

CASE LAW MOSAIC

QUARTERLY INFORMATION BULLETIN OF THE DEPUTY COMMISSIONER FOR THE PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES IN HUNGARY, 2021/3

Inadequate investigation of the legality and professionalism of police actions

Police action in a private home

The Roma complainant complained about police measures taken in the yard of his son's house. He alleged that the police officers, in connection with an action for a violation of the law, immediately assaulted his son and made obscene remarks about his Roma origin, then handcuffed and took him to court.

In the police reports of the measures, there was a discrepancy between the indication of the specific measures and the use of coercive means (physical force and handcuffs), the prior warning of their use and the actual description of the events, which was not detected by the station commander when he examined the legality and professionalism of the measures. The Minority Ombudsman asked the head of the police station to investigate why the discrepancies found had not been pointed out during the investigation by the commander. The Minority Ombudsman also pointed out that the report did not record the time when the complainant was handed over to the investigating prosecutor's office, thus that the actual duration of the arrest could not be established on the basis of the report.

The head of the police station fully agreed with the comments regarding the police reports. The inconsistencies and formal and substantive deficiencies in the police reports were not detected by the station commander in charge of investigating the police measures or the use of coercive means, therefore the necessary measures were taken against the station commander.

Given that the complainant also complained about the prosecution's investigation against him and his son for the crime of violence against a public official, the Minority Ombudsman also contacted the head of the Central Investigation Prosecutor's Office, on the basis of the police documents sent to her, regarding the legality of the police action taken in the private home.

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The Minority Ombudsman pointed out that, according to the law, a police officer may not enter a private home without permission or an official order, except for the purpose of producing a person who continues committing an offence despite of being called upon to stop it. In her view, the above was not the case in this particular instance, which means that the legality of the police action – the lawfulness (legal basis) of the action in the private home and thus the realisation of an element of the offence – is questionable.

She also pointed out to the head of the police station that, in her opinion, it is not in accordance with the State's constitutional obligation to protect the peace of home if the police officers – in the absence of a legal requirement of making a call to stop the offence – take action against the alleged offender on a property, whether partially or completely fenced around, which they can clearly establish to belong to the home of the person concerned and the person concerned also asks them to leave.