

The ombudsman's review of complaints affecting proceedings by the police

I. As from 27 February 2020, the Hungarian Parliament abolished the **Independent Police Complaints Board**, established in 2007 specifically to investigate complaints about police actions that violate fundamental rights, and at the same time delegated its tasks to the Commissioner for Fundamental Rights. Within the Office of the Commissioner for Fundamental Rights, the **Directorate for Law Enforcement** was set up as an independent unit to investigate complaints about police action. The Directorate is responsible for investigating "police complaints" relating to police action, failure to take action or the use of coercive means.

At present, if the person concerned so requests, their complaint about police action is dealt with by the National Police Captain, following an investigation by the Commissioner for Fundamental Rights. The Ombudsman draws up a report on the case and sends it to the National Police Captain, who is obliged to explain if his decision differs from the report. The Commissioner may intervene in any legal action to review a police decision.

Among the legislative changes affecting the Ombudsman's investigation of police complaints, the deadline for filing a complaint has been significantly extended (one year from the date of the police action); the Ombudsman may establish a violation of fundamental rights not only in the case of a concrete violation of fundamental rights, but also in the case of an imminent threat of such violation; and any authority not concerned by the investigation, or any organisation or person not qualified as an authority, who may have relevant information for the effective conduct of the investigation, is also obliged to cooperate in and contribute to the Ombudsman's investigation.

In 2020 and 2021, the Directorate for Law Enforcement received 434 police complaints, of which 195 cases are under investigation. So far, 38 cases have been the subject of an Ombudsman's report, which has identified 14 cases of maladministration. In total, three complaints were received that specifically dealt with **discrimination on the grounds of nationality origin**.

Last year, two cases were reported in which the complainants complained of biased police action on the grounds of their Roma origin.¹ In the first case, an off-duty police officer took arbitrary action against the complainant (in the absence of legal conditions), and in the second case, the complainant's behaviour did not justify the use of coercive measures. In the third case, the Ombudsman considered the police's actions to be abusive in several respects: the fact that the complainant was arrested without discretion violated his right to personal liberty and the fact that the complainant was stripped to his underwear without legal authorisation violated the prohibition of degrading treatment. In the latter case, although not explicitly complained about in the complaint, the NGO representing the complainant and the press reports emphasised the Roma origin of the complainant.² No such report has been made this year and is not expected on the basis of a review of the complaints.

All of the three investigations of the Roma complainants mentioned above revealed breaches of fundamental rights, but none of them were linked to biased action by the police, i.e. discrimination on the basis of origin (for which there was insufficient – substantiated – information available during the investigation).

¹ Report No. RI-AJBH-43/2020. and Report No. RI-AJBH-58/2020.

² Report No. RI-AJBH-2/2020.

<https://index.hu/belfold/2021/10/26/helsinki-bizottsag-alsonezure-vetkozettett-no-bocsanakeres-rendorseg/>

The complainant stressed: "This is a real satisfaction for me. Not only for me, but also for other gypsy people. It is particularly important for us that in this case the police have admitted that they made a mistake. We have never experienced something like this before."

II. As I mentioned, since 2020, complaints concerning police action only are investigated by the Directorate for Law Enforcement. This has also changed the possibilities for the Ombudsman and the Deputy Ombudsman to proceed in other related areas, and I will give two or three examples of this shortly.

Although complaints concerning police action alone are currently investigated by the Directorate for Law Enforcement, it cooperates with the Deputy Commissioner for Nationalities in the case of complaints (also) alleging discrimination on grounds of nationality.

However, the Deputy Ombudsman for Nationalities may also act in cases of complaints of discrimination based on nationality in the course of criminal or administrative proceedings, in connection with the actions (or omissions) of the police or the investigating prosecutor's office, which represent about 5-8% of the average 400 complaints received by the Deputy Ombudsman per year, or roughly 20-30 cases.

The Deputy Commissioner has conducted, and is currently conducting, full investigations into several such cases.

One case should be highlighted from the period before 2020 under the previous legislation, prior to the establishment of the Directorate for Law Enforcement.

It concerned the review of police measures taken against a Roma nationality complainant in the framework of increased control.³

The main findings of this report are that increased control, both formal and substantive, which is the legal basis for the complainant's identity control and the search of his clothing, raises concerns about the rule of law. The form of taking a decision is inappropriate for ordering an increased control, as the law does not provide for such an authorisation. Increased control may be ordered only for the purposes laid down in an Act of Parliament and within the limits of time and space, and only the measures provided for in the Act of Parliament may be taken.⁴ Due to the formal and substantive deficiencies of the decisions ordering increased control at national level, the procedure of the National Police Captain has given rise to anomalies with respect to the requirements of legal certainty and the right to respect for privacy, therefore the report made various recommendations to the Minister of the Interior and the National Police Captain. In his reply, the Minister of the Interior stated that, on the basis of the report's findings, the necessary legislative amendments had been prepared. The National Police Captain also accepted the recommendations addressed to him. The report also examined the link between police measures and ethnic profiling: according to EU research⁵, police in some countries stopped members of minorities (Roma in Hungary) more often than members of the majority population. In Hungary, the results of the European Commission's studies show that Roma persons are more likely to be affected by increased checks than other persons. The existence of the problem of ethnic profiling cannot therefore be denied, as ignoring this phenomenon could lead to an imminent risk of violating the requirement of equal treatment and could result in discrimination against persons of Roma nationality.⁶

I would like to highlight two examples from the period after 2020, i.e. after the establishment of the Directorate for Law Enforcement under the new legislation.

³ Cases No. AJB-729/2021 and 730/2021.

⁴ The *European Court of Human Rights*, in its judgment "*Vig v. Hungary*" of 14 January 2021, pointed out that the law gives law enforcement bodies a too broad mandate to order increased control.

⁵ See two reports of the *European Fundamental Rights Agency* (FRA).

⁶ The *European Commission against Racism and Intolerance* (ECRI) Recommendation No 11 recommends that Member States conduct research on ethnicity-based selection and monitor police work to identify such practices; and provide training for police officers on ethnicity-based selection and the application of the reasonable suspicion criterion.

In the case of a Roma complainant who had been detained and complained of police ill-treatment, the Deputy Commissioner drew the attention of the National Police Captain to the need for police forces to always have a medical report prepared – in accordance with the law – on complaints of ill-treatment of detainees by a member of the authorities. She also drew attention to the fact that the form to be used by the police body responsible for detention does not contain information on the implementation of the legal provisions on the obligation to notify relatives of detained persons, and therefore asked the National Police Captain to initiate the completion of the form in accordance with the law. The form, which is annexed to the Staff Regulations, was amended from June 2021.⁷

In another case, in which the police had opened an investigation against a child boy for breach of peace and defamation because of the behaviour of the complainant's child at school, the Deputy Commissioner pointed out that under the Criminal Procedure Act, the investigating authority must reject a complaint if the available information indicates that the perpetrator is a child. She therefore drew the attention of the head of the police service concerned to the need to respect the rules of the criminal procedure guarantee and to the fact that crime prevention and law enforcement activities in public education establishments can only be carried out in compliance with the legal provisions and other legal norms.⁸

⁷ Case No. AJB-757/2020.

⁸ Case No. AJB-1997/2020.