

Court: District Court of Piešťany
File No.: 6C/29/2019
Court file identification
number: 2519201720
Date of decision: 19. 09. 2019
Name of the Judge: JUDr. Ingrid Šimonová
ECLI: ECLI:SK:OSPN:2019:2519201720.1

Ruling

The District Court of Piešťany in the dispute between the plaintiffs: 1. T. L., born in XX.XX.XXXX, permanently residing in L. XXX, 2. T. L., born in XX.XX.XXXX, permanently residing in L. XXX, 3. H.V., born in XX.XX.XXXX, permanently residing in L. XXX, 4. Y. L., born in XX.XX.XXXX, permanently residing in L. XXX, 5. X. X., born in XX.XX.XXXX, permanently residing in L. XXX, 6. C. V., born XX.XX.XXXX, permanently residing in L. XXX, 6. XX.XX.XXXX, permanently residing in L. XXX, plaintiffs legally represented by: Mgr. Michal Zálešák, attorney, with registered office at Heyrovského 14, Bratislava, against the defendant: Municipality of Prašník, with registered office at Prašník 93, ID No: 00 312 894, on violation of the principle of equal treatment, on an application for an interim measure, has rendered the following

r u l e d:

The Court **r e j e c t s** the plaintiffs' motion for an interim measure.

r e a s o n i n g:

1. The plaintiffs, through a motion for an interim measure delivered to this Court on 23.08.2019, sought for the Court to impose an obligation on the defendant to ensure the supply of drinking water to the plaintiffs, in a volume of at least 20 litres per person per day. At the same time, the plaintiffs, through a lawsuit on the merits, sought for the Court to decide that the defendant, as a result of failing to ensure the connection of the plaintiffs' dwellings to the public water supply, had committed a violation of the principle of equal treatment against the plaintiffs and is obliged, within 6 months from the date this judgment becomes final, to ensure the connection of the plaintiffs' dwellings to the public water supply, and within 30 days from the date this judgment becomes final, to pay each of the plaintiffs compensation for non-material damage caused by the violation of the principle of equal treatment, in the amount of 1,000 euros.

2. The plaintiffs justified their motion for interim measures on the ground that they are citizens of the Slovak Republic of Roma origin. They live in a part of the municipality of L. which is inhabited by the Roma community. The municipality of L. is situated in the district of L. and has approximately 850 inhabitants. The municipality has a large Roma community (over 80 persons, including approximately 20 children and minors), whose access to drinking water is severely limited. The dwellings of the Roma community, including the plaintiffs, have been located for decades in the wider centre of the village near the municipal office. However, unlike the majority of the population (including dwellings located on the outskirts of the municipality),

they are not connected to a water supply and have no other source of drinking water. They draw their water from a natural source near the community. However, this is only a source of drinking water, which is of questionable suitability for drinking, and which, moreover, flows only through a very small stream. In the past, water was also provided by the sued municipality by means of a cistern, but at present drinking water is no longer provided in this way. In 2014-2016, the European Roma Rights Centre ("ERRC") conducted research on the Roma minority's access to drinking water. The ERRC visited a number of Roma communities in seven European countries during field research. The municipality of L. was one of the 21 visited municipalities in Slovakia. In March 2017, a report entitled "Thirsting for Justice - Europe's Roma Denied Access to Clean Water and Sanitation" was produced as a conclusion of the research in question. In it, the defendant is cited as one of the examples of unequal treatment in terms of access to water for Roma in relation to the majority population, as the Roma community, although located relatively in the centre of the municipality, and for decades, is the only part of the municipality without a connection to a public water supply. In October 2017, the issue was also addressed by RTVS in the programme Reporters, with a visit to the sued municipality. The programme's editors focused on the lack of access to drinking water for Roma communities in general, but also visited several communities, including the sued municipality. The only source of water to which the Roma community has access is visible in the report. As the mayor of the defendant municipality expressed in the report, he sees the problem with the connection as the fear that there will be no one to pay for the water. The sued municipality of L. had the opportunity to apply for funding under the Ministry of the Interior's calls for proposals aimed at promoting access to drinking water in segregated and segregated marginalised Roma communities, among other things. Despite the fact that the Roma community's access to drinking water in the municipality is limited and the defendant is aware of this, the municipality of L. did not participate in these initiatives (although there were up to 6 of them over a period of more than 1.5 years) and did not apply for financial support. In April 2018, the plaintiffs approached the defendant with a Request for connection to a drinking water source, to be completed within 90 days from the delivery of the Request. The defendant did not respond to the Request in question. In 2018, in the Roma part of L., a camera was installed by the defendant. This was done on the basis of the subsidy OUTT_ZM_25-TR-2017_2017 - Contract on the provision of a subsidy from the State Budget of the Slovak Republic for 2017 to ensure the tasks of crime prevention. One of the locations that are monitored are Roma settlements within the municipality, with cameras capturing not only publicly accessible areas, but also private areas or persons present there. Apparently, this is done in violation of Act No 18/2018 Coll. on the protection of personal data and on amending and supplementing certain laws as well as Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. It is a well-known fact that members of the Roma community in the Slovak Republic and in Europe in general are in an unenviable position. Their vulnerable and disadvantaged position in society has been highlighted in judgments of the European Court of Human Rights (hereinafter "ECtHR") several times (e.g. D.H. and others v. Czech Republic⁵, Yordanova and others v. Bulgaria⁶). This disadvantage is reflected in many areas of social life, including access to housing. The Slovak Republic has one of the largest Roma communities in Europe in terms of percentage of the population. In 2011, the census showed that there were over 105,000 Roma living in the country, making up 2% of the population. However, the actual number is probably much higher. The Atlas of Roma Communities estimates the Roma population in the Slovak Republic at approximately 400,000. Approximately 42% of the Roma population in the Slovak Republic live in peripheral or spatially completely separated Roma communities without the necessary infrastructure. Spatial segregation and social exclusion are often accompanied by poor sanitary conditions and lack of drinking water, which negatively affects the health status of the Roma population. Overall, 27% of the Roma population live in dwellings with leaky roofs or damp walls or other housing construction problems. As regards segregated Roma settlements, up to approximately 45% of them are not connected to public water supply and 56% lack public sewerage. In the Slovak Republic, several policies and

strategies have been adopted so far to improve the housing situation of Roma - the Revised Action Plan of the Decade of Roma Inclusion 2005-2015, the Strategy of the Slovak Republic for Roma Integration until 2020 or the so-called Roma Reform. However, their implementation remains limited. The above-mentioned strategy explicitly states that lack of access to drinking water is one of the main reasons for the poor health status of members of Roma communities. The strategy therefore set as a sub-objective to ensure the availability and quality of drinking water for health and to reduce the gap between the majority population and the Roma in the proportion of access to housing and utilities (such as water, electricity and gas). Paradoxically, the Government of the Slovak Republic has defined drinking water as a strategic resource to be protected. The unfavourable situation of Roma in the Slovak Republic in the area of housing and access to water has been highlighted by several international bodies and institutions, such as the UN Committee on the Elimination of All Forms of Racial Discrimination (UN CERD), which in its latest final recommendations to the Government of the Slovak Republic expressed concern, inter alia, that Roma in the Slovak Republic live in segregated settlements without basic services such as sewerage, access to drinking water or electricity, and called on the relevant authorities to remedy the situation. The UN Committee on the Rights of the Child (UN CRC) made similar recommendations in its concluding observations. Access to drinking water for the Roma population has also become one of the priorities of the Public Defender of Rights in 2016. Her office conducted research in 20 Roma settlements, the output of which was the Report on the Survey on Respect for Fundamental Human Rights and Freedoms - Access to Drinking Water and information on the provision of fire protection in Roma settlements. It states that "... in six Roma settlements they have no tap water supply and in four of them they use water from a well that has not been analysed and therefore there is no certainty that it is drinking water. Access to drinking water is also not ensured for many inhabitants of those villages where the water supply system has been built, because the connection and water are not affordable for them. On this basis, it can be concluded that a number of municipalities have failed, through their own actions and resources, to provide safe, clean, accessible and affordable drinking water and sanitation for all." The right to adequate housing, including access to drinking water, is one of the fundamental human rights and freedoms protected by international human rights treaties to which the Slovak Republic is bound.

It is important to note that this right is essential for the full and unrestricted enjoyment of many other rights, such as the right to protection of private and family life, the right to protection of the home, the right to health and so on. Of course, the lack of drinking water can also mean an imminent threat to the right to life. In 2002, the UN Committee on Economic, Social and Cultural Rights issued General Comment No. 15 on the International Covenant on Economic, Social and Cultural Rights, entitled: The Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). In it (paragraph 1) it was stated that the right to water is a human right that is essential for the preservation of human dignity. The Committee also articulated the content of the right to water, which includes its:

- physical accessibility;
- economic availability;
- sufficient quantity;
- safety.

The same UN Committee, in General Comment No. 4 - The Right to Adequate Housing, included among the requirements for adequate housing (para. 8) the availability of services, including safe drinking water and waste management. In July 2010, the right to water was also formally recognized as a human right by the UN General Assembly through Resolution A/Res/64/292. According to Article 24 of the UN Convention on the Rights of the Child: 1. States Parties to the Convention recognize the right of the child to the enjoyment of the highest attainable standard of health ... 2. States Parties shall pursue the full realization of this right and, in particular, shall take the necessary measures: c) To combat disease and malnutrition, including in the framework of basic medical care, inter alia, by making use of readily available technology and by providing a sufficiently nutritious diet and clean drinking water, taking into

account the dangers and risks of pollution of the environment; ..." As regards the European Convention for the Protection of Fundamental Rights and Freedoms ("the Convention"), the right to water is closely related to the right to life protected by Article 2 of the Convention, as well as to the right to the protection of private and family life within the meaning of Article 8 of the Convention. Article 31 of the Revised European Social Charter enshrines the right to housing of an adequate standard. The European Committee of Social Rights, which interprets the Charter, has stated in a decision that: "Article 31 (1) guarantees access to adequate housing, which means housing that is structurally sound and safe from a health and hygiene point of view, i.e. it has all basic services such as water, heating, waste disposal, sanitation, electricity and security of tenure." According to Article 44(1) of Act No 460/1992 Coll., the Constitution of the Slovak Republic, "Everyone has the right to a favourable living environment." Within the meaning of Section 1, Paragraph 1 of Act No. 364/2004 Coll. on Waters as a vital component of the environment, is an irreplaceable raw material and natural resource of strategic importance for the security of the State, the lack of which may endanger the life and health of the population or jeopardise the performance of the basic functions of the State." Pursuant to Section 4, Paragraph 3, Letter g) of Act No. 369/1990 Coll. on Municipal Administration, as amended: "The municipality, in the exercise of its self-government, in particular ... ensures public utility services, in particular the management of municipal waste and small construction waste, the maintenance of cleanliness in the municipality, the management and maintenance of public green areas and public lighting, water supply, waste water disposal, sewage management from cesspools and local public transport, ..." Pursuant to Section 36, Paragraph 7 of Act No. 442/2002 Coll. on Public Water Supply and Public Sewerage Systems: "The municipality (a) ensures the conditions for the supply of drinking water from the public water supply, for the removal or disposal of wastewater by public sewerage from its inhabitants and other persons in the municipality, for the emptying of the contents of domestic cesspools in the municipality, in which there is no public sewerage, for the emergency supply of drinking water, for the replacement supply of drinking water and for the removal of wastewater, ..." The principle of equal treatment (or prohibition of discrimination) is a principle enshrined in Article 12 of the Constitution of the Slovak Republic and extends throughout the entire legal order of the Slovak Republic. It therefore also applies to access to water. Water supply is, pursuant to the Act on Municipal Administration, a public utility service, which is therefore also subject to the ADZ. Pursuant to Section 3, Paragraph 1 of the ADZ: "Everyone is obliged to observe the principle of equal treatment in the areas of labour law and similar legal relationships, social security, healthcare, the provision of goods and services, and education." The plaintiffs claim that the defendant violated the principle of equal treatment towards them on the grounds of their membership in an ethnic group, specifically in the form of direct discrimination pursuant to the ADZ. Racial discrimination and ethnic discrimination are, according to the ECtHR, "particularly reprehensible forms of discrimination, which, due to their dangerous consequences, require extraordinary vigilance and a resolute response from authorities." The authorities must use all means to combat racism and thus strengthen the democratic concept of society, where diversity is not seen as a threat but as an asset. In today's democratic society, built on the principle of pluralism and respect for different cultures, differential treatment based solely, or to a large extent, on a person's ethnic origin cannot be objectively justified. " Pursuant to Section 2, Paragraph 1 of the ADZ: "Observance of the principle of equal treatment consists of the prohibition of discrimination on the grounds of sex, religious belief or faith, race, nationality (ethnicity), or membership in an ethnic group, ..." Pursuant to Section 2a, Paragraph 2: "Direct discrimination is an act or omission whereby a person is treated less favourably than another person is, was, or would be treated in a comparable situation." According to the definition of direct discrimination in the ADZ, its demonstration requires the existence of specific conditions:

- A protected ground,

- a comparator - a person in a comparable situation,
- an act/omission,
- disparate - less favourable treatment.

The protected ground or characteristic under the ADZ in this case is membership in an ethnic group. The comparator is the housing of the majority, i.e., non-Roma population. The act or omission that constituted less favorable treatment is the connection to the water supply or, more precisely, the provision of water. While non-Roma households have such a connection, it is absent in the Roma community. Although the Roma community has been present in the municipality for decades, the defendant has been unable (or unwilling) to address this discriminatory situation. The plaintiffs are members of the Roma community, which is socially excluded. As mentioned above, this is not the only community of its kind in Slovakia. On the contrary, most segregated Roma settlements face similar issues, such as housing problems, unemployment, limited access to healthcare, or education. The plaintiffs consider the current situation to be appalling, especially given that it exists in a European Union country in the 21st century. The mayor's "concerns" that the water bills would not be paid are based on prejudice, serving only as an excuse for the municipality's inaction, and cannot justify the discriminatory behavior. According to Section 11, Paragraph (2) of the ADZ: "The defendant is obligated to prove that the principle of equal treatment was not violated if the plaintiff presents facts that reasonably suggest that such a violation occurred." The plaintiffs base their claims that the defendant violated the principle of equal treatment due to their membership in an ethnic group on the aforementioned facts and evidence. Under the cited provision of the ADZ, the burden of proof should shift to the defendant to demonstrate the opposite. The plaintiffs believe that the facts described in this case are so serious that the issuance of a preliminary injunction is justified. The plaintiffs' homes are not connected to the water supply, which causes difficulties in their daily lives. Water is necessary for personal hygiene, cooking, washing, and, of course, drinking. Its lack infringes upon their fundamental rights. Moreover, the Roma settlement's homes are the only ones not connected to the water supply, which raises reasonable suspicions of possible discrimination. The plaintiffs are therefore seeking a temporary adjustment of the conditions until the court rules on the merits of the case. The requested amount of water is based on the minimum daily amount per person as determined by the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation.

3. From the request for connection to the drinking water source dated April 17, 2018, the court found that the plaintiffs had asked the defendant to provide drinking water for their residences.
4. Pursuant to Section 324, Paragraph 1 of Act No. 160/2015 Coll., the Code of Civil Procedure (hereinafter "CSP"), the court may, upon request, issue a preliminary injunction before the commencement of proceedings, during the proceedings, or after their conclusion.
5. Pursuant to Section 325, Paragraph 1 of the CSP, a preliminary injunction may be issued by the court if it is necessary to immediately adjust the conditions or if there is a concern that enforcement might be endangered.
6. Pursuant to Section 326, Paragraph 1 of the CSP, in addition to the formal requirements of the complaint under Section 132 of the CSP, the request for a preliminary injunction must contain a description of the decisive facts justifying the need for an immediate adjustment of conditions or the concern that enforcement might be endangered, as well as a description of the facts credibly proving the justification and duration of the claim to be protected. It must also clearly indicate the type of preliminary injunction being sought by the claimant.

7. Pursuant to Section 326, Paragraph 2 of the CSP, the claimant must attach to the request any documents referred to in the submission.
8. Pursuant to Section 327 of the CSP, if the request for a preliminary injunction does not meet the prescribed requirements, is unclear, or is vague, the court will reject such a request if the deficiencies prevent further proceedings; the provisions on remedying deficiencies in submissions do not apply.
9. Pursuant to Section 132, Paragraph 1 of the CSP, in addition to the general formalities of the submission, the complaint must include the identification of the parties, a truthful and complete description of the decisive facts, the designation of evidence to prove them, and the claim itself.
10. Pursuant to Section 132, Paragraph 2 of the CSP, the description of decisive facts cannot be replaced by references to designated evidence.
11. Pursuant to Section 132, Paragraph 3 of the CSP, the plaintiff shall attach evidence to the complaint if its nature permits, except for evidence that the plaintiff is unable to attach through no fault of their own.
12. Pursuant to Section 329, Paragraph 1 of the CSP, the court may decide on a motion for a preliminary injunction without a hearing, without the parties' statements, and without ordering a trial.
13. Pursuant to Section 331, Paragraph 1 of the CSP, the court delivers the motion for a preliminary injunction to the other parties only along with the resolution granting the preliminary injunction. If the motion is dismissed or rejected, the resolution and any appeal by the plaintiff are not delivered to the other parties; the appellate court's resolution will only be delivered to them if the preliminary injunction is granted.
14. Pursuant to Section 331, Paragraph 2 of the CSP, the court must send the resolution on the preliminary injunction no later than three days after its issuance.
15. Pursuant to Section 325, Paragraph 1 of the CSP, a preliminary injunction may be issued by the court for two reasons: if it is necessary to immediately adjust the conditions or if there is a concern that enforcement might be endangered. Section 325, Paragraph 2 of the CSP provides an illustrative list of practical applications of the institution of preliminary injunctions; the court may issue a preliminary injunction with content beyond what is explicitly listed in the Code of Civil Procedure and may also issue multiple types of preliminary injunctions. A preliminary injunction may be issued by the court before the commencement of proceedings, during proceedings, or even after their conclusion. The purpose of preliminary injunction proceedings is to achieve the fastest possible adjustment of the conditions between the parties in situations where they are not already regulated and need to be addressed. The urgency required in decisions concerning preliminary injunctions places greater demands on the substantiation of the claims in the motion, so the need for the requested urgent adjustment can be considered proven; the court generally does not conduct evidence proceedings in the same scope as in the main case, and decisions on preliminary injunctions are usually made without a hearing, statements from the parties, or a trial.
16. In this case, the court acted and decided on the submitted motion for a preliminary injunction as a motion filed during the course of the main proceedings.
17. After reviewing the plaintiffs' submission regarding the preliminary injunction, the court concluded that although the submission contains a factual and legal description of the

decisive circumstances of the case, the claim (petit) is not sufficiently specified to be enforceable. Therefore, the court had no option but to reject this submission in accordance with Section 327 of the CSP.

18. For completeness, the court states that the plaintiffs' submission does not meet the fundamental requirement under Section 132, Paragraph 1 of the CSP, as it does not include an enforceable claim. Although the plaintiffs requested the court to obligate the defendant to provide the plaintiffs with drinking water in the amount of at least 20 liters per person per day, the court considers this definition of the claim incomplete, unclear, vague, and inaccurately formulated for enforcement purposes. The court believes that the claim (petit) is not sufficiently specified, particularly regarding precise time definitions (it is not sufficient to state just "day") and the identification of the entitled persons to whom the defendant must provide drinking water (it is also not sufficient to state just "person"). Furthermore, it is unclear how the defendant should ensure this water supply. While the claim itself is understandable, as it is clear what preliminary injunction the plaintiffs are seeking, the court has found that the claim as formulated in the motion is not enforceable.
19. Based on the above, the court, following Section 327 of the CSP, rejected the plaintiffs' motion, as it found deficiencies that prevent the continuation of the proceedings.
20. The plaintiffs may seek the protection of their endangered right again, but only on the condition that the motion contains all the necessary requirements, particularly that the claim for which judicial protection is sought is precisely and clearly formulated in a manner that makes it enforceable.

Notice:

An appeal against this resolution may be filed within 15 days from the date of its delivery at the District Court of Piešťany, in writing, in two copies.

The appeal may be filed by the party against whom the decision was issued. An appeal solely against the reasoning of the decision is not permissible.

In addition to the general requirements of the submission, the appeal must specify the decision being challenged, the extent to which it is contested, the reasons why the decision is considered incorrect (appeal reasons), and the relief sought by the appellant (appeal request).

Each submission must clearly indicate the court to which it is addressed, the party submitting it, the matter it concerns, the purpose of the submission, and it must be signed. If the submission is made in ongoing proceedings, it must also include the case file number of the proceedings.

The appellant may extend the scope of the challenge only until the expiry of the time-limit for lodging an appeal.

An appeal may be brought only on the ground that

- a) the procedural conditions were not met,
- b) the Court, through incorrect procedural conduct, prevented a party from exercising their procedural rights to such an extent that it resulted in a violation of the right to a fair trial,
- c) a disqualified judge or incorrectly composed Court made the decision,
- d) the proceedings have another defect that could have resulted in an incorrect decision on the merits,
- e) the Court of first instance did not carry out the proposed evidence necessary to determine the decisive facts,
- f) the Court of first instance, based on the evidence presented, came to incorrect factual findings,

- g) the established factual state is not sustainable because further means of procedural defense or further means of procedural attack, which were not applied, are admissible, or
- h) the decision of the Court of first instance is based on an incorrect legal assessment of the case.

The grounds of appeal and the evidence in support thereof may be amended only until the expiry of the time-limit for lodging an appeal.

Means of procedural attack or means of procedural defence which were not relied on in the proceedings before the Court of first instance may be relied on in an appeal only if

- a) they relate to procedural conditions,
- b) they relate to the disqualification of a judge or incorrect composition of the Court,
- c) they are intended to prove that there were defects in the proceedings that could have resulted in an incorrect decision on the merits, or
- d) the appellant could not, through no fault of their own, apply them in the proceedings before the Court of first instance.