

SUMMARY

of the General Comment 2/2023 of the Minority Ombudsman
on the possibilities and limitations of the application of the law
regarding action against the use of banned authoritarian symbols

Since taking up her post, the Minority Ombudsman has paid particular attention to national and international legislative activity and law enforcement practice in relation to hate speech, hate crimes and other hate-motivated acts, as well as related social phenomena and processes.

In recent years, she has also received an increasing number of individual complaints and press reports of cases in which authoritarian symbols, or symbols reminiscent of authoritarian symbols, or posters have been displayed, disturbing public peace and causing consternation and fear among members of society. These problems primarily affected certain groups with protected characteristics, particularly the Roma and Jewish communities. In addition, however, complaints have been received from a number of places about the increasing incidents of hate speech against members of the Ukrainian community living in Hungary and refugees of Ukrainian origin arriving in Hungary because of the war, including the appearance of anti-Ukrainian posters, banners and graffiti in public places, in addition to verbal aggression.

The majority of the complaints were examined by the Minority Ombudsman on the merits of the cases, but some of them also concerned broad, complex social phenomena or the activities of an organisation outside her remit. In these cases, too, she provided detailed information to the complainants and also collected thematic indications. This was particularly justified by the fact that, in parallel to the global rise of extremist movements, there is a broad legal and social debate on the applicability and effectiveness of the soft (educational, awareness-raising) and hard (legislative, in particular criminal) instruments of the necessary social action against the symbols of authoritarian regimes.

The most remarkable common feature of the cases received by the Minority Ombudsman was their interdisciplinary complexity: in addition to the alleged infringement, the complainant in each case presented or demonstrated the consequences reaching beyond the realm of law, in particular the social context and the negative effects of the abuse, especially the fear and humiliation caused to members of certain national minority communities.

Given the complexity of the underlying problem and the increasing number of complaints, since 2020, the Minority Ombudsman has developed intensive professional contacts with organisations working on the issue, in particular with the member organisations and staff of the Hate Crime Action Task Force (HCTF). The process has also involved civil society organisations, academics and independent experts through various projects. In addition, two specific general comments on hate speech and on tackling hate incidents were published in 2020.

General Comment 5/2020 dealt with statements insulting the German nationality community and the need to take action against hate speech, while General Comment 6/2020 dealt with the vandalisation of the Roma Holocaust Memorial in Budapest and the possibilities of taking action against hate crimes.

After presenting the European and Hungarian regulatory environment of authoritarian symbols, outlining the relevant constitutional constructions and presenting the theoretical framework of law enforcement by the police forces, the Minority Ombudsman presents in this general comment the problems of law enforcement she has observed and the possibilities for

action in connection with them, based on four concrete cases examined ex officio and on the basis of complaints.

In her general comment, the Minority Ombudsman holds that the current domestic legislation is in line with European legal traditions and, as a result of the complex legal development over the two decades presented, meets the requirements of both constitutional and criminal law. Problems in the application of the law arise in particular in the context of the classification and investigation of individual cases. In this context, it is of the utmost importance that the police authorities acting first in such cases, whenever they encounter the use of an authoritarian symbol or other symbols representing an authoritarian ideology, treat the case with due weight from the outset, recognising its danger to society. Successful prosecution or infringement proceedings can act as a deterrent to possible perpetrators of similar acts.

She states that, in addition to effective action by the competent authorities in individual cases, the ultimate goal must be to develop a social rejection of extremist ideas, through a consistent human rights-based approach based on solidarity. Human rights education, tolerance education, consciously shaping the attitudes of the future generation, aiming to reduce stereotypes and prejudices, and inter-group antagonisms, are nowadays essential requirements.

The Minority Ombudsman also pointed out that the importance of tackling hate crimes stems not only from the need to protect victims or groups of victims, but also to reinforce that human rights and the law are indeed equally applicable to all individuals. It also ensures that democratic values are put into practice in modern societies. Consistent action to combat exclusion and discrimination is an indispensable condition for social peace.

In order to eliminate the practical problems and inconsistencies identified and to avoid them in the future, the Minority Ombudsman will make complex proposals to the Parliament's Committee of the Nationalities in Hungary, the Minister of Justice, the Deputy Attorney General for Criminal Law and the National Police Commissioner.