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LANDMARK VICTORY IN DIGITAL DIVIDE AND ACCESS TO EDUCATION CASE

Press release

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The Center for Civil and Human Rights (Poradňa) welcomes the decision of the District Court in Prešov in the case of a Roma child who was denied access to education during the Covid-19 pandemic due to not having access to the internet and digital technologies. A Roma girl from a marginalized community in Jarovnice sued the Slovak Ministry of Education for failing to provide her with equal access to online distance learning during the Covid-19 pandemic. Poradňa provided her with free legal representation in the court proceedings. The Court upheld the claim and awarded damages in the full amount of €3,000. This the first judgment of its kind not only in Slovakia but also in Europe, highlights wider systemic disadvantages in access to digital technologies and the internet faced by some groups in Slovak society.

Veronika Duždová, the plaintiff's grandmother, commented on the Court's decision:

"I decided to pursue this matter through the courts because Roma children were having no education during Covid. The school was not interested in them. Only once a week, the school sent some worksheets. My granddaughter was in the first grade of her schooling. I did not want her to forget what she had learned before. In my opinion, the school did not provide education to Roma children in a way it was obliged to do. I found it to be discriminatory. I am glad the Court agreed with us."

Vanda Durbáková, an attorney working with Poradňa who acted for the plaintiff, said:

"This decision confirms the serious failures of the state at the time of the Covid-19 pandemic. The State failed to provide quality education for Roma children who do not have access to the internet and digital technologies and do not have sufficient digital skills. It is clear that the education of these children was forgotten by the state for many months. The Government has not taken any effective measures to remove the barriers to access to distance learning faced by these children. There is, however, a much bigger dimension of this decision. For the first time, the Slovak court highlighted the existing 'digital divide' between the majority society and disadvantaged communities – a divide that is getting larger every day in this digital age. This digital divide is deepening inequality in our society in many areas of daily life. The Court now confirmed that this is discriminatory and the State must eliminate it."

Background to the case

A Romani girl from a marginalized community in Jarovnice brought a lawsuit against the Slovak Republic, represented by the Ministry of Education, Science, Research and Sport, in November 2022. She argued that distance learning, introduced by the government during the Covid-19 pandemic, was conditioned upon having access to the internet and digital technologies, ownership of computer equipment and computer skills. However, she and her family did not have these, and the Government did not provide them in any way. During the school's closure, her school only distributed weekly worksheets with homework to Romani children but provided no support or evaluation of their work. The

plaintiff also highlighted a wider systemic nature of the problem. She pointed to the research which confirmed that a huge number of Roma children in Slovakia faced the same disadvantages in access to education.

On 6 November 2023, the District Court in Prešov fully agreed with her (the decision was delivered in writing last week). The Court ruled that the government had discriminated against the plaintiff in access to education on the grounds of her social origin, property, and Romani ethnic origin and had also violated her right to access to information. Further, it held that the government had failed to take appropriate measures, including the provision of access to the internet and digital technologies, to ensure equal access to education during the interruption of full-time education during the Covid-19 pandemic. The Court also ordered the government to pay compensation to the girl in the amount of €3,000.

In its decision, the Court stated that the government rightly undertook measures to mitigate the impact of the Covid-19 pandemic was necessarily to take measures to mitigate its effect. It did not question the necessity of measures designed to protect the health and life of the population. However, the Court stressed that the measures taken by the government should have responded to the existing inequality of marginalized groups and should have considered the inequality faced by children from marginalized Roma communities. It reproached the government for not having taken any temporary compensatory measures to overcome this inequality, even though the legislation allowed it to do so. In such a situation, the Court concluded, the starting line in the lives of pupils from marginalized Roma communities had inevitably become worse off than for other pupils.

The Court's decision is groundbreaking, as it is the first decision in the "digital divide" case not only in Slovakia but also in Europe. The Covid-19 pandemic has clearly demonstrated the fundamental importance of internet access for people's lives and for society, including its necessity for modern education. In several countries, the right to access the Internet has been officially recognized as a fundamental human right. The key argument in this case, confirmed by the decision, was that while the state is not obliged to provide internet for everyone, it should not make access to education conditional on the obligation to have sufficient technological equipment and connectivity. If it does so, as in the case of distance online education, it should provide Roma children from marginalized communities with equal access to the internet, as well as equip them with necessary digital technologies and skills. In situations where the state cannot provide such access, it must ensure effective basic education by means other than digital technologies.

The decision is not final and may be appealed by the government.

The anonymised Court decision is available in Slovak here: <https://poradna-prava.sk/sudne-rozhodnutia/>

Contacts

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Poradňa appreciates the financial support of the Digital Freedom Fund (DFF) to the litigation in this important case.

The Center for Civil and Human Rights (Poradňa) is a non-governmental organization dedicated to the protection of human rights and freedoms, with a focus on the protection of minority rights and protection against discrimination. It has long been combating discrimination against the Roma minority in various areas of life in Slovakia. It also focuses on the protection of reproductive rights and the issue of police violence. Poradňa uses strategic litigation to challenge discrimination and violation of the human rights of minorities. It provides free legal assistance in selected cases of human rights violations and free legal representation in proceedings before Slovak courts and the European Court of Human Rights in Strasbourg. It also carries out field monitoring, and advocacy activities in relation to state institutions and conducts educational activities in the field of protection against discrimination for the professional and lay public. Website: <https://poradna-prava.sk/en/>

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