

**REPORT OF THE PARLIAMENTARY
OMBUDSMAN OF CITIZENS' RIGHTS IN CASE
NR. OBH 1748/2008**

JULY 2008

Report in Case OBH 1748/2008

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Startup of the investigation

The study *Human Rights in Special Care Homes for Children* published in 2007 by Mental Health Forum (PÉF) has been sent to my office for information purposes. From the study I've learned of the fact that the special care home for children in Szedres operated by Bezerédj-Kastényterápia Foundation (Alapítvány) could not be monitored by the staff of PÉF due to lack of cooperation. This has raised the suspicion of the insult of the fundamental rights of the inmates this is why I initiated an investigation ex officio on the basis of the 1993/LIX. Act on the Parliamentary Ombudsman of Citizens' Rights.

For the sake of a total scrutiny I asked the president of the Foundation to make available informations, data, a copy of the Establishment Chart, the Set of Organizational and Operational Rules, the Professional Program and the House Rules of the care home.

Considering the fact that promotion and protection of children's rights is the obligation of childrens advocats as well as of the guardianship and care consultants of the competent territorial child-welfare service I inquired about the way and frequency of their contacts with the children cared for. I also inquired about the way the consultants helped the institution in its guardianship, educational and caregiving activities and in implementing the tasks laid down in the individual caregiving and educational plans.

The relevant constitutional rights

- The fundamental obligation of the State to protect the rights of its citizens (*The Republic of Hungary recognizes the inviolable and inalienable rights of persons. Ensuring respect and protection for these rights is a primary obligation of the State. In the Republic of Hungary the law contains rules on fundamental rights and obligations, but must not impose any limitations on the essential contents and meaning of fundamental rights. [Constitution, Article 8, 1, 2]*)
- The right of the child to protection and care. (*In the Republic of Hungary, every child has the right to enjoy the care and protection on the part of their families, and by the State and society, that is necessary for satisfactory physical, mental and moral development. [Constitution, Article 67, 1]*)
- The right of personal freedom (*In the Republic of Hungary everyone has the right to liberty and personal security, and no one may be deprived of freedom except for reasons defined in the law and on the basis of legal proceedings. [Constitution, Article 55, 1]*).

The relevant legal provisions

1993/LIX. Act on the Parliamentary Ombudsman of Citizens' Rights (Obtv.)

1997/XXXI. Act on the Protection of Children and Guardianship Administration (Gyvt.)

Government Decree Nr. 259/2002 (18.12) on the Authorization of Child Welfare and Child Protection Services and on Business License for Child Welfare and Child Protection.

Government Decree Nr. 331/2006 (23.12) on Child Protection and Guardianship Tasks and Competencies as well as on the Organization and Competence of Guardianship Authority (For provisions of law applied in the investigation see Appendix to the Report.)

State of affairs

Based on the available documents the state of affairs is as follows. The foundation was registered as a public benefit charity by Pk Nr. 60182/2000/7, 12.1.2001 by the Court of Baranya County. As relevant activity medical service has been registered. The treatment of children requiring special care (struggling with psychoactive drugs) has been licensed in an institution with 16 inmates in a limited time span: between March 1, 2006 and March 1, 2009. Service territory: Hungary. In the period of the investigation the care home served 11 boys struggling with psychoactive drugs (alcohol, drugs) on the basis of care contracts. Care contracts were concluded with the municipal city of Pécs and Baranya, Somogy, Bács-Kiskun and Veszprém Counties.

On March 1, 2008 the professional staff of the institution included:

1 institution manager with task-oriented professional qualification, 3 graduated educators (2 pedagogues, 1 educator with no data on professional qualification), 4 child supervisors (2 of them graduated, 1 whose graduation is in process, 1 attending college, no data on her task-oriented professional qualification), 2 child protection assistants, 1 child protection official (with college and high school degree but without task-oriented professional qualification).

A psychologist, a teacher for handicapped children, a mentalhygienic professional and a skill-oriented creative teacher are also occupied on a part time basis.

There is no family therapist in the institution.

A joint monitoring of the institution took place by the rapporteur of the Tolna County Regional Office of the Southern Transdanubian Regional Administrative Office, Welfare and Guardianship Office, the President of the foundation and the manager of the child home – on the basis of the authorization given by the government decree 331/2006 (12.23), art. 14 (1) on child protection and guardianship competencies as well as by government decree 259/2002 (12.18), art. 14 (1) on the authorization of child welfare and child protection services and child welfare and child protection licenses. As a result of the monitoring it has been established that the staff requirements (number of staff, professional qualification) of the functioning of the institution have been only partially met. Therefore the maintaining organization has been called upon to take necessary steps until November 1, 2007 the latest to put an end to deficiencies.

Until March 1, 2008 the manager of the care home functioned as the guardian of the children. During the investigation the new manager had his term of probation. This explains the fact that a professional guardian was appointed by the competent guardian's office.

Although I was informed that childrens' rights representatives and guardianship consultants kept contact with the foster-children on a monthly basis, I received no concrete answers concerning either actual contacts or activities supporting the guardian – reference was made on the different competencies concerning the children. I haven't been informed about the supporting activity of the consultants either.

The Organizational Chart reads as follows: „Due to the special nature of our institution a personal search is necessary after the inmate has returned from short leaves. Emptying pockets, laps, searching of shoes, socks. The child can be stripped to underpants if necessary....Face and eyes should be scrutinized, alcohol-test made.”

The Chart further establishes that the special child home should function in a relatively closed system. This is why hospitalization must be followed by a 3 months' isolation period, during which -in order to make accomodation easier- the visit of relatives is undesirable. In the interest of the child the Chart allows diversions from the direction referred to. If the child is perceived to be influenced by psychoactive drugs while returning the Chart prescribes a 1 month' isolation and deprivation of leave. In case of flight the child will be punished with 2 months' of isolation. According to the professional program a negative drugtest extending to 1 month or

tapering-off treatment in a hospital are the prerequisites of admittance to a special care home for children.

The results of the investigation

The charity home being a professional child protection institution is under the legal provisions of child care. According to the Child Care Law the child in temporary or permanent care has the right to a provision conforming to his/her age, health state, development and other needs. A child in special care home has the additional right to health care and a corrective personality therapy. The number of the professional staff with adequate qualification has been set by NM provision.

As a consequence I have established that the charity has not fulfilled the demand of the welfare and guardian's office to put an end to deficiencies in the professional staff.

The provisions of the Chart and the professional program of the institution including regulations that limit the children's personal freedom are disquieting, too. The provisions referring to body search and the application of an alcohol-test are characteristic of a penalty regime rather than of an institution of child protection.

It is my conviction that the professional program (1 month' negative drugtest, hospital treatment) for the special care of children who have been lifted from their families in an institution functioning in the framework of the child protection system must not be subject to any limitations. The guardian's office makes clear both the place where the child will be cared for and the competent guardian whose duty is to provide for and organize the child's health care.

The enforcement of the fundamental rights has been guaranteed by Article 8 of the Constitution: *„The Republic of Hungary recognizes the inviolable and inalienable rights of persons. Ensuring respect and protection for these rights is a primary obligation of the State. In the Republic of Hungary the law contains rules on fundamental rights and obligations, but must not impose any limitations on the essential contents and meaning of fundamental rights.* Article 67 of the Constitution establishes the right of children to care and protection required by adequate physical, mental and moral development. It also establishes the constitutional obligation of the state to protect the child's development. This obligation is the constitutional base to limiting the child in exercising his/her fundamental rights by the legislative power or the court.

Article 67 of the Constitution that obliged the state to care for and protect the child's personality development refers to keeping off clearly harmful effects and includes the prevention of high risks that could affect the child's whole future life.¹ Limiting fundamental rights can be reasonable by children struggling with drug and alcohol problems – in their own interest. According to the law of child protection limiting the personal freedom of children who require special care is permitted in extreme cases only when the child is a danger to him/herself and the public. Legal authorization is given by art. 81/A of the Child Protection Law. According to art. 81/2 (2) when the child is a danger to him/herself and others the manager of the care home has the right to forbid his leaving the care home and to stay in an assigned place. The ombudsman of children's rights, the child protection expert committee of the county and that of the capital as well as the guardian's office must be informed about the limitation within 36 hours. Simultaneously – if the limitation of personal freedom is expected to extend 48 hours – the educational supervision of the child can be initiated.

The guardian's office should make an official decision on educational supervision, the period of which must not extend 2 months. Its necessity must be revised on a monthly base by an expert committee.

According to effective legal regulations it is only the guardian's office that is authorized to limit the child's personal freedom for more than 48 hours. Both the hearing of the children

¹ 21/1996 (5.17), Constitutional Court decision.

concerned, the ombudsman of children's rights and the guardianship consultant and the involvement of an expert committee can serve as legal guarantees in case of a limitation of the fundamental right of personal freedom. The provision of the guardian's office must be approved of by the court.

Educational supervision -if necessary and on the basis of the opinion of an expert committee- can be ordered by the guardian's office simultaneously with the placement of the child.

To sum up: the practise of the care home – since the possibility of the limitation of personal freedom is included in the Chart – hurts child rights as included in Article 67 (1) of the Constitution. Furthermore the professional deficiencies of the staff may involve the imminent danger of injuring this right.

Measures

On the basis of Article 20 (1) of the Law of the Parliamentary Ombudsman the head of Tolna County Office of the Southern Transdanubian Regional Administrative Office Welfare and Guardianship Section will be requested to monitor the institution and take the necessary steps based on art 14 (1) of government decree 331/2006 on both tasks and competencies of child welfare and guardianship and the organization and competency of the guardian's authority.

Budapest, July 7, 2008

Máté Szabó Dr.