

**COMMISSIONER FOR FUNDAMENTAL RIGHTS
HUNGARY**

PROJECTS IN 2011

(Summaries)



2012

PROJECT ON CHILD HEALTHCARE , 2011

The Parliamentary Commissioner for Civil Rights' task is to investigate abuses affecting the constitutional rights of children whenever he becomes aware of them and to initiate general or specific measures for their redress. Since there is no special ombudsman for children's rights in Hungary the general ombudsman acts as one on the basis of the Child Protection Act, 1997.

Within the framework of the Children's Rights Project each year he defines a special area of interest: rights awareness-raising among children in 2008, violence against children in 2009, children in care in 2010.

In 2011 the ombudsman concentrated on the health of the children. According to the constitutional right to health and to the Art.24 of the UN Convention on the Rights of the Child (UN CRC), every child has the right to mental and physical health on the highest degree.

The special issues to be investigated are:

- drug and alcohol abuse among the younger generations
- sexual exploitation and other forms of violence and child abuse
- child prostitution
- school meals
- access to sport and physical education
- missing children
- health care in youth detention centres
- child psychiatry
- health care of disabled children
- access to health services in childcare institutions
- school doctors and dentists, school-psychologists

Investigation on child prostitution

Sexual exploitation of children is not only a real danger in every country, but it means a form of cross border crime too. The child protection signalling system does not respond adequately to the suspicion of sexual abuse and the evidence arrived usually only delayed. The system could fight neither against child prostitution, nor for protection of children properly, because there is no internal cooperation, professional guidance or rules of procedure - stated the ombudsman in a comprehensive ex officio investigation's report, moreover *it is a problem, that the police handle child prostitutes as perpetrators, not as victims*. The ombudsman does not approve the hesitation, inactivity and lack of knowledge of professionals. The report stated that already the suspicion of abuse is a good reason to initiate measures taken of the child protection actors or to search the reasons of the risky behaviour.

Mostly the 14-17 years old girls are in risk, who lives in bad financial and social circumstances. Generally there is no strong family behind, and most of them are victims of sexual violence perpetrated against them prior.

The ombudsman requested child protection signalling system organs (police, family care centres, child protection services) in Budapest and in six counties to share their experiences.

Investigation on school healthcare services

The ombudsman initiated a comprehensive investigation on access to different school health care services, as school nurses, school doctors, school psychologists. He requested not only heads of (private-, state-, church owned) schools in Budapest and in different counties, but also the ministries.

It is clear that there is no “minimum measure to provide healthcare services”, e.g. it is not regulated that how much time do they need to spend in schools, where is the border of basic service and special service, etc. Moreover the professions of school healthcare are underfinanced; they are strongly congested and many times burned-out; and there is a great lack of communication and cooperation among parents, pupils, and professional staff.

The ombudsman noted as highly prioritized problem, that *under the current legislation the school psychologists and child-protection professionals in schools can be employed and this is not obligatory and not in fulltime, which results schools without any of the above mentioned professionals* who have serious task to prevent aggression, conflicts in schools, violence against and among children and they could help also the teachers, and staff.

Investigation on sexual abuse of children in care

Available data suggest that one in five children in Europe are victims of some form of sexual violence. It is estimated that in 70% to 85% of cases, the abuser is somebody the child knows and trusts. Child sexual violence can take many forms: sexual abuse within the family circle, child pornography and prostitution, corruption, solicitation via Internet and sexual assault by peers. The sexual violence is still the most invisible form of abuse, and children in care or in other forms of risks are more vulnerable.

The ombudsman requested in ex officio investigation child care institutions, head of National Police, the Prosecutor General, the relevant ministries, the European Network of Ombudsperson for Children, and NGO's and external experts of the field.

The report stated as a serious problem in all forms and it is existing in care institutions too, however only a few case will be published, and few children ask for help, which has many reasons: as the lack of sensibility of child protection signalling system, the lack of complaint mechanism, the low level of awareness not only about rights, but also about sacredness of body, and forms of abuses.

There is a great need to implement professional guidance, protocols, educational awareness programmes on child sexual abuse.

A Discrimination case:

A child who was infested by hepatitis B (HBV) was sent home from the kindergarten for the reason of fear of the epidemic disease. Though the child had a medical certificate proving that he brings no health danger to the community, the head of the kindergarten insisted on a special medical report issued by a hepatologist. The relevant Education Authority declared its lack of competence on this matter and asked the parents to turn to the mayor as well, whom referred again to the interest of the majority compared to the single interest of the infected child.

After examining the case, the Ombudsman stated that the head of the kindergarten acted discriminatory by sending the infected child home. According to the official opinion of the health authority, no isolation was justified in this case.

PATIENT'S RIGHTS PROJECT, 2011

The Ombudsman launched a comprehensive project on the issues of the right to health and on the functioning of the healthcare system. The project refers to the findings of the former ombudsman practice relating to the patients' rights and to the European and international standards and requirements as well.

The Care of HIV patients in Hungary:

The care of HIV patients is not satisfactory in the country. Although, the new legal regulation appointing the responsible institutions came into force in January 2010, in reality the patients can only find an appropriate social- and healthcare in Budapest, and no special care in the countryside. Even several months later of regulation enacted, the local institutions appointed were not even informed on their new tasks and they were not capable at all to fulfil their new duties. Although the new regulation aimed to end the geographical discrimination, the situation has not changed in the practice. The Ombudsman called the decision makers' attention to that they should have done a performance analysis study during the preparation phase of the regulation. The present situation extremely burdens this vulnerable group of patients, therefore actions must be done for improving their situation and possibilities

The rights of patients: tasks not performed, uncertain legal background, weakening protection

The protection by the authorities of patients' rights is not resolved either from a formal or a contents point of view – underlines Máté Szabó. According to the Parliamentary Commissioner for Civil Rights his inquiry has not uncovered any such exceptional circumstances that would justify a decrease of the level of protection already achieved in the protection of fundamental rights.

On the basis of complaints, the ombudsman started a comprehensive inquiry in order to find out whether after the changes of the relevant legislation the rights of those availing themselves of healthcare services can be enforced. The Commissioner

has come to the conclusion that *the present system, which was modified several times, is not suitable for replacing the former rights protection mechanism of the authorities*. The report emphasises that in *the absence of procedural guarantees and of legal remedies* the public health administration organs of the counties may “cherry pick” among the complaints, may conduct proceedings in some cases, and not in others, which presents the danger of an arbitrary and unpredictable application of the law.

The final conclusion of the Ombudsman’s analysis, which has covered the domestic regulation and practice as well as the international requirements, is the following: *in the interest of an effective enforcement of the rights of patients, it is necessary to set up and operate an institution of a non-judicial type which has the competence of authorities, is impartial, has an independent legal status and specialised expertise, and examines the individual complaints of patients, and whose decisions may be contested in court.*

The report deals with the present status and legal situation of representatives of patients’ rights as well. In this respect the Commissioner underlines that the complete uncertainty and the lack of regulation of the legal status of representatives of patients’ rights – a legal institution having the nature of a guarantee from the point of view of information and representation – results in an improper legal situation. In his report, the ombudsman points out that a high-level protection in the field of patients’ rights is in the public interest. Consequently, the Ombudsman has made several proposals of a legislative nature to the Ministry responsible for healthcare and has requested the national medical officer to review the legal practice.

The Ombudsman on health care provision to patients with a disability

In spite of increased financing, the question of dental care provision to autistic patients and patients with other disabilities is not resolved, and there are important regional differences. The Parliamentary Commissioner has requested the help of the Minister responsible for national resources.

Although financing has been increased, it is still inadequate to meet the needs in terms of equipment, the necessary infrastructure for complying with minimum requirements and the additional time required for the dental treatment of persons with disabilities. It is partly for this reason that for these patients capacities are under-utilised, although the legal background for the financing is in place – says the report of the Ombudsman’s inquiry.

The Parliamentary Commissioner for Civil Rights considers that it would be necessary to designate health care providers that meet the professional operational conditions to satisfy the special needs of medical provision, including dental treatment, of persons with disabilities. It is a further problem according to the Commissioner that *doctors, dentists and other persons working in the health sector lack the necessary skills to communicate with patients living with disabilities or to treat them appropriately*. Therefore, the Ombudsman has called attention to the importance of introducing more information on autism and other disabilities in the undergraduate programme and specialist training, as well as in the system of further education.

The Ombudsman has requested the Minister responsible for national resources to take the necessary measures to eliminate regional inequalities in health

care provision in order to ensure better access to health care provisions. He also proposed to the Minister to review existing contracts for the financing of dental care and designate, in cooperation with the National Health Insurance Fund, new healthcare providers, and to ensure a financing that gives the right incentives for service provision.

Alarming conditions in the central hospital of the penitentiary system – the Ombudsman requests the help of the competent Ministries

The building has not been renovated for fifty years. You have either heating or hot water. The still usable hospital wards are overcrowded. In the one and only elevator one carries sometimes the food, sometimes the dead. The Parliamentary Commissioner for Civil Rights has conducted an inquiry into the conditions of the central hospital of the penitentiary system in Tököl and has drawn up a long list of improprieties.

Máté Szabó continued the series of inquiries of prisons in the Central Hospital of the Penitentiary System, in the special institution where the coordination of preventive and curative as well as special penitentiary activities require significant attention and the cooperation of different professional fields. This is often hindered by the fact that the hospital, while performing national tasks, is not independent from a financial and management point of view: it operates as part of the Juvenile Correctional Institute operating in its vicinity, which does not meet the requirements of the rule of law.

In conclusion, the Parliamentary Commissioner for Civil Rights has found that *there is a simultaneous infringement of the principle of the rule of law and of the rights to human dignity, to fair proceedings and to a healthy environment.* He was satisfied, however, that detained the persons had no complaints at all about the lack of personal contacts. What is more, fathers may visit their children born in the prison-hospital every Sunday, which is an example of the realisation of the right to human dignity and to the protection of marriage and family.

Máté Szabó informed the Minister for Public Administration and Justice of the above, proposing to him, among others, to *issue binding regulations on the number and the conditions of detainees to be held in one single cell, as well as the security standards of prison-vans where prisoners are transported.* He requested the Minister of the Interior to consider the complete renovation and reconstruction of the hospital (first scheduled for 2002) as an urgent priority task. The Minister should think over the possibility of making the hospital independent of the Juvenile Correctional Institute also in the performance of its financial and management tasks, and as a consequence increase the number of posts for supervisory and educational staff, and create a post for a psychologist in the prison-hospital. The Ombudsman has sent his report to the National Commander of the Penitentiary System with the request to install medically approved sports equipment in the prison-yard, to have the heating system repaired and to ensure the accuracy of the central register of the penitentiary system. With the general director of the hospital the Commissioner has initiated that he should *take steps to ensure that detainees under medical treatment have more varied possibilities to spend their free time.*

DISASTER MANAGEMENT PROJECT, 2011

Introduction

According to the constitutional doctrine elaborated by the Constitutional Court of the institutional life protection obligation of the State, the State has an institutional life protection obligation towards its citizens, hence it is bound to set up and operate the necessary legal institutions and a state and public administration organisation in accordance with its current load bearing capacity.

Disaster management generally becomes the centre of attention of the public and of the scientific community when a devastating natural or industrial disaster occurs and the topical questions of prevention, effective management and reconstruction are raised again.

The proactive action of the Commissioner, however, makes it possible to conduct a comprehensive review of this subject-matter. Proactive action is not without precedent, this is partly done by way of comprehensive, already proven proceedings started ex officio since according to the legal regulations there are ample possibilities to conduct such proceedings.

Presentation of the disaster management project

During the past ten years the ombudsmen repeatedly encountered the improprieties related to the performance of the activities of State, most often of the authorities, in the field of the prevention and forecasting of natural disasters, and the relief and elimination of their consequences. In the interest of remedying these improprieties they have drawn up several measures, recommendations and legislative proposals.

Unfortunately, in 2010 a series of natural and industrial disasters came upon the country. The fifteen years of experience of the ombudsmen as well as the experience of the past year have made it clear that it is necessary to make a complex assessment of state tasks related to disaster management and to examine from a fundamental rights protection point of view the cooperation of state organs in the event of disaster situations.

In the light of the above, the Ombudsman examined in 2011, within the framework of an autonomous fundamental rights project, among others, the following range of subjects: follow-up inquiries of previous comprehensive ombudsman inquiries, so for example on the fire brigades; psychological services provision at the law enforcement organs; cooperation of law enforcement and public administration organs and of local governments during emergencies and thereafter; professional management in the event of disaster situations; direction and organisation of the fire brigade and its communications with the organisation for disaster management and with civil protection; timeliness of intervention of certain emergency services and the

existence of technical resources for rapid and expert intervention; practice and legal regulation of the mitigation of damages and of repairs and reconstruction, as well as the procedural guarantees related thereto, and certain questions of the reconstruction by the State in the aftermath of the red sludge catastrophe.

Findings of the Ombudsman's inquiries into the handling of disaster situations

The Parliamentary Commissioner for Civil Rights examined disaster management from a fundamental rights protection point of view first starting from the issue of protection against floods and internal waters (on agricultural lands). In the course of his inquiry he found that, taking into consideration the rules of law in force at the time of the inquiry, the legal regulation needs revision. In general the Ombudsman pointed out that legislation relating to the prevention and management of disasters should, as far as possible, be unified, simplified and their number should be reduced. This applies especially to legislation relating to the management of disasters. As a result of the subject-matter of the regulation it is not possible to avoid a multi-level regulation affecting the competence of several organs of public administration, however, in such legislation one should as far as possible avoid a parallel regulation of identical subjects or regulations relating to the same subject which are different or contrary to each other.

The Ombudsman's reports also indicate that in the event of a disaster a very complex management mechanism operates which is regulated in multiple regulations. Though relations between the several levels and special fields are partly regulated, but this does not help in every respect the rapidity and effectiveness of the application of the law which is indispensable in such situations. Regular and real training would be necessary for mayors and their specialised staff for them to be able to perform their tasks to the full.

The report on the deaths occurring in the course of the firework on 20 August 2006 mentions also the issue of informing the public in disaster situations. Informing the public was and is a legal obligation of the disaster management organs, therefore such information must be given in a professional way and using such terminology which is in line with the terminology used in weather reports. Citizens can only adequately cooperate in the prevention and management of situations of danger or of disasters if they are aware of the given threat. For this purpose we need appropriate information material which gives comprehensible information to the public.

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