

CASE LAW MOSAIC

QUARTERLY INFORMATION BULLETIN OF THE DEPUTY COMMISSIONER FOR THE PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES IN HUNGARY, 2021/4

Complaint about the apprehension of a witness in an offence procedure

A Roma national complainant, who was apprehended for questioning as a witness in an offence case, complained that two police officers had made remarks about the complainant's ethnic origin and that, although he had been able to call his girlfriend, he had later repeatedly reported in vain that his sick child was at home without supervision, but had not received any help. The complainant found it disheartening that members of a police station in a small community should show such prejudice towards people of the local ethnicity.

In relation to the offence proceedings, the Minority Ombudsman noted that the proceedings against the unknown offender should have been terminated by the offence authority even before the complainant was ordered to appear as a witness, due to the statute of limitations, as six months had elapsed since the offence was committed. According to the Code of Administrative Offences, the limitation period is interrupted only by procedural measures taken against the person prosecuted for the offence. However, in proceedings against an unknown offender, in the absence of a person being prosecuted, it is conceptually impossible for the limitation period to be interrupted, since "procedural acts against the person being prosecuted" cannot be considered in such cases. The order to bring the complainant before the courts was therefore unlawful.

The Minority Ombudsman also found that, apart from the police reports and the release certificate, **there was no documentary evidence of the detention of the complainant** who was brought before the police and detained at the police station, and that the documentation of the detention did not comply with the legal requirements and did not allow for a subsequent verification of the conditions of detention. In his reply, the National Police Commissioner stated that most of the basic data on detention had not been recorded at all and therefore agreed with the Minority Ombudsman's findings.

The Minority Ombudsman noted that, at the time of the apprehension, the complainant's children were under the supervision of an adult who had been informed by the complainant of the apprehension. This adult would have been able to arrange for the supervision of the child if necessary by notifying the child's relatives. The Minority Ombudsman therefore considered that **there were no circumstances excluding the apprehension of the complainant.**

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On the basis of the police reports following her request, the Minority Ombudsman found that the **statement by the head of the Police Division** that the complainant "should really appreciate the gesture of the police officer, as he had lent to the detainee his own telephone to exercise the right of access" **was unacceptable**. The provision of the "right to be notified" to detainees is not a gesture, but a legal obligation on the police, which must be fulfilled without undue delay.

The making of the statements complained of by the complainant could not be subsequently proven, as they were denied by the persons concerned, but the Minority Ombudsman found that the tone of the police reports clearly indicated that the attitude of some members of the police station towards the complainant and his family could not be considered in any way impartial.

The National Police Commissioner also agreed that the reports did not meet the requirements of objectivity and impartiality and stressed that the police should pay particular attention to pay full respect of the legal guarantees for the implementation of police measures.

The county police chief **ordered training on the handling of the complaint, with particular attention to the requirement of non-biased communication** and the development of a jurisprudence based on the respect of the rules of guarantee in the context of detention.