



DEPUTY COMMISSIONER FOR FUNDAMENTAL RIGHTS
OMBUDSMAN FOR THE RIGHTS OF NATIONAL MINORITIES

**Joint Report by the Commissioner for Fundamental Rights and the Deputy
Commissioner for the Protection of the Rights of National Minorities in Hungary
on the examination of the support of nationality public education institutions
maintained by nationality self-governments under public education contracts**

Case AJB-1268/2022

SUMMARY

At the beginning of 2022, several nationality self-governments reported to the Minority Ombudsman that they had problems with the maintenance of their nationality public education institutions due to the delay in the conclusion of public education contracts. According to them, the lack of conclusion of the next five-year public education contracts for the period 2022-2026, which expired on 31 December 2021, has caused management, mainly planning, and operational difficulties for the institutions under their maintenance. The Office has also received a specific complaint about the problem raised.

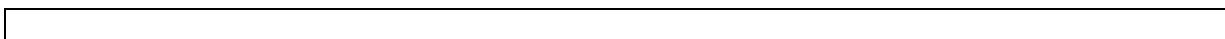
Given that the case raised suspicions of an abuse of national minority education rights and of the principle of legal certainty, the Commissioner for Fundamental Rights and the Minority Ombudsman launched a joint investigation.

As part of the investigation, the Secretary of State for Education of the Ministry in charge of public education was contacted and asked for information. In addition, experts from some nationality self-governments were consulted separately on the practical experiences and proposals of the maintainers. In their joint report, they dealt with the financing of institutions maintained by nationality self-governments, with particular emphasis on the public education contracts between the relevant ministry and the nationality self-governments.

The Commissioner and the Minority Ombudsman stressed first of all that under the current legal provisions, the State is responsible for the basic tasks of public education and bears the additional costs of nationality education. It was also stressed that when the nationality self-governments take over the maintenance of nationality public education institutions, they also take over the public service task of the State in public education by participating in the implementation of the basic tasks of public education.

Funding for public education contracts is provided from the funds in the current budget law under the article “Support for special tasks in the field of public education”. On the basis of the information available to them, the Commissioner and the Minority Ombudsman stated that in 2017, the ministry in charge of public education concluded public education contracts with a total of 11 public education institutions run by 4 national-level nationality self-governments.

In the opinion of the Commissioner and the Minority Ombudsman, since the public education contracts concluded in 2017 expired on 31 December 2021, there was a temporary risk to the enforcement of rights to education and nationality rights, given that the new contracts were not concluded until March 2022. In the meantime, however, the ministry in charge of public education, acting within its powers, has remedied the situation: the public education agreements for the period 2022-2026 have been concluded with the relevant maintainers.



In the light of the above, the Commissioner and his deputy did not find any infringement of fundamental rights in relation to the specific procedure.

They stressed, however, that the way the situation had developed and the way it was generally handled had given rise to a breach of the principle of legal certainty.

In their joint report, the Commissioner and the Minority Ombudsman considered it important and necessary to reflect on, systematise and summarise the problems encountered and to initiate measures to prevent similar difficulties from arising, with a view to prevention.

The Commissioner and the Minority Ombudsman also pointed out that, according to the information available, it is not clear what criteria the maintaining self-governments have to take into account when they are preparing their individual demands for public education grants. The Commissioner and the Minority Ombudsman consider a closer professional cooperation between representatives of the ministry in charge of public education and the nationality self-governments should be established in order to identify the problems clearly and unambiguously. It is also important that more frequent and timely consultations between the parties concerned take place.

In their joint report, the Commissioner and the Minority Ombudsman also pointed to the lack of funding for the transition period, when the old grant contracts have expired but the new ones have not yet been signed, and the uncertainty caused by the lack of signing. This type of financing problem also arises after the conclusion of the public education contracts, as the annual subsidy is usually not received by the maintainers until the end of March. Maintaining self-governments will have to ensure the continuity of their public education institutions during this transitional period, including by taking out a bridging loan. This is a particularly serious problem when a nationality self-government faces financial difficulties in a given year.

They also identified the problem that, based on the current practice, the State does not conclude a public education contract with a new nationality self-government after the conclusion of public education contracts – in this case, for the period between 2022 and 2026 – and that the public education contract can only be extended to a new institution if the predetermined amount of funding for the nationality self-government concerned remains unchanged. However, the Commissioner and the Minority Ombudsman are of the opinion that it is necessary to provide the possibility, and additional resources to finance the additional costs, for the State to be able to conclude public education contracts with new national-level nationality self-governments during this period. It is also important to ensure that existing contracts can be extended to new institutions, with additional funding.

The Commissioner and Minority Ombudsman held that although the five-year public education contracts provide certainty, they are in some respects inflexible, as they set fixed funding conditions for five years in advance, with the same amounts guaranteed each year, and therefore they would consider it reasonable to reform the rigid system. This would also be much needed to compensate for the short and medium-term negative financing effects of the economic and energy crisis in 2022.

A step in this direction is the measure of the ministry in charge of public education to spend HUF 124 million more on the maintenance of institutions in 2023 compared to 2022. Unfortunately, however, this amount would remain unchanged for four years between 2023 and 2026, as currently planned. The Commissioner and the Minority Ombudsman therefore proposed to design and implement a flexible compensation system that would ensure that inflation and other additional expenditure would be monitored and covered, even on an annual basis.

The Commissioner and the Minority Ombudsman stressed the need to ensure legal certainty in the preparation, conclusion and five-year implementation process of public

education contracts, in particular by ensuring transparency, predictability and the continuous and adequate funding of national public education institutions.

In order to prevent the risks of fundamental rights violations identified in the joint report and to prevent the future occurrence of the problems identified, the Commissioner for Fundamental Rights and the Minority Ombudsman:

called on the State Secretary of the Ministry of the Interior responsible for public education to initiate as soon as possible – with the involvement of the Ministry of Finance and the Prime Minister's Office – a professional consultation with the participation of the nationality representatives, nationality advocates and the presidents of nationality self-governments in order to summarise the experiences of the conclusion of public education contracts, clarify the problems and develop proposals to help solve them.

In addition, the Commissioner and the Minority Ombudsman requested the Minister of Finance to consider ensuring inflation-linked funding, including the necessary changes to the regulation and the professional practice of concluding public education contracts.

The Minister of State for Public Education of the Ministry of the Interior was also specifically requested to organise a consultation meeting in due time before the conclusion of the next five-year contract, with the involvement of the Ministry of Finance and the Prime Minister's Office, in order to set out the framework, procedure and timing of the professional consultations for the representatives of the nationalities concerned before the conclusion of the next public education contracts, as well as the professional expectations, criteria and evaluation framework for the definition of specific funding needs.