Child-friendly justice

From the Ombudsman’s Perspective

Special children’s rights project of the Commissioner for Fundamental Rights in Hungary

2012
I. About the Ombudsman

The Commissioner for Fundamental Rights and his Office

The work and the mandate of the Commissioner for Fundamental Rights and his Office are determined by the Article 30 of the Fundamental Law of Hungary adopted in 2011 and based on the Act CXI of 2011 on the Commissioner for Fundamental Rights, both which enter into force 1st January 2012. Following the relevant regulations, the Commissioner for Fundamental Rights is the legal successor of the Parliamentary Commissioner for Civil Rights, who ensures the effective, coherent and most comprehensive protection of fundamental rights and in order to implement the Fundamental Law of Hungary.

The Commissioner for Fundamental Rights pays special attention to the protection of
- the rights of children,
- the rights of nationalities living in Hungary,
- the rights of the most vulnerable social groups,
- the values determined as ‘the interests of future generations’ (so called “green issues”).

The Commissioner for Fundamental Rights gives an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; and he/she may make proposals for the amendment or making of rules of law affecting fundamental rights and/or the recognition of the binding nature of an international treaty.

The Commissioner surveys and analyses the situation of fundamental rights in Hungary, and prepares statistics on those infringements of rights in Hungary which are related to fundamental rights. Therefore, the Commissioner submits his/her annual report to the Parliament, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission.

In the course of his/her activities, the Commissioner cooperates with organisations aiming at the promotion of the protection fundamental rights.

As a new mandate, the Commissioner for Fundamental Rights may initiate the review of rules of law at the Constitutional Court as to their conformity with the Fundamental Law.

Furthermore, the Commissioner participates in the preparation of national reports based on international treaties relating to his/her tasks and competences, and monitors and evaluates the enforcement of these treaties under Hungarian jurisdiction.

The mandate of the Commissioner for Fundamental Rights and the Deputies:

The Parliament elects the Commissioner for Fundamental Rights (by the proposal of the President of the Republic) and his/her Deputies for 6 years term. Any Hungarian citizen can be elected as Commissioner for Fundamental Rights or the Deputy-Commissioner, if he/she holds a law degree, has the right to stand as a candidate in elections of Members of Parliament and who also has outstanding theoretical knowledge or at least ten years of professional experience;
furthermore he/she has reached the age of thirty-five years and has considerable experience in conducting or supervising proceedings concerning fundamental rights.

The mandate of the Commissioner and his/her Deputies is incompatible with any other state, local government, social or political office or mandate or any other gainful occupation, with the exception of scientific, educational, artistic activities.

The Commissioner and his/her Deputies have the right to immunity identical to that of Members of Parliament. The Commissioner for Fundamental Rights may be re-elected once.

The mandate of the Commissioner for Fundamental Rights and his/her Deputies terminates
- upon expiry of his or her mandate,
- upon his/her death,
- upon his/her resignation,
- if the conditions necessary for his/her election no longer exist,
- upon the declaration of a conflict of interests,
- upon his/her dismissal, or
- upon removal from office.

**Proceedings of the Commissioner for Fundamental Rights**

**Anyone may turn to the Commissioner for Fundamental Rights**, if in his/her judgement, the activity or omission of the public and/or other organs performing public duties (see: the exhaustive list below) infringes a fundamental right of the person submitting the petition or presents an imminent danger. When the person reporting has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or if no legal remedy is available to him or her.

The list of organs:
- a public administration organ,
- a local government,
- a nationality self-government,
- a public body with mandatory membership,
- the Hungarian Defence Forces,
- a law-enforcement organ,
- any other organ acting in its public administration competence, in this competence,
- an investigation authority or an investigation organ of the Prosecution Service,
- a notary public,
- a bailiff at a county court,
- an independent bailiff, or
- an organ performing public services.

Inquiries into an organ performing public services may be carried out only in connection with its public service activities. Independently of its form of organisation, organs performing public services shall be the following:
- organs performing state or local government tasks and/or participating in the performance thereof,
- public utilities providers,
- universal providers,
- organisations participating in the granting or intermediation of state or European Union subsidies,
- organisations performing activities described in a rule of law as public service, and
- organisations performing a public service which is prescribed in a rule of law and the use of which is mandatory.
The Commissioner for Fundamental Rights cannot inquire the activities of the Parliament, the President of the Republic, the Constitutional Court, the State Audit Office, the courts, or the Prosecution Service (with the exception of the investigation organs of the Prosecution Service).

The Commissioner for Fundamental Rights can conduct *ex officio proceedings* in order to have such improprieties terminated as are related to fundamental rights and which have came up in the course of the activities of the authorities. Ex-officio proceedings may be aimed at the inquiry of improprieties affecting not precisely identifiable larger groups of natural persons or at a comprehensive inquiry of the enforcement of a fundamental right.

In the course of his/her inquiries, the Commissioner for Fundamental Rights

- may request data and information from the authority subject to inquiry on the proceedings it has conducted or failed to conduct, and may request copies of the relevant documents,
- may invite the head of the authority, the head of its supervisory authority or the head of the organ otherwise authorized to do so to conduct an inquiry,
- may participate in a public hearing, and
- may conduct on-site inspections.

The Commissioner may request a written explanation, declaration, information or opinion from the organisation, person or employee of the organisation having the obligation to cooperate.

The Commissioner for Fundamental Rights may turn to the Constitutional Court in accordance with those laid down in the Act on the Constitutional Court.

*Exceptional inquiry*: If, on the basis of the petition, it may be presumed that the activity or omission of the organ not qualifying as authority gravely infringes the fundamental rights of a larger group of natural persons, the Commissioner for Fundamental Rights may proceed exceptionally.

The Commissioner for Fundamental Rights submits his/her annual report to the Parliament, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission.
II. About the new project method

The Commissioner Prof. Dr. Máté Szabó launched a new working method and a way of thinking after his election in September 2007. He determines every year different topics that are especially important for the society and the enforcement of rule of law and have a particular significance from the point of rights and freedoms.

Within these defined fields, he initiates special projects which have particular focus and consideration within the Ombudsman office (initiating particular investigations, etc), in the media and the public presentation of the Commissioner.

Since there is no independent parliamentary institution for the protection of the rights of the children, the Commissioner operates during his mandate as an ombudsperson for children rights. That was the reason for the Commissioner to launch the Children’s rights project for his whole, six-year mandate, under which he designates a specific subject each year that he intends to focus on.

The Ombudsman’s activities related to children’s rights are not limited only to the utilisation of traditional means. He protects children’s rights by a set of specific means adjusted to the enforcement of children’s rights, therefore, in addition to dealing with individual complaints he lays greater emphasis on legal protection of holistic outlook and of proactive nature: to activities enhancing consciousness about law and shaping public opinion, to ex officio launched and comprehensive investigations and to organising mechanisms of cooperation.

The Ombudsman, in addition to considering it his primary task to explore problems related to children’s rights and deprivations of those rights during the course of his investigations and to word recommendations for their remedy as well as to press for the elaboration of solutions also considers it indispensable in the interest of efficient and broad realisation of children’s rights to establish direct contacts with the target groups of the project. For this purpose he discusses experiences obtained during ombudsmen’s investigations and his related findings, recommendations and initiatives with experts dealing with children in professional meetings, workshops and conferences, and initiates cooperation between children and civil and state professional organisations and experts dealing with the vindication and protection of children’s rights. In addition, in proportion to his own resources he also takes up roles in the presentation of children’s rights and opportunities of the enforcement of those rights, including the protection of rights by the Ombudsman.

In this spirit the Ombudsman and associates of the Children’s Rights Project have participated in and addressed several professional events as well as in ones directly addressed to parents and children at home and abroad as well during the course of the past year.

The special project were as follows
- In 2008: Awareness-raising of the children about their rights
- In 2009: Violence against and amongst children
- In 2010: Children in care
- In 2011: Right to health
- In 2012: Child-friendly justice

The Ombudsman dedicated this year – following the agendas of the Council of Europe and the European Union, also of the European Network of Ombudsperson for Children – to a special project on child-friendly justice, where he has initiated ex officio, comprehensive investigations about the following topics:

- system of child victim support
- how does Hungary fulfill the international legal obligation concerning child-friendly justice (e.g. Council of Europe Guidelines on child-friendly justice)
- juvenile justice (situation of youth detention centers) in general
- mediation and other forms of restorative justice, alternative sanctions
- youth crime prevention, reintegration
- general evaluation of your justice system (criminal, civil and administrative) from the aspect of children’s rights

Moreover since 2010 the Ombudsman has the honor being a national focal point of the Council of Europe, the most important regional human rights defending institution. The Council of Europe, based in Strasburg (France), now covers virtually the entire European continent, with its 47 member countries. Founded on 5 May 1949 by 10 countries, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.

The Council of Europe has a crucial leading role in defending children’s rights, especially since the transversal programme “Building a Europe for and with children” was launched in 2006 in response to a mandate resulting from the Third Summit of the Heads of State and Government of the Council of Europe (Warsaw, 2005). The Council of Europe’s Strategy on the rights of the child 2012-2015 proposes a vision for the Council of Europe’s role and action in this field, taking into account the progress achieved during the previous policy cycles, the needs expressed by governments and the challenges identified by the international community.

In the current strategy the programme focuses on the following four strategic objectives:

1. promoting child-friendly services and systems;
2. eliminating all forms of violence against children;
3. guaranteeing the rights of children in vulnerable situations;
4. promoting child participation.

In 2010, the Council of Europe has adopted the Guidelines on child friendly justice intended to enhance children’s access to and treatment in justice. In the drafting process, it decided also to listen directly to children and young people. This Guideline has been also the basis of the ombudsman’s investigations.

These are new rules that help Governments make sure that children are treated properly by and in the justice system. The rules apply to everyone under 18 years. They apply whenever children come into contact with the justice system, such as when they break the law, when their parents get divorced and when someone who has hurt a child is being punished. They are supposed to make sure that children’s rights are protected whenever these decisions are made.
Child-friendly justice means that decisions are made about children in a way that respects their rights. Decisions should be made quickly, taking the child’s age and needs into account, taking the child’s views seriously and respecting his or her privacy.

Its basic principles are

- **Participation** (governments must make sure that children know about their rights, and know how to get in touch with those that can help them. Children have the right to be heard in decisions that affect them, and adults must take children’s views seriously.

- **Best interests of the child** (when decisions are being made about children, the most important thing is what is right for them. Officials must also listen to what children have to say. They should make sure that children’s rights are respected, and take into account all their needs. Judges usually take decisions about children, but they should be helped by others – like psychologists and social workers - who sometimes know children better)

- **Care and respect** (Children must always be treated with care and respect, taking into account that they are all different.)

- **Equal treatment – Non-discrimination** (Children must all be treated equally, even though they sometimes come from a different country, group or religion or speak a different language. Children who have disabilities, who are homeless or live away from home, who are Roma or have moved to another country, may need special help.

- **Rule of law** (Children have rights in the legal system; they should be treated fairly. If they are in trouble, they should have a lawyer and the court should take into account what the child did and what his or her needs are. Children have the right to complain about their treatment to someone who is independent and sees both sides.

The justice system shall be child-friendly before, during and after legal proceedings, which means:

- **Information and advice**

  (1) Children and their parents should be given information about the child’s right to be treated fairly and properly. Children and their parents should be told what rules apply and what will happen. They should know what time the event (e.g. the court hearing) will take place, how long it will last and what it will be like. Children should learn how they can be protected and who can help and support them (e.g. a translator or other specialist);

  (2) Information and advice should be explained to the child in a way that he or she can understand; it should take the child’s background into account;

  (3) Children and their parents or lawyer should both receive the information directly;

  (4) Legal information should be given to all children in a form that they can understand. Special information services for children, like freephone helplines and websites, should be set up;

  (5) Where a child may have broken the law, the child and his/her parents should be told about what the child is said to have done, and what might happen next.

- **Protection of privacy**

  (1) No one is allowed to print a child’s name, picture or anything personal about a child or his/her family in the newspaper or on the internet, etc.

  (2) If children are being heard in court or some other official place only important people should be present;

  (3) If a child tells an adult a secret, such adult cannot tell anyone unless they are afraid that the child might be hurt.

- **Safety**

  Children should be protected from harm and when they have been hurt, especially by a parent or other family member, it is especially important to keep them safe. Everyone working with children should be checked to make sure they will not harm children.
- Training
People who work with children should receive training on the needs of children of different ages. They should be trained to talk to children in a way that children understand.

- Approach
Everyone working with children must be careful to work together, to make sure that the right thing is done for each child.

- Deprivation of liberty
A child should only be locked up (detained) where there is no other option. Children should never be detained because of their immigration status.
If a child is detained he or she should:
- be kept apart from adults, unless it is better for them to be together;
- enjoy all their rights, especially the right to contact their family and friends by having them visit or write to them;
- be able to attend school or take a course, practice their religion and have access to sports and leisure facilities;
- be prepared for their return home.

*The UN Convention on the Right of the Child (CRC)* defines also legally binding obligations related to child-friendly justice, as follows:
- **Art 1.** Every human being is a child under 18
- **Art 3.** In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration
- **Art 37.** Deprivation of liberty must be only a last resort resolution (for the shortest period)
- **Art 40.** The right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society

We have to mention here also the 10. *General Comment of CRC Committee* (2007), which states: the reaction given to an abuse of law made by a child shall be proportional with the age, maturity, necessities, circumstances of the children, and has to take into account the longterm interests of society (education, reintegration, not pure punishment).
To sum up child-friendly justice means a complex model, because thousands of children could be involved in justice system, as victims, offenders, witnesses, asylum-seekers; or when their parents are divorcing. In order to protect them at the widest range, the administrative, criminal, civil justice has to be child-friendly at all levels & phases, ensuring:

- best interests & respect their rights
- effective access to justice
- participation & proper information (child-friendly conditions; inquiry rooms, right to be heard; etc)
- adequate trainings of professionals dealing with children.
III. Press releases of the ombudsman

Unlawful handcuffing and violated human dignity – the Ombudsman on the proceedings of policemen in the school of Sajókaza

The rights to human dignity and to liberty of the person of those taken to the police station were infringed, and their handcuffing was unlawful and disproportionate. In his inquiry into the taking to the police station of Roma youths the Ombudsman underlined that the measure disturbed the order of the school, and the children’s rights of those witnessing it were also infringed.

Máté Szabó Ombudsman received information from the media that because of physical violence in a school in Sajókaza young persons were taken to the police. A minor from Sajókaza, together with his or her legal representative, filed charges against persons unknown for ill-treating him or her during a break in February 2012 in the school. Ten days later 8 to 10 police surrounded the school building, and then handcuffed and took four Roma youths aged 14 to 16 years to the police station.

The Commissioner for Fundamental Rights conducted an ex officio inquiry into the lawfulness of the police measure. He pointed out that the police had caused disproportionate injury to the youths in question, in particular because the measures were taken in front of their teachers and fellow students. The measure was suitable for spreading fear among the students who witnessed it. According to the Code of Criminal Procedure the youths should not have been taken to the police station but they should have received a summons for questioning as suspects. The police acting in the case disregarded not only the principle of proportionality but the principle of graduation as well, and used handcuffs automatically, without consideration of the circumstances, which was unlawful according to the Ombudsman.

The fundamental rights to human dignity and to liberty of the person of the youths taken to the police station were infringed as well as the children’s rights of students present during the measure – found the Ombudsman.

The Commissioner has requested the Chief of the National Police to take the necessary measures so that in the future police measures in educational institutions are taken only in exceptional cases, for example if it is necessary to perform urgent investigative acts or if the nature of the event, for example stopping a fight in school, requires it. He has also initiated with the Police Chief of Borsod-Abaúj-Zemplén County that he should inform all police officers under his command of the content of the report and instruct them to proceed in the future by respecting the requirement of proportionality as well as the principle of graduation, and without infringing fundamental rights.

31 August 2012

Children’s home, juvenile correctional centre or prison?

The Ombudsman’s inquiry in the special children’s home in Fót

The special children’s home in Fót reminds the Commissioner for Fundamental Rights of a law enforcement institution. On the basis of the on-the-spot inquiry and those laid down in the institution’s documents Máté Szabó has found that in the institution, which cares for children with psychological problems, measures restricting liberty of the person are applied even in the absence of dangerous conduct as defined in the Child Protection Act.

The institution was opened at the end of 2010 but due to the low quality of the building materials used it already needs renovation. Every door and window of the building is equipped with bars. The different parts of the building and the rooms are locked, and the sports ground in the court yard and the walls of the building overlooking the sports ground are surrounded with barbed wire up to the height of a storey; according to the educational programme of the institution this is necessary in order to prevent the children in their care from leaving without permission. The fact that in the children’s home in Fót a security guard and a policeman are also
employed as child supervisors enhances the institution’s juvenile correctional or law enforcement character.

The children are private students at the Juvenile Correctional Centre of Aszód, but it is the teachers of the children’s home who prepare them for their exams. In the opinion of the Commissioner the private student arrangement with the juvenile correctional centre seems to suggest as well that the inmates are serving a sentence. In addition, the educational programme of the institution states that children under disciplinary punishment may not receive visitors.

According to the Commissioner the restriction of fundamental rights may be justified in the case of children if it serves their protection. The Child Protection Act stipulates that measures restricting the personal liberty of children needing special care or educational supervision may only be applied in absolutely justified cases where the children might put themselves or other children in danger. So far the institution has not requested that educational supervision be ordered but on the basis of those laid down in the documents of the institution and of those experienced during the inspection the Ombudsman has established that the children’s home applies measures restricting the liberty of the children in their care even in the absence of dangerous conduct as defined in the Child Protection Act.

The inquiry of Máté Szabó has found that so far either the maintainer of the institution, nor the social and guardianship authority has conducted supervision. In the report closing the inquiry the Commissioner for Fundamental Rights has established improprieties relating to legal certainty, to the right to liberty of the person and to the right to protection and care of children living in child protection institutions. The Ombudsman has therefore requested the Minister of Human Resources, the head of the social and guardianship authority and the director of the institution to put an end to these improprieties.

24 July 2012

The Ombudsman on the protection of children’s rights in the course of police measures

It poses an imminent danger to or violates children’s rights if the police take coercive measures against parents in the presence of their children. In the opinion of the Commissioner for Fundamental Rights the police should take account of the mental development of the child and the requirements of child-friendly justice.

A child’s most important reference points in his or her mental and emotional development are the parents. If parents are the target of an attack, children may experience it as an attack against themselves. According to a complaint received by Máté Szabó Ombudsman, the parent of a minor child was arrested in the open street by armed policemen who wore masks, forced him to lie on the ground and handcuffed him in the presence of the child. In fact, the parents making the complaint deem that the arrest itself was unnecessary and disproportionate. In his inquiry the Ombudsman has found that the use of coercion and handcuffs was lawful and proportionate, and in the course of the measure the police did not violate the fundamental right of the complainant to personal dignity and liberty of the person. The proceeding policemen addressed the complainants in the right tone and adequately informed them of the future course of action.

Nevertheless, at the time of planning the action it should have been taken into consideration that the child might also be affected as an eye-witness, and that the shock experienced by the minor might have a detrimental impact on his or her mental development. This aspect was not considered at all, the rights of the child were infringed in the course of the police measure, and the measure did not meet the requirements of child-friendly justice – says the Ombudsman in the report of the inquiry.

The Commissioner for Fundamental Rights has initiated with the head of the National Bureau of Investigation that in the future other factors should also be considered besides the physical security of those affected by the police measure and that of the surroundings. If the
measure may – even if only indirectly – affect a minor, the police should take into consideration the influence that such a measure may exert on the mental development of the child. He has requested, moreover, that – except for circumstances when there is an imminent threat to loss of life – the police should avoid using coercive measures against wanted persons in the presence of their minor children.

20 July 2012

Children in immigration detention – the Ombudsman’s inquiry

With a view to deportation, alien policing authorities may take into custody for up to 30 days foreign nationality children together with their adult family members for illegally crossing the state borders of Hungary. According to the Commissioner for Fundamental Rights this is unnecessary on the other hand, and, on the other, there is no legal basis and there are no legal guarantees for the detention of minors.

Máté Szabó Ombudsman has recently made an unannounced on-the-spot inspection at the Temporary Detention Facility of Békéscsaba in order to examine the enforcement of the fundamental rights of families with minor children living there. This is the only place in Hungary where the police are detaining children under the age of 14, i.e. children who lack the capacity to act.

In proceedings conducted by the alien policing authorities unaccompanied foreign minors cannot be placed into detention, but children accompanied by their adult family members may be placed in detention for at most 30 days. The Commissioner for Fundamental Rights has found in his inquiry that the subject of such detention, as a measure, is in fact not the minor who lacks the capacity to act but the adult family member accompanying him or her. It violates the right to liberty enshrined in the Fundamental Law that minors without the capacity to act are held in detention for an alien policing law infringement committed by their adult family members.

In children who are unable to comprehend the cause of the detention and estimate its length, 30 days in custody cause a mental stress incompatible with childhood. Consequently, this measure does in no way serve the best interests of the child as laid down in the UN Convention on the Rights of the Child. The question also rises whether or not it is necessary to detain minors for a period of up to 30 days as a preparatory measure of deportation. As a matter of fact, in the absence of a deportation order the child is free to leave the place, either alone or accompanied by his or her adult relative, from the 31th day following the ordering of detention.

The Commissioner for Fundamental Rights has therefore initiated that the Minister of the Interior and the Chief of the National Police take the necessary measures.

12 June 2012

Unaccompanied foreign minors in a Hungarian children’s home – follow-up inquiry of the Ombudsman

Asylum seekers who are minors are now placed in the children’s centre of Fót instead of a refugee camp. This is one of the results of the previous proposals of Ombudsman Máté Szabó. The new inquiry of the Commissioner for Fundamental Rights, however, uncovered further problems.

Before the Ombudsman acted in the matter, unaccompanied minors seeking asylum had been placed in the accommodation centre of Bicske, where the conditions were not really adequate for providing education and getting to know the country. Following the initiative of the Commissioner, the Minister for social and labour affairs and the Minister for public administration and justice set up, by amending the relevant Act, the home of unaccompanied minors in Károlyi István Children’s Centre in Fót. The life circumstances of alien minors in respect of whom asylum proceedings are pending, who are recognised as refugees or who
are in aftercare, are considerably better than they were in Bicske; this has also been confirmed by young persons who have been living there for a longer period of time.

The new inquiry of the Ombudsman has also highlighted some problems. Among others, the report mentions the fact that in the centre there is no isolation ward where newly arriving youths suffering from infectious diseases or from parasites could be treated and cared for. This presents a danger to the right to physical and mental health, as laid down in the Fundamental Law.

Both the teachers of the school providing education for these alien children and the staff of the centre have reported that almost all minors have been gravely affected by the shocks suffered during their journey to Hungary. In psychology one says that they are suffering from ‘posttraumatic stress disorder’, which may result in a sudden loss of weight without any apparent cause, in chronic headaches or unexpected and uncontrollable outbursts of anger. The psychologists and the pedagogical support staff working in the children’s centre are unable to properly attend to these problems since their time and energy is taken up by caring for the inmates of the special children’s home also situated in Fót.

The inquiry of the Ombudsman has revealed the fact that not only the youths living there but also the staff caring for them are in need of professional support. Indeed, after some time children open up and begin developing confidence in and emotional ties towards the grown-ups caring for them; consequently they tell them about all the horrible things they went through and this is very taxing even for the teachers and educators, who, left to themselves, are unable to cope with this emotional burden.

23 April 2012

The Hungarian Ombudsman’s findings about the legal regulation on missing children and some other related issues

Legal regulation is incomplete, and the existing rules are unclear. There is no unified practice for collecting data, no common understanding on definitions, nor are there well-defined obligations for which anyone could be held accountable and through which the State, families and civil society organisations could decrease the number of missing children. In a comprehensive, ex officio investigation the Commissioner for Fundamental Rights has asked those responsible about the reasons for children missing or playing truant, about the ways of prevention and intervention, about the measures taken to deal with the children concerned, and about how professionals working in the field see these problems.

Hundreds of children disappear from their homes or escape from child protection institutions every year. Most of them go back home out of their own free will, but others are found by the police, several of them become victims of crime, and there are even some whose fate remains unknown forever. It is on these phenomena that the Ombudsman has requested data and information from several ministries, the country government offices, the Metropolitan Methodology Centre for Child Protection and relevant NGO’s.

His inquiry has established that there is no uniformly used definition or a unified practice of collecting data on missing children. From the information provided, however, the Ombudsman has concluded that it is mainly children over 14 – typically girls – and cared for within the child protection system that are found missing. Many of them live in specialized child protection institutions, from where they mainly escape to stay with their parents, relatives or acquaintances. Girls over 14 typically run away to their boyfriends. The same child may repeatedly leave the institution without permission, while others are continuously on the run, and there are even some who do not spend one day in the children’s home. Occasionally the institution or the police initiate that the child should return finally to his or her family, which
often endangers the young person’s development. According to the Commissioner this practice is contrary to the principle of the best interest of the child, and at the same time it violates the child’s right to protection and care.

The Commissioner for Fundamental Rights has also found that there are no codified obligations of the State or civil society organisations for which they could be held accountable and with the help of which one could reduce the number of missing children. Professionals in the field often work independently of each other and without any coordination. It also constitutes an impropriety that the activities of authorities investigating the causes of children missing and of child protection providers are not sufficiently regulated or consistent.

Another problem articulated by our data providers is the decreasing number of day-care possibilities at school and of summer day-camps. The Ombudsman holds that during the school-year young people tending to loaf about in their free time could be best occupied in the afternoons in the framework of after-school care, while prevention could be fostered by opportunities for spending the summer holidays in a meaningful way. If, especially in the summer, we fail to provide day-care at schools, which proved a very good practice in the past, we make it impossible for families with children to find or keep their jobs, since disadvantaged families cannot afford privately organised, profit-oriented camps for the whole of the summer holidays.

The Act on Public Education does not contain any provisions on organising school day-care for the period between September 2012 and September 2013. The relevant provisions of the Child Protection Act, effective as of 1 January 2012, do not mention summer day-camps either, nor do they refer to kindergartens or school day-care falling under the scope of the Public Education Act. This lack of regulation is contrary to the requirement of legal certainty, and it endangers the realisation of children’s right to care and protection, concludes Máté Szabó, Commissioner for Fundamental Rights.

24 May 2012

Staying healthy in prison –
Inquiries on the spot of the Ombudsman in the penitentiary institutions in Tököl

The Commissioner for Fundamental Rights has followed up the implementation of his recommendations made pursuant to his inquiry four years ago in the prison of young delinquents in Tököl. One more psychologist has been added to the staff, but more would be needed. The inmates can now have a shower every day, which is an improvement, but it is an inadmissible practice that convicts of younger age are allowed to smoke in their cells.

As for the recommendations the Ombudsman made one year and a half ago on the conditions in the hospital of Tököl, the addresses have partly agreed to implement the proposed measures.

Instead of the two psychologists in the Penitentiary Institution of Young Delinquents in Tököl of four years ago, there are now three psychologists treating the mental hygiene problems arising from them more and more prevalent occurrences of aggression and drug-consumption there. On the other hand, the number of detainees has also increased, and the psychologists also have to look after patients in the Central Hospital of the Penal Institutions in the vicinity of the Penitentiary Institution and after the employees of the prison. The lack of psychologists directly endangers the right to mental health of minor detainees – states the Ombudsman. There are frequent problems of hygiene; minor detainees often have to be reminded of the necessity of washing. Since the inquiry, the daily showers have been made possible for each minor detainee by the institution, which the Ombudsman considers as a step forward from the situation four years ago.

In Tököl smoking and non-smoking prisoners are kept in separate cells. On this subject the Ombudsman has pointed out that in the penitentiary institutions for young delinquents it is not allowed to have cells for smokers. A considerable part of the
detainees are younger than 18, and it is prohibited by law to sell or provide tobacco products for them. Máté Szabó has added that in a confined space like the cells the harmful effects of smoking tend to multiply. The Commissioner suggests that the Act on the protection of non-smokers be modified so that smoking in the cells in the penitentiary institutions for young delinquents be prohibited, since the present situation violates the right of children to protection and health.

After his inquiry into the prison hospital in Tököl, the Commissioner for Fundamental Rights proposed that the overcrowding in the cells be diminished and that prisoner transport vehicles be equipped with safety belts. As a result, the Minister of Public Administration and Justice has now informed the Commissioner on the Government’s intention to build additions to existing penitentiary facilities and also to open up new buildings for such use. He has added that it is impossible and impractical to include all aspects of the living space of prisoners in rules of law, since when determining the number of detainees the staff have to take into account different criteria depending on the different penitentiary institutions and on the individual circumstances of each detainee. Accepting another recommendation of the Ombudsman, the Ministry of the Interior has made an estimate of the foreseeable costs, and by the end of 2014 prisoner transport vehicles are to be equipped with safety belts. The reason why the Ombudsman insisted on this measure is that in the past there had been accidents where detainees had suffered bodily injuries while being transported, and the consequences of could have been mitigated by having safety belts on.

3 May 2012

Petition of the Ombudsman to the Constitutional Court on the provisions concerning the confinement and detention of juvenile offenders

The provision of the Regulatory Offences Act making it possible to order confinement and detention for regulatory offences is contrary to the Fundamental Law and the UN Convention on the Rights of the Child, which has been promulgated in Hungary. Since, in spite of previous warnings by the Ombudsman, the new Regulatory Offences Act, effective as of 15 April, still allows the above sanctions, the Commissioner for Fundamental Rights has requested the Constitutional Court to review certain provisions of the Act.

Ombudsman Máté Szabó already established in November 2010 that the provision of the Regulatory Offences Act then in force, which terminated the prohibition of the confinement of juvenile offenders and even permitted that fines imposed on them be converted to confinement, was contrary to the right of children to care and protection, as well as to their right to liberty of the person. In the concrete case, three secondary school girls as part of a dare tried to steal some costume jewellery, and when the security guard of the shop noticed what they were doing, they claimed to regret what they had done and gave back the jewellery. The police took the fifteen years old girls to the police station, detained them for a day and a half and justified their proceedings with the amended regulations. As a matter of fact, in August 2010 Parliament did delete those provisions of the Regulatory Offences Act which in the case of juvenile offenders prohibited the imposition of confinement.

The Commissioner requested the Minister of the Interior to remedy the impropriety. He in turn informed him that the measure was justified, because otherwise law enforcement would lack the necessary means against offenders and that confinement contributed to the forming of the personality of young people. The Ombudsman did not accept this response and the Minister of the Interior promised that when drafting the new Act on Regulatory Offences the Ministry would, based on the experience gained in applying these measures, reconsider the rules on the confinement and detention of juvenile offenders.

Despite the Ombudsman’s concerns, however, the new Regulatory Offences Act, effective as of 15 April 2012, continues to provide for the possibility of confinement and
detention for juvenile offenders and of converting fines to confinement. The absurdity of the situation is shown by the fact that while only children over sixteen years may be sentenced to community service, children over fourteen may forthwith be sentenced to confinement. Since the legislator did not take steps to redress the situation which is contrary to fundamental rights, the Commissioner has initiated the review of the contested provisions of both the old and the new Act with the Constitutional Court.

In his petition Máté Szabó explains in detail that the concept introduced by the law-maker and retained in the new Regulatory Offences Act cannot be reconciled with either the provision of the Fundamental Law on the protection of the rights of children, nor with the international commitments undertaken by Hungary, and that it violates several provisions of the Convention on the Rights of the Child. The Ombudsman repeatedly points out that in regulatory offence proceedings of persons under eighteen the application of short deprivation of liberty unnecessarily and disproportionately restricts the fundamental rights of the persons concerned. In the case of juvenile persons the restriction of personal liberty is harmful and may only be applied in serious cases and as a last resort. According to the Commissioner, in a democratic State under the rule of law it cannot be justified that to a short-term deprivation of liberty there is no alternative measure or instrument as restrains rights to a lesser extent, ensuring education and restoration instead of reprisal.

The Commissioner for Fundamental Rights requested the Constitutional Court to annul the provisions that make it possible to deprive of their liberty juvenile offenders who commit regulatory offences. At the same time the Commissioner has indicated that the annulment in itself would not completely remedy the existing impropriety; for that it would be necessary to adequately supplement the Act. Consequently, the Ombudsman has also requested that the Court establish that the present legal situation is contrary to an international treaty, as in the Regulatory Offences Act Parliament failed to lay down the exempting rules which would provide for the enforcement of the principles of the Convention on the Rights of the Child, guaranteeing enhanced protection for minors.

15 April 2012

Child friendly justice? – The mediation in vain is a cheap and effective method, but only exists on paper (AJB-2986/2012.)

The ombudsman examined the use of mediation and other alternative conflict management methods/restorative justice in Hungary, from the perspective of the children’s rights. The ombudsman reported that although mediation and alternative dispute resolution are clearly useful, efficient, cost-effective and child-friendly methods for the child protection- and criminal-justice system, in Hungary this approach is hardly implemented.

There is a lack of training of professionals dealing with children, so beside the lack of knowledge, there aren’t enough mediators, and also regulatory gaps and jurisdictional issues are further complicate the use of this – EU conform and child friendly - model.

In the year 2012, the Ombudsman has given high priority to child-friendly justice issues, so he started a comprehensive investigation regard to the number of complaints on family law cases and the use of mediation in the context of the children’s rights. This is a form of dispute settlement in which an impartial third party, the mediator helps the parties in accordance with their respective interests and the establishment of agreements acceptable to all of them. There are also methods of mediation - such as the perpetrator-victim mediation or other forms of restorative justice – in which case the process is some form of compensation and reparation.

The Ombudsman noted that, although the law provides for the mediation process, implementing regulation would be needed on child protection aspects, and it would be essential to create free training opportunities for the professionals working this area.
Next to the raising awareness of mediation, in addition to its wider application the crucial issue is the training of specialists, especially the judges, so the Ombudsman has asked the President of the National Judicial Office, to develop a set of methodological guidelines.

The commissioner for fundamental rights pointed out that the children's best interest undoubtedly requires the professional administrators’ awareness of the alternative dispute resolution methods related to the child-friendly justice system.

**Crime prevention and victim protection during childhood - the Ombudsman’s report for the effectiveness of the child protection system (AJB-2617/2012.)**

*There is significant difference throughout the country in guardianship office work and it’s conditions. The police often conducted without any qualification of child and youth care tasks. Victim services functioning only in county towns, gaps in the legislation, there are no adequate methodological guidelines. Ombudsman Máté Szabó turned to the competent Minister.*

In 2012 the Commissioner for Fundamental Rights placed the child-friendly justice issues to the focus of his project on children’s rights. Linked to the European Union’s theme on the rights of the child, and joining the Ministry of Public Administration Justice special program on child friendly justice the ombudsman started an ex officio investigation on official authorities participating in crime prevention and victim protection system of juveniles.

In this comprehensive study the Commissioner requested about 70 different official bodies, including guardianship offices, regional police headquarters, and the justice and victim protection services.

The Ombudsman found that the effectiveness of the work of guardianship offices is significantly different in the different counties of the country. According to the inspection report this phenomenon is caused by the different performance characteristics, the lack of staff, inadequate training, on the other hand contradictory legislation, grant opportunities, and the narrowing of the national training programs.

The staff members of county police headquarters victim support services, engaged in child and youth care, mainly work without proper qualification and the absence of adequate financial background.

The report noted that there are only few, yet unused child friendly hearing rooms, and legislative barriers impede the use of audio and video recordings as evidence.

Also a serious problem, that the victim support service offices functioning mostly in the county towns, with small staff of specialists.

The commissioner for fundamental rights pointed out that the lack of independent experts, the absence of legal provisions supporting child victims and the guides of good practices, loss follow-up of the afterlife of child victims equally results the anomaly.

**Child-friendly justice? The Ombudsman on the enforcement of children's rights in Hungarian judicial system (AJB-2324/2012.)**

*Within the framework on his project focusing on children’s rights, the Ombudsman investigation of the judiciary and the administrative procedures for children founded a number of violations of different fundamental rights in relation with juvenile justice system. The commissioner for fundamental rights raised his voice again against the decreasing of the minimum age of criminal responsibility, the elimination of independent juvenile courts, the deprivation of the child’s liberty in misdemeanour cases, and drew the attention to meeting the country's international obligations of the UN Convention on the Rights of the Child.*
The Commissioner for Fundamental Rights investigated ex officio whether the children's right for special protection applying on the appropriate level of public administration and in judicial proceedings, in the context of international regulations, the existing legislation and the case law based on it.

During the investigation the Minister of Public Administration and Justice asked by the Ombudsman to revise the new Criminal Code’s regulations on decreasing of the minimum age of criminal responsibility in some cases, in accordance with the regulations of the Basic Law of Hungary and the UN Convention on the Rights of the Child.

The Commissioner requested the Minister also to examine the child and youth age characteristics of appropriate legal infrastructure, particularly the opportunities to develop child-friendly court waiting rooms, and to revise the regulations of the Misdemeanour Process Code which are allowing the deprivation of the child’s liberty in misdemeanour cases.

The Ombudsman drew the attention of the minister to revise the implementation procedure of the judicial enforcement of children hand over from one parent to another (for example in the case of divorce) by an amendment, which prevents the child to be the “victim” of a police action.

The Ombudsman urged the adoption of legal regulations, which would allow the expeditious procedure in guardianship proceedings concerning the handover of child, or in relationship maintenance issues between one of the parents and the child.

The Fundamental Rights Commissioner's report highlighted the importance of the use of mediation, in order to increase the efficiency and speed of the similar procedures for the children’s best interest.

By reflecting to a specific complaint case, the commissioner called the head of the national police for action to ensure that, in the case when the police interrogating a juvenile witness, the officials do not miss the notification of the child's parents or legal representatives.

The recommendation noted the need for increase the number of child friendly hearing rooms, as well as to create legal guarantees for the protection of the children in the case of filming during the police interrogation.

Ombudsman’s concerns on lowering age responsibility

The Commissioner for Fundamental Rights is deeply concerned about the draft of the Hungarian Criminal Code decreasing the minimum age of criminal responsibility from 14 to 12 years in some cases, which may result the deprivation of the child’s liberty in case of finding him or her guilty.

However there is no common praxis of determining unified the lowest age of criminal responsibility at European level, but the UN Convention on the Rights of the Child and General Comments of CRC Committee embody a clear direction and spirit to build a child-friendly/centered justice system aiming to help, support, and reintegrate children who have any conflict with the law. In general criminal statistics and nature of crimes committed by persons under 18 also does not support this amendment, and in this model deprivation of liberty can be used only as last resort and for the possible shortest time.

The Commissioner for Fundamental Rights, as Children’s Rights Ombudsman believes that problems of ‘deviant’ children can be solved primarily not with criminal sanctions, but in close and dialogue-based cooperation of child care professionals, as social workers, child care institutions, health care professionals, schools, etc. to support prevention emphasizing children’s best interest and respecting their universal rights.

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