1. Introduction

In this talk I will look at two very important reports that were presented and published in May 2012 by the newly appointed Children’s Ombudsman (hereafter: CO) in the Netherlands: the First Annual Report (de Kinderombudsman 2012) and the First Children’s Rights Monitor (de Kinderombudsman 2012a). After almost 15 years of political debate the national children’s ombudsman, Mr Marc Dullaert was appointed in April 2011 by the Dutch Parliament.

In his first year in office the CO has already published a number of reports, among others about young asylum seekers (de Kinderombudsman 2012b), and has taken part in a number of televised debates. Also he has created a website www.dekinderombudsman.nl and he is active on Twitter and other social media. The CO has been able in a very short period of time to make up for the lack that has existed for many years when one compares the Netherlands with other countries. In his First annual report the CO writes about the 700 individual contacts he and his five co-workers had with children and youngsters – and parents [around 50% of the 700] - about a range of subjects: violations of the right to be heard, lack of a foster-family, children who are bullied at school, children who are refused access to school, and so on. The CO acknowledges that he is not always in the (formal) position to act directly, but he has in fact in many cases functioned as an intermediary between the many institutions around the child and / or the families involved. So as one who cherishes the protection and defence of children’s rights, one can only applaud the way in which the CO has established his position in the ongoing debate on children’s rights.

What I propose to do is the following. First I will have a look at both reports and present a number of findings. Among them are worrying and even stunning figures about the violation of some of the most fundamental rights, i.e. to be free from and protected against violence and poverty. Violence and poverty are, this needs no clarification, against any ‘best interest’ of the child. Second I will make some comments on these data and I will use Korczak’s concepts of respect, justice and participation, and lastly I will give an example of how children’s rights researchers, educators and artists might work together.

2. Findings from the reports

The monitor was produced by two renowned research organizations in the Netherlands, i.e. the Chair for juvenile justice at the University of Leiden and the National Social and Cultural Planning Bureau. When two weeks ago this monitor was presented, one figure kept coming back in all news clips, i.e. the in the Dutch context stunning figure of around 500,000 children who are victim of maltreatment and poverty. Why stunning? There are about 3.5 mln children in the Netherlands, so this means that around 15% of these children suffer from either one of the forms of maltreatment – the CO was clear that so called psychological mistreatment counted for him as a substantive form – and / or from one or the other form of poverty, or combinations of both. The CO calls this problem ‘worrying, persistent, and extensive’ (2012, p. 40). The CO also points at other categories of children whose rights are jeopardized, i.e. asylum seeking children, handicapped children with regard to their rights to adaptive
education, and children who come into contact with the police and the juvenile justice system.

**Out of home care**

I will now discuss a number of data from the reports. The monitor makes it clear that there are four articles in the Convention on children’s rights that are regarded as its nucleus (also termed ‘umbrella-articles’). In this seminar I need hardly point out that article 3 is one of these: the best interest of the child must be the first to be considered when measures are taken. When one connects this article with others it gets its substance: for instance it gives the child the right to be heard in case of his parents’ divorce, or protects the asylum seeking child against eviction from a country when the country of his origin is not safe. The monitor states that a growing number of children who are in need of out-of-home care are put on a waiting-list, which jeopardizes their well-being and development. The CO urges the state for instance to guarantee a sufficient number of places in foster-care. This subject has much to do with the number and quality of institutions such as intramural and foster-care, and in this respect it is very much dependent on the willingness of the state to supply sufficient funds and monitor the quality of the services.

**Exploitation and violence**

The second topic, protection against exploitation and violence, is of a somewhat different nature. On the one hand it has to do with the safety of the child that must be guaranteed in these same institutions, but on the other hand it has to do with semi-institutions such as the family, and also with relatively new phenomena such as human traffic, child-pornography and Internet safety. (By ‘relatively new’ I do not of course suggest that these phenomena are by themselves ‘new’ but that to study and discuss them from the point of view of the rights of the child is.) The maltreatment of children is a widely spread phenomenon which has the tendency to transplant itself across generations. The monitor states that in 2010 118,836 children (zero to 17) were mistreated (this is 34.1%); of this number only 22,600 cases were directly reported to the Local centers against child maltreatment (AMK’s). After a report has been made the time between this and an actual treatment is way too long, says the monitor, the average being 77 days. In the conclusions the CO states that the national government should have the director’s role to enhance both quality and tempo of preventive measures. Local governments should deploy more policies, and youth care must work more holistic and interdisciplinary. There is furthermore a sharp contrast with the number of cases of child-molesting reported to the police, only about 800, and the cases specified as such that are under prosecution. The monitor says that more data is needed here. Within the exploitation of children and youngsters the phenomenon of so-called ‘lover boys’ is (unfortunately) well known in Holland. (I use ‘so called’ because (a) what they do has nothing to do with love, and (b) mostly they are over 18, so not boys but men.) The figure of minors who are victim of (sexual) exploitation and human traffic are relatively high, between 150 and 230. The CO says it is remarkable that the combat of exploitation is not one of the priorities of the Taskforce Human Traffic. (‘Loverboys’ are.) Of the other phenomena that are a risk factor in the well-being of the child the monitor pays special attention to the Internet, ‘a relatively new and highly topical’ (p. 46) field. Around 15% of the 11 to 16 year olds receive sexually coloured messages. The percentages of having a ‘public profile’ on one of the social media run in the 70s and 80s. Privacy and well-being are at risk, the CO states: what children are likely to see – pornographic material, targeted advertising, etc. – is not always in their best interest. A very recent phenomenon the monitor did not (yet) investigate is the ‘listing’ on social media of (allegedly) sexually active peers in the age around 13 to 15.
**Juvenile offence, delinquency, and criminality**

The third subject that the monitor discusses is perhaps best introduced by a quote from a 17-year old boy who says: ‘I was in a prison-cell for three days. My parents were allowed to visit me but I could not touch them: there was a glass wall between us’ (p. 54). The issue of juvenile offence, delinquency, and criminality is a difficult one: it is ridden with notions of an alleged increase, and of ethnic preference. In fact the number of youth offenders is stable, and the monitor says that a more repressive policy is unnecessary. (In fact, in the past 1,5 year the minister responsible for Safety and Law [note the order!] has presented a great number of repressive measures to Parliament.) There are however youth that give problems, especially when they are together in groups in public areas such as parks, playgrounds and shopping-malls. The Council for Societal Development (RMO) suggested in a report in 2008 (Raad voor Maatschappelijke Ontwikkeling 2008) that our way of treating these youngsters may lie somewhere between letting them ‘hang out’ and addressing them regards their behaviour. Many (first) offenders whose offence is not too severe are relegated to a special service called ‘Halt’ (or ‘Stop’) where they are obliged to do useful work for some weeks/months. In 2010 around 18,000 youngsters did this. But also in 2010 10,000 youngsters had to appear in court, and they were given a special task, again for some weeks. One of the new policies that shows that punishment has become more important is the law on young offenders. The monitor states that this is not in accord with the Convention. Another problematic issue is the fact that a little of 9,000 youngsters spend one or more nights in a police-cell, in the company of adults, which is explicitly against the Convention. Furthermore, technological developments have made new research instruments available, such as DNA-sampling. It appears that there are almost 5,000 of these (individual) samples in police-databases, and that these are kept for over 20 to 30 years. The monitor pleas for a reduction of sampling and a much shorter period of retaining. Lastly, the monitor is very critical about the treatment of young people with multiple (psychological or psychiatric) problems who are held in custody in closed centres for youth care. Only four out of these twelve institutions were rated as ‘good’, five were in fact judged to be insufficient. Among the population of the institutions girls are especially vulnerable.

**Poverty**

I now come to the part that has attracted much attention in the media, i.e. about what is called a ‘sufficient standard of living’. A number of situations are included here: (economic) well-being and its counterpoint poverty, access to sport and leisure, health, obesity etc.: one can see the comprehensiveness of the monitor. A general feature is the policy for inclusion and participation, one of the other cornerstones of the Convention. But not all children are included in the welfare that is so generally associated with my country: 327,000, 1 out of every 10 children (!), live in poverty (poverty defined as ‘not-much-but-sufficient’). For them this means no new shoes, no sporting-club, no outing to the zoo, or worse: no breakfast, only occasionally a good evening-meal. The monitor expects this figure even to rise with 40,000 in this year, and calls this ‘alarming’.

**Education**

The next domain, that of education, is one which many of us here are familiair with. In the past three seminars here in Geneva, education has always been a topic for presentation and discussion. No wonder, because education is a vital element in our democracies and we all know what is at stake here. A question that comes to my mind here is whether the monitor thinks that school and education are not in the best interest of the child. In their references to relevant articles of the Convention article 3 is strangely missing ... The monitor discusses two aspects: the access to and the quality of education. About access, there is an intriguing quote by a boy of 10 who says: ‘They say I am autistic and therefore no school wants me. I have
been home for a year now. No one knows a solution. I want to go to school just like other kids. What are my rights?’ (p. 84). For the researchers of this monitor it is evident that this boy’s rights are violated: every child has a right to education, to go to school. There are about 1,000 of kids like this boy, some of them are on a waiting-list for special education, others are, indeed wanted by no one. A special category are the so-called early school leavers or drop-outs, around 40,000 in lower and secondary vocational education. (In fact, the number is much higher, if you include drop-outs from professional and academic universities.) About the quality of schools, as measured by the Inspectorates for Education, it can be said that the percentages of schools that are monitored at a low inspection level runs in the 80s and 90s, the important exception being primary and secondary special schools. These are considered ‘weaker’ than the other schools, and that is a serious problem: these schools are populated by the most ‘difficult’ categories of pupils. What happens in these schools is evidently not always in their best interest. An interesting subject is education on children’s and human rights, which is underdeveloped in my country. To my mind (the monitor doesn’t say this), it is in the best interest of the child to have information about his rights. So here is work to be done.

Young asylum seekers

The last domain – in fact not a entirely separate domain, but it is nevertheless specific enough to treat it separately – has to do with a subject that has become a sort of gadfly, buzzing around our government’s skin: the treatment of young (minor) asylum seekers. When the OC presented a separate report two weeks ago on this, in which he stated that there were signs that Holland violates the international right of the reunion of families, the (demissionary) minister for Asylum and Immigration reacted like he was actually stung by the gadfly. In fact, between 80 and 97 (!) % percent of all the applications for children to be reunited in the new country with their parents were put down. With regard to asylum seeking children the monitor says it is worried about the policies deployed. In 2009 11,000 children came to Holland with their parents. 7,000 of them live in centres, 500 of these even longer than five years. The life and well-being of these children meet lots of serious problems: health-care, education, insurance etc. The monitor states that living in such a centre can hardly be a fertile ground for child’s development. The monitor says that these children may suffer from traumas to which uncertainty is added, leading to depression, PTSS, and serious behaviour problems. There are young asylum seekers who ‘disappear’ ... into human traffic, prostitution, and the like. Around 200 young asylum seekers were held in judicial custody, which to the mind of the monitor, should only function as a last resort. It seems that new policies are deployed to lower the number of youngsters in this setting.

Conclusion

The monitor concludes by saying that while a number of worrying figures and tendencies are presented, nevertheless the situation of most children in Holland is good – in a general sense. The researchers state that there is a lack of concrete and specific data on many issues, and it urges the state, the local governments and the private institutions to gather these data. Besides that they suggest that every law presented to Parliament should contain a report on the effects on children and their rights.

3. A reflection

In his report on the position of asylum seeking children (de Kinderombudsman, 2012b) the CO quotes a boy saying: ‘I don’t mind waiting for my future, but not my entire life’ (p. 2). I think that the feeling of estrangement of ‘just’ waiting’ has never been put better into words
than this boy does. It reminds me of a quote by Janusz Korczak from his story ‘Grey days’ (in *When I am little again & The child’s right to respect*; Korczak 1992) where the boy says:

‘Children – these are future people – they say. And so it’s a matter of their *becoming*, it’s as if they don’t exist yet, for the time being they don’t take part. What is the meaning of this? We children – aren’t we alive, don’t we feel, and suffer – just like adults? Our childhood years – aren’t they a part of real life – just like everybody else’s? For what reason do they tell us to wait – and for what?’ (p. 155; reworked translation by me, and emph. added, JWAB).

It seems that the findings of the CO today establish the same pattern as Janusz Korczak made clear long ago: in a world dominated by adults children and their best interest do not really count. At best they are the promise of *tomorrow* – today they should be as invisible as possible and not bother us with their problems and sufferings. Indeed, as Korczak says in his *Child’s right to respect*, ‘How can one live under the same roof with the likes of him?’ (1992, p. 167).

Korczak gives us within his practice - so not as a separately designed theory of education - a number of principles about how to live together with children. Earlier (Berding, 2010; Berding, Smit & Van Rijn, 2010) I reconstructed these as the principles of *respect*, *justice*, and *participation*. I’d like to discuss these briefly now, and use them as a comment on the reports just discussed.

**Respect**

Korczak goes back to the origin of the concept of respect ‘re-spicere’ to look after each other, to care for each other, so that everyone may enjoy the good life. Seen in this way the concept of respect is closely related to the central idea in article 3 about the best interest of the child. To be able to guarantee this, it is obvious that one should have a close look at the child and his interest. To respect the child and his interest is depended upon careful observation of what is at stake.

**Justice**

The concept of justice - both from a micro as well as from a macro point of view - is fundamental to Korczak’s view of education and upbringing. Let us not forget that Korczak was very much a ‘political’ pedagogue, if by ‘politics’ we mean the state of affairs in the ‘res publica’: the common and public world that we all share. Korczak was very much aware that this share is not equally divided, and that there are groups that are excluded from a justified part of the cake. Among these he counts children. Especially his *Child's right to respect* is aimed at clarifying the backward position of children in society (Korczak, in Kulawiecz, Ed., 1992). The compendium of this incisive critique is of course *How to love a child* where he develops a full positive educational program in the parts about the summer camps and the orphanage (Korczak, in Wolins, Ed., 1967). This program is in the first place an attempt to live together, and to deal with the plurality of society, also in the small society that was the summer camp or the orphanage. On Korczak’s view, democracy is meant to be more than only a politically organized way of living together deliberatively. Democracy for him was also a way of life, of socially sharing and acting, a democracy of communication, interaction and participation. And lastly Korczak’s ideal of democracy was based upon a firm view of justice as laid down in law, for which his famous Constitution provide the basis. These three elements - rational deliberation - caring - justice - are combined by Korczak in a unique form of res publica and its defence.
Participation

The above considerations bring me to Korczak’s third principle, participation, one which we discussed much in our previous meetings here in Geneva. To my mind, a discussion of participation that disregards the material conditions under which it may take place runs into dead ends. What’s the use of urging citizens to ‘actively take part’ if the access to society’s institutions is blocked. Or when the tools that one needs to actively take part are lacking. There are two mechanisms at work here: one that will effectively block participation in institutions i.e. by raising access fees, and the second that blocks effective participation once you’re inside. One needs for instance the tool of rational language in order to participate in political deliberation, because there are unwritten rules about how political deliberation should proceed. As the educational philosopher Gert Biesta (2010) has shown, theories of participation and inclusion always wrestle with the question of marginalization and exclusion. When there is an ‘us’ who decide whether or not ‘they’ are allowed to enter ‘our’ community, ‘they’ run the risk of being turned away at the door. This is in fact what is happening now, with the families and their children described in the CO’s reports.

Korczak’s practice of participation on the other hand displays an almost infinite and perhaps desperate effort to keep as many people as possible within the community. If you look at the articles in Korczak’s Constitution - his ‘law of respect’ – there is an almost endless diversity in the way the behaviour of the defendant may be interpreted. It is almost as if Korczak is saying: ‘No wait, I can think of yet another argument to keep this boy or girl in our community; please don’t make me send him or her away’, whatever his or his offence. It is very meaningful that in the 30 years of existence of Dom Sierot there were only a few cases of children who were expelled. Our way of looking at children today is almost the opposite: the demand on children to accommodate to supervision, to rules, to procedures has laid an enormous stress on them and their families. It is no wonder that many people shrug in front of society and politics, thereby organizing and internalizing their own marginalization.

Korczak combines in a very interesting way what the American philosopher and pedagogue John Dewey – who shares with Korczak the honorary title of ‘founder of children’s participation’ - called ‘construction and criticism’ (Dewey, 1988/1930; cf. Berding, 2011, 184-192). Korczak was indeed a very constructive, and creative doer and thinker, and this part of his work has as yet not ceased to inspire so many people around the globe. The critical part of his work is also all but obsolete, as the CO’s reports show. In our times a growing number of children have no equal share in the welfare. In these times when the level and the quality of welfare and well-being is threatened by a number of crises – the banking crisis, the euro crisis, the political crisis and let’s not forget the ecological crisis – poor families and their children are the first that run risk of an even more detrimental situation. From the point of view of children’s rights this is obviously unacceptable, since it is not in the best interest of the child to be cut off from leisure and sports, from new clothes, from a place in an adaptive school or, on an even more basic level, healthy and nutritious food. To my mind, the CO’s reports are not fully aware or aware enough of the detrimental circumstances in which children in poor families, in the poorer districts of the cities in my country grow up. They do not analyse this situation thoroughly enough from the standpoint of material conditions for participation. When the monitor states it expects the figure of poor children to rise by 40,000 in this year only, and calls this fact ‘alarming’, then this to my mind is an understatement: it is an assault on civilization. The recommendation that ‘the category of children who live in poverty or near-poverty should be monitored carefully’ (p. 81; emph. added, JWAB) comes as a cold shower, and is politically too correct. One of the consequences of the increase of poverty is that for more and more children and their families participation in society will be cut off before it has even begun.

4. Conclusions
For the Netherlands - with its ‘Triple A status’ still one of the most prosperous, not to say rich countries in the world – where research shows time and again that Dutch children belong to the luckiest in the world - it’s hard to understand the facts presented in the CO’s reports. There is much hidden poverty, and the socio-economic gap between haves and have-less is growing rapidly as can also be seen in the growing number of so called food-banks where poor people can get food for free. To my mind it is no exaggeration to state that an underclass of poor children is growing up who benefit less and less of all the social and civic institutions – if they succeed to get access at all.

Although the recent reports by the children’s ombudsman combine in an authoritative way empirical data and normative advocacy for the rights of children, it lacks an educational-political point of view that might have propelled it to a deeper level of understanding of what is going on. I have tried to provide this point of view by introducing Korczak’s concepts of respect, justice, and participation. What is needed is cooperative action by lawyers and other judicially skilled professionals who work with the Convention and especially article 3 in hand to defend children’s rights - like present here today - and pedagogues, teachers and other educators – also present here today - who are inspired by ideas like Korczak’s about respect, justice, and participation.

In our own work in the Netherlands the Korczak Association has done, and still does much to bring people who work with children into contact with each other to exchange and share views and practices. Last year our bi-annual Korczak Prize was award to the Vrolijkheid (‘Cheer Up!’) Association (The National Foundation for the Advancement of Jollity) that works with asylum seeking children who live in very detrimental situations in their temporary quarters in the asylum centres. Many of these children have, as we know, gone through intense negative experiences – war – armed conflicts – torture – maltreatment – exploitation. The Vrolijkheid tries to make children cope with these by working with them in a creative, and artistic way. Workers of the Vrolijkheid are musicians, theatre-makers, and visual artists. They offer the so-called five V’s (in Dutch): Jollity, safety, confidence, a way to tell your story, and strengthening the resilience of children.

The idea to start with the future today, in a very hands-on way, releases the tension of alienation that these children experience. It demands of society at large and the people who live and work with these children a trust in their abilities to come to grips with themselves and their situation. Is it not fair to say that to put trust and confidence in a child is perhaps what is best, in his best interest?

References


Websites

[www.korczak.nl](http://www.korczak.nl) (with an International page)
[www.vrolijkheid.nl](http://www.vrolijkheid.nl) (with an English page)