



DEPUTY COMMISSIONER FOR FUNDAMENTAL RIGHTS  
OMBUDSMAN FOR THE RIGHTS OF NATIONAL MINORITIES

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**Joint Report by the Commissioner for Fundamental Rights and the Deputy  
Commissioner for the Protection of the Rights of Nationalities in Hungary  
on the lawfulness of the restriction of personal liberty and the safeguarding of the right  
of defence in the context of criminal proceedings against a person of Roma nationality**

**Case AJB-1134/2022**

**SUMMARY**

*A complainant of Roma origin without criminal record, complained in connection with the criminal proceedings conducted against him by the BRFK XI District Police Department (investigating authority), that he was brought before the police on the basis of an anonymous report and then detained, and also complained that he was not allowed to appoint a defence counsel before his interrogation as a suspect.<sup>1</sup>*

In the case, the Commissioner for Fundamental Rights and the Minority Ombudsman *launched a joint investigation*, in which *they contacted the head of the investigating authority, the Prosecutor General and the Chief Prosecutor of Budapest-Capital.*

Based on an analysis of the relevant legislation and a review of the available documents, **the Commissioner and the Minority Ombudsman concluded that:**

**1.** After an investigator called him on the phone to say that he would like to be heard as a witness, the complainant went voluntarily to the police station of his place of residence, where – on the instructions of the investigating authority, with regard to the criminal proceedings against him – he was put under short-term arrest at the competent police headquarters and from there transferred to Budapest.

*Short-term arrest*, as regulated by the Criminal Procedure Act (CPA), is a legal measure that ensures the presence of the accused or – prior to the interrogation of the suspect – the person who is reasonably suspected of having committed a crime, and also restricts his or her freedom.

*A decision on ordering short-term arrest must be taken* in accordance with the rules of the CPA. In urgent cases, short-term arrest may be ordered immediately without a decision being taken, but a decision must be taken subsequently.

A review of the hundreds of pages of documents sent by the investigating authority showed that *the investigating authority had failed to include in its decision an order for the short-term arrest of the complainant, restricting his personal freedom.*

The *Fundamental Law* states that “*no one shall be deprived of his liberty except for reasons and in accordance with procedures defined by an Act*” and that “*anyone whose liberty has been unjustly or unlawfully restricted shall be entitled to compensation for his loss*”.

In the light of the above, the Commissioner and the Minority Ombudsman found that *the failure of the investigating authority had caused an abuse of the complainant's fundamental right to liberty.*

**2.** From 1 January 2021, in order to regulate the position of the “pre-suspect”, the CPA introduced the concept of *a person who is reasonably suspected of having committed a*

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<sup>1</sup> The criminal proceedings were finally terminated by the prosecution after more than a year.

*criminal offence*, whose *rights and obligations are governed by the rules applicable to the accused*, with certain exceptions.

The CPA also establishes the principle that the accused has the right to an effective defence at all stages of criminal proceedings, including the right to defend himself in person and to be assisted by a defence counsel.

The provisions on criminal procedure clearly define, among the rules of investigation, the *specific tasks of the investigating authority* with regard to **ensuring the right of defence of suspects and persons who are reasonably suspected of having committed a criminal offence**. These *specific rules are fully in line with the* intrinsic content of the fundamental right of defence, according to which a person subject to criminal proceedings is free to choose (appoint) a defence counsel at any stage of the proceedings and the authority may only appoint a counsel, even in the case of mandatory protection, if he does not wish to exercise this right.

*In the case under examination, the police report* on the execution of the short-term arrest of the complainant only *states* that the oral communication on the exercise of the right of defence – in accordance with the fundamental provision of the CPA – took place, which only refers to the general (fundamental level) information on the right of defence, but it is not at all clear what the information covered in concrete terms.

However, the *obligation to provide information is not imposed on* the body executing the short-term arrest, but on the *investigating authority*, according to the Act, the executing body only has to cooperate with the investigating authority in order to contact the defence.

According to the *record of the suspect's interrogation, during his interrogation, the complainant was only warned* – with reference to the special provision of the CPA – *that the participation of a defence lawyer was mandatory in the present proceedings, and that if he did not have an authorised lawyer, a lawyer would be appointed for him*; however, the appointment of a lawyer had already taken place much earlier, without the complainant's knowledge. *The complainant was not warned of his right to appoint a lawyer, contrary to the provision of the CPA, nor was he informed whether he wished to appoint a lawyer.*

The legal view that the investigating authority would have granted the complainant an additional right by appointing a defence lawyer cannot be shared either, since the *complainant* – if, according to the rules of the CPA, he had *been* warned of the right to appoint a defence lawyer immediately after his short-term arrest and had been given the opportunity to contact the lawyer – *would have had the opportunity and enough time to appoint a lawyer, who could have been present at his interrogation and could have even consulted him before his interrogation*; this did not happen with the appointed substitute defence lawyer.

On the basis of the relevant legislation and the criminal procedure documents, it can be concluded that *the investigating authority did not ensure the freedom of choice of defence, as it demonstrably failed to warn the complainant, who was suspected of having committed a crime and whose personal freedom was restricted, immediately after his short-term arrest of the right to appoint a defence lawyer, and also failed to obtain his declaration on his intention to appoint a lawyer in view of the mandatory defence.*

In the light of the above, the Commissioner and the Minority Ombudsman found that **the failure of the investigating authority to act had caused an abuse of the complainant's fundamental right of defence.**

**3.** In order to bring the perpetrator caught in act to the court for summary procedure, the investigating authority *submitted a motion to the prosecutor's office for the arrest of the complainant. It can be concluded that the information contained in the submission did not correspond to the truth, either as regards the accused being caught in the act, or as regards the admission of the commission of the offence and the existence of other legal conditions for bringing him to court for summary procedure.*

The Commissioner and the Minority Ombudsman reiterated that in *criminal proceedings the restriction of the personal liberty of the accused may only be imposed in the procedure under the Criminal Procedure Act, for the reason, in the manner and to the extent specified by the Act*, provided that the objective to be achieved cannot be achieved by other procedural acts or measures involving less restriction. *It is therefore a minimum requirement that the investigating authority must include in its proposal for the arrest of the suspect – i.e. for a serious restriction of his personal liberty – the factual information available to it.*

*The identification of the complainant as the perpetrator was made on the basis of an anonymous report*, following the publication of still images extracted from the camera footage, but found by the Facial Image Analysis System to be inadequate for analysis and of poor quality. In the images, the perpetrator's face was covered by a mouth mask and his head by a baseball cap.

According to the head of the investigating authority, the *documentary photos of the complainant in the anonymous complaint were compared with the person in the camera footage, and based on this, they came to the conclusion that the complainant was indeed a reasonable suspect of the crime. However, during the investigation by the Commissioner and the Minority Ombudsman, serious doubts were raised as to whether the complainant could be identified as the perpetrator on the basis of the footage provided.*

*The anonymous reporter does not bear the burden of false accusation, so he or she can accuse anyone of a crime, whether intentionally or negligently, without consequences. Anonymous reports should therefore only be used as evidence in criminal proceedings with particular caution and careful consideration.*

Among the basic rules of the right of defence, the CPA stipulates that *the investigating authority shall take into account ex officio the circumstances that exculpate the accused and mitigate his criminal responsibility.*

The complainant (and his defence counsel) submitted to the investigating authority or requested the obtaining, from the time of his prosecution, a number of pieces of evidence, which logically and objectively supported his defence, which were not taken into account at all or were taken into account only with considerable delay, with the result that *the complainant was subject to criminal proceedings for an unduly long period of time.*

In the light of the above, the Commissioner and the Deputy Commissioner found that *the failure of the investigating authority directly jeopardised the complainant's fundamental right of defence.*

In order to eliminate and prevent future abuses of fundamental rights identified in the joint report, **the Commissioner and the Minority Ombudsman recommended that the Prosecutor General** should examine how the special provisions of sections 386 to 387 of the CPA guaranteeing the right to defence of persons suspected of committing a crime and whose freedom is restricted, in particular the freedom of choice of defence, are enforced, whether the interpretation of these provisions is uniform and how these provisions are applied in practice.

**It was initiated** that if, as a result of the investigation, the Prosecutor General finds that either the interpretation of the law or the practice of its implementation is not uniform, he should, with regard to the implementation of the short-term arrest, if necessary together with the National Chief Head of the Police, develop a procedural order which makes it mandatory to warn the persons concerned in writing of their specific right to appoint a defence counsel or to request the appointment of a defence counsel already at this stage of the procedure, or, in the case of mandatory defence, to require a written declaration of the persons concerned regarding the appointment of the defence counsel. In the event of an intention to appoint a lawyer, the possibility of contacting a lawyer should be provided for, in cooperation with the executing body, and should also be documented.

**The Commissioner and the Minority Ombudsman have taken the initiative to request the head of the investigating authority to take a** decision on the short-term arrest of suspects or persons suspected of having committed a crime, otherwise the deprivation of liberty is not in accordance with the law and the person concerned is entitled to compensation for the damage suffered.

**They also recommended that** the investigating authority should only state the true facts in its application for coercive measures affecting the personal liberty of the accused and should not invoke a legal measure whose legal conditions are clearly not met. Anonymised reports should be treated with due care and caution, taking into account the objective facts and circumstances. In the course of investigations, not only incriminating but also exculpatory circumstances should be taken into account, and efforts should be made to obtain evidence in this respect as soon as possible.