

**Comments submitted by the Ombudsperson for Children** **of the Republic of Croatia**

**on the UN Committee on the Rights of the Child’s draft General Comment no. 27** **on children’s rights to access to justice and effective remedies**

The Ombudsperson for Children welcomes the opportunity to provide *comments to the draft GC27.*

* **Definition of access to justice:** In the Croatian national context, the access to justice and effective remediesimplies the access only to the judicial system. Therefore, GC27 should strictly define that the access to justice and effective remedies implies not only the judicial system, but the system as a whole, with a cross sectional and interdisciplinary approach, in which all children’s rights, in all areas and all levels, and as regards all stakeholders, must be regarded as justiciable, or in which the child rights can be violated when the child is in contact with the law or the child can be supported in meeting his rights. It is important to consider multiple types of mechanisms that can provide a remedy for child rights violation, including alternative mechanisms (mediation, arbitration or restorative practices), access to non-judicial independent complaint procedures as to the Ombudsperson for Children and the role of informal judicial mechanisms.
* **Right to information:** Many children consider their access to the justice only when they are in contact with the justice system, but in general, they are insufficiently informed about their rights and possibilities to exercise their justice rights. More content and topics on children's rights and justice system should be included in different school subjects. Children should be educated about basic legal literacy, the meaning and significance of representative bodies in their schools and the mechanisms to file complaints when their rights are breached. Schools should disseminate child-friendly materials on children’s rights and accessibility to these rights, including legal and human rights approach to ending corporal punishment, hate crime, minimal age of criminal responsibility, imprisonment, specialised child justice institutions by type of institutions or professionals (child police, child prosecutor, child judge, child lawyer, social worker, child probation service…).

*Promising practice* - The *Law project* “Law in everyday life” (Erasmus + professional development program framework- cooperation partnerships in school education 2022-2024, the Forum for freedom in education, the University of Rijeka and partners from Italy, Portugal and France) on basic legal literacy in school with legal literacy competence framework, curriculum, learning and teaching materials for teachers and students. <https://thelawproject.eu/>

* **Right to be heard and to participate**: We have been receiving complaints about the violation of children’s right to express their opinions in administrative and judicial proceedings, in which decisions concerning them are made, as well as about the participation in proceedings that have not been safe for the child.

What concerns us is that some children justify corporal (physical) punishment as an accepted and deserved educational method despite the fact that it is forbidden in all areas in the Republic of Croatia.

*Promising practice* – *The* *Network of Young Advisers* *to the Ombudswoman for Children is a permanent advisory and collaborative body that brings together children and young people at the national level. Not only do they act as advisors to the Ombudswoman on relevant issues, including their justice rights, but they also act as ambassadors who convey information to other children on children's rights and the possibilities of their protection, as well as on the existence and role of our Office.*

* **Special guardian**: In order to protect certain personal and property rights and interests of the child, the *Family Act* stipulates that the social services or the court will appoint a special guardian to the child. The court shall allow the child to express his/her opinion, unless the child objects to it. A special guardian represents the child in the procedure, informs the child about the subject of the dispute, its course and outcome, in a manner appropriate to the child's age. In practice, difficulties occur given the small number of special guardians and their availability to all children, lack of experts available to talk to the child with disabilities in an appropriate manner and lack of knowledge among children and citizens about these rights. In practice, the same guardian is not appointed to one child for all types of procedures, so several of them represent one child in different court proceedings. By getting to know each new guardian, the child goes again through the interviewing. Apart from that, some special guardians only share with a judge what the child said, without assessment which should be given in regards to the best interest of the child. Consequently, the parents are often literally informed about what the child said which point to - lack of confidence.

*Promising practice: Our Office has been advocating for the establishment of family courts, creating procedural, technical and personnel conditions that will ensure urgency in family court proceedings. In 2022 the Court’s Act has been amended, where family departments have been established at the municipal courts. Although the family courts were not established, we praise a specialization of judges as a step forward.*

* **Submission of complaints**: Every child/group of children have to be able to submit complaints within each system internally (police, judiciary, social care, education, health etc.), as well as to all relevant institutions dealing or deciding upon their complaints on the violation of their rights. Filing complaints or legal remedies to national and international bodies should be made possible via electronical means. Children should be able to file a complaint to the Ombudsperson, international courts and directly to the Committee on the Rights of the Child.

*Good practice - According to the Ombudsperson for Children Act, the Ombudsperson can be contacted by anyone who wants to warn about cases of violations of children's rights. Reports can refer to violations of the rights of individual children or to general phenomena that threatens the rights and interests of children. The Ombudswoman pays a special attention to reports submitted by children. Children can submit their complaints personally at the Office, by phone, postal service or via special e-mail intended only for children -* [*mojglas@dijete.hr*](mailto:mojglas@dijete.hr)*, stating their name or anonymously. On our web page there are clear, child-friendly information as regards the above, as well as the complaint forms (in case of violation of the child's rights, and in case of discrimination).*

* **Most vulnerable categories of children**: Obstacles that prevent access to justice and legal remedies to children in poverty and in socially deprived families, or growing up in risky circumstances (certain national minorities, i.e. Roma, children whose parents are foreign nationals), children with disabilities children in institutions and children whose parents are in prison should be taken into account.

Regarding the child-sensitive justice system for children whose parents are in the conflict with the law, the Ombudsperson for Children submitted comments with the Children of Prisoners Europe (COPE), as its member. We especially see some threats for the rights of children who live with their mothers in jail, and children of pretrial prisoners. We also worry about the discrimination of these children in a lot of settings. We deeply believe that only comprehensive, cross-sectorial, interdisciplinary and integrative approach is the best way for wellbeing of this group of children. What also concerns us is the lack of segregated and comprehensive data on all the children, whose parents are in the conflict with the law.

## These children are a low priority for most governments. They suffer low visibility, are not readily recognised as a vulnerable group and are exposed to stigma, instability, disruption of the child-parent bond, an absence of parental involvement in their upbringing and development, and violence, all of which disempower children, contribute to their exclusion, limit the establishment of legal acquis.

Besides that, an arrest can incur a loss of income and housing as well as costs for legal representation, contact (e.g. phone cards, video calls), travel to and from prison, increased childcare, financial support for the individual in prison, electronic tagging and support upon release.

* **Unaccompanied children and migrants**: We welcomed *the amendments to the Law on International and Temporary Protection* in 2023, stipulating that the unaccompanied child, who expresses the intention to submit an application for international protection, will be immediately appointed a special guardian, who will take actions for child’s protection, as well as inform the child about his/her rights. In practice, however, many children do not have information on who their guardian is or how they can contact him/her, and they often meet them only when applying for international protection.
* **Children in conflict with the law**: As *lex specialis,* the *Juvenile’s Court Act* sets more specific rules in the area of juvenile justice,in relation to the *Criminal Procedure Act* as *lex generalis*. This Act has been, to great extent, aligned with the *Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.* However,some national practitioners found gaps in ensuring children’s rights to information, according to the Directive’s rules. The Croatian law does not stipulate that children should receive information about general aspects of the conduct of the proceedings, and that they should be given a brief explanation about the next procedural steps in the proceedings and about the role of the authorities involved. In practice, minors and their parents state that they do not sufficiently understand the course of proceedings and the rights they have. A survey conducted in 2017 in Croatia on information awareness among children aged 14 to 16 years in connection with court proceedings and children's rights showed that children are not sufficiently informed about their rights[[1]](#footnote-1). Parents often say they did not receive the requested information from the competent authorities about the rights the minor has during criminal proceedings.[[2]](#footnote-2)

*Promising practice - The Courts’ Juvenile Act is focused on restorative justice and intended primarily to teach minors the responsibility and changes in their behaviour through the implementation of alternative measures, rather than conducting the judicial proceeding. The particularly valuable measure is the out-of-court settlement, as a good example of victim-offender mediation, as well as other similar measures in accordance with the Act.*

* **Child victims and witnesses:** Judicial proceedings last too long, making the recovery of a child victim considerably more difficult. The slow pace, inefficiency and lack of awareness of the judiciary when deciding on children's rights is unacceptable, something that our Office has been warning about for years, emphasising the need for reforming the judiciary and establishing specialised family courts, as well as the Barnahus model. We have been advocating for urgent measures in addressing these issues, such as: the right of every child victim to be interviewed via audio-video link, without the presence of the judge, the defendant and his lawyer; the child’s right to request protection of identity and residential address in all stages of the procedure (not depending upon the motion of the state attorney); the child's first statement should be evidence-based in the criminal proceedings, since subsequent interviews of the child by the investigating judge, or later by the court judge, can lead to re-traumatization of the child; mandatory education and continuous training of experts working with children; the role and competences of the child's legal representative should be more clearly defined, etc.

***Barnahus model:*** *In 2023 a joint EU-Council of Europe project “Implementing the Barnahus Model in Croatia” has been launched. The Ombudsperson for Children has an active role in the project, which is to be due by February 2026. It should result in the establishment of the Children’s House, where the interagency approach will bring together all relevant services under one roof to prevent re-victimisation and re-traumatisation of the child and provide every child with a coordinated and effective response. In October 2023 a COE Fact Finding Mission was conducted in Croatia (Zagreb), resulting in the Inception report, which reflects the views of the various experts, identifying challenges and gaps, as well as the areas for improvements in this field. We refer to the official COE page where the* [*Inception report for Croatia*](https://rm.coe.int/inception-report-of-the-barnahus-croatia-project/1680ae34ac) *is published.*

* **The awareness-raising, specialisation and training of professionals:** A comprehensive child-friendly system requires the establishment of specialized child units (police, judiciary, court system, prosecutor’s office etc.). A pool of specially trained experts (judges, expert associates, expert witness bodies, special guardians) should be created in order to speed up proceedings, improve work quality and guarantee the protection of the best interest of the child.

All professionals in contact and/or working with children should receive appropriate **multidisciplinary training on the content and meaning of the Convention**, as well as on children's rights and the child-friendly justice concept. They should be instructed that they must inform children on the ways of accessing justice, filing complaints and legal remedies. The system should be inclusive to experts educated in conducting an interview with children and the procedures should be adapted to the developmental characteristics of children. Also, child-friendly premises should be provided.

When it comes to **law enforcement,** we believe that officers carrying out arrests need systematically child-sensitive training (e.g. avoid their witnessing handcuffing of parents, briefly explain what is happening, identifycarers for children if alone parent is arrested, treat children as children not as criminals). **Judges** should be trained forchild-rights approach at all stages – primarily - how to listen and to talk with the child.

In relation to **educational system,** teacher education programs still do not include a sufficient proportion of topics related to children's rights in general and especially about children’s rights to access to justice and effective remedies. Some school employees state that they do not feel competent enough for such topics and for work with children due to an inadequate share of such content in their initial education. Regards to that, training and awareness raising helps teachers in understanding children's issues such as: behavioural reactions, greater bullying by peers, need for discreet support, separation from parents or how to and to whom communicate the information about child’s need.

*Promising practice*: previously mentioned project “Law in everyday life” and the fact that since 2018 the Ministry of Justice has included the Ombudsperson for Children in the basic training for prison officers about children’s rights. On the contrary, although the Judicial Academy is competent body for lifelong education of judges and prosecutors, it seems that the topics related to children’s rights are not systematically and sufficiently included in the Academy’s curricula.

1. *More: Petö Kujundžić, L., Children in the penal system law, perpetrators and victims, School Book, Zagreb, 2019, p. 108-112.*). [↑](#footnote-ref-1)
2. *Report on the work of the ombudsman for children for 2016, Zagreb, 2015, p. 96*. [↑](#footnote-ref-2)