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Zagreb, 30 September 2020

**Mr Joseph Cannataci**

**Special Rapporteur on the right to privacy**

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cc: srprivacy@ohchr.org

**Child Rights Connect**

cc: secretariat@childrightsconnect.org

**Subject: Submission – Privacy and the Child**

Dear Mr Cannataci,

The Ombudsman for Children in the Republic of Croatia considers examining the privacy rights in general, and particularly the privacy rights of children to be very important.

The institution of **Ombudsman for Children of the Republic of Croatia** was established in 2003 by the Ombudsman for Children Act, as a parliamentary institution and the first specialized institution of its kind in the Republic of Croatia, with the aim to monitor, protect and promote the rights and interests of children. We work on four locations: in Zagreb (headquarters), and in three regional offices in other major cities in Croatia (Osijek, Rijeka and Split). The office has a multidisciplinary team. More on our website: [www.dijete.hr](http://www.dijete.hr). The office of the Ombudsman for Children is a member of the following organisations: Eurochild, ENOC (European Network of Ombudspersons for Children), CRONSEE (South East Europe Children's Rights Ombudsperson's Network), and COPE (Children of Prisoners Europe).

The institution has the Network of Young Advisors to the Ombudsman for Children (NYA) where children and young people act as advisors and associates to the Ombudsman for Children, but also as her/his ambassadors, disseminating information about the work of the NYA and the Ombudsman to their peers and taking steps to ensure that they know their rights and the ways to protect them. Acting within the scope of their role as advisors, they inform the Ombudsman about their views of the place of children in society and problems faced by children in their communities, suggesting ways to solve these problems.

As you are probably informed, the Ombudsman for Children deals with a broad spectrum of human rights of children. The right to privacy is one of them. As you highlighted in your letter calling for submissions from all interested stakeholders, we see likewise, the privacy connected with the children autonomy, independence, and freedom.

We also consider the privacy directly related to the child's right to participate in matters that concern him/her, to formulate his/her opinion autonomously and authentically, and to participate autonomously in activities that contribute to his/her development. We believe that the discussion on the right to privacy and the convention principle on the best interests of the child is also very relevant.

This submission is intended to:

1. acquaint you with the examples and **cases** that have been considered by the multidisciplinary team of the Ombudsman for Children in relation to the violation of child's privacy and with the issues that have arisen for us,
2. acquaint you with the knowledge and **views of the Ombudsman for Children** in relation to some aspects of the child's privacy, in accordance with the CRC
3. provide you with some input on privacy **regarding children whose parents are in conflict with the law or are in prison**.

**Examples, cases and areas of violation of the child's right to privacy**

The right to privacy can be violated in all spheres of child's life - some examples considered by the Ombudsman for Children in Croatia:

* the question of the Ministry of the Interior addressed to us whether the right of the child is violated if the name and picture of a missing child are published on the website of the Ministry of the Interior under “Missing children” in order to find the child,
* the problem of data on the previous (biological) family of adopted children which data are retained in the system of health care or education,
* a child and a mother complained that the data on the biological sex of the child (15 years old) who started with the gender transition is kept in the birth register and in personal documents; it is interesting that the school had information about the transition and tried to adapt to the child's needs and there was no problem regarding the violation of privacy,
* publishing information about the children of public figures (politicians, businessmen, celebrities) which are interesting for the media,
* publication in the media and on social networks information on children with behavioural problems and violence at school, or children perpetrators of criminal offenses,
* publication of photographs or recordings of children after a difficult operation (with a lot of equipment at the bedside) which is a remarkable medical feat (with the consent of parents and medical staff),
* often the parents themselves or one of them publish information about the child in the media or on social networks, expecting some material help, support or compensation,
* in highly conflicting divorces or conflicts between parents, parents often publish information about the child, photos, information about the child's growing up, statements, wishes, treatment, etc. in order to compete, revenge, blackmail, embarrass the other parent or simply due to a parent's misjudgement of what is good for the child, and what is not,
* there is a problem of so-called parental consent for the publication of recordings and data about the child, for public appearances, etc. because sometimes the will or desire of the parent is put before the child's will or interest - the parent decides about it,
* some children show dissatisfaction because parents post their pictures on social networks or in the media, in some cases it is the parents who insist that their children appear in the media, appear in talent shows, etc. On the other hand, due to privacy protection, some children are unable to show their abilities, and talents or participate in various leisure activities (educational, cultural, media, etc.) if the parent does not agree. This is a particularly big problem for children who are fostered or placed in institutions, where it is insisted that the biological parent (who has not adequately cared for the child but has not yet been deprived of parental care) gives that consent.
* Cameras on buildings, private houses, parking lots, public beaches, where children are also filmed,
* Publication of judgments of the European Court of Human Rights (with information on children and case details) and publication of judgments of national courts on a publicly accessible websites,
* There is often no reasonable and purposeful reason for certain restrictions related to any information about the child, so it seems to be a formal and bureaucratic approach. E.g. imposing an obligation that a child (under 18 years of age) cannot participate in a research (answer a questionnaire, survey) without parental consent, cannot request professional psychological help, talk to a school psychologist/pedagogue; the problem is also the rigid interpretations of certain legal experts who are inclined to condition all such participations of the child with the consent of the parents;
* Parents complain that some kindergartens, schools and children's homes prohibit taking pictures (there is no difference in banning the dissemination of such photos, posting on the school website or simply the availability of a photo for a family or kindergarten physical photo or video album).
* Only formal protection of the child's identity in the media (with the publication of the address, parents' names, age, school, especially the problem in small communities where people know each other).
* Humanitarian actions related to poverty or treatment and support for a sick child or a child with disabilities. Often children make statements in public, difficult life and living conditions are shown, causing pity for the child and there is a risk for the child to be exposed to negative reactions of his social environment. On the other hand, such actions provide the family, for example, with money for home renovation, or to raise the standard of living, pay expenses, meet some of the child's needs. The question remains whether this should necessarily lead to exposing the child’s privacy and provoking pity.

**Findings and views of the Ombudsman for Children**

* the question of the proportionality of the protection of the child's life, health, best interests and protection of privacy arises. As well as the question of the proportionality between the right to privacy and the importance of protecting children from the reactions of the social environment that may harm them, and the importance of making children and their needs visible in all aspects of life and growing up.
* often the child's privacy is considered within **the parent's right** to know everything about the child and that the child cannot do many things without parental consent (access to sexual and reproductive health counselling services, mental health services, minor medical procedures, participation in researches where, for example, the research object is child 's opinion...)
* It is often considered that the problem of child protection has been solved by the **consent of the parents**. It is not rare that a parent’s decision or consent is not in the best interests of the child. Some problems may have been solved that way. But this is not the approach with the child at the centre of adult actions and decisions, what the CRC obliges us to do.
* Very often the privacy is considered only in relation to the GDPR, and reactions lead to extreme situations (parents forbid teachers to have any conversation with the child if they are not present; children are not allowed to sign their artwork, even with initials. Most kindergartens and schools ban any kind of taking photographs (of activities, birthday celebrations, success in the competition). GDPR is important in the context of data collection and data presentation (and protects children especially from marketing and exploitation for profit) – there is a problem in the application of the GDPR and in general, of the obligation to protect the child's privacy in the educational process itself, which must focus on the child's development and progress, respectively the best interests of the child.

**Inputs on the privacy of children whose parents or close family members are in conflict with the law or are in prison** (these inputs arose from discussions and consultations within the COPE network):

* when we discuss about the privacy of children whose parents are in conflict with the law, we are not only talking about data on the number of children of prisoners, but also whether the prison system needs to know the child's name and surname, age and needs in order to cooperate with other systems (health and social care) and care for the welfare of a child whose parent is in prison. Some prisoners hide information that they have a child, in fear that the child will be placed in state care and they often leave it in inappropriate care.
* the question remains whether the social environment should know the "private" fact and, from the perspective of the child and the family, the "secret" that the parent is in prison or was in prison. Without this information, they will not be able (teacher, educator, coach, librarian, priest, doctor) to provide specific support to the child and mitigate the negative effects of this vulnerable family situation. But there is a danger that the information about the family situation will become a source of stigmatization, discrimination, shame, guilt, violation of the child's dignity.
* It is important to take into account the data on the child who lived with the mother in prison, in relation to the keeping and handling of such information. One should think about the question how in the future the child will cope with the fact that he/she lived in prison at an early age or that his/her parent was a prisoner.
* The positive efforts of the media, which, in their desire to raise awareness of the vulnerability of children of prisoners, also present data or photographs that empower and illustrate this view. There is a problem when the child is interviewed or the child is seen with the parent with whom he/she lives, who talks about the family situation.
* In Croatian prisons, prison officers read all letters that the prisoner is sending (except those sent to a lawyer or ombudsman), and some that the prisoner receives, what may pose a considerable risk of violation of the child's privacy. On the other hand, if the prison officer notices in the letter that the child might be in danger (crime against the child or if the parent in prison is deprived of parental care), then the officer informs the social welfare service or the parent taking care of the child.

In several cases, we have discussed about the child's right to privacy and autonomy within the framework of a code of ethics for researches involving children and consideration of the ethical conduct of people who deal professionally with children.

As there is a number of unanswered questions about the best rules, guidelines, and responsibilities of adults for a child’s privacy, the initiative to consider children’s privacy at such a high level indeed deserves all the support.

Dear Mr Cannataci, should you need more information on the perspective of the Ombudsman for Children in relation to the privacy of the child, please feel free to contact the Deputy Ombudsperson for Children Maja Gabelica Šupljika (gabelica@dijete.hr), whose expertise includes, among other areas, the rights of children whose parents are in conflict with the law.

Best regards,

Deputy Ombudsperson for Children,

Maja Gabelica Šupljika