

Joint report No. 1991/2020. on the procedure for determining the widow's pension of a Roma person

The Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of Nationalities issued a joint report on the procedure for determining the widow's pension of a Roma person. The report stated that the Pension Payment Directorate had seriously infringed the principle of cooperation between authorities and the requirement of good faith vis-à-vis the client and the bodies concerned. On the basis of the available data and documents, it was established that the staff of the Pension Payment Directorate did not comply with the deadline set out in the Act on Complaints in the case of the complainant, significantly exceeding it. Overall, the lengthy procedure was found to have led to a breach of the fundamental right to a fair trial under the rule of law. The aim of the joint report of the Commissioner and the Deputy Commissioner was to ensure that the concerned competent authorities with the matter comply with the relevant legal provisions in the future, preventing the recurrence of fundamental rights abuses, while at the same time helping to ensure that the requirement of equal treatment of their Roma clients is fully implemented all stages of the procedure.

In the case of the complainant concerning the procedure of the Pension Payment Directorate of the Hungarian State Treasury (Pension Payment Directorate), it was the petitioner's representative who addressed the Office of the Commissioner for Fundamental Rights. He wrote that in October 2017, his mandator has submitted a claim for a widow's pension, under the right of her late partner, who accrued this right. The Pécs District Office of the Baranya County Government Office rejected the application, and after the appeal, the second-instance authority upheld the first-instance decision. The action brought on the basis of the complainant's claim was terminated by the Administrative and Labour Court of Pécs (Regional Court). In August 2018, the complainant re-submitted the claim for the widow's pension, and the Pension Payment Directorate terminated the procedure initiated on the basis of the new application as well. The complainant brought an action against the order, as a result of which the Court annulled the order and ordered a new procedure before the Pension Payment Directorate. Following the information provided by the Pension Payment Directorate in May 2019, the complainant did not receive any substantive information about the proceedings initiated in her case. Therefore, the appointed lawyer who provided the legal representation in the case and the representative contacted the Pension Payment Board several times, but they did not receive a

substantive reply either. According to the Pension Payment Directorate, the decision was finally taken in April 2020, in which a temporary widow's pension was established for the complainant. The complainant and the persons representing him complained about the length of the procedure in addition to the lack of providing sufficient information in the case.

Given the suspicion of a breach of fundamental rights in the case, the Commissioner for Fundamental Rights and the Deputy Commissioner for Nationalities launched a joint investigation. During the procedure, the Director of the Pension Payment Directorate was contacted for detailed information.

In the course of the inquiry, the Commissioner and the Deputy Commissioner found that the Pension Payment Directorate had infringed the principles of simplicity and cooperation by not providing the complainant client and the persons representing him with substantive information on the course of the proceedings in their case, on the measures taken, which would have which would have effectively helped the review of it, and understanding why the procedure took so long.

In connection with the principle of cooperation between the authorities in this specific case, the Commissioner and the Deputy Commissioner also examined the working relationship between the Pension Payment Directorate and the Tolna and Baranya County Government Offices. The minutes prepared by the Government Offices contained the basis of the procedure and the facts necessary for the decision-making. It was found that the requested authorities, upon receipt of the requests, complied with their obligation to cooperate and the minutes had been sent well in advance, compared to the information provided by the Pensions Authority to the complainant's legal representative. During the investigation it was concluded, that in 2020, the Pension Payment Directorate, should not have requested again the data received in 2019 from the Tolna County Government Office, and on the other hand it became clear that, it should have acted sooner, in contacting the Baranya County Government Office and hearing additional witnesses. In view of the above, the joint report of the Commissioner and the Deputy Commissioner found that the Pension Payment Directorate had seriously infringed the principle of cooperation between authorities and the requirement of good faith vis-à-vis the client and the bodies concerned.

The Commissioner and the Deputy Commissioner also examined the application of the principle of unjustified discrimination and impartiality, which upholds the requirement of equal

treatment, and reviewing the files concluded that based on Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, no direct or indirect discrimination can be determined in the case.

In their report, the Commissioner and the Deputy Commissioner requested the Director of the Pension Payment Directorate of the Hungarian State Treasury to bring it to the attention of the staff of the authority again, the administrative authority procedures warranty principles proper administration and to comply with the administrative deadlines prescribed by Section 50 of the General Administrative Procedure Act. In view of the investigation and action taken by the Director of the Pension Payment Directorate in his own competence, the Commissioner and the Deputy Commissioner did not consider any further action in the case under investigation to be justified, beyond the warning imposed.