Ombudsman of the Republic of Latvia

REPORT
ON THE CHILDREN’S RIGHTS
2011

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The Rights of Child

The UN Convention on the Rights of Child

Constitution of the Republic of Latvia

The Law on Protection of the Rights of Children

The sphere of human rights also distinguishes between different vulnerable groups of persons subject to special protection and care on part of the State, given their status. The rights of children are treated as a separate group, mainly because of the fact that, according to the applicable legal regulation, children lack certain rights available to adults; on the other hand, children also have their specific rights related to their age, status in the family, etc.

The rights of child mean the body of fundamental rights and fundamental freedoms that must be provided to each and every child (a child means any person who has not reached the age of 18, except the persons declared of full age in accordance with the law, or those who have registered marriage before reaching the age of 18 years) without any discrimination whatsoever, and regardless of the race, nationality, gender, language, religious, political or any other convictions, or domicile, financial and health condition, birth or any other circumstances of the child or his/her parents, guardian, or family members.

Definition of the rights of child arises from the key concepts stipulated in the Universal Declaration of Human Rights. A special section of the Declaration regarding children stipulates that “motherhood and childhood are entitled to special care and assistance”. While acknowledging equal entitlement of children to all freedoms expressed in the Declaration, the international community also acknowledges the need for additional assistance and support to children.

Harmonious development of personality requires living and bringing up of a child in the atmosphere of love, goodness and happiness, in family environment, among close, loving people. It is the task of adults to help the child to get prepared for independent life, to become a wholesome member of society, and to provide living conditions appropriate to physical as well as mental development of the child.

Priorities to which increased attention was paid in 2011 in the field of the right of children were targeted at socially vulnerable groups of children: children at public social care facilities (nursing homes) and children at psycho-neurological hospitals. Another two issues involving all children emerged in the course of work, and they were set as priorities: access to free education, and individual preventive work with children at municipalities.
I Children at public social care facilities (nursing homes)

The UN Convention on the Rights of Child, Articles 20, 23, 31
Constitution of the Republic of Latvia, Section 110
The Law on Protection of the Rights of Children, Section 16, Section 26 Part One, Section 27 Part Four, Section 44

Observation of the rights of young age orphans and children left without parental care at public social care centers has been set in 2011 among priorities in strategies of the Ombudsman of the Republic of Latvia for the years 2011 - 2013¹. Case study has been conducted for implementation of the priority: analysis of the international as well as national legal regulations, international recommendations including those made to the state of Latvia, and identification of the number of facilities and the number of accommodated children. Visits were undertaken to all public social care centers (hereinafter – PSCC) that provide social care and rehabilitation services to orphans and children left without parental care under the age of 2 years, and children with physical and mental development impairments under the age of 4 years: branches “Riga” and “Plavnieki” of the PSCC “Riga”, branch “Liepāja” of the PSCC “Kurzeme”, and branch “Kalkūnī” of the PSCC “Latgale. During such visits the officials of the Ombudsman’s Office inspected the conditions at the above-listed facilities, the status of observation of the rights of children, and discussed the improvement possibilities with the staff of the facilities.

Analysis of the situation in its entirety has shown that the large number of children accommodated in care facilities is the key problem that indicates to failure on part of the State to take the necessary steps to ensure the right of each child to grow up in family.

1. The right of child to grow up in family

The United Nation (hereinafter – UN) Convention on the Rights of the Child (hereinafter – the Convention) and the Law on Protection of the Rights of Children stipulate that each child has inseparable right to grow up in family. In case of children who have no their own family, either temporarily or permanently, they are entitled to care that is the closest to the family-based environment – from a guardian or foster family. Children may only be placed in a child care facility if no family care can be provided to a child. The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already to “ensure that

¹ Available at: http://www.tiesibsargs.lv/lat/tiesibsargs/majas_lapas_jaunumi/?doc=664
placement of a child in a child care facility is an exceptional measure that is only applied if family care is found inappropriate to the child in question”

A care facility presents a number of disadvantages from the view of the rights of children and legal interests: no facility can compensate family-based environment that is the basis for efficient development of a child; no continuous presence of an adult care-taker can be ensured at a facility, and therefore the child has no access to contact and care appropriate to their needs. The UN World Report on Violence against children (2006) notes that residential care seriously affects children, frequently with potentially irreversible consequences. According to studies, care conditions in early childhood (period from 0 to 3 years) have crucial effect on development of a child and impact on future prospects and success of the child. Residential care of infants has adverse impact on physical, mental and cognitive relation of children, and affects adversely their emotional stableness and safety, and preservation of culture and personal identity. According to studies, development of a young child is delayed by one month on every three month spent in a facility.

Article 21 of the Guidelines for the alternative care of children adopted on 18 December 2009 by resolution of UN General Assembly stipulates that use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests. Article 22 of the above-named document stipulates that alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings.

The UNICEF report “At Home or In a Home?” encourages governments to discontinue practice related to placement of children in residential facilities. The report notes that placement of young children under 3 years in residential facilities should be limited to a short term that does not exceed six months; it should be treated as last instance solution exclusively on the occasions when it is necessary and serves the best interests of the concerned child.

The PSCC branches at which inspections have been conducted provide accommodation to 467 customers. In total, 421 children were accommodated at the above-listed facilities during the visits, including 198 children under 2 years. The highest number of young children (under 2 years) was observed at PSCC “Riga” branches “Pļavnieki” – 93, and “Riga” – 72 children. Care and

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4 Available at: http://www.crin.org/docs/UNICEF_A%20call%20to%20action_cahier_web.pdf
rehabilitation services were provided at PSCC “Kurzeme” branch “Liepāja” to 19 children under 2 years, and to 14 children at PSCC “Latgale” branch “Kalkūni”.  

According to the information posted on the website of the State Inspectorate for Protection of the Rights of Children in August 2011, 27 foster families had expressed their willingness to undertake care of children from 0 to 2 years, thus enabling 34 children to grow up in family-based setting. In addition, 8 foster families offered care to additional 10 children over 1 year, and 30 foster families were willing to accommodate and care for children over 2 years, thus providing family-based care to 45 children.  

Information about the vacancies in foster families is available to orphans’ courts competent to decide on providing out-of-family care to a child, subject to the principle that family-based care serves the best interests of the child. According to statistics, however, the right to the above-mentioned care is not provided to younger children.

When assessing the situation, it should also be taken into account that, according to Section 9 of the Law on Social Services and Social Aid, orphans and children under 2 years left without parental care and accommodated by residential facilities are dependent on the State. Maintenance to children placed in foster families is partially provided by municipalities who pay subsistence allowance and allowance for provision of closing and soft staff. The different approach to funding of alternative care services is eventually among the reasons why orphans’ courts in their capacity of municipal institutions occasionally decide on provision out-of-family care to a child guided by financial considerations and give preference to State-funded residential care.

Conclusions:

- According to the international child right standards, placement of younger children, i.e. children under 3 years of age, in residential facilities is treated as infringement of the rights of children. Therefore, if out-of-family care is selected, care to young children must be provided in a family-based environment.

- The large number of children accommodated at the PSCC branches demonstrates that out-of-family care system established in our country has problems related to access of family-based care services to younger children, and infringements of the right of children to grow up in family take place as a result thereof.

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7 Data as of 19 August 2011.
8 Available at: http://www.bti.gov.lv/lat/arpusgimenes_aprupe/?doc=2589&page=
It is crucial to ensure that orphans’ courts develop understanding of the rights and needs of younger children to care in family-based environment, and to ensure compliance with the above-mentioned principle in practice.

A decision made by orphans’ court on placement of a child under 2 years of age in residential care may be influenced by financial considerations. It is therefore crucial to discuss the need for reviewing the funding of residential care services and to provide a uniform source of funding for provision of care services to children who have no physical or mental development impairments, regardless of their age. Costs of the above-mentioned services should be funded from the municipal budget, as it is presently prescribed by normative regulation in respect of children who have reached the age of 3 years.

2. The right of a child with special needs to grow up in family

According to the worldwide practice, the most common reasons in the countries of Central and Eastern Europe for placement of children in care facilities include physical and mental development impairments of children. Children with development impairments also represent a major part of the total number of children accommodated at PSCC branches. According to the information obtained from the staff of PSCC branches, people are not willing to take custody, provide foster care or adopt the said children because of their health condition; therefore, a number of children are continuously accommodated at state long-term social care and social rehabilitation facilities until they reach major age, and even longer. Many of the children with physical and mental development impairments are left without parental care. Some children with development and health conditions are placed in PSCC upon their parents’ application because providing family-based care is not possible for different reasons.

Article 23 of the UN Convention stipulates that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Manual on practical implementation of the Convention on the rights of children points out that emphasis is made in Article 23 on “active participation in the community” and “possibly efficient social integration”, which means, in the light of Article 2 of the Convention, that placement of children with disabilities in residential care facilities should be minimized, and that children should have the right to grow up in family-based environment without any discrimination⁹.

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The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already to “take steps to develop and implement alternatives to residential care of children with disabilities, for example, local rehabilitation programs and home care, as well as to arrange understanding development campaigns aimed at family-based care and fostering of the rights of children with disabilities.

UN Committee on the Rights of the Child in their General Comments No 9 on the Rights of Children with Disabilities\(^\text{10}\) and in European Declaration on Children and Young People with Intellectual Disabilities and their Families\(^\text{11}\) encourages the States to switch from residential care services that have adverse impact on the health and development of children to high quality support and alternative care in community. Alternative services including care by relatives or care in foster families and adoption must be arranged to motivate people who consciously seek possibilities to care for such people, and who are sensitive to special needs of the children and willing to provide benefit to children, to undertake care of the children.

**Conclusions:**

- The large number of children with physical and moral development impairments accommodated at PSCC demonstrates that placement of such children in child care facilities is frequently preferred in practice. Such practice persists due to lack of alternatives.

- Development and health conditions prevent children from access to family-based care services, and this contradicts with the principle of discrimination prohibition.

- Sufficient support should be provided to the families caring for children with special needs, and availability of alternative care services should be promoted in order to minimize placement of children with special needs at care facilities and to support removal of children from such facilities. Possibility should be considered to fix higher amount of remuneration to the guardians and foster families caring for children with physical and moral development impairments, since the health and development status of such children must not prevent them from availability of family-based care.


3. Ensuring the right of siblings to stay together

Article 18 of the UN Guidelines on Alternative Care stipulates that siblings with existing bonds should not be separated by placements in alternative care. Section 27, Part Four, Paragraph 1 of the Law on Protection of the Rights of Children also protects the right of children with existing family bonds not to be separated by placements in out-of-family care, unless in special occasions when it serves the best interests of the children.

According to the information obtained during interviews with the PSCC staff, the above-stated principle is not complied with in practice. According to Section 9 of the Law on Social Services and Social Aid, orphans and children under 2 years left without parental care and accommodated by residential facilities are dependent on the State. Therefore, orphans and children left without parental care only under 2 years of age have social care and social rehabilitation services available from PSCC branches. If a child’s sibling has reached the age of 3 years and no guardian or foster family can be found for the children, care of the siblings is provided by another child care facility funded by the municipality. In case of siblings with minor age difference (1-2 years), it is possible in practice that the municipality makes an agreement with PSCC on care of the children to ensure the right of siblings to grow up together; such occasions, however, present exceptions from the common practice.

Conclusion:

- The different procedure applicable to funding of residential care services, depending on the child’s age, facilitates infringements of the right of siblings to be not separated in the occasions when no care by guardian or foster family is available to children placed in out-of-family care. Therefore, a question arises about whether or not it is appropriate to review the procedure for funding of residential care services (see also the section regarding the right of child to grow up in family).

4. Number of Children at PSCC and their Right to Qualitative Care

The UN Committee on the Rights of the Child, based on conducted research, has repeatedly pointed out that small home-type child care facilities often demonstrate better results of child care. Large number of accommodated children adversely affects the quality of care services and poses risk to wholesome development of children. Child care facilities are unable to compensate efficiently the lack of family-based environment; children accommodated at facilities are subject to the principle of impersonality and strict regime; and shortage of staff results in limited access of children to care appropriate to their individual needs. Also, children may experience difficulties in finding a contact who helps to instill confidence and safety in children due to
personnel turnover. Manual on practical implementation of the Convention on
the rights of children points out that “children accommodated in facilities are
subject to the risk of delayed development; their communication abilities are
impaired, and they experience emotional deficit, insufficient attachment to
adults, passivity and lack of confidence. Serious deviations can be observed in
the intellectual and motivation field of psychology in children at primary school
age, as well as trend to inadequate behavior”12.

It was established during the visits conducted by PSCC that each facility can
provide accommodation to about 100 children, and “Kalkūni” branch of PSCC
“Latgale” can accommodate 160. Children live in groups of 10-12 in each. Two
employees are involved with each group of children on day-to-day basis: a
social worker who is parenting children and teaching skills to them, and a
caretaker. At nighttime, only 1 caretaker is available at the group. Assessment of
such situation against the international standards of the rights of children shows
that the large number of children accommodated at PSCC branches does not
serve the interests of the children. Taking into consideration the number of
caretakers assigned to each group, the age and health condition of children, the
quality of care is also questionable, namely, there is doubt whether the children
always have care available as appropriate to their needs.

According to the UN Guidelines for Alternative Care of Children,13 the
countries where large residential facilities remain, alternative forms and
deinstitutionalization strategies should be developed aimed at progressive
elimination of residential care facilities. Article 23 of the above-named premises
stipulates that states should establish care standards to ensure the quality and
conditions that are conducive to the child’s development, such as individualized
and small-group care, and should evaluate the existing facilities against these
standards.

Conclusions:

• The large number of children accommodated at each PSCC branch has
  adverse effect on the quality of care. The number of staff assigned to the
  groups is also insufficient to ensure that children have care available as
  appropriate to their needs. It is therefore necessary to review the
  requirements stipulated in regulatory acts in respect of social care and social
  rehabilitation facilities.

• The country should have developed deinstitutionalization strategy and
  adequate action plan with clearly set goals and objectives for each period in
  order to ensure progressive elimination of the large residential facilities.

lpp., 284.lpp.
13 Adopted on 18 December 2009 by resolution of the UN General Assembly, Guidelines for the alternative care
5. Alternative care forms

Alternative care forms should be available to younger children in order to reduce the number of children accommodated at PSCC. The Law on Protection of the Rights of Children stipulates that in case of a child placed in residential facility care of such child may be provided by guardian or foster family in the environment that is the closest to family-based setting.

Analysis of information regarding the number of younger children accommodated at PSCC branches and statistic data regarding foster families leads to conclusion that the number of foster families capable of and willing to provide care to very young children is insufficient. There may be several reasons of it.

Care, parenting and supervising of small children needs much more time and efforts. Care of infants requires continuous 24h involvement of the caretaker, and the caretaker’s mode of life is often changed radically. On certain occasions, the willingness to take care of small children may be affected by availability of health care services, because children must be periodically examined by family physician and consulted by other specialists.

The potential conditions that affect the willingness of foster families to take care of younger children, as well as quality of care, is lack of skills in care of small children (especially infants). Observations of the staff of PSCC branches also show that foster families frequently lack knowledge of how to care for infants.

Care of small children also involves notably higher costs (diapers, formulae, prams, clothing, etc.). Neither the foster family nor the guardian, unless he/she is the child’s grandparent, has the duty to support the child on their own cost; therefore, financial support is important in fostering the availability of alternative care services.

According to Section 3, Part One of the Law on State Social Allowances, the costs related to guardianship are fully covered from the state budget: remuneration for performance of the duties of guardian makes 38 lats per month, regardless of the number of children in charge, and allowance for support of a child makes 32 lats per month. The guardian is entitled to have means of subsistence paid by parents of the child; if this is not possible, subsistence is paid by the state instead. The amount of subsistence paid by the subsistence guarantee fund is 30 lats per month in case of children under 7 years. Given that each of the parents has the duty to pay subsistence, the minimum amount of subsistence for support of a child is 60 lats per month. In case of deceased parent, the child is entitled to survivor’s pension the minimum amount is presently fixed at 29.25 lats; in case of individual with inherent disability –

14 Article 4 of the Transitional Provisions of the Law on Subsistence Guarantee Fund
48.75 lats. If a child is eligible to survivor’s pension or state social security allowance to survivor, or subsistence from the subsistence guarantee fund, or family state allowance, the allowance for support of the child is reduced proportionally. At present, when the minimum living wage basket per person has exceeded 170 lats per month, the amount of allowance is not sufficient to cover the actual costs for support of the child.

Foster family also has no obligation to support a child placed in the family on their own account. Remuneration paid by the state for performance of the duties of foster family is 80 lats per month, regardless of the number of children placed in the family. The child support allowance is paid to foster family by the respective municipality, and according to Article 43, Paragraph 1 of the Cabinet Regulations on Foster Families No 1036 of 19 December 2006, the amount of such allowance may not be less than 27 lats per month. In practice, most of the municipalities provide higher allowances, yet the amount differs radically: in Viļāni, for example, it is 50 lats per month, in Jelgava – 3 lats per day, and in Olaine – in the amount of minimum wages. The allocated amount on some occasions is not sufficient to cover all costs related to child subsistence.

Adequate social guarantees also should be provided to motivate people to undertake provision of care services. An employed person who is willing to take care of an infant should have the possibility to use child care leave or unpaid leave with the right to resume the previous employment.

Section 156, Part One of the Labor Law stipulates that the employer has the duty to grant child care leave applied for by employee due to the birth or adoption of child. Further, Section 153, Part One of the Labor Law provides for the right to request and have granted unpaid leave in case of employee in whose care and supervision the adoptive child is placed by decision of orphans’ court prior to approval of adoption by court. On other occasions, unpaid leave may be granted at the employer’s discretion without obligation to grant the leave, that is, “the employer may also grant leave upon the employee’s application on other occasions”. In addition, Section 43 of the Law on Remuneration to the Government and Municipal Officials and Employees stipulates: “Unpaid leave without preserving rations may be granted to an official (employee) who applies for it and whose position (service, employment) regime permits so.”

In practice, due to the above-described regulation, there form situations in which the guardian or a member of foster family may be prevented from effective care of children for reasons independent on them, since the employer may refuse unpaid leave, and thus the person may not be entitled to parental allowance stipulated in the Law on Maternity and Sickness Insurance. Taking into account


Article 2 of the Cabinet Regulations No 1549 of 22.12.2009 Concerning the Procedure for Allocation and Payment of Remuneration for Performance of the Duties of Foster Family
the above-stated, corresponding amendments should be made to the regulatory acts so that a member of foster family and a guardian can enjoy the same rights as parents/adoptive parents of a child.

**Conclusions:**

- Appropriate policy should be implemented to promote availability of alternative care services, so that adequate funding and social guarantees are available to people who are willing to take care of children.

- Financial remuneration paid by the state for performance of the duties of guardian/foster family is incommensurate with the involved tasks, in particular concerning the individuals caring for younger children. Therefore, the issue should be discussed concerning the need to differentiate in regulatory acts the amount of remuneration for performance of the duties of foster family and guardian, respectively, depending on the age of children, so that higher remuneration is provided to the caretakers caring for younger children.

- Regulatory acts should be amended to increase the minimum amount of child subsistence so that it confirms with the actual costs of supporting a child.

- Regulatory norms concerning the provision of social guarantees should be improved to ensure that conditions of a member of foster family and to guardian are equal to those of parents/adoptive parents of a child, including amendments to the Labor Law and the Law on Remuneration of Public and Municipal Officials and Employees, to enable them to use child care leave or unpaid leave.\(^{17}\)

- Education of foster families provided pursuant to the Cabinet Regulations on Foster Families No 1036 of 19 December 2006 includes no extended education on care of young children (especially infants). Therefore, the need for development of a special additional education course on care of young children should be considered for the foster families intending to take care of younger children.

**6. Social Work with the Family**

Preventive social work should be pursued with the families of risk groups in order to minimize the possibility that young children are placed in residential care. According to observations, the lack or knowledge and skills required to take care of and parent children frequently leads to the failure to provide proper care to children, and consequently the parents are deprived of the right to care of their children. Provision of family assistant service should be therefore

\(^{17}\) In the given matter, the Ombudsman has addressed letter No 6-8/722 to the Ministry of Welfare within the scope of the verification proceedings in question for issuing opinion on legal regulation.
encouraged to provide support and training to parents in caring and parenting of children, as well as development of their social skills. Such service is currently available in a few municipalities only (in Riga and in the county of Babīte, for example), and therefore the need for and availability of such service in each and every municipality should be promoted.

Preventive measures in working with a family can eventually include the education of prospective mothers and new parents on care of a newborn child: care, nursing, emotional needs and other matters. Such education is presently organized by maternity hospitals and non-governmental organizations on a fee-based, voluntary basis. An example of good practice is provision of mandatory free education on child care to the parents from social risk groups.

In the situations where separation of a child from his/her family serves the best interests of the child, placement of the child in residential care should be of short-term nature, while intensive work is performed with the biological family to ensure that the child can later return to the family of his parents. Section 4, Part Five of the Law on Social Services and Social Aid stipulates that during the period of accommodation of an orphan or child left without parental care at a long-term social care and social rehabilitation facility, the municipal social service and orphans’ court shall cooperate with the staff of the relevant facility to foster returning of the child into family, to maintain contact between the child and the parents or, if this is not possible, to seek possibilities of providing care of the child by another family.

Practice shows that social work with families is insufficient, and the number of children who return to their families is extremely small. According to the reports made by PSCC branches on provision of long-term social care and social rehabilitation services in 2010, only 45 of 226 children have left the facility for reunion with the family of their parents. According to the information obtained from the staff of PSCC branches, parents on most occasions lack motivation to parent their children, and social workers often can find no solution of this problem. No adequate preventive work involving the risk families with children takes place due to shortage of social workers and lack of financial resources in municipalities.

Conclusions:

- Social, health, educational and other services to risk families should be ensured as well as timely access to such services.

- The need for improvement of normative regulations concerning the required number of specialists in municipalities, as well as concerning further education of social workers on the above-mentioned issues should be discussed.
Taking into consideration the fact that Governmental Declaration of the intended actions by the Cabinet under the management of Valdis Dombrovskis also provides for improvement of social service provision system by means of support to effective, transparent and customer-oriented social care, including competent social care tailored to each group of customers, as well as the fact that development and implementation of the government policy in the field of protection of the rights of children falls into competence of more than one Ministry, the Ombudsman has drawn the attention of the Government in November 2011 to the above-mentioned urgent measures to be taken for securing of the right of children to grow up in family or, failing that, to enjoy care in family-settings.

Having inspected the conditions at PSCC branches during our visits, and having discussed observation of the rights of children with the staff of facilities, it was concluded that a number of measures should be taken to improve the conditions, and the responsible authorities have already started seeking their solution:

1. Procedure for Placement of a Child in Alternative Care

According to the information obtained from the staff of PSCC branches, the workers who have been responsible for the child summarize information about the child’s development, health condition and special needs, and present such information to the guardian/foster family prior to placement of the child in alternative family-based care, in order to preserve succession of care. The above-mentioned information in written form is also submitted to the orphans’ court. The guardian/foster family also have the possibility to meet the child before removal from the residential facility, in order to establish emotional contact with the child.

The staff of PSCC branches informed that in practice, the procedure for placement of a child with foster family was different. There are foster families that express very high interest about the child and seek repeated meetings with the staff to discuss the matters related to child care, as well as with the child to establish emotional contact with him/her prior to placement of the child with the family. On the other hand, there are foster families that express no interest about the child who is removed from residential facility and taken to the foster family by representative of orphans court or social worker. In the latter case it is possible that the foster family lacks versatile information about the actual situation and needs of the child, since such information is available from the staff of PSCC branches during meetings with them. As a result, the foster family may make inconsiderate judgment of their ability to take care for particular
child, and there is risk on some occasions that the child may return again to the facility. Moreover, sudden, unexpected removal of a child from his/her usual environment may cause adverse emotional experience to the child.

Conclusions:

• Whenever alternative care is selected for a child, all parties involved in decision-making should have detailed information about the child, and their personal opinion should be based on such information. Placement of a child in alternative care should take place in circumstances that are emotionally favorable to the child. Therefore, foster families and guardians should meet the staff of residential facility prior to removal of the child from the institution in order to collect detailed information about the child and to establish emotional contact with the child.

• Orphans’ courts should develop understanding of the above-described issue, and amendments should be introduced to the Cabinet Regulations on Foster Families No 1036 of 19 December 2006 concerning the procedure for placement of a child with foster family.18

2. Management of the Child’s Property

During the visits to PSCCs, the staff of the branches has highlighted the issue of management of the children’s property. Children accommodated in residential facilities may have savings the application of which by the guardian – manager of long-term social care and social rehabilitation institution – is subject to approval by the orphans’ court. In practice, the staff of PSCC branches has experienced refusals by orphans’ courts to application of the children’s assets. On certain occasions, the funds owned by child are not put in use at all throughout their lives. According to the information obtained from the employees of PSCC branches, the orphans’ courts motivate their refusals by the fact that children accommodated in care facilities receive full support from the State, and that therefore the State has to provide the children with everything they need.

Social care and social rehabilitation services are provided to the children accommodated in residential facility; the services provided by the state, however, constitute the minimum necessary to meet the fundamental needs of the child. The child’s living standards can be improved and joy can be added to his/her life by toys, games and various events in the child’s life, yet their provision is not always available from the budget assets of the facility. The right to participate at plays and entertainment events appropriate to the child’s age and maturity are the rights of children stipulated in the UN Convention and the

18 The Ministry of Welfare has drafted Cabinet Regulations „Amendments to the Cabinet Regulations on Foster families No 1036 of 19 December 2006 (Reg. No. TA – 2670).
Law on Protection of the Rights of Children. Therefore, authorizing the guardian to apply part of the child’s assets when it is necessary to improve quality of the child’s life, for example, to buy some personal item or to participate at certain activities that may add favorable experience, would serve the best interests of the child.

Conclusions:

- Notwithstanding that the children accommodated in PSCC receive full support from the State the guardian should be authorized by orphans’ court to apply part of the child’s assets to improve quality of the child’s life.

- The orphans’ court should carefully assess the relevant circumstances and the need for use of the child’s funds prior to making decision, because the child’s assets **may not be applied to ensure provision of care and rehabilitation services.**

- Orphans’ courts should develop understanding of the above-described issue.\(^{19}\)

3. Health Care Services

According to Section 1, Paragraph 6 of the Law on Social Services and Social Assistance, continuous social care and social rehabilitation facilities provide accommodation, full care and social rehabilitation to orphans and children left without parental care. Sub-article 2.11 of the Cabinet Regulations concerning the Requirements to Providers of Social Services No 291 of 3 June 2003 (hereinafter – the Regulations) stipulates that provider of social services shall ensure access to the first aid to the customer. Article 18 of the Regulations stipulates that child care facility shall ensure registration of each child with the family attending physician and health care appropriate to the child’s needs. It may be therefore concluded that, according to the normative regulation, the PSCC has to provide access to health care services to their customers.

Article 11 of the Regulations stipulates that work with the children accommodated in child care facilities is conducted by social workers, social pedagogues, social caretakers, nurses registered with the register of practitioner nurses, and caretakers. Manager of the child care institution is entitled to outsource other specialists for provision of social care and social rehabilitation services. The normative regulation contains no list of specialists the manager of child care facility is entitled to outsource; the regulation provides, however, that such specialists may be involved for provision of social care and social rehabilitation services.

\(^{19}\) The Ombudsman has asked the SIRC to issue opinion on the methodical guidance provided by orphans’ court in the matter of management of children’s property.
According to the information provided by managers of PSCC branches, children in all branches are registered with attending family physician and they have health care services available, pursuant to the requirements of regulatory acts. In practice, however, registration with attending family physician is ineffective, since the physician is not always available to children at required time. Taking into account the young age of children and the fact that the children accommodated in PSCC include those with severe functional impairments, occasionally subject to regular supervision by doctors, medicinal professionals are engaged by facilities for work with children. In some facilities full-time medicine professionals are employed, while other facilities outsource the appropriate specialists on contractual basis. According to the information provided to the representatives of the Ombudsman’s Office, Pediatrists are employed on full-time basis by the PSCC “Riga” branches “Riga” and “Pļavnieki”, for example, while PSCC “Kurzeme” branch “Liepāja” is outsourcing a Psychiatrist on contractual basis.

**Conclusions:**

- Notwithstanding that medical treatment is not the purpose of social care and rehabilitation facilities, continuous availability of medicine professionals, such as paediatrician, psychiatrist or neurologist, serves the best interests of the child. At the same time, quality assurance of treatment services is of equal importance.

- Treatment services are provided to the children at PSCC facilities, yet the center or its branch is not recorded in the Register of Treatment Institutions, and therefore the facility may not be subject to the control procedures applicable to treatment institutions in terms of the quality of service and the storage of records.

- Normative regulations governing the health care provided by PSCC are subject to improvement.  

**4. Reorganization of PSCC**

Reorganization of PSCCs carried out on 1 January 2010 served a number of goals including more efficient application of financial assets. Three of PSCC branches informed during the interviews conducted with the staff of PSCCs that they have experienced no positive changes from the reconstruction. Following the reconstruction, the above-mentioned branches experienced lack of funds and the need to save on the account of other costs; this had adverse effect on the quality of provided care. The PSCC “Riga” branch “Riga”, for example, has pointed out that the facility lacked funds for procurement of medicinal

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20 The Ombudsman has raised the given topic with the Ministry of Welfare and also with the Government.
preparations already now, and preliminary estimations show that lack of funds for food may be expected by the end of the year.

Only the employees of PSCC “Latgale” branch “Kaklūni” admit that the facility has experienced a number of positive changes following the reorganization. Several residential premises and classrooms have been re-decorated; special curricula have been developed for children who receive in-situ education because of their health conditions; appropriate employees have been hired, and a number of other changes have taken place, as well as appropriate funding has been received to ensure the provision of services.

The listed causes of insufficient financial support to residential facilities for children include lack of knowledge in the matters related to child care specifics. Taking into account the fact that in the course of reorganization PSCC hosted facilities designed to provide services to children as well as to adults, the assessment of needs if frequently based on the same standard, without paying attention to the fact that the goals and objectives of care and rehabilitation are different because of the age and health condition of the customers. It was eventually the reason why the management of PSCC “Riga” proposed to decrease the number of social caretakers in the branches “Riga” and “Pļavnieki”, starting from 1 June, and to substitute them by less qualified caretakers. Since the branch managers and the Ombudsman objected that the intended changes may have adverse effect on quality of the provided service, the changes were not implemented.

Conclusions:

- Impairment of the quality of care and rehabilitation services due to lack of funding is impermissible.

- When considering any issue that concerns the PSCC branches in which children are accommodated, including the issue of distribution of funds between the PSCC branches, possible changes in the number of staff, eventual reorganization or any other issues, the needs of children should be carefully assessed and compliance should be ensured with the priority of protection of the interests of children enshrined in the UN Convention which stipulates that the utmost care should be exercised to ensure that any actions taken in respect of children serve the best interests of the child.21

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21 The draft law „Amendments to the Law on Protection of the Rights of children“ drafted by the Ministry of Welfare (Reg. No. TA-2580) envisages that Section 20 of the Law on Protection of the Rights of Children would stipulate that heads of residential care facilities, social workers and social rehabilitation personnel shall require special knowledge in the field of protection of the rights of children.
5. Organization of Work and the Staff of PSCC

The urgent issues related to the operation of branches were also discussed with managers of PSCC branches during the visits.

According to the information provided by them, high labor turnover is observed among caretakers in almost all branches. The main reason is the caretakers’ remuneration which is insufficient and incommensurate with their job duties. 8 hours’ training provided to caretakers is also treated as insufficient since performance of the caretakers’ job duties requires additional knowledge in the field of neonate care: nursing, nutrition, emotional needs, development and other aspects.

Managers of PSCC branches have pointed out to shortage of certain specialists: for example, the PSCC “Kurzeme” branch “Liepāja” lacks social caretakers because no specialists with appropriate education are available in the region of Kurzeme; the PSCC “Latgale” branch “Kalkūni” seeks the possibility to outsource a neurologist because no such specialist is available in the county of Daugavpils. Given the high number of children with functional impairments accommodated in the above-named branch, at least one additional speech therapist is also required.

Conclusions:

• Additional measures should be envisaged in support of the staff to eliminate regular turnover of caretakers at PSCC branches.

• The need to provide appropriate training to caretakers and continued improvement of their qualification should be discussed in order to ensure higher quality of care.

• The need to fix competitive remuneration and social guarantees to the staff should be discussed to enable involvement of specialists in certain regions. Other governmental and municipal authorities may be also involved in handling of the said issue.\(^{22}\)

\(^{22}\) The Ombudsman has raised the given topic with the Ministry of Welfare and also with the Government.
II Securing of the Rights of Children at Psycho-Neurological Hospitals

Articles 3, 23, 31 of the UN Convention on the Rights of the Child
Articles 3, 6, 47, 48, 68, 72, 73 of the Law on Protection of the Rights of Children

Securing of the rights of children accommodated in psycho-neurological hospitals was among the priorities of the Ombudsman in 2011. Pursuant to the authority stipulated in Section 13, Paragraph 3 of the Ombudsman Law to visit closed-type facilities at any time without special authorization, to move freely on the territory of the visited facility, and to visit all premises and meet vis-à-vis the individuals accommodated in closed-type facilities, representatives of the Ombudsman’s Office visited in 2011 all 6 psycho-neurological hospitals eligible to accommodate children: “VSIA „Bērnu psihoneiroloģiskā slimnīca „Ainaži””, VSIA „Daugavpils psihoneiroloģiskā slimnīca”, VSIA „Ģintermuiža”, VSIA „Bērnu klīniskā universitātes slimnīca” in Gailezers, VSIA „Piejūras slimnīca”, and VSIA „Rīgas psihiatricas un narkoloģijas centrs”.

The UN Committee on the Rights of the Child has recommended to the state of Latvia by the most recent recommendations issued to Latvia in 2006 “to ensure full protection of the rights of children committed to institutional care for mental illness, including access to family members and the establishment of an independent complaints process.”\textsuperscript{23}

Ombudsman of the Republic of Latvia and employees of the Ombudsman’s Office inspected during their visits to hospitals the situation regarding the observation of rights of the children accommodated in the hospitals and discussed the possibilities to improve the situation.

Having assessed the situation identified at the hospitals against the stipulations of legal acts, the Ombudsman’s recommendations (see below) were issued to the hospitals encouraging to present their visions on the specific issues related to observation of the rights of children at the institutions in question.

All hospitals were visited repeatedly in December 2011 and January 2012 to assess the measures taken by them towards improvement of the situation in the field of the rights of children, including implementation of the Ombudsman’s recommendations.

The recommendations made by the Ombudsman serve the purpose of drawing attention to the infringements of the rights of children identified by Ombudsman of the Republic of Latvia and by representatives of the Ombudsman’s Office during their visits to the hospitals, without distinction of any specific hospital. It is appropriate to note that not all infringements have been identified at all hospitals. Ombudsman of the Republic of Latvia intends to report to the

\textsuperscript{23} Available at: http://www.lm.gov.lv/upload/berns_gimene/bernu_tiesibas/lv_crc.doc, 11.lpp.
Ministry of Health of the Republic of Latvia on the systematic shortcomings in regulatory acts or their application identified during the inspection visits by the officials of the Ombudsman’s Office.

According to Section 72, Part One of the Law on Protection of the Rights of Children, manager of the health care facility accommodating children is responsible for protection of health and life of the child and for ensuring that the child is protected, that qualified services are made available, and that other rights of the child are duly observed. Taking into account the fact that, according to Section 72, Part Six of the Law on Protection of the Rights of Children, the staff is also responsible for observation of the rights of children, the Ombudsman encouraged management of the hospitals to inform the staff of hospitals about the issued recommendations.

1. Treatment of Children Separately from Adults

According to Section 3, Part One of the Law on Protection of the Rights of Children, a child is a person who has not attained 18 years of age, excepting such persons for whom according to law, majority takes effect earlier, that is, persons, who have been declared to be of the age of majority or have entered into marriage before attaining 18 years of age. Part Two of the said Section stipulates that the State shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the State, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members.

According to Article 3 of the UN Convention of the Rights of the Child and Section 6, Part Two of the Law on Protection of the Rights of Children, any actions taken in respect of a child, regardless of whether taken by governmental or municipal authorities, non-governmental institutions or other natural or legal entities, or by courts and other law enforcement authorities, should serve the priority of protecting the rights and interests of the child.

It was identified during the visits to hospitals that some children are accommodated in hospital wards together with adults because of their health condition that entails behavioral changes. According to the information provided by medicine professionals, the grounds for accommodation of children in an adult ward included the children’s age and anti-social behavior (aggressiveness towards other people, etc.) thus preventing threat to security of younger children and the staff.

Hospital administration points out that separate wards for adolescent patients are provided in adult departments, as seen also from signboards on the entrance to
the adult wards. The children accommodated here use the common premises (dining-room, TV-room, classroom, etc.) thus interacting with the adult patients on regular basis.

Also, different approaches are observed, from one hospital department to another, in terms of the number of meals and availability of psychologist; children have 5 meals and a psychologist available, while adolescents accommodated in adult wards are treated as adults: they have 4 meals, and psychologist is only available to them on exceptional basis.

The children accommodated in adult wards have no possibility of solitude in case of need, because of the large number of patients in the adult wards.

Inspection of the books, games and other educational material available to children shows that the range of available material is restricted in the ward designed for male adults; this leads to suspect that the right of children to development through playing games and the right to information in a language that the child understands is not properly ensured.

The right of such children to special protection guaranteed by the State is also restricted on particular occasions. According to the obtained information, adolescent smoking is also tolerated. The given situation contradicts with the international human right standards, and it is impermissible due to special status of a child.

Children present a particularly vulnerable group of persons; development of their personalities is still taking place, and therefore children are more acceptable to influence by persons with negative behavioral trends. Accommodation of children in the wards designed for accommodation of adults who are not their relatives may pose threat to the safety and future development of children.

Moreover, accommodation of children in adult wards should not be supported even if such solution facilitates protection of the rights of other children.

Hospital management should assess the situation and take appropriate steps to ensure protection of all rights accommodated in the hospital.

It was identified during the visits to hospitals in December 2011 and January 2012 that the practice of referral of adolescents to adult wards continued. The Ombudsman had been informed before that only 15-17 years old children were referred to adult wards on exceptional occasions. Employees of the Ombudsman’s Office established, however, during the inspection visits that decisions on accommodation of teenagers in adult wards were made on regular basis. The above-described practice was also applied to younger children. A 13 years old girl was accommodated in the adult ward of hospital during the inspection visit conducted by employees of the Ombudsman’s Office.
2. Internal Regulations for Patients

Section 68, Part One of the Law on Protection of the Rights of Children stipulates that child care institutions shall ensure the rights of the child within the scope of their competence as determined in their articles of association or by-laws. Part Two of the said Section stipulates that the maintenance of order in these institutions shall be ensured by internal procedural regulations that comply with the requirements of law and do not infringe upon the dignity of children.

Visits to hospitals conducted in the first half of 2011 revealed that some hospitals have not established internal regulations (hereinafter also referred to as - Regulations) available to the children as well as to their parents (legal representatives). Representatives of the Ombudsman were informed about the daily regimen of department, which in terms contents may not be equated to internal regulations. This gives raise to doubt whether the children referred to hospital and their legal representatives have sufficient information available about the applicable procedures and the vehicles for protection of the customers’ rights in case of eventual breaches of the rights of patients (such as the visiting procedure, handling of complaints, etc.).

Easily comprehensible regulations established by hospital would facilitate clarification of the rights of children and their parents (legal representatives). Involvement of children in drafting of such regulations, listening to and taking into consideration their consideration is substantial to the practicable extent.

Further, the Regulations should describe the procedure to be followed at the hospital, and the procedure for complaining by children or their legal representatives if they believe that infringement of the child’s rights is taking place at hospital. Though the information collected during visits show that no complaints have been ever filed by legal representatives of children, the hospital has to ensure that proper vehicles are put in place for protection of the individuals’ rights and to facilitate availability of such vehicles.

The Regulations should treat children as a separate group with specific needs, taking into consideration the age and development level of children. The Regulations should specify, for example, the person who signs documents upon admission of the child (whether it is the legal representative or the child). The Regulations should also stipulate that children and their legal representatives have to be informed about their rights in a language and manner that the child is able to understand.

It was identified during the visits to hospitals in December 2011 and January 2012 that a number of hospitals have established new internal regulations for patients or updated the earlier established regulations. Officials of the Ombudsman’s Office concluded, however, upon discussion of the application of such regulations, that certain employees of hospitals unfortunately lack understanding of the need for and effectiveness of such regulations, and no
distinction is made between description of daily regimen and internal regulations for patients, without perceiving the difference in their contents.

3. Restriction of physical mobility (fixation of children)

According to the information provided by hospitals during the visits, restriction of physical mobility (fixation) is applied to children on certain occasions, subject to executing of appropriate statement inserted in the inpatient’s medicinal record. Some hospitals pointed out to application of alternative means for calming down a child, instead of fixation.

During the visits to hospitals conducted in the first half of 2011, representatives of the Ombudsman’s Office in reviewed methodical recommendations established in the hospitals and concluded that restriction of physical mobility was governed by similar instruments (hereinafter – Recommendations) in all hospitals. It was also identified that such recommendations contain no distinguishing approach to children as a separate group subject to special treatment; therefore, it is questionable whether or not the rights guaranteed to children are fully observed upon the application of Recommendations to children.

Drafting and implementation of a separate document to govern the procedure for restriction of child mobility ensures awareness among all staff on the actions to be taken in the relevant situation, thus minimizing the potential infringements of the rights of children. Parents (legal representatives) of the children are also aware of the procedure for restriction of the child’s mobility, and they can efficiently perform their duties of legal representatives and note any breaches of the applicable procedure, if appropriate. Therefore, not only protection of the rights of children is ensured but also improvement of the quality of work of the hospital staff.

It is important to emphasize that drafting of regulations for restriction of child mobility does not necessarily mean application of the relevant methods at the hospital. It is just the other way round: drafting of quality regulations and awareness of the staff facilitates knowledge of the methods and measures to be taken in order to minimize the need to apply mobility restriction to children. The particular methods are not currently included in the Recommendations, and therefore the hospitals have been encouraged to describe in their respective Recommendations the methods that can be used prior to deciding on application of technical facilities to restrict mobility of patients, and to include appropriate environmental factors as means for calming a child as a patient.

Hospitals are also aware of their duty to notify parents (legal representatives) of the child whenever mobility restrictions are applied. Details of notification to the child’s parents (legal representatives) have to be registered in the dossier. If the
above-mentioned individuals are not notified, the doubt may arise whether all relevant information regarding treatment of the child is explained to representative of the child, to enable timely response to potential infringement of the rights of the child. It should be emphasized that restriction of child mobility must not be applied as a type of punishment, for example, for a breach committed by the child.

Whenever restriction of physical mobility is applied, it is important to note that, pursuant to Section 21 of the Law on Protection of the Rights of child, any restrictions of the rights of child are only permissible if they serve the purpose of the child’s security and protection, provided that permissibility of the respective restrictions is stipulated in the law, and provided that such restrictions are aimed at protection of national security, public order, morality of population, protection of their health, and protection of the rights and freedoms of other individuals. In addition, a child has the right to have the grounds of restriction of their rights properly explained.

According to the information collected during the visits to hospitals in December 2011 and January 2012, all hospitals apply nationally developed and approved regulations regarding restriction of physical mobility. One of the visited hospitals has drafted appropriate regulations for restriction of child mobility; however the draft is subject to improvement.

4. Toilets

According to the international standards of human rights and the principles established by the UN for protection of individuals with mental illness and improvement of mental health, human treatment of all individuals with mental illness or those treated as such has to be ensured as well as respect of the inherent dignity of human being, with particular attention being paid to the protection of children24.

Any situation where the child has no possibility to undisturbed relieve without continuous, direct presence of other patients should be treated as infringement of the child’s right to privacy. If door to toilet may not be closed because of the child’s health condition, the hospitals are encouraged to seek other solutions, such as a light switching on outside the toilet door, a corresponding sign hanged on the door-handle, etc.

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24 Principles for improvement of the protection of persons with mental illness and the improvement of mental health care of. Adopted by the UN General Assembly by resolution 46/119 of 17 December 1991. 
It was identified during the visits to hospitals conducted in December 2011 and January 2012 that no uniform practice for ensuring privacy is established in the hospital toilets. The practice of lockable toiled door that may be unlocked by the hospital staff from outside deserves appreciation.

5. The right to maintain contacts, communication possibilities, and social integration

According to the information at disposal of the Ombudsman, communication of the institutionalized children with their relatives basically takes place in form of telecommunications, and such practice is not sufficient, given the possible forms of communication.

Taking into account the frequently limited resources available to parents (legal representatives) of children that prevent daily visiting of children, recommendation is made to the hospitals to promote communication by children by means of the latest technologies (e-mail, “Skype” software, etc.), provided that safety of children in the internet environment is protected (www.drossinternets.lv). It is therefore possible to facilitate communication of children with their relatives and the outside world, and to accelerate social integration of children when they are discharged from hospital. Moreover, if the hospital has access to web, no additional fee is charged for sending an e-mail or communication on “Skype” (correspondence, video call).

Regarding the meeting of children with their parents and other persons, it was observed during the visits to hospitals that conditions for meeting of children with their relatives at hospitals are inappropriate – in the lobby at entrance to the hospital department. Hospitals should provide a separate room where visitors can meet the child, in order to ensure protection of the child’s as well as the parents’ (legal representatives’) right to privacy, and to ensure that the hospital staff can monitor the course of visit and interfere where appropriate. To ensure protection of the individuals’ right to privacy and at the same time to enable the hospital staff to monitor the visit and to interfere if appropriate, the room may be arranged in such a way that observation of persons in the room is possible without direct presence of the hospital staff. The involved parties have to be aware of monitoring.

Information was obtained during the visits to hospitals in December 2011 and January 2012 that arrangement of appropriate meeting rooms is currently impossible in a number of hospitals because of the limited funds. Yet the fact that some hospitals provide possibility to children to communicate with their parents (legal representatives) and relatives by means of internet deserves appreciation. The approach practiced by certain hospitals to prohibit visits by friends in general should also be discussed, though such practice is only applied
if there are grounds to suspect that health or life of the concerned child may be threatened.

6. Support to families with children (availability of social worker and psychologist)

Introduction with the hospital staff revealed that notable work aimed at improvement of observation of the rights of children was conducted by social workers and psychologists. The above-referred specialists were not available in all hospitals at the time of visits in the first half of 2011; however the hospital staff confirmed the importance of their work and the need for involvement of such specialists in handling daily situations.

Availability of psychologist not only to children but also to their parents (legal representatives) can facilitate the parents’ and legal representatives’ understanding about the special needs of the child, thus enabling the child to receive support and assistance from their close people to maximize development of the child’s skills. Based on the assessed need, the hospitals should ensure availability of the above-stated specialists, and information about their consulting hours should be displayed so that is clearly visible to the visitors.

According to the information obtained during the visits to hospitals in December 2011 and January 2012, services of psychologist are not funded from the state budget unless such services are related to diagnostics. The hospitals, however, provide consulting by psychologists within the scope of their resources, given the need for it.

Implementation of support program for parents (legal representatives) launched in November by VSIA “Daugavpils psihoneiroloģiskā slimnīca” deserves appreciation, whereas consulting by psychologist is available not only to children but also to their parents (legal representatives), if necessary.

7. Availability of Outdoor Activities

According to the information obtained by representatives of the Ombudsman’s Office during the visits to hospitals in the first half of 2011, some hospitals do not provide regular possibility for children to enjoy fresh air. It was pointed out that the reasons of such situation include lack of personnel at the hospital departments.

Regular outdoor activities are crucial to development of a child, and therefore such right may only be restricted on exceptional basis, for example, if outdoor activities may lead to impairment of the child’s health condition. Eventual attempts by children to escape from hospital may not be treated as sufficient grounds to prevent children from enjoying fresh air.
Hospitals should take the appropriate steps to ensure that children have regular outdoor activities available to them, for example, to review the workload of the existing personnel, or to adapt the territory of hospital to fit such purpose, and to consider other alternatives.

According to the information provided during the visits to hospitals in December 2011 and January 2012, children have regular possibilities to enjoy fresh air; interviews with the children accommodated in hospitals, however, make to question the correspondence of certain information provided by the hospital with the actual situation.

8. Smoking Prohibition

Visits to hospitals and assessment of the conditions provided for accommodation of children in the first half of 2011 lead to doubt whether the stipulations of Sections 47 and 48 of the Law on Protection of the Rights of Children are complied with by certain hospitals.

According to Section 47, Part One of the Law on Protection of the Rights of Children, The obligation of state institutions, local governments, and physical and legal persons is to protect a child from negative influences in social surroundings. Section 48 of the above-named Law strictly stipulates that a child shall be protected from smoking and the influence of smoking. Negative attitude towards smoking should be instilled in a child.

According to Section 48 of the Law on Protection of the Rights of Children, for inducing a child to smoke, persons at fault shall be held liable as prescribed by law. Supply of tobacco articles to a child is also treated as inducing a child to smoke.

The issue was repeatedly discussed during the visits to hospitals in December 2011 and January 2012.

9. Leisure Time Opportunities

According to Article 31 of the UN Convention on the Rights of the Child, States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Also, States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

It has been established during the visits to hospitals that hospitals have established and equipped separate playrooms to ensure protection of the above-mentioned right. Children also have the possibility to read books and watch TV.
It is essential to follow up to ensure that contents of the games, books and TV broadcasts available to children (including in DVD and other format) is unoffending and appropriate to the children’s age and perceptive peculiarities.

10. The Right of Children to Education

Article 14 of the Cabinet Regulations No 253 of 4 April 2006 Concerning the Procedure for Organizing Education of Long-Term Accommodation Patients Outside Educational Establishments stipulates that: “If, according to the opinion of attending physician, an individual subject to education is expected to stay in hospital two weeks or longer, education shall be organized at the hospital.”

According to the above-quoted Regulations, education is organized in accordance with the overall (type of) curriculum adapted to the individual needs of each child. Overall education is organized on the following levels: preschool education; elementary education; secondary education.

According to the information obtained during the visits to hospitals, the average length of a child’s stay in hospital is 28 weeks. Hospital management is recommended to assess the individual needs of each accommodated child and to ensure the possibility to pursue the respective level of education as appropriate, including secondary education.

11. Involvement of Orphans’ Courts and other Institutions in Handling of the Issues

When performing their duties, hospital staff may become aware of eventual infringements of the rights of children outside the hospital. According to Section 73 of the Law on Protection of the Rights of Children, the involved individual has the duty to notify the police, orphans’ court or other authority responsible for protection of the rights of children on the same day of any violence towards a child, or any infringement of or other threat to the rights of child.

The present practice of hospitals to involve in handling of the potential infringements of the right of children – for example, to call the child care facility and to make recommendations for elimination of infringement, deserves appreciation. Yet it is not sufficient. Hospitals are encouraged to use telephone communication to ensure sooner and more effective response, yet the relevant recommendations should be also issued in writing. Compliance with the procedure stipulated in Section 73 of the Law on Protection of the Rights of Children by application to the competent authority has to be ensured whenever infringement of the rights of children is identified. If, however, the competent authority to which the hospital has applied refuses or fails to take steps for elimination of infringement of the rights of children, the hospital is responsible for notifying superior authority about such failure.
Repeated infringements of the rights of children may only be prevented by strict response to them.
III The Right to Free Education

Sections 91, 112 of the Constitution of the Republic of Latvia
Article 26 of the UN Declaration of Human Rights
Articles 13, 14 of the UN International Covenant on Economic, Social and Cultural Rights
Article 28 of the UN Convention on the Rights of the Child

Section 112 of the Constitution of the Republic of Latvia (hereinafter – the Constitution) provides the right to education to each and every individual. The State shall ensure that everyone may acquire primary and secondary education free of charge. Primary education shall be compulsory.

Section 11 of the Law on Protection of the Rights of Children stipulates, on its turn, that the State shall ensure that all children have equal rights and opportunities to acquire education commensurate to their ability.

The right to education is also enshrined in a number of international instruments binding upon Latvia: The United Nations (hereinafter – UN) Universal Declaration of Human Rights (Article 26), the UN International Covenant on Economic, Social and Cultural Rights (Sections 13 and 14), and the UN Convention on the Rights of the Child (Section 28).

According to the stipulations of Section 11 of the Ombudsman Law, the Ombudsman, having familiarized with the information published in mass media and provided by parents and non-governmental institutions, has concluded that the actual situation in our country in the field of access to education does not meet the requirements of regulatory acts. For example, parents have to spend their own funds on text-books, exercise-books and other teaching aids for mandatory education. Such situation contradicts with the guaranteed right to free elementary education and secondary education stipulated in Section 112 of the Constitution.

In the Ombudsman’s opinion, the norms stipulated in the Constitution of the Republic of Latvia must not be merely declarative; the state is responsible for providing the scope of rights it has guaranteed. The Ombudsman has therefore launched work on reviewing the content of free education guaranteed by Section 112 of the Constitution. The measures involved include identification of actual and legal situation, assessment of the collected information and drafting specific proposals (the Ombudsman’s recommendations) aimed at improvement of situation in the field of provision of human rights.

To ensure comprehensive involvement of society, the Ombudsman has established an advisory council to handle availability of education with participation of the representatives of parents, pedagogues, school children and non-governmental organizations as well as experts. The council is composed of the following members: Gunta Kraģe (Board Member, Establishment “Fund
The advisory council has held a number of meetings\textsuperscript{25} to identify the situation and to draft proposals to the Ombudsman for improvement of the situation.

Specialists of the Ombudsman’s Office in the field of the rights of children have requested detailed information from the Ministry of Education and Science to ensure proper research of the issue. Information about the situation in the field of education availability has also been requested from foreign authorities with the responsibilities similar to that of Ombudsman’s Office.

\textsuperscript{25} The first meeting of the Advisory Council was held on 19 August 2011
IV Individual Preventive Work with Children in Municipalities

Initially, preventive work with children in municipalities was not included in the Ombudsman’s strategies for the years 2011 – 2013. The issue emerged in September 2011 when handling an application for socially unacceptable behavior of children at interest education facility.

The Ombudsman’s Office conducted research of situation in preventive work with children in 2011: study of legal regulation, international recommendations including those addressed to the State of Latvia, and identification of the actual situation in all 119 municipalities of Latvia to assess the compliance of such situation with the legal regulations. The Ombudsman’s strategy has been supplemented with the above-described issue, and work in this field shall be continued in 2012.

1. Introduction to the Issue

Assessment of the existing situation, both in general society and in the education system of Latvia, leads to conclusion that the number of socially excluded children is high and they present a significant risk group. The conducted studies indicate to increased number of children with learning problems, behavioral and emotional disturbances at schools. There are such children in almost all forms of comprehensive educational schools and vocational schools.

Analysis of effectiveness of various preventive programs shows that behavioral problems are among the risks to expulsion of a teenager from school. The authors distinguish between the following groups of behavioral problems: 1) criminal – delinquency that takes the form of theft, violence, punishable aggressiveness; 2) abuse of alcohol and other substances; 3) absence from lessons and from school, drop-outs; 4) antisocial, aggressive, insurgent behavior, disrespect of authorities, indignity towards others.

The UN Committee on the Rights of the Child has pointed out in their most recent recommendations issued to Latvia that the Committee is concerned at

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26 No definition of social exclusion is provided in the regulatory acts of Latvia, and therefore definition of the European Union is applied which stipulates that „social exclusion means inability of individuals or groups of individuals to integrate in society because of poverty, insufficient education, unemployment, discrimination, or other conditions. a socially excluded individual has no access to services and goods, and they are prevented from exercising their rights and taking opportunities by such obstacles as inaccessible environment, social prejudices, emotional and physical violence, etc.. (Ministry of Welfare of the Republic of Latvia, Social Inclusion, 2011).

27 Study “Socio-psychological portray of young people subject to the risk of social exclusion” under the EIF project “Development and implementation of programs for establishment of support system to young people subject to the risk of social exclusion”, p.p. 1.

reported rates of non-attendance from schools as a result of, inter alia, voluntary truancy, the lack of parental interest in education, and bullying in school.\textsuperscript{29}

Behavioral and emotional disturbances belong to the group that requires special psychological as well as social assistance. These children are dependent on measures aimed at fostering behavioral and emotional sphere including the managerial functions and promotion of attention. If a child has no access to the required support, their behavior may pose threat to themselves and lead to infringement of the rights of other individuals including children. This also causes problems to their parents and teachers, since lack of success in education and interaction with other people frequently lead a child to loss of motivation to learn, while teachers are no more willing to facilitate their education.

Lack of timely support from parents misleads children to assume that their behavior is acceptable, and this can gradually lead to commitment of offences.

European Economic and Social Committee (hereinafter – the EESC) has also pointed out to personality and behavioral disorders as grounds to commitment of offences by children: “Personality and behavior disorders, either in association with or independently of the factor outlined in the previous point. These usually conspire with other social or environmental factors to make young people act impulsively or unthinkingly, uninfluenced by socially accepted standards of behavior.”\textsuperscript{30}

Since the behavioral and emotional disorders that traditionally emerge in childhood and adolescence years are included in the International Classifer of Diseases (ICD-10), referral to a child to psycho-neurological hospital is seen as the ultimate means in case of a child whose behavior poses threat to himself/herself or other people. This is a short-term solution that does not meet the principle of the best interests of child, since medicinal assistance alone does not eliminate future problems.

Pedagogues and parents may notice behavioral problems in children quite early and quite well, yet on most occasions the child does not receive the required timely assistance. Parents can hardly accept the fact that behavioral disorders may stem from psychical health, neurological or other causes including parenting mistakes. Parents feel unsecure, and eventually they are even afraid to seek advice of neurologist, psycho-therapist or psychiatrist. Teachers, on their turn, do not identify themselves as subjects entrusted with protection of the right of children and do not understand their duty to respond to the very first signs of behavioral, emotional or learning disorders.

\textsuperscript{29} UN Committee for the Rights of the Child, final considerations, 28 June 2006, Latvia, par. 50; available at: http://www.lm.gov.lv/upload/berns gimmene/bernu_tiesibas/lv_crc.doc

Immediate consulting by specialist would be required in each occasion in order to identify the underlying disorders of behavioral problems and to help the child.

EESC has expressed the position that application of preventive measures today means not only seeking the possibilities of social rehabilitation but also preventing adult criminality in future. It may be therefore concluded that preventive work with children who have behavioral and emotional disorders is important for society in general: „Inclusion and minimizing of social exclusion is not a task “we” have to do for “them”. It is a process of importance to each and every member of society.”

2. Development of the Regulation of Preventive Work

Preventive work with children who had committed illegal offences was the competence of police until 2000. It was stipulated in Section 58, Part One of the Law on Protection of the Rights of Children that: “Preventive work with juvenile offenders shall be conducted by police in collaboration with the municipality, institutions for protection of the rights of children, and public organizations”. Social service, on its turn, was responsible for preventive work with the children who had not committed any offences yet: “If a child is rambling, begging or taking other actions that may lead to criminal actions, (...) social service of the respective municipality shall develop program for social correction of his/her behavior and assistance in collaboration with the child’s parents and authorities/institutions responsible for protection of the rights of children.”

New wording of Section 58 of the Law on Protection of the Rights of Children was adopted on 9 March 2000, and the new wording which is presently applicable had the effect of conceptual alteration of the organization of preventive work and delegation of such function to municipalities (without reference to any specific institution any more).

In practice, State Police inspectors for juvenile delinquency are still playing the key role in preventive work with children: preventive records, handling of preventive dossiers and performance of individual preventive work with the same juvenile groups in respect of which municipalities are responsible for preventive work. Depending on the need and practice established in the field of cooperation inspectors for juvenile delinquency decide on involvement of governmental, municipal and other institutions in the drafting of specific

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31 See above – 1.2
32 Tūna A. Iekļaujoša skola iekļaujošā sabiedrībā, project „Vienādas iespējas visiem ja ir mazināt sociālo atstumtību jauniešu vidū”, 2006.
33 Wording effective as of 22.07.1998. Published - Zinojāms, 04.08.98. No.15 (L.V., No. 199/200). Available at: http://pro.nais.lv/naiser/vtext.cfm?Key=01030119980619327739773
34 Section 58, Part Two, Paragraphs 1-6 of the Law on Protection of the Rights of Children.
programs and on cooperation with such institutions. The above-stated is also confirmed by statistics:

State Police officials who perform their job duties in the field of preventing juvenile delinquency have entered 1473 preventive records of minor individuals in 2006, 1511 in 2007, 1402 in 2008, 1281 in 2009 (1815 minors in total were registered by the end of year)\(^{35}\), 900 in 2010 (1115 minors in total were registered by the end of year), and 308 in six months of 2011 (636 at the end of reporting period)\(^{36}\). Therefore, a notable number of children who have committed offences of various severity is monitored by the State Police officials every year, however, according to the conclusion drawn in “Program for preventing child delinquency and protection of children against criminal offences for the years 2009 – 2011”, as a result of limited resources, the taken preventive measures not always exclude commitment of new offences.\(^{37}\)

The State Police is entitled to make preventive record of children listed in Section 58, Part Two, Paragraphs 1 – 6 of the Law on Protection of the Rights of Children at their own initiative, however on exceptional basis, since the said function has to be performed by social service or other municipal institution.

It may be therefore concluded that, though even the number of children preventively recorded by the State Police has experiences slight decrease in recent years, preventive work with children does not meet the requirements stipulated in Section 58 of the Law on Protection of the Rights of Children, and, as a result thereof, the rights of children are not properly protected; moreover, resources of the State budget are continuously spent on performance of the functions of municipalities. If the number of children preventively recorded by the State Police is reduced, effectiveness of individual preventive work would be improved.

### 3. Legal Regulation of Preventive Work

According to Section 15, Paragraph 23 of the Law on Municipalities, autonomous functions of municipality include protection of the rights of children on their respective administrative territory.

Section 58, Part One of the Law on Protection of the Rights of Children stipulates: “Work with children for the prevention of violations of law shall be carried out by municipalities in collaboration with the parents of children, educational institutions, the State police, public organizations and other

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\(^{35}\) Overview of juvenile delinquency and road traffic situation in 12 months of 2009, available at: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=12286

\(^{36}\) Overview of juvenile delinquency, injured children and road traffic and prevention situation in 6 months of 2011, available at: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=13018

\(^{37}\) Program for preventing child delinquency and protection of children against criminal offences for the years 2009–2011, p. 4. Available at: http://polsis.mk.gov.lv/view.do?id=3144
institutions.” It clearly follows from the above-quoted legal norm that municipalities are competent to conduct preventive work with children.

According to Section 58, Part Two of the Law on Protection of the Rights of Children, municipalities shall establish a prevention file and formulate a social behavior correction and social assistance program for each child who has committed a criminal offence or taken any action that may lead to criminal offence. Therefore, municipalities have the duty to take preventive municipal record of each child from risk group and to develop a program appropriate to such child. The program developed by municipality may provide, depending on the opinion of executive official of the concerned municipality, for involvement of police, because the municipality is competent to develop the program and therefore to select cooperation partners.

It follows from international recommendations that community-based preventive work has to be used and contact of young people with the law enforcement system has to be eliminated insofar practicable: “Preventive and intervention-based measures must be designed to ensure the social integration of all minors and young people, principally through the family, the community, peer groups, schools, vocational training and the labor market.”

Risk factors overlap on most occasions, and therefore complex approach to preventive programs is required, with involvement of various specialists, such as psychologists, social pedagogues, medicinal professionals: “(...) educational treatment should preferably be provided using resources or institutions belonging to the same social environment as the minors concerned, with the aim of equipping them with educational skills or requirements the lack of which caused them to come into conflict with the criminal law in the first place. These minors must be subject to thorough examination by specialists in a range of fields in order to identify educational gaps and determine how to provide them with skills which can reduce the risk of re-offending. Similarly, work needs to be done with the families, to ensure their cooperation and commitment in the process of educating and re-socializing these minors.”

4. The role of Municipal Child Institutions or Specialist Responsible for Protection of the Rights of Children in the Child Right Protection System

Internationally recognized experts in the field of protection of the rights of children emphasize that four system components have to be established in each

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39 See above – 4.2.1
developed State for effective functioning of the system for protection of the rights of children, namely:

- a governmental institution;
- an inter-institutional commission;
- an ombudsman for the rights of children;
- municipal specialists in the field of the rights of children (with functions similar to those of the ombudsman for the rights of children, yet performed by specialists in the field of protection of the rights of children on administrative territory of their respective municipalities)\(^40\).

According to the opinion of international experts, quality and efficiency of the work of municipal institutions (municipal specialist) for protection of the rights of children is closely related to independence, including financial independence, of the institution (specialist) on the supervised institutions. If a specialist for protection of the right of children is subordinated to some municipal authority, performance of his/her functions is jeopardized. **To ensure effective performance of functions, the optimum form of subordination of such specialist is direct subordination to the council chairperson.**

To ensure proper performance of the municipal function stipulated in Section 15. Paragraph 23 of the Law on Municipalities, namely, protection of the rights of children on the administrative territory in question, and to exercise the competence of municipality in protection of the rights of children as stipulated in Section 66 of the Law on Protection of the Rights of Children, each municipality should have an institution, inter-institutional commission or specialist for protection of the rights of children who is competent to ensure implementation of municipal functions stipulated in regulatory acts in the field of protection of the rights of children, including preventive work with children.

### 5. Description of the Actual Situation

#### 5.1. Institutions Responsible for Individual Preventive Work with Children

Summarizing the information obtained from 119 municipalities of Latvia regarding the institutions or specialists entrusted in the concerned municipalities with the right to develop social adjustment programs for children leads to conclusion that the applicable practice is various and highly different.

In one of the studied municipalities, individual preventive work is coordinated by **specialist for protection of the rights of children**, in other – the first deputy of the municipality chairperson. In three municipalities, **municipal police** is competent to handle preventive work with children, and in other three such

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competence is vested in **county educational establishments**. Schools have established inter-professional teams composed of teachers, school administration, psychologists and other specialists as appropriate. Schools collaborate with the municipal social service and orphans court, as well as municipal police.

In seven municipalities, development of social adjustment programs **is not delegated to any institution, and no development of programs is taking place at all.** Municipalities may be divided into three groups by the reasons they state as grounds to omission of the above-mentioned function:

1. Municipalities that lack information about children with behavioral disorders. At the same time, they point out to specialists available on the county level to perform preventive work: “The task could be performed by social worker for work with families that have children, and psychologist, who would, cooperating with the orphans’ court, educational establishments, municipal police and the State Probation Service, develop social adjustment programs. No social adjustment and social assistance programs have been developed because we have received no information until present about any children who have committed criminal offences or actions that may lead to criminal offences”\[^{41}\]. As mentioned above, studies show that there are children with learning difficulties, behavioral and emotional disorders in almost each form, and therefore the arguments listed by municipalities regarding the lack of such children on the whole territory of their county should be taken with a grain of salt.

2. Municipalities where no preventive work is performed due to lack of appropriate specialists – a single social worker for the whole county: “I am left alone, there is no social service manager since April, and no psychologist available in our county. What can I do with no assistance available, just talk.”\[^{42}\]

3. Municipalities who have children with behavioral disorders and who have specialists available to perform the relevant function, yet no political support to preventive work is provided by head of the municipality: the proposal to establish an inter-institutional commission has been declined without even voting; alternatively, the management has promised to thing of allocating funds when drafting budget for the next year.

Eight municipalities have vested preventive work in the competence of **inter-institutional commissions**.

In most of municipalities – 92 of 119 – development of social adjustment programs **is vested into competence of social service.** The executive in charge of them on most occasions is the social pedagogue employed by social service who cooperates with all schools and population of the county.

\[^{41}\] Head of Social Service of County G regarding the institution entrusted with development of programs.

\[^{42}\] Social worker of County B.
5.1. Initiation of Preventive Work

In most municipalities, preventive work is initiated by the State Police – that is, social adjustment program is developed no sooner than the State Police reports on criminal offence committed by a child and requests social adjustment program to be developed for such child. Copies of the developed programs are forwarded to the State Police, and control over their implementation is exercised by social service and State Police. In some municipalities, preventive work is initiated even later, when ruling is rendered by court or information notified by Probation Service. The fact that individual municipalities arrange preventive work without scheduling work with the children whose behavior may lead to criminal offence is expressly illustrated by title of the order on establishing an inter-institutional commission: “On organizing preventive work with juvenile offenders”.

According to the specialists themselves, it means handling of consequences, rather than causes.

At the same time there are certain municipalities who have bodies competent to develop such program, yet no child in the whole county is recorded in preventive file (including a county with population of 10’007). The concerned municipalities state they have had no need for development of such programs. Such approach confirms the fact established by the State Police from year to year that “Unfortunately, certain municipalities conduct no preventive work with children and develop no social adjustment and social assistance programs

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43 Information provided by municipality A regarding the institution/official entrusted with development of programs.
provided for in Section 58 of the Law on Protection of the Rights of Children; therefore the State Police happens to be the sole institution that conducts preventive work with juvenile offenders.”

There are only a few municipalities who have timely initiated preventive work, i.e., before a child commits any criminal offence. This is true in case of municipalities where preventive work is performed by educational establishments, and in particular in case of the very few municipalities where importance of such work is properly understood. For example, in one municipality preventive work is performed by two educational establishments, and they have 58 children recorded on file (in a county with population of 8781). Social service of some other county (with population of 11’339) there are 334 children recorded on file, who are subjects of social work, and there is a client dossier filed for each child as well as social behavior adjustment program developed for each of them.

5.2. Informing of Parents (Guardians, Foster Parents) and Pedagogues about Social Behavior Adjustment Programs for Children Belonging to Risk Groups

According to the national as well as international legal norms, the parents are primarily responsible for upbringing their children. Article 18, Part One of the United Nations Convention on the Rights of the Child stipulates: “(..) Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.”

Section 24, Part Two of the Law on Protection of the Rights of Children stipulates that the obligation of the parents is to prepare the child for an independent life in society, as much as possible respecting his/her individuality, taking into consideration his/her abilities and inclinations.

Practice shows that parents not always manage to perform their duty successfully. If parents lack knowledge and skills in parenting a child, it is the duty of municipality to provide assistance to them. Provision of such assistance is stipulated in Section 26 of the Law on Protection of the Rights of Children which provides that, depending on the age of a child, a municipality shall offer help to the family, especially poor families, in the child's upbringing and education, and provide other services aimed at development of the child.

44 Overview of juvenile delinquency, road traffic and preventive situation in 6 months of the year 2011, available at: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=13018
45 The county has population of about 11300 and preventive work is conducted by social workers of social service for work with families, and by social pedagogues who cooperate with all educational establishments of the county.
Based on the competence of municipalities stipulated in the law in the field of protection of the rights of children, the parents (guardians, foster family) must have easy access to information (for example, Internet site of the council; at the educational establishment, or social service) regarding assistance available if problems arise in upbringing of a child: the child’s behavior becomes socially unacceptable and fails to comply with the stipulation of Section 23 of the Law on Protection of the Rights of Children which provides that a child has the obligation to observe the accepted rules of behavior within society; to treat with care the surrounding environment, and a child may not offend against the rights and legal interests of other children and adults.

Summarizing of the information provided by municipalities leads to conclusion that no municipalities pursue preventive work with children at the initiative of parents, since this is not treated as assistance to parents on part of municipality in upbringing their children.

Normally, parents learn about preventive recording of their child no sooner than the child is already recorded on file at the initiative of some institution (traditionally it is the State Police). Notification takes place by home study of the family or calling them to the concerned institution for interview, together with the child. The only difference is that some municipalities inform parents with an already established program while others involve them in development of such program. Involvement of parents, however, is most frequently related to the need to notify parents or to collect information, rather than involvement of parents as cooperation partners: “As a rule, development of such program is notified to the school as well as to parents, because complete information about the child is required for development of adjustment program.”

Some municipalities involve children and their parents in developing the programs, and both children and parents have their own tasks in such programs.

**Only two municipalities pointed out that causes of the criminal offences committed by children are most frequently related to economical and social factors, and that program for both children and parents is developed in order to handle the issues inherent with juvenile delinquency.** One of the above-mentioned municipalities also pointed out that their social service was conducting work with children and families from other municipalities who have not declared their residence in the given county yet actually reside on the administrative territory of that county. The number of children recorded on preventive file by social service of the said municipality was 82 children as at the time of study.

Educational process comprises teaching and upbringing, and the duty of pedagogues in the educational process is formation of the trainees’ attitude

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46 Municipality of county K about how pedagogues are informed about the programs
47 Data as of 25 November 2011
towards themselves, other people, work, nature, culture, society and the State, and to bring up honest, decent people. An educational establishment is entitled to implement educational programs aimed at social adjustment, however it has no duty to provide social adjustment of the child’s behavior. Given that a number of schools have no supporting staff (psychologist, social pedagogue, assistant teacher) at all or such staff if insufficient, pedagogues also have to be aware of where they can seek assistance if problems emerge in educational work and cooperation with parents brings no desired result. According to the summarized practice, when social adjustment of children’s behavior is required, educational establishments abstain from applying for help to the respective service. Just like parents, educational establishments learn about preventive record of children post factum: “Written information addressed to social pedagogue and psychologist is forwarded to the concerned school.” In some municipalities, educational establishments may receive no information at all about the program developed for certain child, because any information is only forwarded to the school if the program envisages involvement of educational establishment: “Teachers are informed if involvement of educational establishment is expected.”

In some municipalities, the institution responsible for the field of education reports to the prevention authority on the non-attending children. “The number of children changes, it forms from the number of police notices and information about rambling school-children provided by educational establishments.”

It should be kept in mind that non-attendance is only one cause that can lead to illegitimate action. If, for example, a child breaches the accepted rules of behavior within society or offends against the rights and legal interests of other children and adults, no social adjustment of behavior is initiated by the school (except the two municipalities where educational establishments themselves perform such function).

As an exception, two municipalities have pointed out that initial information about the children from families subject to risk of inability to provide for the children’s basic needs is obtained by prevention bodies from educational and pre-school establishments. Whenever information is received about families which are unable to provide for sufficient development and upbringing of a child and which need assistance, social work is pursued on case-to-case basis. It may be therefore considered that in some municipalities preventive work is initiated by educational, including pre-school establishments; this is, however, an exception from the general practice.

48 Section 51, Part One, Paragraph 2 of the Education Law.
49 Head of social service of county B about how are parents and pedagogues informed about the programs.
50 Municipality of county S about how are parents and pedagogues informed about the programs.
51 Head of social service of county A about the number of children recorded on preventive file.
52 One of them is also one of the two municipalities in Latvia where development of rehabilitation plan for family or children is taking place.
5.4. Financial Impact of Preventive Work with Children on the Municipal Budget

The municipalities in which no or insufficient preventive work is performed, point out to lack of appropriate specialists among excuses to their omission; such lack is related, on the turn, to lack of funds for hiring of the specialists in question.

The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already that the State party take immediate steps to allocate appropriate financial and human resources:

(a) To ensure that all children from all areas of the country, without distinction, including children in pretrial custody and detention, have equal access to quality education, including human rights education:

- To strengthen measures aimed at decreasing drop-out and repetition rates in primary and secondary education in all regions;
- To prevent bullying among children at school;
- To inform parents of the importance of education, and where appropriate, to provide incentives to families to encourage children to attend school;
- To improve the standard of living, the disciplinary treatment, and the quality of education for children attending schools in rural and remote areas, and to reduce disparities in allocated resources and facilities.\(^{53}\)

Preventive work if pursued timely, i.e., when the first signs of behavioral and emotional disorders are noticed, eventually even at pre-school age, and in professional manner can prevent a number of future problems. If parents and educational establishment are unable to manage properly the duty of upbringing, achievement of the goals of protection of the rights of children directly depend on the effectiveness of preventive work:

1) Formation and instilling value guidance in a child appropriate to the interests of society;

2) Guidance of a child to employment as the sole morally acceptable source for gaining means of income and welfare;

3) Guidance of a child to family as the key unit of society and the key value of society and individual;

4) Guidance of a child to healthy lifestyle as an objective precondition to survival of the nation.\(^{54}\)

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\(^{54}\)
It depends on the child’s motivation to pursue education, prevention or treatment of addiction, and to master social skills, whether or not the child would be prepared for unassisted life in society, and whether the child would grow into prospective tax-payer or a socially excluded individual unable to exercise his/her rights and take opportunities, thus becoming a recipient of social assistance and social services.

Remuneration paid to specialists for timely development and implementation of social behavior adjustment program for each child in the county whose behavior may eventually lead to criminal offence is incommensurable to resources the municipality would spend in future on each socially excluded inhabitant of the county, paying in form of social allowances, social work and provided housing for the consequences of unsuccessful preventive work.

**Conclusions:**

1. Notwithstanding the identical normative regulations and similar conditions of child behavior, the practice used municipalities is highly different.

2. Managers of municipalities and vast majority of specialists lack understanding of the importance of preventive work with children, and effectiveness of such work directly depends on the specialists’ competence and willingness to work. The responsible body notes that: “Unfortunately, development of programs and filing of records alone is of little help there”.

3. No adequate funding is allocated to preventive work with children. In some municipalities, social worker is the sole specialist who conducts preventive work with children in addition to other job duties.

4. Some municipalities do not fulfill at all the duty stipulated by law to develop social behavior adjustment programs for children.

5. Most of municipalities do not fill the duty stipulated by law to provide assistance to a child whose behavior raises concern that it might lead to criminal offence” in future. Adjustment of children’s social behavior is initiated with delay, when the child has already committed an offence and recorded on file with the State Police.

6. Formally, according to the letter of the law, delegation the function of preventive work to municipal police meets the requirements stipulated in Section 58, Part One of the Law on Protection of the Rights of Children: “Preventive work with minor lawbreakers shall be performed by municipalities (..)”. Given that municipal police is a municipal institution,
the preventive work may be seen as performed by the municipality. It
should be taken into consideration, however, that operation of municipal
police, just like operation of the State Police, is governed by the Law on
Police, and Section 1 of the said Law stipulates that “Police is an armed,
militarized governmental or municipal institution (..)”. Therefore,
competence of the involved police officials in the work with children is
highly important, including the applied methods, approaches and
treatment.

7. Parents have the right to select educational establishment for their
children in any municipality appropriate to them, and therefore not all
children residing in the county attend the educational establishments of
the same county. If preventive work is delegated to an entity related to the
field of education, it extends only to the children attending schools in the
county, rather than all children residing in the county. Delegation of this
function to educational establishments therefore means that preventive
work is improperly performed.

8. None of the municipalities in Latvia treats preventive work with children
as a component of family support system.

9. Preventive work with children is not treated as support system to
educational establishments.

10. Failure to allocate funds for preventive work with children means lack of
foresight that may result in notably higher consumption of financial
resources in future (social allowances and social work, provision of
dwelling, etc.)

11. Good practice means that development of program takes place with
involvement of both the child and parents, and a specialist in the
respective field is attracted to each task of the program: for example,
psychologist, social pedagogue, class-mistress, teacher of the syllabic
discipline, orphans’ court, municipal police officer, or other specialist
appropriate to the goals of the program. Development of program is also
aimed at the family.

12. An established support system for children with learning difficulties,
behavioral and emotional disorders, and for their parents, including
available services of specialist (social pedagogue, psychologist,
psychotherapist, speech therapist, etc.) in a county presents an exception
from the common practice.
V Topical Problems in the Field of the Rights of Children

1. Statistics and Overall Review

No office of ombudsman in the field of the rights of children is established in Latvia, and therefore the relevant functions are performed by the Ombudsman of the Republic of Latvia. Lawyers of the Ombudsman’s Office who work in the field of child rights are only handling the issues related to the rights of children.

515 applications concerning the matters of child rights have been filed with the Ombudsman’s Office in 2011 including applications for eventual infringements of the rights of children. 116 of the above applications are filed in written form and 399 – in verbal form. Verification of 61 matters has been initiated after examination of the application, including five verification proceedings for establishing circumstances of the case at the Ombudsman’s initiative.

The largest number of filed applications (99) refers to the right of a child to grow up in family (for example, for exercising of access rights; the right to be not separated from parents without reasonable grounds; for restoring of the right of care, etc.). On 42 occasions, individuals have applied to the Ombudsman’s Office for information about the rights of a child and advice on how to proceed in specific legal situation. 31 applications are related to recovery of the means of maintenance for a child (for example, for recovery of maintenance while the marriage is not dissolved; for the right to apply to court for issuing a preliminary order; the amount of subsistence and altering thereof; litigation costs; enforcement of judgment, etc.)

For the number of applications filed by topics, please see the enclosed „Statistics of the Ombudsman’s Office in the field of the rights of children”.

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Comparison of the statistics of application to the previous year shows that the right of a child to grow up in family and recovery of the means of maintenance remain actual topics. The number of applications concerning infringement of the rights of orphans and children left without parental care has increased more than three times (8 applications in 2010 against 29 applications in 2011). The number of applications for information has decreased to times: 96 applications in the previous year against 42 applications in the reporting period.

Monitoring visits were made in 2011 to all State social care centers that provide social care and rehabilitation services to orphans and children under 2 years left without parental care, and to children under 4 years with physical and mental development impairments, as well as to all 6 psycho-neurological hospitals qualified to accommodate children (please see the respective section for detailed information about the monitoring visits). The Ombudsman has issued a number of relevant opinions in 2011 in the field of the rights of children, for example, on video surveillance at schools, concluding that safety of the child is the only legitimate purpose for video surveillance of children in separate school premises, where mutual violence of children is likely to occur and where continuous, direct presence of the staff can not be provided for objective reasons.

Review of verification cases by the Ombudsman has facilitated elimination of shortcomings in legal acts: having established, for example, that the Civil Procedure Law contains no provisions regarding prohibition to take a child away from the State in proceedings for establishing of the child’s affiliation, and lack of regulations can render adjudication of such cases difficult of even impossible, the Ombudsman has applied to the Ministry of Justice. The Ministry is going to consider forwarding of the above-described issue for discussing at the regular task force formed for handling of amendments to the Civil Procedure Law.

Child Rights Specialists of the Ombudsman’s Office participated in 2011 in drafting of a number of regulatory acts and amendments thereto; for example, they were included in task force of the Ministry of Welfare for drafting amendments to regulatory acts in order to improve legal regulation of the institutional care of children; they continued work as part of the task force under the guidance of the Head of Information Center of the Ministry of Interior for drafting of regulatory norms aimed at establishing information system to support minor individuals, and thus to ensure notable improvement of inter-institutional cooperation in the field of protection of the rights of children.

Representative of the Ombudsman’s Office continues to perform the task of Special Guardian in administrative proceedings instituted in 2010 to ensure representation of a child’s interests before administrative court, including at the
The Ombudsman continued in 2011 to promote awareness among society about the rights of children and the vehicles for protection of such rights. Lectures were organized for young people who were preparing to pursue independent life after residential care; lectures for social pedagogues, officials of orphans’ court, principals and managers of day centers’ lectures for the 1st year students of Law Faculty of the University of Latvia on the rights of children as a part of study course on human rights. Several educational classes were arranged for children in the form of interactive play. Children and adolescents were introduced during the classes with information about the Ombudsman and Ombudsman’s Office, and their fields of operation, and they gained new and strengthened the existing knowledge regarding the rights of children by means of development-aimed exercises.

Child right specialists of the Ombudsman’s Office participated at a number of informative events, for example, public discussion “Protection of the rights of children and adolescents in medicine, advertising industry and educational system. Are there any other interests and values offered to children, apart from sex?” within the framework of the Lawyers’ Days; the event organized by the Council of Riga School Children “Under a single roof” dedicated to the annual Day of Knowledge; mobile tour “Day of civic involvement” of the Volunteer Work Year organized by the European Commission at the Latvian Museum of Railway History.

On the International Child Protection Day the Ombudsman, in cooperation with the Law Faculty of Riga Stradina University, arranged the conference “The rights of children and their provision”. Discussion on the topic “The needs and rights of a child to adequate alternative care in family-based setting” was arranged in cooperation with the Alternative Child Care Alliance.

Two students who conducted research of legal regulation governing the involvement opportunities of children in Latvia were engaged by the Ombudsman’s Office in the second half of 2011 within the framework of cooperation with Legal Practice and Assistance Center of the Law Faculty of the University of Latvia. Deliverables of the students’ performance were used by the staff of the Ombudsman’s Office to identify compliance of the actual situation with the legal regulations and to draft recommendations for improvement of the situation.

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56 For more details of the given proceedings please see sub-section 3 „The duty of parents to observe the rights of the child”.
57 Cf. http://www.tiesibsargs.lv/lat/tiesibsargs/jaunumi/?doc=298&underline=un+to+nodro%C5%A1in%C4%81jums
Child right specialists of the Ombudsman’s Office participated at several inter-institutional meetings and discussions, for example: expert task force formed by the foundation “Centrs Dardedze” on protection of younger children against violence; discussion arranged by the State Inspectorate for Protection of the Rights of the Child regarding the right of medicinal professionals to disclose information about treatment of a child and regarding the provision of security of a child at educational establishments.

The Ombudsman proactively cooperated in 2011 with non-governmental organizations operating in the field of protection of the rights of children through involvement of non-governmental organizations in discussing the strategy, through joint arrangement of informative events and joint work in advisory council, as well as through collaboration in the identification and handling various problems.

A child right specialist of the Ombudsman’s Office participated on 1st – 2nd June 2011 in the Seminar for Ombudsmen of the Baltic States held in Estonia and presented a report on the role of Ombudsman in supervision of the work conducted by municipalities in the field of the rights of children. The Ombudsman and a child right specialist of the Ombudsman’s Office participated in September 2011 in the annual meeting of European Ombudsmen Network for Children held in Poland where exercising of the rights of children in residential care were the key topics. Child right specialists of the Ombudsman’s Office participate in the seminar conducted by the Judicial Chancellor of Estonia on the role of national institutions for human rights in the protection and development of the rights of children in residential care, and they also had a meeting with the representative of the World Children’s Fund from Sweden, representatives of the US Embassy and European Commission for Preventing Torture, inhuman/humbling treatment or punishment, who are notified on regular basis about the matters regarding the rights of children, in particular regarding the protection of the rights of children in closed-type facilities.

2. The Right of Orphans and Children Left without Parental Care to Housing when they Reach Major Age

Regulatory acts provide for a number of social guarantees to orphans and children left without parental care when they reach major age and discontinue receipt of residential care. Such guarantees include assistance by municipalities in handling the housing issue. Major part of the applications concerning infringements of the rights of orphans and children left without parental care have been filed in 2011 in relation to provision of housing when children reach major age, and the actions taken by guardian in relation to management of the child’s property – real estate.
According to Section 14, Part One, Paragraph 3 of the Law on Assistance in Handling the Housing Matters, municipality has to put orphans and children left without parental care on file when residential care and upbringing of a child by care and educational establishment, or by guardian/foster family is discontinued, or when the child has completed education at an educational establishment unless the child can use the residential premises occupied earlier in accordance with the applicable procedure.

Review of the verification proceedings identified that, whenever the above-described norm is applied in practice, municipalities frequently assess the possibility for the child to use previously occupied residential premises solely from legal aspect without taking into account the actual circumstances. Negative decision made by municipality in such occasion may lead to unreasonable restriction of the right to housing of an orphan or a child left without parental care.

In verification proceedings No 2011-169-18AA, for example, Riga City Council substantiated their refusal to put the applicant on file as a recipient of assistance from municipality by the fact that, according to decision of the municipal commission for tenancy of residential premises, the applicant and her father had the right to use an apartment, and the applicant had not been deprived of such right. The applicant, however, pointed out that she could not reach agreement with her father who was deprived of the right of care in respect of her on occupying the above-mentioned residential premises because her relations with her father were not good and their cohabitation in one apartment was impossible. The reasons for deprival of the applicant’s father of his right of care for his daughter included physical violence on his part towards the applicant. During the period when the applicant was places in residential care her father had demonstrated no willingness to return the applicant into the family and demonstrated no interest about her. When residential care discontinued the applicant received no support from her parent, and she had to seek accommodation in a night shelter for some time when she had left the child care facility until she found the possibility to lease residential premises owned by a third party.

It follows from the practice of administrative courts in handling similar matters that, whenever deciding on providing assistance in handling housing matters or on refusal to provide such assistance by municipality, the possibility to use the earlier occupied residential premises should not be considered solely from the legal aspect, and if no legal obstacles are identified for the person to use the earlier occupied residential premises when residential care is completed, actual circumstances should also considered. Administrative Department of the
Supreme Court Senate has pointed out in its award rendered on 28 October 2010 in proceedings No A42662409 SKA-466/2010 that: „[..] Section 14, Part One, Paragraph 3 of the Law on Assistance in Handling the Housing Matters, should be interpreted so that the possibility to use previously occupied residential premises should only be considered to exist if the child after discontinuation of residential care can and is willing to agree with the tenant of the residential premises used before placement in residential care, and provided that other family members of the tenant accept such agreement, or if the residential premises are vacant”.

According to judicial practice, unfavorable social and emotional conditions or those degrading dignity; risk of jeopardy to health and personal inviolability; unwillingness of the child or the tenant/their family members to reach agreement on possibility for the child to accommodate in previously occupied premises are among the actual circumstances the existence of which gives raise to obligation of the concerned municipality to provide assistance to a child in handling housing matter when residential care is discontinued.

It was identified in the above-mentioned verification proceedings that the municipality had no grounds to refuse registration of the applicant as a recipient of assistance in housing matter, since the conclusion made by the municipality that the applicant could cohabitate with the individual who has caused bodily injuries to the applicant in her childhood years may not be considered a reasonable interpretation of legal norm. Municipality of Riga city was encouraged to pass reasonable decision on this matter; however the Ombudsman’s recommendation was not taken into consideration. The applicant applied for elimination of infringement of her rights to the Administrative District Court, and the court obligated the municipality to pass an administrative deed in favor of the applicant. Proceedings of the given matter are pending because the municipality has filed an appellate complaint.

The child’s guardian has the duty to ensure that the child has legal as well as actual possibility of accommodation in the previously occupied premises. Further, pursuant to Section 331 of the Civil Law, orphans’ court has to supervise the actions of guardian and to take all steps that serve the best interests of the child. The best interests of a child are served by possibility to return after discontinuation of residential care to the dwelling that is not encumbered with indebtedness and that ensures favorable social and psycho-emotional conditions. If a child owns a flat, the guardian has the duty to see that such flat is preserved as the child’s property. Orphans’ court has to follow up and ensure that all relevant payments are made in respect of the flat: management costs, utility payments, real estate tax, etc. In case of doubt regarding payment of the costs

related to maintenance of the flat, the required institution has to be requested from the competent institutions.

Reviewing of verification proceedings helped to establish that the above issue is not always duly taken into account by guardian of a child and by orphans’ court; as a result, when reaching major age, the child faces the need to handle his/her housing matter with no assistance because of legal or actual obstacles to accommodation in the earlier occupied residential premises. Settlement of such issue is often time-consuming, and the child has to wait until the municipality provides accommodation in the order of registration, or to seek legal assistance in order to appeal against the refusal by municipality to register application for assistance in housing matter.

For example, it was established in verification proceedings No 2011-236-23D that guardian of the child failed to take the necessary actions to preserve the right of the minor to tenancy of residential premises when the child’s mother had passed away. It was just the other way round: by decision of municipality the residential premises in which the child was accommodated prior to placement into residential care was leased out to the child’s guardian who was later discharged from guardianship by ruling of orphans’ court because she was unable to ensure efficient care to the child. Since the premises had been granted for tenancy to the ex-guardian before a long time and there were no documents available from the municipality regarding the legal grounds of such tenancy, the Ombudsman had no possibility to assess legitimacy of the decision passed by the municipality. Also, the orphans’ court has no information at their disposal regarding the grounds of failure to preserve for the child the right to occupy the residential premises, and this leads to conclusion that orphans’ court had failed to exercise proper control over the guardian’s actions, thus failing to comply with the principle that the best interests of the child have to be served.

3. Application of legal principles in the field of social rights

Improper application of legal norms was identified in one of the reviewed verification proceedings, where municipality had passed decision by which the right of a family to dwelling was groundlessly restricted.

A family of five people including children was registered by municipality of Riga city in 2004 as recipients of assistance in housing matter. According to the mandatory regulations of the municipality which were applicable at the time when the family was registered, the municipality had to offer a flat of 3 or more rooms to family of 5 people. To apply for tenancy in a municipal flat corresponding with the above-mentioned criteria it was sufficient according to
the legal norms to establish the fact that registered recipients of assistance, namely the family, resided in a house that was denationalized or returned to the lawful owners, and that the family had been occupying the residential premises prior to restitution of ownership, and also to prove that no other premises in Riga, Jūrmala of Riga Region were used or owned by such family.

When deciding on leasing the residential premises to the above-mentioned family in 2011, the municipality decided to offer to that family a flat of two rooms with amenities. Such decision of the municipality was substantiated by the applicable legal norm – Article 102 of the mandatory regulations No 80 of 15 June 2010 Concerning the Procedure for Registration and Providing Assistance in Handling Housing Matters; according to that norm, children of the family were not taken into account when considering the tenancy proposal, since their residence was declared in the flat occupied by the family after 31.03.2004, and their previous residence was not a part of denationalized building estate.

It follows from practice of administrative courts that, when handling an application for issuing a favorable administrative deed, the applicable legal norms are normally assessed; such principle is, however, subject to exceptions. Administrative Department of the Supreme Court Senate has pointed out that: “Such exclusions refer, for example, to the benefits stipulated in social rights. Change of legal situation (amending or withdrawal of a legal norm) in the field of social rights does not affect the rights vested in the individual at the time he/she applies to the competent body for such benefits.”

Taking into account the above-stated principle and the fact that legal regulation applicable at the time of registration of the family did not prevent children of that family to apply for municipal assistance in handling their housing matter, the municipality had the obligation, when proposing accommodation in 2011, to take into account all members of the family and to propose to them a flat of three or more rooms.

The Ombudsman applied to the Municipality of Riga City with a motivated request to reconsider proposing a flat with three or four rooms to the family concerned, however no reconciliation was reached in this matter.

The family appealed against decision of municipality to the Administrative District Court, and the latter granted application of the family in its entirety. Proceedings are still pending, though, because of the appellate complaint filed by the Municipality of Riga City.

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60 Award rendered by Administrative Department of Supreme Court Senate on 8 November 2007 in proceedings No SKA-0430, par. 14.
4. Obligation of Parents to Respect the Rights of a Child

Like in previous year, applications were received from separated parents regarding abuse on part of the parent cohabitating with the child in infringement of the rights of the child and the other parent.

Abuse of the right of custody most often takes the form of providing no information about the child, failure to provide for the child’s right to maintain personal relations and direct contact with the other parent; unilateral decisions in respect of the child, thus preventing the other parent from exercising the right of custody and to make decisions on matters relevant to the child; exerting adverse influence on the child’s relations with the other parent, etc.

Abuse of rights is among the grounds stipulated in Section 203, Paragraph 3 of the Civil Law for deprival of a parent of his/her right to care for the child: “Care of the child rights shall be removed from parents if an Orphan’s court recognizes that a parent abuses his/her rights or fails to ensure care and supervision of the child.” Analogous regulation is also stipulated in Section 22, Part One, Paragraph 3 of the Law on Orphans’ Courts: “Orphans’ court shall decide on deprival of a parent of the right of care for child where the parent abuses his/her rights or fails to ensure care and supervision of the child.” If this is the case, the other parent is entrusted with care for the child.

It may be observed in practice that application of Section 203, Paragraph 3 of the Civil Law only takes place in the part regarding failure to ensure care and supervision of a child, while in the part regarding abuse of rights it is applied only within the scope of the right of care. The Ombudsman has drawn attention to this issue in his report in 2010 already.\(^\text{61}\)

Administrative department of the Supreme Court Senate of the Republic of Latvia has resolved in their award of 10 October 2011\(^\text{62}\) the issue of interpretation of the above-mentioned norms of law. A representative of the Ombudsman’s Office was joined to proceedings in the status of special guardian.

The Senate has concluded that the term “their rights” referred to in Section 203, Part One, Paragraph 3 of the Civil Law and in Section 22, Part One, Paragraph 3 of the Law on Orphans’ Courts extends to all and any rights of parents: the right of custody, including the right of care, and the right to access.

Subject to the interpretation approved by the Senate, the above-mentioned circumstances may constitute grounds for deprival of abusive parent of the right of care in respect of a child. Therefore, when handling an application regarding eventual abusive actions on part of the other parent, the orphans’ court has to


assess whether or not the alleged facts concerning the other parent’s actions should be qualified as abuse of parental rights, or probably such actions result from lack of knowledge, lack of understanding of the role of parent, or delusion. Orphan’s court also has to assess whether or not deprival of the right of care is appropriate in the specific situation, that is, whether or not it would serve the best interests of the child concerned. Orphans’ court has to assess actual circumstances of the matter and pass decision on deprival or refusal to deprive [a parent] of the right of care.

Application of such vehicle would eventually reduce the number of situations where the parent cohabitation with the child infringes the rights of the other parent and of the child.

5. Abusing in the Internet environment

Infringement of children on the Internet has become an urgent topic during the reporting period. Operation of the vehicle established in our country for protection of rights was checked within the framework of verification proceedings.

An application was filed with the Ombudsman for electronically received letters injurious to the esteem and dignity of a child. Father of the child had concurrently applied to the State Police, and therefore the Ombudsman asked the police to provide information about the facts identified and decisions made.

When information about eventual infringement of the rights of children on the Internet was received by the State Police, the latter instituted departmental investigation and established that injurious mail had been sent to the child by another child under the age of fourteen years, therefore, the offender is not a subject to administrative liability. Materials of inspection were forwarded to the administrative commission of the municipality for application of compulsory means of educational nature. Parents of the offender have been called to administrative account pursuant to Section 173, Part One of the Administrative Offence Code of Latvia for negligence of their duty to take care of the child. Orphans’ court and social service were informed about the incident to prevent commitment of any other offences by the child and to conduct preventive work with the parents and the offender.

The Ombudsman informed the applicant that, regardless of administrative proceedings, the applicant is entitled to have the issue settled in accordance with civil procedure. The right of injured party to financial compensation arises from Section 1635, Parts One and Two, and Section 2352.¹, Part Three of the Civil Law.

Since the injured individual is of minor age, the applicant is entitled to file an application with court in accordance with the procedure prescribed by Civil
Procedure Law for compensation of the caused moral damage by parents of the offender, and materials of inspection conducted by the State Police may serve there as evidence to substantiation of the claim.

The State has the duty to establish a vehicle for protection of the rights of individual in case of infringement, and for preventing of infringement. In the given occasion the vehicle established for protection of rights is found to operate effectively: the police has identified the offender, and administrative commission of the municipality has passed decision on application of compulsory educational means; conducting of preventive work with the offender and his parents is ordered, and the right to judicial recovery of compensation for the moral damage caused to the child has been explained to parents of the injured child.

6. The Right of Child to Grow up in Family

Several applications have been filed in 2011 concerning the actions of orphans’ court and eventually unsubstantiated decisions. Review of verification proceedings identified that on some occasions breaches of the principle of good governance by orphans’ court have resulted in infringement of the rights of parents.

It was established, for example, in verification proceedings No 2011-244-5A that Orphans’ Court of Iecava County, when deciding on deprival of a mother of her right to care in respect of a child, had not ensured compliance with the principle of impartial investigation and with the regulatory acts that govern the activities of orphans’ courts and obligate orphans’ court to assess the involved risks prior to deciding on deprival of parents of their right to care for child. Decision was passed by orphans’ court on the basis of applications of the individuals concerned with the proceedings, without verifying the actual circumstances. Actions of the Orphans’ Court of Iecava County in the given proceedings had also been assessed by the State Inspectorate for Protection of the Rights of Children, and the Inspectorate established that the orphans’ court had failed to ensure compliance with the principle of protection of the best interests of child; moreover it had committed a number of significant shortcomings. Decision of the Orphans’ Court of Iecava County was repealed by ruling of Administrative District court, and municipality was ordered to compensate the moral damage caused to mother of the child. Taking into consideration the circumstances of verification proceedings, the Ombudsman applied to the municipality with the request to be kept informed about any future actions in order to ensure legitimacy in the activities of orphans’ court.
It was established in verification proceedings No 2011-197-23B, when reviewing the actions of the Orphans’ Court of Skrunda County that involved removal of a child from family and placement into crisis center, that mother of the child was deprived of her right of care for child by unilateral decision on the child’s removal passed by the orphans’ court when more than a month had passed from placement of the child in crisis center, and the mother was therefore prevented from exercising her right to determine the residence of her child. The reason for placement of the child in crisis center was the need to conduct psychological examination of the child because of the suspect of emotional violence experienced by the child in family.

According to the UN Convention for the Rights of the Child and the Law on Protection of the Rights of Children, deprival of parents of their right of care for children and removal of a child from family are treated as ultimate means that may only be applied if such separation is considered necessary to ensure that the best interests of the child are observed. Therefore, if the orphans’ court had no sufficient grounds to remove the child from family, moreover once it was established that the family acknowledged the existing problems and agreed to cooperate, the orphans’ court had to select other means for conducting psychological examination of the child, for example, to propose consulting of the child by psychologist to the parents, rather than take so drastic measure as removal of child from family.

Actions of the orphans’ court as well as of social service were assessed in the above-described proceedings since future decision of the orphans’ court on restoring the mother’s right to care for the child was directly dependent on favorable opinion of social service. Insufficient cooperation was established in the exchange of information between the two above-mentioned institutions. This, as well as the mother’s insufficient cooperation with social service prevented implementation of rehabilitation plan by the social service and discouraged effective social work with the family. The Ombudsman noted the identified shortcomings to the orphans’ court and social service in the opinion on finalization of the verification proceedings, and he proposed to prevent re-occurrence of such shortcomings in similar situations.