Alternative Report of
the Ombudsman of the Republic of Latvia
for the Committee on the Rights of the Child of United Nations
on Situation in the Rights of Children in Latvia
in the Period from
1 January, 2007 to 30 June, 2012

Riga, 2015

INTRODUCTION

No separate position for children ombudsman and institution for ensuring its work has been established in the Republic of Latvia. The ombudsman of the Republic of Latvia at the same time performs the function of the ombudsman in issues of children's rights. There is Department of Children's Rights established in the Ombudsman's Office and lawyers working at the Department of Children's Rights work only with children's rights issues.

Taking into consideration that the national report is for the period from 1 January, 2007 to 30 June, 2012, the ombudsman draws attention to themes, which have not lost their topicality at the moment of report review.

PARENTAL RESPONSIBILITY TO RESPECT THE RIGHTS OF THE CHILD

Article 9, 18, 19 of the UN Convention on the Rights of the Child

Ombudsman Office receives applications from separated parents, in which it is stated that a parent living together with a child abuses custody rights, thus violating child's and other parent's rights, and the request is made to explain how to handle the particular situation.

Abuse of custody rights is mostly expressed by:

- Failure to provide information on a child to that parent, who does not live together with a child, contrary to Section 181, Paragraph two of the Civil Law: „(..)A parent who does not live together with a child, has a right to receive information on it, especially information on its development, health, learning achievements, interests and living conditions";
- Non-provision of child's rights to maintain personal relations and direct contacts with the other parent. The mentioned rights of the child are determined in Article 9, Clause 3 of UN Convention on the Rights of the Child: "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" and Section 181, Paragraph one of the Civil Law: "A child has a right to maintain personal relations and direct contact with any of parents (access rights)." According to Section 182 of the Civil Law access rights may be limited only by a court, not one of the parents;
- Non-provision of child's rights to maintain personal relations and direct contacts with grandmother and grandfather from the side of the other parent. The mentioned rights of the child are determined in Section 181, Paragraph two of the Civil Law: "A child has a right to maintain personal relations and direct contacts with grandparents";
- Preclusion of the other parent to implement obligation stated in Section 181, Paragraph two and rights to maintain personal relations and direct contacts with a child. Law provision specially emphasises that this provision is applicable also if a child is separated from one or both parents;
- Sole decision on child adoption, thus denying rights of the other parent to implement custody rights and to make decisions on issues important for a child, contrary to provision stated in Article 18, Clause 1 of the UN Convention on the Rights of the Child: "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern" and provision stated in Section 178^1, Paragraph one of the Civil Law: "If parents live separated, the common custody of parents continues. In issues, which can essentially affect development of the child, parents shall make decision jointly";
- Negative influence on child's relations with the other parent, because a child becomes estranged from the other parent if he/she does not meet him/her for many months. Section

181, Paragraph four of the Civil Law states that: "A parent, in custody of which a child is, has a right to refrain from such activities as may negatively influence the relationship of the child with one of the parents."

Abuse of rights is one of the grounds mentioned in Section 203, Clause 3 of the Civil Law for taking away custody rights of parents. The mentioned provision of law determines the following: "Custody rights shall be terminated for a parent if the Orphan's Court finds that a parent misuses his or her rights or does not ensure the care and supervision of the child". A similar regulation is provided also in Section 22, Paragraph one, Clause 3 of the Law in Orphan's Court: "The Orphan's Court shall take a decision to discontinue the child custody of a parent if a parent misuses his or her rights or does not ensure care and supervision of the child". In this case, custody of the child is exercised by the other parent.

Section 178 of the Civil Law provides the following: "Parents living together shall exercise custody jointly. The differences in opinion between parents shall be resolved by the Orphan's Court unless otherwise provided in the law." Also disputes between separately living parents according to Section 178^1 of the Civil Law shall be solved pursuant to the procedure stated in Section 178 of this Law. Consequently, resolution of issues regarding disputes of separately living parents about custody is in jurisdiction of the Orphan's Court.

The Orphans Court, when considering the application, in which it has been asked to evaluate whether action of the other parent can be considered as abuse of rights, shall evaluate whether a parent performs unlawful act maliciously or he/she does not understand the child's needs. Also it shall be evaluated whether goal (child's communication with both parents and grandparents or provision of child's representation) cannot be achieved by means which are less restrictive to rights of participants of administrative procedure. For example, when establishing that parent's action is unlawful and does not correspond to best interests of the child, not to take away custody rights, but, for example, to appoint psychological consultations or to suggest mediation services. For example, in case when a parent expresses opinion that he/she does not wish to communicate with the other parent, that there are difficulties in communication with the other parent, therefore he/she makes all decisions alone.

Such solution would also correspond to Article 19, Clause 1 of the UN Convention on the Rights of the Child: "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

In practice, it can be established that Section 203, Clause 3 of the Civil Law is being applied only to the part regarding non-provision of child's custody and supervision, but regarding abuse of rights it is not applied.

CHILDREN'S RIGHTS TO BE PROTECTED FROM ANY KIND OF VIOLENCE

Article 19 of UN Convention on Rights of the Child

Domestic violence

After receipt of several complaints the ombudsman has found out that the State Police and Prosecutor's Office have no common understanding and methods regarding domestic violence, in cases when offence is classified as domestic violence and regarding the methods of how to help victims of domestic violence.

Getting acquainted with facts mentioned in persons' applications and answers given by prosecutors of several Prosecutor's Offices about results of consideration of complaints, the ombudsman has concluded that the concept "domestic violence" is still interpreted and

understood restrictively only on the basis of registered marriage or existence of joint household at the moment of offense.

The ombudsman has sent explanation of understanding domestic violence to all Latvian Prosecutor's Offices of district courts and State Police.

Domestic violence may also be suffered by children suffering from violence of adult family members, and they also can be witnesses of violence among adults.

Similarly, from the received applications the ombudsman has concluded that there is still no common understanding of child abuse within the aspect of Section 174 of the Criminal Law. Domestic violence in cases when, for example, one of the parents is violent against the other parent in presence of the child, and the minor itself is not physically involved in this conflict, it is essential to recognize offence determined in Section 174 of the Criminal Law - cruelty towards and violence against a minor, if physical or mental suffering has been inflicted upon the minor. It contains, for example, situations, when the mother holds a child in her arms, and mother is physically affected, or the child sees, how mother is being physically affected. In such situations the child suffers psychologically, and such offences are qualified as domestic violence and violent behaviour towards the minor. Section 20, Paragraph one of the Protection of the Rights of the Child states that "state ensures that matters related to ensuring the rights or interest of the child, shall be considered in all state and local authorities by specialists having special knowledge in this field."

Prevention of Violence in Educational Institutions

Article 6, Paragraph second; Article 37, Clause a of UN Convention on the Rights of the Child

One of the basic principles of the rights of the child, giving rise to other rights of the child is rights of a child to development[1]. Rights of a child to development are endangered if the child suffers violence and also in case if the child behaves violently, therefore prevention of violence is an important issue in provision of the rights of children.

According to international and national laws, the child has the right to be protected from all kind of violence, regardless of where the child is: at school, home, social welfare institution or in any other place. In order to exercise these rights, the right protection mechanism has been developed in the state determining obligations and responsibility for non-compliance to these obligations set out in the legal acts and regulations for each involved person – municipality, school, parents and the child itself.

Special regulation regarding safe environment in educational institutions is set out in normative acts regulating the field of education. Educational institutions have determined particular duties in matters of learners' security and responsibility for non-fulfilment of them. Although regulatory framework in preclusion and prevention of school violence is sufficient, it is not used properly so that a case of violence should be timely prevented.

The ombudsman has concluded that school violence is largely related to attitude of local governments towards performing its own function – preventive work with children. Practice shows that programs of social behaviour correction in all municipalities are not properly developed or are not developed at all. Exactly the lack of preventive work started in a timely manner leads to serious cases of violence. Also educational institutions do not address municipality in time for the help in case of child's antisocial behaviour, if resources of school turned out not to be sufficient and have not provided results. Section 58, Paragraph

[1]Article 10, Paragraph two of the UN Convention on the Rights of the Children: "States Parties shall ensure to the maximum extent possible the survival and development of the child." Section 7 of the Law on Protection of the Rights of the Children: "Every child has an inalienable right to the protection of life and development."

two, Clause 7 of the law on Protection of the Rights of the Child states: "A local government shall establish a prevention file and draw up a programme for social correction of behaviour for each child who begs, is vagrant or performs other acts which may lead to illegal actions." Thus, correction of the child's behaviour is statutory duty of a local government (not educational institution) – a local government is obliged to take into the municipal preventive register each child of the risk group and to develop the program corresponding to its needs. Program developed by a local government depending on special circumstances of the case can envisage or not envisage participation of police, because development of the program and hence the choice of cooperation partners is the competence of a local government. According to international recommendations it may be concluded that community based social work should be used and as far as possible, the possibility of youth coming into contact with law enforcement system shall be prevented.
Child's antisocial behaviour shows previously permitted violation of its right to full development, and it is considered also in the liability context of persons responsible for upbringing of children (parents and teachers).

IMPLEMENTATION OF THE RIGHT OF CHILDREN AT PSYCHONEUROLOGICAL HOSPITALS

UN Convention on the Rights of the Child articles 3, 23, 31

Implementation **of the rights of children at** psychoneurological hospitals (hereinafter referred to as the Hospitals) was among the priorities of the Ombudsman in 2010 – 2012 years. Pursuant to the authority stipulated in Section 13, Paragraph 3 of the Ombudsman Law to visit closed-type facilities at any time without special authorization, to move freely on the territory of the visited facility, and to visit all premises and meet vis-à-vis the individuals accommodated in closed-type facilities, representatives of the Ombudsman's Office repeatedly visited in 2012 all psycho-neurological hospitals eligible to accommodate children: "VSIA "Bērnu psihoneiroloģiskā slimnīca 'Ainaži'", VSIA "Daugavpils psihoneiroloģiskā slimnīca", VSIA "Ģintermuiža", VSIA "Bērnu klīniskā universitātes slimnīca" in Gaiļezers, VSIA "Piejūras slimnīca", and VSIA "Rīgas psihiatrijas un narkoloģijas centrs"[2].

In accordance with provisions of paragraph one of Section 72 of the Protection of the Rights of the Child Law, managers of health care institutions as children are found, shall be liable for the protection of the health and life of the child, that the child be safe, that he or she is provided with qualified services and that his or her other rights are observed.

During visits to hospitals, staff of the Ombudsman's Office have evaluated the activities undertaken to improve the situation of the rights of children, inter alia, has verified implementation of the Ombudsman's recommendations sent to the Hospitals in 2011.

The key issues on which notice is taken in the Hospitals:

Treatment of Children Separately from Adults

According to Section 3, Part One of the Law on Protection of the Rights of Children, a child is a person who has not attained 18 years of age, excepting such persons for whom according to law, majority takes effect earlier, that is, persons, who have been declared to be of the age of majority or have entered into marriage before attaining 18 years of age. Part Two of the said Section stipulates that the State shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence

[2] All the hospitals have been visited also in 2011.

in the State, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members.

According to Article 3 of the UN Convention of the Rights of the Child and Section 6, Part Two of the Law on Protection of the Rights of Children, any actions taken in respect of a child, regardless of whether taken by governmental or municipal authorities, non-governmental institutions or other natural or legal entities, or by courts and other law enforcement authorities, should serve the priority of protecting the rights and interests of the child.

It was identified during the visits to hospitals that some children are accommodated in hospital wards together with adults because of their health condition that entails behavioral changes. According to the information provided by medicine professionals, the grounds for accommodation of children in an adult ward included the children's age and anti-social behavior (aggressiveness towards other people, etc.) thus preventing threat to security of younger children and the staff.

Hospital administration points out that separate wards for adolescent patients are provided in adult departments, as seen also from signboards on the entrance to the adult wards. The children accommodated here use the common premises (dining-room, TV-room, classroom, etc.) thus interacting with the adult patients on regular basis.

Also, different approaches are observed, from one hospital department to another, in terms of the number of meals and availability of psychologist; children have 5 meals and a psychologist available, while adolescents accommodated in adult wards are treated as adults: they have 4 meals, and psychologist is only available to them on exceptional basis.

The children accommodated in adult wards have no possibility of solitude in case of need, because of the large number of patients in the adult wards. Inspection of the books, games and other educational material available to children shows that the range of available material is restricted in the ward designed for male adults; this leads to suspect that the right of children to development trough playing games and the right to information in a language that the child understands is not properly ensured.

The right of such children to special protection guaranteed by the State is also restricted on particular occasions. According to the obtained information, adolescent smoking is also tolerated. The given situation contradicts with the international human right standards, and it is impermissible due to special status of a child.

Children present a particularly vulnerable group of persons; development of their personalities is still taking place, and therefore children are more acceptable to influence by persons with negative behavioral trends. Accommodation of children in the wards designed for accommodation of adults who are not their relatives may pose threat to the safety and future development of children.

Moreover, accommodation of children in adult wards should not be supported even if such solution facilitates protection of the rights of other children. Hospital management should assess the situation and take appropriate steps to ensure protection of all rights accommodated in the hospital.

It was identified during the visits to hospitals in December 2011 and January 2012 that the practice of referral of adolescents to adult wards continued. The Ombudsman had been informed before those only 15-17 years old children were referred to adult wards on exceptional occasions. Employees of the Ombudsman's Office established, however, during the inspection visits that decisions on accommodation of teenagers in adult wards were made on regular basis. The above-described practice was also applied to younger children. A 13 years old girl was accommodated in the adult ward of hospital during the inspection visit conducted by employees of the Ombudsman's Office.

Internal Procedural Rules for Patients

It was identified during the visits to Hospitals in 2012 that a number of Hospitals have established new or improved the internal regulations for patients. Unfortunately, internal regulations have not treated children as a separate group with specific needs, taking into consideration the age and development level of children, regulations are not easily perceptible. Accordingly, there are doubts, whether sufficient and clear information is provided to the children or their lawful representatives about the order established in the Hospital and legal remedies in the event of potential infringement of rights (for example, rules of behaviour, procedure for visiting patients, procedure for examination of complaints et al.).

Certain Hospitals have imposed an overall prohibition for the children to meet their friends, although an information was received that this prohibition is applied in practice when there is suspected threat.

Availability of the Rules is a topical issue – the Rules are not placed in location easily accessible to the children and their lawful representatives. For example, State Limited Liability Company "Riga Centre of psychiatry and Narcology" (*VSIA "Rīgas psihiatrijas un narkoloģijas centrs"*) required some time to find the Rules and to present the same to employees of the Ombudsman's Office.

In discussions with regard to application of the Rules, it was found, that personnel of several Hospitals still do not understand the need for the Rules.

Restriction of Physical Mobility (Fixation of Children)

During inspections it was found that there is a different practice as regards restrictions to physical mobility – there are Hospitals where restriction of physical mobility (fixation) is applied to children, whereof a statement is drawn and placed in medical card of in-patient, and there are Hospitals, where fixation is not applied but alternative means for calming down a child are used.

In accordance with the article 21 of the Protection of the Rights of the Child Law in the interests of security and protection of a child himself or herself, the realisation of the rights of the child may be subject to such limitations as are provided for by law and are necessary for the protection of national security, public order, and the morals and health of the public and the protection of the rights and freedoms of other persons. A child shall receive explanations regarding such limitations as soon as the rights of the child are limited.

The possibility of fixation of children is not provided in the specific law of the Republic of Latvia. Therefore the physical mobility of a child cannot be restricted in Hospitals.

The Right to Maintain Contacts, Communication Possibilities, and Social Integration

Communication of the children placed in Hospitals with their relatives basically takes place in a form of telecommunications and meetings.

Recommendation was made to the hospitals to promote communication by children by means of the latest technologies (email, "Skype" software, etc.).

The fact that some Hospitals have provided possibility to children to communicate with their parents (legal representatives) and relatives via possibilities provided by the Internet deserves appreciation.

Regarding the meeting of children with their parents and other persons, it was observed during the visits to hospitals that conditions for meeting of children with their relatives at hospitals are inappropriate – in the lobby at entrance to the hospital department. Hospitals should provide a separate room where visitors can meet the child, in order to ensure

protection of the child's as well as the parents' (legal representatives') right to privacy, and to ensure that the hospital staff can monitor the course of visit and interfere where appropriate. To ensure protection of the individuals' right to privacy and at the same time to enable the hospital staff to monitor the visit and to interfere if appropriate, the room may be arranged in such a way that observation of persons in the room is possible without direct presence of the hospital staff. The involved parties have to be aware of monitoring.

As regards conditions of visits to the children, information was received that establishment of appropriate meeting rooms in several Hospitals is impossible right now due to limited financial resources.

Availability of Outdoor Activities

According to the information obtained by representatives of the Ombudsman's Office during the visits to hospitals in the first half of 2011, some hospitals do not provide regular possibility for children to enjoy fresh air. It was pointed out that the reasons of such situation include lack of personnel at the hospital departments.

Regular outdoor activities are crucial to development of a child, and therefore such right may only be restricted on exceptional basis, for example, if outdoor activities may lead to impairment of the child's health condition. Eventual attempts by children to escape from hospital may not be treated as sufficient grounds to prevent children from enjoying fresh air.

Hospitals should take the appropriate steps to ensure that children have regular outdoor activities available to them, for example, to review the work load of the existing personnel, or to adapt the territory of hospital to fit such purpose, and to consider other alternatives.

According to the information provided during the visits to hospitals in December 2011 and January 2012, children have regular possibilities to enjoy fresh air; interviews with the children accommodated in hospitals, however, make to question the correspondence of certain information provided by the hospital with the actual situation.

Eventual attempts to escape or lack of personnel may not constitute a reason for not ensuring exercises. Hospitals should take the appropriate measures, by reviewing the work load of the personnel, adapting the territory of Hospital or considering other possibilities.

THE RIGHT OF A CHILD TO GROW UP IN A FAMILY

UN Convention on the rights of the child article 8, 9, 16, 20, 23, 27

The public social care centers (hereinafter – PSCC) branches at which inspections have been conducted provide accommodation to 467 customers. In total, 421 children were accommodated at the above-listed facilities during the visits, including 198 children under 2 years. The highest number of young children (under 2 years) was observed at PSCC "Riga" branches "Pļavnieki" – 93, and "Riga" – 72 children. Care and rehabilitation services were provided at PSCC "Kurzeme" branch "Liepāja" to 19 children under 2 years, and to 14 children at PSCC "Latgale" branch "Kalkūni". [3]

According to the information posted on the website of the State Inspectorate for Protection of the Rights of Children in August 2011, 27 foster families had expressed their willingness to undertake care of children from 0 to 2 years, thus enabling 34 children to grow up in family-based setting. In addition, 8 foster families offered care to additional 10 children

[3] Data as of 19 August 2011.

over 1 year, and 30 foster families were willing to accommodate and care for children over 2 years, thus providing family-based care to 45 children.[4]

Information about the vacancies in foster families is available to orphans' courts competent to decide on providing out-of-family care to a child, subject to the principle that family-based care serves the best interests of the child. According to statistics, however, the right to the above-mentioned care is not provided to younger children.

When assessing the situation, it should also be taken into account that, according to Section 9.[1] of the Law on Social Services and Social Aid, orphans and children under 2 years left without parental care and accommodated by residential facilities are dependent on the State. Maintenance to children placed in foster families is partially provided by municipalities who pay subsistence allowance and allowance for provision of closing and soft staff. The different approach to funding of alternative care services is eventually among the reasons why orphans' courts in their capacity of municipal institutions occasionally decide on provision out-of-family care to a child guided by financial considerations and give preference to State-funded residential care.

Conclusions:

- According to the international child right standards, placement of younger children, i.e. children under 3 years of age, in residential facilities is treated as infringement of the rights of children. Therefore, if out-of-family care is selected, care to young children must be provided in a family-based environment.
- The large number of children accommodated at the PSCC branches demonstrates that out-of-family care system established in our country has problems related to access of family-based care services to younger children, and infringements of the right of children to grow up in family take place as a result thereof.
- It is crucial to ensure that orphans' courts develop understanding of the rights and needs of younger children to care in family-based environment, and to ensure compliance with the above-mentioned principle in practice.
- A decision made by orphans' court on placement of a child under 2 years of age in residential care may be influenced by financial considerations. It is therefore crucial to discuss the need for reviewing the funding of residential care services and to provide a uniform source of funding for provision of care services to children who have no physical or mental development impairments, regardless of their age. Costs of the above-mentioned services should be funded from the municipal budget, as it is presently prescribed by normative regulation in respect of children who have reached the age of 3 years.

The right of a child with special needs to grow up in family

According to the worldwide practice, the most common reasons in the countries of Central and Eastern Europe for placement of children in care facilities include physical and mental development impairments of children. Children with development impairments also represent a major part of the total number of children accommodated at PSCC branches. According to the information obtained from the staff of PSCC branches, people are not willing to take custody, provide foster care or adopt the said children because of their health condition; therefore, a number of children are continuously accommodated at state long-term social care and social rehabilitation facilities until they reach major age, and even longer. Many of the children with physical and mental development impairments are left without parental care. Some children with development and health conditions are placed in PSCC

[4] Available at: http://www.bti.gov.lv/lat/arpusgimenes_aprupe/?doc=2589&page=

upon their parents' application because providing family-based care is not possible for different reasons.

Article 23 of the UN Convention stipulates that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Manual on practical implementation of the Convention on the rights of children points out that emphasis is made in Article 23 on "active participation in the community" and "possibly efficient social integration", which means, in the light of Article 2 of the Convention, that placement of children with disabilities in residential care facilities should be minimized, and that children should have the right to grow up in family-based environment without any discrimination[5].

The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already to "take steps to develop and implement alternatives to residential care of children with disabilities, for example, local rehabilitation programs and home care, as well as to arrange understanding development campaigns aimed at family-based care and fostering of the rights of children with disabilities.

UN Committee on the Rights of the Child in their General Comments No 9 on the Rights of Children with Disabilities[6] and in European Declaration on Children and Young People with Intellectual Disabilities and their Families[7] encourages the States to switch from residential care services that have adverse impact on the health and development of children to high quality support and alternative care in community. Alternative services including care by relatives or care in foster families and adoption must be arranged to motivate people who consciously seek possibilities to care for such people, and who are sensitive to special needs of the children and willing to provide benefit to children, to undertake care of the children.

Conclusions:

- The large number of children with physical and moral development impairments accommodated at PSCC demonstrates that placement of such children in child care facilities is frequently preferred in practice. Such practice persists due to lack of alternatives.
- Development and health conditions prevent children from access to family-based care services, and this contradicts with the principle of discrimination prohibition.
- Sufficient support should be provided to the families caring for children with special needs, and availability of alternative care services should be promoted in order to minimize placement of children with special needs at care facilities and to support removal of children from such facilities. Possibility should be considered to fix higher amount of remuneration to the guardians and foster families caring for children with physical and moral development impairments, since the health and development status of such children must not prevent them from availability of family-based care.

Ensuring the right of siblings to stay together

Article 18 of the UN Guidelines on Alternative Care stipulates that siblings with existing bonds should not be separated by placements in alternative care. Section 27, Part Four, Paragraph 1 of the Law on Protection of the Rights of Children also protects the right of

[5] Hodgina R., Ņūvels P. Konvencijas par bērna tiesībām ieviešanas praksē rokasgrāmata: UNICEF, 2002.- p.p. 652, 335.

[6] General Comment Nr.9, The rights of children with disabilities, Committee on the Rights of the Child, http://daccess-ods.un.org/TMP/6372007.13157654.html

[7] European Declaration on Children and Young People with Intellectual Disabilities and their Families, http://www.euro.who.int/__data/assets/pdf_file/0015/121263/e94506.pdf

children with existing family bonds not to be separated by placements in out-of-family care, unless in special occasions when it serves the best interests of the children.

According to the information obtained during interviews with the PSCC staff, the above-stated principle is not complied with in practice. According to Section 9.[1] of the Law on Social Services and Social Aid, orphans and children under 2 years left without parental care and accommodated by residential facilities are dependent on the State. Therefore, orphans and children left without parental care only under 2 years of age have social care and social rehabilitation services available from PSCC branches. If a child's sibling has reached the age of 3 years and no guardian or foster family can be found for the children, care of the siblings is provided by another child care facility funded by the municipality. In case of siblings with minor age difference (1-2 years), it is possible in practice that the municipality makes an agreement with PSCC on care of the children to ensure the right of siblings to grow up together; such occasions, however, present exceptions from the common practice.

Conclusion:

The different procedure applicable to funding of residential care services, depending on the child's age, facilitates infringements of the right of siblings to be not separated in the occasions when no care by guardian or foster family is available to children placed in out-of-family care. Therefore, a question arises about whether or not it is appropriate to review the procedure for funding of residential care services (see also the section regarding the right of child to grow up in family).

Access Right with the Child during Provision of Extra-Familial Care

The next question, which we have to face, when assessing submissions, is safeguarding of the access rights for children with parents and close family members.

Upon assessment of submissions by a number of people, a conclusion has to be drawn that the most common reasons why parents are not in a position to realize access to their children - is the distance, reluctance of the foster family or the guardian to provide for the child's access to biological parents, inefficient social work with biological family.

In cases when the child, after removal from the family, is placed in the extra-familial care institution, which is a long way from the parental home, actual obstacles are created for a normal exercising of the access right. The families often indicate that cannot financially afford to go to visit the child as often as they would like and how it would be necessary.

In a number of cases foster-parents or guardians have initiated the limitation of right to contact, guided by their different interests are trying to dissociate the child from his or her biological family.

Civil Law is the regulatory enactment of the Republic of Latvia determining the right of the child and the parents to maintain personal relationship and direct contacts. Paragraph two of Section 181 of the said Law specifically underlines that this right should be ensured also when the child is separated from one or both parents. While the right of a child placed in extra-familial care to meet his or her parents is prescribed by

Section 33, Paragraph one, Clause 1 of the Protection of the Rights of the Child Law. Section 44 of this Law prescribes that while a child is in extra-familial care, the local government shall provide educational, social and other assistance to the parents of the child, in order to create conditions for renewal of care of the child within the family. While a foster family, guardian and a child care institution shall inform the parents regarding the development of the child and shall encourage the renewal of family ties.

In accordance with the received submissions, Ombudsman concludes that in many cases this work with the family is not really carried out, as well as Access to the parents is even prevented and deliberately restricted rather than encouraged.

Paragraph one of Section 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (hereinafter referred to as the ECHR) ensures for everyone the right to respect for his family life. Majority of the cases, examined by the European Court of Human Rights (hereinafter referred to as the ECtHR) with regard to the right to inviolability of family life, were related directly with the rights of parents and children, inter alia, in relation to determination of the right of parents to meet a child or children, or events when children against the parents' will are delivered for the state maintenance.

Right to inviolability of family life protected by Article 8 of the ECHR, imposes on public authorities a negative obligation to avoid unjustified interference with right of the person for family life.

In the events when public authorities against the parents' will separate a child from his or her parents or impose to the parents restrictions for the access right, undeniably, there is interference of the public authorities with the right to family life. However, such interference may be legitimate, if it meets the requirements laid down in the ECHR Article 8, Paragraph two: it has taken place in accordance with the law, implementing one or more of the purposes prescribed by the ECHR Article 8, Paragraph two, for example, protection of the rights of a child, health, morality, and may be regarded as necessary in a democratic society. When deciding whether interference is needed, it is necessary to assess whether, in the light of all the circumstances of the case, the reasons provided by the public authorities to interfere in the right to family life are essential and sufficient. Decisive role in each case should play a consideration, how to ensure the interests of the child as good as possible. [8]

It should be noted, that in accordance with the ECtHR case-law in deciding the question for putting children to maintenance of the state public authorities have a certain discretion permissible, however, any further limitations are subject to much stronger control by the ECtHR, for example, limitations to rights of the parents to meet the child. It is explained by the fact, that, first of all, putting the child to maintenance of the state should be supposed to be a provisional instrument, which is discontinued, as soon as circumstances allow it and, second, when carrying out temporal custody, the state should take the necessary measures in order to achieve the final aim – reunion of the biological parents and the child. As regards limitations to the access rights of parents and a child, the ECtHR has specified that a reunion possibility will gradually diminish and in an end result it will not take place at all, if the biological parents will be denied the meeting rights or meeting with a child will be allowed so rarely that among them the ties of kindredship undoubtedly will not originate. Prohibition or limitation of access rights between parents and children not only does not promote a family reunion, but rather makes obstacles to it.[9] From ECtHR case-law a conclusion may be drawn, that limitation of access right between parents and a child should be grounded with the purpose such as protection of the interests of a child, however, it may not be contrary to the main aim - further family reunion. At the same time an equilibrium should be observed between contiguity limitation and aims, due to which the limitation is necessary.

Implementation Handbook for the Convention on the Rights of the Child specifies that when children are subjects to the state care, a situation is possible when contact of children with their parents is not ensured. This can be done for the sake of care provider's convenience, especially in the events when the child's parents are ill-disposed, obstructive or unconcerned in the child's development. Arguments are put forward that the child ought to "become familiar", or that the child is worried when meeting with the parents. However, the evidence

[8]Feldhūne G., Kučs A., Skujeniece V. Cilvēktiesību rokasgrāmata tiesnešiem. Latvijas Universitātes Juridiskās fakultātes Cilvēktiesību institūts, 2004. – pp.57-59.

[9]ECtHR judgment of 27 April 2000 in Case *K. and T. v. Finland.*

suggests that a possibility is less likely that children will be reunited with the parents, if the contact with them is not kept during the first few months, while being in the state care.[10]

Ombudsman has established that in some cases, prohibition for the child to meet his or her parents is used as a means of punishment for inappropriate behaviour in the extra-familial care facility. This practice does not comply with the legislative framework and is incompatible with the principle of ensuring the child's interests.

In the light of the above, the Ombudsman has provided recommendations in his opinions to particular Orphan's Courts on the need to cease violations of the rights of the child immediately and to ensure the child's access to biological family.

Number of Children at PSCC and their Right to Qualitative Care

The UN Committee on the Rights of the Child, based on conducted research, has repeatedly pointed out that small home-type child care facilities often demonstrate better results of child care. Large number of accommodated children adversely affects the quality of care services and poses risk to wholesome development of children. Child care facilities are unable to compensate efficiently the lack of family-based environment; children accommodated at facilities are subject to the principle of impersonality and strict regime; and shortage of staff results in limited access of children to care appropriate to their individual needs. Also, children may experience difficulties in finding a contact who helps to instill confidence and safety in children due to personnel turnover. Manual on practical implementation of the Convention on the rights of children points out that "children accommodated in facilities are subject to the risk of delayed development; their communication abilities are impaired, and they experience emotional deficit, insufficient attachment to adults, passivity and lack of confidence. Serious deviations can be observed in the intellectual and motivation field of psychology in children at primary school age, as well as trend to inadequate behavior"[11].

It was established during the visits conducted by PSCC that each facility can provide accommodation to about 100 children, and "Kalkūni" branch of PSCC "Latgale" can accommodate 160. Children live in groups of 10-12 in each. Two employees are involved with each group of children on day-to-day basis: a social worker who is parenting children and teaching skills to them, and a caretaker. At nighttime, only 1 caretaker is available at the group. Assessment of such situation against the international standards of the rights of children shows that the large number of children accommodated at PSCC branches does not serve the interests of the children. Taking into consideration the number of caretakers assigned to each group, the age and health condition of children, the quality of care is also questionable, namely, there is doubt whether the children always have care available as appropriate to their needs.

According to the UN Guidelines for Alternative Care of Children,[12] the countries where large residential facilities remain, alternative forms and deinstitutionalization strategies should be developed aimed at progressive elimination of residential care facilities. Article 23 of the above-named premises stipulates that states should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as

[10] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child: UNICEF, 2002.- p.134.

[11] Hodgina R., Ņūvels P. Konvencijas par bērna tiesībām ieviešanas praksē rokasgrāmata: UNICEF, 2002.- 652 lpp., 284.lpp.

[12] Adopted on 18 December 2009 by resolution of the UN General Assembly, Guidelines for the alternative care of children, http://www.crin.org/docs/Guidelines-English.pdf

individualized and small-group care, and should evaluate the existing facilities against these standards.

Conclusions:

- The large number of children accommodated at each PSCC branch has adverse effect on the quality of care. The number of staff assigned to the groups is also insufficient to ensure that children have care available as appropriate to their needs. It is therefore necessary to review the requirements stipulated in regulatory acts in respect of social care and social rehabilitation facilities.
- The country should have developed deinstitutionalization strategy and adequate action plan with clearly set goals and objectives for each period in order to ensure progressive elimination of the large residential facilities (on **December 4, 2013** Government approved Guidelines of Social service development 2014-2020. On topic from these Guidelines is linked with activities related of deinstitutionalization. However deinstitutionalization process all over the Country is too slow.

Alternative care forms

Alternative care forms should be available to younger children in order to reduce the number of children accommodated at PSCC. The Law on Protection of the Rights of Children stipulates that in case of a child placed in residential facility care of such child may be provided by guardian or foster family in the environment that is the closest to family-based setting.

Analysis of information regarding the number of younger children accommodated at PSCC branches and statistic data regarding foster families leads to conclusion that the number of foster families capable of and willing to provide care to very young children is insufficient. There may be several reasons of it.

Care, parenting and supervising of small children needs much more time and efforts. Care of infants requires continuous 24h involvement of the caretaker, and the caretaker's mode of life is often changed radically. On certain occasions, the willingness to take care of small children may be affected by availability of health care services, because children must be periodically examined by family physician and consulted by other specialists.

The potential conditions that affect the willingness of foster families to take care of younger children, as well as quality of care, is lack of skills in care of small children (especially infants). Observations of the staff of PSCC branches also show that foster families frequently lack knowledge of how to care for infants.

Care of small children also involves notably higher costs (diapers, formulae, prams, clothing, etc.). Neither the foster family nor the guardian, unless he/she is the child's grandparent, has the duty to support the child on their own cost; therefore, financial support is important in fostering the availability of alternative care services.

According to Section 3, Part One of the Law on State Social Allowances, the costs related to guardianship are fully covered from the state budged: remuneration for performance of the duties of guardian makes 38 lats (54,07 euro) per month, regardless of the number of children in charge, and allowance for support of a child makes 32 lats (45,53 euro) per month. The guardian is entitled to have means of subsistence paid by parents of the child; if this is not possible, subsistence is paid by the state instead. The amount of subsistence paid by the subsistence guarantee fund is 30 lats (in 2015 – 90 euro) per month in case of children under 7 years[13]. Given that each of the parents has the duty to pay subsistence, the minimum amount of subsistence for support of a child is 60 (in 2015 – 180 euro) lats per month. In case of

[13] Article 4 of the Transitional Provisions of the Law on Subsistence Guarantee Fund

deceased parent, the child is entitled to survivor's pension the minimum amount is presently fixed at 29.25 lats (41,62 euro); in case of individual with inherent disability – 48.75 lats (69,37 euro). If a child is eligible to survivor's pension or state social security allowance to survivor, or subsistence from the subsistence guarantee fund, or family state allowance, the allowance for support of the child is reduced proportionally. At present, when the minimum living wage basket per person has exceeded 170 lats per month (in 2015 - 252,19 euro),[14] the amount of allowance is not sufficient to cover the actual costs for support of the child.

Foster family also has no obligation to support a child placed in the family on their own account. Remuneration paid by the state for performance of the duties of foster family is 80 lats (113,83 euro) per month, regardless of the number of children placed in the family[15]. The child support allowance is paid to foster family by the respective municipality, and according to Article 43, Paragraph 1 of the Cabinet Regulations on Foster Families No 1036 of 19 December 2006, the amount of such allowance may not be less than 27 lats (in 2015 – 90 euro in case of children under 7 years, 108 - in case of children more than 7 years) per month. In practice, most of the municipalities provide higher allowances, yet the amount differs radically: in Viļāni, for example, it is 50 lats per month, in Jelgava – 3 lats per day, and in Olaine – in the amount of minimum wages. The allocated amount on some occasions is not sufficient to cover all costs related to child subsistence.

Adequate social guarantees also should be provided to motivate people to undertake provision of care services. An employed person who is willing to take care of an infant should have the possibility to use child care leave or unpaid leave with the right to resume the previous employment.

Section 156, Part One of the Labor Law stipulates that the employer has the duty to grant child care leave applied for by employee due to the birth or adoption of child. Further, Section 153, Part One of the Labor Law provides for the right to request and have granted unpaid leave in case of employee in whose care and supervision the adoptive child is placed by decision of orphans' court prior to approval of adoption by court. On other occasions, unpaid leave may be granted at the employer's discretion without obligation to grant the leave, that is, "the employer may also grant leave upon the employee's application on other occasions". In addition, Section 43 of the Law on Remuneration to the Government and Municipal Officials and Employees stipulates: "Unpaid leave without preserving rations may be granted to an official (employee) who applies for it and whose position (service, employment) regime permits so."

In practice, due to the above-described regulation, there form situations in which the guardian or a member of foster family may be prevented from effective care of children for reasons independent on them, since the employer may refuse unpaid leave, and thus the person may not be entitled to parental allowance stipulated in the Law on Maternity and Sickness Insurance. Taking into account the above-stated, corresponding amendments should be made to the regulatory acts so that a member of foster family and a guardian can enjoy the same rights as parents/adoptive parents of a child.

Conclusions:

- Appropriate policy should be implemented to promote availability of alternative care services, so that adequate funding and social guarantees are available to people who are willing to take care of children.
- Financial remuneration paid by the state for performance of the duties of guardian/foster family is incommensurate with the involved tasks, in particular concerning the individuals

[14] Data of Central Statistics Department, http://www.csb.gov.lv/statistikas-temas/iedzivotaju-ienemumi-galvenie-raditaji-30268.html

[15] Article 2 of the Cabinet Regulations No 1549 of 22.12.2009 Concerning the Procedure for Allocation and Payment of Remuneration for Performance of the Duties of Foster Family

caring for younger children. Therefore, the issue should be discussed concerning the need to differentiate in regulatory acts the amount of remuneration for performance of the duties of foster family and guardian, respectively, depending on the age of children, so that higher remuneration is provided to the caretakers caring for younger children.

- Regulatory acts should be amended to increase the minimum amount of child subsistence so that it confirms with the actual costs of supporting a child.
- Regulatory norms concerning the provision of social guarantees should be improved to ensure that conditions of a member of foster family and to guardian are equal to those of parents/adoptive parents of a child, including amendments to the Labor Law and the Law on Remuneration of Public and Municipal Officials and Employees, to enable them to use child care leave or unpaid leave.[16]
- Education of foster families provided pursuant to the Cabinet Regulations on Foster Families No 1036 of 19 December 2006 includes no extended education on care of young children (especially infants). Therefore, the need for development of a special additional education course on care of young children should be considered for the foster families intending to take care of younger children.

Social Work with the Family

Deprivation of right of care and removal of a child from the family are concerning very important human rights - the right to a family. In addition, removal of a child from the family affects this right in the most drastic way. Thus also severity of injury, if the decision had been unlawful, in such cases is considered to be very significant. That is why deprivation of the right of care and dissolution of a child from the family may take place only in accordance with the procedure laid down in the laws and regulations, without any derogation.

In accordance with Paragraph one of Section 203 of the Civil Law (hereinafter referred to as the CL), parent can be deprived of the right of care (the wording of the Civil Law before 01.01.2013) due to five reasons, namely:

1) there are factual impediments which deprive one of the parents of the possibility of exercising care over the child;

2) the child is found in circumstances dangerous for health or life due to the parent's fault (due to deliberate action or negligence of the parents);

3) the parent abuses his or her rights or does not ensure care and supervision over the child;

4) the parent has given consent for adoption of the child, except when, as a spouse he or she has given a consent that the child is adopted by the other spouse;

5) violence of the parent against the child is found or there are reasonable suspicions of violence of the parent against the child.

In practice it was found that in the decision to deprive of the right of care the Orphan's Courts not necessarily indicate a specific clause of Paragraph one of Section 203 of the CL, on the basis of which the rights of care are removed. Often these reasons you can tell from the content of the decision, however, in accordance with Clause 7 of Paragraph two of Section 67 of the Administrative Procedure Law a decision shall contain a reference to the particular section, paragraph, clause etc. of the regulatory enactment.

However, the most essential deficiency, to which increased attention should be paid according to the Ombudsman's opinion, - this is social work with a family. Upon assessment of the submissions, a conclusion can be drawn that after removal of the children from the

[16] In the given matter, the Ombudsman has addressed letter No 6-8/722 to the Ministry of Welfare within the scope of the verification proceedings in question for issuing opinion on legal regulation.

family and placement in the extra-familial care facility, no effective social work is carried out with the parents in order to the children as soon as possible could go back to their family.

According to the reports made by PSCC branches on provision of long-term social care and social rehabilitation services in 2010, only 45 of 226 children have left the facility for reunion with the family of their parents. According to the information obtained from the staff of PSCC branches, parents on most occasions lack motivation to parent their children, and social workers often can find no solution of this problem. No adequate preventive work involving the risk families with children takes place due to shortage of social workers and lack of financial resources in municipalities.

This means that a clear and unambiguous action plan is not developed to help the family to create a secure environment for bringing up children and understanding of the needs of children. This plan should require inclusion of specific, clear and explicit conditions to be fulfilled by the family to decide with regard to renewal of the right of care to the parents, for example, to indicate the need to purchase specific items (beds, stove et al.), the parents need to visit courses of the children's emotional education, to register the child at general practitioner etc., in order the child's parents clearly understand, what is included in condition of the Orphan's Court for renewal of the right of care – to prevent the circumstances that have been the grounds for removal of the right of care.

It is essential to emphasize that responsibility of the State is not to separate children from their families, but to try to eliminate the shortages that threaten the safety of children in the family, therewith it is necessary to improve parental awareness of the needs of the child and emotional education, while the resources available to the public authorities (local government, social service, Orphan's Court) enable the family to provide the necessary support to the development of such skills and abilities, as well as to provide assistance to improvement of the place of residence of the family.

Conclusions:

- Social, health, educational and other services to risk families should be ensured as well as timely access to such services.
- The need for improvement of normative regulations concerning the required number of specialists in municipalities, as well as concerning further education of social workers on the above-mentioned issues should be discussed.

Removal of Care and Custody Rights from the Persons with Disabilities

In 2012 Ombudsman has reviewed also the matters where the Orphan's Court has deprived parents of the care right since the parent due to his or her state of health is not in a position to provide the necessary care for the child.

Thus, for example, the Ombudsman's Office has received an application from a child's father deprived of the right to care as well as his access right with the child has been restricted, by scheduling a meeting once per month in the presence of a third party.

Upon assessment of materials of the matter and requesting information from the competent authorities, the Ombudsman has found that the father has been deprived of his parental rights due to his state of health, but the access right has been limited, since the foster family does not want the child to meet his father twice a month, because after these meetings the boy becomes nervous and expresses his wish to live with his father.

The child's father is dealing with the problem of restoration of the right to care for years, but there is no success in it until now.

The Ombudsman has applied to the responsible Orphan's Court to ensure unlimited access for the child with his father, as well as to address the question of whether it is not

possible to appoint one or other of the child's close relatives to be a guardian of the child, thus ensuring the right of the child to grow up in the family.

In a similar case, the Ombudsman received a letter from the Orphan's Court, which asked to give an opinion on the Administrative District Court judgment where the Orphan's Court is obliged to issue an administrative act on the prohibition of the mother with mental health problems to meet her daughter since her birth being under guardianship.

In accordance with Clause 2 of Section 1 of the Law "On Judicial Power" justice in the Republic of Latvia is administered only by judiciary. Taking into account the statutory principle of independence of the judiciary and the principle of preclusion to intervene in the work of the judiciary, the Ombudsman cannot judge actions and adjudications made by the court in order to establish their legality or illegality. In the light of the circumstances of the particular matter, the Ombudsman has presented his position on the legal aspects of the situation.

In accordance with actual conditions of the situation, the child's guardian over an extended period of time, i.e., from the moment when the child was placed under guardianship, had not properly ensured the child's right to know her mother and to maintain regular personal relationship and direct contacts with her. Directly as a result of unlawful actions of the guardian, the child did not know her mother, therefore, meeting with her mother could cause psychological trauma for the child.

In the particular case, the mother was not capable to implement her duties of care over her daughter because of illness. In the mother's actions there was no deliberate and malicious avoidance of the performance of her duties of care. State of health of the parent that precludes the parent to take care of the child, is a condition beyond control of the parent and has to be valued as the actual obstacle for performance of the duties of care, which in accordance with Section 203, Paragraph three of the Civil Law cannot form the grounds for removal of the child care right. Such a regulatory framework is to protect the rights to inviolability of family life of the child and the parent who is incapable to exercise the duties of care for the child due to reasons beyond his or her control, and justification for this can be found in the principle fixed by the UN Convention on the Rights of the Child (hereinafter referred to as the Convention) that it is in the interests of the child to be placed under custody of his or her parents, whenever it is possible (Article 7 and 9), and the UN Convention on the Rights of Persons with Disabilities prescribing that a child shall not be separated from his or her parents on the basis of a disability of either the child or one or both of the parents (Article 23). A possibility can not be excluded that, in the face of the said actual obstacle, re-unification of the child and the parent in the future may also not take place, however, in order to protect the right of the child and the parent to inviolability of family life, it is in the interests of the child and of the parent that the family ties have to be preserved.

Preservation of the family ties is closely linked to the rights of the children to know their parents. In accordance with Article 7, Clause 1 and Article 8 of the Convention, the child from the time of birth, as far as possible, shall have the right to know his or her parents and to preserve his or her identity. In the Implementation Handbook for the Convention on the Rights of the Child, it is noted that Article 7 does not refer to the best interest of the child. Wording "as far as possible" shall mean that a child has a right to know his or her parents, whenever possible, even in such a case, where that is deemed in conflict with the child's best interests.[17]

In accordance with Clause 1 of Paragraph one of Section 33 of the Protection of the Rights of the Child Law and Paragraph three of Section 39 of the Law On Orphan's Courts a child during extra-familial care, has rights of visitation with parents, except in cases, in which visitation is harmful to the health and development of the child. Administrative District Court,

[17] Hodgkin R., Newell P. Implementation Handbook for the Convention on the Rights of the Child: UNICEF, 2002.- p.117.

in the light of the conditions of the child's mother's mental health characteristics and their potential effects on the child's emotional stability and risks during the visit, has concluded that there is a sufficiently high risk of threat to safety of the child, which allows to impose restrictions to the right of the child meeting the parent. Ombudsman is holding the view that the Court, when adjudicating this matter, has failed to take into account and to assess in conjunction with other conditions the reasons for emergence of such a situation that are basically related to illegal acts of the guardian, without ensuring to the child the right to know her mother and to maintain regular direct contacts with her. Also when assessing the personality and the state of health of the child's mother, the Court has failed to take into account the current information provided by the specialists and third parties, but has given preference to the facts assessed when deciding about the need for continued imposition of compulsory measures of a medical nature to the person.

Article 3 of the Convention has anchored one of the basic principles of the rights of the child - the principle of priority of the rights and legal interests of the child: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." It means that not only the court and other institutions should take their decisions on the basis of what is in the best interest of the child, but also the child's parents and persons caring for the child, should take into consideration that the decisions and actions made by them protect and ensure the interests of the child in the best possible way.

Upon assessment of circumstances of the situation, a conclusion has to be drawn that restrictions for the mother and her daughter to maintain personal relationship and direct contacts, since the guardian so far have avoided to ensure the rights of the child to know her parent and to maintain direct contacts with her, are not desirable. No changes have been observed in the state of health of the woman that might harm her or the surrounding community and no inadequate actions have been observed in her behaviour. Therewith the mother's behaviour during the meeting with the child does not pose a risk to the safety of the child. Prohibition for the mother to meet her child will cause only further obstacles to the rights of the child to know her mother and to preserve with her family ties, which is not in the child’s best interests and does not comply also with the principles of the Convention, ECHR and the UN Convention on the Rights of Persons with Disabilities. In order to the meeting with her mother cause to the child no emotional shock, it is important to ensure that the child is aware of the existence of genetrix, a meeting with her mother is taking place on a regular basis under emotionally favourable conditions for the child and, if necessary, by involvement of knowledgeable third parties in the said events and by ensuring the psychologist consultations for the mother, as well as for the child and for the guardian.

INDIVIDUAL PREVENTIVE WORK WITH CHILDREN IN MUNICIPALITIES

UN Convention on the rights of the child article 27

Assessment of the existing situation, both in general society and in the education system of Latvia, leads to conclusion that the number of socially excluded children[18] is high and they present a significant risk group. The conducted studies indicate to increased number of children with learning problems, behavioral and emotional disturbances at schools. There

[18] No definition of social exclusion is provided in the regulatory acts of Latvia, and therefore definition of the European Union is applied which stipulates that „social exclusion means inability of individuals or groups of individuals to integrate in society because of poverty, insufficient education, unemployment, discrimination, or other conditions. a socially excluded individual has no access to services and goods, and they are prevented from exercising their rights and taking opportunities by such obstacles as inaccessible environment, social prejudices, emotional and physical violence, etc.. (Ministry of Welfare of the Republic of Latvia, Social Inclusion, 2011).

are such children in almost all forms of comprehensive educational schools and vocational schools.[19]

Analysis of effectiveness of various preventive programs shows that behavioral problems are among the risks to expulsion of a teenager from school. The authors[20] distinguish between the following groups of behavioral problems: 1) criminal – delinquency that takes the form of theft, violence, punishable aggressiveness; 2) abuse of alcohol and other substances; 3) absence from lessons and from school, drop-outs; 4) antisocial, aggressive, insurgent behavior, disrespect of authorities, indignity towards others.

The UN Committee on the Rights of the Child has pointed out in their most recent recommendations issued to Latvia that the Committee is concerned at reported rates of non-attendance from schools as a result of, inter alia, voluntary truancy, the lack of parental interest in education, and bullying in school.[21]

Behavioral and emotional disturbances belong to the group that requires special psychological as well s social assistance. These children are dependent on measures aimed at fostering behavioral and emotional sphere including the managerial functions and promotion of attention. If a child has no access to the required support, their behavior may pose threat to themselves and lead to infringement of the rights of other individuals including children. This also causes problems to their parents and teachers, since lack of success in education and interaction with other people frequently lead a child to loss of motivation to learn, while teachers are no more willing to facilitate their education.

Lack of timely support from parents misleads children to assume that their behavior is acceptable, and this can gradually lead to commitment of offences.

European Economic and Social Committee (hereinafter – the EESC) has also pointed out to personality and behavioral disorders as grounds to commitment of offences by children: "Personality and behavior disorders, either in association with or independently of the factor outlined in the previous point. These usually conspire with other social or environmental factors to make young people act impulsively or unthinkingly, uninfluenced by socially accepted standards of behavior."[22]

Since the behavioral and emotional disorders that traditionally emerge in childhood and adolescence years are included in the International Classifier of Diseases (ICD-10), referral to a child to psycho-neurological hospital is seen as the ultimate means in case of a child whose behavior poses threat to himself/herself or other people. This is a short-term solution that does not meet the principle of the best interests of child, since medicinal assistance alone does not eliminate future problems.

Pedagogues and parents may notice behavioral problems in children quite early and quite well, yet on most occasions the child does not receive the required timely assistance. Parents can hardly accept the fact that behavioral disorders may stem from psychical health, neurological or other causes including parenting mistakes. Parents feel unsecure, and eventually they are even afraid to seek advice of neurologist, psycho-therapist or psychiatrist. Teachers, on their turn, do not identify themselves as subjects entrusted with protection of the right of children and do not understand their duty to respond to the very first signs of behavioral, emotional or learning disorders.

---

[19] Study "Socio-psychological portray of young people subject to the risk of social exclusion" under the EIF project "Development and implementation of programs for establishment of support system to young people subject to the risk of social exclusion", p.p. 1.

[20] Wilson, D. B., Gottfredson, D. C.& Najaka, S. S. (2001). School-based prevention of problem behaviors: A meta-analysis. Journal of Quantitative Criminology, 17, 247–272.

[21] UN Committee for the Rights of the Child, final considerations, 28 June 2006, Latvia, par. 50; available at*:* http://*www.lm.gov.lv/upload/berns_gimene/bernu_tiesibas/lv_crc.doc*

[22] Opinion of the European Economic and Social Committee on the prevention of juvenile delinquency, ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union, 2006/C 110/13, available at: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:110:0075:0082:LV:PDF – 2.1.7

Immediate consulting by specialist would be required in each occasion in order to identify the underlying disorders of behavioral problems and to help the child.

EESC has expressed the position that application of preventive measures today means not only seeking the possibilities of social rehabilitation but also preventing adult criminality in future[23]. It may be therefore concluded that preventive work with children who have behavioral and emotional disorders is important for society in general: „Inclusion and minimizing of social exclusion is not a task "we" have to do for "them". It is a process of importance to each and every member of society."[24]

Development of the Regulation of Preventive Work

Preventive work with children who had committed illegal offences was the competence of police until 2000. It was stipulated in Section 58, Part One of the Law on Protection of the Rights of Children that: "Preventive work with juvenile offenders shall be conducted by police in collaboration with the municipality, institutions for protection of the rights of children, and public organizations". Social service, on its turn, was responsible for preventive work with the children who had not committed any offences yet: "If a child is rambling, begging or taking other actions that may lead to criminal actions, (..) social service of the respective municipality shall develop program for social correction of his/her behavior and assistance in collaboration with the child's parents and authorities/institutions responsible for protection of the rights of children."[25]

New wording of Section 58 of the Law on Protection of the Rights of Children was adopted on 9 March 2000, and the new wording which is presently applicable had the effect of conceptual alteration of the organization of preventive work and delegation of such function to municipalities (without reference to any specific institution any more).

In practice, State Police inspectors for juvenile delinquency are still playing the key role in preventive work with children: preventive records, handling of preventive dossiers and performance of individual preventive work with the same juvenile groups[26] in respect of which municipalities are responsible for preventive work. Depending on the need and practice established in the field of cooperation inspectors for juvenile delinquency decide on involvement of governmental, municipal and other institutions in the drafting of specific programs and on cooperation with such institutions. The above-stated is also confirmed by statistics:

State Police officials who perform their job duties in the field of preventing juvenile delinquency have entered 1473 preventive records of minor individuals in 2006, 1511 in 2007; 1402 in 2008, 1281 in 2009 (1815 minors in total were registered by the end of year)[27], 900 in 2010 (1115 minors in total were registered by the end of year), and 308 in six months of 2011 (636 at the end of reporting period)[28]. Therefore, a notable number of children who have committed offences of various severity is monitored by the State Police officials every year, however, according to the conclusion drawn in "Program for preventing child delinquency and protection of children against criminal offences for the years 2009 – 2011",

[23] See above – 1.2

[24] Tūna A. Iekļaujoša skola iekļaujošā sabiedrībā, project „Vienādas iespējas visiem jeb kā mazināt sociālo atstumtību jauniešu vidū", 2006.

[25] Wording effective as of 22.07.1998. Published - Ziņotājs, 04.08.98. No.15 (L.V., No. 199/200). Available at: http://pro.nais.lv/naiser/vtext.cfm?Key=0103011998061932773977 3

[26] Section 58, Part Two, Paragraphs 1-6 of the Law on Protection of the Rights of Children.

[27] Overview of juvenile delinquency and road traffic situation in 12 months of 2009, available at: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=12286

[28] Overview of juvenile delinquency, injured children and road traffic and prevention situation in 6 months of 2011, available at: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=13018

as a result of limited resources, the taken preventive measures not always exclude commitment of new offences.[29]

The State Police is entitled to make preventive record of children listed in Section 58, Part Two, Paragraphs 1 – 6 of the Law on Protection of the Rights of Children at their own initiative, however on exceptional basis, since the said function has to be performed by social service or other municipal institution.

It may be therefore concluded that, though even the number of children preventively recorded by the State Police has experiences slight decrease in recent years, preventive work with children does not meet the requirements stipulated in Section 58 of the Law on Protection of the Rights of Children, and, as a result thereof, the rights of children are not properly protected; moreover, resources of the State budget are continuously spent on performance of the functions of municipalities. If the number of children preventively recorded by the State Police is reduced, effectiveness of individual preventive work would be improved.

Legal Regulation of Preventive Work

According to Section 15, Paragraph 23 of the Law on Municipalities, autonomous functions of municipality include protection of the rights of children on their respective administrative territory.

Section 58, Part One of the Law on Protection of the Rights of Children stipulates: "Work with children for the prevention of violations of law shall be carried out by municipalities in collaboration with the parents of children, educational institutions, the State police, public organizations and other institutions." It clearly follows from the above-quoted legal norm that municipalities are competent to conduct preventive work with children.

According to Section 58, Part Two of the Law on Protection of the Rights of Children, municipalities shall establish a prevention file and formulate a social behavior correction and social assistance program for each child who has committed a criminal offence or taken any action that may lead to criminal offence. Therefore, municipalities have the duty to take preventive municipal record of each child from risk group and to develop a program appropriate to such child. The program developed by municipality may provide, depending on the opinion of executive official of the concerned municipality, for involvement of police, because the municipality is competent to develop the program and therefore to select cooperation partners.

It follows from international recommendations that community-based preventive work has to be used and contact of young people with the law enforcement system has to be eliminated insofar practicable: "Preventive and intervention-based measures must be designed to ensure the social integration of all minors and young people, principally through the family, the community, peer groups, schools, vocational training and the labor market."[30]

Risk factors overlap on most occasions, and therefore complex approach to preventive programs is required, with involvement of various specialists, such as psychologists, social pedagogues, medicinal professionals: "(..) educational treatment should preferably be provided using resources or institutions belonging to the same social environment as the minors concerned, with the aim of equipping them with educational skills or requirements the lack of which caused them to come into conflict with the criminal law in the first place. These

[29] Program for preventing child delinquency and protection of children against criminal offences for the years 2009.–2011, p.p. 4. Available at: http://polsis.mk.gov.lv/view.do?id=3144

[30] Opinion of the European Economic and Social Committee on the prevention of juvenile delinquency, ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union, 2006/C 110/13, available at: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:110:0075:0082:LV:PDF – 2.3

minors must be subject to thorough examination by specialists in a range of fields in order to identify educational gaps and determine how to provide them with skills which can reduce the risk of re-offending. Similarly, work needs to be done with the families, to ensure their cooperation and commitment in the process of educating and re-socializing these minors."[31]

Description of the Actual Situation
Institutions Responsible for Individual Preventive Work with Children

Summarizing the information obtained from 119 municipalities of Latvia regarding the institutions or specialists entrusted in the concerned municipalities with the right to develop social adjustment programs for children leads to conclusion that the applicable practice is various and highly different.

In one of the studied municipalities, individual preventive work is coordinated by **specialist for protection of the rights of children**, in other – the first deputy of the municipality chairperson. In three municipalities, **municipal police** is competent to handle preventive work with children, and in other three such competence is vested in **county educational establishments**. Schools have established inter-professional teams composed of teachers, school administration, psychologists and other specialists as appropriate. Schools collaborate with the municipal social service and orphans court, as well as municipal police.

In seven municipalities, development of social adjustment programs **is not delegated to any institution, and no development of programs is taking place at all**. Municipalities may be divided into three groups by the reasons they state as grounds to omission of the above-mentioned function:

1. Municipalities that lack information about children with behavioral disorders. At the same time, they point out to specialists available on the county level to perform preventive work: "The task could be performed by social worker for work with families that have children, and psychologist, who would, cooperating with the orphans' court, educational establishments, municipal police and the State Probation Service, develop social adjustment programs. No social adjustment and social assistance programs have been developed because we have received no information until present about any children who have committed criminal offences or actions that may lead to criminal offences"[32]. As mentioned above, studies show that there are children with learning difficulties, behavioral and emotional disorders in almost each form, and therefore the arguments listed by municipalities regarding the lack of such children on the whole territory of their county should be taken with a grain of salt.

2. Municipalities where no preventive work is performed due to lack of appropriate specialists – a single social worker for the whole county: "I am left alone, there is no social service manager since April, and no psychologist available in our county. What can I do with no assistance available, just talk."[33]

3. Municipalities who have children with behavioral disorders and who have specialists available to perform the relevant function, yet no political support to preventive work is provided by head of the municipality: the proposal to establish an inter-institutional commission has been declined without even voting; alternatively, the management has promised to thing of allocating funds when drafting budget for the next year.

Eight municipalities have vested preventive work in to the competence of **inter-institutional commissions**.

[31] See above – 4.2.1
[32] Head of Social Service of County G regarding the institution entrusted with development of programs.
[33] Social worker of County B.

In most of municipalities – 92 of 119 – development of social adjustment programs is vested into competence of social service. The executive in charge of them on most occasions is the social pedagogue employed by social service who cooperates with all schools and population of the county.

Initiation of Preventive Work

In most municipalities, preventive work is initiated by the State Police – that is, social adjustment program is developed no sooner than the State Police reports on criminal offence committed by a child and requests social adjustment program to be developed for such child. Copies of the developed programs are forwarded to the State Police, and control over their implementation is exercised by social service and State Police. In some municipalities, preventive work is initiated even later, when ruling is rendered by court or information notified by Probation Service. The fact that individual municipalities arrange preventive work without scheduling work with the children whose behavior may lead to criminal offence is expressly illustrated by title of the order on establishing an inter-institutional commission: "On organizing preventive work with juvenile offenders".[34] According to the specialists themselves, it means handling of consequences, rather than causes.

At the same time there are certain municipalities who have bodies competent to develop such program, yet no child in the whole county is recorded in preventive file (including a county with population of 10'007). The concerned municipalities state they have had no need for development of such programs. Such approach confirms the fact established by the State Police from year to year that "Unfortunately, certain municipalities conduct no preventive work with children and develop no social adjustment and social assistance programs provided for in Section 58 of the Law on Protection of the Rights of Children; therefore the State Police happens to be the sole institution that conducts preventive work with juvenile offenders."[35]

There are only a few municipalities who have timely initiated preventive work, i.e., before a child commits any criminal offence. This is true in case of municipalities where preventive work is performed by educational establishments, and in particular in case of the very few municipalities where importance of such work is properly understood. For example, in one municipality preventive work is performed by two educational establishments, and they have 58 children recorded on file (in a county with population of 8781). Social service of some other county (with population of 11'339) there are 334 children recorded on file[36], who are subjects of social work, and there is a client dossier filed for each child as well as social behavior adjustment program developed for each of them.

Informing of Parents (Guardians, Foster Parents) and Pedagogues about Social Behavior Adjustment Programs for Children Belonging to Risk Groups

According to the national as well as international legal norms, the parents are primarily responsible for upbringing their children. Article 18, Part One of the United Nations Convention on the Rights of the Child stipulates: "(..) Parents or, as the case may be, legal

[34] Information provided by municipality A regarding the institution/official entrusted with development of programs.

[35] Overview of juvenile delinquency, road traffic and preventive situation in 6 months of the year 2011, available at:: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=13018

[36] The county has population of about 11300 and preventive work is conducted by social workers of social service for work with families, and by social pedagogues who cooperate with all educational establishments of the county.

guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern."

Section 24, Part Two of the Law on Protection of the Rights of Children stipulates that the obligation of the parents is to prepare the child for an independent life in society, as much as possible respecting his/her individuality, taking into consideration his/her abilities and inclinations.

Practice shows that parents not always manage to perform their duty successfully. If parents lack knowledge and skills in parenting a child, it is the duty of municipality to provide assistance to them. Provision of such assistance is stipulated in Section 26 of the Law on Protection of the Rights of Children which provides that, depending on the age of a child, a municipality shall offer help to the family, especially poor families, in the child's upbringing and education, and provide other services aimed at development of the child.

Based on the competence of municipalities stipulated in the law in the field of protection of the rights of children, the parents (guardians, foster family) must have easy access to information (for example, Internet site of the council; at the educational establishment, or social service) regarding assistance available if problems arise in upbringing of a child: the child's behavior becomes socially unacceptable and fails to comply with the stipulation of Section 23 of the Law on Protection of the Rights of Children which provides that a child has the obligation to observe the accepted rules of behavior within society; to treat with care the surrounding environment, and a child may not offend against the rights and legal interests of other children and adults.

Summarizing of the information provided by municipalities leads to conclusion that no municipalities pursue preventive work with children at the initiative of parents, since this is not treated as assistance to parents on part of municipality in upbringing their children.

Normally, parents learn about preventive recording of their child no sooner than the child is already recorded on file at the initiative of some institution (traditionally it is the State Police). Notification takes place by home study of the family or calling them to the concerned institution for interview, together with the child. The only difference is that some municipalities inform parents with an already established program while others involve them in development of such program. Involvement of parents, however, is most frequently related to the need to notify parents or to collect information, rather than involvement of parents as cooperation partners: "As a rule, development of such program is notified to the school as well as to parents, because complete information about the child is required for development of adjustment program."[37] Some municipalities involve children and their parents in developing the programs, and both children and parents have their own tasks in such programs.

Only two municipalities pointed out that causes of the criminal offences committed by children are most frequently related to economical and social factors, and that program for both children and parents is developed in order to handle the issues inherent with juvenile delinquency. One of the above-mentioned municipalities also pointed out that their social service was conducting work with children and families from other municipalities who have not declared their residence in the given county yet actually reside on the administrative territory of that county. The number of children recorded on preventive file by social service of the said municipality was 82 children as at the time of study[38].

Educational process comprises teaching and upbringing, and the duty of pedagogues in the educational process is formation of the trainees' attitude towards themselves, other people, work, nature, culture, society and the State, and to bring up honest, decent people.[39] An educational establishment is entitled to implement educational programs aimed at social

[37] Municipality of county K about how pedagogues are informed about the programs
[38] Data as of 25 November 2011
[39] Section 51, Part One, Paragraph 2 of the Education Law.

adjustment, however it has no duty to provide social adjustment of the child's behavior. Given that a number of schools have no supporting staff (psychologist, social pedagogue, assistant teacher) at all or such staff if insufficient, pedagogues also have to be aware of where they can seek assistance if problems emerge in educational work and cooperation with parents brings no desired result. According to the summarized practice, when social adjustment of children's behavior is required, educational establishments abstain from applying for help to the respective service. Just like parents, educational establishments learn about preventive record of children post factum: "Written information addressed to social pedagogue and psychologist is forwarded to the concerned school."[40] In some municipalities, educational establishments may receive no information at all about the program developed for certain child, because any information is only forwarded to the school if the program envisages involvement of educational establishment: "Teachers are informed if involvement of educational establishment is expected."[41]

In some municipalities, the institution responsible for the field of education reports to the prevention authority on the non-attending children. "The number of children changes, it forms from the number of police notices and information about rambling school-children provided by educational establishments." [42]

It should be kept in mind that non-attendance is only one cause that can lead to illegitimate action. If, for example, a child breaches the accepted rules of behavior within society or offends against the rights and legal interests of other children and adults, no social adjustment of behavior is initiated by the school (except the two municipalities where educational establishments themselves perform such function).

As an exception, two municipalities have pointed out that initial information about the children from families subject to risk of inability to provide for the children's basic needs is obtained by prevention bodies from educational and pre-school establishments. Whenever information is received about families which are unable to provide for sufficient development and upbringing of a child and which need assistance, social work is pursued on case-to-case basis.[43] It may be therefore considered that in some municipalities preventive work is initiated by educational, including pre-school establishments; this is, however, an exception from the general practice.

Financial Impact of Preventive Work with Children on the Municipal Budget

The municipalities in which no or insufficient preventive work is performed, point out to lack of appropriate specialists among excuses to their omission; such lack is related, on the turn, to lack of funds for hiring of the specialists in question.

The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already that the State party take immediate steps to allocate appropriate financial and human resources:

(a) To ensure that all children from all areas of the country, without distinction, including children in pretrial custody and detention, have equal access to quality education, including human rights education:

- To strengthen measures aimed at decreasing drop-out and repetition rates in primary and secondary education in all regions;
- To prevent bullying among children at school;

[40] Head of social service of county B about how are parents and pedagogues informed about the programs.
[41] Municipality of county S about how are parents and pedagogues informed about the programs.
[42] Head of social service of county A about the number of children recorded on preventive file.
[43] One of them is also one of the two municipalities in Latvia where development of rehabilitation plan for family or children is taking place.

- To inform parents of the importance of education, and where appropriate, to provide incentives to families to encourage children to attend school;
- To improve the standard of living, the disciplinary treatment, and the quality of education for children attending schools in rural and remote areas, and to reduce disparities in allocated resources and facilities.[44]

Preventive work if pursued timely, i.e., when the first signs of behavioral and emotional disorders are noticed, eventually even at pre-school age, and in professional manner can prevent a number of future problems. If parents and educational establishment are unable to manage properly the duty of upbringing, achievement of the goals of protection of the rights of children directly depend on the effectiveness of preventive work:

1) Formation and instilling value guidance in a child appropriate to the interests of society;
2) Guidance of a child to employment as the sole morally acceptable source for gaining means of income and welfare;
3) Guidance of a child to family as the key unit of society and the key value of society and individual;
4) Guidance of a child to healthy lifestyle as an objective precondition to survival of the nation.[45]

It depends on the child's motivation to pursue education, prevention or treatment of addiction, and to master social skills, whether or not the child would be prepared for unassisted life in society, and whether the child would grow into prospective tax-payer or a socially excluded individual unable to exercise his/her rights and take opportunities, thus becoming a recipient of social assistance and social services.

Remuneration paid to specialists for timely development and implementation of social behavior adjustment program for each child in the county whose behavior may eventually lead to criminal offence is incommensurable to resources the municipality would spent in future on each socially excluded inhabitant of the county, paying in form of social allowances, social work and provided housing for the consequences of unsuccessful preventive work.

Conclusions:

1. Notwithstanding the identical normative regulations and similar conditions of child behavior, the practice used municipalities is highly different.
2. Managers of municipalities and vast majority of specialists lack understanding of the importance of preventive work with children, and effectiveness of such work directly depends on the specialists' competence and willingness to work. The responsible body notes that: "Unfortunately, development of programs and filing of records alone is of little help there".
3. No adequate funding is allocated to preventive work with children. In some municipalities, social worker is the sole specialist who conducts preventive work with children in addition to other job duties.
4. Some municipalities do not fulfill at all the duty stipulated by law to develop social behavior adjustment programs for children.
5. Most of municipalities do not fill the duty stipulated by law to provide assistance to a child whose behavior raises concern that it might | lead to criminal offence" in future. Adjustment of children's social behavior is initiated with delay, when the child has already committed an offence and recorded on file with the State Police.
6. Formally, according to the letter of the law, delegation the function of preventive work to municipal police meets the requirements stipulated in Section 58, Part One of the Law on Protection of the Rights of Children: "Preventive work with minor

[44] UN Committee for the Rights of the Child: Final Considerations, 28 June 2006: Latvia, par. 51, available at*:* http://*www.lm.gov.lv/upload/berns_gimene/bernu_tiesibas/lv_crc.doc*
[45] Section 4 of the Law on Protection of the Rights of Children.

lawbreakers shall be performed by municipalities (..)". Given that municipal police is a municipal institution, the preventive work may be seen as performed by the municipality. It should be taken into consideration, however, that operation of municipal police, just like operation of the State Police, is governed by the Law on Police, and Section 1 of the said Law stipulates that "Police is an armed, militarized governmental or municipal institution (..)". Therefore, competence of the involved police officials in the work with children is highly important, including the applied methods, approaches and treatment.

7. Parents have the right to select educational establishment for their children in any municipality appropriate to them, and therefore not all children residing in the county attend the educational establishments of the same county. If preventive work is delegated to an entity related to the field of education, it extends only to the children attending schools in the county, rather than all children residing in the county. Delegation of this function to educational establishments therefore means that preventive work is improperly performed.
8. None of the municipalities in Latvia treats preventive work with children as a component of family support system.
9. Preventive work with children is not treated as support system to educational establishments.
10. Failure to allocate funds for preventive work with children means lack of foresight that may result in notably higher consumption of financial resources in future (social allowances and social work, provision of dwelling, etc.)
11. Good practice means that development of program takes place with involvement of both the child and parents, and a specialist in the respective field is attracted to each task of the program: for example, psychologist, social pedagogue, class-mistress, teacher of the syllabic discipline, orphans' court, municipal police officer, or other specialist appropriate to the goals of the program. Development of program is also aimed at the family.
12. An established support system for children with learning difficulties, behavioral and emotional disorders, and for their parents, including available services of specialist (social pedagogue, psychologist, psychotherapist, speech therapist, etc.) in a county presents an exception from the common practice.

CHILDREN RIGHTS GUARANTEES AND LAW ENFORCEMENT AUTHORITIES

Article 3, 19, 37, 40 of UN Convention on the Rights of the Child

In 2010, the Ombudsman continued to follow issues related to observance of children's rights and its provision in law enforcement authorities. In the Ombudsman Office several applications were submitted, in which persons complained about possible violations of children's rights committed by police officers, or ineffective investigation.

Provision of children's rights in questionnaire carried out by police officers

For a long time the attention of the Ombudsman has been drawn to violations of the rights of the child in the work of law enforcement authorities, established by children questionnaire and by accepting explanations from the child before initiation of criminal procedure or administrative proceedings. Parents are not always informed about negotiations of police with the child, and in case when they have found out time and place of negotiations from the child or other sources, they are prohibited to take part in them, by motivating the refusal that negotiations are not processual activity and their duration and procedure are not

regulated by normative acts. Procedure of negotiations carried out by state or municipal police or procedure of child's questionnaire is not determined in normative acts. In Section 12, Paragraph one, Clause 3 of the "Law on Police" general rights of police officer are determined by performing his obligations according to official competence, to carry out questionnaire of persons, to accept explanations, as well as to summon any person to police authority due to matters and materials, consideration of which is in competence of the police. Rights of parents to be present and represent it in all child related activities arise from legal provisions governing parental rights and duties towards the child and personal relations of children and parents, as well as arising from principles of law. Section 177, Paragraph one and two of the Civil Law states that until reaching the age of majority a child is under custody of his or her parents, and custody is the rights and duties of parents to care for the child and his or her property and to represent the child in his or her personal property relations. Section 24, Paragraph three of the Law on Protection of the Rights of the Child states that parents are the natural guardians (lawful representatives) of the child. It is their duty to defend the rights and interests of the child protected by law. Whereas the principle of priority of child's rights and interests is determined in Section 6, Paragraph two of Law on Protection of the Rights of the Child: "In all activities in regard to a child, irrespective of whether they are carried out by State or local government institutions, public organisations or other natural persons and legal persons, as well as courts and other law enforcement institutions, the ensuring rights and interests of the child shall take priority." Based on the priority principle of children's rights and interests, the Ombudsman considers unacceptable the acceptance of explanations from the child while prohibiting the presence of the child's parents. Moreover, acceptance of explanations shall be in child-friendly environment, because UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by Resolution 40/33 of the General Assembly of 29 November 1985 are binding also for Latvia. Clause 10.3 of regulations states that "contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case." It is indicated in the commentaries of this clause that designation "to avoid crime" admittedly is flexible wording and covers many features of possible interaction (for example, the use of harsh language, physical violence or exposure to the environment). The term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement institutions, since it may influence the attitude of juveniles towards the State and society.

Participation of parents at the moment of accepting explanations is considered as general psychological and emotional help for minors – function existing throughout the whole process, thus ensuring priority of child's rights and interests. Taking into account the mentioned above, the Ombudsman addressed Head of Riga Region Administration of the State Police and requested to evaluate legitimacy of police officers in the particular case, at the same time inviting to promote awareness of child's rights and to observe recommendations of international organizations binding to Latvia, in order to prevent violations of children's rights in work with minors.

RIGHTS OF CHILDREN OF IMPRISONED PERSONS TO COMMUNICATION WITH PARENTS

Article 2, Article 3, Article 9, Article 12 of UN Convention on the Rights of the Child

Rights of the child to communicate with its parents are secured both in international, and national legislation. According to Article 2 of UN Convention on the Rights of the Child (hereinafter – Convention), member states show respect and provide all rights envisaged in

this Convention for every child without any discrimination, regardless the status of parents. Article 9 of the Convention envisages the obligation of state to respect rights of the child being separated from one or both parents, rights to maintain personal relations regularly and direct contacts with both parents, except cases, when it does not correspond with child's interests.

The European Court of Human Rights in its practice has repeatedly acknowledged that opportunity for children and parents to enjoy presence of one another is essential key element of "family life" in the purpose of Article 8 of the European Convention of Human Rights and Fundamental freedoms.[46]

However, there are several aspects that create obstacles in communication of imprisoned persons and their children:

-short and rare phone calls (for example, 5 minutes twice a month), as well as meeting times are very rare;

-meeting premises are not appropriate to the needs of a child;

-limited number of persons in the time of meeting (only two majors and two minors in one meeting time);

-48 hours meeting in a closed room without opportunity to go out in fresh air;

-lack of social work with children and imprisoned persons;

-a large number of persons (mothers, guardians, foster-parents), with whom the children of imprisoned persons live, thus not promoting meeting of children and parents;

-during the long meeting it is prohibited for guardians, foster-parents to be there;

-long-term meeting opportunities have not been prescribed for imprisoned persons

-lack of financial support for families of imprisoned persons for transport to the place of imprisonment.

In addition to the mentioned above, places of imprisonment and Prison Administration pointed to such problems as necessity to prove kinship or joint household, limited possibilities for children living abroad to meet their parents, as well as prohibition of long meeting opportunities for imprisoned persons.

Even though legislation regulates implementation procedure of communication rights of the child and parent and emphasizes its importance, the actual situation shows that rights to communication of these persons are not provided for to the full extent. In ombudsman's view to ensure communication rights of children and imprisoned parents more effectively, amendments in legislation should be made and the existing practice should be changed.

AVAILABILITY OF SPECIAL EDUCATION

UN Convention on the Rights of the Child article 28

According to Section 2 of the Law On the Convention on the Rights of Persons with Disabilities, the Ombudsman shall monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities. The Ombudsman focused in 2013 on the issues related to the right of children with disabilities to pursue education appropriate to their health condition, level of development and abilities. The applications filed with the Ombudsman Office point out to the circumstances restricting the right of children with disabilities to education. Municipalities, for example, are not interested in licensing the special curricula to the general education establishments, and parents therefore have to seek special educational establishments that meet the needs of their children. If no such special educational establishments are available in vicinity to the child's residence, the children most commonly have to attend boarding schools where they stay in between holidays because the municipalities are unable or unwilling to provide transportation of such children to and from

[46] For example, see Johansen v. Norway [1996] ECHR 17383/90, para 78.

the educational establishments. A large part of children with disabilities have no special educational establishments available in vicinity to their residence. A number of special educational establishments provide boarding to their students; in the Ombudsman's opinion, however, accommodation at boarding schools does not serve the best interests of children if their parents are able to balance their work and family life, because each child has the right to grow up in family.

At the present situation the access by children with disabilities to education is hindered because of the lack of understanding observed among the involved specialists and adults in their approach to children with disabilities.

Shortage of qualified specialists and their inappropriate preparedness for work with children with disabilities continues in Latvia, as well as shortage of methodic and teaching aids at educational establishments; shortage of environment adjustment and technical facilities; lack of cooperation between pedagogues and other institutions; lack of support service system; shortage of funding, etc.

The overall situation in our country shows that children are subject to discrimination in terms of access to education because of their health condition. Development of a child with special needs is best provided at a comprehensive school, provided that their individual needs are met and the necessary support is provided. Municipalities play a crucial role in providing successful social inclusion of children with disabilities because they are most informed of the needs of children with disabilities on their respective territories.

RIGHTS OF MINORITIES TO GET EDUCATION

Article 28 of UN Convention on the Rights of the Child

Article 114 of the Constitution of the Republic of Latvia states that persons belonging to minorities have rights to preserve and develop their knowledge, ethnic and cultural identity. Whereas Section 9, Paragraph two, Clause 2 states that educational programmes for ethnic minorities in State and local government educational institutions may be implemented in conformity with the provisions of Section 41 of this Law. In Section 41, Paragraph one it is provided that educational programs for ethnic minorities shall be drawn up by an educational institution selecting any of the model educational programs included in the guidelines for the state pre-school education or in the respective state educational standards.

In Latvia a unique bilingual education system model has been developed. This system, division of subjects in minority programs in elementary education according to one from five models with gradual increase of subjects in the national language is according to international documents of human rights regarding minority education.

Parents of every nationality[47] can choose educational institution, to which they send their child. Thus educational institutions, which implement educational programs in the official language and educational institutions, which implement minority programs have different ethnic composition. However, not all minorities have opportunity to educate children in state or municipal education institution, so that the child would learn its mother tongue and at the primary stage of education also he/she would learn the learning content. Seven minorities have such opportunity: Russians, Poles, Jews, Ukrainians, Estonians, Lithuanians and Byelorussians. The ombudsman sees unequal opportunities for those minorities, to which none of state and municipal educational institutions implements corresponding minority

[47]Representatives of several nationalities live in Latvia. According to data of the Central Statistical Bureau, at the beginning of 2013 the ethnic composition of residents was the following: 61,1% Latvians, 26,2% Russians, 3,5% the Byelorussians,2,3% Ukrainians,2,2% the Poles,1,3% Lithuanians, 0,3% Jews, 0,3% Roma, 0,1% Germansand 0,1% Estonians.

program, as a result children have no opportunities to learn and preserve their language, culture, as well as to acquire basic subjects at the primary school in their own language. Representatives of Roma minority are especially castaway, which regardless of the rights to develop and implement program of the Roma minority, are not able to implement it due to lack of teachers of particular qualification. Special support measures are necessary for the Roma education, for preservation of Roma language and culture.

Learners acquiring Russian minority program are entitled to choose language of examination materials – Latvian or Russian (except for examinations in subjects of languages). Other learners who do not acquire education in Russian minor educational program, have no opportunity to pass examinations in the language of their choice (for example, in the language of their nationality), but also only in Latvian or Russian. So minorities are treated equally, without taking into account that issue on situation and language requires different attitude.

SEGREGATION OF ROMA IN AN EDUCATIONAL INSTITUTION

Article 2, Article 28 of UN Convention of the Rights of the Child

When monitoring Ventspils municipality, the ombudsman has established that in Ventspils Evening Secondary School Roma ethnic classes are still active, also information was received that Roma ethnic classes are established in Kuldīga elementary school. Having studied the situation, the ombudsman has found that educating of Roma in individual classes is not effective and creates difficulties for representatives of Roma nationality to continue education in secondary schools, higher educational institutions, as well as to enter the labour market. The mentioned above is proved by representatives of the Advisory Board on Romani established by the ombudsman: "The fact that the Roma children learn in separated classes from other children is not permissible, because in this way children are divided according to ethic principle, thereby there is no full communication, creation of cooperation from childhood with other nationality and culture".

Taking into account recommendations of the ombudsman, Kuldīga Municipality has not continued to complete classes for Roma children. In Ventspils Evening Secondary School Roma children are separated from other children, not-implementing particular minority program. Also in classes for smaller children, acquisition of basic subjects of learning content is not provided for Roma children with a proportional increase in the official language equally as in schools, which implement minority programs.

RIGHT TO NATIONALITY

UN Convention on the Rights of the Child article 7

The research "Incentives and disincentives of Latvian citizenship acquisition" of the Office of Citizenship and Migration Affairs[48] indicate the reasons why non-citizens do not submit an application for acquisition of Latvian citizenship:

"The main reasons non-citizens do not submit an application for obtaining Latvian citizenship is their perception that the citizenship shall be entitled automatically (the response rate is 24.8%), doubts about the ability to pass the naturalization examinations - 21.3% and an expectation of reliefs in naturalization process - 17.2%.

The automatic granting of citizenship support respondents aged 31 to 40 years (36%), the least - respondents aged 18 to 20 years (16%) and persons from 51 to 60 years (17%).

[48] Pilsonības un migrācijas lietu pārvalde. Latvijas pilsonības iegūšanas veicinošie un kavējošie faktori. Available at: http://www.pmlp.gov.lv/assets/documents/petijums_2012.pdf.

Automatic granting of citizenship is supported the most in Riga and Zemgale (26%), the least in Kurzeme (20%). Naturalization exams are the biggest obstacle to acquire Latvian citizenship for the respondents aged over 50 years (non-citizens aged 51 to 60 (29%) and the aged 61 (32%)). Examination is the main obstacle to acquire citizenship in Latgale (26%). Reliefs in naturalization process expect older people (aged 51 to 60 years - 22%). Visa-free regime with Russia - as a preference of non-citizen status mentioned 13.5% of respondents. These are mostly workers and persons who are studying (15% and 16% respectively). A relatively large number of respondents to whom free-visa regime with Russia is an important option are in Vidzeme (21%).

The current status of non-citizen satisfies 8.2% of respondents. More often such views are expressed in Vidzeme (12%) by the respondents aged 18 to 20 years (11%). There is no time for naturalization almost for every 10th non-citizen respondent (9.4%). Mainly these are young people (25% of the respondents aged 18 to 20). Least time for acquiring citizenship is for respondents in Kurzeme (16%), the most - in Latgale (5%). Reason "no time" indicated 64% of men and 36% women.

Only 1.7% of non-citizens do not wish to acquire Latvian citizenship. More often the following statement was expressed by non-citizens who are studying (6%). 3.9% of respondents indicated other reasons. The main reasons of the fact that a person are not able naturalize are – "no money", "I would like to travel abroad" and "disability". However the latter is the reason to get reliefs in exam as determined by the Cabinet regulation on naturalization process."

In accordance with the part 3 of the article 24 of the Protection of the rights of the child law parents are the natural guardians (lawful representatives) of a child. It is their duty to defend the rights and interests of the child protected by law. Article 3.[1] of the Citizenship law as one of the basis requires the volition expressed by one of the parents in order to recognise a child (until reaching 15 years of age) as a Latvian citizen. Therefore one of the reasons of a high number of children with the status of non-citizen is linked to the reasons why non-citizen adults do not submit an application for acquisition of Latvian citizenship.

It shall also be noted that non-citizens of Latvia are not stateless. Latvia guarantees greater protection of the rights to non-citizens, than the 1954 Convention on the Status of Stateless Persons.

Non-citizens are guaranteed most of the rights including protection of the state in Latvia and abroad. Latvian non-citizens have the right to reside permanently in Latvia ex lege. They are free to settle down abroad, maintaining rights and privileges of a Latvian non-citizen, including the possibility to leave and return to Latvia freely. Non-citizens have the same social guarantees as Latvian citizens and they can also enjoy some of political rights.

December 15, 2015.