



PORADŇA PRE OBČIANSKE A ĽUDSKÉ PRÁVA

CENTER FOR CIVIL AND HUMAN RIGHTS

KRIVÁ 23, 040 01 KOŠICE, SLOVENSKO

- » mobil: +421 908 69 55 31, +421 949 338 396
- » www.poradna-prava.sk » poradna@poradna-prava.sk
- » IČO: 37 86 72 70 » IBAN: SK98 5200 0000 0000 0551 9629

PRESS RELEASE

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The landmark ruling by the Supreme Court: The education of Romani children at a purely Romani school in Stará Ľubovňa constitutes segregation, which is illegal. Both the state and the founder are responsible

Roma children attending primary school in the urban district of Stará Ľubovňa - Podsadek are segregated in their education. The Supreme Court of the Slovak Republic has ruled on the appeal of the non-governmental organisation Center for Civil and Human Rights (Poradňa), which has been leading strategic court proceedings in this case since 2015. The Supreme Court agreed with its opinion that the education of Roma children in an ethnically homogeneous school close to the local disadvantaged Roma community constitutes discrimination against them on the basis of ethnicity. It confirmed the responsibility of the defendant State, represented by the Ministry of Education, and of the town of Stará Ľubovňa as the school's founder, which, in its view, had failed to take sufficient preventive measures to eliminate the discrimination against Roma children in question. According to the Supreme Court, the state institutions are responsible also for the segregation, which arose spontaneously and not with the purposeful intention of separating Roma children from majority children.

Poradňa has filed a public lawsuit in the case under the Anti-Discrimination Act since 2015. In the lawsuit, it argued that the municipality and the responsible state authorities, including the Ministry of Education, were violating domestic and international law on protection against discrimination by failing to take sufficient measures to prevent discrimination and to take measures to eliminate the segregation of Romani children in the primary school in the Stará Ľubovňa - Podsadek municipal district. Instead of adopting measures to protect against discrimination, the defendants expanded the capacity of the school, which has long been attended only by socially disadvantaged children from the adjacent Roma community, by building a modular annex opened in the 2014/2015 school year. This measure was considered by Poradňa to be unsystematic and, in its view, only perpetuates the segregation of Roma children at the school. In the proceedings, Poradňa argued that education in an ethnically segregated school fails to provide Roma children with equal access to education and proposed their inclusion in schools together with other children in the town.

The Bratislava III District Court dismissed the Poradňa's lawsuit in December 2016, and the Bratislava Regional Court of Appeal upheld its judgment in its entirety in April 2020. In doing so, it noted that although the school is attended exclusively by Roma children - this situation has arisen as a result of demographic development and with the consent of the parents of Roma children. According to the Court of Appeal, the situation in question had arisen without any deliberate action on the part of the State and the municipality as defendants, whose aim was not to prevent Roma children from coming into contact with majority children.

In 2020, Poradňa filed an extraordinary appeal against the judgment of the Court of Appeal to the Supreme Court of the Slovak Republic, which, in its judgment of 15 December 2022, reversed the judgment of the Bratislava III District Court in conjunction with the judgment of the Bratislava Regional Court. It ruled that the defendant town of Stará Ľubovňa and the State, represented by the Ministry of Education of the Slovak Republic, violated the principle of equal treatment by failing to take sufficient

preventive measures to protect against discrimination and to eliminate discrimination against Roma children at the Podsadek Primary School in Stará Ľubovňa on the basis of their ethnic origin.

The Supreme Court rejected the reasoning of the lower courts and agreed with the legal opinion of Poradna that the education of Roma children in an ethnically homogeneous school in the vicinity of the local disadvantaged Roma community constituted discrimination against them on the basis of their ethnicity. According to him, the construction of the modular annex/extension on the premises of the Podsadek Primary School had expanded the capacity of the primary school in such a way that children from the catchment area could attend a school situated as close as possible to their place of residence. However, this effectively separated Roma children from the children of the majority community and segregated them. According to the Supreme Court, this conclusion is not affected by the absence of a motive to discriminate purposefully against Roma children on the part of the defendants. According to the Court, state institutions are also responsible for segregation that arose spontaneously, e.g. as a consequence of demographic development or the setting of school districts. In its decision, the Supreme Court also referred to the established case law of the European Court of Human Rights in Strasbourg in similar cases, to which Poradna also referred during the court proceedings.

In its judgment, the Supreme Court of the Slovak Republic pointed to the overall importance of desegregation efforts in education, explicitly stating that *"the state, in cooperation with the municipality, must take effective measures (whether by legislative initiative, the creation of incentive conditions or the creation of school districts) to prevent segregation, not just stand by and refer to the strict, often misinterpreted dictum of the law. The determining factor in any approach is the best interests of the child. Indeed, it is in the interest of society as a whole that also children who come from socially disadvantaged backgrounds grow up to be full members of that society, and desegregation efforts in school education will contribute significantly to that goal."*

In the proceedings, Poradna asked the court to order the defendants to jointly draw up a so-called desegregation plan within three months of the judgment becoming final, i.e. to propose, on the basis of an analysis of the situation, effective measures to eliminate the discrimination in question, including the timeframe for their implementation as well as propose preventive measures to avoid discrimination in the future. Consequently, the defendants should be obliged to implement the plan within three years. In this regard, The Supreme Court remanded the case back to the district court for further proceedings, which is obliged to decide the case after ascertaining the actual facts of the case, also taking into account the enforceability of the judgment. The district court will hear the case in April 2023.

The judgment of the Supreme Court of the Slovak Republic is final in the part finding segregation at the school in Stará Ľubovňa. The lower courts are bound by its legal opinion.

Vanda Durbáková, the lawyer representing Poradna in this lawsuit, commented on the judgment:

"This is a landmark court decision in Slovakia. For the first time in history, a Slovak court has ruled that the education of Roma children in a purely Roma school is illegal and constitutes segregation. This is true even in cases where there was no purposeful separation of children, but segregation arose spontaneously as a consequence of, for example, demographic development or the parents' decision. The responsibility for this lies with school founders and the state. The judgment is thus a clear message to state institutions that they must act and start taking measures to desegregate Roma children not only in Roma classrooms, but also in purely Roma schools."

Štefan Ivanco, Programme Coordinator of Poradna, added to the judgment:

"The responsible state authorities have been practically inactive as it comes to the desegregation of Roma children in primary schools in recent years. And the construction of modular annexes only perpetuated segregation. As in the Podsadek locality, segregated primary schools in Slovakia often operate close to excluded Roma communities. The causes of this situation are complex and the state, in cooperation with local municipalities, has a legal obligation to take action. They must identify the

causes and propose effective measures to eliminate segregation. This is in the interests of our entire society, as it was ultimately confirmed by the Supreme Court in its judgment."

We would like to thank all the donors who have long supported our strategic litigation of discrimination cases and, as part of that, our work on this case, enabling us to achieve this court decision.

CONTACTS: Vanda Durbáková – attorney cooperating with the Center for Civil and Human Rights (Poradňa); Tel.: +421 908 695 531; E-mail: vanda.durbakova@poradna-prava.sk

The Center for Civil and Human Rights (Poradňa) is a non-governmental organization based in Slovakia focused on the protection of human rights with particular emphasis on the rights of minorities and protection from discrimination. Poradňa has for a long time worked on the issue of discrimination against Roma ethnic minority in various areas of public life. It has also been active in the protection of reproductive rights and protection from police brutality. Poradňa employs strategic litigation to combat discrimination and human rights abuses against minorities. Poradňa offers free legal advice to victims of discrimination and in selected cases free legal representation to victims of discrimination before courts. It also conducts monitoring in the field, advocacy, and educational activities on the topic of protection from discrimination for lay and expert audiences. Visit us at www.poradna-prava.sk

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