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FLASH REPORT

Country:	Slovakia
Title:	The Appeal court confirmed that state authorities have no obligation to take measures on the elimination of segregation of Roma children in a local primary school
Date:	30 October 2020
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Update of flash report:	Slovakia - First instance court: State authorities have no obligation to take measures on the elimination of segregation of Roma children in a local primary school (PDF 110 kB)
Context	
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), 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, Council Directive 2000/43/EC (Racial Equality Directive), International Convention on the Elimination of Racial Discrimination, Article 3

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 given school coped with limited space capacities and increasing percentage of socially disadvantaged Roma children (predominantly from a nearby village Malý Slivník) reaching up to 70 percent of all educated children, which also reportedly spurred 'white flight' of non-Roma children to other schools. As a result, the school was unable to effectively accommodate all Roma children with the children from the majority and started educating some Roma children in separate Roma-only classes and in the second afternoon shift. According to the claimant, the state authorities had set up the school catchment area for the given locality differently, while taking into regard existing free school capacities of the other nearby schools and supporting ethnic diversity throughout local schools. 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 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.

The District Court dismissed the lawsuit,¹ stating that it was not proved that the disputed decisions of the state authorities on the school catchment area had violated the principle of equal treatment. It 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 claimant filed an appeal to the Regional court in Prešov.

Decision of the court: The regional court by its Judgment No. 16Co/21/2019-483 from 20 August 2020 fully upheld the judgment of the district court. As an appeal court it agreed that defendants, as public authorities, were not entitled to interfere in the organisation of the educational process, which was solely the responsibility of the school. Their decisions to set up the school district, according to the appeal court, did not result in the segregation of Roma children in separate Roma classrooms and on the afternoon shift, which the claimant invoked. It stated that the sued state authorities had no choice, but to set a single common school district for all children, both from the municipality of the nearby village Maly Slivnik and from the municipality of village Terňa - regardless of their origin and race of children - at the primary school in Terňa.

Notably, the appeal court did not dispute the fact that segregated education of Roma children constitutes a breach of the principle of equal treatment (i.e. discrimination against them) and that state institutions have a positive duty to take measures to eliminate and prevent segregation. It also acknowledged that the segregation of Roma children in education is a problem for which Slovakia is facing international criticism. However, it expressly stressed that the responsibility for organising teaching lies with schools that are directly responsible for the organisation and management of the teaching process. It also did not consider necessary to refer the case to the Court of Justice of the EU for preliminary ruling on interpretation of the EU law in this case, as the claimant proposed. The claimant plans to file an extraordinary appeal (*dovolanie*) to the Supreme Court of Slovakia.

Key points of analysis: The regional court upheld the decision of the first instance court concerning the alleged responsibility of the state authorities including the Ministry of Education for segregation of Roma children in a primary school. It confirmed that the state authorities have no positive obligation to take measures on the elimination of segregation of Roma children within primary schools. The responsibility here lies solely with schools as they are responsible for organisation and management of the teaching process. According to the country expert, the court did not recognise that the affected primary school was unable to effectively desegregate without resetting the school catchment area and the active intervention of the state authorities and the judgment can be considered contrary to the domestic and international anti-discrimination legislation including the EC Racial Equality Directive.

Internet link source: The decision is available in Slovak language at the website of the claimant: <https://www.poradna-prava.sk/en/documents/decision-of-the-regional-court-in-presov-in-a-case-concerning-alleged-responsibility-of-state-authorities-for-segregation/>.

¹ Decision of the District Court Prešov from 27 February 2019, No. 29C/14/2016.