

THE ROLE OF THE OMBUDSMAN FOR EDUCATIONAL RIGHTS IN HUNGARY

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Education directly affects the present and *future of millions of people*. When so many people spend so much time together, conflicts are bound to occur in their day-to-day interactions. In our view the problem is not that conflicts arise in educational institutions, the problem is that there are no satisfactory mechanisms to resolve such conflicts.

Law statutes determine the environment of the educational system. They set out the rights and obligations of the participants in the educational system and also set out the decision-making powers of the authorities. Besides the specific legislative acts on education, the Constitution, various international agreements and a number of other laws also provide rules that govern the relationships between the participants in education. In the course of teaching, various decisions are made and measures are consequently taken. However, sometimes the decisions may infringe upon the rights of others, despite or regardless the best of intentions.

A total of 22.000 complaints have been submitted, thousands of telephone calls have been received and, at conferences, hundreds of problems have been disclosed to the Office thus far. The annual reports on our operations may be of assistance to all actors of education, but especially to pupils, students and their parents. They are those who need to identify cases of infringement, those who seek legal remedy, those who want to make proposals and those who want to file initiatives. The law may offer help in all of these areas but it cannot substitute co-operation. We are convinced that all of us may contribute to promote the development and consolidation of democracy at schools and in higher education. This Office has joined the awareness process; so as to make additional contributions to an open, honest and professional dialogue on childrens' rights, and on the democratic operation of local and higher education institutions.

Our Office may act if educational rights are infringed or directly threatened.

Educational stakeholders will only trust the Commissioner for Educational Rights if they can see that his actions are unaffected by politics or political interests. In addition to autonomy, another prerequisite of trust is impartial and unbiased inquiry.

The Commissioner for Educational Rights may examine the unlawful decisions and measures of educational institutions providing public service. This office was set up by the state to protect its citizens – especially the children – from the unlawful decisions of public service providers. The initiatives and recommendations of the Commissioner for Educational Rights protect the weak, the party who suffered a violation of rights, using legal means exclusively.

The complaints received since 1999 allow us to draw a few *general conclusions*. One of these is that we received many petitions reporting corporal punishment. It has been always known that there is a serious lack of transparency in such issues, many cases are not reported or do not receive publicity outside the school. In our view, the *most serious offence* at school is physical aggression against children and students.

In the course of the investigation of the petitions, it was apparent that conflicts were rooted in the *lack of information*. The children involved in a conflict are often not familiar with the applicable regulations and local provisions. They are not aware of their rights, and do not know what proceedings must be followed in case of legal disputes. If the rules governing the work of educational institutions are not clear for the parents and students, they will not be able to make responsible decisions, and tend to come out of their disputes with the institutions *as losers*. The applicable legislative instruments establish clear lines of distinction between the responsibilities of the family and those of the educational institution. However, when such lines of distinction are known by neither the institution nor the family, conflicts will inevitably occur between them, and the parties will blame each other for the arising situation.

Many cases reveal a total *absence of trust*. A school did not trust a child with disabilities, and did not allow the student to enrol. Another school did not trust that its students would not use drugs at the weekends, and introduced drug tests. Some parents did not trust their children, and authorised drug tests in the school. A student dormitory did not trust the students and bought a breathalyser to check alcohol consumption. The reason why parents do not complain is either that they are afraid of the institution, or do not trust their own children. Institutions tend to dismiss children they do not know how to deal with. These children are not trusted any longer. There are students who prefer not to ask their teacher for advice or help because the latter has abused their confidence. It will lead to a loss of trust if a teacher overtly refuses to observe the rules that would apply to him or her, but does not hesitate to *punish* students when they break the rules. Many teachers do not trust the families. This is because the consequences of family issues tend to appear at school, but teachers feel powerless. We have read hundreds of complaints from parents who want to take their children out of a school because they no longer trust the institution. It is alarming how many forms of control, prohibition and restriction exist.

Trust can be created and strengthened by co-operation. We can often observe that schools are left alone in solving a problem without receiving any external help. In many cases they do not know where they could turn for assistance. Teachers should be aware of the limits of their competence, and they may act only within those limits. However, they should also know that at the point where their own competence ends, someone else's begins, and that this is the person who can help. Teachers need to *find partners* who can take part in the resolution of conflicts which arise in the school,

but not necessarily originate in the school only. Drug and alcohol abuse, violence, children at risk and poverty are all social phenomena which schools are unable to tackle effectively on their own. However, families are also unable to cope with these problems single-handed.

How can one provide effective help in these cases? In our view, co-operation between institutions and NGOs may be the solution in individual cases. Experts agreed that violence at school was often due to factors outside the school, and therefore the various measures and initiatives – especially the preventive ones – could only be successful if the organisations of the local communities work together as partners. Violence results in serious social damage and cost; therefore preventive measures should aim at achieving a tangible reduction of violence. This co-operation must be free of bureaucracy. The joint efforts of professionals from different sectors and services can be a major contribution to success. The possible partners are school communities, local authorities and regional governments, as well as their various educational, cultural and youth services, along with youth and children's organisations, local and regional NGOs, the local and regional media, scientific and research centres, universities and colleges.

Co-operation is of vital importance in the protection of rights as well. Developed democracies have a complex system of institutions for the protection of the rights of citizens. Courts are the ultimate means of dispute resolution, but judicial proceedings tend to be lengthy, expensive and less confidential due to the principle of publicity. Fortunately, the number of institutions helping the better enforcement of children's rights increased in the last few years. The advocates of patients' rights and children's rights, the 'solicitors of the people', mediators and certain NGOs all aim to ensure a more effective protection of rights. They are closer to the stakeholders, and may help mediation in the initial stage of conflicts or contribute to their settlement via cheaper, more confidential and faster procedures.

The purpose of co-operation between authorities, institutions and NGOs is to find the most appropriate assistance for the cases presented by the citizens as quickly as possible. If the institution to which a request is addressed may take action, it will provide a service to the citizen. If the matter falls outside its sphere of authority, it will act as a compass to provide information to the petitioner on where he or she can turn for assistance. Citizens can decide which one of the possibilities presented one of the offered avenues they wish to explore. Such co-operation will create trust, as citizens will have a reason to feel that the institutions are there for them, and not vice versa. Such trust is beneficial to both the state and the individual. In a free society, where the rule of law prevails, there is no alternative to co-operation.

We have a great debt towards the Hungarian society: in the last 25 years we haven't found an answer to the most important question concerning our educational system: *why do we teach, what is the aim of it?* If we look back in time, we find clear answers, for example the aim of eradicating illiteracy. Later, after the first World War, when Hungary lost its raw material treasure and its geographical advantages, the educational government realized that it in fact it is culture and education, that can pull the country out of trouble. Even to educate the so called "socialist human" can be seen as a goal that was able to indicate a clear vision of what the aim of the

whole educational system was – according to the communist regime. Then came the regime change, when all sorts of reforms started to take place, reforms that we believed were important on the basis of international conventions and democratic principals; there was only one question we forgot to ask ourselves: why are we doing all this? Why are we spending all that money on education? What kind of mandate does the society give to the large team of professionals that we call the community of teachers? During the last 25 years we have heard many debates over *what* we should teach, and even more debates over *how* we should teach, but these should be only one of the many steps – while the very first step has not been made, the question of questions has not been answered.

I dont know whose job it should be to start the discussion on the goal of education, but Im sure in one thing: the answer to this question must be consensual. There is actually a good example to this: about three decades ago the then finnish government addressed the scientific elite, the opposition, artists, churches, the civil sector – and they started a program that was aiming to answer the question of „What will we, finns be in 50 years?“. And in the process of this debate that involved the whole society they found the sentence that is now the foundation of the best performing educational system of the world: „We must not let our parents and grandparents pass away without learning from them all that they know“.

I am aware of the fact that we are not the Finns. Still, I firmly believe that if we were to start a search together aiming to find a consensual goal for our future and education, that could stream an immense amount of energy towards the educational system.