

Context and challenges in the work of the Hungarian Commissioner for Fundamental Rights

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Deputy-Commissioner for Fundamental Rights/ Ombudsman for minority rights

Do have:

- competence to hear and consider individual complaints and provide assistance,
- competence to initiate *investigations ex-officio*,
- wide and strong investigatory power,
- mandate to address recommendations and follow-up their implementation,
- mandate to use alternative dispute resolution (ADR) methods.

Do NOT have:

- mandate to submit amicus curiae or third party intervention,
- mandate to provide representation or assistance in court proceedings,
- power to issue enforceable decisions.

Human rights issues

- **Education**
- **Child protection**
- Social issues, health care
- **Housing**
- **Access to services**
- Media
- **Law enforcement procedures, criminal procedures, fair procedure in public administration**
- Nationality self-governments and local governments
- Public employment

Minority education and the prohibition of discrimination

- Right to education: free and compulsory primary education, free and generally accessible secondary education and higher education accessible to everyone according to his or her abilities with state support available
- Minority education: Every Hungarian citizen belonging to a nationality shall have the right to freely express and preserve his or her identity. Nationalities living in Hungary shall have the right to use their mother tongue, to nurture their own cultures, and to receive education in their mother tongues.
- Prohibition of discrimination: segregation in education.

Segregation in education

- Issue of particular importance within the mandate of the Ombudsman
- Reports based on complaints as well as ex-officio investigations
- Main findings: segregation in most of the cases is the consequence of *different direct and indirect discriminatory practices* against Roma students, but at the same time *Roma minority education* may also lead into segregation or malpractice

Direct and indirect discriminatory practices

- Direct practices: separation of Roma children in an educational institution or in a division, class or group within such an educational institution
- Indirect practices: misdiagnosis of Roma students with mental disability or special educational needs; undue influence made on the parents' rights to free choice of educational institution by local policy-makers

Roma minority education

- General rule: voluntary and organized on the request of at least 8 parents
- Special rule: organized without offering minority language teaching i.e. in Hungarian
- Shortcomings: lack of trained teachers, Romani and Beas minority teacher training courses and text books and other teaching materials
- *Substandard minority education* which is in full compliance with the anti-discrimination law still constitutes unlawful segregation since it fails to fulfil the aim of the right to education to gain the highest attainable standard of education

The amendment of legislation on separation in education (1)

- Three exemptions to the prohibition of discrimination: separation could be based on gender and in case of minority and religious education.
- On 8th November 2014 the Government adopted a Bill on the amendment of the Public Education Act: it proposed to empower the Government to issue a decree specifying further requirements of religious and minority education which fall under the categories of exceptions to the prohibition of segregation

The amendment of legislation on separation in education (2)

- The segregation of children violates human dignity since it creates “the sense of inferiority”, set back the child in social development and at the end of the day it reproduces phenomena such as uncompetitiveness in the labour market, unemployment, low income and lack of ability of mobility
- Any law amendment which would adjust the exceptions to the prohibition of segregation in a way to weaken the general prohibition constitutes human rights violation and does not conform to the Fundamental Law
- Segregation can never be justified by the aim of promoting social inclusion not even in cases when the education is organized based on religion, belief or nationality

The amendment of legislation on separation in education (3)

- The requirements of requirements defined by the decree might cover: the rules of parental choice, the interrelation between minority and religious education if it is organized in parallel or the standards of the education keeping in mind the case law in segregation.
- It is emphasized that the two exceptions shall not be blurred: if an institution organizes minority and religious education at the same time, it has to comply with the requirements of both of them, respectively.
- Therefore, the Government is expected to further elaborate on the requirements of religious and minority education in accordance with the provisions of the Act on Equal Treatment.

International human rights monitoring mechanisms

- ECHR: Horváth & Kiss vs. Hungary (still under execution)
- CoE bodies: ECRI, Framework Convention on Rights of National Minorities, CAHROM, Commissioner for Human Rights
- UN Committee on the Rights of the Child, UN Human Rights Council (UPR), UN Human Rights Committee
- EU: infringement procedure

Comprehensive Investigation: the Miskolc case

The investigation concerned:

- Official control activities coordinated and carried out jointly by the Miskolc Local Government Police and other local authorities and bodies which intimidated and harassed the local Roma community,
- Relevant local government decrees (rules on 'community living' + housing),
- Other measures of the Miskolc Local Government regarding housing conditions,
- Decree amendments by municipalities surrounding Miskolc.

Findings (1)

- Control activities
 - By employees of the various local authorities and utility providers jointly, simultaneously,
 - At a previously determined date and time, on a pre-determined route,
 - Organized by the public order adviser of the Miskolc Local Government, with briefing by and the participation of the M. Local Gov. Police.
- Often raid-like, joint, mass official control activities
 - Conducted in the segregated living areas by local government authorities,
 - Different competences and rights of investigation used jointly - without explicit legal authorization,
 - Incompatible with the principle of the rule of law and the requirement of legal certainty.

Findings (2)

- Fundamental rights infringements (or immediate risk thereof): All of the above have led to impediments regarding
 - Right to fair procedures
 - Right to legal remedy
 - Right to privacy
 - Right of informational self-determination
 - Equal treatment
- Affected persons: mostly disadvantaged, a large proportion being Roma (90%: segregated areas) -without a sufficient reason and to a disproportionate extent;
- Direct discrimination based on social origin and financial status; indirect discrimination based on belonging to a minority.

Findings (3)

- The official controls in Miskolc infringe equality and the right to fair procedures and should be brought to an immediate stop.
- Two decrees of the Miskolc Local Government raised serious constitutional and legal concerns
 - Equal treatment
 - Procedure before the Curia (petition by the Government Office).
- Decrees of municipalities surrounding Miskolc are exclusionist in content and violate national law

Recommendations

- The examined official control activities should be terminated
- The local government decree containing the rules of community living should be repealed
- Effective cooperation with the Hungarian Charity Service of the Order of Malta
- Relevant state institutions should coordinate assistance to prevent evictions
- Exclusionist local decrees should be repealed
- Miskolc L.G. should contribute to the complex programme in preparation on phasing-out and preventing colony-like living environments (MHR)
- MLG cannot handle the issue of segregated colonies on its own → Enhanced assistance by the state (and civil society) necessary

Reaction, responses (1)

- Report welcomed by the Miskolc Roma Minority Local Government; civil organizations; OSCE ODHIR
 - In unison with ECRI
- Miskolc Local Government, mayor:
 - Enhanced cooperation with Maltese Order
 - Protection against eviction for children in the segregated ,colonies'
 - But: official control activities will not stop; ,legal means' of upholding/restoring public order; supported by local population including people living in segregated areas

Reaction, responses (2)

- Response of the Miskolc Local Government Police
- Response from the municipalities surrounding Miskolc
- Response of the Minister in charge of the Prime Minister's Office
- Response from the Minister of Human Resources

Issues related to the pre-boarding screening of international passengers at the airport

- General Comment No.1. of the Deputy Commissioner: kind of aspirational soft law in order to express concerns in relation to the protection of minority rights and to provide standards, guidelines and best practices with the aim to reduce cases of human rights abuses as well as to prevent further human rights violations.
- In 2015 several Hungarian citizens (mainly families) belonging to the Roma minority could not depart for Canada from the Budapest Liszt Ferenc International Airport irrespective of the fact that they had valid travel documents and air tickets as the airline company denied the boarding to them as a result of the pre-boarding screening.

Pre-boarding screening of international passengers at the airport was

- “deemed necessary after several dozens of Hungarians applied for asylum upon arrival to Canada by a direct flight operated by them and another company in the summer of 2015”
- performed, from the victims’ point of view, by officials of unknown affiliation, in reality, by the employees of a company providing security services,
- in the present of the representative of Canadian Border Services Agency,
- out of records,
- in front of fellow passengers which rendered the victims subject to public humiliation, and
- resulted in denial of boarding in formal decision of the airline company many times without proper reasoning or information about complaints procedures or available remedies.

Guidelines (1)

- Rules of pre-boarding screening processes of air passengers should be clearly set out in the form of a written protocol and include safeguards which guarantee the right to fair procedure for everyone.
- The person performing the screening shall wear a name badge, introduce themselves and state their affiliation, furthermore, shall inform the passenger about the purpose, legal basis and the consequence of the procedure.
- All passengers travelling shall be screened in accordance with the rules of the procedure and exactly the same way in all cases in order to avoid any allegation of discrimination.
- All circumstances of the screening and the people involved shall respect the human dignity of the passengers.

Guidelines (2)

- In case of denied boarding, the passengers shall receive the decision as well as the information about the available remedies and compensation in written form, both in English and Hungarian language.
- The document shall include at least the name of the company as well as the employee performing the screening, the airline company concerned, the formal denial of boarding with reasoning based on facts and the legal background (e.g. Canadian laws on entry requirements), the available remedies in case of denied boarding and complaints mechanism concerning the performance of the screening procedure.

Lessons learnt

- Serious human rights issues are generally of complex nature therefore all relevant aspects shall be taken into account when we handle a complaint or conduct through investigation.
- The wide investigatory powers of the ombudsman is often the only mean to reveal severe and systematic human rights violations.
- The power of media and public opinion shall not be underestimated, especially if we cannot make enforceable decisions.
- The trust in and the respect towards the ombudsman institution do support actions which concerns relevant actors outside of the mandate.

**Thank you for your
attention!**