

34 CHILDREN'S RIGHTS IN THE HUNGARIAN OMBUDSMAN'S PRACTICE

Agnes Lux*

34.1 INTRODUCTION

Article XVI of the new Hungarian Fundamental Law (Constitution) contains a special provision on children's rights, reading: 'Every child shall have the right to the protection and care necessary for his or her proper physical, intellectual and moral development.'

The provision sets forth a crucial task and obligation for all parents, caretakers, but requires also the commitment from the side of the state. *Since there is no special ombudsman for children's rights* in Hungary, the Parliamentary Commissioner for Civil Rights acts in this quality on the basis of Art. 11 of Act XXXI of 1997 on Child Protection. The Fundamental Law and Act CXI of 2011 on the Commissioner for Fundamental Rights (Act on CFR) entered into force on 1 January 2012. In accordance with the provisions of this act, the single institution of the Commissioner for Fundamental Rights pays special attention to the protection of the rights of children, the rights of nationalities living in Hungary, the interests of future generations and the rights of the most vulnerable groups.

It is no surprise that children usually do not turn directly to the ombudsman (10-12% of all submitted complaints – the total number of complaints are approximately 8000/year – are related to children's rights, submitted mainly by adults (parents/professionals). Beginning with 2008 the Commissioner fulfilled this role more effectively by launching a special, proactive method with annual children's rights projects dedicated to special issues. In 2008 the ombudsman focused on awareness-raising concerning children's rights, in 2009 on children's right to protection against violence, in 2010 on children in care, in 2011 on children's right to the highest possible standard of physical-mental health, in 2012 on child-friendly justice and in 2013 on the right to a healthy environment.¹

In Hungary today, approximately 200 000 children are registered as at risk and thousands of children are taken into child protection care. Tens of thousands of children and juveniles are in the criminal justice system and about 6000 children/year become the victim

* PhD candidate, Deputy-head of the Equal Opportunities and Children's Rights Department, Office of the Commissioner for Fundamental Rights. E-mail: agnes.lux@ajbh.hu.

1 The results of the inquiries on the above mentioned dedicated annual working programs were published in project-books available on the Office's website, www.ajbh.hu/projektfuzetek;jsessionid=459FD6FA19C29FD02CB5F4D1B85F2D42.

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of a violent crime. In this context, numerous questions arise. Can the child protection system offer an effective response in case of abuse? And how are professionals prepared to deal with children in general, especially with victims, offenders, witnesses or children of parents undergoing a divorce. Under what conditions and how are children heard or interrogated, what awaits them at a police station, juvenile correctional center or in a penitentiary institution? Through which channels and from whom they may seek help and assistance in a closed facility if they have problems with one of the inmates or nurses or if they simply need information, legal or other advice? What are the prospects of a young person who committed a crime or misdemeanour due to his/her vulnerable situation and was sanctioned by the state primarily with criminal law instruments?

In 2012, the Ombudsman, based on the Council of Europe's Guidelines on Child-friendly Justice,² started to explore the gaps between law and practice by conducting several inquiries resulting in lengthy reports on the fulfillment of international obligations concerning child-friendly justice³; the functioning of the victim support system⁴; the general evaluation of the juvenile justice system (criminal, civil and administrative procedures) from the aspect of children's rights⁵; mediation and other forms of restorative justice⁶; child-focused training of justice professionals⁷; the situation of unaccompanied minors⁸ and on-site inquiries regarding penitentiary institutions for juvenile offenders.⁹

The Ombudsman discussed the experiences gathered on several occasions with the representatives of national civil organizations (Family Child Youth Association, Blue Line Child Crisis Foundation, UNICEF National Committee), international NGOs (Eurochild, Eurochips, International Juvenile Justice Observatory, Children's Rights International Network) and government officials from the National Institute of Criminology and the Crime Prevention Department of the National Police Headquarters.¹⁰

2 Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice. Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies. [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1098/10.2abc&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1098/10.2abc&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

3 Report No. AJB 3070/2012.

4 Report No. AJB 2617/2012.

5 Report No. AJB 2324/2012.

6 Report No. AJB 2986/2012.

7 Report No. AJB 2614/2012.

8 Report No. AJB 7120/2009 and AJB 733/2012.

9 At Tököl – Report No. AJB 2323/2012; at Pécs (Baranya county) – Report No. AJB 4495/2012; at Kecskemét (Bács-Kiskun county & special mother-baby ward) – Report No. AJB 3616/2012; at Szirmabesenyő – Report No. AJB 3704/2012.

10 Through its professional and financial support the Council of Europe made the organization of an international conference titled 'Child-friendly justice – from Hungary to Europe' on 22 November 2012 in the Office of the Commissioner for Fundamental Rights. Representatives of the European Commission, the Council of Europe, the UN CRC Committee and the EU Fundamental Rights Agency and highly recognized national experts attended the event.

Since there is no opportunity to give an exhaustive summary about the hundreds of cases per year concerning children's rights, in the following overview I will briefly present the status and tasks of the Hungarian Ombudsman, turning then to the most relevant international law related issues in the ombudsman's practice of the recent years, namely the comprehensive investigation on child-friendly justice and the latest report of Hungary to UN CRC Committee.

34.2 STATUS AND TASKS OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS (OMBUDSMAN)

In accordance with Article 1(2) of the Act on CFR

In the course of his or her activities the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings *ex officio*, to the protection of a) the rights of children.

The work and the mandate of the Commissioner for Fundamental Rights and his Office are determined by Article 30 of the Fundamental Law of Hungary and the Act on CFR. The Commissioner delivers an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; furthermore, the Ombudsman may make proposals for the amendment or the adoption of laws affecting fundamental rights and/or the recognition of the binding nature of an international treaty.

The Commissioner surveys and analyzes the situation of fundamental rights in Hungary, and prepares statistics on those infringements that are related to fundamental rights. The Commissioner submits his/her annual report to the Parliament, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for legislation or possible amendments. The Parliament shall debate the report in the course of the year of its submission. (In reality, since 2009 the Parliament has failed to debate the Ombudsman's report). As a new mandate, the Commissioner for Fundamental Rights may initiate the review of legal acts by the Constitutional Court as to their conformity with the Fundamental Law. Furthermore, the Commissioner participates in the preparation of national reports based on international treaties relating to his/her tasks and competences, monitoring and evaluating the enforcement of these treaties under Hungarian jurisdiction.

The Parliament elects the Ombudsman (upon nomination by the President) and his/her Deputies for a six-year term. Anyone may turn to the Commissioner, if his/her fundamental rights were infringed or in case of an imminent danger thereof, through the activity or

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omission of the public and/or other organs performing public duties. The Commissioner for Fundamental Rights may also conduct *ex officio proceedings* for an inquiry into specific misconduct affecting an unidentifiable group of natural persons or a comprehensive inquiry related to the enforcement of a fundamental right.

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

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

34.3 SPECIAL REPORTS ON CHILD-FRIENDLY JUSTICE WITH INTERNATIONAL LAW ASPECTS

In 2012, within the framework of the Children's Rights Project and following the agendas of the European Union, the Council of Europe, the European Network of Ombudspersons for Children (ENOC)¹¹ and the special programme on the topic launched by the Ministry of Public Administration and Justice a Project on Child-Friendly Justice,¹² the Commissioner has focused on problems concerning child friendly justice. Choosing this topic was very reasonable since thousands of children may get involved with justice systems, whether as victims, defendants, witnesses, at risk, taken into care or as criminal offenders.

Since 2010 the Ombudsman is the national focal point of the Council of Europe,¹³ the most important regional organization dedicated to the protection of human rights. The Council of Europe plays a leading role in defending children's rights, especially since the transversal programme 'Building a Europe for and with children'¹⁴ was launched in 2006 in response to a mandate resulting from the Third Summit of the Heads of State and Government of the Council of Europe (Warsaw, 2005). The Council of Europe's Strategy on the rights of the child 2012-2015 proposes a vision for the Council of Europe's role and action in this field, taking into account the progress achieved during the previous policy

11 See ENOC Position Statement on 'The rights of children/young people in conflict with the law', www.crin.org/docs/FileManager/enoc/ENOC_position_statement_on_the_rights_of_children_in_conflict_with_the_law.pdf.

12 <http://gyermekbarat.kormany.hu/>.

13 The Council of Europe, based in Strasbourg (France), now covers virtually the entire European continent, with its 47 member countries. Founded on 5 May 1949 by 10 countries, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.

14 www.coe.int/t/dg3/children/.

cycles, the needs expressed by governments and the challenges identified by the international community.

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

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

In 2010, the Council of Europe adopted the Guidelines on Child-friendly Justice intended to enhance children's access to and treatment in justice; a specialty of these guidelines is that children and young people were also involved in the drafting process. The Guidelines formed the basis of the ombudsman's investigations. The Guidelines are a set of comprehensive and very concrete rules that help Governments make sure that children are treated properly by and in the justice system. The rules have to be applied to everyone under 18 years. They apply whenever children come into contact with the justice system, for example when they break the law, when their parents get divorced and when someone who has abused a child is sanctioned.

Child-friendly justice means in Council of Europe terms that decisions are made about children in a way that respects their rights before, during and after any procedure. Decisions should be made quickly, taking the child's age and needs into consideration, taking the child's views seriously and respecting his or her privacy. Children and their parents should be given information about the child's right to be treated fairly and properly. Information and advice should be explained to the child in a way that he or she can understand it, with due consideration to the child's background.

The main principles of child friendly justice are as follows:

1. Participation: Governments must make sure that children know their rights, and know how to get in touch with those who can help them. Children have the right to be heard in decisions that affect them, and adults must take children's views seriously.
2. Best interests of the child: When decisions are being made about children, the most important thing is what is right for them. Officials must also listen to what children have to say. They should make sure that children's rights are respected, and take into account all their needs. Judges usually take decisions about children, but they should be assisted by others – such as like psychologists and social workers.
3. Care and respect: Children must always be treated with care and respect, taking into account that they are all different.
4. Equal treatment – Non-discrimination: Children must all be treated equally, regardless of origin, social class, religion or language. Children who have disabilities, are homeless or do not live with their parents, members of minorities or immigrants may need special help.

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5. Rule of law: Children have rights in the legal system; they should be treated fairly. If they are in trouble, they should have access to a lawyer. Children have the right to complain about their treatment to an independent forum.

The UN Convention on the Right of the Child (UN CRC) also defines legally binding obligations related to child-friendly justice, as follows:

- Article 1. Every human being is a child under the age of 18;
- Article 3. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration;
- Article 37. Deprivation of liberty must only be a last resort resolution (for the shortest possible period)¹⁵;
- Article 40. The right of every child alleged as, accused of, or recognized as having infringed criminal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

At this point we must also mention the 10th General Comment of the CRC Committee (2007),¹⁶ which states: the reaction given to an abuse of law committed by a child shall be proportional with the age, maturity, necessities and circumstances of the child, taking into account the long-term interests of society (education, reintegration, not pure punishment).

34.4 HOW DOES THE HUNGARIAN JUSTICE SYSTEM MEET TO THE COUNCIL OF EUROPE'S CHILD-FRIENDLY JUSTICE MODEL REQUIREMENTS?

The ombudsman launched a comprehensive, *ex officio* investigation¹⁷ monitoring the implementation of the child-friendly justice model's requirements in Hungary. He requested the Minister of Public Administration and Justice to provide relevant information with the help of the Inter-ministerial Working Group for Child-friendly Justice and all competent ministries. In addition, the Commissioner addressed a number of NGOs and juvenile

15 The Commissioner for Fundamental Rights in a press release (published in May 2012) expressed that he is deeply concerned about the draft of the Hungarian Criminal Code decreasing the minimum age of criminal responsibility (MACR) from 14 to 12 years in some cases, which may result also deprivation of liberty if they will be found guilty.

16 General Comment No. 10. (2007) Children's rights in juvenile justice. CRC/C/GC/10 25 April 2007, www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf.

17 Report No. AJB 3070/2012.

correctional facilities and penitentiary institutions. The addressed organs received the same questions which had been compiled in compliance with the provisions of the UN CRC and the Council of Europe Guidelines on Child-friendly Justice.

According to the main findings of the Ombudsman, the UN directives and Council of Europe recommendations clearly indicate that a complex, inter-professional, *holistic view is required* for the treatment of the problematic behaviour of children and juveniles. Criminal justice is just one, but not the most important element of the complex system in which the problem must be dealt with. Juvenile delinquency cannot be fought by the justice system alone. Cooperation between the health care, education, social and welfare service systems as well as the justice systems is inevitable. According to the Ombudsman, in the course of the proceedings and the enforcement of the decisions of the authorities, it is quintessential to elaborate a multidisciplinary common assessment framework for the lawyers dealing with children, psychologists, policemen, social workers, etc. to ensure implementation of measures and circumstances that best suit the age, mental and physical conditions of the child. The absence of the above gives rise to the direct jeopardy of the child's right to protection and care.

As indicated by NGOs, in the course of age assessment in asylum and alien control proceedings the multidisciplinary approach is not applied in all cases. Age assessment of seeking asylum occurs in practice if the authority finds that the age declared by the asylum seeker is doubtful. In practice, age assessment involves X-ray examination, collarbone or hand bone examination. However, there are no examinations carried out by psychologists and social workers, which stands in stark contrast to the widely accepted international professional standpoint. The Commissioner concluded that in the course of age assessment of unaccompanied minors, avoiding examinations carried out by psychologists and social workers, corresponding to the international practice and considering psychic maturity and ethnical and cultural aspects as well, infringes the enforcement of the highest interest of the child and the provisions of the Fundamental Law on the adoption of the generally recognized rules of international law and the enforcement of the child's right to protection and care necessary for his or her proper physical, intellectual and moral development. The ombudsman asked the Minister of the Interior to consider establishing an Expert Working Group in order to adopt legislation corresponding to international. In compliance with Council of Europe Guidelines, all experts working with children must receive an interdisciplinary training on the rights and necessities of children of different ages and the adjustment of the procedures to children. In the course of the inquiry, the Commissioner concluded that the absence of regular, interdisciplinary (communication, legal, psychological, child protection, sociological) training of experts working with children (policemen, prosecutors, judges, defence lawyers, etc.) impedes the full enforcement of children's rights.

The Guidelines set out that the justice organs and other authorities have to provide the appropriate information corresponding to the child's age and maturity both at the

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beginning and in the course of the proceeding as well. As indicated by NGOs and some correctional facilities, the information provided did not take the age of the children and juveniles into consideration. The information is formal and experts have not been convinced if children really understood the information provided to them. In their experience, the experts do not know the cognitive abilities and psychic characteristics of the age groups and they have not been prepared for how they should communicate with children. According to information provided by the experts, such knowledge is completely missing from the curriculum of the institutions preparing them for their career. According to the Commissioner, to ensure the provision of information corresponding to the child's age and maturity, it is quintessential to train experts coming into contact with them in the framework of a comprehensive obligatory training.

The protection of the child's privacy and personal data in the various proceedings is an important principle of the Guidelines. This means that especially in the media no information or personal data shall be published or made public from which directly or indirectly the personal identity of the child can be established, including photos, detailed descriptions about the child or his or her family, audio and video recordings. In compliance with the rules in force, the right of the press to information is always evaluated together with the right to the protection of personal data of the person affected. These rules notwithstanding, the website of the Media Council of the National Media and Infocommunications Authority features several cases from 2012 where minors' human dignity was infringed through the media. The Media Council analyzed all such infringements in detail and applied appropriate sanctions. Considering that an inquiry into the operation of commercial media providers does not pertain to the competence of the Commissioner, the Ombudsman could only issue proposals, for example addressed to the National Media and Infocommunications Authority to consider organizing training for the media providers to familiarize them with legal provisions on broadcasting children and juveniles in the media.

In the context of victimization, several respondents mentioned the shortcomings of the children's psychiatric and psychological care and the absence of the treatment of the injured in cases of abuse. They pointed out the shortcomings of the operation of the child protection signaling system and that there is currently no methodical guidance or training system which would provide justice experts with suitable information as to how a child may be interviewed successfully keeping in mind the imperative of causing as little harm as possible.

In compliance with the Guidelines, States shall make efforts to avoid turning to the court, bringing children rehabilitation and the restorative approach to the fore. However, this is not guaranteed by the misdemeanour procedure in force. In the interest of children's welfare, their appropriate education and development, institutions ensuring restoration should be applied in the case of massively occurring minor infringements. Extension of

mediation to misdemeanours would not only efficiently contribute to the re-adaptation of juveniles to society but would also achieve coherence with respect to restorative justice between misdemeanour proceedings and criminal proceedings, accelerating proceedings and decreasing the burden of the judges, while contributing to the defendant's fast reimbursement for his or her damage. The absence of the elements of restorative justice in the framework of misdemeanour proceedings infringes the principle of observing the child's highest interest, creating the imminent danger of the infringement of the child's right to protection and care.

Beyond Article 12 of the UN CRC, the child's right to express his views as well as his right to be heard is set out as an important principle in the Council of Europe Guidelines. The use of a language corresponding to the age and mental development of the child, the so-called child-friendly language, the assurance of a child-friendly environment, the application of child-friendly interrogation techniques, restricting interviews to as few occasions as possible, with the best possible training of interviewing experts are all set out in the Guidelines. Experts claim that at the same time it is not the infringement of the freedom of expression that constitutes the biggest problem but the appearance of this right as an obligation, in some cases in the form of repeated testimonies. Experts do not have sufficient knowledge and appropriate training for interrogating child perpetrators/victims, they are not aware of children's necessities. There is no suitable methodological guidance or training system which would prepare justice experts for how a child can be interviewed without causing secondary victimization.

The Guidelines emphasize the importance of avoiding unreasonable delay in the course of all proceedings affecting children.¹⁸ All procedural rules in force set out concretely the extraordinary procedure or such principles from which the application of the principle of urgency follows in the course of proceedings affecting children. However, experts complain of lengthy proceedings: most answers received from the penitentiary institutions for juveniles and correctional facilities mention that in case of the juveniles monitored by them the extraordinary procedure is not triggered, while some proceedings are delayed for years. Prolonging the judgment period and the pre-trial detainment render the efficient implementation of measures with an educational objective more difficult.

The Ombudsman also inquired into the enforcement of children's rights in the framework judicial enforcement proceedings. As indicated by civil society organizations, the insufficient preparedness of the experts participating in enforcement gives rise to problems. Bailiffs and policemen participating in enforcement do not have information and knowledge about the situation of children and their needs. This is the reason why

18 The latest proposal to amendment terminated the exclusive jurisdiction of local courts acting within the seats of county courts because the legislature found that all local courts was able to fulfill specific requirements originally applied to local courts dealing with juvenile offenders. The amendment also aimed to speed up and make more uniform these procedures however the result is still questionable.

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misconducts occur, for example the use of shackles and physical violence in relation to children.

The legislation on child-friendly justice and related legal practice on it must be regularly reviewed and evaluated. In the monitoring of the implementation of the Guidelines, civil society organizations dealing with the support and the protection of children's rights must also play a role. The Commissioner concluded that the absence of the monitoring system related to the implementation of child-friendly justice infringes the highest interest of the child and the right to protection and care, as well as the right to due process.

Based on the above findings it may be stated that one of the greatest obstacles to child-friendly justice in Hungary is the lack of comprehensive training of experts in the justice system dealing with children. Since this constitutes a major risk of infringement of children's rights, the Commissioner proposed – among others – the elaboration of obligatory, comprehensive training programs to prepare experts for the needs and the characteristics of different age groups under 18.

34.5 REPORTING TO THE UN CRC COMMITTEE

In the context of the international monitoring of children's rights, perhaps the most important task of Hungary is to report to the 67th Session of the UN Committee on the Rights of the Child in September-October 2014 about the progress in last 5-6 years. Related to Hungary's so-called 3rd to 5th periodic Hungary, the ombudsman invited all relevant NGOs dealing with child protection and children's rights for a dialogue and expert consultation in May 2011 held in the Office of the Commissioner for Fundamental Rights contributing actively to the 'Alternative – NGO – Report on the Implementation of the UN CRC in Hungary 2006-2012'.¹⁹ This report was the first non-governmental professional report on the UN CRC in Hungary. The Ombudsman also provided information about the latest developments in 2013 related to children's rights inquiries upon the request of the editors of the NGO report in November 2013, which they compiled in the additional report. The Ombudsman invited the representatives of the relevant NGOs to his Office for an expert meeting in January 2014 to support their preparation for the reporting process in February 2014 before the UN CRC Committee.

In the recently submitted supplementary report of the NGOs the following issues were highlighted:

Childpoverty: According to the National Social Inclusion Strategy 21% of Hungarian children (~ 380,000) were living in poverty in 2009. According to the results of the study

¹⁹ www.csagyi.hu/images/stories/kutatas/civiljelentes/civil_angol.pdf.

conducted by the UNICEF National Committee in 2012, the number of children at risk of poverty has increased since 2009, currently every second child is deprived. There is a (sub)regional gap in access to adequate healthcare and social services and education in Hungary. In the most deprived regions (e.g. North-Eastern Hungary) especially access for 0-6 year olds to pediatric, health visitation and family support services are problematic, however, even cities are facing severe and increasing problems. There is no interdisciplinary definition of the terms 'at risk', 'maltreatment', 'abuse'. For several reasons intersectoral cooperation is scarce, allocation of resources is further weakening the system. Inquiries demonstrate malpractice and lack of adequate support.

Child participation: The UNICEF National Committee launched the 'CRC in the eyes of the children' project between March and July 2012. Altogether 2800 children between the age of 5 and 18 were involved. Children from various social groups of society participated in the project: children in alternative care, children with disability, Roma children, both from the capital and the rural areas. The results of the survey suggest that children in general are aware of their rights. In spite of delivering correct answers, situational questions and interactive courses revealed that children's rights remained an abstract knowledge for most of the children, and they did not realize that they are present in their own life. The survey showed that two out of three children experienced mental abuse (63%), but many of them reported mental health issues (15%), peer bullying (11%), material deprivation (6%), and physical abuse (5%).

Education: The new legislation (Act CXC of 2011 on public education) reduced the age of compulsory education from 18 to 16 as of 2012. The quality of vocational schools' requirements and curriculum have also been reduced, therefore, more young people are leaving the education system without qualification and chances for employment according to the experiences gathered in the first year of introducing the new provisions. Schools' management was centralized causing anomalies many of which continue to exist. There is a new, central institution managing and directing state operated schools, called KLIK (Klebsberg Intézményfenntartó Központ). In the investigation of the operation of the KLIK the Ombudsman found the breach of the rule of law, for lack of remedy available against its decisions and inadequate handling of parents' complaints. According to the new legislation enrollment and attendance of kindergarten will be compulsory from the age of three, however, implementation was postponed to September 2015, due to the lack of kindergartens. Roma segregation is still an issue, which was further deepened through the centralization of public schools. The state failed to tackle the nationwide segregation of Roma and disabled children and those with special needs, legally binding court decisions on terminating segregation are left unimplemented. It is worth noting, that the European Court of Human Rights obliged Hungary to take positive measures against the systematic misdiagnosis of Roma children as disabled.

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Children in alternative care: Child welfare, child protection and social care institutions were transferred under central management. As of January 2014 children under 12 years of age cannot be placed into children's homes (de-institutionalization)/DE-I), only foster families, with the exception of chronically ill, disabled children, or multiple siblings.

Children with disabilities: The UN Committee on the Rights of Persons with Disabilities assessed Hungary and was concerned about the large number of children living in institutional settings and about the fact that many children with disabilities received institutional rather than home care. The De-I of children with disabilities does not show any progress. Under current legislation there is no possibility to provide daycare in institutions for children with disabilities under 3 years.

Juvenile justice: Act LXII of the 2012 modified certain laws in order to implement child-friendly justice. Child friendly witness inquiry rooms were set up at least in one police station in each county. However, discrepancies still abound. Act II of 2012 on Misdemeanour Procedure regarding juveniles results in an absurd and unacceptable situation: according to the law there is still a possibility of confinement for juvenile offenders, as well as for the transfer of a fine into confinement in case the fine is not paid. According to the law only juvenile offenders over 16 years of age can be sanctioned with community service. Detention of juveniles for petty offences is a violation of children's rights, based on this argument, the ombudsman submitted a petition to the Constitutional Court (which was refused in 2013). The interest of criminal procedures can easily override the best interest of the child, for example the pre-trial detention of juvenile offenders (older than 14) shall be carried out in either juvenile reformatories or penitentiaries, according to the decision of court. In practice this means that if there are no juvenile reformatory institutions within a reasonable distance of a given court, the young offender will most likely be placed in a prison near the court to ensure his/her presence. Due to a new provision of the law, the police to take measures against pupils younger than 14 who skip school without permission, albeit school attendance is not an issue of criminal law. The Ombudsman turned to the Constitutional Court also in the case of school truancy, his petition was refused in 2013.

34.6 CONCLUSION

The Ombudsman is strongly committed to represent the approach: human rights begin with children's rights. Despite the fact that Hungary ratified the UN CRC in 1991 and a relatively detailed child protection law was developed, change is still needed in the approach and the practice of relevant authorities.

A European survey (Flash Eurobarometer 235: The Rights of the Child)²⁰ was conducted in 2008 to determine how much young people (15-18 years old) knew about the rights of the child, the extent to which these rights were protected and which actions should be taken as a priority at national and European levels. Two-thirds (67%) of young people (15-18 years old) were aware that children enjoy specific rights compared to adults, while one-third (33%) were not aware of children's rights. The survey showed that Hungarian respondents were the least informed (38%). Hungary was also the only country where a majority of respondents were unaware of the specific rights of persons under the age of 18 (61%). Therefore, we may say that statistically speaking, Hungary has a long road ahead in entrenching the idea of child friendly justice, the first steps of which were assisted by the Ombudsman.

20 http://ec.europa.eu/public_opinion/flash/fl_235_en.pdf.