

**Joint report No. 672/2020. on a case affecting a German
nationality self-government of a county town, about the exercise of
the right to consent necessary for the mandate of the head of a
nationality educational institution**

The Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities issued a joint report on a case affecting a German nationality self-government of a county town, about the exercise of the right to consent required for the mandate of the head of a nationality educational institution. In the report, the Commissioner and Deputy Commissioner called on the Ministry of Human Capacities to secure the right to consent of the national self-government in relation to a specific public education matter and initiated a reconsideration of the amendment of the Act on the Rights of Nationalities with effect from 1 January 2020, regarding the right to consent.

In his complaint to the Deputy Commissioner for Fundamental Rights Ombudsman for the Rights of National Minorities, the president of the German nationality self-government of Szekszárd, objected the procedure and decision making concerning the appointment of the head of the Dienes Valéria Primary School of Szekszárd, which is a nationality educational institution. According to the complaint, the tender procedure announced for the position of the head of the institution, on the framework of which the nationality self-government agreed with the person of the applicant, was declared ineffective by the Secretary of State for Public Education of the Ministry of Human Capacities due to the rejection of the applicant. Subsequently, the Szekszárd Educational District Center failed to obtain the consent of the nationality self-government for the one-year term of office required for the unsuccessful tender procedure, and neither the chairman of the nationality self-government nor the representative body received official notification of the decision. (Subsequently, the Szekszárd Educational District Center failed to obtain the consent of the nationality self-government for the one-year term of office required in the case of an unsuccessful tender procedure, and neither the chairman of the nationality self-government nor the representative body received any official notification of the decision on the merits.)

Given the suspected violation of fundamental rights in the case, the Commissioner for Fundamental Rights and the Deputy Commissioner launched an investigation. In the course of

their proceedings, the Secretary of State for Public Education of the Ministry of Human Capacities was requested to investigate the case and provide detailed information about it.

The Commissioner for Fundamental Rights and the Deputy Commissioner found that during the procedures of appointing the head of the nationality education institution involved in the complaint, contrary to the rules laid down by law, they did not obtain the consent of the nationality self-government. This incident violated the exercise of nationality rights and the requirement of legal certainty deriving from the rule of law.

In addition to the specific case, the report dealt separately with the amendment to the right of consent introduced on 1 January 2020. From 1 January 2020, in the Act on the Establishment of Single-Stage District Office Procedures, Sections 27 and 35 of the Act on the Rights of Nationalities dealing with consent have been amended significantly differently compared to the draft sent to the Commissioner for Fundamental Rights for forming opinion on it.

The new regulation regarding the right to opinion and consent shortened the deadline to make a statement with 15 days, however they failed to give a proper explanation for this amendment. The amendment on "exclusion of silence" is also incomprehensible, it is unchanged in the relevant sections that the term for making a declaration is peremptory, so the nationality self-government does not have the option of acquitting itself in case of default. It is also a serious problem that, as a result of the amendment, there is currently no precise regulation of what to do if the nationality self-government has not given its consent within the open deadline, because it did not agree with the decision of the other party.

In view of all this, the Commissioner and the Deputy Commissioner have determined, that the amendment of the Nationality Act in force from 1 January 2020, on the right of nationality self-governments to consent in matters related to public education and ethnic cultural administration, has jeopardised the lawful exercise of nationality rights and the requirement of legal certainty deriving from the rule of law.

In order to remedy the maladministration, the Commissioner and Deputy Commissioner requested the Secretary of State for Public Education of the Ministry of Human Capacities to ensure in this particular case that: the German Nationality Self-Government of Szekszárd, according to the rules laid down by law, may exercise its right to consent at all stages of the procedure, taking in consideration the deadlines open for the exercise of the right of consent.

They also contacted the Parliamentary Committee of the Nationalities in Hungary, requesting firstly, to review the irregularities identified in the specific case, which impede the exercise of the right to consent of the nationality self-government, and the Nationality Act in force from 1 January 2020, and secondly, to formulate their position and proposal in relation to the above.

The Deputy State Secretary for Ecclesiastical and Ethnic Relations of the Prime Minister's Office was also asked to review the regulatory contradictions and shortcomings identified in the report on the amendment of the Nationality Act to the right to consent and was asked to consider, on the basis of the professional position and proposal of the Parliament's Committee of Nationalities in Hungary, the initiation of preparing a possible legislative amendment with the involvement of the Ministry of Human Capacities and, if necessary, other government bodies.