

JOINT REPORT ON THE INVESTIGATION OF POLICE MEASURES TAKEN AGAINST A PERSON OF ROMA NATIONALITY IN THE FRAMEWORK OF AN INCREASED CONTROL

From the point of view of fundamental rights, it is a significant guarantee that the increased control should be ordered within the legal framework, bearing in mind the purpose limitation and the restriction of space and time, stated Dr. Ákos Kozma Ombudsman and Dr. Elisbeth Sándor-Szalay Minority Ombudsman during a joint investigation.

A complainant of Roma origin complained about the police measures taken against him (stop and search, clothing search, mobile phone check), which he considered was based on his nationality, and also expressed concerns about the increased control on which the measure was based. He also complained that his personal data were recorded despite the fact that the stop was not followed by any further police action or procedure. On the basis of the complaint, the Commissioner for Fundamental Rights and the Deputy Commissioner for the Protection of the Rights of Nationalities in Hungary launched a joint investigation.

In their joint report in cases AJB-729/2021 and 730/2021, the Ombudsman and his Deputy stated that the ordering of increased controls, their spatial and temporal scope may directly affect the fundamental rights of persons residing in a given area at a given time, since at any time – based on the mere fact of the increased control – they may be subject to a stop or even a search of their clothing (vehicle), and therefore it is of paramount importance to comply with the legal conditions of the guarantee and to inform the persons concerned in advance. It was pointed out that the decisions of the National Police Captain ordering a nationwide enhanced control, which constituted the legal basis for the stop and search of the complainant's clothing, raised concerns about the rule of law, both in terms of form and content, and therefore constituted an infringement of the requirement of legal certainty deriving from the principle of the rule of law enshrined in Article B of the Fundamental Law and the right to respect for private life enshrined in Article VI of the Fundamental Law.

With regard to checking the complainant's mobile phone, it was stated that the checking of the phone could not be justified by a similar check of the data of persons and documents checked, nor could it be justified by the increased control. It was also found that the conduct of the police body carrying out the measure constituted an infringement of the right to the protection of personal data under Article VI of the Fundamental Law. It was also found that the action of the police body in recording the identity of the complainant, who was not subject to any further measures or procedures, constituted an infringement of the right to the protection of personal data. In order to remedy and prevent future abuses, it was suggested that the Minister of Interior should consider reviewing the rules on enhanced control and, in the light of the relevant decision of the European Court of Human Rights, initiate a change in the rules. They asked the National Police Captain to review the practice of ordering enhanced controls and to pay special attention to the provision of adequate information to the persons concerned; to ensure that police forces under his control act in compliance with the law when checking mobile phones; to develop concrete proposals and measures to eliminate the abuse of the right to the protection of personal data, taking into account the previous findings of the Independent Police Complaints Board and the position of the President of the National Authority for Data Protection and Freedom of Information.