

7-1-2020

## **"Do My Complaints Matter?" Child Participation and Child-friendliness of Complaint Mechanisms in European Independent Children's Rights Institutions**

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### **Recommended Citation**

Lux, Agnes. 2020. "'Do My Complaints Matter?' Child Participation and Child-friendliness of Complaint Mechanisms in European Independent Children's Rights Institutions." *Societies Without Borders* 14 (1). Available at: <https://scholarlycommons.law.case.edu/swb/vol14/iss1/7>

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**“Do My Complaints Matter?”**  
**Child participation and child-friendliness of complaint mechanisms in European independent children's rights institutions<sup>1</sup>**

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**Keywords:** children’s rights, ombudsman, complaint mechanisms, child-friendly procedures, child participation

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1. Thanks for the language proof reading to Lisa Nóv. In this paper I also benefited from the knowledge gained during a project to develop tools for national human rights institutions (see the tools in footnotes 3 and 9) for UNICEF in 2017-2018, so thank you for Rights On, Vanessa Sedletzki and Gerison Lansdown.

**ABSTRACT**

The protection of children's rights is an obvious task of independent children's rights institutions (ICRIs), though achieved through a variety of means. Based on the guiding principles of the UN Convention on the Rights of the Child (UN CRC), the best interests of the child must be a primary consideration in protecting these fundamental rights, including the right to be heard. ICRIs carefully examine children's rights through investigation and research. But are rights-defenders upholding these principles in their own work? In this brief article I examine the requirements of being a child-friendly and participatory ICRI, and through a three-element comparison of European ombudsman institutions, I present some examples.

## **INTRODUCTION**

In the following, I analyze a particularly important function in the implementation of the UN CRC in relation to ICRI (Gran 2016): the participation of children in decision-making processes, especially in complaint mechanisms. This function is closely intertwined with a crucial feature of procedures involving children and young people as clients — child-friendliness. Article 12 of the UN CRC requires that the child must be adequately informed and heard. An ICRI or an Ombudsman for Children, as an 'advocate' institution, has to channel the views of the nearly invisible children in society, helping them articulate their interests at the highest level. This expectation is also the focus of children's ombudsmen in their own definition of their role.

A complaint mechanism is a means through which children who believe their rights have been violated, as individuals or collectively as a group, can seek redress and an end to an ongoing violation. This mechanism is integral to the right to a remedy in cases of rights violations (UNICEF 2018). Yet, studies reveal that only a very small proportion of the complainants received by ICRI come from children and young people. This can be due to a number of reasons, including lack of information, lack of trust in public institutions, a belief that the complaint will not be taken seriously, and fear of reprisals. It also indicates that complaint mechanisms are insufficiently accessible to children and that they need to become more child-friendly.

## **THE RIGHT OF CHILDREN TO PARTICIPATE AND HAVE THEIR VIEWS TAKEN INTO ACCOUNT**

Freedom of expression is a core human right that plays a prominent role among fundamental rights. The different interpretations of this right reflect a consideration for the need for weaker or stronger protections. The main message of Article 12 of the UN CRC, on the participation of children, is that a child should be considered an active subject of rights (Hanson and Nieuwenhuijs 2012). And one of the key goals of the Convention is to consistently emphasize that human rights also apply to children: To speak, to participate, and to have their views taken into account. These three phases describe the sequence of the enjoyment of the right to participate from a functional point of view. The new and deeper meaning of this right is that it should establish a new social contract. One by which children are fully recognised as rights-holders who are not only entitled to receive protection but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders. This implies, in the long term, changes in political, social, institutional and cultural structures (UN Committee on the Rights of the Child 2006).

The UN CRC requires that all children, even the youngest, be respected as persons with their own rights. Young children also need to be recognized as active members of their families, communities, and societies who have their own concerns, interests, and views. The creation of a formal framework for child participation at national level, at least in its promotion, is also mentioned by the UN Committee on the Rights of the Child (henceforward: Committee), in General Comment No 2, and is addressed to independent human rights institutions:

Independent national human rights institutions have a key role to play in ensuring that both the government and society as a whole respect the views of children in matters concerning themselves. This general principle should be applied to the establishment, organization and activities of independent national human rights

institutions. Institutions should maintain direct contact with children and ensure that they are appropriately involved and consulted. For example, advisory bodies of children could be established alongside national human rights institutions that could facilitate their participation in matters concerning them. National human rights institutions should develop tailor-made consultation programs and imaginative communication strategies to ensure compliance with Article 12 of the Convention. A wide range of appropriate means of communication between children and the institution should be established (UN Committee on the Rights of the Child 2002).

Therefore, with regard to ensuring the participation of children, the Committee states that there is a real need to listen to children and give their views due weight, and not to showcase seemingly imaginative solutions or token events. Furthermore, the competent authorities and bodies (including ICRI's) should directly consult children on issues of concern to them and channel their views (World Vision UK 2015).

### **RIGHT TO REMEDY**

The right to a remedy, or the right to complain, is a fundamental human right and an essential dimension of access to justice for children. Guaranteeing that children have direct (and easy) access to a remedy also recognizes that children are full citizens and actors in their own lives. The right to a remedy is particularly important for children and young people who are “invisible”, marginalized and more at risk of having their rights violated (e.g., child victims of violence, children in care or in closed institutions, children who belong to a minority, children on the move, and children in conflict with the law). The ICRI's complaint mechanism needs to use the UN CRC as its main framework for receiving and handling all complaints submitted by children and/or involving a child rights violation. This means that the approach needs to be rights-based in terms of both process and outcome. The complaint mechanism needs to ensure that the child's dignity is respected throughout the process: treating the child with the same respect as any other person, taking the child seriously without undermining any of the views they express, and providing the necessary information and answers to questions children may ask in a way that they will understand. Even if the child's complaint seems futile, trivial, or irrelevant, it needs to be addressed with respect (UNICEF 2018). According to the UN High Commissioner for Human Rights (2016):

...[A]n independent, safe, effective, easily accessible and child-sensitive complaint and reporting mechanisms should be established by law in compliance with international human rights norms and standards, in particular the Convention on the Rights of the Child. Where such mechanisms already exist, States should secure their availability and accessibility for all children, including children deprived of their liberty, without discrimination of any kind. In addition, States should ensure that complaint and reporting mechanisms act in an effective and child-sensitive manner and pursue the best interests of the child at all times. Child participation in complaint mechanisms includes hearing children's views when handling individual complaints with regard to both the case matter and the way the process is handled (for more information, see UNICEF 2018).

Children should have their say concerning when, how, and where they want to be heard, and maintaining the possibility not to be heard.

ICRIs can take a number of steps to ensure the safe and effective participation of children in this process. For example, communication needs to be adapted to the child's age, stage of development, and individual situation (language, gender, disability). The burden is on the ICRI to ensure that it has adequate tools to communicate with all children. This may involve using cards and images (for younger children in particular), translating legal texts into simple words, using sign language, and having an interpreter available.

The asymmetrical relationship between a child and adult is even more imbalanced during formal procedures, and therefore, any form of communication should aim to minimize power differences. Being child-friendly may mean, in this respect, avoiding formalities, sitting at the child's level, and paying attention to body language, tone of voice and the vocabulary used, amongst other things.

Furthermore, toolkit recommendations can be quite useful in these situations. For example, adults should listen actively and treat children with dignity. They must pay close attention to what the child is saying, and reformulate to ensure that the child has understood properly what the adult has said, and ask follow-up questions. Professionals should systematically ask if the young person has any questions or concerns. They should not minimize or trivialize the child's situation and views. The process, as well as the roles and functions of the adult(s) interacting with the child, must be explained. Children need to be given information about whom they are sharing their views with and how these views will be used.

Professionals in direct contact with children should be trained to communicate with children of all ages and stages of development, and in situations where the child will be particularly vulnerable. Regular trainings should be held to refresh and equip professionals with new skills and to enable them to share their experiences. This is also what the Commissioner for Fundamental Rights in Hungary recommends in various reports on children's rights (Commissioner for Fundamental Rights and His Deputies 2018).

The nature of an ombudsperson's complaint mechanism is largely quasi-judicial. Consequently, when an ICRI receives individual complaints, it does not issue binding decisions on individual cases, but rather facilitates a mediation or conciliation process between the relevant parties in order to address the concerns involved (UNICEF 2012). The scope of the complaint mechanism depends on the breadth of the child rights issues covered and the limitations of the legislative mandate. Hence, they differ from one country to the next. A very small number of ICRIs are unable to take individual complaints. The ability to receive complaints from any source facilitates the reporting of concerns about the welfare of children and credits the ICRI as a body that can be approached by anyone with a concern. Such an open mandate encourages greater public ownership of the institution and underscores the fundamental view that protecting child rights is everyone's responsibility. Most institutions are able to accept complaints directly filed by children (UNICEF 2012:24).

### **COUNTRY ANALYSIS (IRELAND, THE NETHERLANDS, HUNGARY)**

Below, in a small sample analysis, I compare European ICRIs in Ireland, the Netherlands and Hungary, in terms of how their requirements ensure the participation of children, especially concerning complaint mechanisms.

I chose these countries in order to analyze European institutions that fit into the three main structural models (separate ICRI, ICRI integrated into a general ombudsman institution, or general

institution with some special task). I have also tried to take into account geographical diversity. Alongside this, I examined the separate, independent children's ombudsman model in Ireland, the integrated model in the Netherlands, and the general ombudsperson with some tasks dedicated to protect children's rights in Hungary. These countries received scores on Humanium's 10-point index on children's rights; the Netherlands (9.16) and Ireland (9.05) received good ratings, but Hungary (8.36) only received a satisfactory rating. Although this point system is essentially not suited to the analysis of children's rights we have carried out (Humanium), it is worth looking at whether the countries of the institutions involved in comparative analysis performed better where an independent ombudsman for children's rights is involved. Ireland and the Netherlands, as the most advanced, economically-performing countries in Europe, have also achieved good results in terms of child welfare indicators.

### *Ireland*

In Ireland, the constitutional settlement of children was only recently completed. Children (especially children as holders of rights) had limited recognition in the 1937 Constitution. At that time, children were socially perceived as subjects of parental rights and objects and obligations, rather than autonomous rights holders (Nolan 2007). The constitutional provisions on family and educational rights (Articles 40–44; Constitution of Ireland 2018) strongly reflected the Catholic doctrines and papal encyclicals (among others, the *Quadragesimo anno*), due to the country's dominant religiosity. However, in the 1990s and 2000s, there was a growing social and political need for the rights of the child to be consolidated in the text of the constitution. This was further fueled by scandalous child abuse cases brought to light that involved the Catholic Church, and subsequently, the prosecution of hundreds of priests (BBC 2010). The case investigation reports and the Committee on the Investigation of Child Abuse found that the appropriate and effective response of public bodies was partially or completely missing due to the fear that measures needed in these cases would interfere with the constitutional rights of parents.

In 2007, an election year, all emerging political parties pledged to amend the constitution in order to implement the rights of the child and to call for a referendum. Following the elections, a parliamentary committee was set up to prepare a new legislative proposal. During the process, several hearings and debates were held, and reports were made. The committee's proposal was published in 2010. With a relatively low turnout on 10 November 2012, the "Children's rights referendum" finally won, 58–42% (Children's Rights Alliance 2012; Government of Ireland 2019).

Following the referendum, Article 42A of the Thirty-First Amendment of the Constitution entered into force on 28 April 2015. It states, "1. The State recognizes and enhances the natural and inalienable rights of children, and its laws protect and enforce these rights as much as possible [...]". It is a great achievement that a constitution not only refers to the state's obligation to protect children, but also contains detailed provisions on the protection of children's rights. From a policy point of view, it is also remarkable that politicians discussed the situation of children's rights, during a preliminary campaign, and that a referendum was later called on the matter. Thus, it became a greater priority on the political agenda. It should also be mentioned that the children's ombudsman was quite active during the campaign.

### *Protection of fundamental rights (tasks and powers)*

The separate Ombudsman for Children's Office (OCO) was set up in 2004 on the basis of a statutory mandate (Act 22 of 2002 on the Ombudsman for Children). The institution has national competence, with a seat in the capital. The ombudsman is nominated by the head of state during

an absolutely innovative selection process in which children play an active role. A candidate can apply for the position through an open competition, published online and in print, with a panel of 15 children. The ombudsman's term of office is six years, renewable once. The OCO is an independent statutory body that solely and directly reports to the Irish Parliament (*Oireachtas*). According to the legal mandate, the ombudsman can report to Parliament on any other matter, and attend plenary and committee meetings. Among the Ombudsman for Children's core statutory functions is the independent and impartial investigation of complaints made by, or on behalf of, children in relation to public bodies, as well as organizations providing services on behalf of the State. On the office's website and in its annual reports it declares complaint handling its most important function (Ombudsman for Children).

Anyone can make a complaint about a service in the Republic of Ireland. All complaints received will be assigned to a referent after submission. The primary goal when dealing with cases is to find an effective, local solution. Under the statutory mandate, the ombudsman may investigate the actions of any public authority, including public schools and health institutions, that may (1) have adversely affected a child by an act, decision or proceeding of the institution, and (2) have been carried out without good reason or not; been born as a result of negligence; been based on incorrect or incomplete information; been discriminatory; or (3) otherwise be contrary to the principle of fair and equitable treatment.

The ombudsman may also open own-initiative inquiries, the subject of which depends on them. Typically, the ombudsman initiates investigations into cases where children and their families are less able to articulate or complain, and where a more comprehensive change in the area is expected as a result of the study (see, for example, the first comprehensive systemic monitoring of the child protection system in 2010). Since the establishment of the institution, around 1000–1600 complaints have arrived per year, with an increasing trend. The vast majority of complaints are filed by parents, with only a few children turning to the office. But in 2018, the number of complaints coming directly from children rose from 3% to 5%. This is very significant as the office has made concerted efforts to hear directly from children and young people, where possible. This increase is most likely due to the OCO's increased outreach activities at Oberstown Children Detention Campus and Direct Provision Centers, but children are also becoming more aware of the office and making complaints directly, or receive help from advocates to do so (Ombudsman for Children 2018). The majority of complaints, as in previous years, were made by parents or other family members who play a crucial role in raising concerns about how children are treated by public bodies.

The OCO website contains a special section on complaints, with information about who can make a complaint, what should be done before making a complaint, what can be complained about, and what happens after submitting a complaint. The complaint form is available online, as is the contact information for submitting a complaint via email or post. There is also a free help line (Ombudsman for Children). The website provides illustrative case studies to help young people and advocates with a few common issues (housing, child welfare agency, justice, health, and education).

According to the OCO's three-year strategic plan (2019–2021), one of their main objectives is to increase awareness of children and young people's rights, the UN CRC and the OCO. In order to achieve this, they are developing and implementing initiatives to increase awareness among public and other organizations, and children and young people on children's rights and the OCO, including the OCO's role as a redress mechanism. They also repeatedly highlight the OCO's task to find out what children and young people are concerned about, and



share these with the Government and others who make decisions that affect youth (Ombudsman for Children 2019).

### *Child participation.*

The process of selecting an ombudsman is in itself a participatory method; children have a powerful voice in choosing the right person for the role. The ombudsman operated a Youth Advisory Panel (YAP) between 2004–2007 and 2007–2009, and published special child participation reports on their activities. In 2009 the ombudsman began focusing on specific groups of children, such as children separated from their parents, children in prison, and homeless children, rather than the YAP. Additionally, the OCO maintains direct contact with children twice a year, with a one-week consultation with children from all over the country. The consultation is based on specific discussion topics (health, school bullying, etc.) that children vote on. The OCO has also launched its own training program on child rights, and has a number of programs and initiatives aimed at understanding children's views. For example, during the Big Ballot project (“The biggest consultation that has taken place with children and young people in Ireland”), in spring 2007, the ombudsman invited all Irish schools and youth centers to take part in a referendum initiative. As a result, 75,000 children from 500 schools and training centers commented on five topics (education, participation, play and recreation, family and care, and material well-being), and the outcome was shared at City Hall in Dublin on the International Day of the Rights of the Child, 2007. In another project, between September and December 2013, more than 500 children between the ages of 7 and 16 submitted video comments to the OCO on the UN CRC (Ombudsman for Children 2007). The office of the OCO makes efforts to involve children in their work by developing information and educational materials on rights for children. In 2014, the OCO launched a website dedicated to promoting these rights to children and young people via the “It’s your right!” program (Ombudsman for Children nd). Audiovisual and educational content for ages 4–17 enabled children and young people to learn about their rights and the UN CRC. OCO also has an active social media presence on Instagram, Facebook, Audioboom, Vimeo, and Twitter. OCO has over 7200 followers in 2019.

The OCO has organized youth projects, child welfare services, and regular educational workshops for school children since 2006. Thousands of children and young people from across the country have participated in these workshops, which offer valuable opportunities for agency staff to learn from children and young people, contemporary leaders, teachers, and parents.

The OCO has also developed educational materials that will make it easier for teachers to discuss children's rights issues with students. Following the success of the Big Ballot campaign (Ombudsman for Children 2007), “Small Places” (Ombudsman for Children 2012), and “What do you say?” (Ombudsman for Children 2010), additional programs were developed in English and Irish for the public as well as for children and young people (and their teachers) in upper secondary education. These can also be downloaded from the program website.

Currently, the OCO is running the participation projects “Joining the dots,” which is an initiative to hear the views of children and young people, as well as their parents and hospital staff, on the delivery of services to children and young people in hospital, and “Child talks,” which are a series of events with educational speakers that takes place every year on 20 November as part of the World Children’s Day celebrations. But with “Brexit” high on the United Kingdom’s political agenda, they organized the event, “Children’s rights and Brexit,” in November 2017. The OCO and the Northern Ireland Commissioner for Children and Young People (NICCY) jointly hosted

this cross-border event in Newry, where, thanks to a number of youth organizations, many children took part (Ombudsman for Children).

Along with a game ("Rights runner;" Ombudsman for Children), the OCO developed a monthly, anonymous, online survey, "Have Your Say", which is based on issues raised by young people the OCO meet. The office shares the survey results online and uses the information to inform the work they do — a good example of listening to children's views and implementing them into the work of the OCO.

In 2019 a report called "No Place Like Home" was published by the OCO outlining children's views and experiences of living in Family Hubs. The views of 80 children living in eight Family Hubs in Dublin, Cork and Limerick are represented in No Place Like Home. The OCO consulted with children between the ages of 5 and 17, as well as with parents of children under 5. Children were asked what they liked, what they found challenging and what they would change about Family Hubs (Ombudsman for Children nd).

### *The Netherlands*

The Dutch Constitution (Grondwet) has been in place since 1814, and was last amended in 1983. The national ombudsman was set up in 1981 with a general mandate to oversee the constitutional review of the proceedings of all public administrations. Larger cities (such as Amsterdam, Rotterdam, and The Hague) also have local ombudsmen, whose regulations, tasks, and powers are similar to, and work with, the national ombudsman (Wet National Ombudsman 1981). Over the last few decades, there hasn't been a showing of real support for the creation of an independent ombudsman for children, and the government expressed the view that children's rights could be adequately protected within the existing ombudsman institution.

Many NGOs, advocacy groups, and experts have argued in favor of setting up the institution. One such child welfare organization, Stichting Kinderpostzegels Nederland, researched the possibilities for children and young people to enforce their rights at the local and regional level ("Kom Op-project"), and came to the conclusion that the current situation was inadequate (Kinderrechtencollectief 2003). In 2001, the Parliament conducted a study on the usefulness and possible tasks of the Ombudsman for Children. This work formed the basis for a proposal from the Ministry of Justice, Health, Welfare and Sport to establish a national Ombudsman for Children. In November 2002, the competent ministry initiated an expert consultation with a number of European Children's Rights Ombudsmen on the functioning and experience of their institutions.

Subsequently, Parliament adopted the amendment and named the Ombudsman for Children as one of its deputies, alongside the General Ombudsman. Despite belonging organizationally to the National Ombudsman, the Ombudsman for Children was established in April 2011 as an "independent office." Chapter One of the Dutch Constitution contains extensive provisions on freedoms and fundamental rights, but does not explicitly refer to children as special recipients of fundamental rights, nor as a group to be protected (Constitution of the Kingdom of the Netherlands 2008).

### *Protection of fundamental rights (tasks and powers)*

The Ombudsman for Children and his close staff (seven staff members), actively monitor children's rights in the proceedings of public authorities and private organizations active in education, child protection, health, and welfare services. The ombudsman advises the Parliament or any other body on request, or in cases where he deems it necessary. The office draws attention

to the need to protect children's rights by all means, and publishes an independent annual report which is submitted to the House of Representatives.

The first ombudsman for children's rights, Marc Dullaert, entered office in 2011 and enacted a number of fundamental measures to define the institution's image. Among his many actions, he successfully applied for ENOC's rotating presidency, resulting in Amsterdam hosting the ENOC Annual General Assembly, wherein a resolution on violence against children was adopted with the UN Special Rapporteur. Margrite Kalverboer, the incumbent ombudsman for children, appointed on 20 April 2016, said:

I want to do something for children we don't see, such as children who are abused and unknown, or children of needy parents who are otherwise at risk. The UN CRC states that the best interests of the child must be a primary consideration in all decisions concerning children, and that every child has the right to development, to be heard and to be treated equally. This is the starting point from which I would like to investigate cases.

According to the statutory mandate, the Ombudsman for Children provides advice and information on children's rights in general, and provides advice to the government and to the Parliament on child rights during law- and policy making. She also carries out investigations related to children's rights based on complaints or ex officio. Complaints submitted by children or their legal representatives are followed up on when submitted to competent bodies other than the National Ombudsman.

Anyone can contact the ombudsman via a toll-free phone number, Monday–Friday, via email (including anonymously), or by post (even without a stamp). The Ombudsman for Children was approached 1,998 times in 2018 with questions, requests for help, reports of concern and complaints. That is a significant decrease compared to 2017, during which they received 2,452 complaints. As in the past, youth assistance, education and contact after divorce top the list of topics for which they have been contacted. More than half of the complainants (1,103) contacted the office by e-mail. Somewhat less than half (878) approached them via the toll-free phone number. A small number of complainants contacted the ombudsman by mail, or in person during a working visit.

#### *Child participation.*

In a significant and empowering step, the Ombudsman Act states that, in accordance with Article 12 of the UN CRC, the Ombudsman for Children shall seek and take into account, as much as possible, the views and interests of children.

Since the establishment of the Office, the ombudsman has also published comprehensive reports, which always include the presentation of children's views (either on the basis of complaints that they have received, or on the basis of further research involving children). Such reports include the situation of foreign children (2012), child poverty (2013), the right to education (2013), family reunification (2013), and violence against children (2015). Content tailored for the professionals and children, divided into two age groups (under 12 years of age and between 12-18 years of age), on children's rights and the ombudsman's work is regularly uploaded to the ombudsman's website. The ombudsman tries to be active on social media (with over 4,400 followers on Facebook, 15,500 followers on Twitter, and a presence on both YouTube and Instagram).

The ombudsman launched a children's rights tour (Kinderrechtentour) in 2016. Every two years they spend weeks travelling the country to talk with different groups of children and young people (e.g., children with eating disorders, children in correction centers, children of soldiers, etc.) about how they are doing and what they find important. During the 2018 tour, the ombudsman and her colleagues talked to more than 80 children and young people. The ombudsman also received a completed, extensive questionnaire from 1,700 children in which they were asked to score their quality of lives. The tour results are published regularly on Universal Children's Day. The ombudsman also toured the Caribbean Netherlands in 2006, and talked to almost 200 children, with 264 others filling out the questionnaire (De Kinderombudsman 2016).

In the 2018 joint annual report of the ombudsmen, the children's rights ombudsman emphasized that the right to participation is one of the most important of children's rights. The report states that children and young people must be involved in decisions that influence them, and their opinion must really be included in these decisions. This applies both in individual cases and at the group level. The ombudsman not only tries to draw attention to the right to participate in general, but also to embed this in her own work; children were involved in all of the surveys the ombudsman conducted in 2018, through conversations or online questionnaires. Together with the youth organizations (Jongerenlobby) involved in 2017, the office published an infographic about what needs to be done to increase the influence of children and young people in the work of the House of Representatives. The ombudsman also sent a letter to all new municipal councilors with a call to involve young people in their work. In the coming years, they want to focus even more on involving children and young people.

### ***Hungary***

During the regime change in 1989/1990, Hungary shaped the institution of the ombudsman after the Swedish model. The Commissioner for Fundamental Rights (only unofficially called the ombudsman) is solely responsible to the Parliament, and is independent in the conduct of proceedings. They act in accordance with the Basic Law (Constitution) and the new 111 of 2011 Act on the Commissioner for Fundamental Rights (new Act on the Ombudsman). The new Basic Law and the Act on the Ombudsman entered into force on 1 January 2012, introducing a new model of ombudsman. The previous system of one general and three specialized ombudsmen (nationality and ethnic minority rights, data protection and information freedom, and future generations/environmental issues) was merged into an integrated institution for the sake of transparency, efficiency and cost reduction. In the new system, deputy-commissioners working to protect minority rights and the rights of future generations work alongside the ombudsman, though with more limited powers. Since 2011, the ombudsman has operated with the UN National Human Rights Institute (NHRI) "A-status". Although the international community has, since the 1990s, been increasingly active in supporting national human rights institutions to protect children's rights, in particular the establishment of children's ombudsmen, Hungary does not have an independent Child Rights Ombudsman, and there is no deputy ombudsman for children. The right of the child to protection and care is currently enshrined in Article XVI of the Basic Law.

### ***Protection of fundamental rights (tasks and powers)***

Unlike before the new act came into force, the Act on the Ombudsman, in § 1 (2), expressly declares that the ombudsman's priority task during his activities is to pay special attention to protect the rights of the child. At the same time, while the priority tasks set out the protection of children, the rights of nationalities living in Hungary, future generations, and the most vulnerable social

groups, children have not received a deputy ombudsman. The general task of the commissioner remains to investigate problems involving constitutional rights and to initiate general or specific measures to remedy them. Anyone can turn to the ombudsman, including a child. The ombudsman also may initiate proceedings to investigate allegations of constitutional malpractice brought to his/her knowledge by an authority or public service.

Since 2008, the ombudsman has, throughout his mandate (even in the absence of a specific provision in the Ombudsman Act, but through a brief mandate from the child protection act), proactively presented himself as a quasi-ombudsman for children. By launching children's rights projects (2008–2013), the ombudsman has closely monitored the rights of children, and has given special priority to investigating complaints from children, or violations of their rights and interests.

The ombudsman can open an inquiry into a media news issue (news on child abuse, most commonly) or, at his own discretion selects an area or institution to investigate, around the theme of the annual children's rights project. The ombudsman's inquiries, whether launched by complaints or *ex officio*, are primarily based on constitutional provisions and constitutional court practice, taking into account the requirements of international conventions, including the UN CRC. In the case of the latter, it should be noted that, as a one-person institution, it is up to the Commissioner to determine the extent to which the ombudsman's report refers to the UN CRC or other international guidelines and survey results.

Most of the complaints received concern cases that were detrimental to the proceedings of the guardianship authorities (in particular, contact matters, protracted proceedings and other defects). During inquiries launched by the ombudsman himself, numerous on-site visits of children's homes were carried out. Most of the inquiries were sparked by media reports focusing on child abuse (and the malfunctioning of the child protection warning system (Lux 2015)).

Based on case statistics, the commissioners have received around 128,000 complaints since 1995 (roughly 8,000 submissions a year), most of which are dismissed due to jurisdictional constraints. The trend seems to be stable, that is to say, only a fraction of cases are completed, whether in the area of child rights, child protection or family law. However, it should be noted (and this is a problem for other institutions), that there is no data on how many complaints are lodged by children nor on the age of the petitioner. The Office of the Commissioner for Fundamental Rights recently became more active on Facebook, the office's account has around 2500 followers. A related account also owned by the office shares information related children's issues has almost 3000 followers. The ombudsman has no other social media accounts, however researches shown that young people are using more likely other social media platforms (e.g., Instagram, Snapchat) (It has to be mentioned, that after analyzing the national social media statistics, using Twitter is still not that popular in Hungary: 2,92% (in comparison with Facebook which is 89,23% (Statcounter GlobalStats. 2020; Kafkadesk 2019)).

#### *Child participation.*

A “project approach” of the ombudsman aiming to be proactive in a six-year term was expected to improve children's access for the 2008–2013 period. In 2008, the Commissioner set up a separate website providing information on child rights, including an accessible version (also for visually impaired visitors). The office and the work of the ombudsman due to the projects and related media attention became more visible, however without meaningful participation of children, this was not really successful from the young people's perspective. Despite this more active attitude and commitment to promote children's rights, at the same time, children's involvement has not been institutionalized since the establishment of the Office.

## SUMMARY

This analysis finds a clear lack of common and consistent understanding and interpretation of child participation among institutions. For example, institutions using social media (Facebook or Twitter), may not be reaching their target audience or sharing real child-friendly content. Furthermore, it should be noted that one-sided communication or participation in children's programs does not equal the real and meaningful involvement of children. However, the ombudsman's basic weapon is publicity, the use of which is fundamentally dependent on the perception and ability of the office holder. Studies have shown that communicating with the media is a powerful tool. Yet, it is not enough to spread important information and updates related to children's issues, doing so in a child-friendly way must be learned in order for this information to reach its target audience, children.

Among the institutions, the Irish and Dutch Ombudsmen stand out for involving children. In the case of Ireland, children are even involved in the ombudsman selection process. The Irish Ombudsman operated a youth advisory board and, since 2009, has worked with special groups of children on a thematic basis. The ombudsman also developed children's rights briefing materials with children, and launched projects accompanied by prominent campaigns in which children were involved. Some of these campaigns, like "Big Ballot project", had a significant media profile. The OCO uses its monthly online survey, "Have Your Say", to shape the work they do — which is a good example of listening to children's views and implementing them into the ombudsman's work. It is also particularly important and symbolic that the Irish constitution was amended with provisions expressly pertaining to children's rights.

The Dutch Ombudsman Act stipulates that the ombudsman must involve children in the performance of his duties in accordance with Article 12 of the UN CRC. Thus, in its comprehensive reports, children's opinions, expressed either through direct complaints or through research, are always included. The children's rights tours, started in 2016, allow the ombudsman to directly hear the views of different groups of children and young people.

The Hungarian office has not yet institutionalized or formalized the involvement of children. Since the establishment of the institution, the commissioner has played an important role in protecting the rights of the child—acting as a quasi-ombudsman for children's rights, despite the absence of a separate institution. The new Ombudsman Act is a step forward as the law contains an explicit provision on the protection of children's rights, and since 2013, a separate children's rights department has been operating within the institution. The institution is widely accepted by professionals and decision makers, but with this old-fashioned way of using the media, and the lack of child participation, it has remained a bureaucratic "adult" office.

In conclusion, it seems, based on these comparisons, that children and young people can participate in a more meaningful way if the ombudsmen institute is separate, with a stronger mandate. In these cases the participation became a high priority for the ombudsmen. Participation will be not only a right among the others which are important to protect. It became an immanent part of their own work. It can be also concluded if an ombudsperson will be selected with the meaningful participation of children (as we see in the Irish case), not only the legitimacy will be stronger, but also s/he will understand much deeper what it is like to work not only for children but also with them. As a result of having everyday practice of working with young people on a daily basis, the institution will be transformed to a more child-friendly one. Their simple presence will shape soon the entire "adult" office. Moreover the agenda of the ICRI can be more important

and so the institution will be more useful for the children if they have a voice to tell what are their problems, and at the end the work of the institution will more effective.

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