

Summary

Joint Report by the Commissioner for Fundamental Rights and the Deputy Commissioner for the Protection of the Rights of Nationalities in Hungary in connection with the ordering of a local referendum on a primary school providing nationality education

in the case No AJB-523/2021 (AJB-6545/2020)

A resident of Kisoroszi filed a complaint that the Municipality of Kisoroszi ordered a local referendum on the question "Do you support the transfer of the Kisoroszi primary school to the Roman Catholic Church?". The petitioner explained that both the Áprily Lajos Primary School and Elementary Art School in Visegrád and the Kisoroszi branch of the Áprily Lajos Primary School in Visegrád (hereinafter referred to as the "Branch School") provide German nationality language teaching. The current maintainer of the institutions is the Vác School District Centre.

In the petitioner's view, if a valid and successful local referendum is held on the above question and more than half of the voters who cast a valid vote on the question formulated give the same affirmative answer, there is a possibility that the Municipality of Kisoroszi may take steps to change the maintenance provider of the Branch School. The complainant feared that if the referendum on the above question were to result in a change of the maintenance provider, the right of persons of German nationality to education in their mother tongue could be violated.

The Commissioner for Fundamental Rights and the Minority Ombudsman opened an investigation into the suspected abuse of nationality rights in the case. In the framework of the investigation, the mayor of the Municipality of Kisoroszi, the director of the Vác School District Centre and the president of the Visegrád German Nationality Self-Government were contacted.

In their proceeding, the Commissioner and the Minority Ombudsman found, first of all, that under the legal provisions in force, primary school education is not a matter falling within the competence of the municipal government, and does not fall within the scope of local public affairs and local public tasks that may be provided locally.

In the opinion of the Commissioner and the Minority Ombudsman, it is incompatible with the constitutional function of local referendums and at the same time infringes the requirement of the good faith and proper exercise of law, and thus the principle of legal certainty arising from the rule of law, if, without any real intention of placing the local political community in a decision-making position, a local referendum is initiated on a subject-matter in which the municipal government has no competence and authority, consequently would be impossible for the local government to implement the decision made in the question put to the local referendum.

In their joint report, they pointed out that the local referendum ordered on the issue indicated in the petition cannot fulfil the constitutional function of the legal institution, since the local government would not be able to adopt a regulation or a resolution in accordance with the decision of a valid and successful local referendum, due to the lack of competence.

With due regard to the above, the Commissioner for Fundamental Rights and the Minority Ombudsman have concluded that the local government, by initiating and ordering the local referendum on the issue indicated in the petition, has caused an irregularity related to the requirement of legal certainty deriving from the rule of law.

In their opinion, the procedure of the municipality did not directly affect the organisation and maintenance of the German nationality language teaching education in the Branch School. It did not result in a change of maintenance, and as such did not infringe the fundamental rights of persons belonging to the nationality, in particular the pupils receiving national minority education in the Branch School, to education in their mother tongue, or the fundamental rights of the Visegrad German Nationality Self-Government to nationality self-government and educational self-government, or entail an imminent risk of infringement of those rights. Nevertheless, the organisation and maintenance of nationality education, provided that the prescribed statutory conditions are met, is compulsory under the current legislation even in the event of a change of provider.

However, the Commissioner and the Minority Ombudsman consider that at local level, even if the organisation and maintenance of primary education is not the responsibility and competence of the municipality, it is of paramount importance to get the views of local residents on this issue. In this respect, they considered it important to present in their joint report alternative means of learning about the opinion of the local political community.

The Commissioner for Fundamental Rights and the Minority Ombudsman called on the Local Government of Kisoroszi and the Mayor of Kisoroszi to use alternative legal instruments – regulated by the Act on Local Governments of Hungary and the Decree of the Local Government – to obtain the opinion of the local population in order to remedy the anomaly identified. In the case of initiating or ordering local referendums, they should pay special attention to the requirement of compatibility with the constitutional purpose of local referendums and only initiate or order local referendums on issues falling within the scope of the duties and powers of the local government.

In addition, the Commissioner and the Minority Ombudsman requested the Head of the Vác School District Centre to initiate consultations with the Municipality of Kisoroszi and the Visegrád German Nationality Self-Government in order to resolve the issues related to the future of the Branch School and the transfer of its maintenance rights in a satisfactory and conflict-free manner for all stakeholders concerned.