

## Center for Civil and Human Rights v ŠM Primary and Nursery School (The Prešov Regional Court; 2012 )

### Case at a glance

#### Full citation

20Co125/2012

#### Forum / Country

The Prešov Regional Court, Slovak Republic

#### Date of decision

30 October, 2012

#### Summary of decision

The Prešov Regional Court, one of the courts of appeals of the Slovak Republic, affirmed a lower court's decision that schools cannot discriminate against children based on their ethnic origin or socially disadvantaged background. The Prešov Regional Court held that the defendant school was discriminating against children of Romani ethnic origin by placing those kids in separate Romani classes. It ordered that the school rectify the situation by the beginning of the next school year.

#### Significance to the right to education

The Prešov Regional Court found that separating children based on ethnic origin or socially disadvantaged backgrounds is a form of discrimination and is in violation of human rights.

#### Issues & keywords

Ethnic origin, socially disadvantaged backgrounds, segregation, separate class, human dignity, inclusive education.

*This case summary is provided for information purposes only and should not be construed as legal advice.*

# Context

Integrating the Romani population is a problem the Slovakian government has been addressing. On the child education front, some schools are separating Romani children and non-Romani children into different classes under the guise of helping the Romani children to better assimilate by offering reduced curriculum. Also, there is evidence that non-Romani parents are sending their children to schools where there are no Romani children.

## Facts

ŠM Primary and Nursery School was placing Romani children into classes separate from the rest of the students. The Romani children were from village O, which is socially disadvantaged. The main criterion for placing a student in the Romani classes was that the child was of Roma ethnic background. The school tried to justify the Romani classes by arguing that the parents consented to it, and the school did not want the Romani children to feel handicapped educationally because they were getting worse educational results than non-Romani children. Further, the school tried to argue that the segregation was consistent with the 2011-2015 National Action Plan for the Integration of the Roma Population, which referenced the creation of field classes in secondary schools.

The Court of First Instance rejected the school's arguments and found that it violated the principle of equal treatment and discriminated against the Romani children on the account of their ethnic origin by placing them in separate classes. It held that parental consent cannot cancel out or justify the unlawful actions of the school. The Court of First Instance also rejected the school's argument that the separate class is to protect the Romani children. It reasoned that separate classes are not an inclusive education, which is the best approach to develop the full educational potential of each child in the class. Finally, the Court of First Instance held that the 2011-2015 National Action Plan was not applicable to the school because the plan was for secondary schools. Also, the special actions contemplated by the plan were on a temporary basis, but the school's action was permanent. The case was appealed to the Prešov Regional Court (a court of appeal in the Slovak Republic).

## Issue

Can schools segregate students from socially disadvantaged backgrounds or specific ethnic groups?

### Relevant legal instruments:

- Constitutional Court of the Czech Republic, IV. US 412/04 of 7 December 2004. The court held that human dignity is an inviolable value that is a foundation of the Constitution of the Czech Republic.
- Constitutional Court of the Czech Republic, I US 557/09 of 18 August 2009. The court held that public authority must respect human dignity. Without such recognition, all other fundamental rights and freedoms are reduced to empty clichés.
- Article 11, paragraph 2 of the Antidiscrimination Act (relating to equal treatment).

# Decision

The Prešov Regional Court reviewed the facts and affirmed the Court of First Instance's verdict and upheld its reasoning. The Prešov Regional Court acknowledged that equal treatment of Romani children in school will not be easy and will require changes. But the separate class method by the school is 'an undignified simplification of the situation' that is designed to create the impression that the educational process complies with the law. The Romani children may complete the primary education with difficulty, but they will be unprepared for secondary education – a disadvantage compared with non-Romani children.

The Prešov Regional Court found that schools must adopt an inclusive approach. In a discursive and policy-rich decision, it explained that UNESCO defines inclusive education as a process that increases diverse students' attendance in class and reduces exclusion within and from an education. Further, it explained that an inclusive education is a system of education that respects and develops the child's personality and allows he/she to attend regular educational institutions. 'In institutions of this kind the diversity of children is perceived as an opportunity to develop respect for oneself and for others. The child's sense of empathy, tolerance, consideration and responsibility are fostered.' In its judgment, the Prešov Regional Court set forth the advantages inclusive education provides to the different parties:

- Non-Romani children will learn to perceive and respond to changes and diversity and will be better adjusted for the diversity in society
- Romani children will have a chance to develop their abilities and make friends with non-Romani children. Romani children will also feel as a part of society, which will boost their confidence, and get a more realistic picture of society
- In Slovakian society an inclusive educational system will help to resolve taboo problems such as discrimination, segregation and racism, and foster tolerance, empathy and mutual understanding
- In schools inclusive education will develop the teacher's professional skills

The Prešov Regional Court held that placing the Romani children in separate classes deprives the children of human dignity. It determined that 'every underage child has the right to equal treatment and access to school.'

# Impact

The decision outlawed the practice of segregating Romani children based on their ethnic origin and socially disadvantaged background. The Prešov Regional Court also espoused, in great detail, the virtues of an inclusive educational system where diversity is accepted and celebrated. The decision serves not only as a legal protection for the human rights of children from socially disadvantaged background, but also as a statement to the Slovakian society that acceptance of diversity and inclusion of the people from socially disadvantaged backgrounds is the correct path forward.

# Additional resources

- [European Roma Rights Centre](#), the website of a Roma-led international public interest law organisation
- [D.H. and Others v the Czech Republic](#), A case was brought by 18 Roma students from the Ostrava region in the Czech Republic
- Right to Education Initiative's [minorities and Indigenous Peoples issue page](#)
- United Nations [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#)
- Barbora Černušáková's Blog [Breaking the law: stories of Roma discrimination in Czech schools](#)
- Al Jazeera's [Life in Slovakia's Roma slums: poverty and segregation](#)

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The Right to Education Initiative (RTE) works collaboratively with a wide range of education actors and partners with civil society at the national, regional and international level. Our primary activities include conducting research, sharing information, developing policy and monitoring tools, promoting online discussion, and building capacities on the right to education.

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With thanks to [White & Case](#) and [Advocates for International Development](#) for their support in compiling this case summary.

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