



ENOC 15th ANNUAL CONFERENCE

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

14, 15 and 16 September 2011
Warsaw, Poland

PRESENTATION OF THE INSTITUTION & SUMMARY OF ACTIVITIES

Name of the member institution : The Human Rights Ombudsman of the Republic of Slovenia

Current Ombudsperson: Dr Zdenka Čebašek Travnik, MD.

I. Role and structural organization

- Legal framework

The legal basis for establishing the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) is provided in the Constitution of the Republic of Slovenia, adopted on 23 December 1991. Article 159 of the Constitution provides that the office of the ombudsman is established in order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority.

The Human Rights Ombudsman Act was adopted in 1993. The Ombudsman's functions and responsibilities follow the model of the classic Scandinavian ombudsman.

- Principal functions as defined by law

The law grants the Ombudsman the power primarily to obtain all information, regardless of its level of classification, from public and other authorities that may be subject to the Ombudsman's

supervision, to carry out investigations and also as part of this to call witnesses for examination. The Ombudsman may at any time conduct an inspection at any public authority, any facility where personal freedom is restricted, psychiatric institution, etc. In agreement with the person concerned, the Ombudsman can also lodge an appeal with the Constitutional Court regarding the violation of human rights, which is an important power. The Ombudsman can also submit motions for constitutional review of regulations without the prior determination of his legal interest by the Constitutional Court, as is the case with other petitioners.

- Structural organization

The Ombudsman of the Republic of Slovenia has four deputies. One of them covers the area of children's rights. The work in the field of children's rights is organised within a department where four persons and the Deputy Ombudsman are employed. In addition to carrying out tasks related to the protection of children's rights, three of them are also engaged in other areas.

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

- Scope of competences of the Ombudsperson in handling individual complaints

After receiving an individual complaint, save where a petition is manifestly ill-founded, the Ombudsman first solicits the view of the authority that is allegedly encroaching on an individual's right, regarding the allegations concerned. The views of all parties concerned are examined and an opinion is drawn up; on that basis, we provide proposals and recommendations to the authorities, if appropriate. Sometimes our measures are directed solely towards solving an individual case, but we can also identify broader systemic issues while considering a particular petition, in which case we draw the attention of those responsible to such issues. In addition to communication with the competent bodies, we also draw attention to our findings in an annual report to the National Assembly, and highlight more important topics through the media, which react well to our warnings.

- Relevant statistics (if available) on:
 - Number of cases for the year 2010-2011 or for a given period in between,

From January to August 2011, we received 150 petitions relating to alleged violations of children's rights.

- Complaints' main authors. What is the percentage of complaints initiated by children,

Most of the petitions are submitted by parents, school and kindergarten teachers and professional workers in social work centres. We estimate that children themselves submit between one and two per cent of all petitions.

- Age average of concerned children,

We do not keep track of petitioners by age, but we estimate that the average age of children is above ten years.

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

The majority of petitions refer to the rights of children who are in any way involved in legal proceedings relating to the breakdown of a parental partnership, to the placement of a child in custody and to the determination of contacts and maintenance amounts. A number of petitions relate to the need to appoint advocates within the pilot project Advocate – A Child's Voice. Many petitions concern children's rights at school, in particular the rights of children with special needs. Some petitions concern the alleged violation of rights in the procedures of removing children from the family, and some to housing and wider issues relating to children. There were no petitions referring predominantly to social issues.

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

After many years of endeavours by the competent public authorities, including the Human Rights Ombudsman, a new Family Code was adopted in 2011. In addition to some other new features, the corporal punishment of children is legally prohibited for the first time in the country. The Family Code has also introduced some new possibilities for same-sex partners to adopt a child. This rendered the Family Code a target for numerous attacks and it is likely that the Code will not be supported in the autumn referendum. Currently, the Constitutional Court is deliberating whether such a referendum would be unconstitutional, and therefore the Code has not entered into force.

In July, a new Placement of Children with Special Needs Act entered into force; it includes a special reference to autism, which is a new feature.

Some rooms for interviews have been arranged; they are child-friendly and enable the child's opinion to be obtained in an unburdened environment, where a professional talks to the child and can, in an appropriate manner, also ask him/her questions posed by third persons (judges, parties to the proceedings, etc.). A new video conferencing system, linking some courts and social work centres, has been established within the justice administration. It enables procedural acts to be carried out remotely. This means that there is no longer any need for a child to be exposed to burdens likely to be caused by his/her direct presence at court. Interviews with children in such rooms can be recorded; these recordings can later be used for the purposes of certain proceedings without exposing the child to unnecessary traumatic situations.

In the past year, we received some questions concerning the inclusion of children in political activities, in particular political propaganda. We fear that such inclusion will increase. In our opinion such inclusion is not controversial in itself, provided the children are aware of the contents and significance of the political views and approve of them. Our warnings are primarily focused on explaining that the criteria for children participating in such activities should be subject not to parental consent, but to the right of a child to participate in activities he/she is capable of understanding, given his/her age and maturity.

We estimate that the number of cases of abuse of children in the media decreased in the past year. The Ombudsman's consistent reporting of all controversial cases to the Court of Honour of Journalists has probably helped in this regard; as a rule, the Court found our initiatives well-founded and in fact revealing violations of the Journalists' Code of Ethics. Displaying children is the easiest way to get readers' attention; the authors, though, are not able to see the potential harm to the life of a child caused by their articles, so we will therefore continue to pursue these activities.

IV. Research, investigation, studies

The Ombudsman remains actively involved in the issue of children suffering from mental disorders. For serious cases of such children who demonstrate a high degree of hetero- or auto-aggression, the state does not have adequate accommodation facilities with the necessary medical and other professional care. Such children are placed in the secure wards of psychiatric hospitals together with adults, which can place an additional burden on children. Although the establishment of a special secure psychiatric ward for children has been envisaged for some years, final implementation is still far away.

We have again highlighted the issue of determining the time and extent of contacts between parents and children in cases where children were taken from their parents. Under the applicable law, the competent social work centres have the authority to remove a child from its home but not to determine contacts. Parents must resort to the courts to seek contacts with their children. In practice such cases are handled by professionals at a social work centre, who determine the time and

extent of contacts. However, in their opinion, their decision has no legal basis, and it cannot therefore be referred to as a decision because the solution is taken “in agreement” with parents. Such an agreement, of course, poses a problem, as the parents are given no option but to accept the determination of the professional, since any disagreement could prevent all contacts. The new Family Code should solve this issue.

V. Communication, Promotion and Publications

On the International Day of the Child, a completely updated website dedicated to children’s rights was launched last year. The website was well received and had many hits.

VI. Other activities

The Advocate – A Child’s Voice pilot project, running for a few years under the auspices of the Ombudsman, has neared its conclusion. However, it is not yet clear what form the final version will take. In September the Ministry of Labour, Family and Social Affairs is expected to present a model of advocacy that should uniformly regulate the advocacy of children and also other vulnerable groups (elderly persons, persons with disabilities, etc...). Despite some uncertainties in connection with its implementation, the Ministry has given assurances that the project will be satisfactorily completed.