

Summary

JOINT REPORT IN THE CASE AJB-553/2021 ON THE BREACH OF THE DUTY OF COOPERATION BY THE REQUESTED BODY

The late president of the Érsekvadkert Roma Nationality Self-Government and the president of the Nógrád County Regional Nationality Self-Government submitted a joint complaint to the Minority Ombudsman concerning the closing down of the main entrance to the cemetery in Érsekvadkert and the prohibition of access by car.

The complainants were informed by the municipality that the closing of the gate was for safety reasons, due to the poor condition of the cemetery pavement, and that until the road is repaired, only pedestrian traffic is allowed. At present, the funeral home can be accessed on foot or by vehicle from another road adjacent to the cemetery, a dirt road, according to the complaint.

It was also complained that during a funeral, the bereaved family wanted to escort their deceased relative to the funeral home from the main entrance, but were unable to drive the hearse through the gate, so the funeral home staff carried the coffin on foot, hand in hand, for several hundred meters to the funeral home.

The presidents of the Roma nationality municipalities have called for an investigation into the violation of the relatives' piety right. In addition, the Commissioner and the Deputy Commissioner also learned from social media about serious problems of cooperation between the Roma Nationality Self-Government of Érsekvadkert and the municipal government.

In view of the concern of the violation of fundamental rights, the Commissioner for Fundamental Rights and the Deputy Commissioner opened an investigation into the case. In the course of their proceedings, they contacted the mayor of Érsekvadkert and requested the head of the Balassagyarmat District Office of the Nógrád County Government Office to conduct an investigation. The head of the office provided detailed information on his investigation within the deadline.

The mayor had not replied to the requests in any form, despite the requests, more than six months after the date of the joint report. Pursuant to Section 25 (1) of the Act on the Commissioner for Fundamental Rights, the head of the investigated authority, the head of the investigated authority's supervisory body, the head of the body otherwise authorised by law to conduct the requested investigation, and the staff of the investigated authority shall cooperate with the Commissioner for Fundamental Rights and his deputies in the conduct and planning of investigations in the cases specified in Section 21 (1) of the Act. Pursuant to Section 25 (2) of the Act, if the investigated authority fails to fulfill or delays in fulfilling its obligation to cooperate without good reason, the Commissioner for Fundamental Rights shall record this fact in a report and shall highlight it in his annual report.

The mayor of the Municipality of Érsekvadkert has failed to comply with his statutory duty to respond, i.e. to cooperate, without good cause.

The Commissioner for Fundamental Rights and the Minority Ombudsman stressed that they were unable to carry out a substantive investigation into the complaint concerning the piety right and the difficulties of cooperation between the Roma nationality self-government of Érsekvadkert and the municipal government due to the lack of information available.

In the light of the above, they concluded in their report that the failure to comply with their requests constituted an obstacle to the conduct of their investigation and a restriction on the exercise of their constitutional powers, which caused abuse of the requirement of legal certainty arising from the rule of law.

In order to remedy the anomaly, the Commissioner and the Deputy Commissioner, in a joint report, this time underlining the duty of cooperation, requested the mayor to provide detailed information on the requests sent to him in order to allow them to complete their in-depth investigation and to comply with his obligation to reply to their future requests in any event.

They also called on the Government Delegate in charge of the Nógrád County Government Office to use the means at his disposal to ensure that the requests of the Commissioner for Fundamental Rights and his deputies are fully complied with in a timely manner by the local authorities under investigation and all local authorities in Nógrád County.