



2009 ENOC Annual Conference
Paris, 23-25 September 2009

THE BEST INTERESTS OF THE CHILD

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1. Keynote speeches

1.1. Foreword from Dominique Versini



Ms Versini welcomed all participants, colleagues from 35 Ombudspersons for children offices across Europe but also international observers and experts. The particular importance of the 2009 Annual meeting and of the theme of the “Best interests of the child” has been underlined since the 20th anniversary of the International Convention on the Rights of the Child is being celebrated all around the world. The

theme of the “best interests of the child” is one of the most important and most challenging principles that the CRC¹ is promoting. Ombudspersons for Children are, without doubt, those whose interventions are always motivated by the best interests of the child while they are also the primary promoters of the principles and rights enshrined by the CRC. *“We, Ombudspersons for Children, all advocate for children’s rights. Our mandate is to protect the best interests of the child in all circumstances”*. “The mandate of an Ombudsperson for Children is to defend children’s rights *in all circumstances* and thus even if this goes against the government, the parliament or other public authorities’ policies.”

Ms Versini expressed the hope that the programme of the Conference which includes workshops on the best interests of the child in various fields and from different aspects i.e. the best interests of the child whose parent(s) is/are in prison, the best interests of children living in residential institutions or in foster families, the best interests of children with disabilities or of those who are confronted to the judiciary system, will explore various ways and opportunities on how Ombudspersons for children contribute to a better consideration of children’s best interests in every and each field concerning them. The mainstreaming of all relevant national legislation in order to better take into account and to protect and promote children’s best interests has been considered by Ms Versini as a primary objective.

While the Network members reached the number of 35 and will continue to grow up, the French Government has submitted to the Parliament a draft bill which might end up in the closing down of the Office of “la Défenseure des enfants” and a dilution of a part of its missions into a general ombudsman office. Ms Versini reinsured her network colleagues that she will be continuing advocating and lobbying for a *strong, visible, efficient and independent* children’s rights Ombudsperson in France.

¹ CRC : Convention on the Rights of the Child



1.2 Address by Mr Jacques Barrot, Vice President of the European Commission, and Commissioner for Civil Liberties, Justice and Security

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Mr Barrot congratulated Ms Versini who took over the chairmanship of ENOC and Ms Emily Logan, the outgoing Chair, for the great work done over the year. Mr Barrot thanked all Ombudspersons for children for the hard work they are doing on a daily basis and encouraged the development of the network which is the main instrument in the exchange of good practices.

As to the current situation of the rights of the child in EU countries and the mainstreaming of children's best interests in all EU policies, and their implementation Ms Barrot stated that the situation is far from being satisfactory: many children's rights are still being violated, many children are still victims of trafficking, of sexual exploitation and there are also new risks linked to the use of new technologies. As from 2007, the European Commission started organizing "EU forums on Children's rights" on different themes i.e. social exclusion, roma children, forced labour etc. to which many ENOC members have already been associated.

Concerning the sectorial activities already undertaken and essentially motivated by ensuring that the best interests of the child form part of the Commission policies in the field, Commissioner Barrot enumerated the 5 most important:

- The issue of violence: from 20% to 65% of children declared to have already been intimidated in schools of industrialized countries.

According to the WHO, 40 million children aged under 15 suffered of moral abandon and need health care and social protection.

In response to the statistics, the European Commission took the following measures:

- The setting up of an abduction warning system: the system is already functioning in 8 EU member states while 3 extra member States are developing a similar mechanism. The European Council recommended to all EU member states to develop such or similar mechanisms;
- In 2007, the Commission adopted a decision on a compulsory unique hotline number 106 000 to provide psychological support for children in distress. The hotline number already exists in 10 EU member states;
- The 3rd initiative to combat violence is the Daphne programme which provides support to actions taken by local authorities or NGOs. The budget of the programme is €16 million; 200 projects have already been funded through this programme

And last but not least the Spanish presidency of the EU will focus on the issue of domestic violence against women and children.



- The issue of Trafficking of children and child pornography: 150 million girls and 73 million boys under 18 have already experienced some acts of sexual violence. ILO estimated that 5, 5 million children are being forced to work, 1, 8 million are being forced to prostitute and 1, 2 million children are victims of trafficking.



The Commission has proposed the revision of the key decisions in order to criminalise the offenders, to defend the victims and to prevent the phenomenon.

- The issue of cyber security for children: a warning program has been set up in the framework of Europol and a platform has been developed while data is centralised by Europol; in addition to that, a “safer internet plus” program has been developed in cooperation with the Council of Europe;
- Civil justice and children: the 2003 Regulation “Brussels 2 bis” allows the determination of the competent jurisdiction in case of conflictual divorces; there is a set of community decisions ruling for a competent jurisdiction in cases of conflictual divorces, but also rules on the recognition of decisions in the field of parental responsibilities, or in cases of abduction of a child by one of the parents where States must guarantee the return of the child in the home country. In the field of family law and concerning the above regulations, the Commission pays special attention to the principle of the best interests of the child when adopting or revising Community regulations in the field.

In May 2008 a Directive on civil mediation has been adopted and should be applicable by 2011. The aim of the Directive is to give a better status to the family mediation in cases of transborder family disputes.

However, there is still a major problem as the family field is still being considered as a State competence and not a Community one.



- The issue of migration and asylum: Commissioner Barrot informed ENOC that an Action Plan on unaccompanied minors is under preparation and will hopefully be presented to the Commission by the end of the year 2009. The objective is to collect best practices from member states, and then to have a reflexion on setting up specific centres adapted to children's needs but also how to reinsert those children in their country of origin when this is possible.

Commissioner Barrot reminded that the Stockholm 2010-2014 program will be adopted by the Council of the EU by the end of the year. He reinsured ENOC that children's rights and the protection and promotion of children's best interests principle will remain on the agenda of the EU program and a special attention will be paid to the issues of combating violence against children, on protecting vulnerable categories of children (disabled, unaccompanied, Roma children) and on child poverty.

Mr Barrot wished that there is a very good and strong communication between the European Commission and ENOC on the subject matter. He pursued that *"no success will be possible if there is not in each state a willingness to protect Children's Rights through a specific institution."* In the coming years, the EU will intensify its actions in the Children's rights area.

1.2. Address by the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg

Commissioner Hammarberg intervened through a video message. He welcomed the close collaboration established between his team and ENOC before pursuing that *"the work of Ombudspersons for children is crucial, important but very difficult to accomplish as Ombudspersons for children represent children's interests and concerns in all the fields of the public and private life"*.

"The CRC has been a great success with the number of ratifications achieved, which makes it universal", he said. The main consequences of the CRC's success according to the Commissioner are that: it is widely recognized that children are right holders; important issues concerning children's rights are now put on the political agenda; and last but not least is that in many countries specialized ombudspersons for children offices do exist.

However, he stated that important problems in the children's rights area remain unsolved. One of these problems concerns the interpretation of the Article 3 CRC principle of the *"best interests of the child"*. According to him, the best interests of the child principle should be the one that guide the interpretation by the public and private sectors of all the other rights of the child.

In the interpretation of the best interest of the child, *"children's concerns, aspirations and rights should be given priority. This has to be applied in every field concerning children"*, he underlined.



Mr Hammarberg invoked also another serious problem this concerning the best interests of children living in institutions. He stated that the process of de-institutionalisation is not going far enough. “The best for a child, especially for a young child, is that the child grows up in a family life environment”, he said. He mentioned the very bad living conditions in the institutions, the low status of the staff in the institutions which is not interested in supporting children. What, according to him, requires more reflexion and review is the procedure to decide how to support and how to care for offended, disabled, and the so called socially offended children. In this context, he mentioned the current activities undertaken by the Council of Europe in the field of juvenile justice and especially the set up of guidelines on child friendly justice where the contribution from Ombudspersons for children might be essential.

Commissioner Hammarberg expressed concerns as to the intention of some governments in Europe to close down or to reduce the functions of ombudspersons for children offices. He then stated that “if there are changes in the structure of such independent institutions, public authorities have the obligation to prove that the change will be *in the interests of children* and must prove the efficiency in the support work for children. Otherwise, such proposals should be rejected.”





2. Interventions in plenary sessions

2.1. Child rights impact assessment & child rights toolkit by UNICEF

Ms Margaret Wachenfeld, from UNICEF Brussels' office, presented an ongoing project undertaken by UNICEF with the support of the European Union. The purpose of the project is to develop high-quality tools and training package around a whole series of child rights issues with the aim to improve the capacity of targeted stakeholders and key actors to identify and address child right issues in their work and to better integrate children's rights and children's best interests into a whole range of relevant political, legal, budgetary and programmatic actions and structures. The toolkit aimed to provide all stakeholders (Governments, donors, civil society, ombuds and international organizations) with a series of tools. There are 9 tools on, among others, child rights impact assessment, child rights in political dialogue, child friendly budgeting, child participation etc.

The key outputs expected are a toolkit, 10 Global trainings and a learning package, a website and a global conference in Brussels.

While UNICEF is already working on the child rights impact assessment tool with the Scotland Commissioner for Children and young people and with the Swedish Ombudsman for Children office, Ms Wachenfeld encouraged ENOC member institutions to participate in the project by providing examples and expertise from the field and by sharing case studies. She also invited ENOC member institutions to use the tools (once finalized) and to promote them with the partners.

2.2. Developing Indicators for the protection, respect and promotion of the Rights of the Child in the European Union: the work of the European Union Agency for Fundamental Rights (FRA)

Ms Anastasia Crickley, Chairperson of the management board of the EU Fundamental rights agency, presented the current activities undertaken by FRA in the children's rights area.

"1/5 of the EU population is children and the protection and promotion of their rights are a priority for the EU and its institutions", said Ms Crickley. Aside from the UN CRC and the ECHR to which EU member states are bound, the EU Charter of Fundamental rights also recognizes the rights of the child in its article 24 and pays special attention in its paragraph 2 to the principle of the best interests of the child which should be a primary consideration for public and private institutions in actions





relating to children. However, despite these various binding instruments, the situation of children remains worrying. According to Eurostat, quoted by Ms Crickley, 19% of children (in EU area) aged 0-16 are at risk of poverty; many suffer violence within the family, in the community, in residential care and in other settings; many continue to be placed in institutions despite the potentially damaging effects, particularly on young children; children are still being trafficked and smuggled into and across EU Member States to be exploited despite the international efforts to stop this horrific form of abuse; separated children seeking asylum are often placed in detention, lacking access to appropriate housing, education, and health care; disabled children and those from minority ethnic backgrounds continue to suffer discrimination, often on multiple grounds, and experience problems in accessing vital services such as education and health care.

In response to the alarming situation and following a specific request made by the European Commission, the FRA presented on 25 March 2009 a set of indicators that constitute an initial toolkit to evaluate the impact of EU law and policy on children's status and experience across various fields.

The areas covered by the indicators were selected on the basis of four key criteria:

- The area is included in the child rights framework, as developed under the 1989 UN Convention on the Rights of the Child, ratified by all EU Member States;
- The area falls within EU competence;
- The area affects a significant proportion of the child population in the EU or raises concerns that require an **urgent response**;
- That there is a clear policy interest at EU level.

The indicators aimed at assessing the impact, highlighting the achievements, and revealing the gaps in EU provisions for children enabling EU institutions to develop the appropriate legal and policy response to enhance the protection and promotion of children's rights at EU level. In this context, two urgent issues based on the work on the indicators have already been tackled by the FRA:

Child trafficking

In April 2008 the FRA launched its first research project based on the work on indicators focusing on child trafficking, a serious problem for the EU and beyond it. The main conclusions drawn from the report, as presented by Ms Crickley:

- The current EU legislation on the subject matter should be updated and supplemented
- Primary consideration for EU child trafficking legislation should be **the best interests of the child victims**
- Child trafficking lacks a uniform definition in EU member states



- Socio-economic rights of children trafficking victims need to be guaranteed by EU legislation

Separated children seeking asylum in the EU

In December 2008 the FRA launched its second research project drawing from the work on indicators that examine the views and experiences of separated asylum seeking children accommodated in different care settings in 12 EU Member States. The aim of this project, which is ongoing and expected to be published in early 2010, is to provide EU and national policy makers, agencies and services with a valuable insight into separated asylum seeking children's views and perspectives that will assist them in improving the quality of living conditions, as well as the relevant legal procedures. The research investigates the views, experiences and perspectives of these children, and, in addition, those of officials and staff involved with these children. The research takes up the Inter-Agency definition of separated children as "those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members". It covers children seeking asylum, as well as those staying irregularly in the host country. This research aims to identify also how asylum seeking children's best interests could better be protected and taken into account by the hosting EU countries.

2.3. The Council of Europe Strategy 2009-2011

Ms Eida Moreno, Manager of the Council of Europe Programme "Building a Europe for and with children" presented the Council of Europe activities in the children's rights area.

After having summarized the achievements already reached for the period 2006-2008 in the children's rights field, Ms Moreno talked about what is planned ahead for 2008-2011 reminding that ENOC members have participated in September 2008 at the Stockholm Conference launching the Stockholm Strategy.

She pursued by stating that the program continues to constitute a support for the implementation of international standards in the subject matter and aimed to introduce a child rights perspective in all Council of Europe policies (mainstreaming). For this purpose, 5 strategic objectives have been fixed:





- Further mainstreaming and coordination in the democracy, media, family and social policies, and health; two new projects on child friendly social services and on children and health are under way;
- Promoting children's access to justice and child friendly justice; the Guidelines under preparation by the Group of Specialists to which ENOC has been associated are expected to be adopted in 2010;
- Elimination of all forms of violence against children: the Guidelines for the protection of children from violence are to be adopted by the Committee of Ministers in November 2009; the launching of a campaign against sexual violence and abuse is planned;
- Promotion of children's participation: an ad-hoc working group on child participation to which ENOC has also been associated, was established and will hold its first meeting in Helsinki in December 2009;
- Focus on vulnerable children i.e. those without parental care, with disabilities, those in risk or at risk of social exclusion. Promotion of the best interests' principle concerning vulnerable groups of children.

Concerning the working methods, Ms Moreno reminded that a large permanent platform including all the partners to the programme, ENOC included has been established since June 2009.

Ms Moreno quoted 3 main axes in which ENOC's support is sought:

- Standard setting activities in order to make sure that children's voice and best interests are fully taken into account but also in supporting the ratification and implementation of conventions, recommendations etc.;
- In the monitoring process by helping to identify problems and by suggesting solutions;
- In awareness raising activities by providing advice and by disseminating materials, information and participating in campaigns;

Ms Moreno thanked all ENOC members for their support and expressed hope that the cooperation between the Council of Europe and ENOC will be further strengthened.



2.4. The best interest of unaccompanied/separated children

2.4.1. The OCO²'s action oriented participation project to support separated children

Ms Emily Logan, Ombudsman for Children of Ireland and Ms Leylah Mohammed, Project Liaison Officer, presented the OCO's project on separated children. Ms Logan started by explaining that in Ireland the term used is "separated" and not unaccompanied as not all children are unaccompanied and not all of them are seeking asylum. Mr Logan announced that the Constitution of Ireland is going to be revised so that the position of children's rights and the respect and promotion of the best interests of all children living in Ireland are strengthened. Ms Logan stated that the project aimed to first identify the real situation of separated children before taking action to ensure that their best interests are protected as least as much as those of Irish children.

She pursued that there are approximately 180 separated children in Ireland, who are accommodated in hostels thus receiving a far lower standard of care that Irish children living in institutions. These hostels are not registered in a normal way and not inspected. Ms Logan reported that according to media reports approximately 400 separated children have gone missing since 2002. *"Separated children are children who are invisible in the Irish society and who are not on the political agenda"*, she said.



Ms Mohammed went through the essential of the project. The aim of the project was to facilitate the identification of key issues by separated children while the objectives were to undertake a project work of interest to those children and to develop recommendations for relevant authorities. 35 separated children (in an advisory capacity), 3 project team workers (members of the YAP) and OCO staff have been involved in the project. The project team visited all the hostels and all SC³ received an individual invitation to participate at an "Open Day" activities organized by OCO. 48 SC came to the open day. Special software has been developed through which SC could type a message, record their voices or make a video. Young people were invited to choose how they wanted to share their experiences. Some of them chose to work with a professional writer; some others chose to write their own stories or to record their own experiences. At the end, 13 stories have been recorded. The outcomes of the project consist in a story book, a creative art, a book and a project report the follow-up of which will be ensured by the OCO.

² Ombudsman for Children's Office

³ Separated children



2.4.2. The controversy about age determination for asylum-seeking young people

Sir Al Aynsley Green, Children's Commissioner for England, presented the concerns raised by the institution of the Commissioner over age assessment of children seeking asylum and the objections raised against the methods used since asylum seeking children's best interests are very often disrespected. He first started by explaining the importance, the implications and the risks of such an assessment. The first and direct implication for a child is to be treated as an adult while a child and therefore be prevented from all benefits related to its child status. Sir Aynsley Green reported that the authorities require a "scientific" method of age assessment while a radiological assessment can never tell precise chronological age and thus for various reasons. Sir Aynsley Green declared that a radiological assessment can only give an assessment of "maturity". He pursued by stating that what is needed are normative standards for comparison from population from which the child comes. One of the main objections to the radiology is also its unethical character as it inflicts radiation without therapeutic benefit but only for administrative purpose and demands informed consent which is very often lacking.

Therefore, Sir Aynsley Green recommended a *holistic approach* of age assessment. For age disputed cases, he suggested specialist assessment centers led by highly trained social workers experts in the countries of origin to interpret the narrative of the person's life, supported by pediatric, psychological and educational input to define the needs of the person.

2.5. The best interest of children in disputes over parental divorces & separation

Ms Mila Jelavic, Ombudsman for Children for Croatia and this year's CRONSEE (south eastern European network of ombudspersons for children) Coordinator hosted the 2009 ENOC/CRONSEE Annual Conference dedicated to the issue of children facing conflictual parental divorces or separations. Ms Jelavic presented the main lessons and conclusions drawn from the Dubrovnik Conference organized together with ENOC in May 2009.

- It was confirmed that, in highly disputed divorces, children are frequently the victims of parental conflict and inability or unwillingness on the part of parents to resolve their relationship, so it is the duty of the state, primarily centres for social welfare, the courts and other public services and professionals, to ensure **that the child's best interests** are respected and dully taken into account;
- The importance of providing professional assistance for children and parents, especially in developing parental skills, was emphasised. Parents going through a divorce should obviously be instructed on how to recognise their children's



feelings and talk to them, without projecting their own negative emotions arising from anger with their former partner.

- Special attention was devoted to the practice of using mediation between parents in the process of divorce in some European countries (ex: in France). It was noticed that, in some countries, uncertainty exists as to whether the child should be included in the process of mediation and at what age the courts in individual European countries are obliged to listen to the child's opinion on issues relating to his or her future life after parental divorce.
- Other important questions are how to ensure the child's authentic opinion is heard, free from parental pressure, and how the courts can adjust their procedures so that the child be able to express his or her opinion freely.



Ms Jelavic reported that what emerged from the presentations was that the difficulties related to the exercise of the rights of children witnessing disputed divorces are similar in all countries in the region. These difficulties are mainly due to the inadequate, inconsistent application of laws, non-functioning institutions, and to a certain extent, inappropriate legal arrangements. All participating countries stressed the need to find more effective mechanisms to ensure that children can express their opinions about this matter without pressure or fear. In this connection, it was suggested that children should have their own counsel or a special guardian, who could, but would not have to be, an attorney-at-law.

2.6. Access for children to European and international justice

The issue of access for children to justice in general and to European and International mechanisms in particular is an issue that has been on the top of the ENOC agenda for longtime now. After having undertaken an ENOC survey on the status of implementation of the CRC⁴ in the different member countries but also on the capacity (legal) of member institutions in relation to legal action **to safeguard children's rights and to protect their best interests**, a working group has been set up to deal with the subject matter.

The Chair of the Working Group, Ms Leda Koursoumba⁵, intervened and presented the principal concerns which encouraged ENOC to tackle the issue. Ms Koursoumba

⁴ UN Convention on the Rights of the Child

⁵ Children's Commissioner in Cyprus



stated that there is a real gap between obligations and commitments of the respective Governments vis-à-vis the CRC and the reality of the denial of the rights of the child. Ms Koursoumba reminded the Committee of the Rights of the Child's General Comment n°5 according to which "*for rights to have meaning, effective remedies must be available to redress violations*"⁶. She then pursued that what is needed is a child sensitive information, advice and advocacy. The real lack of effective remedies to breaches of children's rights has conducted ENOC to first undertake a survey i.e. to collect the necessary background information and then to establish a working group to deal with the issue. Ms Koursoumba shared the principal results of the ENOC survey according to which only a few institutions out of 35 members could access courts (national) on behalf of a child; member institutions' competences are unfortunately reduced to provide advice and support to children; no ENOC member institution has used or even tried to use an European or international human rights mechanism to pursue children's rights; the majority of the respondents said that their powers didn't enable them to do so; only a minority of member institutions reported that the CRC is used in Courts.

Ms Koursoumba stated that before ensuring that children have access to international or regional mechanisms, they need first to have "effective" access to national courts. If children are going to pursue their rights internationally it means that national mechanisms are lacking or have failed.

Mr Peter Newell, external expert to ENOC, briefly sum up the existing international and European human rights mechanisms. He mentioned that the most important mechanism to redress human rights violations remains the European Court of Human Rights, the judgments of which have a binding effect on concerned member states. He underlined that the ECtHR⁷ has a flexible position as to the exhaustion of domestic remedies when the issue concerns a possible breach of children's rights and that very often the Court refers in its judgment to the CRC and to the Committee on the Rights of the Child when interpreting children's rights.

In addition to that, Mr Newell informed the Network that CRIN⁸ is collecting data on the use of the CRC by national, International and European courts. He also updated ENOC members of the state of advancement of the work in relation to the setting up of a communication procedure to the UN Committee on the rights of the child. He reminded that the CRC is the only human rights mechanism without an established communication procedure. In June 2009, the UN Human Rights Council decided to establish an open-ended working group which will work on the settings for an optional protocol on a communication procedure, the first meeting of which will be

⁶ CRC/GC/2003/5 on General measures of implementation for the Convention on the Rights of the Child, see par. 24

⁷ European Court of Human Rights

⁸ Child Rights Information Network



held in December 2009. Mr Newell underlined that the ENOC presence at the meeting of the above group is more than ever crucial.

2.7. Young people's participation in the ENOC Conference

One of the six workshops has been led by 3 young people, members of the Youth Advisory Panel (YAP) of the Northern Ireland Commissioner for Children and Young people (NICCY). The workshop was entitled "*If children ruled the world*" and expressed adults, children's and young people's experience of rights or which world through children and young people's eyes. On the same occasion, they met with young people, members of the Consultative Committee of the Ombudsperson for Children in France. The latest expressed their deep concerns concerning a recent law proposal in France to close down the independent institution of la Défenseure des Enfants. Therefore, members of the NICCY's YAP decided to prepare an official letter of support to the institution of the French Children's Defender which they officially transmitted to their counterparts from the Youth Consultative Committee.

Four representatives of the Consultative Committee of the Children's Defender of France presented their expectations as to the construction of a Europe that better takes into consideration the rights but also that is keen of children's best interests. The young representatives participated in an interactive dialogue with Ombudspersons for children of different countries. They also launched the idea of the establishment of a network bringing together all young consultative bodies set up by Ombudspersons for children offices across Europe. It was proposed that representatives of the youth network meet every year at the same time that the General Assembly meeting of ENOC.





3. Workshop sessions : children's best interests from different perspective

The workshop sessions have been dedicated to presentations of best practices or ongoing projects carried out by Ombudspersons for Children offices on different child rights related topics. The aim of the workshops is not only to let the others know of what is going on in each member institution on a given subject matter but also to serve as a source of influence or inspiration for each other.

3.1. Right to be heard and participate in decision making in the community life

Three different examples of child participation have respectively been presented. The Ombudsman for Children of Norway shared with its colleagues the experience of organizing meetings between children that have faced situations of domestic violence, sexual abuse, or incest and ministries and their services in charge of dealing with this sort of problems.

In Malta, the Children's Commissioner organizes every year an Annual Children's Rights Course called "Rights 4U". The 2009 Rights 4U course was given the theme of "Giving Young People a voice". The 2009 course was attended by 45 children/young aged 13-15 coming from economically challenged families. During the course, children are given the tools to stand up for their rights and to participate in matters of social concern in such a way that they are empowered as active and independent members of society.

In the Republic of Slovakia, the Office of the Public Defender of Rights launched a project called "Children Ombudsmen". Children were elected by their peers in different type of schools and with a minimum intervention of adults. On a second stage, each "children ombudsman" has been assigned a special responsibility: responsible for family affairs, for education, etc. The first set of complaints coming from children ombudsmen revealed the issue/problem of teacher's rights against the rights of students.



3.2. If children ruled the world: an interactive workshop led by members of the Youth Advisory Panel of the Northern Ireland Commissioner for Children & Young People

Three members of the Youth Advisory Panel of the Northern Ireland Commissioner for Children & Young People led the interactive programme of the



workshop “*If children ruled the world*”. The role were reversed and while children had the power to take all decisions concerning adults, adults only had the right to keep silent and to execute what they have been asked to do by children. The exercise aimed to create a Charter of adults’ rights.

Adults have been asked to define their rights in different spheres i.e. health, education, family, political rights, participation etc.

When asked at the end of the game, how adults feel vis-à-vis the way they have been treated by children, most of them responded that they felt humiliated, aggressed, attacked, their say violated and not heard at all.

3.3. Juvenile Justice & physical restraint

The Lithuanian experience witnessed a reform of the juvenile justice system which comprises three level help and care system for children with behavioural problems and those who have offended the law. The 1st level of minimal care is a one set up on municipalities’ level and provided a social, psychological, pedagogical or other help to children without separation from the family in order to achieve positive changes in the child behaviour. The second level of medium care is set up on counties’ level and is provided in special child education institutions-children socialization centres. Only children who are 14 years old or older can be sent to those centres. The third level of maximum care is set up on the State level and consists of a constant supervision of children in imprisonment places and social, psychological, pedagogical and other help provided to achieve positive changes of child behaviour.

Concerning the question of the audition of young offenders by the police and the violation of their rights to defence, the President of the Ombuds-Committee on the rights of the child of Luxembourg reported that the Government of Luxembourg accepted to take the engagement that no minor, offender or victim of a criminal offence will be auditioned by the police or by judicial bodies without being represented by a legal assistant, except in cases of conflict of interests. In all circumstances, the minor has the right to an independent judicial assistance and to be assisted by a court-appointed lawyer. Concerning the audition of children with specific needs, children with disabilities or those victim of mistreatment or sexual abuse, the Ombuds-Committee recommended to the Government of Luxembourg to take the necessary measures to make sure that the police is assisted by specially trained experts to audition children in general and children with specific needs in particular.

In France, a hug reform of the juvenile justice system is under way in order to bring in one single document the existing disparate legislation and consequently to update it following the recent recommendations of the CRC in the field. Thus, the



adoption of a “Criminal Code for minors” has been proposed by an expert parliamentary commission while the Ombudsperson for Children delivered specific recommendations on the subject matter. The Ombudsperson for Children insisted, among others, on the maintain of the specialisation of the jurisdiction dealing with child related issues (Judge for children) and on its collegiality, the abandon of the distinction of children authors and children victims of crimes, the maintain of the term used of “children” and not “minor”, the maintain of the age of imprisonment to 13 and 16 years old instead of the proposed 12 years old, the changement in the name of the proposed code by a “Juvenile Justice Code”, and the continuous looking for alternative measures to the imprisonment by giving a clear priority to educational measures instead of strict and rigorous punitive measures. The Ombudsperson for Children in France appealed to those in charge of reforming the French juvenile justice to make sure that the proposed measures are not regressive but progressive and take better into account the best interest of children confronted for one reason or another to the justice system.

3.4. Children with disabilities

The Office of the Parliamentary Commissioner for Civil Rights of Hungary launched in 2009 a project about the rights of people living with disabilities, called “*With dignity-with difference*”. The project aimed to direct public attention to persons who are living with any kind of disabilities. By cooperating with different stakeholders i.e. civil organizations, local authorities, ministries, Parliament committees, the Commissioner initiated a dialogue among the various parties aiming at an active networking. All efforts have been put in place to mainstream the public discussions about the rights of persons with disabilities, to promote the necessary paradigm change and to ensure that their best interests are taken into account at least as much as those of the other children. The outcome of the project consists in the organization of two workshops on the rights of people with disabilities, in the public and private life, and a final conference on people living with disabilities in institutions.

3.5. Children living in residential institutions or in foster care families

In Cyprus, the Commissioner for Children launched a study on the right to participation of children living in institutions. The Commissioner recommended the set up of regular interviews with children living in institutions (the right to refuse such interviews is preserved) in order to make sure that their views on matters concerning them directly or indirectly be heard. In the same context, the necessity to set up regular interviews with the staff of the institutions but also the need to establish groups which might carry out additional investigations following the information received during the interviews, has constantly been recommended by the Commissioner. A Manual designated to professionals has been published and



contained a clause encouraging the participation of children living in institutions in the decision making process concerning them.

In Malta, a group of professionals working on local level in the field of child protection called the “Focus Group” has been set up by the Children’s Commissioner of Malta in order to elicit feedback on the current situation as well as to draw out possible directions on how to move forward and encourage investment and attention to this sector. A group of researchers (6 researchers) has been set up in 2007 to take care of a vast project split into three phases: 1) the effect of institutional placement for children under 5; 2) mental health needs of children in care; 3) exploring the long term outcomes of youth leaving care. While the research project is still ongoing, some results have already been made available.

The Ombudsperson for Children of Lithuania hardly insisted that it is in their best interest that family links of children living in care with relatives but especially with brothers and sisters are maintained or restored following the adoption by the Parliament of a new strategy of re-organization of the child care system and its implementation plan for 2007-2012 and after having organized a Conference where children in care have directly presented the problems they mainly encountered.

Following Ombudsman’s numerous interventions and recommendations addressed to municipalities, institutions and all other relevant bodies, recent evaluations showed that important changes in the practises are having been under way. A reduction of the number of complaints received in this field by the Commissioner’s office has also been observed.



The Deputy Ombudsman for Children of Catalonia presented some recent statistics on the situation of children in care, placed in institutions or in foster families. According to the statistics, over the last 6 years there is an increase of the percentage of in care children in institutions (33,8% in 2008). The statistics showed that the institutions are getting more and more overcrowded since more and more children are placed in institutions instead of in foster families. More often children stayed in institutions more than 3 years. Among the numerous conclusions drawn up from the statistics, he stated that there are deficits in regulations of the institutions’ material conditions; there is an overcrowding of residential equipment and of institutions; there is a lack of enough foster families and deficits in foster families placements.



Therefore, the Office of the Deputy Ombudsman for Children for Catalonia addressed a set of recommendations concerning among others the legal regulations, the information management, prevention actions, sufficiency of resources, professional training, networking etc.

The situation of street children as the most vulnerable group of children in Georgia and their placement has been presented by a representative of the Child's Rights Centre of the Public Defender of Georgia. Following a recommendation addressed by the UN Committee on the Rights of the Child, a Children's Social Adaptation Centre has been founded by the Georgian Government. The Centre is an open type institution, and there is a 6 months rehabilitation process. Despite the existence of such a Centre, a systematic approach to the situation of placed children is lacking. However, it was noticed that the number of children in state institutions has been reduced by two since 2005 (de-institutionalisation process). The Government developed child care standards while further to recommendations addressed by the Public Defender, children's homes are being re-organized. Following an amendment to the Criminal Code, the age of criminal responsibility has been reduced to 14 years which has had as a consequence the increase of the number of prosecutions against juveniles. Following the above, the Public Defender addressed a set of recommendation to the Parliament in relation to the Juvenile Justice system while the CRC urged the Georgian state to reinstate the minimum age of criminal responsibility at 14 years. What resulted was the establishment of a Criminal Justice Reform Interagency Coordination Council to revise the 2005 Criminal Justice Reform Strategy, to adopt an Action Plan and to create a juvenile justice system that complies with international standards.

3.6. How to preserve the best interests of children whose parents are in prison?

The Ombudsman for Children of Norway has set up a consultative group bringing together children that have faced the situation of having a parent in prison. The group has directly proceeded on the ground to an evaluation of the way children are being received and to the support of the relationship with the parent in the central prison of Oslo. Following this evaluation, the group met with the prison authorities and had an exchange on their observations and proposals.

After having visited the majority of the prisons and penitentiary institutions across Croatia, the Ombudsman for Children of Croatia discovered that the number of children whose parents are imprisoned was not mentioned in any official report. The lack of data and of precise statistics as to the number of children whose parent is in prison or children who have the right to stay live with their imprisoned mothers (the Ombudsman has met three of them) showed the total invisibility of these children.



Following the above findings, the Ombudsman for Children engaged talks and a tight collaboration with the Ministry of Justice, with the penitentiary authorities, the Ministry of Health, kinder gardens, schools but also with competent experts in order to improve the situation of the reception of children visiting their imprisoned parents. In the same vein, the situation of children under 3 who live with their mothers in prison was also taken into consideration. Therefore, a set of recommendations drawn up from this experience have been circulated by the Ombudsman for Children office thus pointing up that the right to maintain close contact and to pay visits is an essential right of a child whose parent is in prison.

In Lithuania, the question of possible abuse of parental authority of imprisoned persons aimed to shorten their stay in prison or to benefit from a conditional release in order to take care of their minor children provoked a dilemma. Under the pressure of the media, which collected samples of abuse, a legislative reform is under preparation while the Ombudsman for Children of Lithuania adopted a different approach. When auditioned by the relevant authorities, the Ombudsman stressed that situations of abuse are caused not by defective legal gaps in regulations or in law, but by the practical application of legal rules and institutions involved in decision-making - their insufficiently careful approach, lack of cooperation in gathering and analyzing the data that is connected with the sentenced persons and social environment. A special preventive measure ‘Supervision of sentenced persons’ has been set up during which correctional inspection officers, police officers and representatives of child rights protection services control how the sentenced implement injunctions and its parental obligations vis-à-vis to his/her children.





4. ENOC Business

4.1. Foreword from Emily Logan, outgoing Chair



Ms Emily Logan, the outgoing Chair presented the main ENOC activities during her presidency.

Ms Logan first welcomed the new Commissioners, Mr Tam Baillie from Scotland, Mr Keith Towler from Wales, Mr Fredrik Malmberg from Sweden and Mr Bruno Vanobbergen, the new Flemish Children's Commissioner. She also welcomed the four new members that joined the Network: United Kingdom (11 Million), Hungary, Armenia and Moldova.

The key strategic areas highlighted by Ms Logan remained the maintaining and developing of strong relationships with ENOC's traditional stakeholders: the Council of Europe, the UN Committee on the Rights of the Child, the European Union and UNICEF.

Ms Logan enumerated the principal highlights of cooperation with each of the stakeholders:

At the Council of Europe level: ENOC has been invited by the Directorate General on Human Rights and Legal Affairs to participate as observer at the meetings of the Group of Specialists in charge of elaborating Guidelines on child friendly justice; Ms Leda Koursoumba, Chair of the ENOC Sub-Group on access for children to justice has been elected to represent ENOC at the CoE Group of experts; ENOC has constantly collaborated with the Council of Europe Programme "Building a Europe for and with children" and with the Commissioner for Human Rights Office.

At the UN Committee on the Rights of the Child level: two key connexions over the past year. In a written letter addressed to the UN Council of Human Rights, ENOC expressed support to the set up of a communication procedure to the UN Committee on the Rights of the Child for violations of the Convention on the Rights of the Child. Reminding that Peter Newell has done a lot of work on the issue, via position papers or lobbying, a working group has already been established and Ms Leda Koursoumba, Children's Commissioner for Cyprus, intends to represent ENOC. ENOC members met with Ms Yanghee Lee, Chair of the UN Committee on the Rights of the Child, during the Dubrovnik Conference, co-organized by the Ombudsman for children of Croatia, ENOC and Save the Children.

At the EU level: ENOC participated at some very active meetings organized by the European Commission. Thus, Emily Logan and Polina participated at the meetings of the Steering Group in charge of preparing the programme of the EU Forums on



children's rights. ENOC has been sought by the European Commission on child participation issues but the project was dropped given the current economic context. Many ENOC/EU members participated at the EU Forums on children's rights and brought to the meetings their field experience.

At the UNICEF level: there is a close relationship between ENOC and the UNICEF Innocenti Research Centre. Two ENOC member institutions (Croatia and Belgium-Flanders) participated at the 3rd World Congress against sexual exploitation of children and adolescents organized by UNICEF in Rio de Janeiro, Brazil.

A reference group working on the drafting of a General Comment on Article 12 of the CRC has been formed by UNICEF and is led by the HQ of UNICEF. While Emily Logan and George Moschos are part of the Group, their contributions are essentially electronic via emails.

Concerning ENOC's current financial situation, Ms Logan reminded that ENOC has applied successfully for funding twice through the European Commission's programme for fundamental rights and citizenship. However, Ms Logan draw the attention of ENOC members to the fact that this kind of funding is regressive in order to avoid dependence and in order to make sure that beneficiaries look for alternative means of funding.

Ms Logan thanked the Norwegian office and CRIN for their supportive work to get the ENOC website properly functioning and reminded that for a first time the ENOC Secretariat launched and issued monthly or bi-monthly ENOC Newsletters. However, while the Newsletter contains basic information on the activities carried out by the principal stakeholders, it depends on each member institution's personal involvement and feedback to get the Newsletter improved and the information contained as complete as possible. Aside from that, the network is exchanging electronically information on regular basis via the ENOC Secretariat.

Another very important piece of work carried out with the help of Mr Peter Newell, external expert to ENOC, was the preparation of two thematic reports, the one on child participation and the other on children and divorces and access for children to justice. The participation report and samples of child participation were presented at the ENOC seminar organized in December 2008 in Brussels while the interim results of the second has been presented at the Dubrovnik Conference.

In conclusion, Ms Logan recalled that *"There are emerging threats for the survival of our institutions. Therefore, we need to build up a body of evidence that separates us as independent child rights institutions with a very unique mandate that should be maintained. Our programme needs to be strengthened and we need to make strategic choices for our future work."*



4.2. Country updates (*These documents are available for ENOC members upon request. Please, email ENOC secretariat*)

4.3. ENOC's declaration projects

During the ENOC Bureau meeting that took place on 23th of February 2009 in Paris, it was decided that ENOC will release two statements/position papers over the year: one on the specific topic of "children and armed conflicts" while the second one will be dedicated to the 20th anniversary of the United Nations Convention on the Rights of the Child. Ms Dominique Versini, Ombudsperson for Children in France took the leadership of preparing the statement on children and armed conflicts while Peter Newell, expert advisor to ENOC, agreed to propose a first draft of the statement on the 20th Anniversary of the CRC.

4.3.1. ENOC declaration on the 20th anniversary of the CRC

Mr Peter Newell, expert advisor to ENOC presented the key points that potentially could be taken on board at the first draft of the declaration. After reminding the legal binding obligations and commitments that resulted for States that have ratified the UN CRC, he suggested different issues from which a few could be picked up and further developed.



- First and most challenging point 20 years after the adoption of the CRC is child poverty and the potential disproportional effect global recession has on children and young people
- Second very important point to be reminded is the growth of intolerance, racism and xenophobia but also the treatment of asylum seeking children
- The third point concerns juvenile crime and the unconstructive punitive measures used by States as well as the increasing use of detention of children
- The fourth point is about the impact of all forms of violence on children and the total ban of corporal punishment
- And last but not least ENOC expresses deep concerns that some governments, far from supporting existing institutions (Ombudspersons for children) to fulfil their role effectively for children, are imposing cuts and reducing independence.

It was agreed that the ENOC statement will be released on 20th of November 2009, date of celebration of the 20th anniversary of the CRC.



4.3.2. ENOC declaration on children and armed conflicts

Ms Dominique Versini, Ombudsperson for Children in France, presented the ENOC declaration on children and armed conflicts. It was agreed that given the continuous armed conflicts all around the world and the more and more scary situation children are facing while involved in one way or in another in such conflicts ENOC needs to come up with a common position on the situation of children in armed conflicts in general, being they internal or international, without taking position on one or another particular conflict.

While Ms Versini quoted the UN alarming statistics of children victims of armed conflicts and the persistent breaches of all their rights despite the international texts in the field, she called upon ENOC to adopt a strong but very practical common position that can be used by each member of the Network but also by the Bureau, thus suggesting the following crucial points:

- The implementation and reinforcement of the monitoring and the reporting mechanism on breaches of children's rights during armed conflicts;
- The development of cooperation and exchange of information between civilian population and international and regional agents in charge of peace keeping and peace building;
- The development of Demilitarisation, demobilization and reintegration programs for children in situation of armed conflict;
- Consideration for children and young people in post conflict reconstruction and recovery programmes as well as their direct participation in the process of peace consolidation;
- Priority prosecution of individuals charged with crimes on children before the International Criminal Court.

4.4. ENOC priorities for the next three years

Mr Hugues Feltesse⁹ summarized the main results of the questionnaire on ENOC priorities for the next three years. Nine member institutions replied to the questionnaire and some of the responses have been sent too late to be taken into consideration in the analysis that will follow.

Concerning the question related to the ENOC strengths, four main strengths have been pointed out by the respondents:

- The capacity of exchange: exchange of good practices but essentially ensuring a better understanding of each other's activities;
- Networking capacity: the capacity to communicate quickly with other Ombudspersons for children offices;

⁹ Chief Executive to the Ombudsperson for Children in France



- Capacity to adopt common position papers, conclusions etc.;
- Capacity to go beyond the mere national level i.e. be recognized on European and even international level.

As to the weaknesses, four main weak points have been underlined:

- ENOC's weak resources depending essentially on members' contributions i.e. membership fees;
- The modesty of ENOC publications;
- ENOC is understaffed while there is a need to develop a reflexion capacity;
- ENOC's impact and influence on national, European and international level was considered not to be strong enough.

To the question what are the opportunities for ENOC, the principal highlights revealed:

- The possibility to be children's advocate on European and international level;
- The real capacity (but limited resources) to influence European policies in the children's rights field;
- Capacity to develop strategies;
- Possibility to organize the networking beyond the open borders i.e. beyond the EU by developing close relationships with the Council of Europe and the United Nations.

The last part of the questionnaire concerned the main priority areas on which ENOC members would concentrate their energy in the next three years. The following thematic priorities have been pointed out by the members:

- Meaningful child participation
- Child trafficking and child exploitation
- Prevention and combating of all forms of violence against children
- Child poverty
- Children and the risks related to the use of internet and new technologies

The question of ENOC's communication strategy and its improvement has also been discussed. The respondents to the questionnaire suggested that:

- The ENOC Newsletter should be strengthened;
- ENOC might develop more targeted communication strategy with the principal stakeholders;
- ENOC develops a communication that would use the voice of children;
- ENOC increases its visibility & credibility through a real communication strategy.

Following the above presentation of the questionnaire's principal results, the participants have been split into three working groups with a rapporteur nominated for each, to discuss the following three issues:



- 1) How to defend the specificity of ombudspersons for children;
- 2) How to anticipate the content of ENOC's programme for the next three years;
- 3) How we envisage the future development of ENOC and how we will take into consideration the specificity of ENOC when mainstreaming new members.

According to the conclusions drawn up from the rapporteurs of the working groups:

- Specificity of Ombudspersons for children: clearly identified persons/institutions, visible, accessible, independent, making sure that children's voice is heard and that children related issues remain on the agenda locally but also internationally. The specificity and the duty of ENOC are to bring the work done domestically by each ombudsperson for children office at a higher political level, European and international. As a network, the main specificity remains the active sharing of information which according to some members should be even more active and constructive.
- Topical agenda of ENOC for the next three years: members agreed that while the networking activities are and remain important there is a need to go beyond and to concentrate on a few targeted issues. The proposed issues need to be closely related to the current context. Therefore, it was proposed that child poverty be put on the top of the agenda given the economic recession worldwide and its potential negative impact on children. While the question of preventing and combating all forms of violence against children has been moving slowly, members agreed to join efforts for the achievement of a positive outcome. Child participation but also the question of children and the risks related to the use of internet and new technologies is an issue of increasing interest in all member institutions and members agreed to tackle these demanding issues together.
- Future development of ENOC: members felt comfortable to get the membership fees increased in order to make sure that the ENOC Secretariat functions properly. However all members expressed the will that the ENOC Secretariat should be given the necessary resources to get stronger and more central for all member institutions. Aside from that, it was proposed that the Network chooses a small number of key people (from the members) who will be in charge of looking for alternative sources of funding, other group which will take care of lobbying; another group could be in charge of the ENOC publications etc. It was further suggested that ENOC should be keen to create and/or support other regional networks, children networks included. Possible exchange of Youth Advisory Panels has also been proposed.

4.5. General Assembly meeting *(These documents are available for ENOC members upon request. Please, email ENOC secretariat)*