

Infringement of the right to peaceful assembly – the findings of the Ombudsman concerning the police handling of two demonstrations in Budapest

The fact that protesters conducting a sit-down strike in the Mayor's Office in the 8th district of Budapest were taken to the police station was contrary to the right to peaceful assembly and to the right to liberty of the person. Instead of facilitating the resolution of conflicts between the people demonstrating in front of the building of the Public Service Television and the institution, the police have not even made an attempt at the resolution of the conflict and have thereby infringed the right to assembly and freedom of expression.

In his *ex officio* inquiry the Commissioner for Fundamental Rights, Máté Szabó, found that the conduct of the persons both in the sit-down strike in the Mayor's Office of the 8th district and in the hunger strike in front of the Budapest building of the Public Service Television was in conformity with the lawful conditions of assembly, since several persons assembled peacefully at the same place in order to jointly express their opinion.

According to the opinion of the Ombudsman the sit-down strike started on 11th November 2011 in the 8th district Mayor's Office against the criminalisation of homelessness was in conformity with the lawful conditions of peaceful assembly, but it was also lawful to break it up, since the exercise of the right of assembly infringed the rights and liberty of others. So the demonstrators should have been removed from the building; the police, however, in addition to breaking up the event employed other measures as well: they took the protesters to the police station, which infringed their right to peaceful assembly and to liberty of the person.

Máté Szabó noted that the Act on the Police emphasises the requirement of proportionality, meaning that police measures shall not cause harm which is obviously out of proportion to the lawful purpose of the measure. From among several possible and appropriate police measures the police have to choose that one which, while still ensuring an adequate outcome, entails the least restriction, injury or damage for the person(s) concerned. Pursuant to the interpretation of the Constitutional Court, the proceedings for depriving a person of his or her liberty may only be regulated in such a way that they should not unnecessarily or disproportionately restrict the right to liberty of the person.

Those taking part in the hunger strike started on 10 December 2011 in front of the Budapest building of the Public Service Television protested against the fact that in a news report a public figure, the former chief justice, Zoltán Lomnici, was blocked out. The demonstrators demanded the naming and holding to account of those responsible. The site of the hunger strike was an unfenced area where anybody could enter without any restriction, i.e. according to the Commissioner for Fundamental Rights the police should have considered the area as public domain. The police did not even make an attempt at resolving the conflict and they justified their omission by saying that the event took place outside the public domain. Both the protesters and the management of the television asked the police for help, but the latter did not take any action because they did not recognise that the demonstrators were exercising their right to peaceful assembly and therefore the police had an obligation to act. As a consequence, both the protesters and the management of the television tried to settle the

situation as best they could, by putting up mobile fences and by trying to prevent the building of fences, respectively, according to their interests. On the site the police did not consider whether the event restricted the right or liberty of others or whether the right of the protesters to assembly was infringed.

In both cases the Commissioner for Fundamental Rights turned to the Chief Commissioner of the National Police asking for his opinion and inviting him to ensure that similar situations be settled in conformity with the provisions of the Act on the right to assembly.

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