



ENOC 15th ANNUAL CONFERENCE

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“The respect of the rights of children and young people in institutional care”

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14, 15 and 16th September 2011
Warsaw, Poland

PRESENTATION OF THE INSTITUTION & SUMMARY OF ACTIVITIES

Name of the member institution :

The Protector of Citizens/Ombudsman

Current Ombudsperson:

Ombudsman: Mr. Sasa Jankovic

Deputy for the Rights of the Child: Ms Tamara Luksic - Orlandic

I. Role and structural organization

- Legal framework

The Protector of Citizens of the Republic of Serbia is an independent state authority, introduced into the legal system of the Republic of Serbia in 2005 by the Law on Protector of Citizens and subsequently regulated by the Constitution of the Republic of Serbia in 2006. Serbia has established a model of general, parliamentary ombudsman institution – Ombudsman is responsible for his/her work to the national Parliament. The Protector of Citizens is mandated with protection and promotion of human and minority rights. The Protector of Citizens has a duty to control legality and regularity of activities of public administration institutions related to realization of individual and collective rights of the citizens. The Ombudsman works within the national legal system and in the framework of ratified international agreements and widely accepted rules of international law. ·

- Principal functions as defined by law

The Protector of Citizens controls the operation of the public authorities and the respect of the rights of citizens during the activities of public bodies when application of national laws and regulation is in question. Mandate of Serbian Ombudsman comprises all state and local administration as well as administration in province of Vojvodina (including institutions, organizations and enterprises which have public authority - schools, institutions in social protection area, etc), but not the National Assembly, the President of the Republic of Serbia, the Government, the Constitutional Court, courts and public prosecutor's offices. Control function of the Ombudsman is fulfilled through investigations and inquiries in individual cases.

The Protector of Citizens is entitled to act in a preventive way, by extending good services, mediating between citizens and administration authorities and by offering advice and opinion on issues within its scope of competence.

The Protector of Citizens is also entitled to legislative initiative. It can propose laws within its scope of competence; submit initiatives aimed at amending the existing or adopting new legislation; offer its opinion to the Government and the National Assembly on legislation under preparation upon their request or on his own initiative; initiate the law constitutionality and legality assessment procedure before the Constitutional Court.

The administration authorities have a legal obligation to cooperate with the Protector of Citizens, grant access to its premises and all the available data regardless the level of confidentiality. Failure to abide by these legal obligations constitutes the basis for launching disciplinary and other procedures, including request for dismissal of certain state official, ministers, as well.

□ Structural organization

The Protector of Citizens has four deputies according to the law. One of them is the Deputy for the Rights of the Child, elected by the National Parliament in October 2008. Other three deputies are specialized in the field of: minority rights, gender equality and rights of the disabled persons - one person and rights of persons deprived of liberty. From January 2011, one of the deputy for gender equality and rights of persons deprived of liberty resigned. In the new distribution of responsibilities, the Deputy for the rights of the child is now responsible for gender equality (and the rights of LGBT persons), as well. Serbian Ombudsman authorized Deputy for the Rights of the Child to work instead of him when he is out of Office or unable to undertake his duty.

Deputy's term of office is five years.

Protector of Citizens has its Office, consisting of different departments and units. One of departments is a Department for the Rights of the Child, which has 5 employees. Department conducts inquiries, prepares legislative initiatives, opinions, recommendations and other acts concerning rights of the child, performs researches and promotion of the rights of the child activities. There are also other staff members from other departments (project, cooperation, legal initiatives and publication, etc.) who may contribute, as experts or technical support in certain activities that Child Rights Department launch. The Department is led by the Deputy Ombudsman for the Rights of the Child herself.

The Protector of Citizens has established Council for the Rights of the Child as consultative body. Its members are well known experts in the child's rights area. By offering its opinions, proposals, analysis and special reports, this expert and advisory body of the Protector of Citizens/Deputy should contribute to developing a more comprehensive understanding of complex and specific issues in exercising and protection child's rights in Serbia.

The Panel of Young Advisers (Youth Panel) has been established in November 2010, as an Ombudsman's advisory body in the child's rights matter. Panel is consisted of 30 children, age 13 - 17. The election of Panel members respected the principles of age and gender equality (equal number of boys and girls; equal number of students in elementary school - up to 14 years, and high school - up to 17 years), representation of national minorities, children with disabilities, children in alternative care (institutions and foster families) and territorial representation - due to place of living, Panel members represent all territories in Serbia, and the number of Panel members living in a certain territory is appropriate to number of pupils on that territory.

Three meetings of the Panel have been organized so far. Panel members had two cycles of education on the rights of the child (February and April 2011). They participated in the consultation process on the rights and legal status of children and parental responsibility and in the survey on child-friendly healthcare (for the purpose of preparing CoE recommendations on issues) and conducted peer research on violence in schools by themselves and under supervision of Ombudsman's expert. Further activities shall start with the beginning of new school year.

II. Individual complaints (if the institution has a competence to handle individual complaints)

□ Scope of competences of the Ombudsperson in handling individual complaints

The Protector of Citizens reviews cases upon the complaints of citizens or legal entities or at its own initiative. During the procedure the Ombudsman undertakes investigation and control of work of certain administrative body in order to collect all the necessary facts and get insight into the circumstances. All the necessary means for this purpose, such as interviews with all employees working for the authority which is an object of control procedure, access to all the documentation of the authority, unobstructed access to office premises, unsupervised interviews with children are at the Ombudsman's disposal.

Method of direct intervention (mediation, preventive actions, extending good services, offering advice and opinions on a particular case) is often and effectively used method in Ombudsman's procedures especially regarding children. There are different ways of intervention: telephone contacts with the authorities and the complainants; forwarding short and brief documents to the administration authorities; direct contact with the representatives of the authorities and complainants, etc.

Due to the vulnerability of children, direct supervision over controlled body is very effective since it quickly leads to the elimination of deficiencies and termination of child rights violation. This method also creates a stronger presence of the Protector of Citizens in all environments where there is a higher possibility for child rights violations. Case conference is highly effective method of solving urgent and complex problems in the area of child rights.

When the Ombudsman, i.e. deputy for the Rights of the Child finds that violation of the child rights occurs, he/she issues the recommendation to the public body to make certain corrections or undertake concrete measures. When public body answers how it has applied the recommendation the case is closed. Recommendations concerning rights of the child, issued by the Ombudsman, are fulfilled in all cases.

□ Relevant statistics (if available) on:

- Number of cases for the year 2010-2011 or for a given period in between,

Cases (31. July 2010 - 31. July 2011)

In the period 31. 07. 2010 - 31. 07. 2011, Protector of Citizens formed 272 cases in the child's rights area (9% of total number of cases before the institution) - 232 upon complaints and 40 upon Ombudsman's own initiative.

In the same period, Ombudsman received 80 posts, through web site www.pravadeteta.rs (Ombudsman's web page designed for children) and respective email address.

- Complaints' main authors. What is the percentage of complaints initiated by children, Complainants were mostly parents (188 complaints - 80%). 44 complaints (19%) were forwarded or filed by other authorities (local or Provincial Ombudsman, schools, administrative bodies), or other legal or nature persons (NGOs, foster parents, potential adoptive parents, relatives, etc). Two complaints were filed by children themselves.

Posts were also sent mostly by adults (not necessary parents) - 52 (65%). Children sent 28 posts (35%)

- Age average of concerned children,

Age average of concerned children is 5.

- Area of complaints (ex: situations relating to schools, social and housing problems etc.).

The largest number of cases reflected the child's right to family life (maintaining personal relationship with a parent the child does not live with; parental responsibilities; decision on who the child shall live with; respecting child's best interests in the social service proceedings on family matters, etc) - 87 cases (32%). The second largest area relates to the rights within the education system, including protection from violence in schools - 79 cases (29%). Then, cases referring to protection of violence, abuse and neglect (without similar cases referring to violence in education facilities) - 42 (15%); rights of children in alternative care (adoption, foster family and institution cases) - 20 (7%); rights of children with disabilities - 19 cases (7%); health - 15 cases (6%); remaining cases refer to privacy, adequate standard of living, identity, rights of the child in the conflict with the law, and cases considering Ombudsman's research on the « missing babies » case conducted in 2009 and 2010.

The most concerned rights (percentage)¹:

- the best interests of the child - 187 cases (69%)

¹ The percentage of breached rights does not correspond to actual number of cases, as every case refers to breach of several child's rights at the same time

- the right to protection from abuse and neglect - 91 cases (33%),
- the right to development – 68 cases (25%)
- the right to maintain contacts with both parents - 64 cases (24%)
- the right to high quality education, including protection of violence in schools – 63 cases (23%)
- the respect for the views of the child – 29 cases (11%),
- the right to accessible social and social protection services - 27 cases (10%),
- rights of the child with disabilities – 19 cases (7%)
- the right to an adequate standard of living - 17 cases (6%),
- the right to rehabilitation and reintegration – 17 cases (6%)
- the rights concerning illicit transfer and non-return – 17 cases (6%)
- the right to health – 13 cases (5%)

Posts received through email and web page relate to these areas :

- education system, including protection from violence in schools – 34 posts (43%), 12 sent by children, 22 by adults ;
- family life – nine posts (11%), three sent by children, six by adults ;
- rights of the child in general – eight posts (10%), six sent by children, two by adults ;
- adequate standard of living – eight posts (10%), all sent by adults ;
- protection of violence, abuse and neglect – seven posts (9%), two sent by children, five by adults ;
- alternative care – five posts (6%), three sent by children, two by adults ;
- right to privacy – three posts (4%), one sent by a child, two by adults;
- the rest were posts concerning children with disabilities (2 posts), health (2 posts), identity, and child in the conflict with the law (each with one post) – one sent by child, five by adults.

It is obvious that majority of children's posts relate to educational rights (43%) and rights of the child in general (22%).

III. Expressed opinions, statements, policy recommendations and/or proposals for legislative and/or other reforms

Expressed opinions, statements

- Having in mind that nine-month preparatory pre-school education is mandatory for all children and a part of elementary education, it is an obligation for State authorities and all public bodies to provide attending of this program to all children. Omission by any authority to timely inform the parents about preparatory pre-school education, shall not be the reason for denying such service to a child (*Opinion with recommendations to Ministry of education and pre-school educational institutions*).
- The Committee for the Rights of the Child, in its General comment No 7 - Implementing Child Rights in Early Childhood, insists on knowledge and competences of experts on early childhood, especially about emotional attachments in early childhood, importance of maintaining and continuity of close relationships between the child and his/her caregivers and family members. The earliest years of young children's lives are the basis of their physical and emotional health...Decomposition of child's family is one of the most harmful circumstances for young children... Young children are especially vulnerable to breaches caused by unreliable, inconsistent relationships with parents, caregivers and other persons close to the child, or in case of separation from parents or long-term discontinuance in relationship with them (*Recommendations to social service*).

- Omission to provide or untimely providing support and protection to children without parental care, by social services, is severe breach of the child's rights. Psychological recovery of child victim of abuse and neglect demands that experts in social services and institutions act timely and efficiently in providing help, support and protection to the child, as well as to provide additional support in education and for the purpose of overcoming the social deprivation of the child

The right of the child to preserving his/her identity and family relations shall be fully protected in the process of adoption. The social service, as an institution in charge of adoption proceedings, shall - before the beginning of the procedure - explore possibilities and ways of maintaining the child's relations with his/her relatives. The social service shall respect the child's right to participate in the proceeding, and shall plan its activities with due respect for child's expressed views (*Recommendations to social service, in the case of adoption*).

- Registry Office, as public authority, has an obligation to protect the right of the child to preservation of his/her identity, protected by the Convention on the Rights of the Child and Constitution of the Republic of Serbia. Family (last) name, as a part of a name and personal and family identity, represents the connection of a child with his/her parents and other ancestors and relatives (*Recommendations to the Municipal Registry Office*).
- Omission to provide or untimely providing support and protection to children without parental care, by social services, is severe breach of the child's rights. Psychological recovery of child victim of abuse and neglect demands that experts in social services and institutions act timely and efficiently in providing help, support and protection to the child, as well as to provide additional support in education and for the purpose of overcoming the social deprivation of the child (*Recommendations to social service*).
- It is a breach of the rights of the child when a health institution rejects the request for information on the health of the child younger than 15, filed by a parent who – under the court decision to entrust the child to the other parent - does not exercise parental rights. By demanding that a parent needs to prove his non-deprivation of parental rights (negative legal fact), health institution restricts the parent in fulfilling his parental duties and denies the child's right to have full care from both parents. By such acts, health institutions violate the principle of equality of parents and rules on parental rights and duties provided in Convention on the Rights of the Child and Serbian laws (*Recommendations to Ministry of Health*).
- It is out of question that public has a right and interest to be informed about the work of State authorities, especially in the field of safety and protection of human lives and property. However, the specific situation of children victims of sexual abuse and exploitation demands the enhanced attention of all State authorities. Dissemination of information on sexual exploitation and abuse of a child, significantly lowers his/her chances for rehabilitation and reintegration and can leave permanent harmful consequences on the child's psychosocial development
By ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Republic of Serbia became responsible to provide the special status of children victims of these criminal acts. Especially, it is an obligation of the State to protect the privacy and identity of children victims and to take measures to prevent the public dissemination of any information that could lead to identification of a child victim. Information about the identity of a child is not consisted only of personal data and data which directly refer to personal and other attributes. Identity information consist of all facts which – alone, or in relation with other facts – can directly or indirectly enable the recognition and identification of a child (*Recommendations to Ministry of Interior*)
- Every child has a right to education directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential. Education is not just formalistic attendance of classes; it comprises wide specter of activities and learning processes, including the participation of children in national and international contests and other activities aimed to acquiring knowledge and competences in accordance with child's abilities and affinities and to development of child's personality, talents and capacities. The Committee on the Rights of the Child, in its general Comment No 1 – The Aims of Education, refers the States to holistic approach to education, which provides the fulfilment of the basic aim of education – the development of child's abilities to their fullest potential and a child's full participation in society. By ratification of the Convention on the Rights of the Child, Republic of Serbia became responsible for taking all available measures for fulfillment the aims of education set forth by the Convention and for taking the best interests of the child as a guiding principle in reaching decisions in all matters which (in)directly affect children (*Recommendations to Association of Music and Ballet Schools in Serbia*).

Proposals for legislative and/or other reforms

In the period 31. 07. 2010. – 31. 07. 2011., The Protector of Citizens has continued with the drafting the Law on the Rights of the Child. As stated in the previous report on Annual updates, the Law will be the so-called "umbrella" law referring to children, their rights and freedoms and the basic principles of protection. Currently, the Draft Law is in the process of expertise by experts of Council of Europe. After receiving the expertise, consultation process on the national level with children, professionals, State authorities and civil sector will start.

The Protector of Citizens launched three important legal initiatives, as well:

- The Initiative for the amendment to the *Draft Law on Amendments to the Law on Fundamentals of Education System*. The Initiative was aimed to strengthening child's rights in education, especially participation of children in quality assessment of school books, the position of children in discipline proceedings in cases of violation of school rules and better protection of children from acts of abuse and neglect done by teachers.
- The Initiative for the amendment to the *Draft Law on Social Protection*. The Initiative tried to introduce new right for parents of children with disabilities – the legal status of « parent – caregiver ». This right should secure that a parent, who directly cares for the disabled or heavily sick child, receive monthly sum which correspond to the wage assigned to foster parents of children with disabilities. Unfortunately, Ombudsman's amendments were not adopted,
- The Initiative for the amendment the *Regulation on reimbursement, reduction or exemption of tax for environmental pollution*. The Initiative was aimed to equalization of parents of children with disabilities – owner of motor vehicles with owners of vehicles who have disabilities, before tax laws and authorities, concerning this specific tax for environmental pollution.

IV. Research, investigation, studies

The protector of Citizens conducted three researches:

- Consultation process with Panel of Young Advisers on the rights and legal status of children and parental responsibility, in the process of drafting Recommendation on the rights and legal status of children and parental responsibilities by CoE Expert Group. The Serbian ombudsman's findings and report have been sent to the Expert group;
- A survey with Panel of Young Advisers on child-friendly healthcare, in the process of drafting respective recommendation on the issue, by the Expert Group of Council of Europe ;
- A peer research on violence in schools, conducted by the Panel of Young Advisers.

The Protector of Citizens participates in the ongoing Regional project « Prevention of exploitation of children in South East Europe », which first phase is the research on child begging. Ombudsman institutions from Montenegro, Republika Srpska (BiH) and Province of Vojvodina (Serbia) are members of the same project. The purpose of this research is to strengthen the fulfillment of child's rights through the improvement of the system of protection of children exposed to begging. The project is realized in cooperation with Save the Children Norway and partnership with the NGO "Center for Youth Integration", Belgrade. The outcome of the research will be the Special report of the Protector of Citizens on child begging in Serbia (currently in the process of preparing), together with the brochure and poster designed for the wide public. The public presentation of the Report is planned for September 2011. During 2011, the second phase of project will start – further investigation of child exploitation in Serbia.

V. Communication, Promotion and Publications

Deputy Ombudsman for the rights of the child participated in number of public debates: on violence against children, sexual exploitation and sexual abuse of children, role of Ombudsman in protection and promotion children's rights, social inclusion of children with disabilities, inclusive education, abuse of children in public advertisements, public policies on children, rights of children – asylum seekers, restorative juvenile justice, ban of corporal punishment, protection of "street children", etc.

Ombudsman experts in Department for the Rights of the Child visited 14 schools in East Serbia region, promoting the establishment of Panel of Young Advisers, introducing the Ombudsman institution to children and raising dialogue with children on rights of the child, especially in education.

Deputy Ombudsman for the rights of the child visited institution for urgent placement of children victims of abuse and neglect.

Deputy ombudsman has published several articles in Serbian dailys: on non-adoption the Ombudsman's amendment to the Law on Social protection and leaving parents of severely sick children or children with disabilities without special social support; on protection of children from sexual violence; attempt on lowering the reached level of exercising of child's rights in education. Deputy ombudsman also participated in radio and TV shows, concerning protection of children in advertisements, inclusive education, cyber violence, sexual violence, street children, etc.

VI. Other activities

□ Innovative projects/good practices

- After education on the rights of the child and special education on violence, prevention and protection from violence and legal acts on prevention and protection of children from violence in educational facilities (mandatory for school and every public body and facility in the education system), members of Panel of Young Advisers conducted the peer research on violence in schools. The research covered not only the extent of violence in schools, but also children's attitudes on the issue and the level of awareness of children about school obligations in cases of violence, existence of specific school bodies in charge to prevent and protect children from violence and existence of the Special protocol for Protection of Children from Abuse and Neglect in Education Facilities (issued by Ministry of Education) and the Regulation on Procedure Protocol in Educational Facility in Response to Violence, Abuse and Neglect (issued by minister of education).

By conducting this research, Panel members became a part of the Ombudsman's control mechanism: they actually control how their schools deal with violence and how they inform students about their rights and ways of prevention and protection from violence. Panel's findings shall be the ground for future Ombudsman's recommendations on the issue.

- Ombudsman participates in the project "Electronic communication with the Protector of Citizens", currently ongoing in 10 municipalities in Serbia, in which citizens can now communicate with the Ombudsman's office over video link.