



**THE COMMISSIONER FOR FUNDAMENTAL RIGHTS
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS
HUNGARY**

THE OMBUDSMAN'S PROJECT ON CHILD HEALTHCARE IN 2011

In 2011 the ombudsman concentrated on the health of the children during his annual project. According to the constitutional right to health (Art. XX of Fundamental Law) and to the Art.24 of the UN Convention on the Rights of the Child (UN CRC), every child has the right to the highest attainable standard of health; these have served the legal background of the investigations. Moreover it was interesting to find, that in a global survey made by the UNICEF in 2010, the biggest inequality is in the Hungarian children's health. (See more: http://www.unicef-irc.org/publications/pdf/rc9_eng.pdf)

The special issues to be investigated comprehensively ex officio were:

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

In 2011, the ombudsman received 188 complaints concerning right to health.

The Ombudsman about children' drug-alcohol abuse

In two reports (in 2011, then in Summer 2012) the Commissioner for Fundamental Rights submitted the Government *to take urgent and effective measures for creating addiction treatment for children*, in order to handle drug problems he recommends to make action plans of the National Drug Strategy, and generally review the complete regulation.

Researches about measures of drug consumption suggest considering Hungary as a medium "infected" country. At least one quarter of high-school aged children consumed any drug, and data shows this age is even lower. With more than a quarter increased the number of medical abuse. In the same time until now the Government could not adopt a new Drug Strategy and its enforcing Action Plans, there is no strategic decision taken for the prevention and care professionals.

The Ombudsman warns that addiction treatment for children as such does not exist in Hungary, and the generally unregulated legal situation raises the abuse of legal certainty not only in medical care of children, but also of adults.

The large-scale reports of the ombudsman among others raised the fact, that the quickly spreading so called designer drugs can be registered in urgent procedure in other European countries. *At the moment in Hungary there is no possibility to react quickly, if a new drug appears;* to handle this deficiency the ombudsman submitted to the minister responsible reconsidering to take all measures of the urgent procedure, as the authorization and distribution of dangerous substances, in cooperation with involved civil organizations.

Deficiency in child-psychiatry

The mental conditions of children are getting even critical, the number of children with learning difficulties and behaviour problems are increasing. In the last year more youth under age 24 tried to or committed suicide. In the same time medical care of children in urgent crises are not ensured, nowadays only 60-70 child-psychiatrists are working in Hungary.

This abuses the right to health and to get proper medical care. In its report the ombudsman stated that *child-psychiatrist is not among those professions which have shortage*. Many of them are quite old, and continue their praxis next to their pensions: there is a region where the only child-psychiatrist available is 72 years old. In an ombudsman report from 2009 it is stated from 64 child-psychiatrist 10 are working abroad, 10 are not practicing their profession. In the last two years only 14 doctor received certification of child-psychiatrist, and more experienced doctors went to work abroad.

The number of health care institution offering in-patient care is very low, and there are big regional differences. In the Western part of the country there is no active child-psychiatric in-patient care. The children patients of this region (and also in North-Hungary) get treatment at paediatric divisions or at adult's psychiatric divisions without child-psychiatrist's supervision or consultation. Children's emergency care is also deeply concerning, only limited number of institutions is able to ensure the conditions of emergency care, and the health administrative bodies at county level don't have registration about it, so they could not regulate it. In consequence of this deficiency, care of children are completely occasionally and unpredictable.

About the situation of nurses

A complainant nurse has to take care alone of 600 children in three service divisions instead of 250 laid down by the law. The nurse asked for help from the municipality, from the national head of the nurses and from the ministry of health, unsuccessfully. Finally, she turned to the ombudsman, during his procedure her problem was partly solved, her division was divided by the municipality.

The Ombudsman requested the minister responsible comprehensive reporting about the service of nurses. *In his report the Commissioner stated there are huge regional-and sub-regional differences in access to nurse services, caused either by high number of beneficiaries or by the fact that a nurse works also as school nurse in a given division* (or when she substitutes an other nurse). In more than 350 communes is not operating any nurse services. This all hurts the right to health of children, concluded the Ombudsman and submitted the minister in responsible to handle these regional problems with make adequate access and balanced workload.

About the school PE lessons

The conditions for school PE lessons and pupil sports are inadequate, which mainly causes problems at smaller villages. The ombudsman's report it is said, that the current situation hinders to be enforced the highest level of right to mental and physical health.

Pre-school, school, residential college is responsible for the mental, emotional, physical development of pupils. The state ensures PE lessons in schools and universities, and sport activities beyond schools in order to the healthy development of youth.

In smaller communes, villages the conditions are inadequate, most of the PE balls are old-fashioned, not hygienical, sometimes dangerous, and in some institutions locker rooms are missing.

Substantive change could not be expected until providing adequate institutions and facilities is compulsory only for the institutions founded after the new decree entered into force. It would be necessary to widen the possibilities of applications to funds, and liberalize the conditions in order to support smaller municipalities. In his report, the Ombudsman found that all school-aged children take part in PE lessons, there is no abuse of rights. But, in many places the school holds the minimum number of lessons. *There is no professional quality supervision system; no professional guidelines; the requirements of quality and accident prevention is depending from the financial situation of maintainants of schools.*

Investigation on child prostitution

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

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

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

Investigation on school healthcare services

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

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

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

Investigation on sexual abuse of children in care

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

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

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

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

A Discrimination case

A child who was infected by Hepatitis B (HBV) was sent home from the kindergarten for the reason of fear of the epidemic disease. Though the child had a medical certificate proving that he brings no health danger to the community, the head of the kindergarten insisted on a special medical report issued by a hepatologist. The relevant

Education Authority declared its lack of competence on this matter and asked the parents to turn to the mayor as well, whom referred again to the interest of the majority compared to the single interest of the infected child.

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

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

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

On the basis of complaints, the ombudsman started a comprehensive inquiry in order to find out whether after the changes of the relevant legislation the rights of those availing themselves of healthcare services can be enforced. The Commissioner has come to the conclusion that *the present system, which was modified several times, is not suitable for replacing the former rights protection mechanism of the authorities*. The report emphasises that in *the absence of procedural guarantees and of legal remedies* the public health administration organs of the counties may “cherry pick” among the complaints, may conduct proceedings in some cases, and not in others, which presents the danger of an arbitrary and unpredictable application of the law.

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

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

The Ombudsman on health care provision to patients with a disability

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

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

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

The Ombudsman has requested the Minister responsible for national resources to take the necessary measures to eliminate regional inequalities in health care provision in order to ensure better access to health care provisions. He also proposed to the Minister to review existing contracts for the financing of dental care and

designate, in cooperation with the National Health Insurance Fund, new healthcare providers, and to ensure a financing that gives the right incentives for service provision.

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

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

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

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

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

The Government has an overall health reform concept (Simmelweis Plan) dealing also with child care issues, with the aim to reduce professional and regional access disparities, and to improve quality. Due to the characteristics of the maternal and child health the plan handles as a separate, subsystem with its own logic.

"Children Are Our Common Treasure," a National Infant and Child Health Program was adopted in November 2005 to develop children's health care. This program established by professional consensus could only partly implemented, so its renewal and adoption of an associated action program could ensure organic growth in the field.

Key elements of this are the following:

- highlighted human resource programs,
- renewal of primary health care for babies and children,
- integrate the in-patient and out-patient services with standardized interfaces at regional structures
- elimination of anomalies in child care financing, special care of diseases with high morbidity and mortality rates;
- shifting focus to the role of families in health of children, in prevention programmes;
- carrying out efficient intersectoral (health, educational, social, sport, youth, gender equality) sectors cooperation representing above all the best interests of children

Budapest, 05/09/2012.