



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



*Chairmanship of the Russian Federation
of the Committee of Ministers of the Council of Europe*

Athens, 30 September 2006

CommDH/OMB(2006)3

“OMBUDSWORK FOR CHILDREN”

Athens, 29-30 September 2006

Conference organised jointly by
the Commissioner for Human Rights of the Council of Europe,
the Commissioner for Human Rights
of the Russian Federation and the Greek Ombudsman



**CONCLUSIONS
BY THOMAS HAMMARBERG,
COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS**

The Conference “Ombudswork for Children” was jointly organised by the Council of Europe Commissioner for Human Rights, the Commissioner for Human Rights of the Russian Federation and the Greek Ombudsman in Athens, on 29-30 September 2006. Held under the Russian Federation Chairmanship of the Council of Europe Committee of Ministers, it brought together national and regional Ombudsmen, with general competence or specialized in children’s rights from over 30 Member States of the Council of Europe as well as the European Ombudsman, the Deputy Secretary General of the Council of Europe, a member of the UN Committee on the Rights of the Child, international experts, representatives of Governments and of civil society. Greek young people contributed to one of the working sessions, expressed their opinion on Ombuds’ institutions and presented their experience and views on how ombudswork with children should take place.

Almost 150 million Council of Europe’s inhabitants are under 18 and they represent a fifth of the European population. Ombudsmen in Europe, whatever their competences and mandates are, cannot exclude children from their field of intervention. Protection of children’s rights must be a part of ombudswork.

Having these observations in mind, the conference aimed at bringing together both general and children’s ombuds’ institutions exchange experiences on their work for and with children.

The following conclusions are inspired by the various presentations made during the conference as well as the fruitful debate among the participants and provide my reflections and suggestions on ombudswork for children.

What are the independent institutions for children

Throughout Europe, almost every State has one or more Ombuds’ institution at national, regional or local level. Their competence varies from the “traditional” role of protecting citizens against maladministration by the state to a broader role in promoting and safeguarding human rights in the public and in some cases also in the “private” sphere.

In addition to these general institutions, children’s Ombuds’ institutions have developed. Norway was the first state to establish a children’s ombudsman through legislation, in 1981. Over the last 15 years only, there has been a rapid propagation of independent national human rights institutions for children. Now, at least 26 Council of Europe member States have an independent institution specifically dedicated to promoting and safeguarding children’s rights at national and/or regional level. Although few studies¹ have been conducted on their impact, they can make a unique contribution to the protection and promotion of children’s rights.

These institutions have various names - Ombudsman, Commissioner, Defenseur, Public tutor or Ombuds’ Committee. Their names depend on the culture and traditions of the country, the structure of the institution, the necessity to distinguish it from or assimilate it to another existing body.

¹ UNICEF-Innocenti Research Centre is currently carrying out research on existing ombuds’ offices for children and on efforts designed to promote the establishment of new institutions.

Institutions also vary in their mandates. A majority have both reactive mandates – handling complaints from children and their representatives – and proactive work promoting and safeguarding the rights of children as a group and of particular groups of children. Some institutions handle complaints and issues only in relation to public authorities; others may be able to look into private entities or family law disputes.

Proactive work involves reaching out to children to better understand their lives and promote and safeguard their rights. It also involves reaching out to the Government and the public to raise awareness of children’s rights and provide information and advice. Such work may involve, for example, carrying out general investigations, commenting on legislative proposals, influencing public policies on children and referring cases to the courts in order to promote the effective implementation of children’s rights.

A few of these independent institutions for children are specifically excluded from considering individual complaints dealing exclusively with the promotion of children’s rights. But most cover both functions.

The mandates of independent institutions for children

Independent human rights institutions for children should be established in accordance with international and European standards applicable to such institutions. In addition to the Paris Principles², attention should be given to the Parliamentary Assembly of the Council of Europe Recommendation³, which defines certain essential characteristics of Ombuds’ institutions, namely independence, transparent system for appointments or designation, sufficient resources for discharge of all responsibilities allocated to the institution, and public accessibility.

As specialized institutions, independent human rights institutions for children have additional responsibilities. The UN Committee on the Rights of the Child⁴ clearly states, in its General Comment No. 2 that “while adults and children alike need independent [institutions] to protect their human rights, additional justifications exist for ensuring that children’s human rights are given special attention. These include the facts that children’s developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments’ response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children’s access to organizations that may protect their rights is generally limited.”

Mandates of independent institutions for children need to take account of children’s special status. ENOC (the European Network of Ombudspersons for Children) insists that institutions should meet the following criteria⁵:

² Principles relating to the Status of National Institutions endorsed by the resolution 48/134 of 20 December 1993 of the United Nations General Assembly.

³ Recommendation 1615 (2003) “the institution of Ombudsman”, Parliamentary Assembly of the Council of Europe, 8 September 2003.

⁴ General Comments n°2 (2002) “The role of independent national human rights institutions in the promotion and protection of the rights of the child”, CRC/GC/2002/2, 15 November 2002.

⁵ Article 4 of the ENOC statutes

- The institution is established through legislation approved by parliament, which provides for its independence.
- The institution has the function of protecting and promoting children's rights. This function is established through legislation.
- There shall be no provisions in the legislation which limit the institution's ability to set its own agenda in relation to this function, or which prevent it carrying out significant core functions suggested in international and European standards.
- The institution must include or consist of an identifiable person or persons concerned exclusively with the protection and promotion of children's rights.
- Arrangements for appointment of ombudspersons, commissioners and members of a commission must be established by legislation, setting out the term of the mandate and arrangements for renewal, if any.

Separate institution for children or integration into national human rights institution

There are both separate human rights institutions (ombudsman) for children, and focal points or units on children's rights within national human rights institutions or general Ombuds'institution offices.

As stated by ENOC⁶, "institutions may be constituted separately or may form part of an independent national or regional human rights institution". European experience suggests that both integrated and separate models can work well for children. In its General Comment, the Committee on the Rights of the Child states: "It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. It is essential that promotion and protection of children's rights is 'mainstreamed' and that all human rights institutions existing in a country work closely together to this end."

When establishing an independent institution for children, European states can choose whether to establish it separately, or within the Office of the General Ombuds'institution. In most cases, independent institutions for children have been established after the creation of a general Ombuds'institution.

Whatever the model chosen, to function properly the independent institution for children requires legislation defining precisely its mandate and competences. With such a clear text, the institution can then establish necessary good relations and co-operation with the pre-existing general institution. This could take the form of a memorandum of understanding. To be successful, the relationship and co-operation should be based on the principle of mutual respect and understanding and the best interests of the child always should prevail.

⁶ idem

a. Establish a new and separate specialized institution

The first possibility is to establish a new and separate specialist office competent to deal with complaints concerning children's rights as well as to work proactively for the promotion of children's rights, in addition to the existing General Ombuds' institution or its equivalent. This solution has been chosen by a majority of Council of Europe Member States.

An alternative is to create an institution for children which only deals with the proactive role of the protection and promotion of children's rights. Then the General Ombuds' institution continues to deal with all individual complaints whereas the independent institution for children has the responsibility of advising the Government and other public authorities on issues relating to children and their rights. Such models, less frequent, exist *inter alia* in Sweden and Finland.

Potential advantages of this approach is that a separate specialized institution can focus on a single mission and establish a clear identity that makes it easier to reach out to children. The separate institution can determine its own policies and agenda. Being seen as fully independent of bodies for "grown-ups" can also be an asset and children may feel more comfortable about communicating with such institutions⁷.

On the other hand, establishing a new body requires time, investment and is resource-intensive. It can also face a problem in establishing its legitimacy. A new and separate office may have difficulty in establishing a clear perception that it is an institution of accountability, rather than part of the normal machinery of public administration.

b. Establish a special department within the General Ombudsman office

The second possibility is to establish an independent institution for children's rights inside the Office of the General Ombudsman. Through a specific law or constitutional provision, Governments can create a specialized Deputy Ombudsman for children under the umbrella of the General Ombudsman. Such model exists *inter alia* in Greece and in Catalonia (Spain).

If the existing general office has an established legitimacy, visibility and effectiveness, these can be carried over to cover children's rights, while the costs and risks of setting up a new institution are also avoided. Additionally, any problems with the functioning or reputation of the General institution are likely to also damage the children's institution. Also, depending on the legislation, it is likely that the Deputy Ombudsman or equivalent remain under some degree of control from the General Ombudsman and thus may not have total freedom of speech or action.

Ombudswork for children

Protection and promotion of children's rights is the responsibility of every independent human rights mechanism existing in Europe. National and regional Ombudsmen with a general mandate should be as concerned as an independent institution for children with the protection of the best interests of the child. This issue is of particular importance when a specialised institution does not exist. In this situation, General Ombudsmen should take full responsibility for children as citizens

⁷ assuming that such institution can deal with individual issues.

The mandate should be broad – covering all children’s civil and political and economic, social and cultural rights, as does the Convention on the Rights of the Child.

Particular attention should be given to children at risk: for example, those living in institutions, in foster care or in any form of detention; those exposed to child labour, to trafficking and other forms of exploitation, unaccompanied and separated children, members of minorities, immigrants, refugees and those who have experienced war and other forms of social conflict. The independent institution must have a right of access – without warning – to all institutions and places of detention where children might be at risk, and the right to speak to children in private about any concerns.

In order to guarantee the quality of its actions for children, it is necessary for the independent institution to organise its work according to the needs of children. It should have a multi-disciplinary staff, specially trained to ensure the protection of children’s best interests and their participation. Procedures - especially complaints procedures - must be child-friendly, child-sensitive and easily accessible.

Regarding the proactive role of the institution, constant collaboration and co-operation with national and local authorities, NGOs, parents as well as direct contacts with children themselves are fundamental. As the Committee on the Rights of the Child’ emphasises: “[National Human Rights Institutions] 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. 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.”⁸ And ENOC’s Standards for Independent Children’s Rights Institutions, adopted in 2001, propose that institutions should have duties “to pay particular regard to the views of children, to take active steps to maintain direct contact with children, organisations of children and organisations established to promote children’s rights; and to promote respect for the views of children throughout society; the institution must be readily accessible to children and able to respond to any individual communications from children”.

The institution should be able to report and promote children’s views and promote their rights to parliament, local, national and international bodies.

⁸ General Comment n°2, paras 16-17

Ombudswork with children

a. different form of children participation

In our societies, adults often overlook children's rights and their opinions are not adequately heard. Often they do not have suitable people to talk to about their thoughts, fears, feelings and experiences. Parents are not always fully aware of their rights and needs and political systems do not represent appropriately children's opinions. It is the duty not only of independent human rights institutions for children but also of general ombuds'institutions to ensure children's participation and strengthen their voices throughout society.

As defined by Save the Children⁹, "participation is about having the opportunity to express a view, influencing decision-making and achieving change. Children's participation is an informed and willing involvement of all children in any matter concerning them either directly or indirectly. Children's participation is a way of working and an essential principle that cuts across all programmes and takes place in all arenas – from homes to government, from local to international levels".

An obvious need exists for Ombudsmen to meet regularly with children in their environment, including in schools and institutions. As a proactive body, such visit allows to promote children's rights and their education besides raising the visibility of the institution.

Additionally, institutions should take advantage of modern means of communication frequently used by children such as the internet, e-mails or freely accessible hotlines, as well as traditional mechanisms for complaints, in order to maximise their accessibility.

Some Ombudsmen for children have formed a child advisory board, as an institutionalised mechanism for regular consultation with children. This should be encouraged, as it offers the possibility of a constant exchange with a representative group of children. It can highlight difficulties or specific problems faced by particular groups of children. Communication and, debating ideas and policies between the board and the independent institution can prevent misunderstanding or misinterpretation of children's views.

b. how should children participate to ombudswork

Certain elements are required to ensure that children's participation is positive, successful and constructive.

The first element lies in the necessity to involve children in the earliest stage of the process. Then it is fundamental to appropriately prepare the consultation. The quality of children's contribution is directly linked to the environment created around their participation. Children's participation should be organised and structured. Children should be consulted on issues affecting them directly and indirectly. The adults' objectives must be clear and targets and goals should be agreed with the children involved. They should further be provided in advance with relevant information regarding their participation.

⁹ Save the Children – International Alliance, "*Practice standards in children's participation*", 2005

Regarding any selection of children to participate, children should be involved in setting the criteria for selection and in selecting representatives. Participation should always be on a voluntary basis and children should be able to withdraw at any time. To facilitate the broadest participation possible and avoid any kind of discrimination, issues such as the day, the time, the place and the length of the consultation and the language used must be taken into account.

The dialogue should be adapted to the level of understanding of the children involved; their involvement should be in accordance with their capacities and interests. Written and oral language must be child-friendly. Non-technical language should be used and any technical terms clearly explained. But this does not mean that adults should “infantilise” the discussion or assume that children are not able to understand or give their opinion on certain situations or issues.

Children’s right to participation requires that adults listen to them carefully and give their views due consideration. Immediate dismissal of children’s proposals should be therefore avoided. Adult staff involved in children’s participation activities should be trained. Moreover, children should have enough time to express themselves, to feel self-confident. Adults should also show that they are listening by giving feedback to their suggestions, by exchanging ideas with them.

Finally, it is crucial to explain to children what the outcome of their participation is and how their contributions were taken into account. A clear feedback on their involvement should be provided as well as an explanation of any decisions taken. If a decision does not match with their proposal or if a proposal is not followed, justification should be provided to them. Responses to children’s expectations are crucial, otherwise it will damage established the relation of trust and confidence.