

THE CHILD'S SUPERIOR INTEREST – THE ADVOCACY APPROACH

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The topic of this conference is The Child's Superior Interest: Socio-Cultural, Normative and Jurisdictional Approach. My work's motto as Ombudsman's for Children is – in fact – the child's superior interest – full stop.

I am Ombudsman for Children since the end of 2018. The problems that I deal with, refer to social rights, the right to education, the right to be raised in a family, the right to be protected against violence, or the right to protection of life and health. Not only single cases can be seen from the perspective of these problems, but also a wider legal and social context. My role is to intervene in single cases as well as work toward system solutions.

Currently, most pressing child rights violations are: armed conflicts, austerity, migration crisis, violence – corporal punishment, domestic violence, bullying, sexual violence, trafficking, cyber-violence. But this year has brought challenges that we have not seen before – war in Ukraine and the influx of minor refugees seeking safety away from the war zone. It has become clear that the interest of children from Ukraine must be put above all else – their situation is hard to imagine.

Since the very beginning of war, Poland – the people and the institutions – has been organizing a system of help to Ukraine. I have been monitoring the situation of children fleeing the war zone. I cooperate with institutions to find best possible solutions, I collect information from cases reported to my office, and I monitor the situation in reception centers. This day-to-day work allows me to find areas that need improving and address competent organs with proposals for solutions.

As Ombudsman for Children, I participated in the works on the special new law on help to the refugees from Ukraine – the State Aid Act – and I was proposing changes focusing on the welfare of minors coming to Poland. The State Aid Act has become a functional instrument responding to the pressing needs of refugees from Ukraine. It regulates the most important areas and allows for legal residence in Poland and the use of state aid. Children refugees have access to education, medical care and social benefits. Among other things, this act also introduces a system of registering unaccompanied minors arriving in Poland as well as those who, before their arrival, were placed in foster care in Ukraine. This register is an important tool for protecting these children from the potential threat of human trafficking.

This State Aid Act is an example of a legislative solution to a pending crisis – showing constructive normative approach in the area of protecting children’s rights.

Legislation is an important tool to safeguard children’s rights. The child protection system in Poland is founded on numerous legal acts – international and domestic – among them the 1989 Convention on the Rights of the Child on the one hand and the Polish Constitution on the other, as well as other acts incorporated and constituting the Polish body of law. The child in Poland is protected by criminal law, civil law, family law, administrative law. The leading principle of the child protection system in Poland consists in best interests of the child.

The Ombudsman for Children in Poland is an independent constitutional body appointed to safeguard the rights of children as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other regulations of law.

The Ombudsman acts on the basis of the Act on Ombudsman for Children, which empowers the Ombudsman with a wide range of authority.

The Ombudsman for Children may:

- examine each case on the spot even without notice,
- require information from public authorities, organizations or institutions,
- participate in proceedings before the Constitutional Tribunal,
- lodge cassation or appeal,
- enter into proceedings in cases involving minors,
- require that preparatory proceedings be instituted by a competent prosecutor in cases of crime,
- ask for instituting administrative proceedings, lodge complaints to the administrative court and participate in those proceedings with the rights enjoyed by the prosecutor.

Moreover, the Ombudsman for Children may request that proper authorities, organizations or institutions take steps within their authority.

The Ombudsman for Children presents evaluations and conclusions aimed at providing effective protection of children’s rights and wellbeing, to proper authorities, organizations or institutions.

The Ombudsman for Children may also address proper authorities to take up legislative initiative by issuing or amending legal acts.

In my work, in the work of my staff, we put the superior interest of the child first. Parents or other claimants turn to me for help, but it is never their interest I seek to protect. It is always the child’s. So for example – when I decide to enter

pending court proceedings – let’s say regarding custody – one of the first things I verify, is if the court heard the child properly and according to age requirements, if not – I often move such motion. This is a small practical example of how I put to use my authority as Ombudsman for Children.

I strongly believe that the child’s voice should be heard. This is the right we must remember to strengthen and protect because children are a group least heard. This is one of the reasons ombudspersons are needed – to be the voice of children, to advocate for children, to strengthen and enforce their rights and participation.

Children’s rights institutions constitute an important factor in the struggle for children’s rights. These institutions should be active and present. Ombudspersons must respond to the current situation and find new effective ways to advocate for children’s rights, for example expand their authority to have more influence on governments, be able to request action or recommend changes or directions. This is where Children’s Rights Impact Assessment (CRIA) falls into place – relatively new area of expertise allowing to assess if we are moving in the right direction with whatever process initiated.

All these strategies – children participation, children being heard, Children’s Rights Impact Assessment, and more – are a reflection of the superior strategy – the child’s superior interest.

Being a member of a network of children’s rights institutions – ENOC – shows me how together we can achieve more. It is the strength of combining forces, voices and people – that can do more.

I would like to share with you a practice I developed in my office. One of my initiatives was to expand the activities of our telephone helpline. Currently, psychological help is offered not only in Polish but also in Ukrainian and Russian – by phone and by chat – 24/7 (twenty four seven). In 2021 we had nearly 50 thousand calls and chats - many important conversations and saved children. My office and the helpline have now become first-contact clinic. I see how important it is to make it possible for children to have immediate access to help from someone who cares, who is prepared, competent, who has the child interest in mind.

Due to the growing number of children benefiting from the support of the Children’s Helpline, I decided to expand the work of the helpline – now in Poland I run two clinics – one in Warsaw and one in Łódź – it is the phone line and face-to-face help point. I plan to open two more in the near future. These points offer psychological, pedagogical and legal assistance, also in Ukrainian.

Today’s conference is a platform for us, grown-ups, to learn, to improve, to exchange opinions, to search for answers, to grow. There is so much to do in the field of children rights protection – improve international and national standards, strengthen the network of advocacy, implement solutions, and so much more.

We have to prepare solid ground for children to have a childhood full of opportunities. One of my latest projects is supporting a talent finding program – a nationwide program of workshops for senior high school students to support them in recognizing their talents and choosing the right path after school. During a series of workshops, together with experts, we help young people to explore their potential and social competence. The first series of workshops already took place and our goal is to organize them in every region of Poland - in as many schools as possible, in order to help the largest possible group of young people answer the question of what career path to choose, who to be, where to work. I think it is crucial to build children's confidence and power to take on any challenge.

Last but not least I want to mention the program ENYA run by ENOC – European Network of Ombudspersons for Children. ENYA stands for European Network of Young Advisors. The purpose of the ENYA project is to actively involve children and young people in ENOC's annual work and to give them the opportunity to be heard at a level that exceeds their country boundaries - at European level. ENYA aims to ensure a meaningful and effective participation of young people by giving them a say on specific topics. They have the opportunity to express their concerns and views regarding their rights, to make proposals, and to participate in the elaboration of common recommendations. Each year ENOC and ENYA separately work on a specific topic. This year it is climate justice. I entered the ENYA program also this year with a group of youth. I hosted them in my office for a series of workshops and discussions to make space for them to develop recommendations early this year. Later, in June, they met with other ENYA participants in Bilbao for a youth forum to sum up the works of national youth teams. Finally, a few days ago – during ENOC's annual meeting – young members of ENYA presented their recommendations regarding climate justice and ENOC included them in the annual ENOC positions statement that will be presented to high-level institutions and decision makers.

The child's superior interest – should be advocated, supported and enforced in all possible fields – simply because this is our future.

