

SUMMARY

Joint Report of the Commissioner for Fundamental Rights and the Minority Ombudsman in case AJB-1627/2023

In the summer of 2021, the German Nationality Self-government of Üröm (hereinafter: German Self-government) filed a complaint with the Office of the Commissioner for Fundamental Rights, complaining that the Municipality of Üröm (hereinafter: Municipality) had violated the right of consent of the German Self-government on several occasions during the appointment of the head of the Üröm Kindergarten (hereinafter: Kindergarten).

In view of the suspicion of a violation of fundamental rights in the case, the Commissioner for Fundamental Rights and the Minority Ombudsman launched an investigation, in the framework of which they contacted the head of the Pest County Government Office and the Mayor of Üröm several times.

The background of the case is that the Council of the Municipality first announced a call for applications for the head of the Kindergarten, which is a national public education institution, in the spring of 2020. After the first tender was declared invalid, the Municipality's body of representatives took several decisions in order to temporarily secure the management of the Kindergarten, which violated the right of consent of the German Self-government and other legal provisions. The Pest County Government Office initiated a legal supervisory procedure against the measures of the Municipality, as a result of which it found that the decisions of the Municipality infringed the law and issued several legal notices. Finally, following a repeated, but unsuccessful, appeal, the Pest County Government Office challenged the decision of the Municipality's Board of Representatives disregarding the right of consent of the German Self-government in an administrative action before the Budapest District Court.

In its judgment, the Budapest District Court found a violation of the right of consent of the German Self-government and annulled certain provisions of the Municipality's unlawful decision.

The Commissioner and the Minority Ombudsman, on the basis of the available documents and decisions of the legal authorities, found that in the procedures for the appointment of the head of the Kindergarten, which is a public education institution of national minority status, the representative body of the maintaining Municipality had failed to obtain the consent of the German Self-government on several occasions, and had disregarded the different decision of the German Self-government, which it had indicated in the context of the exercise of its right to consent. As a consequence, a head of institution was appointed whose appointment was not subject to the right of consent or agreement of the German Self-government.

In their joint report, the Commissioner for Fundamental Rights and the Minority Ombudsman concluded that the decisions of the Municipality violated the right of consent of the German Self-government, which is rooted in fundamental rights, and the requirement of legal certainty derived from the rule of law, as well as the principle of the constitutional bodies' duty of good faith cooperation.

Furthermore, the action of the body of representatives of the local government directly endangered the predictable and stable operation of the Kindergarten, which is a national minority public education institution, in violation of the fundamental right of the children concerned to a national minority education. The unlawful actions and omissions of the Municipality over the years have resulted in an abuse of national minority rights and the requirements derivable from the rule of law.

Among his findings, the Commissioner for Fundamental Rights and the Minority Ombudsman stressed that the resolute and consistent action of the relevant law enforcement

bodies – the Pest County Government Office and the Budapest District Court – against violations of national minority rights in the context of the case can be positively assessed.

Finally, in order to eliminate and prevent future abuses of fundamental rights and constitutional principles identified in the joint report, the Commissioner and the Minority Ombudsman called upon the Mayor and the Clerk of the Municipality of Üröm to ensure that in the future, when preparing decisions on the appointment of the head of the Üröm Kindergarten, the legal requirements are met, to act in accordance with the legal provisions, taking into account the time limits for the exercise of the right of consent, and to ensure that the right of consent is exercised by the German Self-government at all stages of the procedure, in good faith cooperation and, where necessary, through repeated consultations, allowing for the mutual consideration of the various interests. The head of the Pest County Government Office was requested to promote the enforcement of national minority rights in Üröm, in particular the exercise of the right of consent of the German Self-government, by the effective and full use of the legal supervisory instruments at his disposal.