

NATIONAL COUNCIL OF BOSNIAK NATIONAL MINORITY

36300 Novi Pazar

Street 28.November

Respected,

The Ombudsman, based on the complaint of National Council of Bosniak National Minority, conducted the procedure of control of work of Ministry for education, science and technological development, confirmed omission in work and in accordance with its constitutional and legitimate authorities sent recommendations for the sake of removal of these omissions.

In the attachment of this document, we send the copy of the recommendation.

With respect,

Deputy of the Ombudsman

Attachment 1:

Republic of Serbia

The Ombudsman

6-4-2361/15

Belgrade

No. 45211

Date. 08.12.2015.

Based on the article 138, paragraph 1, of the Constitution¹ of Republic of Serbia and article 31, paragraph 2, of the Law on Ombudsman², in the procedure of control of legality and regularity of work of Ministry for education, science and technological development, started based on the complaint of National Council of Bosniak National Minority, the Ombudsman

CONFIRMS

Ministry of education, science and technological development made an omission in its work, which consists on violation of the principle of good management, as damage on right of elementary school "Selakovac" in Novi Pazar, because did not decide on time on the request for giving consent for renaming the school, the request which fulfilled all legally prescribed formal requirements.

¹ "Official Gazette RS", No. 98/06

² „Official Gazette RS ", No 79/05 and 54/07

The failure of the Ministry of Education, Science and technological development is also reflected in the fact that mention request was not decided with an official decision, but after two years since the submitting the first request and in contrary to reasonable expectations, sent an announcement to submitter of the request that there is no possibility for giving requested consent, even next to the fact that request was submitted in accordance with the law and directions given in the previous answers from the Ministry, by what it is violated the right to efficient legal remedy.

The attitude of Ministry of Education, Science and Technological Development to change names of public schools only in exceptional cases, as well as practice not to enact, therefore to postpone making a decision on the request for approval to change the name of the school on the grounds of rationality, expediency and priorities of educational activities, is not based on prescribed, measurable and objective criteria.

This attitude and practice of the Ministry of Education, Science and Technological Development does not have a foothold in the applicable law, and the result is that the elementary school "Selakovac", for which the National Council of the Bosniak national decided that it is of particular importance to the education of Bosniaks, does not achieve the right to change its name, which marks a geographical term, and that the future should be called "Avdo Medjedovic" according to the poet whom this national minority considered significant.

Based on the confirmed omissions in work, the Ombudsman sends to the Ministry of education, science and technological development next:

Recommendations:

It is necessary that Ministry of Education, Science and Technological Development, without delay, make a decision to decide on the request for granting the consent to change the current name of primary school "Selakovac" in Novi Pazar, which was submitted in June 2015.

During review of the application and making the decision, it is necessary that the Ministry of Education, Science and Technological Development has in mind powers and the reasons why the

school has accepted the proposal of the National Council of the Bosniak national minority to change the current name of the school, considering that the proposed change is the name of the poet which this national minority considers significant.

It is necessary that the Ministry of Education, Science and Technological Development considers the need for closer and precise editing procedure for giving the consent to changing the name of the school, both in terms of documentation to be submitted with the application, as well as measurable and objective criteria on the basis of which it is possible to justify the reasons which postpone the decision and approval of the claim that meets all the formal requirements. Ministry of Education, Science and Technological Development shall, within 60 days of receipt of this Act, notify the Ombudsman on the measures taken and provide evidence of acting on them.

Reasons:

The National Council of the Bosniak national minority (hereinafter National Council) has filed a complaint against the Ministry of Education, Science and Technological Development (hereinafter Ministry), indicating a violation of the right of elementary school "Selakovac" in Novi Pazar (hereafter School) to change the name and the violation of the right to an effective procedure and remedy, because, for a period of three years, the Ministry does not bring a decision on the request of the School for approval to change its name, with a legal remedy.

According to the complaint and the submitted documentation, the National Council has decided that the School is of particular importance to the education of members of the Bosniak national minority and has submitted a proposal to the school board initiating a procedure to change the name of the School so the institution is called "Avdo Medjedovic" in the future, which School adopted. School sent the first request for approval to change its name, to which was attached the approval of the School Board and the Teachers' Council, to the Ministry in July 2013. The Ministry asked that this request be amended with the delivery of the decision of the school

board with detailed explanation and the reasons for changing the name of the school, opinion of the Council of parents, an excerpt from the Statute of the school, the opinion of the Group for the professional - pedagogical supervision for the municipality of Novi Pazar, Sjenica and Tutin on the justification of a change of name, as well as the opinion of city of Novi Pazar. Acting in accordance with the given guidelines, the School obtained all required documentation and re-submitted requests in December 2014 and June 2015.

The Ministry has not issued decisions on orderly request for issuing consent to change the name, which was last submitted at the end of the school year 2014/2015 and timely in relation to the start of the new school year, but has informed the school that there are no conditions; therefore there is failure to deliver required approvals.

Considering the allegations contained in the received complaint, as well as the attached documentation, the Ombudsman carried out a control procedure of the Ministry, for the undisputed findings of all the facts.

On the basis of declarations³ and additional notifications⁴, which the Ministry submitted at the request of the authorities, it was found that it is the attitude of the Ministry that the names of public schools change only in exceptional cases and that when deciding on a request for name change of school it is governed by the principles that names used are only those known to the wide public in Republic of Serbia.

The reasons why the School is informed about the "impossibility" of granting approvals, the Ministry clarified with priorities of educational activities and the commitment of rational conduct, therefore that it is necessary to consider what is qualitatively changed and whether it will the change of the name of the school be providing the right to education with the new quality of the information to the students.

³ ³ Report No: 614-02-01228/2015-02 from 12. 8. October 2015.

⁴ ⁴ Report No: 614-02-01228/2015-02 from 12. November 2015.

In the period from 2008 to 2015, the Ministry issued six decisions on approval, and in the period from 2012 to 2015, the Ministry has not issued any decisions rejecting approval for the change of name of the school, but has sent notices to headmasters that there are no conditions for approval, because documentation is not complete, as well as in cases where with the request was submitted the school board decision with the consent of the founder of the school, in accordance with the law.

An article 34 of the Law on the Basis of the Education System⁵ stipulates that the institution can make status changes, change of name or headquarters and that the decision to change the name or headquarters of the institution is brought by the management body, with the consent of the founder, and when the founder of the Republic of Serbia, autonomous province or local self-government, with the consent of the Ministry. School cannot perform status change, a change of name or headquarters during the school year.

According to Article 53 of the named law, the management body of the school is a school board. By the Law on National Councils of National Minorities⁶, Article 22, paragraph 1, item 4, it is regulated that the national council proposes renaming of streets, squares, city districts, villages and other settlements, and institutions which have been found to be of particular importance for national minority,

Article 7, of the Law on General Administrative Procedure⁷ stipulates that the authorities conducting the procedure or deciding in administrative issues are required to ensure the successful and quality realization and protection of rights and legal interests of individuals, legal persons and other parties (principle of effectiveness).

⁵ „Official Gazette RS", No. 72/2009,52/2011,55/2013,, 35/2015 – authentic interpretation and 68/2015)

⁶ „, Official Gazette RS, No. 72/2009, 20/2014 – Decision of CC and 55/2014)

⁷ „, Official Gazette RS ", No. 33/97 and 31/2001 and “Official Gazette RS ", No. 30/2010

According to the article 208 of the Law on Administrative Procedures, when the procedure is instituted on the request of the party or the official duty, if this is in the interest of the party, and prior to the decision it is not necessary to conduct a separate examination proceedings, nor are there any other reasons why it cannot be brought a decision without delay (previous issue decision, etc.), the authority must make a decision and submit it to the party as soon as possible, but not later than one month from the date of the submitting of the request, or from the date of the initiation of proceedings by official duty, unless a special law has not determined shorter term. In other cases, when the procedure is instituted on application of a party or on official duty if this is in the interest of the party, the authority must make a decision and submit it to the party at the latest within two months, unless a special law stipulates shorter deadline.

The ministry on applications for approval of name change of school does not decide by decision, which is granting or refusing the consent, although they are submitted in accordance with the law and complete documentation. Instead of bringing a decision on orderly request, as in the present case, Ministry informs schools that there are no conditions for granting the requested consent and thereby prevents the exercise of right to effective remedy and start administrative dispute against the decision.

Legally established commitment to seek consent of the Ministry during the name change of an institution allows to consider submitted requests before consent, which can prevent often and unjustified changes of names of schools, from the aspect of continuity of education and explanations of reasons to change the name, especially in circumstances when school carries a name of one famous person, and the name is changed to other person.

However, the Ministry has the legal obligation to, on submitted request for issuing consent on name change give decision and in every case, when it is in accordance with the law, given decision of the management body, with consent from the founder. Therefore, justification, or the foregoing reasons why the Ministry does not deciding on the requests, is not acceptable because its assessment of whether or not the proposed change is in relation to the historical personality which is known to wide public, is not based on the law nor measurable criteria.

In such circumstances, contrary to the rule of law, it is possible a different treatment in the same situations and arbitrariness in decision-making. After examining the submitted documentation, it was observed that, of the six solutions in 4 cases consent was given to change a school name, which marks the geographical term or date, in the name of the school after famous historical figures. But, at the same time, in two cases was approved to change the name of school after famous historical figures into another name of other historical figure.

Next to the fact that there is no legal basis, the attitude of the Ministry about whether the decision to change the name of the school is expedient and rational, in the present case it obscures the fact that the primary school "Selakovac" submitted the request with full documentation, that the school is of particular importance for the Bosniak national minority and that the proposed amendment is name "Avdo Medjedovic", according to the largest Bosniak epic poet, contributing to the upbringing and educational function of improving and strengthening the national and cultural identity of students which are Bosniaks, having in mind that in this way pupils learn and cherish their cultural heritage, and certainly contribute to acquainting majority nation with historical figures of minority communities.

It must not be overlooked that there are circumstances in which there is a reasonable postponement or refusal of approval even though the request meets the formal requirements. Also it can be accepted that objective reasons due to which the Ministry requests that next to the decision of management body on name change, with founder's consent, deliver the consent, therefore the opinion of other organs and bodies, in this case Teachers Council, Parents Council and competent school administration.

However, bearing in mind the respective decree for law that regulates this issue, it is not acceptable that, after all the previous years, the Ministry has taken not a single measure to regulate the circumstances, conditions and criteria (changes in the law or giving instructions, directives) and made them known in advance . Failure to perform duties and activities from their scope or the responsibilities of the administrative bodies is a flaw that for the direct and indirect

consequences has, and this time it had, creating legal uncertainty, making difficult legal position for the citizens and the violation of their rights.

Further, the Ministry stated that it is consent to orderly submitted request do not reject consent for the reasons of expediency, rationality or priority of educational activities, and that it is consent that law does not know the institute for impossibility of giving the consent (or that conditions were not met), which is stated as an explanation to the headmaster of the school. However, even next to that, Ministry did not state that on orderly submitted request will bring decision, but informed this body that request will be, in the current school year, again considered and decided upon, in a timely manner in a relation to the 1st of September 2016.

Based on all the facts and circumstances, the Ombudsman, by application of the article 31, paragraph 2, of the Law, gave recommendations to the Ministry of education, science and technological development with the aim of work of administrative bodies, legal, fair and effective exercise of rights of Bosniaks to education in native language and preventing similar omissions in the future.

Deliver to:

- The Ministry of education, science and technological development*
- A copy for the National Council of Bosniak national minority*