

SUMMARY

Joint Report of the Commissioner for Fundamental Rights and the Minority Ombudsman in case AJB-1698/2023

In the spring of 2023, the former president of the Kismányok German Self-government (hereinafter referred to as the " German Self-government ") and its former representatives submitted a complaint to the Office of the Commissioner for Fundamental Rights, complaining about what they considered to be extremely poor cooperation between the German Self-government and the Municipality of Kismányok (hereinafter referred to as the "Municipality"), and the lack of cooperation, which, in their opinion, ultimately led to the dissolution of the German Self-government.

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 Mayor of Kismányok, the notary of the Nagymányok Municipal Office and the head of the Tolna County Government Office.

As regards the background of the case, the Commissioner and the Minority Ombudsman stated that the difficulties in cooperation between the Mayor of the Municipality of Kismányok and the former President of the German Self-government were mainly due to personal conflicts.

According to the information received, the former president of the German Self-government received invitations to the meetings of the Municipality's body of representatives in due time before the meetings, which he attended. In the letters of reply to the inquiries, it was also informed that the former President of the German Self-government was entitled to exercise his rights of information, consultation and initiative under the Act on Nationalities within the framework of the provisions of the laws and the organisational and operational rules of the Local Government. In order to exercise these rights, the former President of the German Self-government was sent the agenda items on which he had the rights under the Act on Nationalities.

In relation to the case, it is positive that the Tolna County Government Office provided professional assistance to the relevant bodies on several occasions in the context of the content of the applicable legislation, with a view to its lawful operation.

The Commissioner and the Minority Ombudsman did not fully agree with the interpretation of the Tolna County Government Office regarding the scope of participation rights and the right to deliberate, according to which it can only be exercised in a narrow manner, in matters directly affecting the rights and activities of the national minority community. In their view, maintaining the findings of earlier cases with similar content, the concept of a matter affecting a given nationality should be interpreted as broadly as possible in the interests of the national minority population living in the municipality, since a significant number of the issues to be discussed at the meetings of the body of representatives and committees of the municipality necessarily affect the national minority communities of the municipality.

The question arose whether the narrow interpretation of the law by the head of the Tolna County Government Office, according to which his legal supervisory authority does not extend to disputes concerning the cooperation and contractual relations of local governments and national minority self-governments, can be maintained. In the view of the Commissioner and the Minority Ombudsman, that obligation can be clearly inferred from the provisions of the Act on Local Governments and the Act on Nationalities, but the head of the Tolna County Government Office failed to do so.

On the basis of the documents available, the Commissioner for Fundamental Rights and the Minority Ombudsman found that there were difficulties in cooperation between the Mayor

of the Municipality of Kismányok and the former President of the German Self-government, their actions and omissions in this context, and the failure of the Tolna County Government Office to take measures to promote cooperation between the bodies concerned, had resulted in the infringement of the right of the German minority community living in the settlement to self-government and the exercise of its nationality rights, and in an abuse of the rule of law.

In order to eliminate anomalies that violate the enforcement of national minority rights, legal certainty and the requirement of mutual cooperation between constitutional bodies, the Commissioner and the Minority Ombudsman considered it necessary to request the Mayor of the Municipality of Kismányok to ensure that the body of representatives of the Municipality of Kismányok will in future be responsible for local public affairs, to pay particular attention to the effective enforcement of the rights of the German minority community living in the municipality, in accordance with their interests, in the performance of local government tasks and in the preparation and adoption of decisions relating to these tasks, in particular with regard to the dissolution of the German Self-government.

Furthermore, the Commissioner for Fundamental Rights and the Minority Ombudsman requested the head of the Tolna County Government Office to take action against the Municipality of Kismányok in justified cases, using the full range of legal supervisory tools at his disposal, in order to prevent and promptly eliminate any possible irregularities involving violations of national minority rights. They also considered it important that the Tolna County Government Office, in its legal supervisory powers, should detect any difficulties in cooperation between local governments and national minority self-governments operating in its area of jurisdiction, should endeavour to resolve these conflicts as far as possible by using the means at its disposal, in particular by organising consultations.