

**General Comment No. 1/2020 of the Minority Ombudsman
on the preservation of the nationality cultural values of the Old Swabian Cemetery
(Neufriedhof) in Zsámbék**

The Minority Ombudsman received a complaint about the difficulties of maintaining the Old Swabian Cemetery (Neufriedhof) in Zsámbék. The complainant complained about the work on the cemetery, which he said might pose a risk of the graves being destroyed and demolished. The petitioner turned to the Minority Ombudsman in order to preserve the historical and ethnographic heritage and the cultural objects of the German nationality in Hungary.

According to the Fundamental Law of Hungary and the Act CXI of 2011 on the Commissioner for Fundamental Rights (Ajt.), it is the primary duty of the Minority Ombudsman to monitor the enforcement of the rights of nationalities living in Hungary, to provide regular information on the experience gained in this field and to raise the awareness of the general public and of the affected institutions to the threats of the injuries of the rights of nationalities. The Minority Ombudsman may, in the performance of her duties, issue a general comment. The comment is intended to draw the attention of the legislator and the public to the importance of taking steps to safeguard the individual and collective rights of the members of national minority communities, to the situations and practices which threaten to undermine fundamental nationality rights or equal treatment, and to highlight good practices that serve the more efficient enforcement of the nationality rights.

On the basis of a complaint concerning the graves of the Swabian Old Cemetery in Zsámbék, the Minority Ombudsman initiated an investigation, which concluded with a general comment. During her investigation, the deputy commissioner contacted the municipality notary of the Town of Zsámbék, the parish priest of the Roman Catholic Parish of Zsámbék, and the head of the office of the Budakeszi District Office of the Pest County Government Office, she personally visited the Swabian Old Cemetery in Zsámbék, and she had a personal meeting with the parish priest of the Roman Catholic Parish of Zsámbék.

The general comment refers to the comprehensive review concluded in 2010 by the Parliamentary Commissioner for National and Ethnic Minority Rights on the implementation of minority cultural rights and the resulting report (Cultural Report), which also concerned nationality cemeteries. It discusses the affiliation of Zsámbék with the traditions of the German nationality, the general presentation of the cemeteries in Zsámbék, and it gives a detailed overview of the relevant domestic legal environment and the fundamental rights aspects of the case.

Based on the information received from the requested institutions, it was established that there are five cemeteries in Zsámbék: four maintained by the Roman Catholic Parish in Zsámbék and one by the Zsámbék Jewish Community. The Swabian Old Cemetery, owned and maintained by the Roman Catholic Church, has been discontinued for burial since 1986. Most of the tombs date from the late 1930s. Families care only for 5-6 of the nearly 200 graves to this day.

On the request of the Minority Ombudsman, the Budakeszi District Office of the Pest County Government Office, as the competent authority for the supervision of the tasks related to the maintenance and operation of the cemetery, carried out an on-the-spot inspection at the

Swabian Old Cemetery. According to the inspection, the Old Cemetery had undergone preparatory earthworks and landscaping work on fence construction and chemical weed control. The owner of the cemetery tried to protect the gravestones by painting and preventing the tilts. The maintainer's representative, the local parish priest, informed the deputy commissioner that work on the cemetery had begun just to preserve the values that still existed. The aim was to preserve the unified image of the cemetery and to provide a worthy visit to the cemetery. The Parish made great financial sacrifices and strives to make the Neufriedhof a worthy memorial place. However, the lack of equipment and capacity poses a major challenge for the preservation and care of the more than 200 graves of the Old Cemetery. The municipality is a fully cooperative partner in the preservation of the Neufriedhof. In addition, non-governmental organizations have helped cleaning the cemetery.

The Act CLXXIX of 2011 on the Rights of Nationalities (Njt.) states that Hungary shall guarantee the rights of national minority communities to keep their events and festivals undisturbed, to preserve, to maintain and to transmit their architectural, cultural, religious and religious monuments, traditions and to use their symbols. Cemeteries are also places of remembrance for earlier generations, and therefore they play an important role in maintaining the sense of nationality identity of those who live in the settlement and also of those, who moved to other places. For the German nationality community of Zsámbék, the Swabian Old Cemetery (Neufriedhof) has been an important link between the settlement and the thousands of people and their descendants who had been displaced to Germany, especially as in the cemetery there are many tombs and tomb-marks created before the displacement of Germans from Hungary.

The on-site visit and the information received proved that the local German community is consciously committed to upholding its nationality traditions and to preserving their values. They also receive help from local NGOs and the Catholic parish priest of Zsámbék, with whom they have developed very good and effective cooperation over the past decades. The Minority Ombudsman pointed out that the fact that the owner of the Catholic Church in recent decades had not intended to officially close the cemetery and to empty the graves, but also to mark the graves, was a great help in preserving the local heritage of the German minority.

In her resolution, the Minority Ombudsman stated that nationality cemeteries, cemetery sections, graves and gravestones are part of our cultural heritage, even if they are not under historic or local protection. The culture of national minority communities still represents an added value today, the research, documentation and preservation of which is a shared responsibility for future generations. Despite the good intentions, it is difficult to preserve the significant nationality values of the examined church-maintained cemetery. The maintenance of the graves of the German minority community is the responsibility of the cemetery maintainer, which cannot be fully met alone, and the tasks of its preservation cannot be the sole responsibility of the Roman Catholic Church.

The Minority Ombudsman is convinced that the problems in the Old Cemetery could only be addressed with the cooperation and joint responsibility of the relevant bodies. In general, she indicated that the protection of nationality cemeteries could not be achieved without the involvement of the local population, local governments, nationality communities and their representatives, the owners, maintainers of the cemeteries and the competent authorities of the Hungarian state.

On the basis of the above, with respect to the Swabian Old Cemetery (Neufriedhof) of Zsámbék, the Minority Ombudsman asked the body of the members of the German Nationality Self-Government of Zsámbék to initiate – together with the cemetery owner, the Roman Catholic Church, the local government and the local nationality NGOs, and involving the National Self-government of Germans living in Hungary and, as necessary, the Prime Minister's Office, Deputy State Secretariat for Architecture and Construction – substantial steps and measures for the future preservation of the irreplaceable nationality values and material relics of the Zsámbék cemeteries, in particular of the Swabian Old Cemetery.

In view of the complexity and the general national nature of the subject matter covered by the general comment, the Minority Ombudsman asked the Association of National-level Nationality Self-Governments to consider creating a database accessible to all, containing information on Hungarian cemeteries and tombs that are significant to the nationalities. She also recommended that the Parliament's Committee for the Nationalities living in Hungary, with the involvement of the Prime Minister's Office, Deputy State Secretariat for Architecture and Construction, should review the current status, legal regulations, possible deficiencies of the cemeteries' nationality architectural and material heritage, and initiate a consultation about preserving the functioning or closed graveyards of the nationality communities as well as their tombs worth preserving, but threatened by perish.

The Minority Ombudsman requested the Prime Minister's Office, Deputy State Secretariat for Architecture and Construction to support the implementation of the principles set out in the general comment by making available and transferring data and information, preparing expert materials, organizing consultations, professional discussions and by providing experts.