

SUMMARY

General Comment no. 2/2022 of the Minority Ombudsman on the examination of infringement procedures and other sanctions for school absence

An NGO has requested the intervention of the Commissioner for Fundamental Rights because of a disproportionate number of infringement proceedings for unjustified school absences in a municipality in Borsod-Abaúj-Zemplén county. This practice, according to the organisation, has targeted families with many children, living in extreme poverty, most of them of Roma origin, who often have serious difficulties in paying the fines, and the conversion of unpaid fines into detention has also endangered the care and provision of their children. In addition to the general complaint, the petitioner also asked for an investigation into a family with several children, as the mother of ten children had been the subject of 17 infringement proceedings during the period under review.

The Minority Ombudsman launched an investigation into the case, which also raises systemic problems. The Minority Ombudsman also investigated the background and the consequences of the large number of infringement procedures initiated for unjustified school absences. She also examined the effectiveness of the complex system of sanctions for offences and child protection in response to parents' failure to comply with compulsory school attendance and its contribution to successful completion of schooling and the prevention of early school leaving, i.e. early school leaving.

Drawing on the experience of the specific case presented in the resolution, the Minority Ombudsman also highlighted the specific problems of schooling in general in severely disadvantaged and peripheral areas, especially for Roma children. On the basis of the problems and shortcomings identified, she set as a priority the initiation of research, studies and professional dialogue which, together, would allow a systemic overview and analysis of this complex issue.

The Minority Ombudsman pointed out in her general comment that the village concerned is one of the most disadvantaged settlements in Hungary, with a large Roma population, and that the primary school and the day school concerned are almost exclusively attended by Roma children. The Minority Ombudsman noted that children in all the primary school's places of work are taught in segregated conditions, so that, in addition to segregation, there may also be educational problems which may result in a lack of quality education. Despite the best intentions and efforts of teachers, primary schools with a predominantly Roma population are often characterised by a lower quality of education than professional standards, as a result of spontaneous selection. However, given that the Minority Ombudsman did not specifically examine the quality of education in the context of the present statement of principles, she only listed by way of example the problems and circumstances which make the effectiveness of the education work in the places of assignment difficult.

In the Minority Ombudsman's view, the issue of truancy goes well beyond the issue of school absenteeism in terms of how to deal with the problem and the consequences. Unjustified absenteeism is highest among children whose families are socially disadvantaged, for whom the only way out of extreme poverty and unemployment would be to complete their education

and obtain further education or vocational training. The available information therefore clearly indicates that the problem of criminal sanctions related to unexcused absences affects disadvantaged families, including Roma families, to a greater extent.

The general comment also points out that the system of sanctions applicable to families from poor social backgrounds in order to comply with compulsory schooling, in particular the suspension of family allowances, the payment of fines for infringements and the exclusion of parents from public employment, causes serious financial problems. The specific contradiction of the legislation is that measures taken in the best interests of children can hinder their safe, healthy physical and psychological development. By seeking to treat truancy as a punitive sanction, the legislation also deprives parents of the support they need to ensure children's rights, thereby jeopardising children's rights.

In her opinion, the Minority Ombudsman came to the general conclusion, confirmed by the lessons of the specific complaint case, that the legal environment for dealing with truancy, while setting out mandatory standards and sanctions for all, is still particularly disadvantageous for a well-defined social group. The families most affected are those living in extreme poverty, usually with many children and deprived in all respects, and with an over-representation of Roma ethnicity. Inevitably, the question arises as to whether, if the available indicators show that punitive measures as a whole are not effective in addressing the problem of truancy, do not effectively reduce it and do not serve the intended purpose, then their continued use does not lead to indirect discrimination against Roma and other disadvantaged groups.

One of the biggest challenges for schools in segregated, disadvantaged areas is to promote successful completion of schooling and prevent early school leaving.

On the basis of the concrete and systemic irregularities revealed in the case, the Minority Ombudsman made a number of recommendations at both local and national level.

She asked the head of the competent School District Centre to launch an investigation and research in cooperation with the Education Office - with the involvement of all authorities and institutions concerned - into the causes and background of the high number of unauthorised absences of pupils in the settlement concerned in the past five years, and why the highest number of infringement proceedings against Roma parents were initiated in this settlement at district level in recent years. In view of the reasons identified, she also proposed to develop a package of measures to encourage parents, families and pupils concerned to comply with compulsory school attendance and to prevent early school leaving, through positive, modern, student-centred educational and training tools and cooperation in the framework of the public education and child protection system.

In her general comment, the Minority Ombudsman also suggested that, before criminal sanctions are applied, more effective, longer-term family care in the framework of basic care should be applied first, followed by a protective placement if this is not successful. If the official child protection measures in the framework of basic care are not successful, sanctions aimed at enforcing compulsory school attendance should only be applied afterwards, on the basis of a signal from the guardianship authority. This would leave more chances to address and change the circumstances of unjustified school absences in disadvantaged families until sanctioning measures are introduced, which of course requires the frequent personal presence of a family

support worker and the development of a consistent, well thought-out support process, as well as the development of a family- and individualised care plan.

In the Minority Ombudsman's view, it is also essential to review and analyse the measures related to compulsory education, in particular the decades of experience of the punitive sanctions system, with a special focus on the rights and interests of disadvantaged Roma children living in deprived and depressed areas.

The Minority Ombudsman considers it worth reconsidering the increase in the number of hours of unexcused absence required to constitute an offence in the case of offences related to the provision of compulsory education and the suspension of family allowances. At the same time as strengthening and extending support and assistance measures, it is proposed to abolish the use of exclusion from public employment as a sanction. On this basis, the Minority Ombudsman also considers it necessary to initiate amendments to the relevant legislation. In connection with the proposals put forward, she contacted the State Secretary for Public Education of the Ministry of Human Resources.

The full text of the general comment is available here in Hungarian.