1-2), Section 9(1-3), Section 9a, Section 10(1) and Section 11(1-2); School Act No. 245/2008 Coll of Laws, Section 3d and Section 20(5) 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 April 2015 filed an *actio popularis* lawsuit with the District Court Bratislava III based on the domestic Anti-Discrimination Act concerning documented segregation of Roma children at a primary school in the town Stará Ľubovňa (town district *Podsadek*). The school, founded by the municipality of the town, has been for a long time attended solely by socially disadvantaged Roma children from the nearby marginalised Roma community. Non-Roma children living in this town district attended the other primary schools in the town. The claimant argued that the municipality and the responsible state authorities including the Ministry of Education, by not adopting effective measures to eliminate the segregation of Roma children in the given primary school, violated the domestic and international anti-discrimination laws. Instead of adopting remedial measures to eliminate segregation, in 2015 they expanded the capacity of this primary school by adding a new modular building - a low-cost annex to the school made out of metal containers. The claimant argued that this latest measure was inappropriate and maintained the segregation of Roma children in this school. In the lawsuit it pointed out that education in an ethnically segregated school is unable to provide socially disadvantaged Roma children equal educational opportunities and asked the court to order the defendants to elaborate and implement a desegregation

plan that would ensure the integration of Roma children in other primary schools with the other children in the town.

The District Court dismissed the lawsuit in October 2016,¹ essentially reasoning that the claimant did not prove that education of Roma children in the school is carried out on the ground of their ethnic origin and failed to bear its burden of proof as it did not sustain a *prima facie* case of discrimination. The claimant filed an appeal to the Regional Court in Bratislava.

Decision of the court: The Regional Court by its judgment No. 4Co/260/2017 - 441 from 29 April 2020 fully upheld the judgment of the District Court. As an appeal court it stated that even though the primary school is attended only by Roma children, this situation stemmed from demographic development and parents of the affected Roma children agreed with their education in the given school. It essentially added that the situation arose without intentional action by the state and local authorities as defendants in the case, which aim was not to prevent mutual contact between Roma children and children from the majority. The Regional Court also disregarded expert opinions submitted by the claimant in the proceeding that were produced by renowned Slovak academics and highlighted inherent negative psychological, social and pedagogical impacts of segregated education of Roma children, including its wider negative impacts on social cohesion.

From a procedural viewpoint the appeal court rejected the objections of the Ministry of Education and confirmed that the state itself as well as state authorities that represent the state in proceedings can be sued in anti-discrimination civil court disputes. The appeal court also noted that civil courts can order the adoption of measures to prevent discrimination, provided that discrimination is proved in proceedings. This also includes elaboration of a desegregation plan as the claimant proposed in this proceeding.

The claimant disagrees with the judgment and plans to submit an extraordinary appeal to the Supreme Court of Slovakia and suggest referring the case to the Court of Justice of EU for preliminary ruling.

Key points of analysis: According to the country expert's assessment, the Regional Court reconfirmed 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. However, it equally failed to recognise the overall legal nature and scope of racial segregation, while suggesting that only separate education of Roma children, which would be caused by intentional and targeted actions by state or local authorities, can be considered a violation of the anti-discrimination laws. The Regional Court disregarded the claimant's key 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 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. In addition, it also disregarded the existing positive legal obligation of the state authorities to prevent racial segregation in education regardless of its cause. This legal approach of the Regional Court is contrary to international human rights law and present judgments of the European Court of Human Rights which interpret 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 this has been done with malicious intent or not.

Internet link source: The judgment is available in Slovak only at:
<https://www.poradna-prava.sk/sk/dokumenty/rozsudok-krajskeho-sudu-v-bratislave-v-pripade-namietanej-segregacie-romskych-deti-na-zakladnej-skole-v-starej-lubovni/>.

¹ Decision of District Court Bratislava III from 6 October 2016, n. 11C351/2015- 387.