

**General Comment No. 5/2020. of the Minority Ombudsman
on statements insulting the German nationality community, the need to take action
against hate speech and the possibilities for taking action against harmful content on
video-sharing platforms**

The Minority Ombudsman obtained information ex officio and then through complaints that on 19 January 2020 in the live broadcast under the title “Hajónapló” (meaning “ship diary”) launched by the Petőfi Literary Agency established by the Petőfi Literary Museum (PIM), the participants conversed in an unacceptable way about the German nation, the German ethnic community in Hungary and the liquidation of their members, violating their human dignity.

At the end of the eight-hour program, in the block entitled “Gumiszoba” (meaning “seclusion room”) a conversation took place in which the presenter and his guests laughingly discussed, among other things that the German people were a “breed” that – in their opinion – “*can only march and kill.*” The programme portrayed individuals belonging to the German people as a homogeneous group whose members murder without thinking, whose folk music heritage is one-sided, whose folk tales are interspersed with child murders; one invited guest claimed that it had been “*a big mistake not to destroy them completely at the time*”.

The statements made on the program deeply offended the members of the German nationality community and their human dignity. They also capable of inciting anger or even hatred towards members of the German nationality community. All this was made even more insulting by the fact the program had been broadcast on the day we remembered one of the most painful and tragic events in the history of the German community in Hungary, the deportation of the Germans.

On January 23, 2020, the “Gumiszoba” block of the Hajónapló programme continued. As the first broadcast had provoked a number of protests, in the second part, disguised as an apology, the participants continued to ridicule the German community and some of its members for more than half an hour.

The German community, the Government and many representatives of the political parties condemned what was said in the programs. The Minority Ombudsman personally consulted with representatives of the nationality community, the Commissioner for Fundamental Rights, and requested information from the Secretary of State for Culture of the Ministry of Human Capacities (EMMI), the President of the National Media and Communications Authority (NMHH) and the Attorney General. In addition to contacting official state bodies, the Minority Ombudsman issued a statement following the events, drawing attention to the need for strong action against hate speech.

In General Comment No. 5/2020, the Minority Ombudsman describes in detail the replies she received from the various state bodies contacted, presents the domestic possibilities for combating harmful content on video platforms, and draws attention to the fact that action against various hate incidents is essential in all cases, even if the incident does not reach the level of a criminal offence.

In connection with the case, the President of the NMHH informed the Minority Ombudsman that the NMHH Office was competent to examine the obligations imposed by law on video-sharing platform providers, however, substantive legal rules for video-sharing platform services had not yet been adopted. However, the relevant obligation of implementation under EU law was expected to be performed by the legislator. Consequently, the NMHH did not examine the content of the relevant Youtube social media channel at the time when the

programme was made online on the merits. The president of the NMHH was of the opinion that at the time of the publication of the objected content and at the time of issuing the general comment, in the current Hungarian legal environment, only criminal proceedings could have been initiated, if committing a criminal offence was probable.

The Prosecutor General assessed and treated the request made by the Minority Ombudsman as a report of a criminal offence and sent it to the XI. district police headquarters, from where it was later transferred to the Budapest Police Headquarters (BRFK). The Prosecutor General also informed the Minority Ombudsman that an extremely low number of proceedings had been initiated in previous years for the crime of incitement against a community, for example in only five cases in 2016 and in only one case in 2019. In the letter, the Prosecutor General explained that, taking into account the interpretive and methodological aspects, in the light of the presented statistical data, it is obvious that the amendment of Section 332 of the Criminal Code, i.e. the introduction of “inciting violence” as a form of committing the crime, did not bring any substantive change in the law enforcement practice of incitement against a community. “Inciting hatred” as a form of committing the crime – although not intended by the law-maker to be the same as incitement to violence – continues to have limitations of proof and difficulties of interpretation, due to the condition of “disturbance of public order above a certain level”, as stated in the reasoning attached to the Act. According to the Prosecutor General, following the shortcomings of the regulations and the decisions of the Constitutional Court and the Curia, the authorities still interpret the conducts of committing the offence of incitement to hatred as incitement to violence, which is conditional upon a real and immediate threat of violence.

Following the reply from the Prosecutor General, in May 2020, a decision on rejecting the report of crime was received from the Anti-Corruption Crime Division of the BRFK Anti-Corruption and Economic Crime Department. According to the reasoning of the decision rejecting the report, the authority assessed whether the criminal offence of incitement against the community under in Section 332 of the Criminal Code or the offence of the public denial of the crimes of the National Socialist or Communist regimes under Section 333 of the Criminal Code were realized. As the police took the view that the suspicion of a crime was lacking in both cases, the BRFK decided to reject the crime report.

News in the press and previous statements made by the director of the Petőfi Literary Museum led to the conclusion that the program was organically linked to the museum's activities and could be presumed to be publicly funded. Nevertheless, the Secretary of State for Culture informed the Minority Ombudsman that, as the Director of PIM claimed that the alleged incident was only a pilot broadcast, for which the editors were responsible, the matter did not fall under EMMI's management and supervisory powers or the exercising of rights as owner, therefore the State Secretariat had no competence over what was said in the program.

In her general comment, the Minority Ombudsman states that although the operation of online video sharing platforms, social media interfaces does not in itself constitute an activity of providing public service as defined in the Act on the Commissioner for Fundamental Rights, however, the activity carried out on such platforms could be the focus of the ombudsman's procedure, provided that it is justified by the specific public function of the person making the communication or by other additional facts of the case. In the present case, the Minority Ombudsman received signals in connection with a public program that deeply offended the German nationality community and provoked anger against its members. Based on the available data, the program was organically linked to the activities of the Petőfi Literary Museum, a

museum institution providing public services under Section 3/A of the Act on Public Culture. In connection with the production of the program, and then in connection with what was said there, a number of statements were made by the director of PIM, which led to the conclusion that the museum, as an institution, was organically connected to the program, therefore it was responsible for what was said in the broadcast. Unfortunately, the subsequent dissociation by the PIM director and the contradictions regarding its previous statements were not resolved by the Secretary of State's laconic reply.

In her general comment, the Minority Ombudsman stated that what was said in the "Hajónapló" broadcasts on 19 January 2020 and then on 23 were capable of violating the human dignity of the members of the German nationality, provoking them and acting against social and public peace. In connection with the program, both the PIM's director and the participants referred to the freedom of expression, nevertheless the general comment states that any oral or written statement aimed at humiliating, harassing or excluding members of a social group and inciting to anger or violence is to be regarded as hate speech, which should not be protected by the fundamental right of the freedom of expression.

It is a positive development that, thanks to the implementation of the relevant EU directive into domestic law, the provisions of the Act on Electronic Communication in force since 12 June 2020 will allow the NMHH Office to investigate also content of concern published on video-sharing platforms in the future. In addition, the proper implementation of the directive necessitated the establishment in March 2020 by the Government within the Ministry of Justice of a Digital Freedom Working Group to examine the functioning of technology giants in terms of fundamental democratic rights, personal freedoms and the rule of law.

In her general comment in connection with the "Hajónapló" program and hate speech spread on the video-sharing platform, the Minority Ombudsman makes proposals to the Minister of Justice and the President of the NMHH.

In addition to the proposals related to the specific case, the Minority Ombudsman emphasizes in her general comment that the freedom of expression must not be accompanied by a violation of the human dignity of others and a re-emergence of fear among members of certain social groups of freely declaring and living their identity. One of the biggest challenges today is to ensure informed, unbiased and deliberate response by the members of the society to any violation of human rights, and in particular the rights of the members of ethnic communities. However, to achieve this, exemplary, committed and consistent action on behalf of the legislators and law enforcers is essential in each case when social peace and cooperation are at risk.

The Minority Ombudsman stresses that human rights education, education for tolerance and the conscious shaping of the attitude of the next generation with the aim of reducing stereotypes, prejudicial approaches and the mitigation of intergroup differences are basic requirements nowadays. The responsibility of public actors in this field is extremely high, as they can amplify the existing processes in any direction with their speeches, they can contribute to raising the standard of public discourse with their personal example and manifestations, but they can also contribute to the intensification of negative tendencies.