



# EVALUATION OF THE INSTITUTION OF THE OMBUDSPERSON FOR CHILDREN

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# INTRODUCTION

The institution of the Ombudsperson for Children was established in 2003 as the first specialised institution of its kind in the Republic of Croatia, with the aim of protecting and promoting the rights and interests of children. The impetus for establishing the institution came from the 1996 recommendations of the UN Committee on the Rights of the Child, which, upon considering the report of the Government of the Republic of Croatia on implementing the Convention on the Rights of the Child, recommended the establishment of an independent watchdog body. In considering the type of model most appropriate, the Republic of Croatia selected an independent body which would monitor individual violations of children's rights and act both preventively and in general.

The scope and means of operation of the Ombudsperson for Children is laid down in the Ombudsperson for Children Act (Official Gazette 96/2003), in accordance with which the Ombudsperson for Children safeguards, monitors and promotes the rights and interests of children in the Republic of Croatia, based on the Constitution of the Republic of Croatia, the United Nations Convention on the Rights of the Child, other international documents and the legislation of the Republic of Croatia. The Ombudsperson for Children acts on the basis of complaints received, or on his or her own initiative, whether in responding to individual violations of children's rights and interests, or in general. The Ombudsperson for Children is appointed by the Croatian Parliament for a period of eight years, acts independently and autonomously, adhering to the principles of equity and morals, and no-one may instruct or order him or her in his or her work.

There are more than 900,000 children in Croatia, which means they form a significant segment of Croatian society, even if they wield no political influence. Due to their vulnerability and developmental limitations, it is necessary to take into account their various, special interests on a continuous basis. The Office of the Ombudsperson for Children has daily opportunities to assess and evaluate the state of children's rights, child protection and living conditions in Croatia, using a multidisciplinary approach. The Office reports each year to the Croatian Parliament on these assessments and also offers its opinions in conjunction with them. We are often hesitant about the accuracy of our assessment and our effectiveness. Therefore, five years after the entry into force of the Ombudsperson for Children Act and the establishment of the Office, we have thought it necessary to evaluate and appraise its work in relation to legislation, competence, means of reporting, authority and effective independence, accompanied by an assessment of effectiveness achieved at the individual and general levels, possible changes in society achieved during this period, and recommendations for future activities or potential areas for improvement in regulations and in practice. In addition, we thought it extremely important, within this external evaluation project, to also review the assessments and opinions of experts within the Office on their own work, in terms of methods of working and achieving the desired goals. Since this involves, among other things, the implementation of international standards in the area of human rights and children's rights, particularly the Paris Principles on independent national institutions and the UN Convention on the Rights of the Child, we thought the evaluators should be experts from Croatia and abroad, representing UNICEF, the UN Committee on the Rights of the Child,

and experts from the fields of psychology and constitutional and family law. Thus, in order to obtain evaluations, we approached Dr. Nevena Vučković Šahović, a member of the UN Committee on the Rights of the Child, Trond Waage, from the UNICEF Innocenti Research Institute, and a former Norwegian Ombudsperson for Children, Prof. Dr. Vlasta Vizek Vidović of the Psychology Department of the Faculty of Philosophy in Zagreb, Prof. Dr. Antonija Žižak of the Faculty of Education and Rehabilitation Services, Prof. Dr. Branko Smerdel, holder of the Chair of Constitutional Law at the Faculty of Law in Zagreb and Prof. Dr. Dubravka Hrabar, holder of the Chair of Family Law at the Faculty of Law in Zagreb. The analysis of self-evaluation was carried out by Dr. Petar Bezinović of the Institute for Social Research.

The sources we suggested as a basis for forming assessments were, among others, the Convention on the Rights of the Child and the opinions and recommendations of the Committee on the Rights of the Child, the Paris Principles on the work of independent national institutions, the Constitution of the Republic of Croatia, the Ombudsperson for Children Act, other international documents, laws and subordinate regulations, the Reports on the Work of the Ombudsperson for Children 2003 – 2007, the Plan of Work of the Ombudsperson for Children 2004 – 2007, the archives of the Office of the Ombudsperson for Children, media articles, correspondence with individuals and representatives of competent institutions, according to the experts' selection, and others.

We asked the experts to provide answers to the following questions:

1. Have the principles prescribed in the Convention on the Rights of the Child and emphasised in the opinions and recommendations of the Committee on the Rights of the Child been accomplished by the adoption of the Ombudsperson for Children Act and the activities of the Office?
2. Is the Ombudsperson for Children Act aligned with international standards in the area of independent national institutions and children's rights?
3. Is the Office of the Ombudsperson for Children de facto and de iure independent in its work? What is the relationship of the institution of the Ombudsperson for Children with other bodies of public authority, legal and natural persons, pursuant to the Ombudsperson for Children Act?
4. How effective is the Ombudsperson for Children, at the individual and general levels? How successful is the Office in protecting and promoting children's rights? What is the relationship between reactive and pro-active procedures?

Since the experts with whom we consulted had strengths in different, specific fields, each of them answered one or two of these questions relating to their area of expertise, for the period from the establishment of the Office to the present day.

A particularity of the work of the Office of the Ombudsperson for Children is the almost daily public attention which it receives concerning the attitudes, assessments and actions of the Ombudsperson. During the past few years, there has been hardly a single social situation in which children have been involved, even indirectly, and in which the actions or opinions of the Office have not been sought, or in which the Office has not acted, whether at the individual level or in general. However, we cannot judge the actual results ourselves.

We would like to take this opportunity of thanking the evaluators for their participation and valued recommendations. Apart from helping us clarify and confirm the present social status of the Office of the Ombudsperson for Children and its "strengths" in protecting children, their recommendations and suggestions will act as guidelines for our future work, decisions and considerations, in many aspects of our work. We hope and anticipate that they will also serve the decision-makers, thus indirectly or directly affecting the way childhood is experienced in the Republic of Croatia.





Nevena Vučković Šahović, Ph. D.  
UN Committee on the Rights of the Child

## THE COMPLIANCE OF THE OMBUDSPERSON FOR CHILDREN ACT WITH INTERNATIONAL STANDARDS AND, IN PARTICULAR, THE CONVENTION ON THE RIGHTS OF THE CHILD AND RECOMMENDATIONS AND OPINIONS OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

*Have the activities and actions undertaken by the Ombudsperson for Children since the establishment of this institution in the Republic of Croatia given effect to international principles and standards in the area of the protection and promotion of children's rights and interests?*

In 1989, when the Convention on the Rights of the Child was adopted under the auspices of the United Nations there was only one independent institution for children in the world – in Norway. Today almost all European states and also many other states on other continents have some form of independent institution for children. Croatia chose the best way – it decided to introduce a completely independent system of an Ombudsperson for Children, an institution established on the basis of law and appointed by the Croatian Parliament.

Since the very beginning of its work on supervising the implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child (established pursuant to Article 43 of the Convention) has always recommended the contracting states to ensure on-going supervision of the application of the Convention, but also allow independent supervision. For almost the entire decade of the Committee's work, this independent supervision was largely carried out by civil society organisations or non-governmental organisations. This was primarily because the States Parties to the Convention were relatively slow in introducing independent institutions for the rights of the child.

The Convention on the Rights of the Child does not make reference in any of its provisions to words such as: independent supervision, ombudsman, or similar. There is only one provision in the Convention (Article 4) stating that *the States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this international agreement*. Therefore, the Committee on the Rights of the Child could only take this provision as a legal basis for obliging the States Parties to introduce an independent supervision authority. For the States Parties to be able to better understand what is expected of them in the implementation of the Convention, in 2002 the Committee decided to dedicate its General Comment No. 2 to the role of independent national human rights institutions in the protection and promotion of

the rights of the child. Three years later the Committee adopted the General Comment No. 5 on general measures of implementation for the Convention on the Rights of the Child, in which it gave a list of measures to be undertaken by the states, including the measure of establishing an independent institution dealing with the promotion and protection of children's rights.

On the basis of the Convention on the Rights of the Child and the two General Comments (Nos. 2 and 5), and also on the basis of other relevant international documents, the Committee adopted a series of recommendations relating to the establishment, work, independence and efficiency of independent institutions. Thus in its recommendations to Croatia of 1996 (CRC/C/15/Add.52) the Committee recommended that consideration be given to the establishment of a special independent monitoring structure, whether under the existing Office of the Ombudsman or as a separate body. As part of its efforts to implement the recommendations of the Committee on the Rights of the Child, Croatia initiated the process of adoption of a special law and in 2003 the Ombudsperson for Children Act was passed. Welcoming this decision in its subsequent recommendations to Croatia (CRC/C/15/Add.243) in 2004, the Committee on the Rights of the Child expressed its concern that this institution has insufficient financial and professional support for its functioning. On that occasion the Committee recommended to Croatia that, in light of its General Comment No. 2 and the Paris Principles (Resolution GA 48/134), it should continue to strengthen its political, human and financial support for the Office of the Ombudsperson for Children.

**Therefore, the compliance of the Ombudsperson for Children Act, the subordinate regulations issued by the Office and the activities of this institutions with international standards and, in particular, with the Convention on the Rights of the Child and recommendations and opinions of the Committee on the Rights of the Child, was analysed on the basis of the Convention on the Rights of the Child (Article 4), but primarily on the basis of the General Comment No. 2 of the Committee on the Rights of the Child.**

## MANDATE AND POWERS

*National human rights institutions should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments - thus effectively covering children's human rights, in particular their civil, political, economic, social and cultural rights. The legislation should include provisions setting out specific functions, powers and duties relating to children linked to the Convention on the Rights of the Child and its Optional Protocols. If the NHRI was established before the existence of the Convention, or without expressly incorporating it, necessary arrangements, including the enactment or amendment of legislation, should be put in place so as to ensure conformity of the institution's mandate with the principles and provisions of the Convention. (General Comment No. 2, paragraph 8)*

**The Constitution of the Republic of Croatia makes no mention of such an institution. Its mandate derives from the Ombudsperson for Children Act, stating that the Ombudsperson:**

- *protects, monitors and promotes the rights and interests of children on the basis of the Constitution, international agreements and laws (Article 2);*
- *monitors whether the laws and other regulations in the Republic of Croatia, relating to the protection of the rights and interests of children are in line with the provisions of the Constitution of the Republic of Croatia, the Convention on the Rights of the Child, and other international documents relating to the protection of the rights and interests of children (Article 6, paragraph 1);*
- *monitors whether the Republic of Croatia is fulfilling its obligations under the Convention on the Rights of the Child and other international documents relating to the protection of the rights and interests of children (Article 6, paragraph 2).*

**The Act does not mention the Optional Protocols to the Convention, although Croatia had ratified both these international agreements before 2002, the year when the Act was passed. The analysis of the plans and programmes of work of the Office of the Ombudsperson for Children, from 2004 to 2007, has revealed that the Office has always planned monitoring the compliance of Croatian laws and other regulations with the provisions of the Convention on the Rights of the Child and other international documents relating to the protection of the rights and interests of children. Reading the reports on the work of the Office does not leave the impression that the Office had a special programme for monitoring the compliance. However, many activities connected with proposals for amendments and improvements of the national legislation show that the Office has regularly carried out this function. After all, these activities are also laid down in the Rules of Procedure of the Office itself:**

*The Service for Professional Activities:*

- *monitors the compliance of laws and other regulations in the Republic of Croatia relating to the protection of children's rights and interests with the provisions of the Constitution of the Republic of Croatia, the Convention on the Rights of the Child and other international agreements relating to the protection of children's rights and interests;*
- *monitors whether the Republic of Croatia is fulfilling its obligations under the Convention on the Rights of the Child and other international documents relating to the protection of the rights and interests of children;*
- *monitors the application of all regulations relating to the protection of the rights and interests of children. (Article 7)*

*National human rights institutions should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities. (General Comment No. 2, paragraph 9)*

**When it comes to the powers referred to in the paragraph above, the Act is in line with the documents mentioned:**

- *state administration bodies, local and regional self-government units, and legal and natural persons, are obliged to co-operate with the Ombudsperson for Children and submit reports at*

the Ombudsperson's request, and give answers to his or her inquiries;

- all state administration bodies, local and regional self-government units, and legal and natural persons are obliged to provide the Ombudsperson for Children with access and the opportunity to inspect all data, information and legal acts relating to the rights and protection of children, regardless of their degree of confidentiality. (Article 12)

**The examination of all the plans and reports clearly showed that the Office has always devoted special attention (especially during the past several years) to monitoring individual violations of children's rights. When it comes to monitoring the situation concerning the complaints filed, it is obvious that the Office's capacity has been significantly strengthened and that the Office is now capable of collecting, processing (in relation to special rights of children) and reacting to violations of rights.**

## ESTABLISHMENT PROCESS

*The NHRI establishment process should be consultative, inclusive and transparent, initiated and supported at the highest levels of Government and inclusive of all relevant elements of the State, the legislature and civil society. In order to ensure their independence and effective functioning, NHRIs must have adequate infrastructure, funding (including specifically for children's rights, within broad-based institutions), staff, premises, and freedom from forms of financial control that might affect their independence. (General Comment No. 2, paragraph 10)*

**The author of this paper had no information about the actual establishment process of the Office, that is, to what degree this process was transparent. The Act lays down the following requirements for appointing the Ombudsperson:**

*The Ombudsperson for Children and his or her deputies must not be members of any political party or take part in political activities (Article 3, paragraph 3).*

- *The Ombudsperson for Children is appointed and relieved of his or her duties by the Croatian Parliament on the proposal of the Government of the Republic of Croatia.*
- *The Ombudsperson for Children has two deputies, who are appointed and relieved of their duties by the Croatian Parliament on the proposal of the Ombudsperson for Children.*
- *The Ombudsperson for Children and his or her deputies are state functionaries of the Republic of Croatia, appointed for a term of eight years and they can be re-appointed. (Article 4)*
- *The person appointed as the Ombudsperson for Children must be a Croatian national with a university degree and at least 10 years of work experience, whose personal commitment in the field of the promotion and protection of children's rights is well-known to the public.*
- *The person appointed as a deputy of the Ombudsperson for Children must be a Croatian national with a university degree and at least 5 years of work experience.*
- *One of the deputies of the Ombudsperson for Children must have a law degree.*
- *A person convicted of a criminal offence by a final court judgement cannot be appointed either as the Ombudsperson for Children or as his or her deputy. (Article 22)*
- *The Government of the Republic of Croatia shall initiate the procedure for appointing the*

*Ombudsperson for Children no later than 3 months prior to the expiration date of the mandate of the Ombudsperson for Children, or no later than 30 days after the termination of the Ombudsperson's office on other grounds provided for by law.*

• *The Ombudsperson for Children initiates the procedure for appointing his or her deputy no later than 3 months prior to the expiration date of the deputy's mandate, or no later than 30 days after the termination of the deputy's office on other grounds provided for by law. (Article 23)*

**As far as the staff and premises are concerned, it should be noted that the Office has its own premises and staff. The recruitment and status of the Office's staff is regulated by its internal legal acts.**

**The Act does not make any reference to control of financial operations. Independent controls, which are necessary to guarantee the autonomy of this institution, are probably carried out in the form of arrangements normally applied in democratic societies.**

## RESOURCES

*While the Committee acknowledges that this is a very sensitive issue and that State parties function with varying levels of economic resources, the Committee believes that it is the duty of States to make reasonable financial provision for the operation of national human rights institutions in light of article 4 of the Convention. The mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers. (General Comment No. 2, paragraph 11)*

• *The resources for the work of the Ombudsperson for Children, his or her deputies and the Professional Service are provided from the State Budget of the Republic of Croatia. (Article 21)*

**The Act makes only brief reference to financing the Office. There are no provisions guaranteeing the minimum level of budgetary allocations or framework rate of the salary payable to the Ombudsperson and his or her deputies (such as, for instance: *in the same category as the salary a Constitutional Court judge earns*, solutions from other legislations).**

**The impression emerges from the Report that the budgeting of the Office has been progressively improving, and this conclusion is further supported by the scope of its work so far, the number of offices in Croatia and the number of staff and associates. In her most recent report, for 2007, the Ombudsperson states that the funds that were available to the Office were in line with what was planned for that year, so it can be concluded that the appropriate financing levels have been achieved over time. The same Report did not suggest any dissatisfaction nor did it contain any statements to the effect that the level of budgetary allocations could have or had affected their independence and activities within their powers.**

## PLURALISTIC REPRESENTATION

*NHRIs should ensure that their composition includes pluralistic representation of the various elements of civil society involved in the promotion and protection of human rights. They should seek to involve, among others, the following: human rights, anti-discrimination and children's rights non-governmental organizations (NGOs), including child- and youth-led organizations; trade unions; social and professional organizations (of doctors, lawyers, journalists, scientists, etc.); universities and experts, including children's rights experts. Government departments should be involved in an advisory capacity only. NHRIs should have appropriate and transparent appointment procedures, including an open and competitive selection process. (General Comment No. 2, paragraph 12)*

**The Act does not prescribe any form of pluralistic representation within the Office. Neither do the subordinate regulations issued by the Office provide for the establishment of any bodies attached to the Office, which would be composed of representatives of NGOs, experts or children themselves. This body could be formed, for instance, as a Council of the Office or as an External Expert Council. In this sense, the Office should take steps toward establishing such a body.**

**The evaluation that is currently being carried out is a good example of independent verification of the work of the Office, but it is also necessary to ensure the influence of independent evaluators on the Office's plans and implementation of its activities.**

## PROVIDING REMEDIES FOR BREACHES OF CHILDREN'S RIGHTS

*NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints. (General Comment No. 2, paragraph 13)*

**The Act does not mention any power to consider individual complaints and petitions and carry out investigations, but it provides that the Ombudsperson:**

- has the right to enter the premises and gain insight into the manner of providing care to children who are staying or have been temporarily or permanently accommodated with natural and legal persons and other legal entities on the basis of special regulations;
- a report is drawn up on the inspection carried out under paragraph 1 of this Article, which is forwarded to the body responsible for supervising the work of the subjects referred to in paragraph 1 of this Article;
- the body referred to in paragraph 2 of this Article has the obligation to inform the

*Ombudsperson for Children about the actions undertaken within 30 days of receiving the report, and in the event of emergency without delay;*

- *if the body responsible for supervision fails to submit a report within the time limit specified in paragraph 3 of this Article, the Ombudsperson for Children will bring this to the attention of the Government of the Republic of Croatia and the public media; (the last 4 indents of Article 13)*
- *if the Ombudsperson for Children, during the performance of his or her duties, obtains knowledge that a child is being subject to physical or mental violence, sexual abuse, maltreatment or exploitation, negligence or careless treatment, he or she shall immediately file a report with the competent Public Prosecution Office, and inform the competent centre for social welfare and propose measures for the protection of the rights and interests of the child;(Article 14)*
- *the Ombudsperson can seek expert assistance from scholars and professionals and from scientific and expert institutions whose scope of work includes research, protection, care, development and rights of children, and these are obliged to provide assistance to the Ombudsperson;*
- *the institutions referred to in paragraph 1 of this Article are obliged to provide the Ombudsperson for Children with the requested assistance within an adequate time limit. (Article 15)*

**The plans of activities and reports of the Office manifestly show that one of the Office's most important activities is receiving and processing individual complaints. A continuing increase in the overall number of phone calls is an indication of the growing trust of children and the public in the Ombudsperson and her team (and not of an increase in the number of violations).**

*NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case. (General Comment No. 2, paragraph 14)*

**The Act does not provide for any possibility of supporting children taking cases to court or any powers associated with this. However, the Act provides as follows:**

*If the Ombudsperson for Children, during the performance of his or her duties, obtains knowledge that a child is being subject to physical or mental violence, sexual abuse, maltreatment or exploitation, negligence or careless treatment, he or she shall immediately file a report to the competent Public Prosecution Office, and inform the competent centre for social welfare and propose measures for the protection of the rights and interests of the child. (Article 14)*

**Since it is clear that the Act does not provide for any possibility of influencing courts or participating in court proceedings, no conclusion can be drawn on the basis of the Office's past reports as to the extent of the Ombudsperson's co-operation with courts. It is obvious that there have been many expert-level contacts, including participation in meetings and seminars. Perhaps the Office should offer more information about this type of co-operation to allow a conclusion to be drawn about the extent of compliance with international standards.**

## ACCESSIBILITY AND PARTICIPATION

*NHRIs should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children. (General Comment No. 2, paragraph 15)*

**The Act provides that the seat of the Office is in Zagreb (Article 19, paragraph 2), but it does not impose any restrictions on establishing special offices. To implement the recommendation of the Committee on the Rights of the Child and to meet the demands for increased accessibility, the Office opened offices in Split, Osijek and Rijeka in 2007, by which the requirements imposed in the above paragraph of the Committee's General Comment were met. The examination of the reports prepared by the Office revealed significant growth of what is called "reach-out" over the past years. In this way the institution of the Ombudsman has come closer to the ideal that no child should be excluded or denied the opportunity to report violations of his or her rights or to seek protection of these rights. The devolution of activities is directly related to the co-operation with local authorities, which is assessed as positive by the Ombudsperson (2007 Report, page 8).**

*NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organization and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them. (General Comment No. 2, paragraph 16)*

The Act provides that the Ombudsperson:

- *informs and advises children on the manner of the realisation and protection of their rights and interests (Article 7, paragraph 1),*
- *co-operates with children, encourages children to express their views and respects their opinion, initiates and participates in public activities aimed at improving the position of children, and proposes measures to increase the influence of children in society (Article 7, paragraph 2).*



*NHRIs should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established. (General Comment No. 2, paragraph 17)*

**Nothing similar can be found in the Act. As already mentioned (number 4), neither the Act nor the subordinate regulations envisage any institutional co-operation between children and the Office. However, the reports describe on-going activities with children. Ideally, children should also be instructed and trained to participate not only in the Office's plans and activities, but also in the evaluation which is currently being carried out. Although the Ombudsperson devotes attention to communication with children in the Report (pages 237-239), the impression is gained that this communication is still slightly under the influence of "bygone times", and a touch of "higher-level organisation" is felt. This is not necessarily an objection to the work of the Office, but rather a remark about the situation in society whereby the participation of children is still seen more as a necessary evil (respect for international standards) than as a reflection of a genuine belief in equality regardless of any differences, including those relating to age.**

*NHRIs must have the right to report directly, independently and separately on the state of children's rights to the public and to parliamentary bodies. In this respect, States parties must ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children's rights and the State's compliance with the Convention. (General Comment No. 2, paragraph 18)*

**From the report it is clear that the Croatian Parliament and the Office maintain regular communication. The Act itself provides as follows:**

- *the Ombudsperson for Children submits annual reports about his or her work to the Croatian Parliament, and is entitled to submit special reports to the Croatian Parliament in situations when this is believed to be necessary, with a view to undertaking the measures relevant for the protection of the rights and interests of children. (Article 18)*

## RECOMMENDED ACTIVITIES

*The following is an indicative, but not exhaustive, list of the types of activities which NHRIs should carry out in relation to the implementation of children's rights in light of the general principles of the Convention. They should:*

- (a) Undertake investigations into any situation of violation of children's rights, on complaint or on their own initiative, within the scope of their mandate;*
- (b) Conduct inquiries on matters relating to children's rights;*

**The provisions of the Act given below are closest to recommendations (a) and (b):**

- *if the Ombudsperson for Children, during the performance of his or her duties, obtains knowledge that a child is being subject to physical or mental violence, sexual abuse, maltreatment or exploitation, negligence or careless treatment, he or she shall immediately file a report to the competent Public Prosecution Office, and inform the competent centre for social welfare and propose measures for the protection of the rights and interests of the child;(Article 14)*

From the Report one can learn about many activities the Office has undertaken in connection with violence against children. It appears that these were among the first activities of the Office, which started at the very beginning of its work.

*(c) Prepare and publicize opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children's rights;*

The Act provides that:

- *the Ombudsperson for Children submits annual reports about his or her work to the Croatian Parliament, and is entitled to submit to the Croatian Parliament special reports in situations when this is believed to be necessary, with a view to undertaking the measures relevant for the protection of the rights and interests of children. (Article 18)*

**When visiting the Office and during numerous meetings with representatives of the Office, the author of this report also had the opportunity to see many printed reports and analyses prepared by the Office, so she concluded that the requirement imposed in the above provision of the General Comment had been met.**

*(d) Keep under review the adequacy and effectiveness of law and practice relating to the protection of children's rights;*

**According to the provisions of the Act, the Ombudsperson:**

- *monitors whether the laws and other regulations in the Republic of Croatia, relating to the protection of the rights and interests of children are in line with the provisions of the Constitution of the Republic of Croatia, the Convention on the Rights of the Child, and other international documents relating to the protection of the rights and interests of children,*
- *monitors whether the Republic of Croatia is fulfilling its obligations under the Convention on the Rights of the Child and other international documents relating to the protection of the rights and interests of children,*
- *monitors the implementation of all regulations relating to the protection of the rights and*

*interests of children,*

- *monitors violations of individual rights of children and studies general aspects and types of violations of the rights and interests of children,*
- *works for the protection and promotion of the rights and interests of children with special needs,*
- *proposes measures aimed at creating an integrated system for the protection and promotion of the rights and interests of children and for the prevention of harmful actions threatening the rights and interests of children,*

(e) Promote harmonization of national legislation, regulations and practices with the Convention on the Rights of the Child, its Optional Protocols and other international human rights instruments relevant to children's rights and promote their effective implementation, including through the provision of advice to public and private bodies in construing and applying the Convention;

**This has already been discussed (see the above opinion)**

(f) Ensure that national economic policy makers take children's rights into account in setting and evaluating national economic and development plans;

**The Act does not contain any similar provision, but the Office has actively participated in creating government policies in the area of children's rights, such as the National Plan 2006-2012, and has also put forward many proposals (the Social Welfare Act) and recommendations (the recommendation to introduce free secondary school education, and many others. Examination of the reports prepared by the Office)**

(g) Review and report on the Government's implementation and monitoring of the state of children's rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realize children's rights;

**The Act does not provide for anything like this. The Office obviously uses the statistical data provided by state authorities. The Office has been very constructive in applying the above provision of the General Comment and the recommendation of the Committee on the Rights of the Child, which can be concluded from the: RECOMMENDATION ON COLLECTING STATISTICAL DATA ABOUT CHILDREN, which, amongst other things states as follows:**

*The Committee is concerned about the absence of disaggregated statistical data and other information on the situation of children, especially those belonging to different ethnic groups and the most vulnerable groups. This type of information is lacking in particular with respect to girl children, street children, disabled children, displaced, refugees and asylum-seekers children, children from minority groups, Roma children.*

*(h) Encourage ratification of or accession to any relevant international human rights instruments;*

**No such functions are laid down in the Act.**

*(i) In accordance with article 3 of the Convention requiring that the best interests of children should be a primary consideration in all actions concerning them, ensure that the impact of laws and policies on children is carefully considered from development to implementation and beyond;*

*(j) In light of article 12, ensure that the views of children are expressed and heard on matters concerning their human rights and in defining issues relating to their rights;*

*(k) Advocate for and facilitate meaningful participation by children's rights NGOs, including organizations comprised of children themselves, in the development of domestic legislation and international instruments on issues affecting children;*

*(l) Promote public understanding and awareness of the importance of children's rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field;*

**It appears that the Act prescribes the aforesaid functions:**

*The Ombudsperson for Children:*

- informs the public about the state of children's rights (Article 6)*
- informs and advises children on the manner of the realisation and protection of their rights and interests (Article 7, paragraph 1)*
- co-operates with children, encourages children to express their views and respects their opinion, initiates and participates in public activities aimed at improving the position of children, and proposes measures to increase the influence of children in society (Article 7, paragraph 2)*

**The Office pays a great deal of attention to these tasks, as already described.**

*(m) In accordance with article 42 of the Convention which obligates State parties to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike", sensitize the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard;*

*(n) Assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools and universities and in professional circles;*

*(o) Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children's rights);*

*(p) Take legal proceedings to vindicate children's rights in the State or provide legal assistance to children;*

*(q) Engage in mediation or conciliation processes before taking cases to court, where appropriate;*

*(r) Provide expertise in children's rights to the courts, in suitable cases as amicus curiae or intervenor;*

*(s) In accordance with article 3 of the Convention which obliges States parties to "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision", undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and to make recommendations for improvement;*

*(t) Undertake such other activities as are incidental to the above. (General Comment No. 2, paragraph 19)*

**The Act does not specifically provide for the activities mentioned in recommendations (m) to (t), but the activities of the Office are greatly oriented towards visiting institutions and issuing warnings about the situation of children placed in institutions. As regards items (q) and (r), the author has not found any information indicating any involvement in court proceedings.**

## REPORTING TO THE COMMITTEE ON THE RIGHTS OF THE CHILD AND COOPERATION BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND UNITED NATIONS AGENCIES AND HUMAN RIGHTS MECHANISMS

*NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children's rights, including through dialogue with the Committee on the Rights of the Child at its pre-sessional working group and with other relevant treaty bodies. (General Comment No. 2, paragraph 20)*

*The Committee requests that States parties include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee. (General Comment No. 2, paragraph 21)*

*NHRIs should also cooperate with the special procedures of the Commission on Human Rights, including country and thematic mechanisms, in particular the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General for Children and Armed Conflict. (General Comment No. 2, paragraph 22)*

*The United Nations has a long-standing programme of assistance for the establishment and strengthening of national human rights institutions. This programme, which is based in the Office of the High Commissioner for Human Rights (OHCHR), provides technical assistance and facilitates regional and global cooperation and exchanges among national human rights institutions. States parties should avail themselves of this assistance where necessary. The United Nations Children's Fund (UNICEF) also offers expertise and technical cooperation in this area. (General Comment No. 2, paragraph 23)*

*As articulated in article 45 of the Convention, the Committee may also transmit, as it considers appropriate, to any specialized United Nations agency, OHCHR and any other competent body any reports from States parties that contain a request or indicate a need for technical advice or assistance in the establishment of NHRIs. (General Comment No. 2, paragraph 24)*

**The Act does not make any provision for participation in procedures before UN bodies or holders of mandates. However, from its very establishment, the Office has been involved in the reporting procedure before the Committee on the Rights of the Child, and also in the procedure for implementing the recommendations issued by the Committee on the Rights of the Child.**

## NATIONAL HUMAN RIGHTS INSTITUTIONS AND STATES PARTIES

*The State ratifies the Convention on the Rights of the Child and takes on obligations to implement it fully. The role of NHRIs is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities. (General Comment No. 2, paragraph 25)*

**As already stated, the Act envisages that the Office:**

- *monitors the compliance of laws and other regulations in the Republic of Croatia relating to the protection of children's rights and interests with the provisions of the Constitution of the Republic of Croatia, the Convention on the Rights of the Child and other international agreements relating to the protection of children's rights and interests,*
- *monitors whether the Republic of Croatia is fulfilling its obligations under the Convention on the Rights of the Child and other international documents relating to the protection of the rights and interests of children.*

*The author has the impression that the implementation of the principle of full independence of the Office is being achieved progressively, which is, amongst other things evident from increased*

*budgetary allocations for the Office. When the Ombudsperson for Children appeared before the Committee on the Rights of the Child in 2004, as a member of the State delegation, this did not leave the impression of any major separation. However, this is an issue which can be much better assessed by the Ombudsperson and her team.*

## NATIONAL HUMAN RIGHTS INSTITUTIONS AND NGOS

*Non-governmental organizations play a vital role in promoting human rights and children's rights. The role of NHRIs, with their legislative base and specific powers, is complementary. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs. (General Comment No. 2, paragraph 26)*

**The Act does not contain any provisions on co-operation with NGOs, but the reports mention numerous and close contacts and joint activities with non-governmental organisations.**

## REGIONAL AND INTERNATIONAL COOPERATION

*Regional and international processes and mechanisms can strengthen and consolidate NHRIs through shared experience and skills, as NHRIs share common problems in the promotion and protection of human rights in their respective countries. (General Comment No. 2, paragraph 27)*

*In this respect, NHRIs should consult and cooperate with relevant national, regional and international bodies and institutions on children's rights issues. (General Comment No. 2, paragraph 28)*

*Children's human rights issues are not constrained by national borders and it has become increasingly necessary to devise appropriate regional and international responses to a variety of child rights issues (including, but not limited to, the trafficking of women and children, child pornography, child soldiers, child labour, child abuse, refugee and migrant children, etc.). International and regional mechanisms and exchanges are encouraged, as they provide NHRIs with an opportunity to learn from each other's experience, collectively strengthen each other's positions and contribute to resolving human rights problems affecting both countries and regions. (General Comment No. 2, paragraph 29)*

**The Act does not make any explicit reference to international co-operation. However, the Office is engaged in on-going co-operation and communication with counterpart organisations from Europe and the world. The Office is also an active member of the European Network of Ombudspersons for Children. Besides, the Office actively provides assistance for the establishment and development of similar institutions in Europe. A great deal of information can be found in their annual reports about numerous international activities. The author of this text herself has been a witness of the intensive co-operation and high reputation of this institution in Europe.**

## CONCLUSION

In response to the basic question: "Have the activities and actions undertaken by the Ombudsperson for Children since the establishment of this institution in the Republic of Croatia given effect to international principles and standards in the area of the protection and promotion of children's rights and interests?", the author concludes as follows:

- The Office has shown a high level of involvement in the promotion and protection of children's rights in Croatia and the entire region.
- The Office has also shown a high level of involvement in international co-operation.
- In the short period since its establishment, the Office has considerably developed its human resources and formed an expert team capable of responding to any task.
- Achieving the goal of the ideal level of compliance with international standards is an ongoing process and no institution in the world has yet attained this goal. Therefore, we can only speak about positive trends when it comes to the Office of the Ombudsperson and wish for sufficient political will, financial and other continuous support for these trends to continue.



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# "CHILDREN'S OMBUDSMAN" IN THE REPUBLIC OF CROATIA

*The constitutional position and prospects for development  
of the institution of Ombudsperson for Children*

## INTRODUCTION

As part of the process of evaluation of the influence of the institution of Ombudsperson for Children, to mark the fifth anniversary of the establishment of this institution, I was sent a request in correspondence from the Ombudsperson for Children (DPR-023-01/08-02 of 12 May 2008), "as an expert in the field of constitutional law, to respond to questions relating to the alignment of the Ombudsperson for Children Act to international standards in the field of independent national institutions and children's rights and the institutional independence of the Ombudsperson for Children, and also the relationship of the institution of Ombudsperson for Children with other bodies of public authority, legal and natural persons, pursuant to the Ombudsperson for Children Act". Here I intend to deal with two questions: first, the question of the constitutional foundation of the institution of "Children's Ombudsman" in the Republic of Croatia, and second, the question of the desired further development of the legal position of the institution of "Children's Ombudsman" in the Republic of Croatia.

## FUNDAMENTAL QUESTIONS

First, from the point of view of constitutional law, I believe the question of the constitutional foundation of the institution of Ombudsperson for Children is important as is the possibility of strengthening its position in constitutional law, and thereby its independence and authority in interventions before other bodies, as well as in the eyes of the entire interested public. This constitutional basis is derived – correctly, in our opinion – from teleological and objective interpretation of all constitutional provisions on human rights and fundamental freedoms, especially the provisions of Chapter 1 of Part III of the Constitution, in conjunction with those of Articles 61 to 65, which guarantee special state protection of the family, especially children and young people (Article 62 of the Croatian Constitution).

Second, in this context I believe that the question of further development is of great importance, in the sense of regulating the legal position of the institution of Ombudsperson for Children in such a

way that will enable this institution, as part of the group of institutions for extra-judicial protection of human rights and fundamental freedoms in general, to develop further and be affirmed as an independent and effective service, in other words, a service for citizens, charged with providing support in all cases and before all bodies of public authority when the rights and interests of a child are concerned, as defined in the Convention on the Rights of the Child and its optional protocols which Croatia has adopted, and other international documents, and also in Croatian legislation. I believe that the development of the institution of a specialised "Children's Ombudsman", in view of the special nature of his or her work and tasks, is not in conflict with the need to strengthen the institution of the People's Ombudsman. On the contrary: general and specialised ombudsmen can complement each other in a very useful manner in carrying out their basic tasks, which all in all can only contribute to the complete system of promotion and protection of fundamental and human rights in this country.

## THE FOUNDATION OF THE INSTITUTION IN CONSTITUTIONAL LAW

We believe that doubt concerning the foundation of the institution of "Children's Ombudsman" in the Republic of Croatia in constitutional law is misplaced since it is based exclusively on a restrictive grammatical interpretation of the Constitution of the Republic of Croatia, which is not justified for any specific branch of law and especially not in the field of constitutional law. The Constitution, as the basic law of the country, contains the principles of the organisation and work of the political community, where the most important part consists of the provisions on human rights and fundamental freedoms. In this area, the fundamental principle of interpretation must be "*ubi jus – ibi remedium*" – that is, every interpretation must start from the imperative that, at the same time as adopting certain guarantees of rights and freedoms, it is necessary to provide for effective means to protect them. Without protective institutions, constitutional guarantees remain dead letters on the page (B. Smerdel – S. Sokol: *Ustavno pravo* ("Constitutional Law"), Zagreb 2008, pp. 100-102).

With the increasing importance being attributed to human rights and fundamental freedom in the field of international law, in certain international documents on human rights special attention is being paid to putting effective specialised ombudsmen in place as institutions aimed at protection of special rights, particularly dependent on the backing and support of the public.

The fact that the Constitution of the Republic of Croatia in Article 92 only prescribes the institution of the People's Ombudsman, as a commissioner of the Croatian Parliament who protects the constitutional and legal rights of citizens in proceedings before state administration and bodies vested with public authority, whilst none of the specialised ombudsmen introduced in the meantime (for gender equality, for people with disabilities) is prescribed specifically, cannot in any way be interpreted as a limitation.

It is clear, therefore, that the creator of the Croatian Constitution, in the autumn of 1990 when the text of the Constitution, adopted on 21 December 1990, was drawn up, took on the traditional notion, dominant at that time, of an individual parliamentary commissioner with the task of representing

citizens' rights before bodies of state administration, or bodies vested with public authority.

At the beginning of the 1990's this was the dominant notion in the spread of the institution of ombudsman in the world. The opinion prevailed that this concept was particularly appropriate for transition countries in view of the inherited lack of organisation and bureaucratic inefficiency of the state administration in those countries, especially in the area of protection of human rights and fundamental freedoms. Support for an individual and authoritative ombudsman in the Republic of Croatia also came from experience, *mutatis mutandis*, with the similar institution from the earlier socialist regime, i.e. the Social Attorney of Self-Management (*društveni pravobranilac samoupravljanja*), which, during the period of its existence from 1975 to 1990, was completely limited to marginal issues, despite the extensive capacity of the institution in formal terms, aimed at protecting "fundamental constitutional rights" (Dimitrije Kulić: *Ombudsman i društveni pravobranilac samoupravljanja* ("The Ombudsman and the Social Attorney of Self-Management"), Niš 1985 and our reference in *Collected Papers of Zagreb Law Faculty (Zbornik Pravnog fakulteta u Zagrebu*, 5-6 (1985)).

Today the constitutional provisions should be interpreted objectively, in line with the goals of the constitutional guarantees of individual freedoms and rights, which require effective means of protection. Of course, it is necessary in this interpretation to take into consideration the international law documents in force in the Republic of Croatia, which are above law in terms of legal effects (Article 140 of the Constitution of the Republic of Croatia), such as the Convention on the Rights of the Child.

## CENTRAL AND/OR SPECIALISED OMBUDSMEN: A MISPLACED DILEMMA

In what are known as transition countries, the so-called "young democracies", democratic constitutional institutions have been created taking into account the experiences of mature or older democracies, and frequently with the direct involvement and advice of experts from developed democracies. In these countries the institution of the ombudsman was already developing and spreading widely in the 1970's (Donald C. Rowat: *Ombudsmen and Others: Citizens Defenders in Twelve Countries*, New York 1972; Walter Gellhorn: *Ombudsman: Citizens Defender*, New York 1968, etc.). At that time even countries that were traditionally reserved towards institutional innovations, such as France and the United Kingdom, introduced this old Swedish institution, whilst in the literature of socialist states it was claimed that the same function was being successfully performed by the State Procuracy (B. Smerdel: *Deset godina djelovanja Ombudsmana u Velikoj Britaniji* ("Ten Years of the Work of the Ombudsman in Great Britain"), *Naša zakonitost*, no.1. 1980; B. Smerdel: Boim L./Morgan G.: The Soviet Procuracy Protests, *Zbornik PFZ*, [Collected Papers of Zagreb Law Faculty] 30, (1980), 4. pp. 601 - 603.).

After the fall of the communist regimes, ombudsmen, in various forms, were introduced by almost all transition countries. But the dominant form was the Parliamentary Commissioner for protection of human rights before bodies of central administration (Damir Aviani: *Parlamentarni Ombudsman* ["The Parliamentary Ombudsman"] Split 1999), and in later development, also before bodies of local self-government (Anamarija Musa in *Hrvatska javna uprava* [Croatian Public Administration], Zagreb 2001, pp. 563-603) from the widest variety of violations and the inefficiency of state

administration (which was well expressed in the word "maladministration" coined by the British legislation on the Parliamentary Commissioner in 1967).

The problems involved in the establishment and the initial years of work by the People's Ombudsman in the Republic of Croatia already raised the question of introducing specialised ombudsmen whilst the amendments to the Constitution were being prepared in 2000. So in spring 2000, the Working Group of the President of the Republic, in materials entitled "The Scholarly Basis for a Possible Draft of Amendments to the Constitution" (Collected Papers of Zagreb Law Faculty, 5/2000; available on the internet, on the site [predsjednik.hr](http://predsjednik.hr)), proposed the introduction of the institution of a specialised ombudsman to protect the constitutional and legal rights of citizens in proceedings before the Ministry of Defence and the security services (based on the example of the German and Norwegian institutions).

The Parliament rejected this initiative however, and in the new paragraph 4 of Article 92 of the Constitution, allocated these questions to the competence of the People's Ombudsman, together with protection of the right to local self-government and the protection of the rights of citizens before bodies of local self-government. Despite this formulation in the Constitution, the People's Ombudsman until the last few years was not given any additional financing or staffing and other means necessary to carry out these constitutional obligations effectively.

In 2003 the Parliament, mainly due to international obligations and under international influence, had already changed its attitude in principle towards specialised ombudsmen, and in June 2003 adopted two acts: the Ombudsperson for Gender Equality Act and the Ombudsperson for Children Act. The question was thereby raised of the further development of institutions for extra-judicial protection of human rights and fundamental freedoms, that is to say, would the new orientation be dominant towards the development of various specialised ombudsmen, which would "spring up like mushrooms after the rain" (in 2007 an ombudsman was introduced for people with disabilities, but there are also proposals to introduce ombudsmen for pensioners, for freedom of information, for the media, etc.) or would the People's Ombudsman be established and strengthened as an "umbrella institution" with general competence to protect human rights and fundamental freedoms, and the existing specialised ombudsmen integrated into that system. A discussion took place in July 2007 on this between those who held the functions, Mr Jurica Malčić and Mrs Mila Jelavić (*Jutarnji list*, 10 July 2007).

This question is still being dealt with in a contradictory manner, from case to case, and it is clear that no unified view exists of the matter, which is of key importance for the further development of the system of protection of human rights and fundamental freedoms in the Republic of Croatia. The Act on Suppression of All Forms of Discrimination of July 2008, although it gives a certain degree of advantage to the People's Ombudsman, did not finally resolve the issue. Of course, our report is also not a suitable place for further consideration of this question, except to the extent it is reflected on an evaluation of the work of the Ombudsperson for Children in the five-year period. But in principle we have to say that the "either-or" dilemma mentioned is misplaced.

## CONCLUSION

Our position in principle is that the individual areas of work by protective extra-judicial institutions, such as ombudsmen, in a period when increased attention is being paid to the protection of human rights and freedoms, as a result of the internationalisation of that protection, with at the same time an increasing threat to those rights and freedoms, demand specialisation, which justifies the establishment of specialised ombudsmen. At the same time, the requirements of the Europeisation and modernisation of society, local (including judicial) administration and in general the "public authorities" (in the broad sense as defined by the Freedom of Access to Information Act) demand the strengthening of the People's Ombudsman, as a parliamentary commissioner for the administration. This is especially important in the conditions of rapid development of the system of independent regulatory agencies, where court protection, limited to the traditionally overburdened Administrative Court, does not offer sufficient guarantee of effective protection of human rights and fundamental freedoms.

But without any doubt whatsoever, the work of specialised ombudsmen in the Republic of Croatia in recent years, primarily the "Children's Ombudsman", has undoubtedly shown the need and justification for the existence of this form of institution in specific areas, such as the rights of children.

For this reason we consider a combination of one strong central ombudsman with several specialised ombudsmen to be ideal, where it would be necessary to take comparative experiences into account, especially in view of limited funding, which in fact leads to the need to set priorities.

In my opinion it is precisely the successful work of the Office of the Ombudsperson for Children over the past five years which shows the justification of this form of "mixed" approach to building the system of institutions of extra-judicial protection of human rights and fundamental freedoms. This is well documented by the reports by the Ombudsperson to the Croatian Parliament, especially since the appointment of the current Ombudsperson, Mrs Mila Jelavić in 2006, but also the constant presence of the Ombudsperson for Children and her office in the public eye.

For this reason, although I support proposals for a more precise formulation of the relevant constitutional provisions, submitted by Mrs. Mila Jelavić, with the support of the head of the Chair of Family Law of the Law Faculty of Zagreb University, Prof. Dr. Sc. Dubravka Hrabar (*O potrebi izmjene obiteljskopравnih odredaba u Ustavu Republike Hrvatske* ["On the Need to Amend the Family Law Provisions in the Constitution of the Republic of Croatia"], Novi informator no. 5648/08 of 23 April 2008), I am convinced that the institution of Ombudsperson for Children can function successfully and develop even without these constitutional amendments.

They would, it is true, strengthen the position of this institution, which has truly confirmed its effectiveness in practice and it is certainly necessary to support them if a decision is rendered on a more thorough refinement and "spring clean" of the Constitution (as I myself once recommended in the Collected Papers of the Zagreb Law Faculty, no. 6 from 2001), but this situation does not seem likely to me for political reasons.

On the other hand, the foundations of the institution in international law (the Convention on the Rights of the Child and other relevant international documents) with the correct interpretation of constitutional provisions, we believe, provide a sufficient legal basis for this important institution, which has been well confirmed in daily life.

This legal basis, we believe, gives the possibility of further refinement of the legal regulation of the institution of Ombudsperson for Children. Here we see a great opportunity for far more precise regulation of the position and work of the institution, including the legal guarantee of financing, but a discussion of these questions goes far beyond the framework of our given role as evaluator from the point of view of constitutional law regulation.

We would like to point out some important questions: first, the immunity of the holder of the office, which we consider must be regulated in terms of his or her conduct and statements given as part of his or her duties, and second, the question of dismissal, which in our opinion should be resolved in a way that would strengthen the stability and independence of the office holder (Article 25, point 5).

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# EVALUATION OF THE EFFECTIVENESS OF THE ACTIVITIES OF THE OFFICE OF THE OMBUDSPERSON FOR CHILDREN

(Opinion)

## **2003 Report on the work of the ombudsperson for children (Covering the period 25 September – 31 December 2003)**

the Report covers a three-month period and in that respect is very short. However, in spite of this, it shows the first signs of planned work and responses to the needs in connection with the efficient functioning of the institution of the Ombudsperson for Children.

The Report contains ten chapters on 35 pages.

It is evident that the Ombudsperson for Children at the time, Mrs Ljubica Matijević, faced many problems, from the Office's accommodation and staffing, to direct contact with children.

I consider that in this Report the demands made of the Ombudsperson for Children at the time of the establishment of the Office are shown to have been fully met. In the first instance, there was the need to be presented in public and establish the profile of her independence and active participation in various meetings and expert gatherings. This task was fully dealt with, for the total of twenty-seven meetings which she attended in this short period shows that the Ombudsperson for Children was very much present in the public eye. Every new institution, including that of the Ombudsperson for Children, needs time in order to be accepted at the general and individual levels, in other words, for the institution to get off the ground. We think it extremely useful that the Office of the Ombudsperson for Children broadened the scope of its activities right from the start, to include international co-operation and contacts, in order to better present the Republic of Croatia and its protection of children's rights to the world at large, and in order to exchange experiences with other Ombudspersons for Children. Moreover, the Ombudsperson for Children recognised the need for close co-operation with UNICEF and other non-governmental organisations in Croatia, which has also resulted in great effectiveness at a general level. At the individual level, cases of individual violations of children's rights are only just beginning to come to light, and the Ombudsperson for Children has responded swiftly to two cases exposed in the media. In the first case (the Katalenić case, p. 14 and below) the intervention of the Ombudsperson for Children resulted in a positive public

response and the cessation of the violation of this child's rights to dignity, integrity and personality. In the second case, which was also reported in the media, multiple violations of children's rights were involved (the case of girl "E", p.15 and below), and after a series of interventions, the situation improved to a great extent, and an initiative was launched to pass amendments to the Croatian journalists' Code of Honour, in order to protect children better.

Other cases to which the Office of the Ombudsperson for Children reacted are presented in the Report, as well as specific suggestions made by the Ombudsperson for Children for improving the efficiency of the work of the courts, in particular in relation to child maintenance.

It is evident from the Report that by the end of 2003 a number of individual violations of children's rights had been noted, as well as changes which would be required, both in legislation and in the practice of state and non-state bodies engaged in safeguarding children's rights.

### **2004 Report on the work of the ombudsperson for children**

The 2004 Report amounts to 260 pages, organised in twelve chapters. It is evident that the Office of the Ombudsperson for Children was engaged in monitoring individual violations of children's rights, promoting better protection for children at a systematic, state level, monitoring and checking up on children removed from their families, raising children's awareness of their rights, international activities and finally, legislative activities.

The overview and assessment of the types of violations of children's rights noted by the Office of the Ombudsperson for Children in 2004 is a very valuable tool, as is the analysis of individual cases. On the basis of this analysis, the Office was able to draw conclusions about problems within the system (particularly social welfare centres) and about the non-implementation of existing legal options by which the rights of children can be adequately safeguarded. Most of the failings noted relate to frequent violations of a child's right to live with its parents, or to the right to an economic standard (i.e. maintenance). Chapter II deals with the problem of violence against children and provides a very detailed account of violations of children's right to education, and their health, social, economic and legal protection rights at both the individual level and the general level. The Ombudsperson for Children, on the basis of information collected by the Office and case analyses, gives an exhaustive overview of the state of children's rights in the Republic of Croatia.

We consider Chapter III of the Report particularly laudable as well, especially the proposals for setting up an integrated system for safeguarding and promoting children's rights.

This Report again points out the damaging influence of the media and its frequent violations of children's rights, and for the first time notes the socially negative phenomenon of child beggars and failure to protect children from dangerous pyrotechnical devices.

The Ombudsperson for Children was also involved during the reporting year in specific, not



insignificant activities concerning direct contact with many institutions, whether government or non-government, which deal with children. Furthermore, the Office of the Ombudsperson for Children addressed the efficacy and adequacy of some regulations concerning safeguarding children's rights (specifically the Family Act, in terms of court jurisdiction, the Rules of Court, in terms of procedure in cases of violence against children, and the Instructions for the Implementation of the Act on the State Registry and Registration of Adoptions [dated 1999 and 2002], in terms of violating the confidentiality of information on completed adoptions).

At the end of the Report (Chapter XII – Conclusion), a very broad overview of the state of children's rights in the Republic of Croatia is given (for 2004), with the conclusion that children's rights are not being addressed adequately or satisfactorily.

### **2005 Report on the work of the ombudsperson for children**

Somewhat briefer information is provided on this reporting period (in the section entitled *Information on the work of the Office of the Ombudsperson for Children in 2005*, p.77), from which it can be seen that the work of monitoring individual violations of children's rights continued, along with new proposals to adopt measures for the setting up of an integrated system for safeguarding and promoting children's rights, participation in preparing draft laws, visiting children separated from their families, international co-operation, etc. A new element, apart from an overview of the Office's financial dealings (pp.76-77), was the detection of a new problem in society within the system of safeguarding children's rights. Thus the Office of the Ombudsperson for Children, in terms of the child's right to protection from violence, apart from domestic and institutionalised violence, identified paedophilia as a fairly widespread form of violation of children's personal rights and their rights to legal protection. In this chapter, the Report deals with different aspects of this problem (types of violation, places in which they occur, offenders), including a national strategy for suppressing paedophilia, and specific proposals for legislative amendments (particularly criminal legislation) and reform of the justice system in this respect.

For the first time, children's rights as members of social communities are mentioned, but the Ombudsperson for Children concluded in specific cases that no violations had taken place. A further group of children's rights which were prone to violation in 2005 was systematised by the Office as educational rights, and analysed in detail (giving the children's ages and the persons reporting the incidents) with the emphasis on the types of threats to educational rights. Furthermore, the Office of the Ombudsperson for Children identified new problems within the group of rights relating to health (for example, the threat to children's health posed by additives in food and drinks, non-availability of certain forms of therapy at the expense of the Croatian Institute for Health Insurance, or the impossibility of exercising children's rights to orthopaedic aids), but also certain failings which presented threats to children's health (e.g. putting bus stops in dangerous places, silicone implants, etc). In the Report, the Office correctly noted the need for better co-operation between state bodies (particularly ministries) in safeguarding children's health rights. The Report also refers to other individual cases of violation of children's rights (whether social, economic, cultural or legal), and we would like to draw attention to a new element relating to monitoring the promotion and safeguarding

of the rights of children with developmental difficulties (Chapter III).

The Office made specific proposals concerning the setting up of an integrated system for safeguarding children's rights in certain areas (pre-school education and education, sex education in schools, testing for drugs, preventing peer violence in schools, improving the position of Roma children, trafficking in children, etc).

Problems concerning the violation of various children's rights in and via the media continued to be noted.

### **2006 Report on the work of the ombudsperson for children**

In 2006 changes occurred in the leadership of the Office of the Ombudsperson for Children (Mrs Mila Jelavić) and her deputies. Although several months went by before a new appointment was made, the Office began work, building on the good practice of the previous system.

In the introduction to the Report, the curricula for the new staff are given, as is the fact that a Plan and Programme for the work of the Office for 2006 and 2007 was adopted, in order to deal with case backlog and to improve the operations of the Office. The most essential, extremely important factor in the Plan was the idea of extending the work of the Office at regional level, which occurred the same year, thus implementing the September 2004 recommendations of the Committee on the Rights of the Child.

The Office of the Ombudsperson for Children presents in this Report the number of cases reported by year (2003 to 2006) and in total. The number is imposing (a total of 2,132 cases in four years), and it points to a continuing rise in the number of cases reported, which leads us to the conclusion that by 2006 the public had become fairly well acquainted with the existence, activities and of course the effectiveness of the Ombudsperson for Children as an institution for safeguarding children's rights.

The Report is divided into twelve chapters and runs to 175 pages.

A distinction still needs to be drawn between the individual cases in which the Office was involved and increased activity at the level of general initiatives and activities, which, I believe, display the more important role of the Ombudsperson for Children, because they are pro-active, preventive and long-term. However much the Ombudsperson for Children ought to react to individual violations of children's rights (Article 6, indents 1-3 and 6 of the Ombudsperson for Children Act), the basic function of the Office is to monitor the state of children's rights on the basis of positive or negative trends in society, and to propose changes which can lead to improvement in children's welfare throughout the Republic of Croatia. In the reporting period, I think that this was essential step forward in terms of quality of the activities of the Ombudsperson for Children.

From the Report, a new approach to safeguarding children's interests has arisen, through the presence of the Ombudsperson for Children in the legislative structure (i.e. her presence on parliamentary committees during debates on passing laws concerning children) and her attempts to create a positive atmosphere and promote humanist values in society which enable children and their

rights to be better protected in the Republic of Croatia. Pages 9-64 give a general description of individual violations of children's rights (not by case, but by type of threat) and present them analytically. It emerges from this that in the Republic of Croatia, children's personal rights continue to be threatened most often (61% of cases), and these most often relate to the right to protection from violence and neglect (49%), followed by the right to live with parents and the right to parental care (43%). This kind of presentation of violations of children's rights provides an excellent source of information for experts dealing with these rights, whether theoretically or in practice. At the end, the opinion of the Ombudsperson for Children, concerning the causes of such a situation in the Republic of Croatia, is given.

The Report again analyses and presents other forms of violations of children's rights (by groups of rights), as has been the practice in writing these reports since 2003. As an example of the extension and careful monitoring of threats to children's rights, we would like to draw attention to the following, which are mentioned within the group of health care rights: the danger of using detergents for washing laundry, the failure of the "Sretna beba" (Happy Baby) campaign to conform to international standards, the need to improve health education among the general public regarding individual infectious diseases, and even the need to issue warnings about unacceptable ways of feeding children (vegetarianism, fast-food, dispensing machines, etc).

As the Office of the Ombudsperson for Children continues to foster better recognition of the existence of and the threat to children's rights, and promotes the existence, activities and effectiveness of the Office itself, this can also be seen in the fact that according to this Report, the Office dealt with seven cases involving children's cultural rights, which are the least violated group of rights. Most of these were in relation to children's rights to recreation and sport. The Office responded in all these cases by informing the competent state bodies of the unacceptable nature of each situation.

Within the framework of proposals for setting up an integrated system (Chapter 3), further special attention is paid to children with developmental difficulties; the Report concludes (p. 70) that although a national policy has been conceived, it has not yet been implemented, either in practice, or in terms of legislation. The Ombudsperson for Children draws attention in her Report to the fact that individual cross-cultural conflicts between children are still happening, that Roma children are still insufficiently included in the social system (schooling, status, etc.), and also that specific violations occur in the areas of trafficking in children, the unequal status of the female population, arranged marriages for minors and similar situations, which threaten the rights of national minorities.

We think the analysis on the rights of children engaged in sports activities, which the Office of the Ombudsperson has carried out, is extremely helpful. The information which the Office discovered (not only concerning the low numbers of children engaged in sports activities, but concerning the treatment of children and their behaviour among their peers in sports clubs, harsh initiation rites, etc.), demonstrates that there is a burning need for the competent state authorities to pay more attention to the role of sport in the healthy nurture of children.

A new step in raising awareness of children's rights can be seen in the Office's dedication to two problems, following a comprehensive evaluation. One problem concerns the rights of children whose parents are in prison, and the other is how to protect child beggars. The first problem spurred the

Office to visit several prisons and check up on the conditions and legal provisions for allowing contact between children and parents in prison, and thus the institution of the Ombudsperson for Children was actively involved in the European organisation EUROCHIPS. Many failings and unsuitable situations were discovered, which then spurred the Office to deal with this problem more intensively, in an attempt to improve various factors which affect or prevent the exercise of good parenting or relationships with children.

Although various regulations and documents regulate the protection of children from different forms of economic exploitation, in 2006 the Office of the Ombudsperson for Children dealt with violations of the child's right to be protected from economic exploitation, specifically in the catering industry, business and small businesses (based on eleven specific reports). A related topic was the question of protecting child beggars, and the figures contained in the Report concerning them are indeed worrying. The Office published a careful analysis of the threats to many rights to which such children are exposed, indicating the severity of the problem, and at the initiative of the Ombudsperson for Children, a meeting was convened with various state bodies in order to get to grips with this problem, at which the Ombudsperson for Children made several specific proposals.

Further to the idea of comprehensive monitoring of the occurrence of various forms of violation of children's rights, in 2006 the Ombudsperson for Children issued warnings about the need to protect children from the advertising industry. Her appeal was based on psychologists' opinions concerning the negativity of aggressive advertising. In that sense, several amendments to the relevant laws were proposed.

Special attention focussed on the fact that violence as a form of communication between pupils is prevalent in schools, and the Ombudsperson for Children proposed specific forms of co-operation in order to resolve this issue.

The Office of the Ombudsperson for Children was again concerned with children's right to health, with a particular emphasis on the programme and need for health education in schools, as a means of preventing various forms of harmful influences on children's health.

As part of its activities concerning pre-school education, the Office acted in twenty-two cases of pre-school children, in which various situations made it clear that it was precisely this section of the child population which required special attention, both directly and in terms of modernising existing regulations.

Among newly-established forms of monitoring children's rights, the Office of the Ombudsperson for Children, on the basis of ongoing good co-operation with the Ministry of the Interior, noted the need for additional education on children's rights, in the most general sense, at the Police Academy. In addition, the Office announced a new, helpful proposal, recommending the need to distribute funds for children and make appropriate allocations in the state budget, in accordance with the recommendation of the UN Committee on the Rights of the Child. The Office informed various state structures of this matter, with the aim of making concern for children transparent (including in the financial sense) in the Republic of Croatia.

Similarly, the Office sent communications and recommendations to the competent bodies handling different statistics, in order for the international obligations of the Republic of Croatia to be met and for a methodology for collecting and processing data relating to children to be developed, in accordance with the recommendation of the UN Committee on the Rights of the Child.

As a result of a need to be engaged in new activities, the Office of the Ombudsperson for Children published and presented the text of the UN Convention on the Rights of the Child in Braille, held a round table discussion with the aim of promoting a pro-social, positive spirit in society and initiated the proposal, which was accepted by the Croatian Bar Association, that all children on whose behalf maintenance proceedings are under way should receive free legal aid.

Showing particular sensitivity to the actual presence of violence in everyday life, the Office of the Ombudsperson for Children engaged in various activities aimed at suppressing it among children and young people, and it was designated as the responsible subject for implementing various parts of the National Action Plan for the Rights and Interests of Children, 2006-2012. The Office was also involved in UNICEF's programme *Early Childhood Development and Better Parenting*, and in other activities which reflected the real need to protect particular groups of children.

The Office of the Ombudsperson for Children showed particular insight in recognising threatening behaviour towards children, by producing extremely specific proposals for preventing behaviour which threatens or may threaten the interests of children. Thus specific procedures were proposed regarding the conduct of the courts (e.g. 24-hour duty at courts for the application of some provisions of the Family Act, enforcement in family matters), along with recommendations on providing children with protection from the sale of alcoholic beverages, from being attacked by dogs, and protection during teachers' strikes in schools, etc.

In continuing to monitor amendments to regulations, the Office of the Ombudsperson for Children delivered opinions on amendments to some regulations (the Criminal Code, the Asylum Act, the Weapons Act, the Legal Aid Act, the Aliens Act, the Child Benefit Act and the Family Act), always taking into account the need to safeguard children's welfare.

The Office of the Ombudsperson for Children visited social welfare homes in which children were resident, with the aim of acquainting children with their rights and checking on the conditions in which they were living. During these visits, some irregularities concerning the basic accommodation provided for the children were noted and the competent ministry was informed about this. Visits made to children in penal facilities (i.e. the women's penitentiaries) revealed some minor irregularities harmful to children.

The Office of the Ombudsperson for Children nurtured the practice of participating in various conferences on children and their rights, and is involved in inter-departmental and others forms of co-operation, and in direct co-operation and association with children, which we consider especially important, in terms of raising the profile of the work and facilitating its acceptance in society at different levels.

At the end of the Report, a clear financial report and conclusion are presented, recapitulating in brief the activities of the Office during 2006.

### **2007 report on the work of the ombudsperson for children**

The 2007 Report is the most extensive, running to 261 pages, which is basically an indication of the increased activities of the Office and the broadening of areas of interest in order to protect children and their rights. Reading it through, it seems that the Ombudsperson for Children has not omitted a single activity relating to children, whether in terms of taking positive steps or noting negative occurrences.

Individual violations of children's rights continued to be monitored. An increase of 63% in complaints received is emphasised in the Report, linked to the operation of regional offices (in Osijek, Split and Rijeka). A huge number of cases was received and processed (2,199), covering a wide range of threats to children's rights. According to the data in the Report, for example in the section dealing with violations of personal rights, some new forms are noted (e.g. the right to discover one's own background, to have one's birth registered, to a personal name, to acquiring nationality, to spend time with one's grandparents, etc.). All these violations were processed and analysed statistically. In principle, wherever possible the Ombudsperson for Children responded to individual cases by providing recommendations for general procedure, thus carrying out the duties falling within the competence of this body under the Ombudsperson for Children Act. Since we are dealing with a now familiar method of presenting violations, we can only conclude that the Office constantly notes violations of the right to protection from violence and neglect, and the right to life with parents and parental care. This fact should be taken very seriously, in the sense of acknowledging the need to strengthen social involvement and state intervention. Furthermore, in the Report we find a good legal and factual analysis of a newer problem, and proposals for improving the situation in the case of abduction, i.e. the wrongful removal of a child by one parent. Similarly, on the basis of cases reported (335 in 2007), the Office of the Ombudsperson for Children carried out a thorough analysis of violations of children's right to live with their parents, whether in terms of the person lodging the report, the age and profile of the children, or the procedures and/or failings of the centres of social welfare. In effect, long-term stagnation characterises any approach to resolving this issue, in spite of the many recommendations for procedures which the Office of the Ombudsperson for Children has forwarded to the competent bodies. It is a cause for concern that no adequate response has been received from the most responsible state body. The Office correctly noted that basically the problem lies in the fact that there are no adequate professional qualifications or ongoing training for staff in centres of social welfare, and that they are overburdened with other tasks, which prevent them from properly carrying out the procedures prescribed by law. Another related area the Office has taken note of is the threat to children's rights when they are placed in foster care, since cases have been discovered of children in foster homes who have not been visited for years. In regard to this problem, again, no response has been received from the competent ministry, in spite of the Office's requests and urging.

In relation to domestic violence, the Office has compiled a detailed, comprehensive analysis and evaluation of the problem (which according to the number of reports, continues to grow), from which it

can be concluded that children's rights in this area are still being violated, whether domestic violence, or violence in schools and institutions. Along with this, the Office has discovered that there is insufficient education of parents on the unacceptability of smacking children as a disciplinary method.

The Report also provides a picture of the state of children's rights as members of the social community, based on reports received, and in this respect we would like to emphasise that the co-operation of the Office with children, via children's magazines and direct encounters with children in schools, homes and other places, is a very positive method. Educational rights are dealt with in table form, showing the breakdown of children included in educational institutions and an analysis of violations of their educational rights on the basis of individual complaints received by the Office (105 cases). Basically, the Office has noted inadequate conditions in the work of schools, inappropriately organised transport of children to and from school, inappropriate treatment of children by adults, various forms of violence against children in schools, the issue of assessing academic knowledge, failure to enforce implementing regulations, the safety of children in schools, the problem of heavy schoolbags, etc.

Violations of children's health rights, as emphasised in the 2007 Report, continue to be noted in the same areas – protection for children in maternity wards is inadequate, they suffer physical injuries during birth, there is insufficient promotion of the importance of breast-feeding, it is impossible to obtain costly medicines for children, they suffer from anorexia, are exposed to unacceptable noises levels, are attended by too few paediatricians, their privacy is not safeguarded during regular medical check-ups, etc. In all these cases the Office of the Ombudsperson for Children intervened with the competent authorities, but in most cases no final answer was received.

Poverty is not a minor problem in Croatian society, and is linked to violations of children's social and economic rights. The Office of the Ombudsperson for Children compiled a statistical and narrative analysis, based on complaints received, of violations of these rights (in the sense of failure to receive the right to one-off payments, allowance for assistance and care, disability benefit, housing supplement, child benefit, etc), among which we note the very specific intervention of the Office in the area of safeguarding children's property interests (p. 72 of the Report).

Safeguarding or ignoring the cultural rights of children is presented in this Report on the basis of the Office's responses in eleven individual cases and several cases involving larger numbers of children. Apart from the rights of healthy children we have already mentioned, the Office considers that occasional violations of the rights of children with developmental difficulties represent a special problem. The cases are described in the Report (e.g. children's problems in sports clubs, playgrounds, extortion of money from children in holiday centres, the problem of computer games, and child participation in inappropriate theatre performances) and on the basis of these, the relevant conclusions and recommendations for action were adopted (e.g. sending recommendations to the Education and Teacher Training Agency, passing appropriate regulations, etc.).

Thirty individual cases involving violations of the right to legal protection are analysed and systematised into eight groups. Through analysing each case, the Office has reached particular, very thorough conclusions, of which we endorse the conclusion on the need for specialist lawyers to represent minors and the necessary amendments to the criminal legislation, as well as the more

efficient application of regulations.

At the level of the proposal to undertake measures to set up an integrated system for protecting and promoting the rights and interests of children (Chapter III), the Office concentrated in particular on the rights of children with developmental difficulties and proposed specific activities which should be carried out in order to safeguard the interests of these children better (p. 88). I think the Office of the Ombudsperson for Children has addressed this issue and how to detect it in a very serious way, highlighting the specific problems of children with developmental difficulties and giving a breakdown of these difficulties by type.

The protection of children belonging to national minorities (particularly the Roma population) is one in which the Ombudsperson for Children considers there is too little activity, however she recognises the efforts made by state institutions in seeking solutions for the improved inclusion of national minorities in the social system.

The rights of children with behavioural problems are presented as a result of visits made to institutions in which such children are placed. A very detailed analysis points primarily to the need for better inter-departmental action, then to the need for co-operation at a lower level. Individual problems, such as inadequate accommodation for children with behavioural difficulties due to mental problems, or, for example, overlong waiting periods for correctional measures to be pronounced, are just minor indicators of society's lack of care for such children. The Ombudsperson for Children adds a reminder that the UN Committee on the Rights of the Child sent recommendations to the Republic of Croatia, which included, among other things, the drafting of an action plan for suppressing violent behaviour among children and the appropriate legislation.

The Office of the Ombudsperson for Children has identified a specific problem in Croatian society, and that concerns children involved in sports activities, that is to say, their protection. In spite of supporting a pro-active view of sport and physical activity in principle, as part of healthy living, some not insignificant problems have been noted in this area. These mostly relate to children being exposed to stressful factors, poor or non-existent relationships with coaches and team members, violence in clubs, main focus on profit, and similar. Although the Office responded to some of these negative occurrences in 2006, it is reported here that in 2007 not a single question received an answer from the Croatian Olympic Committee. Using complaints received during the reporting year, the Office warned against threatening behaviour against children, for example in being prevented from leaving the club or cancelling the contract, being subject to violence on the part of their coaches, being humiliated, and a lack of financial transparency in clubs' dealings. Children's behaviour before, during or after sporting events gives cause for concern, according to the Ombudsperson for Children, as does the behaviour of adults in connection with sport, as this can have a negative influence on children. In the same vein, the Ombudsperson for Children supports the building of many swimming pools, given the need to offer instruction to those unable to swim.

The Ombudsperson for Children thinks that a particular problem is posed by the fact that there is no consolidated information about children in sport, clubs and playgroups, or about coaches, and that social responsibility towards children in sport is unclear and unrecognised.



As in earlier Reports, in 2007 the Ombudsperson for Children paid particular attention to children with parents in prison, in the sense of setting up an integrated system for protecting and promoting children's rights, and undertook specific activities in terms of protecting the rights of such children.

The issue of children who are economically exploited is also dealt with separately, and the positive role of the State Inspectorate in regard to this emphasised. However, the unacceptability of children participating in fire fighting units, and the need to prevent this from happening, is also pointed out, and the concern is highlighted regarding the increase in the number of applications for approval for child participation in advertising campaigns.

The media continue to attract the attention of the Office of the Ombudsperson for Children, since in 2007 almost a hundred cases of children in the media were dealt with. On the basis of individual cases, the Office acted on a number of general initiatives, and some specific ones, pointing out inappropriate media content (particular on television, and, to a lesser extent, in printed media). At the same time, the Office is trying to achieve better co-operation with the media, in terms of informing them of the Office's activities, and in terms of educating journalists on children's rights and raising public awareness of children's rights. Different forms of violations of children's rights in the media have been analysed, and there is a realistic attitude towards children's rights in this area.

The Office of the Ombudsperson for Children continues to insist on better protection for children in the advertising industry, and has been successful in certain areas, however we must conclude that there is a great battle ahead in order to ensure the full protection of children, since financial gain is the ruling factor in this area.

Apart from initiatives to improve child protection in terms of proper nutrition and health education, we would also like to highlight the Office's efforts in the area of environmental protection of children (including protection from landmines), protecting children from pornography (and the related initiative launched by the Office to create a database of sex offenders against children), protecting children in traffic, protecting children from corporal punishment, and the justified criticisms which the Office has made of some forms of the practice of adoption, and the manipulation of children for political ends.

The Office of the Ombudsperson for Children has participated actively in various public activities aimed at improving the position of children (participation in and monitoring the implementation of various national plans and programmes) and has made specific recommendations vis-à-vis general, harmful behaviour which threatens the rights and interests of children (e.g. environmental protection of children, unhealthy food based on sponsorship contracts, preventing children from drowning, lowering the infant mortality rate, protecting children in rail traffic, reform of the primary and secondary school systems, protecting children from economic manipulation, protecting small children in street parades, improving child protection in the area of alcohol abuse, etc.). We think it important to point out that the level of identification of harmful activities has reached an admirable level in the 2007 Report.

As prescribed by the Ombudsperson for Children Act, the Office has participated in procedures for drafting several laws, contributing suggestions and recommendations (not, unfortunately, always

accepted). Among these were the Legal Aid Act, the Weapons Act, the Act on the Enforcement of Sanctions Imposed on Juveniles for Criminal Offences and Misdemeanours, the Aliens Act, the Consumer Protection Act, the Audiovisual Activities Act, the Act on the Ombudsperson for Persons with Disabilities, the Blindness Allowance Act, the Electronic Media Act, the Family Act, the Asylum Act, the Social Welfare Act, the Foster Care Act, etc.

On the basis of Article 13 of the Ombudsperson for Children Act, the Office has continued to visit children who do not live with their families, and has thus secured direct insights into how such children, who require special attention, are cared for, as stipulated in the Constitution of the Republic of Croatia, and other regulations.

The Office participated in various forums held on various topics, presenting theoretical and practical levels of child protection, and continued to foster inter-departmental co-operation between various state bodies and NGOs, national and international bodies, at both bilateral and multilateral levels. The Office did not neglect its publishing and promotional activities, or direct contacts between the Ombudsperson for Children and children themselves.

We consider that a great contribution to the better protection, elimination of discrimination and equality of all children in the Republic of Croatia has been achieved by the fact that in 2007, the regional structure of the Office went into operation (three regional offices, with varying opening hours) and a short overview of the activities of each office is given, arranged according to types of violation of children's rights, and types of other activities. The Report for 2007 clearly justifies the soundness of the idea of regional offices, since regional representation, or rather the area now covered by the expert Ombudsperson's functions, has already led to the better protection of children's rights.

An overview of the organisational and financial dealings of the Office for the reporting period is also provided, in which marked growth and improvement in planning and fulfilling the budget is noticeable (in 2007 this reached 97.7%).

Finally, there is a conclusion, in which the problems met by the Ombudsperson for Children in her work are recapitulated in a highly objective manner. What is more important, weak links in the social chain of constitutional obligations concerning children's rights are identified. The social protection system in particular is singled out as being relatively ineffective, and thorough reform of the social welfare system is suggested. From observations of the roles of individual ministries, as the bodies responsible for carrying out activities in the area of protecting individual children's rights, the need is highlighted for increased activity in implementing national plans which have been adopted, the subject of which is protecting the rights and interests of children. The warning about poor media practice in child protection, along with the passivity of many institutions, the ineffectiveness of the judiciary and parts of the educational and health systems, is repeated.

## CONCLUSION

Insights and analyses of all the reports provided (2003 to 2007) reveal the many-faceted efforts and successes of the Office of the Ombudsperson for Children in extending the activities for the protection of children and their rights to all areas in which children's rights are present or should be. Since no society is perfect, it is logical for the Ombudsperson for Children to focus on negative issues and failures, while trying continually to achieve changes in social behaviour and steps forward in the social, normative and practical sphere. The Ombudsperson for Children has not omitted to mention positive signs or practice, but we still consider her primary task to be the identification of violations or potential lapses, which she may prevent by timely intervention.

In considering and comparing these reports, I think they have been logically written, both structurally and in terms of content and stability of questions and topics to which she gives answers and observations. Thus, it is possible to monitor the growth of the institution and the growth, stagnation, new occurrences or cessation of violations of children's rights. In order to achieve this goal, it was necessary to consider certain individual cases or reports and create a specific picture, which could then be applied generally. Of course, the picture is to a certain extent relative, because there is, and always will be, a dark number of unreported cases of violations of children's rights. Yet the picture is realistic, and indicates the need for continued supervision of society by an independent and unbiased institution, such as the Ombudsperson for Children. After five years of activity, the role of the Ombudsperson for Children is today incontestable, recognised in society at large, effective and with the perspective to develop further. We think she needs increased support in society as a whole, particularly in terms of her authority, since she is unfortunately not always perceived as a guardian of the best interests of children, as expressed in Article 3 of the Convention on the Rights of the Child. The existence of the Office (also at regional level) has been adequately recognised, as is clear from the number of cases dealt with and the growth in the number of cases. However, we would suggest increasing intervention in state structures, in the sense of recognising the Ombudsperson for Children as a body which is completely independent, yet superior to all, from local to state level, from the lowest competent body to the highest ministry. It should not be allowed to happen that petitions or questions submitted by the Ombudsperson for Children remain unanswered, and that there is no reaction or activity on the part of the body concerned.

On the whole, we have gained the impression that the Ombudsperson for Children systematically, on a daily basis, in a multidisciplinary and polyvalent fashion, monitors children's rights in the Republic of Croatia and the ways in which they are actually or potentially threatened. It is astounding that such a small number of people have been able to deal with such a broad scope of tasks, with such enthusiasm and legal knowledge. There must be a great deal of unseen effort and commitment to the job, a feeling of responsibility for children's wellbeing and a serious understanding of constitutional notions and notions arising from the Convention, concerning children's needs for special protection in society.

In terms of assessing the efficiency of the Ombudsperson for Children, whether at the individual or general level, I think full efficiency has been achieved. At the individual level the Office does not go beyond the mandate conferred by the Ombudsperson for Children Act, but rather tries, in

response to individual cases, to elicit an adequate response from the bodies, institutions or systems involved in particular cases, without suggesting a final legal solution, and using the cases described (whether violations or contempt for children's rights) to avoid similar practice in future potential cases. Along with this, the Ombudsperson for Children tries to encourage good practice in general, and to root out bad practice or erroneous approaches in relation to individual children's rights.

Accordingly, we consider that the Ombudsperson for Children protects the rights of children in the best possible way, whether reactively or pro-actively, and this is her fundamental, enormous and challenging task. From the Reports submitted, it emerges that there is not a segment of society which she has not identified as a potential area for the violation of children's rights, and that she has a prospective view of the need for better, more inclusive, more socially responsible protection of children and their rights. Furthermore, it can be concluded that the Office of the Ombudsperson for Children is a place where children's rights are intensively monitored, and as such, is an institution which has long been awaited and needed in the Republic of Croatia. The Ombudsperson for Children, Mrs. Mila Jelavić, acts promptly, without bias and with the conviction that every type of safeguard, including those concerning children's rights, can always be improved.

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# EVALUATION OF THE PSYCHO-SOCIAL ASPECTS OF THE WORK OF THE REPUBLIC OF CROATIA'S OFFICE OF THE OMBUDSPERSON FOR CHILDREN

## INTRODUCTION

### The social context of the development of children's rights

One of the most significant changes to occur in social awareness at the end of the 20th century, declared the Century of the Child, was the change of a paradigm in relation to children and childhood. Traditionally, children were regarded as unformed, future adults, and their rights transferred to their parents or guardians. The legal provisions, formal and informal aspects of care and the social control of children were based on this view. From this perspective, the responsibility for children's maturing and their entry into the adult world rested with families, parents and other important adults in their lives. The modern approach, which appeared in the second half of the 20th century, altered that view of the child and presented a new paradigm, in which children are people in their own right. Based on that understanding, children are now recognised as a separate social interest group, needing to be emancipated from other interest groups and given legal protection while achieving such emancipation (Verhellen, 1997, Žižak and Vizek Vidović, 2004).

Within this new paradigm, the best interests of the child appear as the principle providing a framework for the legal and psycho-social support of children. At the same time, the best interests of the child are understood to include satisfying his or her basic developmental needs, for which a basis is to be found in international and national legal documents. The correspondence between individual groups of children's rights and specific types of needs is shown in Table 1 (according to Žižak and Vizek Vidović, 2004).

TYPE OF PSYCHO-SOCIAL NEED:	GROUP OF CHILDREN'S RIGHTS:
Existential needs	Health rights Personal rights
Need for security	Personal rights Social-economic rights Rights to judicial protection
Need to belong	Personal rights Cultural rights
Need for respect/achievement	Social rights Educational rights
Need for self-realisation	Social rights Cultural rights

Table 1 – Children's psycho-social needs and corresponding children's rights

In its legal form, this perspective found expression in the 1989 Convention on the Rights of the Child, and in the 1996 European Convention on the Exercise of Children's Rights. In Croatia, the rights in these Conventions are enshrined in several laws regulating matters of education, protection, assistance and other aspects of the social life of children and families.

In general, in Europe and indeed in Croatia, it has been demonstrated that legal regulations are insufficient guarantee that the new paradigm will be implemented in everyday life. For this reason, along with the shaping and implementation of the UN Convention on the Rights of the Child, the first Ombudsperson's Offices were established, firstly in countries with developed social democracies (in Norway in 1981 and in Sweden in 1993). These institutions were based on the principle of the independent, unbiased promotion and protection of children's rights in society. The main task of these offices was to monitor the harmonisation of national systems of care for children and the treatment of children in society, with the principles of the UN Convention on the Rights of the Child (Swedish Government Official Report No. 1999:65).

## Profile of the activities of the Ombudsperson for Children in the Republic of Croatia

As a signatory to the UN Convention on the Rights of the Child, and as part of the process of monitoring European and global experience in this area, in 2003 Croatia passed the Ombudsperson for Children Act (OG 96/2003).<sup>1</sup> In the same year, the Office of the Ombudsperson for Children was

<sup>1</sup> Hereinafter: "the Act"

set up.<sup>2</sup> The main task of the Ombudsperson for Children was defined in the Act as protecting, monitoring and promoting children's rights and interests, pursuant to the Constitution of the Republic of Croatia and international treaties and laws. At the same time, the Act emphasised that the Ombudsperson for Children must act independently and autonomously, as a matter of the highest principle, observing the principles of fairness and morality, and that no one should attempt to instruct the Ombudsperson or give him or her orders, nor should the Ombudsperson be a member of any political party (Articles 2 and 3 of the Act), which is in full agreement at the international level with the principles of organising this kind of independent institution.<sup>3</sup> In a separate legal act, the implementation of the second key principle was elaborated – the principle of confidentiality (Decision on confidentiality, 2004). From these basic precepts concerning the work of the Ombudsperson for Children, it is clear that there is a close connection between children's rights as a legal concept and children's best interests as a psycho-social dimension.

The psycho-social needs and rights of children form two components of children's best interests. On the one hand, there are needs as natural biological, psychological and social phenomena, and on the other, rights as social phenomena. In other words, by recognising children's needs and meeting them, we respect children's rights and ensure the realisation of children's best interests. Thus, children's best interests are based on a combination of legal and psycho-social standards (Miler, 2002).

These two components of the activities of the Ombudsperson for Children are described in the Ombudsperson for Children Act (OG 96/2003), which defines the Ombudsperson's scope of work in four groups of activities:

1. Monitoring the harmonisation of laws with the Convention and other international documents, the implementation of the obligations of the Republic of Croatia, amendments to regulations and violations of individual rights;
2. Analysing and studying general occurrences and ways in which children's rights are violated;
3. Proposing and taking measures to build an integrated system for promoting children's rights and interests, including children with special needs;
4. Informing the public on the state of children's rights in the country.

The Act proscribes the ways in which the Ombudsperson for Children may work within the given scope of activities. Primary place is given to direct contact between the Ombudsperson and children. This provision allows for the possibility of intervention in individual cases, which contributes to the Ombudsperson's direct insight into children's living and family circumstances. In this way, the Ombudsperson has the opportunity to come face to face with the (in)effective functioning of the social system of care for children and observe the specific barriers faced by children and their guardians in trying to achieve children's best interests.

The Ombudsperson for Children meets children and offers them advice on how to safeguard their

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<sup>2</sup> Hereinafter: "the Office"

<sup>3</sup> Eg. Paris Principles – Annex 6 (A/res/48/134), i.e. The role of the independent national human right institutions in the promotion and protection of the rights of the child. Committee on the Rights of the Child. General Comment No.2 (CRC/GC/2002/2)

rights and interests, co-operates with them, encouraging them to express themselves and respecting their opinion, and initiates and participates in public activities aimed at improving the status of children, and proposes measures for increasing the influence of children in society (Article 6 of the Act). Here it is important to point out that in this way the Act provides for a participatory aspect of realising children's rights, and not just a protective aspect of their realisation.

In order for the Ombudsperson for Children to be consistent and able to function at both the general and individual levels while respecting the child's perspective, it is first necessary to understand the developmental needs of different age groups and the social circumstances in which children find themselves. One of the main strategies for achieving this is tapping the sources of information provided by children themselves, young people, parents and experts dealing with children and young people. This direct, specific experience must be combined with a general understanding of the legal framework and knowledge of the results of relevant research and statistical data provided by various institutions and organisations (Swedish Government Official Report No. 1999:65). Given the breadth of the scope of activity and the requirement of an interdisciplinary approach, experts from different fields are employed in the Office of the Ombudsperson for Children (lawyers, psychologists, educationalists, special education experts and social workers).

## METHODOLOGY OF THE COMPILATION OF THE EVALUATION REPORT

This report is part of a comprehensive evaluation of the work of the Office of the Ombudsperson for Children of the Republic of Croatia for the period 2003-2008 and its focus is the psycho-social aspects of the scope of work. The methodology of compiling the evaluation report is based on:

1. Assessing the efficiency of the Office's activities, with the aim of arriving at an answer to the question of whether the goals and activities planned for particular periods were realised;
2. Assessing the influence of the work of the Office of the Ombudsperson for Children in relation to the question of whether measures undertaken led to expected outcomes at both the individual and general levels.

In order to achieve the clearest focus on the psycho-social aspects of the Office's work, a combined evaluative approach was adopted, which consisted of participatory<sup>4</sup> and external evaluations, and which respected the rules under which the Office of the Ombudsperson for Children operates.<sup>5</sup> In accordance with this, within the Office of the Ombudsperson for Children an ad hoc self-evaluation group was formed. The group was given the task of preparing material for external evaluators (reports and works plans, examples of newspaper articles, information on legal acts). The part of their work in preparing material relating to individual cases should be highlighted in particular. Using the method of quota samples, they identified 77 cases, according to types of problem, dealt with between

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4 Participatory evaluation is the process of generating knowledge of one's professional reality, or the process of articulating and elucidating values and standards. Participatory evaluation is based on partnership between educated evaluators and practitioners, i.e. those directly involved in carrying out activities (Garaway, 2004).

5 This relates to the Decision on data confidentiality, the Decision on office operations and the Ordinance on the protection of archive and registry material.



2004 and 2008.<sup>6</sup> The cases were described succinctly with the aid of the Protocol on describing individual cases (Appendix 1), the content of which was agreed beforehand with the external evaluators.

## PSYCHO-SOCIAL ASPECTS OF THE OFFICE'S ACTIVITIES

### *Analysis of the efficiency of the Office at the programme level*

The evaluation task was linked to an assessment of the efficiency of the Office's activities at the programme level, which was carried out by analysing the programmes and reports on the work of the Office, as well as legal provisions on the scope of the Office's work. An overview of the programme of work by year shows that the elements of planning were structured in the same way and in harmony with the structure of the Office, in which a Service for Expert Tasks and a Service for General Tasks operate. Given the aim of this part of the evaluation report, we will only concentrate on the programme of work of the Service for Expert Tasks.

A comparison of the structure of the programme and the legal description of the scope of the work of the Office shows that, during the period under analysis, the same principles of planning work were adhered to as required by the Act. Activities fell into six broad groups. A description of individual activities was accompanied by a time-frame for their realisation.

The first group of activities concerns the protection of individual children's rights and interests, by carrying out expert tasks in relation to reports received and oral requests made to the Office, and the provision of expert and advisory help, both orally and in writing. The second group of activities includes comprehensive safeguarding of children's rights and interests in society as a whole (at the macro-social level). This group focuses on activities monitoring the harmonisation of the Republic of Croatia's laws and regulations with the Convention and with international documents, monitoring the implementation of regulations and documents, and monitoring the implementation of strategies and plans in this area. Along with monitoring activities, the second group includes submitting recommendations and proposals to the competent bodies and institutions, such as the Central Bureau of Statistics, various ministries, the Croatian Olympic Committee, units of local self-government, etc. The Office of the Ombudsperson for Children is also the implementing body or co-implementer in drafting various programmes and projects relating to safeguarding and protecting children's rights. The third group of activities relates to gaining insights into methods of providing care to children accommodated outside their families. This group of activities includes field work, in the sense of visiting various educational, social, rehabilitation and penal institutions. The activities of these three groups are carried out continuously throughout the year.

The fourth group includes activities aimed at promoting children's rights, whether in the sense of commemorating special events (e.g. The Week of the Child, International Day of Children's Books, etc.), creating web pages, co-operating with the media or publishing appropriate material, handbooks and flyers, or organising expert debates on the topic of children's rights. Within this type of activity, direct contact and meetings with children in different environments are vital. These activities

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<sup>6</sup> 2003 was not included, since this was the year the Office was set up and began its public life, therefore the number of individual cases was very small.

take place, on the whole, within limited periods of time. The fifth group of activities includes inter-departmental co-operation between ministries, bodies of public government, local communities, NGOs, state agencies and educational organisations. The sixth group of activities includes international co-operation within European and global networks, foundations and organisations dealing with children's rights. These activities are carried out on a continuous basis.

All the activities planned in the programme of work fall directly within the scope of work of the Office of the Ombudsperson for Children, as described in the Ombudsperson for Children Act (Articles 6 to 18). Amendments to the programme can be seen in the extension of the spectrum of activities within each group in the period observed, and the increasing tendency to make them specific. This trend in programme planning has led to a higher profile and greater transparency in the operations of the Office. A comparison of the programme plan and reports on its implementation show that planned activities have been carried out to a very high level (99%). Communication with members of the self-evaluation team revealed that, in reacting to immediate events, the Office has often taken up additional issues not foreseen in the programme, so that on the whole, the planned range of activities was significantly exceeded. In conclusion, we can state that the Office of the Ombudsperson for Children's process of planning activities is to a high degree harmonised with the needs identified and is realistically implemented.

During our evaluation of the work of the Office, we read all the reports for the period 2004 to 2007. The way in which the reports are structured is compatible with the annual programme of work of the Office. A comparison of the contents reveals that the range of the Office's activities expands from year to year, as does the scope of its operations. To illustrate this, we will mention the following example, related to activities monitoring violations of individual rights. In Table 2 it is clear that there is exponential growth in the number of cases worked on each year. After the first year, in which the Office was still in the phase of being set up, in 2004 the number of cases received each year rises swiftly. Between 2004 and 2006 the number of new cases received is significant, while in 2007 it doubles. This rapid rise in the number of cases can be attributed to several causes, of which we consider the most important to be increased social awareness of violations of children's rights and greater success in informing the public of the Office of the Ombudsperson for Children's activities.

Year	2003.	2004.	2005.	2006.	2007.	Ukupno
No. of cases received	52	479	416	405	847	2199

Table 2 – Number of newly received cases between 2003 and 2007 (2007 Report)

In Table 3 the structure of the cases according to type of children's rights and the total number of cases dealt in the first and the final year of the evaluation is shown. In both the years observed, personal rights are best represented, and the greatest relative rise in the number of cases is noted in the areas of educational and cultural rights, followed by personal and social/economic rights.

The particular value of these exhaustive reports is that their conclusions give a succinct, critical review of the state of exercising children's rights, in relation to individual categories of rights. Again and again, weak points are identified in the social welfare system, in health, education and the justice

system. Attention is also drawn to insufficient links between government departments, insufficient use of expert knowledge, and the lack of a multidisciplinary approach (see for example the 2007 Report). Some positive examples of co-operation are cited (with the Ministry of the Interior, the Croatian Bar Association, and parliamentary working bodies), which has led to significant achievements in terms of adopting legal regulations. In parallel with these positive steps forward in some areas of realising children's rights within state institutions, it is clear from the reports that there is a noticeable rise in the number of individual cases at two points in time, i.e. in 2004 and 2007. On the one hand, this points to the fact that, after the Office was set up, it gained a public profile and, by periodically introducing significant changes within its work, succeeded in informing the public better on means of safeguarding children's rights and on the accessibility of the Office of the Ombudsperson for Children to every citizen, but on the other hand, it also had an effect on the open expression of public dissatisfaction with the institutions within the system responsible for implementing preventive and protective measures.

TYPE OF RIGHT	NO. OF CASES IN 2004	NO. OF CASES IN 2007
Personal rights	363	800
Children's rights as members of the social community	-	16
Educational rights	43	142
Health rights	10	29
Social/economic rights	39	101
Cultural rights	2	16
Rights to judicial protection	25	44
Other rights	42	46
<b>TOTAL</b>	<b>524</b>	<b>1194</b>

Table 3 – Comparison of the number of cases dealt with according to type of right (including cases carried over from the previous year)

### **Efficiency analysis at the level of individual cases**

As we have said, the Office of the Ombudsperson for Children is responsible in Croatia for dealing with matters involving children's rights at the individual level. In order to facilitate transparency in this area, the evaluators suggested creating a concise overview of large cases, by using the Protocol on describing individual case as a set form of case presentation for the needs of the evaluation. In this way, we attempted to standardise our approach to the analysis in an economical manner. The aim of

this approach was to reach answers at the individual level on whether measures taken and the inclusion of certain institutions had led to expected outcomes.

In the following tables the main results of the analysis of the Protocol are shown, in relation to type of problem, person, institution reporting the problem and the total number and type of institutions involved, the number of official responses from the Office, the child's best interest, media coverage and an assessment of the success of the proceedings.

As is clear from Table 4, at the individual level, the prevailing problems are those relating to inadequate nurture or education and problems linked to parental custody, while problems relating to sexual abuse and adoption are least represented in the selected sample of individual cases.

TYPE OF PROBLEM	No. of cases
Problems relating to inadequate nurture and education	16
Various problems relating to parental custody	11
Safety issues and exposure to inappropriate information	9
Protection of privacy and respect of dignity	8
Peer violence	7
Exposure to domestic violence	7
Problems relating to protecting children accommodated outside their families	7
Economic exploitation and trafficking in children	5
Threats to life and health	4
Sexual abuse of children	3
Problems relating to adoption	2

Table 4 – Types of children's problems to which individual cases related

In Appendix 2 there is a list of the specific declarations made concerning the children's best interests in the individual cases observed. An examination of the description of the cases and the way in which the best interests of the children were identified points to the fact that the Office's expert staff apply the principle of individualisation in assessing children's best interests and that in most cases, express them very specifically. Recognising a child's best interests is crucial when proposing recommendations or measures from the Office of the Ombudsperson for Children. The way in which children's best interests are expressed demonstrates the increasing focus of the Office on the psycho-social aspects of children's welfare, rather than on the physical or material aspects of children's lives and health, which are of course directly linked to the nature of the problems encountered.

The most frequent initiators of action on the part of the Office of the Ombudsperson for Children in individual cases are mothers, or both parents (Table 5). In this sample, children themselves relatively rarely took the initiative of reporting their problems to the Ombudsperson for Children.

Table 6 shows the institutions the Office of the Ombudsperson for Children co-operated with in resolving individual cases. From this Table it can be concluded that, in resolving individual cases, the Office involved on average three institutions, not counting individuals (family members, children or others) who were also inherent to the case. Most frequently, the Office involved social welfare centres

in resolving cases, and to about the same extent the police, courts and legal profession. In the sample observed, the Ministry of Science, Education and Sports played an important role, as did individual educational institutions. These data indicate how common problems of children exercising their rights are, given the competence of these institutions.

PERSON OR INSTITUTION REPORTING PROBLEM	No. of cases
Mother of child/children	16
Parents of child/children	11
Office's own initiative	9
Other person (neighbours, anonymous ...)	8
Father of child/children	7
Institutions – social or educational	7
Media information	7
Foster parent or adoptive parent	6
Child/children	5
Several concurrent sources	5
Associations	3

Table 5 – Persons or institutions reporting problems

INSTITUTIONS INVOLVED IN RESOLVING INDIVIDUAL CASES	Frequency of inclusion:
Social welfare centres	43
Ministry of the Interior/police	25
Court/legal profession	25
School/nursery school	23
Ministry of Science, Education and Sports	20
Town/County	12
Medical institution	12
Ministry of Health and Social Welfare	11
Other ministries (Justice, Family, Culture, Finance, Economy)	11
NGOs	5
Children's homes	4
Other	30*

Table 6 – Institutions involved in resolving individual cases

\* Institutes mentioned three or less times: soup kitchen, Office of the State Administration, Office for Human Rights, Ombudsperson for Gender Equality, Government, Agency for the Protection of Personal Data, Croatian Parliament, Medical Association, Health Insurance, Red Cross, Jadranska pivovara (Jadranska Brewery), USKOK, a bank, an insurance agency, UNICEF, Concert Management, Faculty of Philosophy, Croatian Journalists' Association, chimneysweepers' co-operative, City Gas Company, Croatian Society for School and University Medicine.

From Table 7 it is evident that usually the Office resorted to intervention on several occasions in resolving individual cases. Closer analysis shows that in only four cases the Office intervened once, and in all others, several times, with around 40% of cases requiring more than 6 interventions.

NO. OF OFFICIAL RESPONSES/INTERVENTIONS BY THE OFFICE	NO. OF CASES
5 or less	43
6 - 10	20
11 - 15	8
16 - 20	4
More than 20 (31 and 44)	2

Table 7 – Number of official responses by the Office of the Ombudsperson for Children

An analysis of media coverage relating to the cases observed shows that it was present in 40% of cases. According to the assessment of Office staff, only a quarter of the media coverage was positive. The rest was assessed as leading to negative or even harmful effects.

In the final part of the Protocol on individual cases, an assessment is required of the success of actions taken, measured in terms of client satisfaction and the satisfaction of the Office with measures undertaken by the competent institutions. Along with this, the degree to which cautions, proposals or recommendations are accepted is also assessed, and an attempt is made to identify factors which may have aggravated or mitigated steps taken in the best interests of the child in individual cases.

An analysis of answers shows that data concerning client satisfaction was not available in 57% of cases. In those cases for which data was available, it took the form of written or oral thanks, in 37% of cases, while in 6% of cases dissatisfaction was expressed.

An analysis of the answers given by the Office's staff regarding their own satisfaction with the Office's actions and the results achieved shows that in 39% of cases complete satisfaction was achieved, while in 35% of cases satisfaction was only partial. In some cases, dissatisfaction with the co-operation shown by social welfare centres, schools and competent ministries was in particular expressed. Dissatisfaction with the outcome of the Office's actions was expressed in 26% of case, and in some of these the particular dissatisfaction of the Office was expressed with regard to current legal solutions, the fact that recommendations were ignored, or with lapses on the part of social welfare centres and the reactions of the public prosecutor's office and the judiciary.

In terms of the assessment of factors which might facilitate the proceedings undertaken by the Office in the best interests of children, the following were most frequently mentioned: prompt, responsible action on the part of competent institutions, better legal solutions, better training for experts, better use of expert knowledge, better means of informing the public on children's rights, more professional work with parents, raising the responsibility level of journalists in protecting children's rights, shortening court proceedings, etc.

As a means of measuring the efficiency of the Office, self-evaluation of the level of acceptance of individual recommendations and opinions provided by the Office was used. The results of this analysis show that the Office staff considered recommendations to have been accepted in full in 48% of cases of the sample observed. Recommendations were partially or reluctantly accepted in 18% of cases, while in 15% of cases they were accepted in form only, since no action was taken in line with these recommendations.

The variety of problems faced by the Office indicates the need for teamwork and an interdisciplinary approach. Recognition of this need is reflected in the professional profile of the Office staff, and also in the readiness to co-operate with a great number of individual colleagues and institutions. The question of how best to employ resources is raised in those situations in which the Office is compelled to intervene more than six times in a single case. Given this state of affairs, questions must also be raised concerning the efficiency of the competent services and institutions.

In spite of the fact that the Office is rather overburdened with complicated, lengthy individual cases, 56 out of 77 were considered closed and filed in the observation period. Since sixteen cases in the sample were opened in 2008, this statistic illustrates the promptness of the Office in dealing with individual cases.

In the part of the self-evaluation report relating to the assessment of outcomes, we can conclude that recommendations and opinions were on the whole fully or partially accepted, and that action based on them was taken. Feedback on client satisfaction with services was not gathered systematically, but mostly took the form of spontaneous expressions of thanks to Office staff. The great majority of those who approached the Office during or following their cases did so in order to express thanks for the help rendered. From the perspective of Office staff, satisfaction with the results achieved was expressed in 74% of cases.

#### ***Analysis of the efficiency of the Office in terms of contributions made to furthering legislation***

The Ombudsperson for Children's most visible pro-active role is in the area of initiatives concerning amendments to laws and legal acts directed towards protecting the best interests of children. From the data prepared by the Office for this evaluation report (Appendix 3) it is evident that in the period between 2003 and mid-2008 the Office was involved in the adoption of 26 legal regulations, of which 22 were laws. In connection with this, the Office generated 86 specific proposals. Of these, 24 were fully and one was partially accepted. Twenty-four proposals are still in procedure<sup>7</sup>, while 39 were rejected. Given that indicators of the general level of acceptance of proposals made by others are not available, it is difficult to estimate whether or not this level of acceptance is satisfactory, statistically speaking. Viewed from the perspective of diligence, these data are evidence of determination and deep involvement in fighting for and representing children's best interests in this area.

#### ***Analysis of the efficiency of the Office in terms of media presentation***

The credibility and profile of the Office of the Ombudsperson for Children depends to a great extent on how the Office is presented in the media. The media has a dual function: to inform objectively on the activities, initiatives and appeals made by the Office, on the one hand, and on the other, to convey the reactions and commentaries of the Ombudsperson and her colleagues concerning promoting and protecting children's rights.

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<sup>7</sup> In this group there are 6 proposals on the Ordinance on the psycho-physical state of children, which has not yet been debated.

Type of article Mood	Notes on the activities initiatives/ appeals of the Office	Case analysis/ investigative reporting	Interviews with the Ombudsperson or colleagues	Information/ commentaries made by the Ombudsperson or colleagues	Other	Total
Positive	43	3	9	45	1	101
Neutral	9	-	-	6	2	17
Negative	7	-	-	2	1	10
Total	59	3	9	53	4	128

Table 8 – Type of newspaper articles given the attitudes expressed towards Office staff

From Table 8 it is evident that, in the sample of newspaper articles observed, most concerned information on the activities of the Office, or were texts in which the Ombudsperson or her colleagues commented on individual cases of violations of children's rights. In terms of the mood of such articles, the attitude of the writer towards the activities of the Office could be judged as negative, neutral or positive, and out of 128 articles analysed, 101 were deemed positive.

The Internet page of the Office of the Ombudsperson for Children ([www.dijete.hr](http://www.dijete.hr)) has also made a significant contribution to credibility and profile raising. This is a modern, dynamic tool used by the Office to inform the Croatian public on a daily basis of its activities, and of the state of children's rights. As well as content aimed at adults (documents, information, FAQs), there is also information on meetings between the Ombudsperson and children and some content aimed at children.

## REMARKS ABOUT THE EVALUATION PROCEDURE AND ACTIVITIES OF THE OFFICE

All the information we have presented demonstrates that the Office of the Ombudsperson for Children was extremely active and efficient during the observation period, in carrying out the basic task defined in the 2003 Ombudsperson for Children Act. During these five years, the Office has assumed the position of a central state institution which promotes, protects and represents the best interests of children equally forcefully at the general and individual levels.

All the elements of this report indicate that the Republic of Croatia's Office of the Ombudsperson for Children adheres to the highest professional principles and standards laid down for Ombudspersons (e.g. ICANN, 2007). Prominence should be given to the principle of non-compromise in representing the best interests of children and promoting their rights. In addition, by analysing the reports and other material produced by the Office, it can be seen clearly that the Office acts in accordance with recognised international principles for the actions of Ombudspersons, including:

- The principle of advocating diversity – recognised in a willingness to tackle various types of problems, regardless of the target persons or groups;
- The principle of excellence – recognised by the Ombudsperson representing a social



model for promoting justice and fairness, equality, transparency in work and innovativeness in approach, and refusing to cover up problems relating to violations of children's rights;

- The principle of professionalism – the Ombudsperson and her colleagues are people with a high degree of professional competence, willing to accept vocational training and who are guided in their work by the highest professional and humanely ethical values;
- The principle of confidentiality – in its work, in initiating action, in presenting itself to the public and in evaluating its achievements, the Office of the Ombudsperson for Children respects the confidentiality of the information at its disposal and adheres strictly to the Decision on Confidentiality;
- The principle of independence – according to which the Ombudsperson and her staff resist influences exerted by various levels of power and social control.

The process of creating this evaluation report has also demonstrated the need to improve some segments of documenting the Office's work, and it would be advisable for this to be done in the coming period. This relates primarily to the way in which activities are recorded and monitored. It is also important to define quality indicators and to develop an instrument for measuring them in the process of self-assessment and external assessment, as bases for improving the work of the Office. In connection with this, we would like to point out the need for further elaboration of the methods by which data are collected, linked to indicators of final outcomes (e.g. the system of applying follow-up procedures). As an example, one such indicator might be consistence, or the appropriateness of action on the part of individual institutions, following recommendations from the Office. It would also be useful to devote attention to process or direct indicators, such as evaluating satisfaction with educational activities, or assessing the profile and value of promotional activities and messages. It should be stressed that some of these proposals were already accepted and applied while this report was being prepared. In addition, we recommend that the Office initiates systematic research and monitoring of the state of affairs in the area of violations of children's rights, using the professional support of external experts, as a basis for forming strategic development plans, particularly those relating to the launching of wider public activities for protecting children's best interests.

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## APPENDIX 1

### PROTOCOL ON DESCRIBING INDIVIDUAL CASES

#### 1. GENERAL INFORMATION

- a) File number and name \_\_\_\_\_
- b) Type of child's/children's problem in focus \_\_\_\_\_
- c) Who (role) reported the problem to the Office \_\_\_\_\_
- d) Date file opened \_\_\_\_\_
- e) Number of official reactions/interventions by the Office \_\_\_\_\_
- f) Was file archived? Date – Yes/No \_\_\_\_\_

#### 2. SHORT DESCRIPTION OF CASE AND COURSE OF PROCEEDINGS

(Summarise the case on one page maximum – at the end do not forget to assess and state what the best interests of the child are in the case in question.)

#### 3. INSTITUTIONS/SERVICES/INDIVIDUALS INVOLVED IN RESOLVING THE CASE

- a) Institutions/individuals involved before the Office was contacted
- b) Institutions/individual involved on the initiative/request of the Office

#### 4. CAUTIONS/PROPOSALS/ RECOMMENDATIONS

- a) Short description of final cautions/proposals/recommendations
- b) Resolutions in progress
  - State the level to which the case has been resolved
  - Assessment of measures which will be needed in the future

#### 5. MEDIA COVERAGE Yes/No

Assessment of success (in terms of the child's interests)

#### 6. ASSESSMENT OF SUCCESS

- a) Is there any information on client satisfaction and what does it indicate?
- b) Assessment of the Office's satisfaction with interventions undertaken and their effects
- c) Assessment of mitigating and aggravating factors in protecting and representing the child's best interests
- d) Assessment of the level of acceptance of cautions/proposals/recommendations

#### 7. MISCELLANEOUS IMPORTANT INFORMATION

## *APPENDIX 2*

### **List**

#### **The best interests of children:**

- Changing the form of education in order to protect a child
- Providing better combinations of choice of aid for children
- Remaining in a stable foster home
- Remaining in the parental home
- Being included in regular pre-school education with adequate support
- Fostering co-operation between schools and parents
- Providing psychological help for children
- Unquestioned parental care
- Finding appropriate means of exercising educational rights
- Hard to define given circumstances (length of procedure, inconsistency in decision-making)
- Allowing access to free meals services (soup kitchen) without exercising discrimination
- Protecting children from verbal peer violence
- Creating preconditions for children's access to pre-school education
- Raising awareness of the needs of children with special needs
- Providing protection for children in cases of abuse
- Tolerating developmental crises and manifestations of sexual orientation
- Ensuring the right to maintenance is exercised
- Resolving protection procedures promptly
- Ensuring a high level of safety in social welfare institutions
- Speeding up court proceedings in cases of contested divorce
- Improving individual work with children
- Continuing education for parents and peers on the problem of hyperactivity
- Reducing pressure on children to express loyalty
- Reaching agreements on joint custody with expert help
- Reacting to inappropriate behaviour on the part of teachers
- Creating the preconditions for quality educational work
- Facilitating open communication between teachers and children
- Co-operating with expert associates in resolving conflicts between teachers and children
- Guarding the right to privacy without media involvement
- Providing lawyers who are educated and specialised in representing minors
- Implementing legal provisions on not exposing children to dangerous situations
- Ensuring the protection of children's identities in public campaigns
- Ensuring adequate medical treatment for the purpose of re-socialisation
- Allowing children to stay with their mother
- Forbidding meetings/contact with the mother
- Conducting misdemeanour/criminal proceedings for domestic violence
- Offering safety and protection from violent fathers
- Strengthening children through psychotherapeutic treatment
- Strengthening parental competence by means of supervision and monitoring measures

- Treating a child medically in accordance with best practice
- Implementing necessary preventive (medical) measures
- Removing a child from the family and placing it in an institution or foster home
- Safeguarding children from economic exploitation through the purchase of housing units
- Allowing social welfare centres access to bank documents in order to protect children's property
- Ensuring access to the courts in proceedings for safeguarding children's rights
- Implementing protection and appropriate proceedings in cases involving the arrest of minors
- Avoiding every form of discrimination
- Ensuring adequate education for children with developmental problems
- Creating equal rights for adopted and biological children
- Not exploiting children to entertain adults
- Safeguarding children's right to privacy
- Preventing children from being exposed to harmful substances



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# SELF-EVALUATION OF THE OFFICE OF THE OMBUDSPERSON FOR CHILDREN

## INTRODUCTION

The Office of the Ombudsperson for Children of the Republic of Croatia has carried out an internal evaluation of its work from the perspective of the staff. This self-evaluation procedure was motivated by a desire on the part of the Office leadership to acquire a deeper insight into the Offices' activities and opportunities for development.

The goal of the self-evaluation was to further the internal efficiency and effectiveness of the Office.

Eleven members of staff responsible for carrying out all the expert and administrative tasks of the Office took part in the self-evaluation. It was assumed as a starting-point that the staff themselves had the best insight into the organisation of their work, work dynamics and personal workloads, and that they could provide the most useful information for a general evaluation of the work of the Office.

This report is based on a SWOT analysis and gives an overview of the positive aspects of the Office's work, its strengths and weaknesses, opportunities for development, and also the failings and impediments to more efficient work which were perceived.

### What is a SWOT analysis and what purpose does it serve?

A SWOT analysis is a simple, but useful method of assessing the positive and negative forces at work in the operations of an organisation, from the perspective of the relevant actors.

The ability to realistically assess one's own weaknesses, failings and impediments is the first step towards reducing and removing them. Recognising one's creative capacity and personal developmental opportunities can help lead to this. The SWOT analysis proves useful as a procedure which enables an organisation to prepare itself better for more efficient operations. It is often used as the primary phase in drawing up strategic development plans.

The method was developed in the 1960's as part of a Stanford University project led by Albert Humphrey, entitled "States' Fortune 500". Within the project, the TAM – Team Action Model was developed, which demonstrated how a small group of people can achieve big changes.

The name SWOT is formed from the initial letters of Strengths, Weaknesses, Opportunities and Threats. It is a procedure for describing and assessing the strengths, weaknesses, unused

opportunities and external threats to the development of an organisation from the perspective of different actors.

The analysis begins by determining the goal and an assessment of the favourable and unfavourable factors which contribute towards the achievement of that goal.

The ability to recognise and assess one's own strengths and potential, weaknesses and problems, opportunities and potential external threats and impediments can be immensely useful, since it is relatively easy to extract a development plan from the data collected.

This method was considered suitable for the internal evaluation of the Office of the Ombudsperson for Children because of its economy and simplicity in relation to the expected amount of information to be processed.

## GOAL OF THE ANALYSIS

The goal of the analysis was to compile the opinions, attitudes and ideas of the staff of the Office and use them for self-analysis and self-evaluation purposes. These data were also to be used for raising the level of efficiency of realising the Office's mission.

## DESCRIPTION OF PARTICIPANTS AND PROCEDURES

The analysis was carried out during May 2008. Eleven members of the Office's staff (five lawyers, two psychologists, two educationalists, one social worker and one special needs teacher) sent their opinions on standardised forms, by email, directly to the analysis leader. Virtually all the members of the multidisciplinary team were included, which validated the analysis.

The anonymity of the participants and the contents of their answers were kept completely confidential.

## STANDARDISED SWOT ANALYSIS FORM

The evaluation categories shown in the table below were used to describe the work of the Office. The task given to the participants was to enter their answers to the questions asked in the four fields of the table.

STRENGTHS	WEAKNESSES
What are we doing exceptionally well? What are our strengths, our advantages? What valuable resources do we have at our disposal? How do our clients and the public see our strengths? What should be encouraged to develop further?	What are our faults, failings and weaknesses? What should be removed or changed? What could we be doing better? Are we using our position in the best way? Are we as successful as we might be? What are we criticised for or what are grounds for complaints? What are our vulnerable points?
OPPORTUNITIES	THREATS
What opportunities do we recognise, but are not taking up? What is our unused potential? Are there social trends which we could use to our advantage? What could we be doing that we are not doing?	What real problems are we facing? Which external factors threaten, block, disable or hinder our activities? Are there, or do we think there might be any significant changes or trends about to occur in our country or in the world which might threaten us?



## SURVEY OF KEY RESULTS

### Strengths and advantages of the Office

In the first category the participants described the positive side of the Office's operations. The existing positive attributes were described which enable pro-active, efficient and successful operations. The participants answered the following questions: *What are we doing exceptionally well? What are our strengths, our advantages? What valuable resources do we have at our disposal? How do our clients and the public see our strengths? What should be encouraged to develop further?*

#### Position in society, opportunities to exert influence, initiative taking

The staff noted many positive aspects of the Office's work. The greatest advantage was felt to be the position of the Office in society. They thought that the independence of the institution and its power to bring influence to bear for positive changes put the Office in a highly favourable position.

Neutrality, opportunities to offer criticism, initiating things which are unlikely to get moving spontaneously, opportunities to speak in public on the problems of children in society, problems which about which nothing or too little is said.

This position is facilitated by a clear legal framework and the authority granted by the Ombudsperson for Children Act. The staff rate the opportunity to openly and publicly issue warnings against failures on the part of institutions which deal with, or should deal with, protecting children's rights, as very important.

This position is facilitated by a clear legal framework and the authority conferred by the Children's Ombudsman Act. The staff think an important opportunity is the ability to issue warnings concerning failings on the part of institutions which handle, or should handle, the protection of children's rights. The fact that the Office has a superior position in regard to other institutions and services, has the authority to request reports from all bodies, the right to access to information and legal documents, the means of contacting them directly at any time, and the means of obtaining advice and instructions on how to proceed from scholars and professionals, all contribute to the free operation of the Office.

We are good in linking different sectors, co-ordinating institutions, moderating interdepartmental activities, in taking initiatives for furthering certain areas of protection of children's rights, and in producing proposals for changes to legislation.

The staff are satisfied with general initiatives undertaken by the Office, by which experts in the field are encouraged to be more energetic in protecting children's rights.

*"By making suggestions and recommendations we have the opportunity of participating actively and influentially in the decision-making of the legislative branch, thus protecting the rights of great numbers of children."*

The staff think that the Office's co-operation with associations, expert services, educational institutions and all the opportunities to promote children's rights and interests by educational means, focussing on raising the awareness of all who contact children concerning the right way to behave with, educate and raise children while recognising and understanding the needs they express, are

particularly important.

*"Our clients and the general public think that the institution uses the power of its authority in many ways to protect, monitor and promote children's rights and interests, in situations in which individuals feel or indeed are powerless within the mechanisms of other systems (the police, social welfare centres, etc.)."*

### **Positive image of the Office in the public eye**

The generally positive image of the Ombudsman for Children in the public eye means that the activities of the Office are well received by the public. As some clients have said themselves, *"The Office is extremely accessible, in contrast to most state institutions."* The significance and purpose of the Office's work is recognised by the public and expert services. This was achieved by media presence, both electronically and in the press, and by visiting institutions. The work of the Office is constantly reported on through the web site.

### **Work experience, knowledge, expertise, professionalism, motivation**

The greatest advantage the Office has is considered to be the expert profile of its staff, who use their knowledge, competence and creativity to deal with tasks and fulfil goals.

The working atmosphere in the Office is seen as very positive, as most of the staff are hard-working and dedicated to their work. The staff find purpose in what they are doing, are highly motivated and prepared to work hard.

The most valuable resource is multidisciplinary team work, which guarantees credibility and efficiency.

A high level of professionalism and expertise in approach.  
A strong, close team.  
A particularly valuable resource is our multidisciplinary team, which means we can approach problems from different angles.  
Motivation, complete dedication to improving the status of children's rights in society.

### **Sensitivity, ability to react, timely reaction**

Another advantage the Office staff see is the ability to make correct judgment calls by noting what is important and anticipating possible problems. This kind of sensitivity to problems facilitates timely reactions to events in which children's rights are threatened. The most frequent forms of reaction are public appearances, concise, well-founded written recommendations, suggestions or opinions, which express the Office's stance clearly and unambiguously.

We are accessible to the public and clients because we contact them directly and react promptly. We are not detached from practice.

It is important to highlight good working relationships and the fact that the staff focus on their work, not on themselves. They are able to work together intensively and contact each other directly, facilitating agreement, delegation and efficiency. The staff emphasise their tolerance and respect for other professions, their readiness to share information and knowledge, offer assistance and behave in a positive social way. They are open to a wide spectrum of issues and areas concerning children and are ready to approach problems analytically.

## Weaknesses and failings noted

In the second part of the evaluation the participants were asked to describe the weaknesses and failings of the Office's operations. They also mentioned existing unfavourable attributes which block or reduce efficiency and success. They responded to the following questions: *What are our faults, failings and weaknesses? What should be removed or changed? What could we be doing better? Are we using our position in the best way? Are we as successful as we might be? What are we criticised for or what are grounds for complaints? What are our vulnerable points?*

### Relationships with other institutions, taking over tasks which belong to others

One of the greatest problems in the Office's operations is seen in "turning" the Office into a legal advice centre, a social welfare centre or an inspection service. These kinds of tendencies are becoming more common on a daily basis and the staff find them exhausting.

*"We are taking over the work of administrative bodies and other institutions, which takes up time we need to work on strategies and protecting children's rights in general."*

There is a growing number of cases relating to reports of individual violations of children's rights, in which no violations have actually taken place, but the person reporting is dissatisfied with the work of the competent institution. A lot of time goes on these cases without producing any beneficial results for the children.

I think that in the segment of our work on individual cases we need to make changes and concentrate more on finding better ways of protecting children's rights, and less on taking over the work of other competent institutions.

The Office has become a place where legal advice is sought and general advice is sought over the telephone, and a great deal of our working hours are spent on this.

*"Instead of launching general initiatives and investing the resources at our disposal in solving the problems which arise from these individual reports systematically, a great deal of our involvement is with the individual cases themselves, in which the same topics recur (slow court proceedings, etc.)."*

The staff feel overburdened by individual cases which take up their valuable time, and which should be handled by other institutions, which are actually responsible for this.

### Unreal, overambitious expectations

Some of the staff think the Office sets itself too high standards: *"We can do anything, every call for help should be answered, and all issues dealt with at the same level of intensity."*

They think these ambitions are set too high and see them as a threat to professionalism in their work.

### Insufficient promotion of regional offices

The Office of the Ombudsperson for Children has regional offices in Split, Rijeka and Osijek, which could have a more significant role and be recognised in the public eye. It is thought that the flow of

information to the branch offices is insufficient and that the staff should improve communication with the staff of regional offices.

### **Staff recommendations**

- *If we want to continue functioning as a "call centre" or "helpline" we will have to reorganise the whole institution, and have a duty telephone and several employees doing it (mostly lawyers, who would be trained for this kind of work), while the others could deal with general policy issues relating to various rights, specific, individual cases, legal proposals and opinions, co-operation and mediation between institutions and finally, but not least important, be in contact with children, make themselves visible and recognisable to children by visiting schools and institutions and by all other possible means (campaigns, media...).*
- *We should try to acquire extra training in areas we tackle most frequently, in which children's rights are violated most frequently, in order to get a better picture of the situation.*
- *Harmonise the organisation of work with the volume of work and number of employees.*
- *Assign each advisor to a narrower area of work, because it is impossible for all to efficiently monitor all areas*
- *I think systematic involvement in general initiatives would lead to much better results in terms of individual cases.*

## **Opportunities for Improving the Office's Role**

In the third evaluation category, the participants described developmental opportunities for Office's operations. Procedures that could increase efficiency and success were described. The participants answered the following questions: *What opportunities do we recognise, but are not taking up? What is our unused potential? Are there social trends which we could use to our advantage? What could we be doing that we are not doing?*

The staff showed a great capacity for creating valuable ideas in this part of self-evaluation in order to improve the Office's role and efficiency.

### **Increasing public influence – using the media**

The staff think there should be further public discussion on children's rights and that the public should be acquainted with all forms of violations of children's rights. It is important to find the right level in making society aware of children's rights and human rights in general, in order to avoid simply paying lip service to the protection of human rights.

*"People do not understand enough the essence of the notion of protecting children's rights, because, among other reasons, they are most frequently discussed in abstract terms and out of a "here and now" context We should make this context more immediate, more visible, so that we do not end up*

*sounding like teachers lecturing or writing on children's rights. I'm not saying lectures are bad, but our approach must be different from theirs."*

It is thought that media space could be better used, that the public must be kept informed more frequently and systematically. The area of educational media both for children and adults in particular must be better used.

Be more active in contact with the media in order to "use" them, rather than being used, to obtain comments on (most often) negative social phenomena. I think we could often act pre-emptively, for we already have a number of insights, and I always have the impression we react too late.

*"We should use the powers in Article 11, paragraphs 3 and 4 of the Ombudsperson for Children Act more often, and inform and acquaint the public more often on the realisation and protection of children's rights and interests, especially with regard to harmful influences on these rights and interests, for ordinary citizens do not read our annual reports to the Croatian Parliament."*

### **Publishing, writing expert papers, participation in conferences**

Another underused opportunity perceived is the opportunity of turning expert insights into expert and popular texts, intended for different professions working with children, or with child protection competence. There is large untapped potential in the Office for writing expert papers or giving lectures at conferences, and thus for direct work in promoting children's rights and making experts aware of the protection of children's rights. More frequent participation in international conferences and international exchanges of experience would also contribute to our professional operations.

In this sense, the Office would emancipate its work more vigorously, by organising conferences and expert debates, in which topics which are issues in protecting children's rights and interests would be covered.

### **Monitoring the legislative procedure, influence on politicians and adopting laws**

The Office should be engaged more in the legislative procedure. More vigorous engagement is impossible to achieve as yet, on account of the workload of individual cases. Monitoring the work of the Government and Parliament, and timely reactions, would lead to the better quality, better preparation and better elaboration of drafts in legislative procedure, and also provide opportunities for timely influence and lobbying, in order for drafts written by the Office to be adopted. The current situation shows that the Office is respected as an authority, and the opinions of the Office are accepted, but such opinions are often not incorporated due to last-minute reactions.

Our greatest advantage is that we can truly act as the shortest route from children to the legislature and the executive, and truly fight at the general level to advance their status in society. Experience has shown we always gain a lot of valuable information and initiatives on how to get things going and changed in discussions with children.

More insistent lobbying among decision makers would be good (the Government, the Parliament, ministers).

### **Better use of existing status, positive position in society**

It is generally considered that the reputation of the Office, its present energy, enthusiasm and knowledge, should be used further, as well as the willingness of the competent bodies in co-operating to resolve general issues, which would significantly contribute to progress in protecting children's rights. Individual complaints could be a source of information with regard to the state of the protection of children's rights in individual areas.

The trend of general national declarative commitment to the promotion of children's rights and welfare and media interest in the operation of the Office could be exploited more efficiently.

We should be more vociferous in demanding increased action by the state in protecting children's rights and more efficient legal procedures for those committing violations of children's rights.

### **Prevention, working with schools and children**

One of the more clearly expressed staff viewpoints is that more communication with children is needed. Children should be approached as a target group, for the purposes of acquainting them with their rights and the opportunities and means of realising them. We should work more on prevention, by providing children with better information on their rights. Therefore, co-operation with primary school staff in acquainting children with their rights should be increased over a period of time, depending on the number of staff.

We have the opportunity and the commitment of contacting children and promoting rights among children and other experts working on the protection of children's rights, but in my estimation it is underused.

### **Exposing the negative parent role**

*"We could use the opportunity of being the protector of children's rights more clearly, in situations in which parents, who obviously try to solve their partner relationships under the guise of struggling for the rights of their children, actually become the ones who abuse their children".*

## **Threats**

In the fourth evaluation category the participants described external threats or obstacles to working more efficiently. They described these obstacles by answering the following questions: *What real problems are we facing? Which external factors threaten, block, disable or hinder our activities? Are there, or do we think there might be any significant changes or trends about to occur in our country or in the world which might threaten us?*

This is the most extensive part of the self-evaluation. In this part the employees describe the difficulties they are facing in their everyday work, which are not caused by "internal" factors. At the same time, they provide a sociological overview of the situation in society, which jeopardises children's right to a healthy life in a supportive environment for their optimal growth and development.

### **Declarative vs. actual dedication to safeguarding children's rights**

One of the major difficulties is the perceived tendency towards declarative dedication to safeguarding children's rights, but without genuine interest in investing additional funds in this area.

The inefficiency of competent bodies, the bureaucratic approach to protecting children's rights and disrespect of the Office's recommendations and opinions in connection with regulating the area of safeguarding children's rights in general are major problems. Support is asserted in principle, but in practice recommendations are not implemented nor are proposals for legislative changes sufficiently taken into consideration. In addition, no explanation is given to the Office as to why its proposals have not been accepted.

Another problem is an inadequate number of experts in the institutions dealing with children's rights. An insufficient level of training and the lack of awareness of experts and the general public are noticeable. The prevailing approach to bringing up children is the conservative approach, which is in conflict with the accepted principles concerning children's rights.

The situation is also aggravated by difficult economic conditions with which the majority of Croatian citizens are faced.

*"The European orientation and acceptance of EU standards can enhance the significance of the Office, but this can also narrow its scope of work as a result of the expected strengthening of the legal system and better social and economic conditions."*

### **Misperceptions and lack of information among the public, and unrealistic expectations of clients**

Public misperceptions considerably affect the work and atmosphere in the Office. For instance, the public expects the Office to act as an arbiter in all situations concerning children. Even the media often expect the Ombudsperson to assume the role of moral arbiter, or interpret her views along these lines; citizens believe that the Ombudsperson should be a "censor", not only in relation to the media, but also in wider terms, i.e. that she should "issue prohibitions" or state what is "permitted" in connection with children.

As a result of public misperception of the Ombudsperson's omnipotence, the Office is regarded as an institution responsible for solving all problems, even those which are not directly related to the protection of children's rights (illegal construction, problems in relations among neighbours, property relations ...) but which may have some connection with the protection of children's rights because children are, in one way or another, always affected by problems with which their parents are confronted.

Persons who turn to us for help and also the general public do not have a clear picture of the powers conferred on the Office; they expect us to resolve their problems or at least to exert "pressure" on the competent institutions, and when we inform them about what we are allowed to do, they are often disappointed or verbally aggressive.

I think that the biggest sore point is the public perception of the Office, that is, citizens mostly see us as a law firm or perceive the Ombudsperson as an omnipotent person who is capable of resolving their problem by "taking a shortcut", even though there are specific procedures which must be observed.

The staff find it difficult to cope with the expectation that they must always be prepared to solve

problems. Non-compliance with such requests is frequently a source of dissatisfaction ("What's your purpose anyway?") ... The clients' expectations that the Office will take over the handling of their case from the competent body eventually make them disappointed with the institution of the Ombudsperson for Children.

Misperceptions about the Office's powers sometimes result in aggressive behaviour of individuals, which the employees find very difficult to cope with.

*"Clients are dissatisfied because they are not familiar with what our work and the work of our institution is actually about; they do not know what our purpose is; they do not know that we are not a parallel system or a parallel body which will decide on their rights, so they become disappointed when we are unable to protect children's rights which are put at risk by the inaction of the bodies referred to in Article 11, paragraphs 3 and 4 of the Act, especially regarding general initiatives."*

Confining the Office merely to a "call centre" or to counselling clients by phone (responding to their calls and providing information that should be given by the competent institutions, which are not as accessible and available as our Office), takes almost one half of our working time, so we are unable to efficiently offer protection in cases where this protection is really needed.

Our vulnerability is precisely due to the unclear role of the Ombudsperson for Children and unrealistic expectations of the clients approaching us.

### **Lack of understanding of the Ombudsperson's role**

*"The danger lies in the fact that citizens approaching the Ombudsperson expect her to solve their problems and believe that it is her duty to solve these problems (because "isn't that why she exists after all?"), bypassing the regular procedures through institutions in charge of child protection. Unfortunately, there is another danger which lies in the fact that these institutions themselves refer people to the Ombudsperson's Office as the place which will solve their problems, as if they are not aware that this was their job."*

*"Due to the lack of understanding of the Ombudsperson's role, unrealistic expectations and even the idealisation of her powers, some other important bodies and organisations (for example, the Council for Children, NGOs, international organisations for child protection), which should be active in this area and maintain a higher profile, remain invisible in the public eye. Some of them even use this situation as a screen and an excuse for inaction".*

### **Poor work of the competent bodies**

When it comes to individual protection of children's rights from an expert point of view, a major delaying factor is definitely the failure by competent bodies to respond to our correspondence and to act on our recommendations.

*"Due to the failure by competent bodies to respond to submissions, we are unable to respond to the party's requests, so we are mostly criticised for being slow in handling individual cases."*

The Office's staff members have noticed that their recommendations are frequently not implemented, even when they are very simple and incontestably useful.



In addition, the relevant subjects often fail to act pursuant to Article 11 of the Act (providing for an obligation of state administration bodies, local and regional self-government units and legal and natural persons to co-operate), thus obstructing the Office's further activities and efforts to protect the rights and interests of children.

### **Inadequate awareness of the police, judiciary, schools**

It is still noticeable that official persons (the police, courts, schools) are inadequately aware of the acceptable and proper treatment of children and the need to take into consideration children's views and needs when carrying out their regular duties.

### **Being insufficiently equipped, inadequate premises**

Since optimal working conditions (sufficient staff levels and adequate premises) are still not present in the Office, there is a risk in terms of maintaining quality and credibility in the Office's work.

The lack of administrative and technical staff, especially in regional offices, makes the expert work more difficult and slows it down.

The need has been identified for more frequent visits to institutions where children are placed, but due to the lack of staff and limited financial resources, it is not possible to do this.

### **Professional burnout**

The great enthusiasm of staff members and their desire to cover the widest possible area of children's rights, coupled with an increase in the number of individual cases and requests, which require maximum involvement in each particular case and result in higher job-related stress, raise the probability of professional burnout and troubled relationships within the team.

## **CONCLUSION**

The participants in the analysis – the staff members of the Office of the Ombudsman for Children – approached this task very scrupulously and with a great deal of involvement. They expressed an unusually great number of views, opinions and ideas. The staff obviously identify themselves with the Office, and their enthusiasm is noticeable.

Their production of ideas and manner of thinking reveal that this is a group of highly educated, involved, aware, and extremely motivated and proactive individuals.

The staff members' capacity to assess their tasks, involvement and activities in a realistic and self-critical manner is admirable. The impression is gained that this is a group of professionals with high work ethics and a potential for exerting strong positive social influence.

The opinions articulated in this way can serve as a very good basis for elaborating a strategy of reinforcing the public role and activities of the Office of the Ombudsman for Children. The prevailing attitude in this self-evaluation is a realistic attitude which reflects the staff members' belief in their own abilities and capacities, but also their awareness that one can always do better.



Trond Waage  
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## INDICATORS OF SUCCESS IN THE WORK OF OMBUDSPERSON'S OFFICES

*Trond Waage, of the UNICEF Innocenti Research Institute and the former Norwegian Ombudsperson for Children, also participated in the session. He spoke about the role of Ombudspersons for Children, with special reference to the Croatian model. He talked about how he envisaged the development of the Croatian model in the future and how he assessed its achievements up to now. He presented his exposition based on the reports of the Ombudsperson for Children submitted to the Croatian Parliament over a five-year period, and on comparisons of data from other countries which have an established, independent, national institution for protecting children's rights, and the Ombudsperson for Children Act.*

*His exposition has been adapted for this publication from a phonogram of the session.*

*Mr. Waage thanked the Office for the opportunity to present his perspective and congratulated them on the "brave decision on evaluation", and continued by presenting the information compiled by the Institute.*

The UNICEF Innocenti Research Institute is carrying out a comprehensive evaluation of institutes for children throughout the world, and there is an initiative to establish such offices for children in all countries. The Institute has a great deal of information on legislation, the role of the Ombudspersons for Children, the priorities and means of financing them, and has analyses of annual reports and reports and recommendations from the UN Committee on the Rights of the Child for individual countries. So, on the basis of all these things, it is possible to understand the position of children in individual countries.

Why does the Ombuds for Children movement exist at all? Generally speaking, people think that the Ombuds for Children movement is a children's movement. That is true. It is a movement based on legal reforms and initiatives for the purpose of protecting children's rights. In spite of the importance of the existence of certain legislation to protect children's rights, this is not enough. The Institute co-operates on a common platform with NGOs, parliaments, and university researchers.

The principle of the child's best interests is indeed a complex concept. If we speak of this means of protection, there are extremely reactive models. In other words, the Ombudsperson for Children is the person who reacts. However, two or three years ago, within the framework of a newer movement in the European Union, and with the aim of creating a declaration on the rights of the child for all EU member states, it was discovered that there were children in the European Union who were in

difficulties, and the demographic data of the Union showed that fewer children were being born, and, of course, if there are no children, then there is no market. Suddenly, meetings were no longer held with ministers of social welfare or those responsible for children, but with ministers of finance, and this is a completely different perspective. Thus it was established that policies needed to be put into place which would be both child-friendly and encourage people to have more children. So this meant a trend, which is being discussed not only in the European Union, but in many other OSCE countries. Many countries have these problems.

We are dealing with a new trend of understanding the status of the child within modern politics, but also in reality. This is what UNICEF is engaging with in its global research.

But how do Ombudspersons for Children and the movement for the protection of children's rights fit into all this? How can these problems be addressed?

There is a new way, a new role for ombudspersons' offices, in the sense of an approach to children and there are also new indicators of success in the work of these institutions.

One of these is, of course, the independence of the institution. This is something which must of course be emphasised, and which is evident in all Offices of Ombudspersons for Children. It is clear to everyone that if the Ombudsperson is not independent, then the Office of the Ombudsperson cannot be independent. We are talking about courageous politicians, courageous parliamentarians, who are strong enough to be able to say they have a completely independent, self-maintaining system, in which there is room for the voice of criticism, but in which there is also room for a pro-active voice to speak about the future.

So that is one aspect, independence. The next is accessibility. Children must have ways of reaching the Office. In some countries, like India, there is one Ombudsperson for Children, yet there are 400 million children in the country. How can there be accessibility for 400 million children? In this sense, the Croatian model is to be praised, since it included the establishment of a central office and several regional offices, to provide wider-ranging access.

A further indicator is accountability, particularly towards children. Children need to trust the Ombudsperson. They need to believe that he really represents them, that he has no hidden agenda, that he is not just after position, etc., that he is not interested in building his own ego or appearing on television, but that he is really the person for them and that they can trust him. There needs to be mutual respect between the Ombudsperson and children, and this is really much more important to children than we sometimes think.

Another factor which is definitely an indicator of the success of the Croatian Ombudsperson for Children is the balance between being pro-active and dealing with individual cases. This is difficult, because it is of course important to deal with individual cases and engage with the children's problems, whose sufferings are often not noticed by some of us.

Another important issue is the appointment of the Ombudsperson for Children. In Norway there is a huge debate on this, since the procedure is not transparent. There are only three countries in which children are included in the appointment process: Ireland, where the process is highly successful, then Wales and Northern Ireland. When the attempt is made to include children in such a process, it

must be transparent, which is of course in accordance with the UN Convention on the Rights of the Child.

One of the last two points which it is important to mention is the multi-disciplinary, holistic approach which the Office has initiated. This is of course important, because Croatia belongs to a group of countries in which children participate in various sectors, and someone is needed, in such a fragmented society, to deal with children in a serious way.

The final point of this global discussion is the perception of children and childhood.

What is childhood, and what is a child in a given society, whether in Africa or Croatia? Childhood is not a static phenomenon, since my childhood is of course not the same as my daughter's childhood. We mean a phenomenon, which we call permanent childhood, a phenomenon which is constantly in transition. For this reason, it is necessary to establish offices of ombudspersons for children, which will take permanent childhood into account and include all aspects of society in the debate on children.

According to an analysis of answers to a survey carried out by UNICEF researchers and an evaluation of these answers, we can state that the Croatian Office is very near the top. It has produced very valuable results in almost all areas and has a clear focus on children's participation, which is a key issue.

One critical comment has been made in relation to independence and legislation. There is a legal provision, which might cause certain problems in this regard, and this is Article 25 paragraph 5, according to which the Ombudsperson can be relieved of his post if his report is not accepted by Parliament. This is a clear threat to the independence of the Ombudsperson for Children. If this provision of the law could be amended, the Croatian Office of the Ombudsperson for Children would be at the very peak, globally speaking.

*Finally, Trond Waage emphasised, "The Croatian Ombudsperson for Children has achieved brilliant results in all areas and in the name of UNICEF, I would say that we are more and more becoming an ambassador for the Croatian Ombudsperson for Children. When people ask us about the best case study, we say, "Take a look at Croatia"."*